

Draft Regulations laid before the Scottish Parliament under section 7(5) of the Cost of Living (Tenant Protection) (Scotland) Act 2022, sections 23A(4) and 24J(3) of the Housing (Scotland) Act 1988 and section 77(3) of the Private Housing (Tenancies) (Scotland) Act 2016 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

HOUSING

**The Cost of Living (Tenant Protection) (Scotland) Act 2022
(Amendment of Expiry Dates and Rent Cap Modification)
Regulations 2023**

Made - - - - 2023

Coming into force in accordance with regulation 1(2) and (3)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 5 and 7(3)(a) of the Cost of Living (Tenant Protection) (Scotland) Act 2022(a), sections 23A(3), 24J(2) and 53(3) of the Housing (Scotland) Act 1988(b), sections 21A(3), 33F(2) and 77(1) of the Private Housing (Tenancies) (Scotland) Act 2016(c), and all other powers enabling them to do so.

In accordance with section 7(6) of the Cost of Living (Tenant Protection) (Scotland) Act 2022 the Scottish Ministers have laid before the Scottish Parliament a statement of reasons as to why this instrument should be made.

In accordance with section 7(5) of the Cost of Living (Tenant Protection) (Scotland) Act 2022, sections 23A(4) and 24J(3) of the Housing (Scotland) Act 1988 and section 77(3) of the Private Housing (Tenancies) (Scotland) Act 2016, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023.

(2) Subject to paragraph (3), these Regulations come into force on the day after the day on which they are made.

(3) Regulations 3, 4 and 5 come into force on 1 April 2023.

(a) 2022 asp 10.

(b) 1988 c. 43. Section 23A has effect by virtue of paragraph 2(3) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the 2022 Act”). Section 24J has effect by virtue of paragraph 2(5) of schedule 1 of the 2022 Act.

(c) 2016 asp 19. Section 21A has effect by virtue of paragraph 1(5) of schedule 1 of the 2022 Act. Section 33F has effect by virtue of paragraph 1(17) of schedule 1 of the 2022 Act. The effect of section 77(3) was modified by paragraph 1(20) of schedule 1 of the 2022 Act.

(4) In these Regulations—

“the 1988 Act” means the Housing (Scotland) Act 1988,

“the 2016 Act” means the Private Housing (Tenancies) (Scotland) Act 2016,

“the 2022 Act” means the Cost of Living (Tenant Protection) (Scotland) Act 2022.

(5) In regulations 3 and 4, the references to each of the sections of the 1988 Act and the 2016 Act respectively are references to each of those sections that are to be treated as having been inserted into those Acts by virtue of paragraphs 2 and 1 respectively of schedule 1 of the 2022 Act.

Amendment of expiry date of Part 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022

2.—(1) The 2022 Act is amended as follows.

(2) In section 7(1) (expiry of Part 1) for “31 March 2023” substitute “30 September 2023”.

Modification of the Housing (Scotland) Act 1988

3.—(1) The 1988 Act is modified as follows.

(2) In section 23A(2), for “0%” substitute “3%”.

(3) In section 24F(2)(b)(a), for “3%” substitute “6%”.

(4) In section 24F(4)(b), for “3%” substitute “6%”.

(5) In section 24G(4)(b)(b), for “3%” substitute “6%”.

Modification of the Private Housing (Tenancies) (Scotland) Act 2016

4.—(1) The 2016 Act is modified as follows.

(2) In section 21A(2), for “0%” substitute “3%”.

(3) In section 33B(2)(b)(c), for “3%” substitute “6%”.

(4) In section 33B(4)(b), for “3%” substitute “6%”.

(5) In section 33C(4)(b)(d), for “3%” substitute “6%”.

Transitional provisions

5.—(1) The modifications made by regulation 3(3) and (4) apply only to an application under section 24E(1)(e) of the 1988 Act that is made on or after 1 April 2023.

(2) The modification made by regulation 3(5) applies only to an appeal under section 24G(1) of the 1988 Act where—

(a) the appeal is against an order made under section 24F(2) or (3) of that Act, and

(b) the order was made following an application under section 24E(1) of that Act that was made on or after 1 April 2023.

(3) The modifications made by regulation 4(3) and (4) apply only to an application under section 33A(1)(f) of the 2016 Act that is made on or after 1 April 2023.

(a) Section 24F has effect by virtue of paragraph 2(5) of schedule 1 of the 2022 Act.

(b) Sections 24G has effect by virtue of paragraph 2(5) of schedule 1 of the 2022 Act.

(c) Section 33B has effect by virtue of paragraph 1(17) of schedule 1 of the 2022 Act.

(d) Section 33C has effect by virtue of paragraph 1(17) of schedule 1 of the 2022 Act.

(e) Section 24E has effect by virtue of paragraph 2(5) of schedule 1 of the 2022 Act.

(f) Section 33A has effect by virtue of paragraph 1(17) of schedule 1 of the 2022 Act.

(4) The modification made by regulation 4(5) applies only to an appeal under section 33C(1) of the 2016 Act where—

- (a) the appeal is against an order made under section 33B(2) or (3) of that Act, and
- (b) the order was made following an application under section 33A(1) of that Act that was made on or after 1 April 2023.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the 2022 Act”) so as to change the expiry date of Part 1 of that Act. Part 1 was originally scheduled to expire on 31 March 2023. Regulation 2 amends section 7 of the 2022 Act so that Part 1 will instead expire on 30 September 2023.

These Regulations also, from 1 April 2023, modify the permitted rate as specified in the Housing (Scotland) Act 1988 (“the 1988 Act”), and the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The permitted rate in each of those Acts is the percentage above which a landlord may not increase the rent for a residential tenancy. This restriction on increasing the rent in residential tenancies is known as the rent cap.

The rent cap was introduced for assured tenancies under the 1988 Act, and private residential tenancies under the 2016 Act, via modifications to those Acts made by the 2022 Act. The rent cap was initially set at 0% with powers for the Scottish Ministers to substitute a different percentage via regulations. Regulations 3(2) and 4(2) modify the rent cap provisions in the 1988 and 2016 Acts so as to substitute 3% as the new rent cap from 1 April 2023 onwards.

The 2022 Act also modified the 1988 and 2016 Acts by enabling landlords to apply to a rent officer to raise the rent above the permitted rate to reflect increases in prescribed property costs. An appeal against the rent officer’s decision can be made to the First-tier Tribunal for Scotland by the landlord or the tenant. The increase in rent under this procedure is limited to 50% of the increase in costs or 3% of the current rent, whichever is lower. Regulation 3(3) to (5) and regulation 4(3) to (5) modify the 1988 and 2016 Acts so as to provide that the increase in rent under this procedure is limited to whichever is the lower of 50% of the increase in costs, or 6% of the current rent from 1 April 2023 onwards.

Regulation 5 makes transitional provision for the changes being made to the level of the rent cap and the prescribed property costs procedure.

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