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STATUTORY INSTRUMENTS

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**1993 No. 658 (S.96)**

**COUNCIL TAX, SCOTLAND**

**HOUSING, SCOTLAND**

**The Local Government Finance (Housing)  
(Consequential Amendments) (Scotland) Order 1993**

<i>Made</i>	- - - -	<i>11th March 1993</i>
<i>Laid before Parliament</i>		<i>11th March 1993</i>
<i>Coming into force</i>	- -	<i>1st April 1993</i>

The Secretary of State, in exercise of the powers conferred on him by sections 113 and 114 of the Local Government Finance Act 1992<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Local Government Finance (Housing) (Consequential Amendments) (Scotland) Order 1993 and shall come into force on 1st April 1993.

(2) This Order shall extend to Scotland only.

**Amendment of enactments**

2. The Rent (Scotland) Act 1984<sup>(2)</sup> and the Housing (Scotland) Act 1988<sup>(3)</sup> shall be amended as specified in Schedules 1 and 2 to this Order.

St. Andrew's House,  
Edinburgh  
11th March 1993

*James Douglas-Hamilton*  
Parliamentary Under Secretary of State, Scottish  
Office

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(1) 1992 c. 14.  
(2) 1984 c. 58.  
(3) 1988 c. 43.

## SCHEDULE 1

Article 2

## AMENDMENTS OF ENACTMENTS

**THE RENT (SCOTLAND) ACT 1984**

1. The Rent (Scotland) Act 1984 shall be amended in accordance with paragraphs 2 to 7.
2. In section 46 (applications for registration of rents) after subsection (3) there shall be inserted the following subsection—
  - “(3A) An application such as is mentioned in subsection (3) above shall not be entertained on the ground only that, since the relevant date, there has been a change in the amount of council tax payable in respect of the dwelling-house.”.
3. In section 49 (amount to be registered as rent)—
  - (a) in subsection (1) after the word “services” there shall be inserted the words “or in respect of council tax”;
  - (b) in subsection (2) after paragraph (c) there shall be added the following paragraph—
    - “(d) the council tax.”.
4. In section 56 (rents to be registrable under Part V) in subsection (2)(4) for the word “49” there shall be substituted the word “49A”.
5. In section 66(5) (powers of rent assessment committees on reference of contracts) after subsection (4) there shall be added the following subsection—
  - “(5) A rent assessment committee shall not entertain a reference under subsection (4) above on the ground only that, since the relevant date, there has been a change in the amount of council tax payable in respect of the dwelling-house.”.
6. In section 67 (register of rents under Part VII contracts) after subsection (2) there shall be inserted the following subsection—
  - “(2A) For the purposes of subsection (2) above the rent shall include any sums payable by the lessee to the lessor in respect of council tax, whether those sums are payable by virtue of a contract under which a rent is payable or otherwise.”.
7. In section 81 (interpretation of Part VII) in subsection (1) before the definition of “dwelling-house” there shall be inserted the following—
  - ““council tax” means the tax payable under the Local Government Finance Act 1992;”.

**THE HOUSING (SCOTLAND) ACT 1988**

8. The Housing (Scotland) Act 1988 shall be amended in accordance with paragraphs 9 to 11.
9. In section 24 (increases of rent under assured tenancies) in subsection (2)—
  - (a) after the word “is” where it first occurs there shall be inserted the words “except in a case where section 25A applies”; and
  - (b) at the end of paragraph (b) there shall be added the following—
    - “and in any case to which section 25A applies, one month”.

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(4) Section 56(2) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 28 and the Housing (Scotland) Act 1988 (c. 43), Schedule 10.

(5) Section 66(1) was amended by the Housing (Scotland) Act 1987 (c. 26), Schedule 23, paragraph 29(5) and by the Housing (Scotland) Act 1988, section 68 and Schedule 10.

10. In section 25 (determination of rent by rent assessment committee) in subsection (3) after the word “services” there shall be inserted the words “or in respect of council tax”.

11. In section 55 (interpretation of Part II) in subsection (1) before the definition of “house” there shall be inserted the following—

““council tax” means the tax payable under the Local Government Finance Act 1992;”.

## SCHEDULE 2

Article 2

### TRANSITIONAL AMENDMENTS

#### THE RENT (SCOTLAND) ACT 1984

1. The Rent (Scotland) Act 1984 shall be amended in accordance with paragraphs 2 to 4.
2. In section 46 (applications for registration of rents)—
  - (a) in subsection (3) after the word “below” where it first occurs there shall be inserted the words “and section 49A”; and
  - (b) in subsection (5) at the end there shall be added the words “but does not mean the date from which registration took effect under section 49A of this Act”.
3. After section 49 (amount to be registered as rent) there shall be inserted the following section—

#### “Transitional applications: regulated tenancies

**49A.**—(1) This section applies in the case of a regulated tenancy or an agreement relating to the tenancy which provides for the payment by the tenant to the landlord of sums in respect of council tax and—

- (a) a rent was registered before 1st April 1993; or
- (b) an application is made before 1st April 1993 under section 46 above for the registration of a rent but a rent is not registered in respect of that application.

(2) At any time before 1st April 1994 or the expiry of 3 years beginning with the relevant date (within the meaning of sections 46 and 47), whichever is the earlier, an application for the registration of a rent for a dwelling-house may be made to the rent officer by the landlord or the tenant, or jointly by the landlord and the tenant, under a regulated tenancy of the dwelling-house for the purpose of taking into account sums payable by the tenant to the landlord in respect of council tax.

(3) Any such application shall be in the prescribed form and shall—

- (a) specify the rent (including sums payable by the tenant to the landlord in respect of council tax) which it is sought to register; and
- (b) contain such other particulars as may be prescribed.

