



## EXPLANATORY NOTES

---

### **Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10)**

£6.90



# **COST OF LIVING (TENANT PROTECTION) (SCOTLAND) ACT 2022**

---

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Cost of Living (Tenant Protection) (Scotland) Act 2022. They do not form part of the Act and have not been endorsed by the Parliament.
2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **OVERVIEW**

3. The Act—
  - adjusts the law on rent increases and sets a permitted rate (which may be varied by regulations made by the Scottish Ministers) by which rent may be increased (set at 0% initially), and provides for limited circumstances in which rent may be increased above this rate,
  - confers a power to modify the law on adjudication of rent disputes on or in anticipation of the expiry or suspension of the temporary rent controls,
  - adjusts the law on evictions to temporarily restrict the enforcement of various eviction orders, and provides for limited exceptions to the restriction,
  - allows for increased damages to be awarded in the event of an unlawful eviction.
4. The provisions of the Act relating to rent increases and evictions apply to—
  - private residential tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”),
  - assured tenancies and short assured tenancies under the Housing (Scotland) Act 1988 (“the 1988 Act”),
  - Scottish secure tenancies and short Scottish secure tenancies under the Housing (Scotland) Act 2001 (“the 2001 Act”), and
  - student residential tenancies.
5. The provisions of the Act relating to evictions also apply to protected tenancies (including short tenancies) and regulated tenancies under the Rent (Scotland) Act 1984 (“the 1984 Act”).

## **CROWN APPLICATION**

6. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or a Scottish statutory instrument unless the provision expressly exempts it. This Act applies to the Crown in the same way as it applies to everyone else.

## **DETAIL ABOUT PROVISIONS**

### **Part 1 – Residential tenancies – rent cap and evictions**

7. Section 1 introduces schedule 1 which makes temporary modifications in relation to rent controls in the following—

- the 2016 Act in relation to private residential tenancies (paragraph 1 of schedule 1),
- the 1988 Act in relation to assured tenancies and short assured tenancies (paragraph 2 of schedule 1),
- the 2001 Act in relation to Scottish secure tenancies and short Scottish secure tenancies (paragraph 3 of schedule 1),
- student residential tenancies (governed by contract) (paragraph 4 of schedule 1).

8. Section 2 introduces schedule 2 which makes temporary modifications to the law in relation to evictions. In particular, schedule 2 adjusts the law on evictions to temporarily restrict the enforcement of various eviction orders and provides for limited exceptions to the restriction.

### **Part 2—Part 1: supporting provisions**

#### ***Information and advice for tenants***

9. Section 3 provides that the Scottish Ministers must take steps to ensure that tenants affected by the provisions of Part 1 (including schedules 1 and 2) receive appropriate information, advice and support for the period during which Part 1 remains in force.

#### ***Advancement of equality and non-discrimination***

10. Section 4 provides that the Scottish Ministers must have regard to the importance of communicating in an inclusive way and to opportunities to advance equality and non-discrimination when exercising the functions contained in Part 1 (including schedules 1 and 2).

#### ***Subordinate legislation making powers***

11. Section 5 provides that any power to make subordinate legislation conferred by Part 1 (including schedules 1 and 2) includes the power to make ancillary provision – that is, incidental, supplementary, consequential, transitional, transitory or saving provision. The section also provides that any regulation-making power conferred by virtue of Part 1 includes the power to make different provision for different purposes and areas.

### ***Suspension, revival and expiry of Part 1***

12. Section 6 allows the Scottish Ministers, by regulations, to suspend the operation of any provision in Part 1 (including schedules 1 and 2), and to revive the operation of any such provision that has been suspended. For example, this power may be used to suspend any provision which is, in the view of the Scottish Ministers, not currently necessary or proportionate but which may need to be revived in the future if it becomes necessary and proportionate again. Regulations under this section are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010) if they textually amend any part of an Act, but are otherwise subject to the negative procedure (see section 28 of that Act).

13. Section 7 expires Part 1 (including schedules 1 and 2) at the end of 31 March 2023, unless the Scottish Parliament approves draft regulations (under subsection (3)) providing instead for the expiry of Part 1 at the end of 30 September 2023. If the Scottish Parliament approves such regulations, it may later approve draft regulations (under the same subsection) allowing a further, final extension until the end of 31 March 2024, at which point any remaining provisions of Part 1 will expire. Regulations under subsection (3) are subject to the affirmative procedure. In addition, subsection (7) allows the Scottish Ministers, by regulations, to make consequential, transitional, transitory or saving provision in connection with the expiry of a provision in Part 1. For example, this may be used to clarify the legal effect of anything previously done under an expired provision. Regulations under subsection (7) are subject to the affirmative procedure if they textually amend any part of an Act, but are otherwise subject to the negative procedure.

14. Section 8 allows the Scottish Ministers, by regulations, to expire any provision in Part 1 (including schedules 1 and 2) earlier than it would otherwise. It also provides that, where the Scottish Ministers consider that any provision in Part 1 is no longer necessary or proportionate in connection with the cost of living, they must bring forward regulations under section 6(1) to suspend the provision (where they consider that the provision may need to be revived) or under section 8 to expire the provision. Regulations under this section are subject to the affirmative procedure if they textually amend any part of an Act but are otherwise subject to the negative procedure.

