
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the 2022 Act”) so as to change the expiry date of Part 1 of that Act. Part 1 was originally scheduled to expire on 31 March 2023. Regulation 2 amends section 7 of the 2022 Act so that Part 1 will instead expire on 30 September 2023.

These Regulations also, from 1 April 2023, modify the permitted rate as specified in the Housing (Scotland) Act 1988 (“the 1988 Act”), and the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The permitted rate in each of those Acts is the percentage above which a landlord may not increase the rent for a residential tenancy. This restriction on increasing the rent in residential tenancies is known as the rent cap.

The rent cap was introduced for assured tenancies under the 1988 Act, and private residential tenancies under the 2016 Act, via modifications to those Acts made by the 2022 Act. The rent cap was initially set at 0% with powers for the Scottish Ministers to substitute a different percentage via regulations. Regulations 3(2) and 4(2) modify the rent cap provisions in the 1988 and 2016 Acts so as to substitute 3% as the new rent cap from 1 April 2023 onwards.

The 2022 Act also modified the 1988 and 2016 Acts by enabling landlords to apply to a rent officer to raise the rent above the permitted rate to reflect increases in prescribed property costs. An appeal against the rent officer’s decision can be made to the First-tier Tribunal for Scotland by the landlord or the tenant. The increase in rent under this procedure is limited to 50% of the increase in costs or 3% of the current rent, whichever is lower. Regulation 3(3) to (5) and regulation 4(3) to (5) modify the 1988 and 2016 Acts so as to provide that the increase in rent under this procedure is limited to whichever is the lower of 50% of the increase in costs, or 6% of the current rent from 1 April 2023 onwards.

Regulation 5 makes transitional provision for the changes being made to the level of the rent cap and the prescribed property costs procedure.