

2023 No. 6

TRIBUNALS AND INQUIRIES

**The First-tier Tribunal for Scotland Housing and Property
Chamber (Amendment) Regulations 2023**

Made - - - - at 9.53 a.m. on 17th January 2023

Laid before the Scottish Parliament at 2.30 p.m. on 17th January 2023

Coming into force - - - - 24th January 2023

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014(a), section 12(1) of the Cost of Living (Tenant Protection) (Scotland) Act 2022(b) and all other powers enabling them to do so.

In accordance with paragraph 4(3) of schedule 9 of that Act, the Scottish Ministers have consulted the President of Tribunals and such other persons as they consider appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the First-tier Tribunal for Scotland Housing and Property Chamber (Amendment) Regulations 2023 and come into force on 24 January 2023.

(2) In these Regulations, “the principal Regulations” means the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017(c).

(3) In these Regulations, any reference to a numbered rule is to the rule bearing that number in the schedule of the principal Regulations.

**Amendment of the First-tier Tribunal for Scotland Housing and Property Chamber
(Procedure) Regulations 2017**

2.—(1) The principal Regulations are amended in accordance with this regulation.

(2) In rule 1 (application and interpretation)—

(a) at the start of paragraph (1), insert “Subject to paragraph (1A),”;

(b) after paragraph (1) insert—

“(1A) Part 1 of the Rules applies to an appeal under section 24G of the 1988 Act(d) or section 33C of the 2016 Act(e) subject to the modifications in rule 114.”.

(a) 2014 asp 10.

(b) 2022 asp 10.

(c) S.S.I. 2017/328, amended by S.S.I. 2017/369 and S.S.I. 2018/378.

(d) 1988 c. 43. Section 24G was inserted by paragraph 2(5) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

(e) 2016 asp 19. Section 33C was inserted by paragraph 1(17) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

- (c) in paragraph (2), in the definition of “assured tenancy reference to the First-tier Tribunal” after paragraph (b) insert—
 - “(ba) an appeal by a tenant or landlord under section 24B(a) of the 1988 Act against an order made by the rent officer under section 24A(2) or (3)(b) of that Act (consideration of notice to increase rent by rent officer),”.
- (d) after the definition of “regulated tenancy reference” insert—
 - ““rent officer” has the meaning given by section 43 of the Rent (Scotland) Act 1984(c),”.
- (3) In rule 32 (addition, substitution and removal of parties), after paragraph (3) insert—
 - “(4) Paragraph (3) does not apply to an appeal under section 24B of the 1988 Act or section 28 of the 2016 Act.”.
- (4) In rule 37(3) (application for permission to appeal a decision of the First-tier Tribunal), after sub-paragraph (d) insert—
 - “(da) section 24C(d) (First-tier Tribunal’s power to set rent subject to permitted rate) of the 1988 Act,”.
- (5) After rule 39 (review of a decision) insert—

“Review of an order made under section 24C(1) of the 1988 Act

39A.—(1) This rule applies to a review—

- (a) conducted under section 24I(3)(e) of the 1988 Act in relation to an order made under section 24C(1) of that Act,
- (b) conducted under section 30(3) of the 2016 Act in relation to an order made under section 29(1) of that Act.

(2) The request to review by the landlord or the tenant must—

- (a) be made in writing and copied to the other party,
- (b) be made within 14 days of the date on which the decision is made,
- (c) set out why a review of the decision is necessary.

(3) If the First-tier Tribunal considers that the request to conduct a review is wholly without merit, the First-tier Tribunal must refuse the request and inform the parties of the reasons for refusal.

(4) Except where paragraph (3) applies, the First-tier Tribunal—

- (a) must notify the landlord and the tenant in writing of the time limit for any response to the request to review, and
- (b) may notify the landlord and tenant in writing of the First-tier Tribunal’s provisional views on the request to review.

(5) The First-tier Tribunal may conduct the review—

- (a) on the basis of written representations by the landlord and the tenant, and
- (b) without a hearing.

(a) Section 24B was inserted by paragraph 2(5) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

(b) Section 24A was inserted by paragraph 2(5) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

(c) 1984 c. 58. Section 43 was amended by paragraph 137(3) of schedule 13 of the Local Government etc. (Scotland) Act 1994 (c. 39), paragraph 5 of schedule 16 of the Deregulation and Contracting Out Act 1994 (c. 40) and S.I. 1999/1820.