### ***Reporting***

15. Section 9 requires the Scottish Ministers to periodically review the necessity and proportionality of the provisions in Part 1 (including schedules 1 and 2) in connection with the cost of living and then prepare, and lay before the Scottish Parliament, a report on each review. The initial reporting period covers the period from when the Act comes into force until the end of 31 December 2022, and thereafter the reporting period covers each successive 3 month period until 31 December 2023 or the expiry of Part 1 (if that occurs before 31 December 2023).

16. But no review or report is required for any such period if, during the period, the Scottish Ministers are required by section 7(6) to lay before the Scottish Parliament a statement of their reasons why regulations should be made under section 7(3) to change when Part 1 expires.

17. In the report in respect of the period ending 31 December 2022, the Scottish Ministers must, in considering the application of the permitted rate in relation to Scottish secure tenancies and short Scottish secure tenancies (as set out in section 24A(1) of the Housing (Scotland) Act 2001), explain whether they propose to retain the permitted rate at 0%, increase it, or suspend or expire paragraph 3 of schedule 1 which imposes that rent cap.

### **Part 3—Residential tenancies: rent adjudication**

18. Section 10 introduces schedule 3 which inserts a regulation-making power—

- into the 2016 Act, that can be used by the Scottish Ministers on or in anticipation of the expiry or suspension of paragraph 1 of schedule 1, to modify Chapter 2 of Part 4 of the 2016 Act in relation to private residential tenancies in connection with the rent adjudication process before a rent officer or the First-tier Tribunal for Scotland (“First-tier Tribunal”), and
- into the 1988 Act, that can be used by the Scottish Ministers on or in anticipation of the expiry or suspension of paragraph 2 of schedule 1, to modify Part 2 of the 1988 Act in relation to assured tenancies and short assured tenancies in connection with the rent adjudication process before the First-tier Tribunal.

19. Section 11 expires section 10 at the end of 31 March 2024, unless the Scottish Parliament approves draft regulations (to be made using the power in subsection (2)) providing for the expiry of section 10 up to one year later. This power may be used more than once. Regulations under subsection (2) are subject to the affirmative procedure. If the Scottish Ministers lay any such draft regulations before the Scottish Parliament they must, at the same time, lay a statement of their reasons.

### **Part 4—General**

20. Section 12 confers on the Scottish Ministers a power, by regulations, to make ancillary provision (incidental, supplementary, consequential, transitional, transitory or saving provision) for the purposes of, in connection with or for giving full effect to the Act or any provision made under it. It also confers on them a power, by regulations, to modify any such regulations in consequence of the use of their powers under sections 6 to 8. Regulations under this section are subject to the affirmative procedure if they textually amend any part of an Act, but are otherwise subject to the negative procedure.

21. Section 13 brings the Act into force on the day after the Bill for the Act receives Royal Assent. It also allows the Scottish Ministers to make, by regulations, transitional, transitory or saving provision in connection with the coming into force of any provision of the Act. Regulations under this section must be laid before the Scottish Parliament, but are otherwise subject to no parliamentary procedure (see section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010).

### **Schedule 1—Rent cap**

#### ***Rent cap for private residential tenancies***

22. Paragraph 1(1) of schedule 1 provides that the 2016 Act applies, subject to subparagraph (2), with the modifications set out in paragraph 1 of the schedule.

23. Sub-paragraph (2) provides that the modifications in paragraph 1 have no effect in relation to any rent-increase notice given under section 22(1) of the 2016 Act by a landlord under a private residential tenancy to a tenant before 6 September 2022. Existing rights of tenants to challenge any rent increase will be maintained for rent-increase notices given before 6 September 2022. This means that, where a rent-increase notice was issued prior to 6 September 2022, the 0% cap will not apply and the proposed rent will be applied 3 months after the tenant received the rent-increase notice (or such longer period as may be agreed between the landlord and the tenant) unless the tenant has made an application to a rent officer (part of Rent Service Scotland) under section 24 of the 2016 Act to challenge the rent-increase notice.

24. Sub-paragraph (4) modifies the effect of section 19 of the 2016 Act. Section 19(1) of the 2016 Act provides that the rent payable under a private residential tenancy may not be increased more than once in a 12 month period. Sub-paragraph (4)(a) modifies section 19(2) in consequence of sub-paragraph (9) and (13). Separately, sub-paragraph (4)(b)—

- firstly, inserts a new subsection (3) into section 19 of the 2016 Act in consequence of the new Chapter 2A of Part 4 of the 2016 Act (to be inserted by paragraph 1(17) of schedule 1 of the Act) to allow a landlord to apply to a rent officer seeking a rent increase above the level of the permitted rate in certain circumstances,
- secondly, inserts a new subsection (4) of section 19 conferring a regulation-making power (subject to the affirmative procedure) on the Scottish Ministers to amend that section to permit a second rent increase in a 12 month period in certain circumstances (as may be specified in the regulations).

