

Cost of Living (Tenant Protection) (Scotland) Bill

[AS PASSED]

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Cost of Living (Tenant Protection) (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision in connection with protecting residential tenants from increases in rent; protecting residential tenants from eviction; and for connected purposes.

PART 1

RESIDENTIAL TENANCIES: RENT CAP AND EVICTIONS

Rent cap

1 Rent cap for residential tenancies

Schedule 1 contains temporary modifications to the law in relation to rent controls.

Protection against eviction

2 Protection against eviction from residential properties

Schedule 2 contains temporary modifications to the law in relation to evictions.

PART 2

PART 1: SUPPORTING PROVISIONS

A3 Information and advice for tenants

The Scottish Ministers must take steps to ensure that tenants affected by the provisions of Part 1 receive appropriate information, advice and support for the period during which Part 1 remains in force.

3 Advancement of equality and non-discrimination

(1) In exercising a function conferred by virtue of Part 1 (including a function of making subordinate legislation), the Scottish Ministers must have regard—

- (a) to the importance of communicating in an inclusive way,
- (b) to opportunities to advance equality and non-discrimination.

- (2) In subsection (1)(a), “communicating in an inclusive way” means communicating in a way that ensures that individuals who have difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet each individual’s needs.

4 Subordinate legislation making powers

Any power to make subordinate legislation conferred by virtue of Part 1 includes power to make—

- (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
- (b) different provision for different purposes or areas.

5 Power to suspend and revive Part 1

- (1) The Scottish Ministers may by regulations—
 - (a) suspend the operation of any provision in Part 1,
 - (b) revive the operation of a provision so suspended.
- (2) Sections 15 to 17 of the Interpretation and Legislative Reform (Scotland) Act 2010 (effect of repeals) apply to the suspension of a provision by regulations under subsection (1)(a) as if the provision had been repealed by an Act.
- (3) The powers in subsection (1) may be exercised more than once in relation to the same provision.
- (4) Regulations under this section may make—
 - (a) different provision for different purposes or areas,
 - (b) consequential provision,
 - (c) transitional, transitory or saving provision.
- (5) The power under subsection (4)(b) and (c) includes power to modify any enactment (including this Act).
- (6) Regulations under this section—
 - (a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
 - (b) otherwise, are subject to the negative procedure.

6 Expiry of Part 1

- (1) Part 1 expires at the end of 31 March 2023.
- (2) Subsection (1) is subject to section 7 (power to bring forward expiry).
- (3) The Scottish Ministers may by regulations—
 - (a) amend subsection (1) so as to replace “31 March 2023” with “30 September 2023”,
 - (b) further amend subsection (1) so as to replace “30 September 2023” with “31 March 2024”.
- (4) The power conferred by subsection (3)(b) may be used only after 31 March 2023.

- (5) Regulations under subsection (3) are subject to the affirmative procedure.
- (6) At the same time as laying a draft Scottish statutory instrument containing regulations under subsection (3) before the Scottish Parliament in accordance with section 29(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (instruments subject to the affirmative procedure), the Scottish Ministers must lay before the Parliament a statement of their reasons why the regulations should be made.
- (7) The Scottish Ministers may by regulations make—
- (a) consequential provision,
 - (b) transitional, transitory or saving provision,
- in connection with the expiry under subsection (1) of any provision of this Act.
- (8) Regulations under subsection (7) may—
- (a) make different provision for different purposes or areas,
 - (b) modify any enactment (including this Act).
- (9) Regulations under subsection (7)—
- (a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
 - (b) otherwise, are subject to the negative procedure.

7 Power to bring forward expiry of Part 1

- (1) The Scottish Ministers may by regulations provide that any provision of Part 1—
- (a) does not expire at the time when it would otherwise expire (whether by virtue of section 6 or previous regulations under this section), and
 - (b) expires instead at such earlier time as is specified in the regulations.
- (2) Where the Scottish Ministers consider that any provision of Part 1 is no longer necessary or proportionate in connection with the cost of living, they must, as soon as is reasonably practicable—
- (a) in a case where they consider that the provision may need to be revived, bring forward regulations under section 5(1) to suspend the provision,
 - (b) in any other case, bring forward regulations under subsection (1) to expire the provision.
- (3) Regulations under this section may make—
- (a) different provision for different purposes or areas,
 - (b) consequential provision,
 - (c) transitional, transitory or saving provision.
- (4) The power under subsection (3)(b) and (c) includes power to modify any enactment (including this Act).
- (5) Regulations under this section—
- (a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
 - (b) otherwise, are subject to the negative procedure.

8 Reports by the Scottish Ministers on status of Part 1 provisions

- (1) The Scottish Ministers must, in respect of each reporting period—
- (a) undertake a review of the operation of the provisions of Part 1 with a view to considering whether those provisions remain necessary and proportionate in connection with the cost of living, and
 - (b) prepare a report on that review.
- (2) A report prepared under subsection (1) must—
- (a) set out how any powers conferred by the provisions of Part 1 have been exercised,
 - (aa) set out the steps the Scottish Ministers have taken to meet the requirements in section A3, and
 - (b) include—
 - (i) the status of the provisions of Part 1 (whether or not any power under a provision has been exercised), and
 - (ii) a statement that the Scottish Ministers are satisfied that the status of those provisions is appropriate.
- (2A) Before Scottish Ministers prepare a report of a review under subsection (1), the Scottish Ministers—
- (a) must consult—
 - (i) such persons as appear to them to represent the interests of tenants and landlords that may be affected by the provisions of Part 1,
 - (ii) local authorities,
 - (b) may consult any other person they consider appropriate.
- (2B) A review under this section must include a summary of how the views of those consulted under subsection (2A) were taken into account by the Scottish Ministers in finalising their report.
- (3) The references in subsection (2) to the “status” of a provision are to—
- (a) whether the provision is in force at the end of the reporting period, and
 - (b) whether any power under the following provisions has been exercised by the Scottish Ministers in relation to it during that period (and, if so, how)—
 - (i) section 5 (power to suspend or revive provisions),
 - (ii) section 7 (power to bring forward expiry).
- (4) Each of the following is a “reporting period”—
- (a) the period beginning with the day after Royal Assent and ending on 31 December 2022,
 - (b) each successive period of 3 months that ends during the period before Part 1 of this Act expires by virtue of section 6(1) or 7(1) up to and including 31 December 2023.

- (4A) In the report in respect of the period ending 31 December 2022, the Scottish Ministers must, in considering the application of the permitted rate (within the meaning of section 24A(1) of the Housing (Scotland) Act 2001) of 0%, explain whether they propose to—
- (a) retain the permitted rate at 0%,
 - (b) increase the permitted rate,
 - (c) make regulations under section 7(1) to provide for the expiry of paragraph 3 of schedule 1, or
 - (d) make regulations under section 5(1) to suspend the operation of that paragraph.
- (5) Subsection (1) does not apply in respect of a reporting period if, during the reporting period, the Scottish Ministers are required under section 6(6) to lay before the Scottish Parliament a statement of their reasons why regulations should be made under that section.
- (6) Where the Scottish Ministers are required to prepare a report under subsection (1) in respect of a reporting period, they must lay the report before the Scottish Parliament no later than 14 days after the end of the reporting period.

PART 3

RESIDENTIAL TENANCIES: RENT ADJUDICATION

9 Rent adjudication: power to modify

Schedule 3 contains modifications to the law in relation to rent adjudication.

10 Expiry of section 9

- (1) Section 9 expires at the end of 31 March 2024.
- (2) The Scottish Ministers may by regulations provide that, instead of expiring at the time it would otherwise expire, section 9 will expire at the end of a period of not more than one year from that time.
- (3) For the avoidance of doubt, the power under subsection (2) may be exercised more than once.
- (4) Regulations under subsection (2)—
 - (a) are subject to the affirmative procedure, and
 - (b) must be made before section 9 expires.
- (5) At the same time as laying a draft Scottish statutory instrument containing regulations under subsection (2) before the Scottish Parliament in accordance with section 29(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (instruments subject to the affirmative procedure), the Scottish Ministers must lay before the Parliament a statement of their reasons why the regulations should be made.

