

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

The Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024

Statutory assured tenancies

3.—(1) Where a referral to the First-tier Tribunal under section 24(3)(a) of the 1988 Act is prompted by a notice served under subsection (1) of that section on or after 1 April 2024, the 1988 Act applies in relation to the referral in accordance with the following amendments.

- (2) Section 25 (determination of rent by the First-tier Tribunal) has effect as if—
- (a) in subsection (1), for “at which” to the end of the subsection there were substituted “under the tenancy (being an increase to the current rent) in accordance with section 25ZB”,
 - (b) subsections (2) to (4) were repealed.
- (3) The 1988 Act applies as if after section 25ZA there were inserted—

“25ZB Determination of rent payable

(1) Where the First-tier Tribunal is to determine the rent under the tenancy under section 25(1), the determination is to be made on the basis that the rent is the lowest of—

- (a) the proposed rent,
 - (b) the open market rent,
 - (c) where the market difference is more than 6%, the permitted rent.
- (2) The permitted rent is—
- (a) where the market difference is less than 24%, the calculated amount,
 - (b) where the market difference is 24% or more, 12% more than the current rent.
- (3) The calculated amount is the amount (to the nearest £1) determined using the formula—

$$\text{Amount (£)} = C \times \left(106\% + \frac{(D\% - 6\%)}{3} \right)$$

where—

C is the current rent,

D% is the market difference expressed as a percentage.

(4) In this section—

“the proposed rent” means the new rent proposed in the notice served under section 24(1) which prompted the referral,

“the current rent” means the rent under the tenancy immediately before the date on which the rent would have been increased in accordance with section 24(3) had a referral to the First-tier Tribunal not been made,

“the market difference” means the percentage figure (to the nearest two decimal places) determined using the formula—

$$\text{The market difference expressed as a percentage (D\%)} = \left[\left(\frac{M - C}{C} \right) \times 100 \right] \%$$

Where—

C is the current rent,

M is the open market rent,

“the open market rent” means the rent determined in accordance with section 25ZC.

25ZC Determination of open market rent

(1) Where the First-tier Tribunal is to determine the open market rent for the purpose of section 25ZB, the determination is to be made on the basis that it is the rent at which, subject to subsections (2) and (3), the First-tier Tribunal considers that the house might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—

- (a) which begins at the beginning of the period to which the new rent specified in the relevant notice relates,
- (b) the terms of which (other than those relating to rent) are the same as those of the tenancy to which the relevant notice relates, and
- (c) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of schedule 5, as have been given (or have effect as if given) in relation to the tenancy to which the relevant notice relates.

(2) In determining the open market rent under subsection (1), the First-tier Tribunal is to disregard any effect on the rent attributable to—

- (a) the granting of a tenancy to a sitting tenant,
- (b) an improvement carried out by the tenant or a predecessor in title of the tenant unless the improvement was carried out in pursuance of the terms of the tenancy,
- (c) a failure by the tenant to comply with any terms of the tenancy.

(3) Where any rates in respect of the house concerned are borne by the landlord or a superior landlord, the First-tier Tribunal is to make its determination as if the rates were not so borne.

(4) In this section—

“rent” includes any sums payable by the tenant to the landlord on account of the use of furniture or for services or in respect of council tax, whether or not those sums are separate from the sums payable for the occupation of the house concerned or are payable under separate agreements,

“relevant notice” means the notice under subsection (1) of section 24 that prompted the referral to the First-tier Tribunal under subsection (3)(a) of that section.

(5) This section applies in relation to a short assured tenancy as if, in subsection (1), the reference to an assured tenancy were a reference to a short assured tenancy.”.

(4) Section 32 (short assured tenancies) has effect as if subsection (5) were repealed.