25. Sub-paragraph (5) inserts a new section 21A into the 2016 Act (with temporary effect) providing that from 6 September 2022 a landlord under a private residential tenancy may not increase rent by more than the permitted rate (which is initially set at 0%). The permitted rate may be changed by the Scottish Ministers by regulations (subject to the affirmative procedure). Any rent-increase notice given on or after 6 September 2022 when the permitted rate is 0% has no effect.

26. In consequence of the new section 21A of the 2016 Act imposing a rent cap, sub-paragraph (6) modifies section 22 of the 2016 Act providing that any rent increase agreed between a landlord and tenant has no effect to the extent that the increase is more than the permitted rate.

27. Sub-paragraphs (8) and (9) modify sections 24 and 25 of the 2016 Act with the effect that, except where the permitted rate is 0% (meaning that no rent-increase notice can be given), a tenant who has received a rent-increase notice from a landlord may refer the proposed rent increase to a rent officer for a decision on whether the proposed rent increase does or does not exceed the permitted rate of increase. If it does not, the rent officer will approve the proposed rent increase by order. If the proposed rent would be an increase of more than the permitted rate, the rent officer will order that the rent may be increased by the permitted rate (see new sections 25(1A) to (1C) of the 2016 Act inserted by paragraph 1(9) of schedule 1).

28. In the circumstances where the modifications of section 25 of the 2016 Act made by the Act mean that the application to a rent officer under section 25 is to be limited to the rent officer deciding whether the proposed rent increase is at or below the level of the permitted rate (and is more limited than the process of rent determination by a rent officer otherwise set

out in section 25 of the 2016 Act which is to be determined at the level of open market rent), the following provisions of the 2016 Act are not necessary and are temporarily to be treated as having been repealed—

- section 26 (rent officer’s duty to issue provisional order) – see sub-paragraph (10),
- section 32 (determination of open market rent) – see sub-paragraph (15),
- section 24 (duty of rent officers and the First-tier Tribunal to make information about open market rents determined) – see sub-paragraph (18).

29. Sub-paragraphs (12) and (13) modify the effect of sections 28 and 29 of the 2016 Act to provide that the landlord or the tenant may appeal against an order by a rent officer under section 25(1A) or (1B) (deciding that the proposed rent increase is at or below the permitted rate and ordering that the rent payable is the rent proposed in the rent-increase notice, or otherwise ordering that the rent payable is the current rent payable as increased by the permitted rate) to the First-tier Tribunal. On determining the rent payable on appeal, the First-tier Tribunal must decide that the rent payable is the current rent as increased by the permitted rate.

30. Sub-paragraph (14) consequentially modifies section 31 of the 2016 Act dealing with what is effectively an underpayment of rent which arises where the effective date on which the rent officer’s or the First-tier Tribunal’s decision regarding rent increase takes effect is later than the date that the rent increase had originally been due to take effect in accordance with the rent-increase notice.

31. Sub-paragraph (16) makes consequential provision to section 33 of the 2016 Act (which applies where a referral made to a rent officer under section 24, or an appeal to the First-tier Tribunal under section 28, is withdrawn). In those circumstances, the rent officer or the First-tier Tribunal must decide that the rent payable is the lower of the rent proposed in the rent-increase notice or the current rent increased by the permitted rate.

32. Sub-paragraph (17) inserts a new Chapter 2A of Part 4 of the 2016 Act containing exceptions where a landlord may apply for a rent increase above the permitted rate. New section 33A of the 2016 Act enables a landlord to make an application to a rent officer to apply a proposed rent increase above the permitted rate in order to recover up to 50% of the increase in any prescribed property costs (defined by new section 33A(4) of the 2016 Act) incurred by the landlord at any time during the period of 6 months before making the application. The definition of “prescribed property costs” may be modified by regulations made by the Scottish Ministers under section 33A(5) which require the approval of the Scottish Parliament.

33. Prescribed property costs are any of the following costs—

- interest payable in respect of a mortgage or standard security relating to the let property,
- a premium payable in respect of insurance (other than building and contents insurance) relating to the let property and the offering of the property for let,
- service charges relating to the let property that are paid for by the landlord but the payment of which the tenant is responsible for under the tenancy.

34. Where a landlord applies to a rent officer under new section 33A(1) of the 2016 Act for a rent increase above the permitted rate, new section 33A(3) of the 2016 Act requires the landlord to give written notice of the application to the tenant which must—

- state the rent that would be payable if the proposed rent increase took effect,
- state that the proposed rent would be an increase of more than the permitted rate,
- state that the rent payable under the tenancy is not increased until the rent officer or (if appealed) the First-tier Tribunal makes an order determining the rent,
- describe what prescribed property costs of the landlord have increased in the previous 6 months prompting the proposed rent increase,
- where the proposed rent increase includes an amount in relation to the landlord's increased service costs (which is a reference to increased service charges which fall within the definition of "prescribed property costs") that are paid for by the landlord but recoverable from the tenant, a statement detailing the nature and amount of the increase in the service charges.