(d) Section 24C was inserted by paragraph 2(5) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

(e) Section 24I was inserted by paragraph 2(5) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

(6) Where the First-tier Tribunal proposes to conduct a review at its own instance, it must inform the landlord and the tenant of the reasons why the decision is being reviewed and the decision must be reviewed in accordance with paragraph (4) (as if a request to review had been made and not refused).”.

(6) In rule 61(b) (assured tenancy references to the First-tier Tribunal) after sub-paragraph (ii) insert—

“(iii) a copy of any order made by the rent officer under section 24A(2) or (3) of the 1988 Act;”.

(7) In rule 64 (parties to be notified by the First-tier Tribunal)—

(a) the existing text becomes paragraph (1),

(b) after that paragraph insert—

“(2) Additionally, in relation to an appeal under section 24B of the 1988 Act, against the order of a rent officer made under section 24A(2) or (3) of that Act, the rent officer is to be notified by the First-tier Tribunal under rule 9(1).”.

(8) In rule 112 (parties to be notified by the First-tier Tribunal)—

(a) the existing text becomes paragraph (1),

(b) after that paragraph insert—

“(2) Additionally, in relation to an appeal under section 28 of the 2016 Act, against the order of a rent officer under section 25(1A) or (1B)(a) of that Act, the rent officer is to be notified by the First-tier Tribunal under rule 9(1).

(3) This rule does not apply to an appeal under section 33C of the 2016 Act.”.

(9) After rule 112 insert—

“PART 4

Procedure in respect of prescribed property costs applications

Application and interpretation of Part 4

113. This Part applies to a prescribed property costs application.

Modification of Part 1

114.—(1) Part 1 of these Rules applies to a prescribed property costs application subject to the modifications in this rule.

(2) Rule 1 (application and interpretation) has effect as if—

(a) after the definition of “postpone” there were inserted—

““prescribed property costs” has the meaning given by section 24E(4)(b) of the 1988 Act or section 33A(4)(c) of the 2016 Act as the case may be,

“prescribed property costs application” means an appeal by a tenant or landlord under section 24G of the 1988 Act or section 33C of the 2016 Act,

(a) Section 25(1A) and (1B) was inserted by paragraph 1(9) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

(b) Section 24E was inserted by paragraph 2(5) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

(c) Section 33A was inserted by paragraph 1(17) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

“prescribed property costs order” means an order made by a rent officer under section 24F(2) or (3)(a) of the 1988 Act or, as the case may be, section 33B(2) or (3)(b) of the 2016 Act.”

(b) after the definition of “regulated tenancy reference” there were inserted—

““rent officer” has the meaning given by section 43 of the Rent (Scotland) Act 1984.”.

(3) Rule 5(1) (requirements for making an application) has effect as if from “rules” to the end there were substituted “rule 115”.

(4) Part 1 has effect as if rules 9 (notification of acceptance of application), 13 (amendment to a party’s written representations) and 14 (amendment raising new issues) were revoked.

(5) Rule 15 (withdrawal of an application) has effect as if paragraph (1)(a) were revoked.

(6) Part 1 has effect as if rules 17 to 19, and rules 21 to 25 were revoked.

(7) Rule 26 (decisions of the First-tier Tribunal) has effect as if—

(a) in paragraph (2), the words “in accordance with rule 18” were revoked,

(b) in paragraph (6), after “Rules” there were inserted “and in relation to a prescribed property costs application”.

(c) after paragraph (10) there were inserted—

“(11) In relation to a prescribed property costs application, a statement of reasons may contain a description of the prescribed property costs of the landlord that have increased.”.

(8) Part 1 has effect as if rules 28 (adjournment or postponement of a hearing) and 29 (hearing case in the absence of a party) were revoked.

(9) Rule 32 (addition, substitution and removal of parties), has effect as if after paragraph (4) (inserted by regulation 2(3)) there were inserted—

“(5) Paragraph (3) does not apply to a prescribed property costs application.”.

(10) Part 1 has effect as if rules 33 (absence of a member of the First-Tier Tribunal), 34 (exclusion of persons disrupting proceedings) and 35 (prohibition on recording of proceedings by parties) were revoked.

(11) In rule 37(3) (application for permission to appeal a decision of the First-tier Tribunal)—

(a) the “or” immediately following sub-paragraph (i) were revoked, and

(b) after sub-paragraph (j) there were inserted—

“or,

(k) a prescribed property costs application.”.

