
EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

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

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

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

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

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