PART 4**GENERAL****11 Ancillary provision**

- 5 (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).
- 10 (3) Without prejudice to section 6 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Scottish Ministers may by regulations modify any regulations made under subsection (1) in consequence of—
- (a) the exercise of a power under section 5 (power to suspend and revive provisions),
 - (b) the expiry of a provision of this Act under section 6 (expiry),
 - (c) the exercise of a power under section 7 (power to bring forward expiry).
- 15 (4) Regulations under subsection (3) may make transitional, transitory or saving provision.
- (5) Regulations under this section—
- (a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
 - (b) otherwise, are subject to the negative procedure.

12 Commencement

- 20 (1) This Act comes into force on the day after Royal Assent.
- (2) The Scottish Ministers may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.

13 Short title

25 The short title of this Act is the Cost of Living (Tenant Protection) (Scotland) Act 2022.

SCHEDULE 1
(introduced by section 1)

RENT CAP

Rent cap for private residential tenancies

5 1 (1) Subject to sub-paragraph (2), the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) applies in accordance with the modifications in this paragraph.

(2) The modifications set out in this paragraph have no effect in relation to any rent-increase notice (within the meaning of section 22(1) of the 2016 Act) given by the landlord under a private residential tenancy (within the meaning of section 78(1) of the 2016 Act) to a tenant before 6 September 2022.

(3) Section 18 (method by which rent may be increased) has effect as if after “Chapter 2” there were inserted “or 2A”.

(4) Section 19 (frequency with which rent may be increased) has effect as if—

(a) in subsection (2)—

(i) after “the rent officer” there were inserted “under section 25(1A) or (1B)”,

(ii) for “the First-tier Tribunal” there were substituted “an order of the First-tier Tribunal under section 29(1)”,

(b) after subsection (2) there were inserted—

“(3) For the purpose of subsection (1), in a case where the last rent increase resulted from an order of the rent officer under section 33B(2) or (3) or an order of the First-tier Tribunal under section 33C(3), the 12 month period is to be regarded as commencing on the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under section 33A(3).

(4) The Scottish Ministers may by regulations amend this section to permit the rent payable under a private residential tenancy to be increased a second time within a 12 month period in such circumstances as may be specified in the regulations.”.

(5) The 2016 Act has effect as if before section 22 there were inserted—

“21A Rent cap controls

(1) On or after 6 September 2022, the landlord under a private residential tenancy may not increase the rent payable under the tenancy by more than the permitted rate.

(2) For the purposes of this Chapter, the “permitted rate” is 0%.

(3) The Scottish Ministers may by regulations substitute a different percentage for the one for the time being mentioned in subsection (2).

(4) Any rent-increase notice given on or after 6 September 2022 during a period when the permitted rate is 0% is of no effect.

(5) This section is subject to Chapter 2A.”.

(6) Section 22 (landlord’s power to increase rent) has effect as if—

(a) before subsection (1) there were inserted—

“(A1) This section does not apply where the permitted rate is 0%.”,

- (b) in subsection (1), after “tenancy”, where it second occurs, there were inserted “by no more than the permitted rate”.

(7) Section 23 (modification of rent-increase notice by parties) has effect as if—

- (a) before subsection (1) there were inserted—

“(A1) This section does not apply where the permitted rate is 0%.”,

- (b) after subsection (1) there were inserted—

“(1A) But a modification made to a rent-increase notice by virtue of subsection (1) has no effect to the extent that the modification increases the rent that is to be payable by more than the permitted rate.”.

(8) Section 24 (tenant’s right to refer increase to rent officer) has effect as if—

- (a) before subsection (1) there were inserted—

“(A1) This section does not apply where the permitted rate is 0%.”,

- (b) in subsection (1), for “an order” there were substituted “a decision”.

(9) Section 25 (rent officer’s power to set rent) has effect as if—

- (a) in subsection (1), for the words from “must” to the end of the subsection there were substituted “is to decide whether the rent specified in accordance with section 22(2)(a)(i) in the rent-increase notice would be an increase to the rent payable under the tenancy of more than the permitted rate”,

- (b) after subsection (1) there were inserted—

“(1A) If the rent officer decides under subsection (1) that the rent specified in the rent-increase notice would be an increase to the rent payable under the tenancy of no more than the permitted rate, the rent officer must make an order stating that from the effective date the rent payable under the tenancy is the rent specified in the rent-increase notice.

(1B) If the rent officer decides under subsection (1) that the rent specified in the rent-increase notice would be an increase to the rent payable under the tenancy of more than the permitted rate, the rent officer must make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the rent officer.

(1C) In determining the rent under subsection (1B), the rent officer must determine that the rent is an amount that would be an increase to the rent payable under the tenancy of the permitted rate.”,

- (c) in subsection (2), for “subsection (1)” there were substituted “subsections (1A) and (1B)”,

- (d) subsection (3) were repealed.

(10) The 2016 Act has effect as if section 26 (rent officer’s duty to issue provisional order) were repealed.

(11) Section 27 (rent officer’s power to correct final order) has effect as if—

- (a) in subsection (1), for “25(1)” there were substituted “33B(2) or (3)”,

(b) in subsection (2), for “subsection (2) of section 25” there were substituted “subsection (5) of section 33B”,

(c) in subsection (3)—

(i) in paragraph (b), for “25(1)” there were substituted “33B(2) or (3)”,

(ii) in paragraph (c), for “28(1)” there were substituted “33C(1)”,

(d) in subsection (4), paragraph (b) were repealed.

(12) Section 28 (right of appeal to First-tier Tribunal) has effect as if—

(a) in subsection (1), for “25(1)” there were substituted “25(1A) or (1B)”,

(b) in subsection (2), for “25(1)” there were substituted “25(1A) or (1B)”.

(13) Section 29 (First-tier Tribunal’s power to set rent) has effect as if—

(a) in subsection (1), the words “in accordance with section 32” were repealed,

(b) after subsection (1) there were inserted—

“(1A) In determining the rent under subsection (1), the First-tier Tribunal must determine that the rent payable is an amount that would be an increase to the rent payable under the tenancy of the permitted rate.”,

(c) subsection (3) were repealed.

(14) Section 31 (liability for over or under paid rent) has effect as if—

(a) the title becomes “Liability for under paid rent”,

(b) in subsection (1)—

(i) in paragraph (a), for “25(1)” there were substituted “25(1A) or (1B)”,

(ii) in paragraph (c), for “differs from” there were substituted “is more than”,

(c) subsection (2) were repealed,

(d) in subsection (3), the words “If the new rent is more than the old rent,” were repealed,

(e) in subsection (5), after “12” there were inserted “or 12A”.

(15) The 2016 Act has effect as if section 32 (determination of open market rent) were repealed.

(16) Section 33 (withdrawal of referral or appeal) has effect as if—

(a) in subsection (2)—

(i) in the opening words, for “25(1)” there were substituted “25(1A) or (1B)”,

(ii) for paragraph (b) there were substituted—

“(b) if that amount would be an increase to the rent payable under the tenancy of more than the permitted rate, the rent determined by the order maker.”,

(b) after subsection (2) there were inserted—

“(2A) In determining the rent under subsection (2)(b), the order maker must determine that the rent is an amount that would be an increase to the rent payable under the tenancy of the permitted rate.”,

(c) subsection (4) were repealed.