(12) Part 1 has effect as if rule 38 (First-tier Tribunal’s consideration of application for permission to appeal) were revoked.

(13) In rule 39(1) (review of a decision) for “37(3)(b) to (j)” there were substituted “37(3)(b) to (k)”.

(a) Section 24F was inserted by paragraph 2(5) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

(b) Section 33B was inserted by paragraph 1(17) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

Form of a prescribed property costs application

115.—(1) Where a tenant or landlord makes a prescribed property costs application, the application must—

- (a) state—
 - (i) the name and address of the applicant,
 - (ii) the registration number of the landlord (where it is known by the applicant),
 - (iii) the name, address and profession of any representative of the tenant or landlord,
 - (iv) the name and address of the other party to the tenancy, and
- (b) where the application is made by the landlord, be accompanied by—
 - (i) a copy of the prescribed property costs order,
 - (ii) a copy of the application under section 24E(1) of the 1988 Act or, as the case may be, section 33A(1) of the 2016 Act,
 - (iii) a copy of the notice given by the landlord to the tenant under section 24E(3) of the 1988 Act or, as the case may be, section 33A(3) of the 2016 Act,
- (c) where the application is made by the tenant, be accompanied by—
 - (i) a copy of the prescribed property costs order,
 - (ii) a copy of the notice given by the landlord to the tenant under section 24E(3) of the 1988 Act or, as the case may be, section 33A(3) of the 2016 Act, and
- (d) be signed and dated by the applicant or a representative of the applicant.

Notification of a prescribed property costs application

116.—(1) Where rule 8 does not apply in relation to a prescribed property costs application, the First-tier Tribunal must, as soon as practicable and in accordance with paragraph (2) give notice to—

- (a) the landlord,
 - (b) the tenant, and
 - (c) the rent officer who made the prescribed property costs order in question.
- (2) A notice given under paragraph (1) must—
- (a) state that a prescribed property costs application has been received and accepted by the First-tier Tribunal, and
 - (b) include a copy of the notice given by the landlord to the tenant under section 24E(3) of the 1988 Act or, as the case may be, section 33A(3) of the 2016 Act.

Production of evidence

117. In a prescribed property costs application the First-tier Tribunal may require the rent officer who made the prescribed property costs order to provide a copy of—

- (a) the application made by the landlord under section 24E(1) of the 1988 Act or, as the case may be, section 33A(1) of the 2016 Act, and
- (b) the prescribed property costs order.

Determination of a prescribed property costs application

118.—(1) A prescribed property costs application must be determined by the First-tier Tribunal by reference to—

- (a) the application made by the landlord or, as the case may be, the tenant,

- (b) any evidence obtained by the First-tier Tribunal under rule 117.
- (2) A prescribed property costs application must be determined by the First-tier Tribunal—
 - (a) without written representations,
 - (b) without a hearing.

Statement of reasons

- 119.**—(1) The statement of reasons prepared and provided under rule 26 may inform the landlord and the tenant as to whether or not the First-tier Tribunal considers that—
- (a) the increase in rent proposed by the landlord reflects an increase in the landlord’s prescribed property costs,
 - (b) the increase in rent proposed by the landlord is more than 50% of the increase in prescribed property costs that the landlord has incurred during the relevant period (within the meaning of section 24E(7) of the 1988 Act or, as the case may be, section 33A(6) of the 2016 Act),
 - (c) the increase in rent proposed by the landlord is an increase of more than 3%,
 - (d) the rent officer’s decision was correct in fact and law.
- (2) The statement of reasons prepared and provided under rule 26 may include any other information that the First-tier Tribunal considers appropriate.

Review of an order made by the First-tier Tribunal in relation to a prescribed property costs application

- 120.**—(1) This rule applies to a review conducted under section 24I(3) of the 1988 Act or section 33E(3)(a) of the 2016 Act, in relation to an order made in relation to a prescribed property costs application.
- (2) The request to review by the landlord or the tenant must—
- (a) be made in writing and copied to the other party,
 - (b) be made within 14 days of the date on which the decision is made,
 - (c) set out why a review of the decision is necessary.
- (3) If the First-tier Tribunal considers that the request to conduct a review is wholly without merit, the First-tier Tribunal must refuse the request and inform the parties of the reasons for refusal.
- (4) Except where paragraph (3) applies, the First-tier Tribunal—
- (a) must notify the landlord and the tenant in writing of the time limit for any response to the request to review, and
 - (b) may notify the landlord and tenant in writing of the First-tier Tribunal’s provisional views on the request to review.
- (5) A notification under paragraph (4) may contain a description of the prescribed property costs of the landlord that have increased.
- (6) The First-tier Tribunal may conduct the review—
- (a) on the basis of written representations by the landlord and the tenant,
 - (b) without a hearing.

