



Rent (Scotland) Act 1984

1984 CHAPTER 58

PART IV

RENTS UNDER REGULATED TENANCIES

28 Limit of rent during contractual periods

- (1) Where the rent payable for any contractual period of a regulated tenancy of a dwelling-house would exceed the limit specified in the following provisions of this section (in this Part of this Act referred to as "the contractual rent limit"), the amount of the excess shall, notwithstanding anything in any agreement, be irrecoverable from the tenant.
- (2) Where a rent for the dwelling-house is registered under Part V of this Act then, subject to sections 33 and 49(5) below, the contractual rent limit is the rent so registered.

29 Limit of rent during statutory periods

- (1) Except as otherwise provided by the following provisions of this Part of this Act, where the rent payable for any statutory period of a regulated tenancy of a dwelling-house would exceed the rent recoverable for the last contractual period thereof, the amount of the excess shall, notwithstanding anything in any agreement, be irrecoverable from the tenant.
- (2) Subject to section 49(5) below where a rent for the dwelling-house is registered under Part V of this Act the following provisions shall apply with respect to the rent for any statutory period of a regulated tenancy of the dwelling-house, that is to say—
 - (a) if the rent payable for any statutory period would exceed the rent so registered, the amount of the excess shall, notwithstanding anything in any agreement, be irrecoverable from the tenant; and
 - (b) if the rent payable for any statutory period would be less than the rent so registered, it may, subject to section 33 below, be increased up to the amount of that rent by a notice of increase served by the landlord on the tenant and specifying the date (which may be any date during a rental period) from which the increase is to take effect.

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- (3) The date specified in a notice of increase under subsection (2)(b) above shall not be earlier than the date from which the registration of the rent took effect nor earlier than four weeks before the service of the notice.
- (4) Where no rent for the dwelling-house is registered under Part V of this Act the provisions of sections 30 and 31 below shall have effect with respect to the rent recoverable for any statutory period under a regulated tenancy of the dwelling-house.
- (5) In relation to any rental period beginning after a tenancy has become a converted tenancy, this and the two next following sections shall have effect as if references therein to the last contractual period were references to the last rental period beginning before the conversion.

30 Adjustment, with respect to rates, of recoverable rent for statutory periods before registration

- (1) Where section 29(4) above applies and any rates in respect of the dwelling-house are, or were during the last contractual period, borne by the landlord or a superior landlord, then, for any statutory period for which the amount of the rates, ascertained in accordance with Schedule 3 to this Act, differs from the amount, so ascertained, of the rates for the last contractual period, the recoverable rent shall, subject to subsection (2) below, be increased or decreased by the amount of the difference.
- (2) Where the amount of the recoverable rent is increased by virtue of this section, the increase shall not take effect except in pursuance of a notice of increase served by the landlord on the tenant and specifying the increase and the date from which it is to take effect.
- (3) The date specified in a notice of increase under sub-section (2) above shall not be earlier than six months before the service of the notice, and if it is earlier than the service of the notice, any rent unpaid shall become due on the day after the service of the notice.

31 Adjustment, with respect to services and furniture, of recoverable rent for statutory periods before registration

- (1) Where section 29(4) above applies and for any statutory period there is with respect to—
 - (a) the provision of services for the tenant by the landlord or a superior landlord, or
 - (b) the use of furniture by the tenant,or any circumstances relating thereto any difference, in comparison with the last contractual period, such as to affect the amount of the rent which it is reasonable to charge, the recoverable rent for the statutory period shall be increased or decreased by an appropriate amount.
- (2) Any question whether, or by what amount, the recoverable rent for any period is increased or decreased by virtue of this section shall be determined by agreement in writing between the landlord and the tenant or by the sheriff; and any such determination—
 - (a) may be made so as to relate to past statutory periods; and

- (b) shall have effect with respect to statutory periods subsequent to the periods to which it relates until revoked or varied by any such agreement as is referred to in this subsection or by the sheriff.