(17) The 2016 Act has effect as if after section 33 there were inserted—

“CHAPTER 2A

RENT VARIATION INSTIGATED BY LANDLORD’S APPLICATION TO RENT OFFICER

33A Landlord application to rent officer to increase rent above permitted rate

- (1) A landlord under a private rented tenancy may make an application to the relevant rent officer to increase the rent payable under the tenancy by more than the permitted rate in order to recover up to 50% of the increase in any prescribed property costs that the landlord has incurred during the relevant period.
- (2) An application under subsection (1) must include—
 - (a) evidence of an increase in any prescribed property costs of the landlord incurred during the relevant period, and
 - (b) a statement of—
 - (i) the rent payable under the tenancy, and
 - (ii) the rent that would be payable under the tenancy if the proposed rent increase took effect (“the proposed rent”).
- (3) The landlord must give notice in writing to the tenant under the private residential tenancy of any application under subsection (1) which must include—
 - (a) a statement of the proposed rent,
 - (b) a statement that the proposed rent would be an increase to the rent payable under the tenancy of more than the permitted rate,
 - (ba) a statement that the rent payable under the tenancy is not increased unless and until—
 - (i) the relevant rent officer makes an order determining the rent payable under the tenancy, or
 - (ii) if the order is appealed to the First-tier Tribunal, the Tribunal makes an order determining the rent payable under the tenancy,
 - (c) a description of the prescribed property costs of the landlord that have increased during the relevant period prompting the proposed rent, and
 - (d) where an increase mentioned in paragraph (c) includes an increase in the landlord’s service costs, details of the nature of the increase in the service costs and the amount.
- (4) In this Chapter, “prescribed property costs”, in relation to a landlord, are—
 - (a) interest payable in respect of a mortgage or standard security relating to the let property,
 - (b) a premium payable in respect of insurance (other than general building and contents insurance) relating to the let property and the offering of the property for let,

- (c) service charges relating to the let property that are paid for by the landlord but the payment of which the tenant is responsible for (in whole or in part) in accordance with the terms of the tenancy.
- (5) The Scottish Ministers may by regulations modify the list in subsection (4) so as to amend, remove or add to the matters for the time being mentioned in the list.
- (6) In this Chapter—
 - “proposed rent” has the meaning given in subsection (2)(b)(ii),
 - “relevant period” means the period of 6 months occurring immediately before the day on which the application under subsection (1) is made,
 - “relevant rent officer”, in relation to a private rented tenancy, means the rent officer of the area in which the let property is situated.

33B Rent officer’s power to apply rent increase above permitted rate

- (1) Where a rent officer receives an application under section 33A(1), the rent officer must decide whether the following conditions are met—
 - (a) the rent officer is satisfied that the landlord’s prescribed property costs that are specified in the application have increased during the relevant period, and
 - (b) the rent officer is satisfied that the amount of the proposed increase to the rent payable under the tenancy represents no more than 50% of the increase in the landlord’s prescribed property costs incurred during the relevant period as specified in the application.
- (2) If both conditions mentioned in subsection (1) are met, the rent officer must make an order stating that from the effective date the rent under the tenancy is the lower of—
 - (a) the proposed rent, or
 - (b) the rent payable under the tenancy as increased by 3%.
- (3) If either or both of the conditions mentioned in subsection (1) is or are not met, the rent officer may make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the rent officer.
- (4) In determining the rent under subsection (3), the rent officer—
 - (a) may not determine that the rent payable under the tenancy from the effective date is an amount that would be an increase to the rent payable under the tenancy of more than an amount representing 50% of the increase in the landlord’s prescribed property costs incurred during the relevant period as specified in the application under section 33A(1), and
 - (b) in any event, may not determine that the rent payable under the tenancy from the effective date is more than the rent payable under the tenancy as increased by 3%.
- (5) For the purpose of subsection (2) or (3), the effective date is—
 - (a) where the rent officer makes the order under either of those subsections 14 days or more before the original effective date, the original effective date,

- (b) otherwise, the first payment date falling at least 14 days after the day on which the rent officer makes the order.

(6) In this section—

“original effective date” is the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under section 33A(3),

“payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

33C Appeal to the First-tier Tribunal

- (1) Where a rent officer makes an order under section 33B(2) or (3) in relation to the rent payable under a private residential tenancy, the landlord or the tenant may appeal against the order to the First-tier Tribunal.

- (2) An order under section 33B(2) or (3) may not be appealed against more than 14 days after the order is made.

- (3) Where an appeal is made to the First-tier Tribunal under subsection (1), the First-tier Tribunal may make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the First-tier Tribunal.

- (4) In determining the rent under subsection (3), the First-tier Tribunal—

(a) may not determine that the rent payable under the tenancy from the effective date is an amount that would be an increase to the rent payable under the tenancy of more than an amount representing 50% of the increase in the landlord’s prescribed property costs incurred during the relevant period as specified in the application under section 33A(1), and

(b) in any event, may not determine that the rent payable under the tenancy from the effective date is more than the rent payable under the tenancy as increased by 3%.

- (5) For the purpose of subsection (3), the effective date is—

(a) where the First-tier Tribunal makes its order 14 days or more before the original effective date, the original effective date,

(b) otherwise, the first payment date falling at least 14 days after the day on which the First-tier Tribunal makes its order.

- (6) Making an appeal under subsection (1) renders the order under section 33B(2) or (3) that is being appealed against of no effect.

(7) In this section—

“original effective date” is the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under section 33A(3),

“payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

33D Withdrawal or dismissal of appeal to the First-tier Tribunal

If an appeal under section 33C(1) is withdrawn or dismissed, subsection (6) of that section ceases to have effect (and the order under section 33B(2) or (3) that was being appealed against is reinstated).

33E Finality of First-tier Tribunal's decision

- (1) An order under section 33C(3) may be reviewed in accordance with this section only.
- (2) Accordingly (and without prejudice to the generality of subsection (1)), a decision of the First-tier Tribunal to make an order under section 33C(3) may be neither—
 - (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor
 - (b) appealed against under section 46 of that Act.
- (3) The First-tier Tribunal may review an order under section 33C(3)—
 - (a) at its own instance, or
 - (b) at the request of the landlord or the tenant under the tenancy to which the order relates.
- (4) In a review under subsection (3), the First-tier Tribunal may—
 - (a) take no action, or
 - (b) correct a minor error contained in the order.

33F Powers to adjust maximum amount of increased costs by which rent may be increased

- (1) The Scottish Ministers may by regulations substitute a different percentage for the one for the time being mentioned in each of the following provisions—
 - (a) section 33A(1),
 - (b) section 33B(1)(b),
 - (c) section 33B(4)(a),
 - (d) section 33C(4)(a).
- (2) The Scottish Ministers may by regulations substitute a different percentage (which percentage must be no lower than the permitted rate) for the one for the time being mentioned in each of the following provisions—
 - (a) section 33B(2)(b),
 - (b) section 33B(4)(b),
 - (c) section 33C(4)(b).

33G Liability for underpaid rent

- (1) This section applies where—
 - (a) the rent payable under a private residential tenancy has been changed by an order made under section 33B(2) or (3) or section 33C(3),

- (b) the effective date stated in the order (“the actual effective date”) falls later than the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under section 33A(3) (“the originally proposed effective date”), and
- 5 (c) the rent payable from the actual effective date (“the new rent”) is more than the rent payable immediately before that date (“the old rent”).
- (2) On the date the order is made the tenant becomes liable under this subsection to pay the landlord the difference between—
- 10 (a) the amount that would have been payable in rent between the originally proposed effective date and the actual effective date had the new rent been the rent payable from the originally proposed effective date, and
- (b) the amount that should have been paid in rent during the same period (whether or not it was actually paid).
- 15 (3) Subsection (4) applies if, at the end of the day falling 28 days after a tenant’s liability under subsection (2) arose, that liability is (in whole or in part) still outstanding.
- (4) For the purposes of paragraphs 12 and 12A of schedule 3, the liability mentioned in subsection (2) is to be regarded as a sum that fell to be paid by way of rent on the day the liability arose.
- 20 (5) In this section, a reference to a period between two dates includes both of those dates.”.
- (18) The 2016 Act has effect as if section 34 (duty to make information available) were repealed.
- (19) The 2016 Act has effect as if sections 35 to 43 (rent pressure zones) were repealed.
- 25 (20) Section 77(3) (regulation-making powers) has effect as if after “12,” there were inserted “19(4), 21A(3), 33A(5), 33F(1) or (2),”.