35. Under new section 33B of the 2016 Act, any rent increase ordered by the rent officer must be no more than 50% of the increase in the landlord's prescribed property costs incurred at any time during the 6 month period before making the application (as specified in the application to the rent officer) subject to an overall limit of this increase being no more than 3% of the level of the existing rent. This 3% limit may be changed by regulations by the Scottish Ministers if approved by the Scottish Parliament – see new section 33F(2) but may not be lower than the level of the permitted rate.

36. Sub-paragraph (11) modifies section 27 of the 2016 Act in consequence of the application to a rent officer under section 33A(1) and an order by the rent officer under section 33B(2) or (3). Within 14 days of making the order, the rent officer may correct an error in the original order determining the rent by making a new order.

37. Chapter 2A also provides for appeals and reviews. An order of a rent officer under section 33B(2) or (3) may be appealed to the First-tier Tribunal under section 33C within 14 days of the order being made. As with the decision of the rent officer, any rent increase ordered by the First-tier Tribunal on appeal must be no more than 50% of the increase in the landlord's prescribed property costs incurred in during the 6 month period before making the application (as specified in the original application to the rent officer) subject to a limit of this increase being no more than 3% of the level of the existing rent. The 3% limit may be modified by regulations made by the Scottish Ministers subject to the approval of the Scottish Parliament – see section 33F(2).

38. Again, the decision of the First-tier Tribunal may only be reviewed by the First-tier Tribunal under limited circumstances set out in section 33E. This is comparable to section 30 of the 2016 Act which applies in relation to an appeal to the First-tier Tribunal following a referral by a tenant to a rent officer under section 24.

39. New section 33F(1) confers power on the Scottish Ministers by regulations (subject to the affirmative procedure) to modify the 50% limit on the increase in prescribed property costs in respect of which a landlord may apply to a rent officer (under section 33A(1)) to seek recovery by way of rent increase.

40. Section 33G makes equivalent provision to section 31 of the 2016 Act, dealing with what is effectively an underpayment of rent which arises where the effective date on which the rent officer's or the First-tier Tribunal's decision (under section 33B(2) or (3) or 33C(3)) regarding the rent increase takes effect is more than 3 months after the day on which the tenant was notified of the landlord's proposed increase under section 33A(3). This is based on the assumption in the provisions in new Chapter 2A of Part 4 of the 2016 Act inserted by the Act that if an application by a landlord to increase rent to a level above the permitted rate is approved by a rent officer or the First-tier Tribunal under this Chapter, it is to take effect 3 months after the tenant has been notified under section 33A(3) of the application.

41. Sub-paragraph (19) temporarily disapplies Chapter 3 (rent pressure zones) of Part 4 of the 2016 Act meaning that a local authority will be unable to make an application to the Scottish Ministers requesting that all or part of the local authority's area be designated as a rent pressure zone during the period of application of the rent cap while Part 1 of this Act is in force.

### ***Rent cap for assured tenancies and short assured tenancies***

42. Paragraph 2 makes similar provision in relation to assured tenancies and short assured tenancies modifying the 1988 Act as the provision made in paragraph 1 in relation to private residential tenancies modifying the 2016 Act.

43. From 6 September 2022, a landlord under an assured tenancy or a short assured tenancy may not increase the rent payable under the tenancy by more than the permitted rate, which is initially set at 0% (see section 23A of the 1988 Act inserted by sub-paragraph (3)). The Scottish Ministers may, by regulations, change the permitted rate.

44. But the modifications made by paragraph 2 of schedule 1 of the Act have no effect in relation to a rent increase notice properly served under section 24(1) of the 1988 Act before 6 September 2022 (see sub-paragraph (2)(a)). Similarly, the modifications made to the 1988 Act do not affect a referral or an application to the First-tier Tribunal (under section 25(1) or 34(1) of the 1988) that has been made before the paragraph comes into force (see sub-paragraph(2)(b)).

45. Furthermore, the rent cap does not apply to tenancies to which the statutory rent increase process did not apply under section 24(5) of the 1988 Act (see subsection (6) of new section 23A). The rent increases relating to those tenancies are not governed by the arrangements under Part 2 of the 1988 Act and are instead governed by contractual terms. These excluded tenancies are either—

- statutory assured tenancies where the landlord varied the terms of the contract in the year following the conversion of the assured tenancy to a statutory assured tenancy under section 17 of the 1988 Act,
- contractual tenancies which include a term making provision for an increase in rent (including provision whereby the rent for a particular period will or may be greater than that for an earlier period).

46. The Act makes provision for a new route of referral to rent officers under the 1988 Act as modified, mirroring the modifications of the 2016 Act. The 1988 Act, without the modifications made by the Act, provides that statutory rent increase notices can be appealed by a tenant directly to the First-tier Tribunal, and rents in general in respect of short assured

tenancies can be referred to the First-tier Tribunal for a redetermination of appropriate rent for that tenancy. Sections 24A to 24K of the 1988 Act (inserted by paragraph 2(5) of schedule 1 of the Act) replace this process, mirroring the changes made to the 2016 Act relating to applications to rent officers and appeals to the First-tier Tribunal.

