



Housing (Financial Provisions) (Scotland) Act 1972

1972 CHAPTER 46

PART V

CONTROLLED AND REGULATED TENANCIES

34 Conversion of controlled tenancies: general decontrol

- (1) Subject to section 35 of this Act, where, on the date applicable to the dwelling-house under the following provisions of this section, a dwelling-house is let on a protected tenancy or subject to a statutory tenancy which, in either case, is a controlled tenancy, the protected or statutory tenancy shall on that date cease to be a controlled tenancy and shall become a regulated tenancy.
- (2) Subject to the provisions of this section—
 - (a) 1st January 1973 is the date applicable to a dwelling-house of a value of £50 or more,
 - (b) 1st January 1974 is the date applicable to a dwelling-house of a value of less than £50 but not less than £25, and
 - (c) 1st January 1975 is the date applicable to a dwelling-house of a value of less than £25.
- (3) The Secretary of State may by order substitute as the date applicable to a dwelling-house of such value as may be specified in the order a date earlier or later than that which would be applicable to it under subsection (2) above.
- (4) An order under this section—
 - (a) may make different provision with respect to different registration areas,
 - (b) may be varied or revoked by a subsequent order under this section, and
 - (c) shall be made by statutory instrument.
- (5) In subsection (2) above " value " means the rateable value on the date on which this Act comes into force and subsections (1) and (2) of section 6 of the Act of 1971 shall

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apply for the purpose of ascertaining the rateable value on that date as they apply for the purpose of ascertaining the rateable value of a dwelling-house for the purposes of that Act:

Provided that any question arising under the said section 6 as applied by this subsection as to the proper apportionment of any value may be determined by the landlord and the tenant by agreement in writing.

- (6) If part of the premises comprised in a dwelling-house is used as a shop or office or for business, trade or professional purposes and is let on or subject to a controlled tenancy, then nothing in section 9 of the Act of 1971 shall prevent that tenancy becoming a regulated tenancy on the date applicable to the dwelling-house nor prevent any new tenancy granted to the tenant under that regulated tenancy or to any person who might succeed him as a statutory tenant from being a regulated tenancy.

35 Houses excluded from general decontrol

- (1) Subject to subsection (2) below, section 34 of this Act shall not apply to a dwelling-house let on or subject to a controlled tenancy if, on the date applicable to the dwelling-house under that section—
- (a) a closing order under section 15 or 18 of the Act of 1966, or a demolition order under the said section 15, has been made and served in accordance with that section (and not determined) with respect to the dwelling-house, or
 - (b) an order under paragraph 1(2) of Schedule 2 to the Land Compensation (Scotland) Act 1963 declaring that the dwelling-house does not meet the tolerable standard has been made and a notice stating the effect of the order has been served in accordance with paragraph 1(3) of that Schedule.
- (2) The said section 34 shall apply to a dwelling-house excluded by subsection (1) above if—
- (a) in the case of a dwelling-house excluded by virtue of paragraph (a) of that subsection, the closing order or the demolition order is quashed by the sheriff on appeal or determined by the local authority, or
 - (b) in the case of a dwelling-house excluded by virtue of paragraph (b) of that subsection, the order in question is not confirmed or is reduced by a court,
- and the date applicable to the dwelling-house for the purposes of the said section 34 shall be the date of occurrence of the event upon which that section applied to the dwelling-house by virtue of this subsection.

36 Conversion of controlled tenancies: general provisions

- (1) In this Part of this Act " converted tenancy " means a tenancy which is or becomes a regulated tenancy by virtue of—
- (a) section 34 of this Act,
 - (b) Part VI of the Act of 1971, or
 - (c) paragraph 5 of Schedule 2 to the Act of 1971 (conversion on death of first successor),
- and " the conversion " means the time when the tenancy became a regulated tenancy.
- (2) Section 24(1) of the Act of 1971 (increase of rent for improvements) shall not apply to any improvement completed before the conversion, but if the rent recoverable for the last rental period beginning before the conversion was less than it would have been

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if the landlord had served a notice of increase under section 58 of that Act in respect of an increase of rent by virtue of paragraph 1(3)(a) or that paragraph as applied by paragraph 2(3) of Schedule 8 to that Act, the rent recoverable under section 21(1) of that Act, as modified by subsection (3) below, shall be increased by the amount of that difference:

Provided that that increase shall not take effect except in pursuance of a notice of increase served by the landlord on the tenant specifying the increase and the date, which may be any date after the service of the notice, from which it is to take effect.