32 Notices of increase

- (1) Any reference in the following provisions of this section to a notice of increase is a reference to a notice of increase under section 29(2) or 30(2) above.
- (2) A notice of increase must be in the prescribed form.
- (3) Notwithstanding that a notice of increase relates to statutory periods, it may be served during a contractual period; and where such a notice is served during a contractual period and the protected tenancy could, by a notice to quit served by the landlord at the same time, be brought to an end before the date specified in the notice of increase, the notice of increase shall operate to convert the protected tenancy into a statutory tenancy as from that date.
- (4) If the sheriff is satisfied that any error or omission in a notice of increase is due to a bona fide mistake on the part of the landlord, the sheriff may order the amendment of the notice by correcting any error or supplying any omission therein which, if not corrected or supplied, would render the notice invalid and, if the sheriff so directs, the notice as so amended shall have effect and be deemed to have had effect as a valid notice.
- (5) Any amendment of a notice of increase under subsection (4) above may be made on such terms and conditions with respect to arrears of rent or otherwise as appear to the sheriff to be just and reasonable.
- (6) No increase of rent which becomes payable by reason of an amendment of a notice of increase under subsection (4) above shall be recoverable in respect of any statutory period which ended more than six months before the date of the order making the amendment.

33 Limits on rent increases

- (1) The Secretary of State shall by order make the following provisions in relation to regulated tenancies in respect of which there are registered rents which are registered on or after 1st December 1980 under Part V of this Act, that is to say he shall—
 - (a) specify the maximum amount by which the total of the rent payable under a tenancy to which this subsection applies in any period of 12 months beginning with the relevant date for the purposes of sections 46 and 47 below or with any subsequent anniversary of that date may be increased ;
 - (b) restrict the total additional rental income which may be recovered by a landlord under such a tenancy in any period of 12 months beginning with the relevant date for the purposes of sections 46 and 47 below or with any subsequent anniversary of that date to such amount as is specified in the order.
- (2) An order made under subsection (1) above shall be made by statutory instrument subject to annulment in pursuance of a resolution by either House of Parliament, and may contain such supplementary and incidental provisions as the Secretary of State thinks fit.

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- (3) For the purposes of subsection (1) above "rent" and "rental income" do not include sums paid to the landlord in respect of the provision of any services.

34 Rent agreements

- (1) In this Part of this Act "a rent agreement with a tenant having security of tenure" means—
- (a) an agreement increasing the rent payable under a protected tenancy which is a regulated tenancy, or
 - (b) the grant to the tenant under a regulated tenancy, or to any person who might succeed him as a statutory tenant, of another regulated tenancy of the dwelling-house at a rent exceeding the rent under the previous tenancy:

Provided that there shall be disregarded for the purposes of this definition any increase of rent if (where any rates in respect of the dwelling-house are borne by the landlord) the increase is no more than one corresponding to an increase in the rates borne by the landlord in respect of the dwelling-house.

- (2) If a rent agreement with a tenant having security of tenure takes effect on or after 1st January 1973, and at a time when no rent is registered for the dwelling-house under Part V of this Act, the requirements of subsection (3) below shall be observed as respects the agreement.
- (3) The said requirements are that—
- (a) the agreement is in writing signed by the landlord and the tenant,
 - (b) the agreement contains a statement, in characters not less conspicuous than those used in any other part of the agreement, that the tenant's security of tenure under this Act will not be affected if he refuses to enter into the agreement, and that entry into the agreement will not deprive the tenant or the landlord of the right to apply at any time to the rent officer for the registration of a fair rent under Part V of this Act, or words to that effect,
 - (c) the agreement contains a statement that, if a rent is registered under Part V of this Act in respect of the dwelling-house, any increase in the rent may be limited under section 33 above, and
 - (d) the statements mentioned in paragraphs (b) and (c) above are set out at the head of the agreement.