Rent cap for assured tenancies and short assured tenancies

- 2 (1) Subject to sub-paragraph (2), the Housing (Scotland) Act 1988 (“the 1988 Act”) applies in accordance with the modifications in this paragraph.
- 30 (2) The modifications set out in this paragraph have no effect in relation to—
- (a) a notice under section 24(1) of the 1988 Act that is served by a landlord under an assured tenancy or a short assured tenancy on the tenant—
- (i) before 6 September 2022, and
- 35 (ii) in accordance with Form AT2 as specified in the schedule of the Rent Regulation and Assured Tenancies (Forms) (Scotland) Regulations 2017 (S.S.I. 2017/349),
- (b) a referral under section 25(1) of the 1988 Act, or an application under section 34(1) of the 1988 Act, made to the First-tier Tribunal for Scotland before the day on which this paragraph comes into force.
- 40 (3) The 1988 Act has effect as if after section 23 there were inserted—

“23A Rent cap controls

- (1) Except in the case of an exempt tenancy, on or after 6 September 2022, the landlord under an assured tenancy or a short assured tenancy may not increase the rent payable under the tenancy by more than the permitted rate.
- 5 (2) For the purposes of this Part, the “permitted rate” is 0%.
- (3) The Scottish Ministers may by regulations substitute a different percentage for the one for the time being mentioned in subsection (2).
- (4) Regulations under subsection (3) are subject to the affirmative procedure.
- 10 (5) Any notice served under section 24(1) on or after 6 September 2022 during a period when the permitted rate is 0% is of no effect.
- (6) In subsection (1), “exempt tenancy” means—
- 15 (a) a statutory assured tenancy which includes a term of the type mentioned in paragraph (a) of subsection (5) of section 24, or
- (b) a contractual tenancy which makes provision of the type mentioned in paragraph (b) of that subsection.”.
- (4) Section 24 (increases of rent under assured tenancies) has effect as if—
- (a) before subsection (1) there were inserted—
- 20 “(A1) This section does not apply where the permitted rate is 0%.”,
- (b) in subsection (1), at the beginning there were inserted “Subject to subsection (1A)”,
- (c) after subsection (1) there were inserted—
- 25 “(1A) The landlord may not serve a notice under subsection (1) proposing an increase in the rent under an assured tenancy of more than the permitted rate.”,
- (d) in subsection (3)(a), for “the First-tier Tribunal” there were substituted “the relevant rent officer”,
- 30 (e) subsection (3)(b) has effect as if the words “agree on a variation of the rent which is different from that proposed in the notice or” were repealed,
- (f) after subsection (4) there were inserted—
- “ (4A) The Scottish Ministers may by regulations amend subsection (4) to permit the rent payable under an assured tenancy to be increased a second time within a 12 month period in such circumstances as may be specified in the regulations.
- (4B) Regulations under subsection (4A) are subject to the affirmative procedure.”,
- (g) after subsection (6) there were inserted—
- 35 “(7) This section is subject to sections 24E to 24G (applications to rent officer and First-tier Tribunal for uplift).
- (8) This section and sections 24A to 24K apply in relation to a short assured tenancy as they apply in relation to an assured tenancy (and references in these sections to an assured tenancy are to be read as including references to a short assured tenancy).
- 40 (9) In this Part—
- “First-tier Tribunal” means the First-tier Tribunal for Scotland,

“relevant rent officer”, in relation to a house let under an assured tenancy or a short assured tenancy, means a rent officer (within the meaning of section 43 of the Rent (Scotland) Act 1984) for the area in which the house is situated.”.

(5) The 1988 Act has effect as if after section 24 there were inserted—

“24A Consideration of notice to increase rent by rent officer

(1) Where a rent officer receives a referral under section 24(3)(a), the rent officer is to decide whether the new rent specified in the notice under section 24(1) (“the proposed new rent”) would be an increase to the rent under the assured tenancy of more than the permitted rate.

(2) If the rent officer decides under subsection (1) that the proposed new rent would be an increase to the rent under the assured tenancy of no more than the permitted rate, the rent officer must make an order stating that from the effective date the rent under the assured tenancy is the proposed new rent.

(3) If the rent officer decides under subsection (1) that the proposed new rent would be an increase to the rent under the assured tenancy of more than the permitted rate, the rent officer must make an order stating that from the effective date the rent under the assured tenancy is the rent determined by the rent officer.

(4) In determining the rent under subsection (3), the rent officer must determine that the rent is an amount that would be an increase to the existing rent under the assured tenancy of the permitted rate.

(5) For the purpose of subsection (2) and (3), the effective date is—

(a) where the rent officer makes the order 14 days or more before the original effective date, the original effective date,

(b) otherwise, the first payment date falling at least 14 days after the day on which the rent officer makes the order.

(6) In subsection (5)—

“original effective date” means the date on which the rent would have been increased in accordance with section 24(2) had a referral to the rent officer not been made, and

“payment date” means a date on which a rent payment falls to be made in accordance with the terms of the assured tenancy.

24B Right of appeal to First-tier Tribunal against order of rent officer

(1) Where a rent officer has made an order under section 24A(2) or (3) in relation to the rent under an assured tenancy, the landlord or the tenant may appeal against the order to the First-tier Tribunal.

(2) An order under section 24A(2) or (3) may not be appealed against—

(a) more than 14 days after the order is made,

(b) where the order is made by virtue of section 24D(2).

(3) Making an appeal under subsection (1) renders the order being appealed against of no effect.

24C First-tier Tribunal’s power to set rent subject to permitted rate

- (1) Where an appeal is made to the First-tier Tribunal under section 24B(1), the First-tier Tribunal must make an order stating that from the effective date the rent under the assured tenancy is the rent determined by the First-tier Tribunal.
- (2) In determining the rent under subsection (1), the First-tier Tribunal must determine that the rent is an amount that would be an increase to the existing rent under the assured tenancy of the permitted rate.
- (3) For the purpose of subsection (1), the effective date is—
- (a) where the First-tier Tribunal makes its order on or before the original effective date, the original effective date,
- (b) otherwise, the first payment date falling on or after the day on which the First-tier Tribunal makes its order.
- (4) In subsection (3)—
- “original effective date” means the date on which the rent would have been increased in accordance with section 24(2) had a referral to the rent officer not been made, and
- “payment date” means a date on which a rent payment falls to be made in accordance with the terms of the assured tenancy.

24D Withdrawal of referral or appeal

- (1) This section applies—
- (a) where a referral made under section 24(3)(a) is withdrawn by the tenant, or
- (b) where—
- (i) an appeal made under section 24B(1) is withdrawn by one party, and
- (ii) the other party has not made an appeal in respect of the tenancy in question, or any appeal made by the other party has been withdrawn.
- (2) The order maker must make an order under section 24A(2) or (3) or (as the case may be) 24C(1) stating that from the effective date the rent under the assured tenancy is—
- (a) the new rent specified in the notice under section 24(1), or
- (b) if that amount would be an increase to the rent under the tenancy of more than the permitted rate, the rent determined by the order maker.
- (3) In determining the rent under subsection (2)(b), the order maker must determine that the rent is an amount that would be an increase to the rent payable under the assured tenancy of the permitted rate.
- (4) Where the order maker is the First-tier Tribunal, an order may not be made by virtue of subsection (2) until the earlier of—
- (a) the expiry of the period within which an appeal under section 24B(1) may be made, or

- (b) the date on which both parties become ineligible to make an appeal (whether by withdrawing an appeal or by waiving the right to appeal).

