



Housing (Financial Provisions) (Scotland) Act 1972

1972 CHAPTER 46

PART V

CONTROLLED AND REGULATED TENANCIES

Regulated tenancies where no rent is registered

41 Repeal of rent limit for contractual periods

- (1) Section 19(3) and section 20 of the Act of 1971 (which fix a rent limit for contractual periods of a regulated tenancy where no rent is registered) shall, subject to subsection (2) below, cease to have effect.
- (2) The repeal by this Act of the said sections 19(3) and 20 shall not apply to—
 - (a) rent for a rental period beginning before 1st January 1973, or
 - (b) rent under a regulated tenancy granted before 1st January 1973 if the rent under the tenancy, as varied by any agreement made before that date, exceeded the rent limit under the said section 19(3) (with any adjustment under the said section 20 or paragraph 3 of Part III of the Schedule to the Fire Precautions Act 1971).
- (3) Paragraph (b) of subsection (2) above shall cease to apply if the landlord and the tenant enter into an agreement complying with the requirements of section 42(3) of this Act which is a rent agreement with a tenant having security of tenure or which provides that the said paragraph is not to apply.

42 Rent agreements

- (1) In this Part of this Act " a rent agreement with a tenant having security of tenure " means—

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- (a) an agreement increasing the rent payable under a protected tenancy which is a regulated tenancy, or
- (b) the grant to the tenant under a regulated tenancy, or to any person who might succeed him as a statutory tenant, of another regulated tenancy of the dwelling-house at a rent exceeding the rent under the previous tenancy:

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

- (2) If a rent agreement with a tenant having security of tenure takes effect on or after 1st January 1973, and at a time when no rent is registered for the dwelling-house under Part IV of the Act of 1971, the requirements of subsection (3) below shall be observed as respects the agreement.
- (3) The said requirements are that—
 - (a) the agreement is in writing signed by the landlord and the tenant,
 - (b) the agreement contains a statement, in characters not less conspicuous than those used in any other part of the agreement, that the tenant's security of tenure under the Act of 1971 will not be affected if he refuses to enter into the agreement, and that entry into the agreement will not deprive the tenant or the landlord of the right to apply at any time to the rent officer for the registration of a fair rent under Part IV of the Act of 1971, or words to that effect, and
 - (c) the statement mentioned in paragraph (b) above is set out at the head of the agreement.

43 Rent agreements: special provisions following conversion

- (1) Subject to subsections (2) and (3) below, this section applies where a rent agreement with a tenant having security of tenure of a dwelling-house is entered into, whether before or after a tenancy becomes a converted tenancy, which is expressed to take effect—
 - (a) on or after 1st January 1973 and after the conversion, and
 - (b) at a time when no rent is registered for the dwelling-house under Part IV of the Act of 1971.
- (2) This section shall not apply to any agreement where the tenant is neither the person who, at the time of the conversion, was the tenant, nor a person who might succeed the tenant at that time as a statutory tenant, and where this section has applied to any agreement, it shall not apply to any subsequent agreement relating to the dwelling-house which takes effect more than three years after the first such agreement took effect.
- (3) Where a rent is registered for the dwelling-house and the registration is subsequently cancelled, this section shall not apply to the agreement submitted to the rent officer in connection with the cancellation nor to any agreement which takes effect after the cancellation.
- (4) The provisions of this section are without prejudice to the requirements imposed by section 42 of this Act.
- (5) The following requirements shall be observed with respect to any such agreement as is mentioned in subsection (1) above—