47. A tenant who has received a notice to increase rent from a landlord (where the permitted rate is more than 0%) may refer the proposed rent increase to a rent officer for a decision that the proposed rent increase does not exceed the permitted rate of increase (see section 24(3)(a) of the 1988 Act as modified by sub-paragraph (4)(d) and (g)). If it does not, the rent officer will approve the proposed rent increase by order. If the proposed rent would be an increase of more than the permitted rate, the rent officer will order that the rent may be increased by the permitted rate (see sub-paragraph (5) inserting new section 24A of the 1988 Act).

48. The landlord or the tenant can appeal against an order by the rent officer to the First-tier Tribunal within 14 days of the order being made (see new section 24B of the 1988 Act). On determining the rent on appeal, the First-tier Tribunal must decide that the rent payable is the current rent as increased by the permitted rate (see new section 24C of the 1988 Act).

49. New section 24D of the 1988 Act makes similar provision to section 33 of the 2016 Act (mentioned above).

50. Sub-paragraph (5) also makes provision for circumstances where a landlord may apply to increase the rent above the permitted rate (see new section 24E of the 1988 Act). It is similar to the provision made for private residential tenancies in paragraph 1 of the schedule in which a landlord may apply to a rent officer for an increase in rent to recover no more than 50% of prescribed property costs (as specified in the application to the rent officer) incurred by the landlord at any time during the period of 6 months before making the application, subject to an upper cap of the increase being no more than 3% of the current amount of rent.

51. Prescribed property costs are any of the following costs—

- interest payable in respect of a mortgage or standard security relating to the house that is let,
- a premium payable in respect of insurance (other than building and contents insurance) relating to the house that is let and the offering of the house for let,
- service charges relating to the house that is let that are paid for by the landlord but the payment of which the tenant is responsible for under the tenancy.

52. Where a landlord applies to a rent officer under new section 24E(1) of the 1988 Act for a rent increase above the permitted rate, new section 24E(3) of the 1988 Act requires the landlord to give written notice of the application to the tenant which must—

- state the rent that would be payable if the proposed rent increase took effect,
- state that the proposed rent would be an increase of more than the permitted rate,
- state that the rent payable under the tenancy is not increased until the rent officer or (if appealed) the First-tier Tribunal makes an order determining the rent,
- describe what prescribed property costs of the landlord have increased in the previous 6 months prompting the proposed rent increase,

- where the proposed rent increase includes an amount in relation to the landlord's increased service costs (which is a reference to increased service charges which fall within the definition of "prescribed property costs") that are paid for by the landlord but recoverable from the tenant, a statement detailing the nature and amount of the increase in the service charges.

53. The powers of a rent officer under new section 24F of the 1988 Act and the First-tier Tribunal under section 24G of the 1988 Act are the same as described in relation to sections 33B and 33C respectively of the 2016 Act mentioned above.

54. New section 24I of the 1988 Act makes equivalent provision to section 30 of the 2016 Act mentioned above.

55. New section 24J confers equivalent regulation-making powers on the Scottish Ministers as conferred under new section 33F of the 2016 Act to modify—

- the 50% cap on recovery of any increase in the landlord's prescribed property costs in connection with any approved rent increase above the permitted rate of increase,
- the overall cap on any rent increase of 3% of existing rent.

56. New section 24K of the 1988 Act makes equivalent provision to existing section 31 of the 2016 Act (as modified) and new section 33G of the 2016 Act mentioned above.

57. As a result of modified processes of applying to a rent officer and the First-tier Tribunal, sub-paragraphs (6) and (7) disapply the routes of appeal under section 25 and 34 of the 1988 Act. As mentioned above, saving provision is made under paragraph 2(2)(b) of schedule 1 of the Act to ensure that, on the day on which paragraph 2 of schedule 1 comes into force, no existing referral to a rent officer, or application to the First-tier Tribunal, is affected by the modifications made in this schedule.

### ***Rent cap for Scottish secure tenancies and short Scottish secure tenancies***

58. Paragraph 3 makes provision in relation to Scottish secure tenancies and short Scottish secure tenancies. On or after 6 September 2022, a landlord under a Scottish secure tenancy or short Scottish secure tenancy may not increase the rent payable under the tenancy by more than the permitted rate, which is initially set at 0%. Any rent increase notice given on or after 6 September 2022 has no effect. In addition, any rent increase notice that is given at a time when the permitted rate is 0% is of no effect (see sub-paragraph (3)).

59. The provision does not affect a landlord's ability to increase any charge other than rent that is payable under a Scottish secure tenancy or a short Scottish secure tenancy.

60. The Scottish Ministers may, by regulations, change the permitted rate. A landlord may not give a rent increase notice if it increases the rent payable under the tenancy by more than the permitted rate.

61. Paragraph 3(3) (see new section 25(7) of the 2001 Act) confirms that the provisions do not preclude social landlords from consulting their tenants.

62. Note that, while the provisions refer to Scottish secure tenancies, they additionally apply to short Scottish secure tenancies by virtue of section 34(6) of 2001 Act.