35 Rent agreements: special provisions following conversion

- (1) Subject to subsections (2) and (3) below, this section applies where a rent agreement with a tenant having security of tenure of a dwelling-house is entered into, whether before or after a tenancy becomes a converted tenancy, which is expressed to take effect—
- (a) on or after 1st January 1973 and after the conversion, and
 - (b) at a time when no rent is registered for the dwelling-house under Part V of this Act.
- (2) This section shall not apply to any agreement where the tenant is neither the person who, at the time of the conversion, was the tenant, nor a person who might succeed the tenant at that time as a statutory tenant, and where this section has applied to any agreement, it shall not apply to any subsequent agreement relating to the dwelling-

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- house which takes effect more than three years after the first such agreement took effect.
- (3) Where a rent is registered for the dwelling-house and the registration is subsequently cancelled, this section shall not apply to the agreement submitted to the rent officer in connection with the cancellation nor to any agreement which takes effect after the cancellation.
 - (4) The provisions of this section are without prejudice to the requirements imposed by section 34 above.
 - (5) The following requirements shall be observed with respect to any such agreement as is mentioned in subsection (1) above—
 - (a) the agreement shall contain the prescribed particulars,
 - (b) the agreement, when duly completed, shall be lodged by the landlord with the rent officer, and
 - (c) the landlord shall, not later than the date when the agreement is lodged with the rent officer, serve a copy of the agreement on the tenant.
 - (6) No such agreement shall take effect earlier than 28 days after it is lodged with the rent officer under subsection (5)(b) above, and it may only take effect on or after that date if the rent officer has not before that date notified both the landlord and the tenant in writing that he proposes to treat the agreement as an application for the registration of a rent for the dwelling-house under Part V of this Act made jointly by the landlord and the tenant.
 - (7) The rent officer may treat an agreement as such a joint application as is referred to in subsection (6) above before the conversion if an application for the registration of a rent could have been made by virtue of section 38 of the Housing (Financial Provisions) (Scotland) Act 1972.
 - (8) A rent officer may treat an agreement as such a joint application only if he is satisfied that the rent payable under the agreement exceeds a fair rent for the dwelling-house.
 - (9) Where an agreement is treated by the rent officer as such a joint application then, subject to subsection (10) below, Schedule 5 to this Act shall apply as if the application had been made to him and as if any reference in that Schedule to the rent specified in the application included a reference to the rent expressed to be payable under the agreement.
 - (10) For the purposes of subsection (9) above, paragraph 3(1) of the said Schedule 5 shall have effect as if for the words " he may register that rent without further proceedings " there were substituted the words " he shall notify both the landlord and the tenant in writing that he is no longer treating the agreement as a joint application for the registration of a rent and that the agreement may take effect on or after the date of such notification if that date is later than 28 days after the agreement was lodged with him. "
 - (11) The rent officer shall make available for public inspection, without charge, any agreement which has been lodged with him under this section unless the agreement is treated by him as a joint application for the registration of a rent and a rent is subsequently registered in pursuance of such application; and any agreement which is made available for public inspection under this subsection shall be so available for a period of three years from the date which is 28 days after it has been lodged with the rent officer.

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- (12) A copy of such an agreement certified by the rent officer or any person duly authorised by him shall be receivable in evidence, and shall be sufficient evidence of the agreement in any court and in any proceedings.
- (13) A person requiring such a certified copy shall be entitled to obtain it on payment of the prescribed fee.
- (14) No stamp duty shall be chargeable on any agreement to which this section applies which contains—
 - (a) the statement required by section 34(3)(b) above as read with subsection (4) above, and
 - (b) the particulars prescribed pursuant to this section.

36 Failure to comply with provisions of rent agreements

- (1) If, in the case of a variation of the terms of a regulated tenancy, there is a failure on the part of the landlord to observe any of the requirements of section 34 or 35 above, any excess of the rent payable under the terms as varied over the terms without the variation shall be irrecoverable from the tenant.
- (2) If, in the case of the grant of a tenancy, there is a failure on the part of the landlord to observe any of the requirements of section 34 or 35 above, any excess of the rent payable under the tenancy so granted (for any contractual or any statutory period of the tenancy) over the previous limit shall be irrecoverable from the tenant.
- (3) In subsection (2) above the "previous limit" shall be taken to be the amount which (taking account of any previous operation of this section) was recoverable by way of rent for the last rental period of the previous tenancy of the dwelling-house, or which would have been so recoverable if all notices of increase authorised by section 36(2) of the Housing (Financial Provisions) (Scotland) Act 1972 or by this Act had been served.
- (4) A default in complying with subsection (5)(c) of section 35 above shall not apply to rent for any rental period after the default is made good, and, if a rent agreement with a tenant having security of tenure is put into effect earlier than the date when it is provided under section 35 above that it may take effect, such a default shall not affect the rent for any rental period beginning after that date.