24E Landlord application to rent officer to increase rent above permitted rate

- (1) A landlord under an assured tenancy may make an application to the relevant rent officer to increase the rent under the tenancy by more than the permitted rate in order to recover up to 50% of the increase in any prescribed property costs that the landlord has incurred during the relevant period.
- (2) An application under subsection (1) must include—
- (a) evidence of an increase in any prescribed property costs of the landlord incurred during the relevant period, and
- (b) a statement of—
- (i) the rent under the tenancy, and
- (ii) what the new rent under the tenancy would be if the proposed rent increase took effect (“the proposed rent”).
- (3) The landlord must give notice in writing to the tenant under an assured tenancy of any application under subsection (1) which must include—
- (a) a statement of the proposed rent,
- (b) a statement that the proposed rent would be an increase to the rent under the tenancy of more than the permitted rate,
- (ba) a statement that the rent payable under the tenancy is not increased unless and until—
- (i) the relevant rent officer makes an order determining the rent payable under the tenancy, or
- (ii) if the order is appealed to the First-tier Tribunal, the Tribunal makes an order determining the rent payable under the tenancy,
- (c) a description of the prescribed property costs of the landlord that have increased during the relevant period prompting the proposed rent, and
- (d) where an increase mentioned in paragraph (c) includes an increase in the landlord’s service costs, details of the nature of the increase in the service costs and the amount.
- (4) In this Part, “prescribed property costs”, in relation to a landlord, are—
- (a) interest payable in respect of a mortgage or standard security relating to the house that is let,
- (b) a premium payable in respect of insurance (other than building and contents insurance) relating to the house that is let and the offering of the house for let,
- (c) service charges relating to the house that is let that are paid for by the landlord but the payment of which the tenant is responsible for (in whole or in part) in accordance with the terms of the tenancy.
- (5) The Scottish Ministers may by regulations modify the list in subsection (4) so as to amend, remove or add to the matters for the time being mentioned in the list.

(6) Regulations under subsection (5) are subject to the affirmative procedure.

(7) In this Part—

“proposed rent” has the meaning given in subsection (2)(b)(ii),

“relevant period” means the period of 6 months occurring immediately before the day on which the application is made under subsection (1).

24F Rent officer’s power to apply rent increase above permitted rate

(1) Where a rent officer receives an application under section 24E(1), the rent officer must decide whether the following conditions are met—

(a) the rent officer is satisfied that the landlord’s prescribed property costs that are specified in the application have increased during the relevant period, and

(b) the rent officer is satisfied that the amount of the proposed increase to the rent under the assured tenancy represents no more than 50% of the increase in the landlord’s prescribed property costs incurred during the relevant period as specified in the application.

(2) If both conditions mentioned in subsection (1) are met, the rent officer must make an order stating that from the effective date the rent under the assured tenancy is the lower of—

(a) the proposed rent, or

(b) the existing rent under the tenancy as increased by 3%.

(3) If either or both of the conditions mentioned in subsection (1) is or are not met, the rent officer may make an order stating that from the effective date the rent under the assured tenancy is the rent determined by the rent officer.

(4) In determining the rent under subsection (3), the rent officer—

(a) may not determine that the rent under the assured tenancy from the effective date is an amount that would be an increase to the existing rent under the tenancy of more than an amount representing 50% of the increase in the landlord’s prescribed property costs incurred during the relevant period as specified in the application under section 24E(1), and

(b) in any event, may not determine that the rent under the tenancy from the effective date is more than the existing rent under the tenancy as increased by 3%.

(5) For the purpose of subsection (2) or (3), the effective date is—

(a) where the rent officer makes the order under either of those subsections 14 days or more before the original effective date, the original effective date,

(b) otherwise, the first payment date falling at least 14 days after the day on which the rent officer makes the order.

(6) A rent officer may, within 14 days of making an order under subsection (2) or (3), re-make the order for the purpose of curing an error in the original order.

- (7) The effective date of the re-made order is to be specified in accordance with subsection (5) as though it were an order made under subsection (2) or (3).
- (8) Where an order has been re-made under subsection (6)—
 - (a) the original order is of no effect,
 - (b) references in this Part to an order made under subsection (2) or (3) are to be read as references to the re-made order,
 - (c) if the original order has been appealed against under section 24G(1), the appeal is to be regarded as having been made against the re-made order.
- (9) Subsection (8)(b) does not apply in relation to subsection (6).
- (10) In this section—

“original effective date” is the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under section 24E(3),

“payment date” means a date on which a rent payment falls to be made in accordance with the terms of the assured tenancy.

24G Appeal to the First-tier Tribunal

- (1) Where a rent officer makes an order under section 24F(2) or (3) in relation to the rent under an assured tenancy, the landlord or the tenant may appeal against the order to the First-tier Tribunal.
- (2) An order under section 24F(2) or (3) may not be appealed against more than 14 days after the order is made.
- (3) Where an appeal is made to the First-tier Tribunal under subsection (1), the First-tier Tribunal may make an order stating that from the effective date the rent under the assured tenancy is the rent determined by the First-tier Tribunal.
- (4) In determining the rent under subsection (3), the First-tier Tribunal—
 - (a) may not determine that the rent under the assured tenancy from the effective date is an amount that would be an increase to the existing rent under the tenancy of more than an amount representing 50% of the increase in the landlord’s prescribed property costs incurred during the relevant period as specified in the application under section 24E(1), and
 - (b) in any event, may not determine that the rent under the tenancy from the effective date is more than the existing rent under the tenancy as increased by 3%.
- (5) For the purpose of subsection (3), the effective date is—
 - (a) where the First-tier Tribunal makes its order 14 days or more before the original effective date, the original effective date,
 - (b) otherwise, the first payment date falling at least 14 days after the day on which the First-tier Tribunal makes its order.
- (6) Making an appeal under subsection (1) renders the order under section 24F(2) or (3) that is being appealed against of no effect.

(7) In this section—

“original effective date” is the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under section 24E(3),

“payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

24H Withdrawal or dismissal of appeal to the First-tier Tribunal

If an appeal under section 24G(1) is withdrawn or dismissed, subsection (6) of that section ceases to have effect (and the order under section 24F(2) or (3) that was being appealed against is reinstated).

24I Finality of First-tier Tribunal’s decision

(1) An order under section 24C(1) or 24G(3) may be reviewed in accordance with this section only.

(2) Accordingly (and without prejudice to the generality of subsection (1)), a decision of the First-tier Tribunal to make an order under section 24C(1) or 24G(3) may be neither—

- (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor
- (b) appealed against under section 46 of that Act.

(3) The First-tier Tribunal may review an order under section 24C(1) or 24G(3)—

- (a) at its own instance, or
- (b) at the request of the landlord or the tenant under the assured tenancy to which the order relates.

(4) In a review under subsection (3), the First-tier Tribunal may—

- (a) take no action, or
- (b) correct a minor error contained in the order.

24J Powers to adjust maximum amount of increased costs by which rent may be increased

(1) The Scottish Ministers may by regulations substitute a different percentage for the one for the time being mentioned in each of the following provisions—

- (a) section 24E(1),
- (b) section 24F(1)(b),
- (c) section 24F(4)(a),
- (d) section 24G(4)(a).

(2) The Scottish Ministers may by regulations substitute a different percentage (which percentage must be no lower than the permitted rate) for the one for the time being mentioned in each of the following provisions—

- (a) section 24F(2)(b),
- (b) section 24F(4)(b),

(c) section 24G(4)(b).

(3) Regulations under subsection (1) or (2) are subject to the affirmative procedure.

24K Liability for underpaid rent

(1) This section applies where—

(a) the rent payable under an assured tenancy has been changed by an order made under any of the following provisions—

(i) section 24A(2),

(ii) section 24A(3),

(iii) section 24C(1),

(iv) section 24F(2),

(v) section 24F(3),

(vi) section 24G(3),

(b) the effective date stated in the order (“the actual effective date”) falls later than the originally proposed effective date, and

(c) the rent payable from the actual effective date (“the new rent”) is more than the rent payable immediately before that date (“the old rent”).

(2) For the purpose of subsection (1), “the originally proposed effective date” is—

(a) in the case of an order under section 24A(2) or (3) or section 24C(1), the date on which the rent would have been increased in accordance with section 24(2) had the referral to the rent officer not been made,

(b) in the case of an order under section 24F(2) or (3) or section 24G(3), the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under section 24E(3).

(3) On the date the order is made the tenant becomes liable under this subsection to pay the landlord the difference between—

(a) the amount that would have been payable in rent between the originally proposed effective date and the actual effective date had the new rent been the rent payable from the originally proposed effective date, and

(b) the amount that should have been paid in rent during the same period (whether or not it was actually paid).

(4) Subsection (5) applies if, at the end of the day falling 28 days after a tenant's liability under subsection (3) arose, that liability is (in whole or in part) still outstanding.