Section 25 of the Act of 1971 shall apply to a notice of increase under this proviso as it applies to a notice of increase described in that section.

- (3) In relation to any rental period beginning after the conversion, sections 21 to 23 of the Act of 1971 (rent limit and adjustments) shall have effect as if references therein to the last contractual period were references to the last rental period beginning before the conversion.
- (4) Section 2(1)(a) of the Act of 1971 (exclusion of tenancies where rent is less than two thirds of the rateable value) shall not apply to a converted tenancy after the conversion.
- (5) Section 42 of the Act of 1971 (determination of fair rent) shall apply in relation to the converted tenancy as if the references in subsection (3) of the said section 42 to the tenant under the regulated tenancy included references to the tenant under the tenancy before the conversion.
- (6) The enactments mentioned in subsection (1) above shall not be taken as affecting any court proceedings which are pending under the Act of 1971 at the time of the conversion, and a decision on which may affect the recoverable rent for any period before that time, or the rent under the regulated tenancy after the conversion so far as that depends on the recoverable rent before conversion.
- (7) Any right conferred on a tenant by section 63 of the Act of 1971 to recover any amount by deducting it from rent shall be exercisable by deducting it from rent for any rental period beginning after the conversion to the same extent as the right would have been exercisable if the conversion had not taken place.

37 Phasing of rent increases

Schedule 6 to this Act shall have effect for securing that, on first registration of a rent after the conversion of a controlled tenancy into a regulated tenancy by virtue of section 34 of this Act, an increase in rent may, in certain circumstances, be recovered only in stages.

Registration of rent for regulated tenancies

38 Early application for registration of rent

- (1) Subject to the provisions of this section, any application for the registration of a rent under section 40 of the Act of 1971 may be made at a time when the dwelling-house is let on or subject to a controlled tenancy, if the application is made not earlier than six months before the date applicable to the dwelling-house under section 34 of this Act.

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- (2) Where an application is made by virtue of this section the regulated tenancy for which the rent is registered shall be assumed to be a tenancy on the same terms (other than terms relating to rent) as the terms applicable to the controlled tenancy.
- (3) Where a rent is registered on an application made by virtue of this section—
 - (a) the date from which the registration takes effect under section 44(1) of the Act of 1971 shall not be earlier than the date applicable to the dwelling-house under section 34 of this Act, and
 - (b) in a case where the rent is registered before the said applicable date, any reference in this Act, or in the Act of 1971 or in any other enactment to the date of registration shall be deemed to be a reference to the date from which the registration takes effect.

39 Cancellation of registration of rent

In the Act of 1971 after section 44 there shall be inserted the following section—

- (1) Where a rent agreement is made in writing as respects a dwelling-house for which a rent is registered, an application may be made in accordance with this section for the cancellation of the registration.
- (2) The application shall be made jointly by the landlord and the tenant under the agreement to the rent officer, and the application shall not be entertained before the expiry of three years from the relevant date as defined in section 40(4) of this Act.
- (3) An application under this section must be in the prescribed form and contain the prescribed particulars, and must be accompanied by a copy of the rent agreement.
- (4) The Secretary of State may make regulations under section 46 of this Act prescribing the procedure on an application under this section.
- (5) If the rent officer is satisfied that the rent payable under the rent agreement does not exceed a fair rent for the dwelling-house, he shall, subject to subsection (6) below, cancel the registration, and he shall make an entry in the register of that fact and of the date from which the cancellation takes effect.
- (6) Where under the terms of the rent agreement the sums payable by the tenant to the landlord include any sums varying according to the cost from time to time of any services provided by the landlord, the rent officer shall not cancel the registration unless he is satisfied that those terms are reasonable.
- (7) The cancellation of the registration shall be without prejudice to a further registration of a rent at any time after cancellation.
- (8) The rent officer shall notify the applicants of his decision to grant, or to refuse, any application under this section and, where he grants the application, of the date from which the cancellation takes effect.
- (9) In this section " rent agreement " means—
 - (a) an agreement increasing the rent payable under a protected tenancy which is a regulated tenancy, or

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- (b) where a regulated tenancy is terminated, and a new regulated tenancy is granted at a rent exceeding the rent under the previous tenancy, the grant of the new tenancy.”