### ***Rent cap for student residential tenancies***

63. Paragraph 4 makes provision in relation to student residential tenancies. From the day paragraph 4 comes into force, a landlord may not increase the rent payable under the tenancy by more than the permitted rate. The permitted rate is initially set at 0% meaning that no rent increase may take effect while the permitted rate is set at that level.

64. The rent cap in relation to student residential tenancies has effect from the date on which paragraph 4 of schedule 1 of the Act comes into force rather than from 6 September 2022. This is because student residential tenancies are governed by contractual arrangements which, generally, would have been entered into before 6 September 2022 for the 2022-2023 academic year meaning that it is not considered to be necessary or appropriate to apply this provision retrospectively, that is, before the Act comes into force.

65. Subsection (7) defines “rent” for the purposes of this paragraph as not including any sums payable by the tenant under the tenancy in connection with the excessive use of any utilities by the tenant. This means that if the contractual tenancy allows the landlord to charge the tenant for an amount in respect of excessive use of energy or broadband, for example, this charge is still payable by the tenant as it is not “rent” to which the rent cap at the permitted rate (initially set at 0%) applies.

### **Schedule 2—Protection against eviction**

#### ***Eviction from residential properties: restrictions on enforcement***

66. In paragraph 1 of schedule 2, sub-paragraphs (1) and (2) impose restrictions on the enforcement of certain orders granted by a court or tribunal. These orders would, without these enforcement restrictions, have allowed a landlord to take steps to enforce the removal of a residential tenant from the landlord’s property. (In the following notes, such an order is referred to as an “eviction order”.)

67. Sub-paragraph (3) imposes limits on the duration of these enforcement restrictions. When the restrictions apply to an eviction order, the landlord cannot take further steps to enforce the order for 6 months starting from when it was granted or, if sooner, until the restrictions end. The 6-month maximum period of restrictions on the enforcement of an order cannot be extended.

68. Despite these enforcement restrictions, a landlord may still take steps to apply for and obtain an eviction order as previously. But, as with any other eviction order, if the enforcement restrictions apply to the order then it cannot be enforced for 6 months starting from when it was granted or, if sooner, until the restrictions end.

69. There are different kinds of eviction order although they broadly do the same thing - they enable a landlord to take steps to remove a tenant from the landlord’s property. In paragraph 1, an order of this kind is referred to as a “decree for removing”. The meaning of this is set out in sub-paragraph (10). It includes the most common kinds of eviction order that may be granted by a court or tribunal to enable a landlord to remove a residential tenant from the landlord’s property.

70. There are also different kinds of residential tenancy, with each kind governed by a different regime (whether statutory or common law). The main statutory regimes are—

- the 2016 Act for private residential tenancies,
- the 2001 Act for Scottish secure tenancies and short Scottish secure tenancies,
- the 1988 Act for assured tenancies (including short assured tenancies), and
- the 1984 Act for, among other things, protected tenancies (including short tenancies) and statutory tenancies.

71. Most student residential tenancies are governed instead by the common (non-statutory) law of contract.

72. Any eviction order granted by a court or tribunal to remove a residential tenant from a property that is subject to any one of the above tenancies could potentially be affected by the enforcement restrictions. Whether the order is subject to these restrictions depends, in part, on when proceedings for the order were raised with the court or tribunal (i.e. when the landlord first submitted an application to the court or tribunal for the order)—

- If the proceedings for an eviction order start after the restrictions come into force, the restrictions could apply to the order. If the landlord was required to give the tenant an “eviction notice” (see definition in sub-paragraph (10)) before doing so, it makes no difference when the notice was given (including whether it was given before or after details of the enforcement restrictions to be delivered by the Act were first made public on 6 September 2022, or before or after the enforcement restrictions come into force).
- If the proceedings for an eviction order started before the restrictions come into force and an eviction notice had to be given to the tenant before doing so, the restrictions could apply to the order (regardless of when the order is or was granted) but only if the notice was given on or after 6 September 2022.
- If the proceedings for an eviction order started before the restrictions come into force and an eviction notice did not need to be given to the tenant before doing so, the restrictions could apply to the order (regardless of when the order is or was granted) but only if the proceedings started on or after 6 September 2022.
- If the proceedings for an eviction order started before 6 September 2022, the restrictions do not apply to the order (regardless of when the order is or was granted). Accordingly, any such eviction order may be obtained and enforced as previously.

73. Whilst the enforcement restrictions could apply to any eviction order that meets the criteria in sub-paragraph (1) or (2), they do not apply in a case mentioned in sub-paragraph (4) or (5)—

- Sub-paragraph (4) provides that where an eviction order relates to a student residential tenancy, the enforcement restrictions do not apply if the order is or was granted in respect of circumstances which are the same as those described in

paragraph 2 (the tenant received a relevant conviction) or paragraph 3 (the tenant behaved in an anti-social manner) of schedule 2 of the Act. Paragraphs 2 and 3 are explained below.