(4) Where an application is made under subsection (2) above, the rent officer shall determine the amount by which the registered rent might reasonably be increased to take account of sums payable by the tenant to the landlord in respect of council tax.

(5) The amount of any rent registered under this section shall be the total of the sums payable in respect of the previously registered rent and the amount determined under subsection (4) above.

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(6) In any case where a rent officer has before him for determination applications under this section and section 46 above, he shall not make a determination in the application under this section until he has made a determination under the said section 46.

(7) No more than one application in respect of any tenancy may be made under this section.”.

4. After section 66 (powers of rent assessment committees on reference of contracts) there shall be inserted the following section—

**“Transitional references of Part VII contracts**

**66A.**—(1) This section applies in the case where a Part VII contract or an agreement relating to such a contract provides for the payment by the lessee to the lessor of sums in respect of council tax and—

- (a) a rent was registered before 1st April 1993; or
- (b) a reference is made before 1st April 1993 under section 66(1) above with a view to the registration of a rent but a rent is not registered in respect of that reference.

(2) At any time before 1st April 1994 or the expiry of 3 years beginning with the date of last consideration by the rent assessment committee, whichever is the earlier, either the lessee or the lessor under a Part VII contract may refer the contract to the rent assessment committee for the area in question for consideration of the rent for the purpose of taking into account sums payable by the lessee to the lessor in respect of council tax.

(3) Where a reference is made under subsection (2) above, the rent assessment committee shall, after making such inquiry as they think fit and giving to each party to the contract an opportunity of being heard or of submitting representations in writing, increase the amount of the registered rent by such sum as the committee consider reasonable to take account of the sums payable by the lessee to the lessor in respect of council tax.

(4) The rent registered under this section shall be the total of the previously registered rent and the increased sum mentioned in subsection (3) above.

(5) In any case where the committee have before them references under this section and section 66 above, the committee shall not make their decision in relation to the reference under this section until they have made their decision under the said section 66.

(6) No more than one application in respect of any Part VII contract may be made under this section.”.

**THE HOUSING (SCOTLAND) ACT 1988**

5. In Part II of the Housing (Scotland) Act 1988 (rented accommodation) after section 25 there shall be inserted the following sections—

**“Assured tenancies: transitional provisions**

**25A.**—(1) This section applies in the case where an assured tenancy to which section 24 above applies, or an agreement relating to the tenancy, provides for the payment by the tenant to the landlord of sums in respect of council tax; and

- (a) the first anniversary of the date on which the rent has previously been increased (whether by agreement or by virtue of a notice under section 24(1) above or a determination under section 25) has not occurred; or

- (b) a notice is served before 1st April 1993 under section 24(1) above for the purpose of securing an increase in the rent but the new rent has not yet taken effect either by virtue of the notice or a determination under section 25 above.
- (2) At any time before—
  - (a) 1st April 1994; or
  - (b) the first anniversary of the date when the existing rent took effect,whichever is the earlier, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take account of any sums payable by the tenant to the landlord in respect of council tax and specifying a date when the new rent shall take effect.
- (3) The date specified in subsection (2) above shall, unless either of the conditions mentioned in subsection (4) below applies, be a date not earlier than one month after the date of service of the notice under this section.
- (4) The conditions referred to in subsection (3) above are that before the date specified in the notice—
  - (a) the tenant by an application in the prescribed form refers the notice to a rent assessment committee; or
  - (b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.
- (5) Nothing in this section or section 25B affects the right of the landlord and tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).
- (6) No more than one notice in respect of any tenancy may be served under this section.

**Determination of rent by rent assessment committee where section 25A applies**

- 25B.**—(1) Where a tenant refers to a rent assessment committee a notice under section 25A, the committee shall determine the amount by which the existing rent might reasonably be increased to take into account the tenant's liability to make payments to the landlord in respect of council tax.
- (2) A determination under subsection (1) above shall, unless the landlord and tenant otherwise agree, have effect—
    - (a) from the date specified in the notice under section 25A(2); or
    - (b) if it appears to the committee that such effect would cause undue hardship to the tenant, from such later date (being not later than the date of the determination) as the committee may direct.
  - (3) In any case where—
    - (a) a rent assessment committee have before them at the same time a section 24 reference and a section 25A reference relating to the same tenancy; and
    - (b) the date specified in the notice under section 24(1) is not later than the date specified in the notice under section 25A; and
    - (c) the committee propose to hear the two references together,the committee shall make a determination in relation to the section 24 reference before making their determination in relation to the section 25A reference.
  - (4) In any case where paragraphs (a) and (c), but not paragraph (b), of subsection (3) above are satisfied—

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- (a) the committee shall make a determination in relation to the section 24 reference before the section 25A reference; and
  - (b) the rent determined for the purposes of the section 25A reference shall take effect from the date specified in the notice given under that section.
- (5) In this section—
- (a) “section 24 reference” means the reference of a notice under section 24(1);
  - (b) “section 25A reference” means the reference of a notice under section 25A; and
  - (c) “rent” has the same meaning as in section 25.
- (6) Section 25(2) applies to a determination under this section as it applies to a determination under that section.”.
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#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Rent (Scotland) Act 1984 and the Housing (Scotland) Act 1988 to take account of the case where a landlord is liable for council tax and the tenant makes a payment to the landlord in respect of council tax.

Article 2 and Schedule 1 amend these Acts generally.

Article 2 and Schedule 2 amend the Acts to include transitional provisions, in particular provisions for transitional increases in rent during the period commencing on 1st April 1993 and ending on 31st March 1994 to take account of the landlord’s liability for council tax.