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- (a) the agreement shall contain the prescribed particulars,
 - (b) the agreement, when duly completed, shall be lodged by the landlord with the rent officer, and
 - (c) the landlord shall, not later than the date when the agreement is lodged with the rent officer, serve a copy of the agreement on the tenant.
- (6) No such agreement shall take effect earlier than 28 days after it is lodged with the rent officer under subsection (5)(b) above, and it may only take effect on or after that date if the rent officer has not before that date notified both the landlord and the tenant in writing that he proposes to treat the agreement as an application for the registration of a rent for the dwelling-house under Part IV of the Act of 1971 made jointly by the landlord and the tenant.
- (7) The rent officer may treat an agreement as such a joint application as is referred to in subsection (6) above before the conversion if an application for the registration of a rent could have been made by virtue of section 38 of this Act.
- (8) A rent officer may treat an agreement as such a joint application only if he is satisfied that the rent payable under the agreement exceeds a fair rent for the dwelling-house.
- (9) Where an agreement is treated by the rent officer as such a joint application then, subject to subsection (10) below, Schedule 6 to the Act of 1971 (applications for registration of rents) shall apply as if the application had been made to him and as if any reference in that Schedule to the rent specified in the application included a reference to the rent expressed to be payable under the agreement.
- (10) For the purposes of subsection (9) above, paragraph 3(1) of the said Schedule 6 shall have effect as if for the words " he may register that rent without further proceedings " there were substituted the words " he shall notify both the landlord and the tenant in writing that he is no longer treating the agreement as a joint application for the registration of a rent and that the agreement may take effect on or after the date of such notification if that date is later than 28 days after the agreement was lodged with him. "
- (11) The rent officer shall make available for public inspection, without charge, any agreement which has been lodged with him under this section unless the agreement is treated by him as a joint application for the registration of a rent and a rent is subsequently registered in pursuance of such application; and any agreement which is made available for public inspection under this subsection shall be so available for a period of three years from the date which is 28 days after it has been lodged with the rent officer.
- (12) A copy of such an agreement certified by the rent officer or any person duly authorised by him shall be receivable in evidence, and shall be sufficient evidence of the agreement in any court and in any proceedings.
- (13) A person requiring such a certified copy shall be entitled to obtain it on payment of the prescribed fee.
- (14) No stamp duty shall be chargeable on any agreement to which this section applies which contains—
- (a) the statement required by section 42(3)(b) of this Act as read with subsection (4) above, and
 - (b) the particulars prescribed pursuant to this section.

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44 Rent agreements: special provisions where grant-aided improvements are carried out

- (1) This section applies where a grant under Part II of the Act of 1968 has been approved in respect of works to be carried out in a dwelling-house let on or subject to a regulated tenancy.
- (2) If a rent agreement with a tenant having security of tenure Part V of the dwelling-house takes effect—
 - (a) on or after 1st January 1973, and in the period beginning with the time when the tenant's consent to the works was sought by the landlord and ending one year after the completion of the works, and
 - (b) at a time when no rent is registered for the dwelling-house under Part IV of the Act of 1971 and the increase of rent effected by the agreement is wholly or partly to take account of the carrying out of the works,the requirements of subsection (4) below shall be observed as respects the agreement.
- (3) The provisions of this section are without prejudice to the requirements imposed by section 42 above.
- (4) The requirements mentioned in subsection (2) above are that the agreement—
 - (a) states that a grant has been approved, and
 - (b) explains that, if the grant became payable, and a rent was registered, the rent increase up to the registered rent would be phased as follows, that is—
 - (i) if the increase exceeded £1.50 per week, the rent would be increased by three annual increments, each of one-third of the total increase,
 - (ii) if it were less than £1.50 per week, the rent would be increased by annual increments of up to £0.50 per week up to the registered rent.

45 Failure to comply with provisions of rent agreements

- (1) If, in the case of a variation of the terms of a regulated tenancy, there is a failure on the part of the landlord to observe any of the requirements of section 42, 43 or 44 of this Act, any excess of the rent payable under the terms as varied over the terms without the variation shall be irrecoverable from the tenant.
- (2) If, in the case of the grant of a tenancy, there is a failure on the part of the landlord to observe any of the requirements of section 42, 43 or 44 of this Act, any excess of the rent payable under the tenancy so granted (for any contractual or any statutory period of the tenancy) over the previous limit shall be irrecoverable from the tenant.
- (3) In subsection (2) above the " previous limit" shall be taken to be the amount which (taking account of any previous operation of this section) was recoverable by way of rent for the last rental period of the previous tenancy of the dwelling-house, or which would have been so recoverable if all notices of increase authorised by the Act of 1971, or by section 36(2) of this Act, had been served.
- (4) A default in complying with subsection (5)(c) of section 43 of this Act shall not apply to rent for any rental period after the default is made good, and, if a rent agreement with a tenant having security of tenure is put into effect earlier than the date when it is provided under section 43 of this Act that it may take effect, such a default shall not affect the rent for any rental period beginning after that date.

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- (5) Section 31 of the Act of 1971 (enforcement provisions) shall apply as if any amount made irrecoverable by this section were irrecoverable by virtue of Part III of that Act.