(5) For the purpose of Grounds 11 and 12 in schedule 5, the liability mentioned in subsection (3) is to be regarded as a sum that fell to be paid by way of rent on the day the liability arose.

(6) In this section, a reference to a period between two dates includes both of those dates.”.

(6) The 1988 Act has effect as if section 25 (determination of rent by the First-tier Tribunal) were repealed.

- (7) The 1988 Act has effect as if section 34 (reference of rents under short assured tenancies to the First-tier Tribunal) were repealed.
- (8) Section 53(2) (orders and regulations) has effect as if after “above” there were inserted “or regulations under section 23A(3), 24(4A), 24E(5) or 24J(1) or (2)”.

Rent cap for Scottish secure tenancies and short Scottish secure tenancies

- 3 (1) The Housing (Scotland) Act 2001 (“the 2001 Act”) applies in accordance with the modifications in this paragraph.
- (2) The 2001 Act has effect as if after section 24 (restriction on variation of tenancy) there were inserted—

“24A Rent cap controls

- (1) On or after 6 September 2022, the landlord under a Scottish secure tenancy may not increase the rent payable under the tenancy by more than the permitted rate.
- (2) In subsection (1), the “permitted rate” is 0%.
- (3) The Scottish Ministers may by regulations substitute a different percentage for the one for the time being mentioned in subsection (2).”.
- (3) Section 25 (increase in rent or charges) has effect as if—
 - (a) in subsection (1), at the beginning there were inserted “Subject to subsection (1A),”,
 - (b) after subsection (1) there were inserted—
 - “(1A) The landlord under a Scottish secure tenancy may not give notice under subsection (1) to increase the rent payable under the tenancy—
 - (a) if the permitted rate is 0%, or
 - (b) if the permitted rate is more than 0%, by more than the permitted rate.”,
 - (c) after subsection (4) there were inserted—
 - “(5) A notice under subsection (1) given by the landlord under a Scottish secure tenancy to increase the rent payable under the tenancy is of no effect if—
 - (a) the notice is given on or after 6 September 2022, and
 - (b) at the time the notice is given the permitted rate is 0%.
- (6) In this section, “permitted rate” has the same meaning as in section 24A(2).
- (7) Nothing in this section prevents the landlord under a Scottish secure tenancy who proposes to increase the rent or any other charge payable under the tenancy that is payable by all (or any description) of its tenants from—
 - (a) consulting those of its tenants who would be affected by the proposal, and
 - (b) having regard to the views expressed by those consulted.”.
- (4) Section 109(6) (orders and regulations) has effect as if after “7(3)” there were inserted “or 24A(3)”.

Rent cap for student residential tenancies

4 (1) Sub-paragraph (2) applies where a student residential tenancy permits the landlord under the tenancy to increase the rent payable under the tenancy during the period of the tenancy.

5 (2) On or after the day on which this paragraph comes into force, the landlord may not increase the rent payable under the tenancy by more than the permitted rate.

(3) For the purposes of this paragraph, the “permitted rate” is 0%.

(4) If the rent payable under the tenancy is increased by more than the permitted rate (“impermissible new rent”)—

10 (a) the rent payable under the tenancy is to be treated as being the rent payable under the tenancy immediately before the increase took effect as increased by the permitted rate (“permissible new rent”), and

(b) the amount of impermissible new rent above the amount of permissible new rent is not recoverable from the tenant.

15 (5) The Scottish Ministers may by regulations substitute a different percentage for the one for the time being mentioned in sub-paragraph (3).

(6) Regulations under sub-paragraph (5) are subject to the affirmative procedure.

(7) In this paragraph—

20 “rent” means any sums payable periodically by the tenant to the landlord in connection with the tenancy (and includes, for the avoidance of doubt, any sums payable in respect of services, repairs, maintenance or insurance) but does not include any sums payable by the tenant under the tenancy in connection with excessive use of any utilities by the tenant,

25 “student” has the same meaning as in paragraph 5 of schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”),

“student residential tenancy” means a tenancy—

(a) the purpose of which is to confer on the tenant the right to occupy the let property while the tenant is a student, and

30 (b) to which paragraph 5(2) or (3) of schedule 1 of the 2016 Act (tenancies which cannot be private residential tenancies) applies.

SCHEDULE 2
(introduced by section 2)

PROTECTION FROM EVICTION

Eviction from residential properties: restrictions on enforcement

35 1 (1) Where a decree for removing is granted in proceedings raised after this paragraph comes into force, no person may—

(a) serve a charge for removing in respect of the decree,

(b) execute the decree.

40 (2) Where a decree of removing is or was granted in proceedings raised before this paragraph comes into force in relation to an eviction notice served on or after 6 September 2022

or, in proceedings raised on or after that date (and before this paragraph comes into force) without the need for an eviction notice, no person may—

(a) if a charge for removing has not been served in respect of the decree, serve any such charge,

(b) if the decree has not been executed, execute the decree.

(3) Sub-paragraphs (1) and (2) apply until the earlier of—

(a) the end of a period of 6 months beginning with the day on which the decree for removing is or was granted,

(b) the expiry or suspension of this paragraph in accordance with Part 2.

(4) In a case where the decree for removing relates to a student residential tenancy, sub-paragraphs (1) and (2) do not apply where the decree is or was granted in respect of circumstances which are the same as those described in either of the following paragraphs—

(a) paragraph 2 (criminal behaviour),

(b) paragraph 3 (anti-social behaviour).

(5) In any other case, sub-paragraphs (1) and (2) do not apply where the decree for removing is or was granted on the basis of the application of—

(a) any of the following paragraphs of schedule 3 of the 2016 Act—

(i) paragraph 1A (intent to sell property to alleviate financial hardship),

(ii) paragraph 2 (property to be sold by lender),

(iii) paragraph 4A (intent to live in property to alleviate financial hardship),

(iiia) paragraph 8 (not an employee),

(iv) paragraph 10 (tenant not occupying let property),

(v) paragraph 12A (substantial rent arrears),

(vi) paragraph 13 (criminal behaviour),

(vii) paragraph 14 (anti-social behaviour),

(viii) paragraph 15 (association with person who has relevant conviction or engaged in relevant anti-social behaviour),

(b) any of the following paragraphs of schedule 2 of the 2001 Act—

(i) paragraph 1 (rent arrears) but only so far as it relates to rent lawfully due from the tenant which has not been paid and the amount of such rent specified in the decree is equal to or greater than £2,250,

(ii) paragraph 2 (conviction for certain offences),

(iii) paragraph 5 (tenant absent or not occupying house),

(iv) paragraph 7 (anti-social behaviour or harassment),

(v) paragraph 8 (nuisance, annoyance or harassment),

(vi) paragraph 10 (demolition of, or substantial work on, the property),

(vii) paragraph 14 (islands council as education authority),

(c) any of the following Grounds in schedule 5 of the 1988 Act—

- (i) Ground 1A (intent to live in house to alleviate financial hardship),
- (ii) Ground 2 (house to be sold by lender),
- (iii) Ground 8A (substantial rent arrears),
- (iv) Ground 15 (conviction for certain offences, acting in an anti-social manner or pursuing a course of anti-social conduct),
- (v) Ground 17 (employment with landlord ceases), or

(d) any of the following Cases in, or paragraphs of, schedule 2 of the 1984 Act—

- (i) Case 1A (substantial rent arrears),
- (ii) Case 2 (nuisance, annoyance or conviction for using or allowing dwelling-house to be used for immoral or illegal purposes),
- (iia) Case 7 (employment with landlord ceases),
- (iii) Case 8A (intent to live in house to alleviate financial hardship),
- (iv) paragraph (c)(vi) in Case 11 (owner-occupier's house to be sold by lender),
- (v) paragraph (c)(iv) in Case 12 (owner's house to be sold by lender).