(a) Section 33E was inserted by paragraph 1(17) of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10).

(7) Where the First-tier Tribunal proposes to review an order mentioned in paragraph (1) at its own instance, it must inform the landlord and the tenant of the reasons why the decision is being reviewed and the decision must be reviewed in accordance with paragraph (4) (as if a request to review had been made and not refused).”.

PATRICK HARVIE

Authorised to sign by the Scottish Ministers

St Andrew's House

Edinburgh

At 9.53 a.m. on 17th January 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the principal Regulations”) in relation to the procedures for a variable rent cap introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the 2022 Act”). The 2022 Act introduced the rent cap via amendments to the Housing (Scotland) Act 1988 (“the 1988 Act”) and the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The amendments by the 2022 Act inserted new rights of appeal to the First-tier Tribunal for Scotland (“the Tribunal”) in relation to rent increases over the level of the rent cap which are authorised by a rent officer in relation to the prescribed property costs of the landlord (“prescribed property costs applications”). The 2022 Act also introduces new appeal processes, in the 1988 and 2016 Acts, in relation to rent increases authorised by a rent officer up to the level of the rent cap (“rent cap appeals”).

Regulation 2(2) amends rule 1 of the principal Regulations to provide that the general rules in Part 1 of the schedule of the principal Regulations apply to prescribed costs appeals subject to the modifications in rule 114. Regulation 2(2) also amends the definition of “assured tenancy reference” and inserts a definition of “the rent officer”.

Regulation 2(3) to (8) make amendments to Part 1 of schedule 1 of the principal Regulations in relation to rent cap appeals. Regulation 2(3) amends rule 32 to prevent a landlord from applying to be added as a party in respect of a tenant’s rent cap appeal and vice versa. Regulation 2(4) adds the rent cap appeal under the 1988 Act to the list of matters in rule 37(3) which may not be further appealed. Regulation 2(5) inserts new rule 39A which provides for a review of a decision under section 24C of the 1988 Act or section 29(1) of the 2016 Act.

Regulation 2(6) amends rule 61 to require a reference under section 24B of the 1988 Act to be accompanied by a copy of the order under section 24A(2) or (3) of that Act. Regulation 2(7) substitutes a new rule 64 into the principal Regulations in order to set out notification requirements for appeals under section 24B of the 1988 Act and rule 2(8) substitutes new rule 112 in order to make similar notification requirements for appeals under section 28 of the 2016 Act.

Regulation 2(9) inserts a new Part 4 into the schedule of the principal Regulations to provide procedural rules for prescribed property costs applications - this new Part 4 includes new rules 113 to 120 described as follows. New rule 113 applies Part 4 to appeals under section 24G of the 1988 Act or section 33C of the 2016 Act and provides defined terms for those applications and the order made by the rent officer in relation to the landlord’s prescribed property costs. New rule 114 applies Part 1 of the schedule to prescribed property costs applications with certain modifications, including the removal of requirements in relation to written representations and the holding of hearings.

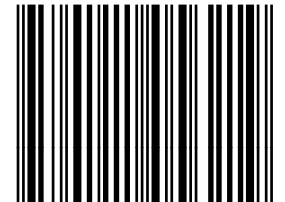
New rule 115 provides for the form of a prescribed property costs application, including the documents which must accompany it. New rule 116 provides for the notification of the application to the landlord, tenant and rent officer. New rule 117 enables the Tribunal to require evidence from the rent officer. New rule 118 requires the application to be determined by reference to the application and any evidence obtained under the powers in new rule 117. New rule 118 also requires the application to be determined without written representations by the parties or an oral hearing.

New rule 119 provides a list of matters which the Tribunal’s statement of reasons can include. New rule 120 makes similar provision to that in new rule 39A (inserted by regulation 2(5)) but in relation to the review of an order made by the Tribunal in relation to a prescribed property costs application.

£6.90

<http://www.legislation.gov.uk/id/ssi/2023/6>

ISBN 978-0-11-105621-9



9 780111 056219