- Sub-paragraph (5)(a) provides that where an eviction order relates to a private residential tenancy under the 2016 Act, the enforcement restrictions do not apply if the order is or was granted on the basis of the application of paragraph 1A, 2, 4A, 8, 10, 12A, 13, 14 or 15 of schedule 3 of that Act. These paragraphs set out various circumstances in which an eviction order may be granted in relation to this kind of tenancy. (The 2016 Act is modified by paragraph 4 - as noted below - to insert paragraphs 1A, 4A and 12A.)
- Sub-paragraph (5)(b) provides that where an eviction order relates to a Scottish secure tenancy or a short Scottish secure tenancy under the 2001 Act, the enforcement restrictions do not apply if the order is or was granted on the basis of the application of paragraph 1, 2, 5, 7, 8, 10 or 14 of schedule 2 of that Act. These paragraphs set out various circumstances in which an eviction order may be granted in relation to these kinds of tenancy. These are all existing grounds. But the reference to paragraph 1 (which relates, in part, to rent arrears) is qualified. The effect is that the enforcement restrictions do not apply to an order granted on the ground of rent arrears only if the amount is equal to or greater than £2,250. If the rent arrears are below that amount, an eviction order granted on that ground (and which is subject to the enforcement restrictions) cannot be enforced for 6 months from when the order was granted (or, if sooner, until the enforcement restrictions are brought to an end).
- Sub-paragraph (5)(c) provides that where an eviction order relates to an assured tenancy (including a short assured tenancy) under the 1988 Act, the enforcement restrictions do not apply if the order is or was granted on the basis of the application of Ground 1A, 2, 8A, 15 or 17 of schedule 5 of the 1988 Act. These are Grounds on which an eviction order may be granted in relation to this kind of tenancy. (The 1988 Act is modified by paragraph 5 - as noted below - to insert Grounds 1A and 8A.)
- Sub-paragraph (5)(d) provides that where an eviction order relates to a protected tenancy (including a short tenancy) or a statutory tenancy under the 1984 Act, the enforcement restrictions do not apply if the order is or was granted on the basis of the application of Case 1A, 2, 7 or 8A, paragraph (c)(vi) in Case 11 or paragraph (c)(iv) in Case 12 of schedule 2 of the 1984 Act. These are Cases where an eviction order can be granted in relation to these kinds of tenancy. (The 1984 Act is modified by paragraph 6 - as noted below - to insert Cases 1A and 8A.)

74. Sub-paragraph (6) provides that where an eviction order is subject to the enforcement restrictions, and was granted under section 51 of the 2016 Act or section 16 or 36 of the 2001 Act after the enforcement restrictions came into force, the order does not bring the tenancy to an end until the landlord has recovered possession of the property through the enforcement of the order (at any time after the restrictions on the enforcement of the order have come to an end). This ensures that the landlord does not end up in a situation where a tenancy comes to an end at a time when an eviction order cannot be enforced against the tenant.

75. Sub-paragraph (7) ensures that any period when an eviction order mentioned in section 16(5A)(c) of the 2001 Act is subject to enforcement restrictions under paragraph 1(1) or (2) is disregarded when calculating the period for which the landlord has a right under the order to recover possession of the property in question. In other words, the period when the landlord has those rights is paused whenever the enforcement restrictions apply to the order.

76. Sub-paragraph (8) confers a power on the Scottish Ministers to modify, by regulations, the circumstances in which the enforcement restrictions in paragraph 1 of schedule 2 do not apply. Sub-paragraph (9) provides that these regulations are subject to the affirmative procedure.

***Student residential tenancies: criminal behaviour***

77. As noted above, the enforcement restrictions that are imposed by paragraph 1(1) and (2) of schedule 2 do not apply in relation to a student residential tenancy where the eviction order is or was granted in respect of the circumstances set out in paragraph 2 of the schedule. This is where a tenant receives a relevant conviction for an offence that was committed by using, or allowing the use of, the let property for an immoral or illegal purpose, or an offence that is punishable by imprisonment and committed within, or in the locality of, the let property.

***Student residential tenancies: anti-social behaviour***

78. As noted above, the enforcement restrictions that are imposed by paragraph 1(1) and (2) of schedule 2 do not apply in the case of a student residential tenancy where the eviction order is granted in respect of the circumstances set out in paragraph 3 of the schedule. This includes circumstances relating to anti-social behaviour of the tenant within, or in the locality of, the property.

***Safeguards for landlords: substantial rent arrears and financial hardship***

79. Paragraphs 4 to 6 of schedule 2 set out some additional grounds on which an eviction order may be granted, with effect from the date on which the enforcement restrictions in paragraph 1(1) and (2) of the schedule come into force. Where an eviction order is granted on one of these additional grounds, the enforcement restrictions do not apply and the order can be enforced in the usual way. Whether and how these apply depends on the type of tenancy in question—

- In relation to private residential tenancies, paragraph 4 modifies the 2016 Act to insert new paragraphs 1A, 4A and 12A into schedule 3 of the 2016 Act. The new grounds are: the landlord's intention to sell the property to alleviate financial hardship, the landlord's intention to live in the property to alleviate financial hardship, and circumstances where the tenant has accrued substantial rent arrears.
- In relation to an assured tenancy (including a short assured tenancy), paragraph 5 modifies the 1988 Act to insert new paragraphs 1A and 8A into schedule 5 of the 1988 Act. The new grounds are: the landlord's intention to live in the property to alleviate financial hardship, and circumstances where the tenant has accrued substantial rent arrears.
- In relation to a protected tenancy (including a short tenancy) and a statutory tenancy, paragraph 6 modifies the 1984 Act to insert new paragraphs 1A and 8A into schedule 2 of the 1984 Act. The new grounds are: the landlord's intention to live in the property to alleviate financial hardship, and circumstances where the tenant has accrued substantial rent arrears.