(6) In a case where sub-paragraph (1) or (2) has effect in relation to—

(a) an eviction order issued under section 51 of the 2016 Act after this paragraph comes into force, that section has effect in relation to the order as if for subsection (4) there were substituted—

“(4) Despite any provision by the Tribunal in the order, the tenancy in question is terminated only if the landlord recovers possession of the let property in pursuance of the order.”,

(b) an order for recovery of possession made under section 16 of the 2001 Act after this paragraph comes into force, that section has effect in relation to the order as if—

- (i) in subsection (5), paragraph (a) were repealed,
- (ii) after that subsection there were inserted—

“(5ZA) Despite any provision by the court in the order, the tenancy in question is terminated only if the landlord recovers possession of the house in pursuance of the order.”,

(iii) in subsection (5A), paragraphs (a) and (b) were repealed,

(iv) in subsection (6), the words “and subsection (5)(a) does not apply in such a case” were repealed,

(c) an order for recovery of possession made under section 36 of the 2001 Act after this paragraph comes into force, that section has effect in relation to the order as if—

- (i) in subsection (6), paragraph (a) were repealed, and
- (ii) after that subsection there were inserted—

“(6ZA) Despite any provision by the court in the order, the tenancy in question is terminated only if the landlord recovers possession of the house in pursuance of the order.”.

5 (7) Any period during which sub-paragraph (1) or (2) has effect in relation to an order mentioned in paragraph (c) of section 16(5A) of the 2001 Act (powers of court in possession proceedings) is to be disregarded for the purposes of calculating the period mentioned in that paragraph.

(8) The Scottish Ministers may by regulations modify this paragraph to add, amend or remove circumstances in which sub-paragraph (1) or (2) does not apply.

10 (9) Regulations under sub-paragraph (8) are subject to the affirmative procedure.

(10) In this paragraph—

“the 1984 Act” means the Rent (Scotland) Act 1984,

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

“the 2001 Act” means the Housing (Scotland) Act 2001,

15 “the 2007 Act” means the Bankruptcy and Diligence etc. (Scotland) Act 2007,

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

“charge for removing” means a charge to remove under section 216(1) (service of charge before removing) of the 2007 Act in respect of a decree for removing,

“decree for removing” means—

20 (a) a decree of removing and warrant of ejection obtained in an action of removing in respect of—

(i) a protected tenancy (including a short tenancy) or a statutory tenancy under the 1984 Act, or

(ii) a student residential tenancy,

25 (b) a decree obtained by virtue of a summary application for removing under section 38 of the Sheriff Courts (Scotland) Act 1907 in respect of a student residential tenancy,

(c) a decree for recovery of possession of heritable property obtained by virtue of a summary cause under section 35(1)(c) of the Sheriff Courts (Scotland) Act 1971 in respect of—

30 (i) a Scottish secure tenancy or a short Scottish secure tenancy under the 2001 Act, or

(ii) a student residential tenancy,

35 (d) an order for possession (within the meaning of section 55(1) of the 1988 Act) in respect of an assured tenancy (including a short assured tenancy) under the 1988 Act, or

(e) an eviction order issued under section 51 of the 2016 Act,

“eviction notice” means—

40 (a) in the case of a short tenancy under the 1984 Act, a notice under section 14(2) of that Act,

- (b) in the case of an assured tenancy (including a short assured tenancy) under the 1988 Act, a notice under section 19 of that Act,
- (c) in the case of a short assured tenancy under the 1988 Act, a notice under section 33(1)(d) of that Act,
- 5 (d) in the case of a Scottish secure tenancy or a short Scottish secure tenancy under the 2001 Act, a notice under section 14(2) of that Act,
- (e) in the case of a short Scottish secure tenancy under the 2001 Act, a notice under section 36(2) of that Act,
- 10 (f) in the case of a private residential tenancy under the 2016 Act, a notice under section 50 or 61 of that Act,
- (g) in the case of a student residential tenancy a notice to quit (however expressed) which must, whether under the tenancy or otherwise, be served on the tenant before the tenancy can be terminated by the landlord,
- “student” has the same meaning as in paragraph 5 of schedule 1 of the 2016 Act,
- 15 “student residential tenancy” means a tenancy—
 - (a) the purpose of which is to confer on the tenant the right to occupy the let property while the tenant is a student, and
 - (b) to which paragraph 5(2) or (3) of schedule 1 (tenancies which cannot be private residential tenancies) of the 2016 Act applies.

20 *Student residential tenancies: criminal behaviour*

- 2 (1) For the purpose of paragraph 1(4)(a), the circumstances are as follows.
- (2) During the tenancy, the tenant receives a relevant conviction.
- (3) In sub-paragraph (2), “a relevant conviction” means a conviction for an offence—
- 25 (a) which was committed by using, or allowing the use of, the let property for an immoral or illegal purpose, or
- (b) which—
- (i) was committed within, or in the locality of, the let property, and
- (ii) is punishable by imprisonment.

Student residential tenancies: anti-social behaviour

- 30 3 (1) For the purpose of paragraph 1(4)(b), the circumstances are as follows.
- (2) During the tenancy—
- (a) the tenant behaved in an anti-social manner in relation to another person, and
- (b) the behaviour was within, or in the locality of, the let property.
- (3) For the purpose of sub-paragraph (2), a person is to be regarded as behaving in an
- 35 anti-social manner in relation to another person by—
- (a) doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or

- (b) pursuing in relation to the other person a course of conduct which—
 - (i) causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or
 - (ii) amounts to harassment of the other person.

(4) In sub-paragraph (3)—

“conduct” includes speech,

“course of conduct” means conduct on two or more occasions,

“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997.

Safeguards for landlords: substantial rent arrears and financial hardship

(1) The Private Housing (Tenancies) (Scotland) Act 2016 applies in accordance with the modifications in this paragraph.

(2) Section 54(3)(b) has effect as if after sub-paragraph (iii) there were inserted—

“(iiia) that the tenant has substantial rent arrears,”.

(3) Schedule 3 has effect as if—

(a) after paragraph 1 there were inserted—

“Landlord intends to sell property to alleviate financial hardship

1A(1) It is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the landlord—

(i) is entitled to sell the let property,

(ii) is suffering financial hardship, and

(iii) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a)(iii) includes (for example)—

(za) a letter of advice from an approved money advisor or local authority debt advice service,

(zb) a letter of advice from an independent financial advisor,

(zc) a letter of advice from a chartered accountant,

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market, and

(c) an affidavit stating that the landlord has that intention.”,

(b) after paragraph 4 there were inserted—

“Landlord intends to live in property to alleviate financial hardship

4A(1) It is an eviction ground that the landlord intends to live in the let property to alleviate financial hardship.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the landlord—

(i) is suffering financial hardship, and

(ii) intends to alleviate that hardship by occupying the let property as the landlord’s only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord’s interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a)(ii) includes (for example)—

(a) a letter of advice from an approved money advisor or local authority debt advice service,

(b) a letter of advice from an independent financial advisor,

(c) a letter of advice from a chartered accountant,

(d) an affidavit stating that the landlord has that intention.”,

(c) after paragraph 12 there were inserted—

“Substantial rent arrears

12A(1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

- (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,
- (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

- (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),
- (ii) a payment on account awarded under regulation 93 of those Regulations,
- (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
- (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”.

(1) The Housing (Scotland) Act 1988 applies in accordance with the modifications in this paragraph.

(2) Section 18 has effect as if after subsection (4) there were inserted—

“(4ZA) In deciding under subsection (4) whether Ground 1A in schedule 5 is established, evidence tending to show that the landlord has the intention mentioned in the Ground includes (for example)—

- (a) a letter of advice from an approved money advisor or local authority debt advice service,
- (b) a letter of advice from an independent financial advisor,
- (c) a letter of advice from a chartered accountant,
- (d) an affidavit stating that the landlord has that intention.

(4ZB) In deciding under subsection (4) whether it is reasonable to make an order for possession on Ground 8A in schedule 5, the First-tier Tribunal is to consider—

- (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,
- (b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers under subsection (4A)(b) (and

continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4ZC) For the purpose of subsection (4ZB)—

(a) references to a relevant benefit are to—

- (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),
- (ii) a payment on account awarded under regulation 93 of those Regulations,
- (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
- (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”.