40 Certain amounts to be separately noted on the register

Section 43 of the Act of 1971 (amount to be registered as rent) shall have effect as if after subsection (1) there were inserted the following subsections—

“(1A) Subject to subsection (1B) below, there shall be noted on the register the amount, if any, of the registered rent which, in the opinion of the rent officer or rent assessment committee, is fairly attributable to the use of furniture or the provision of services or to the use of part of the premises comprised in a dwelling-house as a shop or office or for business, trade or professional purposes.

(1B) It shall not be necessary to note on the register under subsection (1A) above any amount which in the opinion of the rent officer or, as the case may be, the rent assessment committee is negligible.”

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—
 - (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)

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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—
 - (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

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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.

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—

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- (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.
- (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.

Miscellaneous

46 Statutory tenants by succession

In Schedule 1 to the Act of 1971 after paragraph 7 there shall be inserted the following paragraph:—

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- “7A (1) Where after a succession the successor becomes the tenant of the dwelling-house by the grant to him of another tenancy, " the original tenant" and " the first successor " in this Schedule shall, in relation to that other tenancy, mean the persons who were respectively the original tenant and the first successor at the time of the succession, and accordingly—
- (a) if the successor was the first successor, and immediately before his death he was still the tenant (whether protected or statutory), paragraphs 6 and 7 above shall apply on his death,
 - (b) if the successor was not the first successor, no person shall become a statutory tenant on his death by virtue of this Schedule.
- (2) Sub-paragraph (1) above applies even if—
- (a) a successor enters into more than one other tenancy of the dwelling-house, and
 - (b) both the first successor, and the successor on his death, enter into other tenancies of the dwelling-house.
- (3) This paragraph shall apply—
- (a) as respects any succession which takes place on or after the date of the coming into force of section 46 of the Housing (Financial Provisions) (Scotland) Act 1972, and
 - (b) as respects a succession which took place before that date if the tenancy granted after the succession, or the first of those tenancies, was granted on or after that date.
- (4) In this paragraph—
- " succession " means the occasion on which a person becomes the statutory tenant of a dwelling-house by virtue of this Schedule and " successor " shall be construed accordingly;
 - " tenancy " means " regulated tenancy " and " tenancies " shall be construed accordingly."

47 Amendment of section 35 of Act of 1971

Section 35 of the Act of 1971 (regulations) shall have effect as if—

- (a) at the end of subsection (1) there were inserted the following paragraph—
 - “(c) prescribing matters as to which notice is to be given to a tenant of a dwelling-house let on or subject to a regulated tenancy by means of notices inserted in rent books and similar documents and the forms of such notices. and”
- (b) at the end there were added the following subsection—
 - “(3) If any rent book or similar document which does not conform to the prescribed requirements is used by or on behalf of any landlord, the landlord shall be liable to a fine not exceeding £50.”

48 Modifications of Part VI of Act of 1971

Part VI of the Act of 1971 (rent of dwellings in good repair and provided with standard amenities) shall have effect subject to the modifications set out in Schedule 7 to this Act.

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49 Amendment of Schedules 6 and 12 to Act of 1971

- (1) Schedule 6 to the Act of 1971 (application for registration of rents unsupported by certificate of fair rent) shall have effect as if—
- (a) in paragraphs 1 and 2 for the words " seven days " there were substituted the words " 14 days ";
 - (b) after paragraph 3 there were inserted the following paragraph—

“3A Where the rent officer, in carrying out his functions under this Part of this Schedule, inspects a dwelling-house, he shall explain to the tenant or to his spouse, if either is present at the inspection, the procedure upon an application for the registration of a rent under this Part of this Schedule.”
- (2) Schedule 12 to the Act of 1971 (applications for registration of rents supported by certificate of fair rent) shall have effect as if in paragraph 7 for the words " 7 days " there were substituted the words " 14 days " .

50 Interpretation of Part V

In this Part of this Act—

" controlled tenancy " has the same meaning as in section 133(1) of the Act of 1971;

" conversion " and " converted tenancy " have the meanings respectively assigned to them by section 36(1) of this Act;

" prescribed " means prescribed by regulations made by the Secretary of State, and section 35 of the Act of 1971 shall apply to such regulations as it applies to regulations made for the purposes of Part III of that Act;

" protected tenancy " has the same meaning as in section 133(1) of the Act of 1971;

" a rent agreement with a tenant having security of tenure " has the meaning assigned to it by section 42(1) of this Act;

" statutory tenant " and " statutory tenancy " have the same meanings as in section 133(1) of the Act of 1971; and other expressions shall be construed as in Part III and Part IV of the Act of 1971.