

Draft Regulations laid before the Scottish Parliament under section 77(3) of the Private Housing (Tenancies) (Scotland) Act 2016 and section 25ZA(4) of the Housing (Scotland) Act 1988 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

HOUSING

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

Made - - - - 2024

Coming into force - - 1st April 2024

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 33ZA of the Private Housing (Tenancies) (Scotland) Act 2016^(a) (“the 2016 Act”), sections 25ZA and 53(3) of the Housing (Scotland) Act 1988^(b) (“the 1988 Act”) and all other powers enabling them to do so.

In accordance with section 33ZA(3) of the 2016 Act and section 25ZA(3) of the 1988 Act, the Scottish Ministers consulted such persons as appear to them to represent the interests of tenants and landlords under private residential tenancies, assured tenancies and short assured tenancies and other persons the Scottish Ministers considered appropriate before laying a draft of this instrument.

In accordance with section 77(3) of the 2016 Act and section 25ZA(4) of the 1988 Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement, expiry and interpretation

1.—(1) These Regulations may be cited as the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 and come into force on 1 April 2024.

(2) These Regulations expire at the end of 31 March 2025.

(3) In these Regulations—

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

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

(a) 2016 asp 19. Section 34A was inserted by paragraph 1 of schedule 3 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (asp 10) and renumbered as section 33ZA by S.S.I. 2023/116.

(b) 1988 c. 43. Section 25ZA was inserted by paragraph 2 of schedule 3 of the 2022 Act. The functions of the Secretary of State under section 53(3) were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

Private residential tenancies

2.—(1) Where a referral to a rent officer under section 24(1) of the 2016 Act is prompted by a rent-increase notice given to a tenant on or after 1 April 2024, the 2016 Act applies in relation to the referral or to any subsequent appeal to the First-tier Tribunal, in accordance with the following modifications.

(2) Section 25 (rent officer’s power to set rent) has effect as if, in subsection (1), for “32” there were substituted “31A”.

(3) Section 29 (First-tier Tribunal’s power to set rent) has effect as if, in subsection (1), for “32” there were substituted “31A”.

(4) The 2016 Act has effect as if after section 31 there were inserted—

“31A Determination of rent payable

(1) Where an order maker is to determine the rent payable under section 25(1) or (as the case may be) 29(1), the determination is to be made on the basis that the rent payable is the lowest of—

- (a) the proposed rent,
- (b) the open market rent,
- (c) where the market difference is more than 6%, the permitted rent.

(2) The permitted rent is—

- (a) where the market difference is less than 24%, the calculated amount,
- (b) where the market difference is 24% or more, 12% more than the current rent.

(3) The calculated amount is the amount (to the nearest £1) determined using the formula—

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

where—

C is the current rent,

$D\%$ is the market difference expressed as a percentage.

(4) In this section—

“the proposed rent” means the rent specified in accordance with section 22(2)(a)(i) in the rent-increase notice which prompted the referral,

“the current rent” means the rent payable under the tenancy immediately before the date on which the rent would have been increased in accordance with section 22(4) had a referral to the rent officer not been made,

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

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

where—

C is the current rent,

M is the open market rent,

“the open market rent” means the rent determined in accordance with section 32.”.

(5) Section 32 (determination of open market rent) has effect as if in subsection (1) for “rent under” to “29(1)” there were substituted “open market rent for the purpose of section 31A”.

(6) Section 34 (duty to make information available) has effect as if in subsection (1)—

(a) after “about—” there were inserted—

“(za) what rents they have determined to be payable in accordance with section 31A,”,

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

“(b) the open market rents they have determined in accordance with section 32.”.

Statutory assured tenancies

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

(2) Section 25 (determination of rent by the First-tier Tribunal) has effect as if—

(a) in subsection (1), for “at which” to the end of the subsection there were substituted “under the tenancy (being an increase to the current rent) in accordance with section 25ZB”,

(b) subsections (2) to (4) were repealed.

(3) The 1988 Act applies as if after section 25ZA there were inserted—

“25ZB Determination of rent payable

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

(a) the proposed rent,

(b) the open market rent,

(c) where the market difference is more than 6%, the permitted rent.

(2) The permitted rent is—

(a) where the market difference is less than 24%, the calculated amount,

(b) where the market difference is 24% or more, 12% more than the current rent.

(3) The calculated amount is the amount (to the nearest £1) determined using the formula—

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

where—

C is the current rent,

D% is the market difference expressed as a percentage.

(4) In this section—

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

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

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

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

Where—

C is the current rent,

M is the open market rent,

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

25ZC Determination of open market rent

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

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

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

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

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

(4) In this section—

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

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

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

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

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations change how rent in relation to a private residential tenancy is determined on referral by a tenant to a rent officer (or on subsequent appeal to the First-tier Tribunal for Scotland) under the Private Housing (Tenancies) (Scotland) 2016 Act (“the 2016 Act”). They also change how rent in relation to statutory assured tenancies is determined under section 25 of the Housing (Scotland) Act 1988 (“the 1988 Act”) on referral to the Tribunal.

Regulation 3 makes the changes to the 2016 Act and regulation 4 makes the changes to the 1988 Act. These changes apply only in relation to a referral or an appeal that is prompted by a rent-increase notice given to the tenant on or after 1 April 2024. The changes are temporary and apply only from 1 April 2024 until the end of 31 March 2025, after which the Regulations will expire.

The changes ensure that, where a rent-increase notice has been given to the tenant and the tenant refers the matter to a rent officer or to the Tribunal, the rent to be paid will be the lowest of the rent proposed by the landlord, the open market rent or, if the gap between the current rent and the open market rent (“the market difference”) is more than 6%, the permitted rent. (The market difference represents the percentage difference between the current rent and the open market rent.)

The maximum rent increase depends on how big the existing gap is between the current rent and the open market rent (see the table below). If the gap is 6% or less, the current rent can be increased by an amount up to that percentage. If the gap is more than 6% but less than 24%, the current rent can be increased by a percentage that is calculated using a formula. This percentage is less than the gap. For example, if the gap is 14%, the increase in rent cannot exceed 8.7%. If the gap is closer to 24%, the increase is capped at a figure closer to 12%. If the gap is 24% or more, any increase in rent is capped at 12%.

<i>Gap between current rent and the open market rent (as a percentage of the current rent)</i>	<i>Maximum increase in current rent allowed (as a percentage of the current rent)</i>
0%	0.00%
1%	1.00%
2%	2.00%
3%	3.00%
4%	4.00%
5%	5.00%
6%	6.00%
7%	6.30%
8%	6.70%
9%	7.00%
10%	7.30%
11%	7.70%
12%	8.00%
13%	8.30%
14%	8.70%
15%	9.00%
16%	9.30%
17%	9.70%
18%	10.00%
19%	10.30%
20%	10.70%
21%	11.00%
22%	11.30%
23%	11.70%
24%	12.00%
Above 24%	12.00%

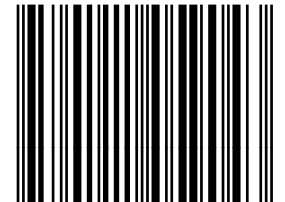
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