(3) Section 19(4)(a) has effect as if—

- (a) after “Grounds 1,” there were inserted “1A,” and
- (b) after “7,” there were inserted “8A.”.

(4) Schedule 5 has effect as if—

(a) after Ground 1 there were inserted—

“Ground 1A

The landlord who is seeking possession of the let house—

- (a) is suffering financial hardship, and
- (b) intends to alleviate that hardship by occupying the let house as the landlord’s only or principal home for at least 3 months.

In this Ground, references to the landlord—

- (a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,
- (b) in a case where the landlord holds the landlord’s interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.”.

(b) after Ground 8 there were inserted—

“Ground 8A

The tenant has accrued rent arrears under the tenancy in respect of one or more periods, and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice is served under section 19 on this ground or, if dispensed with, when proceedings are raised for an order of possession on this ground.”.

6 (1) The Rent (Scotland) Act 1984 applies in accordance with the modifications in this paragraph.

(2) Section 11 has effect as if after subsection (1) there were inserted—

“(1A) In deciding under subsection (1) whether it is reasonable to make an order for possession in the circumstances as are specified in Case 1A in schedule 2, the First-tier Tribunal is to consider whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(1B) For the purpose of subsection (1A)—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(1C) In deciding under subsection (1) whether the circumstances as are specified in Case 8A in schedule 2 are established, evidence tending to show that the landlord has the intention mentioned in the Case includes (for example)—

(a) a letter of advice from an approved money advisor or local authority debt advice service,

(b) a letter of advice from an independent financial advisor,

(c) a letter of advice from a chartered accountant,

(d) an affidavit stating that the landlord has that intention.”.

(3) Schedule 2 has effect as if—

(a) after Case 1 there were inserted—

“Case 1A

The tenant has accrued rent arrears under the tenancy in respect of one or more periods, and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when proceedings for an order for possession are raised on the basis of these circumstances.”,

(b) after Case 8 there were inserted—

“Case 8A

The landlord who is seeking possession of the let house—

(a) is suffering financial hardship, and

(b) intends to alleviate that hardship by occupying the let house as the landlord's only or principal home for at least 3 months.

In this Case, references to the landlord—

- (a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,
- (b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.”.

Unlawful eviction: notification and determination damages, etc.

7 (1) The Housing (Scotland) Act 1988 applies in accordance with the modifications in sub-paragraphs (3) and (4).

10 (2) The modifications set out in this paragraph and paragraph 8 have no effect in relation to actions taken by (or on behalf of) a landlord before this paragraph comes into force which result in the landlord being liable for damages by virtue of section 36(3) of the Housing (Scotland) Act 1988 (damages for unlawful eviction).

(3) Section 36 (damages for unlawful eviction) has effect as if—

15 (a) in subsection (3), for “assessed on the basis set out in” there were substituted “determined in accordance with”,

(b) subsection (6B) were repealed,

(c) after subsection (7) there were inserted—

20 “(7A) Where the court makes an order awarding damages to a former residential occupier by virtue of subsection (3), the court must send a copy of the order to the Scottish Housing Regulator.

(7B) Where the First-tier Tribunal makes an order awarding damages to a former residential occupier by virtue of subsection (3), the First-tier Tribunal must send a copy of the order to—

25 (a) the chief constable of the Police Service of Scotland, and

(b) any local authority with which the landlord (or where there is more than one, each of them) is registered as a landlord.

30 (7C) For the purpose of subsection (7B), a person is registered as a landlord with a local authority if the person is entered in the register prepared and maintained by the local authority for the purpose of Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004.”.

(4) For section 37 (the measure of damages) there were substituted—

“37 Determination of damages

35 (1) For the purpose of section 36(3), the damages that the court or, as the case may be, the First-tier Tribunal may determine as payable are to be an amount which is—

(a) not less than 3 months' rent, and

(b) not more than 36 months' rent,

40 taking into account the manner of the unlawful eviction and the impact that it has had on the tenant.

(2) But, the court or, as the case may be, the First-tier Tribunal may reduce the amount of damages that would otherwise be payable under subsection (1) to an amount lower than 3 months' rent if it considers it appropriate to do so having regard to all the circumstances of the case.

(3) Where two or more persons jointly were the landlord, the court or, as the case may be, the First-tier Tribunal may determine that—

- (a) damages are payable by all, some or only one of the former landlords,
- (b) each former landlord must pay a specified amount of damages, but the cumulative total of each of the amounts must not exceed 36 months' rent, or
- (c) the former landlords are jointly and severally liable in respect of the whole amount of damages payable.

(4) In this section, "rent" means—

- (a) the amount that was payable in rent under the tenancy immediately before it ended, or
- (b) in a case where two or more persons jointly were the tenant under the tenancy immediately before it ended, the amount mentioned in paragraph (a) divided by the number of persons who were at that time joint tenants under the tenancy."

8 (1) The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (S.S.I. 2017/328) apply in accordance with the modification in sub-paragraph (2).

(2) In the schedule, paragraph 69(a) has effect as if for paragraph (iv) there were substituted—

"(iv) the amount of damages sought, and".

SCHEDULE 3 (introduced by section 9)

RENT ADJUDICATION: POWER TO MODIFY

Private residential tenancies

1 (1) The Private Housing (Tenancies) (Scotland) Act 2016 is amended as follows.

(2) After section 34 insert—

"Power to modify Chapter

34A Power to modify Chapter

(1) On or in anticipation of the expiry or suspension of paragraph 1 of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022, the Scottish Ministers may by regulations modify the provisions of this Chapter in connection with the determination of the rent payable under a private residential tenancy by a rent officer or the First-tier Tribunal.

- (2) Regulations under subsection (1) may in particular make provision—
- (a) about the basis on which the rent is to be determined by a rent officer or the First-tier Tribunal which may include—
 - (i) matters to be taken into account in determining the rent,
 - (ii) matters to be disregarded in determining the rent,
 - (iii) assumptions to be made in determining the rent,
 - (b) limiting the rent that may be determined to an amount that is no more than the rent specified in accordance with section 22(2)(a)(i) in a rent-increase notice prompting the referral to the rent officer in question or (as the case may be) leading to the appeal to the First-tier Tribunal,
 - (c) about the procedure relating to referral to a rent officer or appeal to the First-tier Tribunal.
- (3) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers—
- (a) must consult such persons as appear to them to represent the interests of tenants and landlords under private residential tenancies, and
 - (b) may consult any other person they consider appropriate.”.
- (3) In section 77(3) (regulation-making powers), before “37” insert “34A,”.

Assured tenancies and short assured tenancies

2 (1) The Housing (Scotland) Act 1988 is amended as follows.

(2) After section 25 insert—

“25ZA Power to modify this Part

- (1) On or in anticipation of the expiry or suspension of paragraph 2 of schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022, the Scottish Ministers may by regulations amend or repeal the provisions of this Part in connection the determination of the rent payable under an assured tenancy or a short assured tenancy by the First-tier Tribunal.
- (2) Regulations under subsection (1) may in particular make provision—
 - (a) about the basis on which the rent is to be determined by the First-tier Tribunal which may include—
 - (i) matters to be taken into account in determining the rent,
 - (ii) matters to be disregarded in determining the rent,
 - (iii) assumptions to be made in determining the rent,
 - (b) limiting the rent that may be determined to an amount that is no more than the rent proposed in accordance with section 24(1) leading to the referral to the First-tier Tribunal,
 - (c) about the procedure relating to referral to the First-tier Tribunal.

- 5
- (3) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers—
 - (a) must consult such persons as appear to them to represent the interests of tenants and landlords under assured tenancies and short assured tenancies, and
 - (b) may consult any other person they consider appropriate.
 - (4) Regulations under subsection (1) are subject to the affirmative procedure.”.
 - (3) In section 53(2) (orders and regulations), before “, shall” insert “or regulations under section 25ZA”.

Cost of Living (Tenant Protection) (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision in connection with protecting residential tenants from increases in rent; protecting residential tenants from eviction; and for connected purposes.

Introduced by: Shona Robison
Supported by: Patrick Harvie
On: 3 October 2022
Bill type: Government Bill

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