80. The new grounds of “substantial rent arrears” apply if the tenant has accrued rent arrears in respect of one or more periods, and the cumulative amount equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy. But a court or tribunal must also be satisfied that it is reasonable to grant an eviction order on this ground, taking into account, among other things, whether the rent arrears are due to a delay or failure in the payment of certain benefits.

81. In addition, paragraph 5(3) of schedule 2 modifies section 19(4) of the 1988 Act so that the minimum period to be specified in an eviction notice under that section is two months if the notice specifies either of the new Grounds (1A or 8A) that are inserted into the 1988 Act by the paragraph.

***Unlawful eviction: notification and determination of damages etc.***

82. Paragraphs 7 and 8 of schedule 2 make provision for the determination of damages where a tenant has been unlawfully evicted. This applies to unlawful evictions taking place on or after the commencement of the Act. Such a determination may be for an amount that is not less than 3 months’ rent and not more than 36 months’ rent but which may be reduced to an amount of less than 3 months’ rent if the court or First-tier Tribunal considers that to be appropriate. The provisions also place a requirement on the First-tier Tribunal to inform the police and local authorities when an order is made. In the case of a social landlord, the sheriff court is required to inform the Scottish Housing Regulator when an order is made.

**Schedule 3—Rent adjudication: power to modify**

83. Paragraph 1 of schedule 3 confers regulation-making powers that may be used on or in anticipation of the expiry or suspension of paragraph 1 of schedule 1. These powers enable the Scottish Ministers to modify Chapter 2 (rent variation instigated by landlord’s notice) of Part 4 of the 2016 Act in connection with the determination of rent payable under a private residential tenancy by a rent officer or the First-tier Tribunal. Regulations under this power are subject to the affirmative procedure. For example, the power could be used to change the basis on which rents are determined (i.e. otherwise than on the basis of open market value as provided for in section 32 of the 2016 Act which is modified by the Act to be treated as having been repealed). It could also be used to provide that a rent adjudicator can only determine an increased rent if the increase is the same or lower than the increase sought by the landlord. Before laying draft regulations, the Scottish Ministers must consult such persons as appear to them to represent the interests of tenants and landlords under private residential tenancies and any other persons as they consider appropriate.

84. Paragraph 2 of schedule 3 makes similar provision with respect to the rent adjudication process for assured tenancies and short assured tenancies under Part 2 of the 1988 Act with the regulation-making powers being exercisable on or in anticipation of the expiry or suspension of paragraph 2 of schedule 1. Regulations under this power are subject to the affirmative procedure. Before laying draft regulations, the Scottish Ministers must consult such persons as appear to them to represent the interests of tenants and landlords under assured tenancies and short assured tenancies and any other persons as they consider appropriate.

## PARLIAMENTARY HISTORY

85. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

<i>Proceedings and reports</i>	<i>Reference</i>
Bill as introduced	<a href="#">SP Bill 18</a>
Housing, Local Government and Planning Committee, pre-Stage 1 evidence sessions	<a href="#">Official Report 4 October 2022, Col. 2 to 47</a>
Stage 1 proceedings	<a href="#">Official Report 4 October 2022, Col. 15 to 75 and 82 to 84</a>
Marshalled list of amendments for Stage 2	<a href="#">SP Bill 18 - ML</a>
Groupings of amendments for Stage 2	<a href="#">SP Bill 18 - G</a>
Stage 2 proceedings	<a href="#">Official Report 5 October 2022, Col. 28 to 171</a>
Bill as amended at Stage 2	<a href="#">SP Bill 18A</a>
Marshalled list of amendments for Stage 3	<a href="#">SP Bill 18A - ML</a>
Groupings of amendments for Stage 3	<a href="#">SP Bill 18A - G</a>
Stage 3 proceedings	<a href="#">Official Report 6 October 2022, Col. 56 to 107</a>
Bill as passed at Stage 3	<a href="#">SP Bill 18B</a>
Royal Assent: 27 October 2022	<a href="#">2022 asp 10</a>

© Crown Copyright 2022

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, the King's Printer for Scotland.





a Williams Lea company

Published by TSO (The Stationery Office), a Williams Lea company,  
and available from:

**Online**

**[www.tsoshop.co.uk](http://www.tsoshop.co.uk)**

**Mail, Telephone, Fax & E-mail**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0333 202 5070

Fax orders: 0333 202 5080

E-mail: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Textphone: 0333 202 5077

**TSO@Blackwell and other Accredited Agents**

ISBN 978-0-10-592066-3



9 780105 920663