37 Recovery from landlord of sums paid in excess of recoverable rent, etc.

- (1) Where a tenant has paid on account of rent any amount which, by virtue of this Part of this Act, is irrecoverable by the landlord, then, subject to subsection (3) below, the tenant who paid it shall be entitled to recover that amount from the landlord who received it or his personal representatives.
- (2) Subject to subsection (3) below, any amount which a tenant is entitled to recover under subsection (1) above may, without prejudice to any other method of recovery, be deducted by the tenant from any rent payable by him to the landlord.
- (3) No amount which a tenant is entitled to recover under subsection (1) above shall be recoverable at any time after the expiry of two years from the date of payment.

38 Onus on landlord

- (1) Any person who, in any rent book or similar document, makes an entry showing or purporting to show any tenant as being in arrears in respect of any sum on account of rent which is irrecoverable by virtue of this Part of this Act shall be liable to a fine not exceeding level 3 on the standard scale, unless he proves that, at the time of the making of the entry, the landlord had a bona fide claim that the sum was recoverable.
- (2) If, where any such entry has been made by or on behalf of any landlord, the landlord on being requested by or on behalf of the tenant to do so, refuses or neglects to cause the entry to be deleted within seven days, the landlord shall be liable to a fine not exceeding level 3 on the standard scale, unless he proves that, at the time of the neglect or refusal to cause the entry to be deleted, he had a bona fide claim that the sum was recoverable.

39 Rectification of rent books in light of determination of recoverable rent

Where, in any proceedings, the recoverable rent of a dwelling-house subject to a regulated tenancy is determined by a court, then, on the application of the tenant (whether in those or in any subsequent proceedings) the court may call for the production of the rent book or any similar document relating to the dwelling-house and may direct the clerk of court to correct any entries showing, or purporting to show, the tenant as being in arrears in respect of any sum which the court has determined to be irrecoverable.

40 Adjustment for differences in lengths of rental periods

In ascertaining for the purposes of this Part of this Act whether there is any difference with respect to rents or rates between one rental period and another (whether of the same tenancy or not) or the amount of any such difference, any necessary adjustment shall be made to take account of periods of different lengths; and for the purposes of such an adjustment a period of one month shall be treated as equivalent to one-twelfth of a year and a period of a week as equivalent to one-fifty-second of a year.

41 Regulations

- (1) The Secretary of State may make regulations—
 - (a) prescribing the form of any notice or other document to be given or used in pursuance of this Part of this Act;
 - (b) prescribing anything required or authorised to be prescribed by this Part of this Act; and
 - (c) prescribing matters as to which notice is to be given to a tenant of a dwelling-house let on or subject to a regulated tenancy by means of notices inserted in rent books and similar documents and the forms of such notices.
- (2) Any such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) If any rent book or similar document which does not conform to the prescribed requirements is used by or on behalf of any landlord, the landlord shall be liable to a fine not exceeding level 3 on the standard scale.

42 Interpretation of Part IV

(1) In this Part of this Act—

" contractual period " means a rental period of a regulated tenancy which is a period beginning before the expiry or termination of the protected tenancy ;

" contractual rent limit" has the meaning assigned to it by section 28(1) above;

" notice of increase" means a notice of increase under section 29(2) or 30(2) above, as the case may require;

" prescribed " means prescribed by regulations under section 41 above, and references to a prescribed form include references to a form substantially to the same effect as the prescribed form;

" recoverable rent" means rent which, under a regulated tenancy, is or was for the time being recoverable, having regard to the provisions of this Part of this Act;

" a rent agreement with a tenant having security of tenure " has the meaning assigned to it by section 34 above;

" rental period " means a period in respect of which a payment of rent falls to be made ;

" statutory period " means any rental period of a regulated tenancy which, is not a contractual period.

(2) References in this Part of this Act to rates, in respect of a dwelling-house, include references to such proportion of any rates in respect of lands and heritages of which the dwelling-house forms part as may be agreed in writing between the landlord and the tenant or determined by the sheriff.