



Housing (Financial Provisions) (Scotland) Act 1972

1972 CHAPTER 46

PART VI

HOUSING ASSOCIATIONS

Rent limit for dwelling-houses let by housing associations and the Housing Corporation

60 Tenancies to which sections 60 to 66 apply

This section and sections 61 to 66 of this Act apply to a tenancy where—

- (a) the interest of the landlord under that tenancy belongs to a housing association or to the Housing Corporation, and
- (b) the tenancy would be a protected tenancy but for section 5 of the Act of 1971, and in this section and the said sections 61 to 66 "tenancy" means, unless the context otherwise requires, a tenancy to which those sections apply.

61 Rents to be registrable under Part IV of the Act of 1971

- (1) There shall be a separate part of the register under Part IV of the Act of 1971 in which rents may be registered for dwelling-houses which are let, or are, or are to be, available for letting, under a tenancy to which sections 60 to 66 of this Act apply.
- (2) Sections 39 to 42, section 43 (except subsection (3) thereof) and section 46 of, and Schedules 6 and 7 to, the Act of 1971 shall, in relation to that part of the register, have effect as if for any reference in those provisions to a regulated tenancy there were substituted a reference to a tenancy to which the said sections 60 to 66 apply.
- (3) Subject to section 64 of this Act, registration in the said part of the register shall take effect on the date of registration:

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Provided that registration before 1st January 1973 shall be provisional only until that date, and the date of registration shall be 1st January 1973.

- (4) From the date of registration any previous registration of a rent for the dwelling-house shall cease to have effect.
- (5) A rent registered in any part of the register for a dwelling-house, which becomes or ceases to be a dwelling-house under a tenancy to which sections 60 to 66 of this Act apply, shall be as effective as if it were registered in any other part of the register.
- (6) Subject to subsection (5) above, references in the said sections 60 to 66 to registration are, unless the context otherwise requires, references to registration pursuant to this section.

62 The rent limit

- (1) Where the rent payable under a tenancy would exceed the rent limit determined in accordance with sections 60 to 66 of this Act, the amount of the excess shall be irrecoverable from the tenant.
- (2) Where a rent for the dwelling-house is registered, then, subject to sections 63 and 64 of this Act and Part IV of the Schedule to the Fire Precautions Act 1971, the rent limit is the rent so registered:

Provided that where any rates in respect of the dwelling-house are borne by the landlord the amount of those rates for any rental period, ascertained in accordance with Schedule 4 to the Act of 1971, shall be added to the limit imposed by this subsection, and then, subject to subsection (4) below, any reference in sections 60 to 66 of this Act to the rent registered for the dwelling-house shall be taken as a reference to the registered rent plus the amount of rates borne by the landlord.

- (3) Where no rent for the dwelling-house is registered, then, subject to subsection (4) below and Part IV of the Schedule to the Fire Precautions Act 1971, the rent limit shall be determined as follows—
 - (a) if the lease or agreement creating the tenancy was made before 1st January 1973, the rent limit is the rent recoverable under the tenancy, as varied by any agreement made before that date (but not as varied by any later agreement),
 - (b) if paragraph (a) above does not apply, and, not more than three years before the tenancy began, the dwelling-house was subject to another tenancy (whether before 1973 or later) the rent limit is the rent recoverable under that other tenancy (or, if there was more than one, the last of them) for the last rental period thereof,
 - (c) if paragraph (a) and paragraph (b) above do not apply, the rent limit shall be the rent payable under the terms of the lease or agreement creating the tenancy (and not the rent so payable under those terms as varied by any subsequent agreement).
- (4) Where for any period there is a difference between the amount (if any) of the rates borne by the landlord in respect of the dwelling-house and the amount (if any) so borne in the rental period on which the rent limit is based, the rent limit under subsection (3) above or paragraph (a) or (b) of section 63(2), or section 64(4), of this Act shall be increased or decreased by the amount of the difference:

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Provided that an increase of rent made solely to reflect an increase in the amount of rates borne by the landlord shall be disregarded for the purposes of section 63(3) or (4) of this Act.

- (5) Section 31 of the Act of 1971 (enforcement provisions) shall apply as if any amount made irrecoverable by virtue of this section were irrecoverable by virtue of Part III of that Act.
- (6) A tenancy commencing (whether before or after this Act comes into force) while there is in operation a condition relating to rent imposed under any of the enactments mentioned in section 40(5) of the Act of 1971 shall be disregarded for the purposes of subsection (3)(b) above in determining the rent limit under any subsequent tenancy of the dwelling-house.
- (7) Section 33 of the Act of 1971 (duty of landlord to supply statement of rent under previous tenancy) shall apply where the rent is subject to the rent limit under subsection (3)(b) above as it applies where rent under a regulated tenancy is subject to the contractual rent limit mentioned in that section.
- (8) This section shall not apply to rent for any rental period beginning before 1st January 1973.

63 Phasing of progression to registered rent

- (1) This section applies where a rent is registered for a dwelling-house (whether it is the first or any subsequent registration) which exceeds the rent limit for the dwelling-house immediately before the date of registration, unless at the date of registration there is no tenant and no person to whom the tenancy has been granted.
- (2) The rent limit shall progress from the rent limit immediately before the date of registration to the registered rent in stages, and, subject to section 62(4) of this Act and paragraph 3 of Part IV of the Schedule to the Fire Precautions Act 1971—
 - (a) for any rental period beginning in the first stage, the rent limit shall be the rent limit immediately before the date of registration plus £0.75 per week, or the registered rent, whichever is the less,
 - (b) for any rental period beginning in the second or any subsequent stage, the rent limit shall be the rent payable for the first rental period of the last previous stage plus £0.75 per week, or the registered rent, whichever is the less.
- (3) The first stage shall last for 52 weeks from the date of registration, or from the beginning of the first rental period for which the rent is first increased (by any amount) on or after that date, whichever is the later.
- (4) Any subsequent stage shall last for 52 weeks from the end of the last previous stage, or from the beginning of the first rental period for which the rent is first increased (by any amount) after the end of the last previous stage, whichever is the later.
- (5) If a tenancy of the dwelling-house is granted at any time when the rent limit is less than the registered rent, and the tenant is neither the person who, at the time when the previous tenancy (or the last previous tenancy) ended, was the tenant under that tenancy nor a member of that tenant's family who resided with him, the registered rent shall become the rent limit from the beginning of the new tenancy, and the stages by which the rent limit was to progress up to the registered rent shall terminate.

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- (6) The registration of a lower or higher rent during the progression from the rent limit in force before the prior registration shall not alter the stages by which the rent limit is to progress, and if a higher rent is registered in the 52 weeks beginning with the first rental period for which the rent is increased up to the rent registered on the prior registration, the first stage in the progression from that rent up to the later registered rent shall not begin until the end of that period of 52 weeks.

64 Previous rent limit exceeding registered rent: special rent limit

- (1) Where the rent limit for a dwelling-house immediately before the date of registration of a rent for that dwelling-house exceeded the rent so registered, the registration shall be provisional only until it takes effect in accordance with this section.
- (2) If—
- (a) no application is made under this section to the Secretary of State before the expiration of a period of 28 days beginning with the date of registration, or
 - (b) an application duly made to the Secretary of State under this section is refused, the registration shall cease to be provisional, and shall take effect as from the date of registration.
- (3) Notwithstanding section 67(2) of this Act, the reference in subsection (2)(a) above to the date of registration shall be construed, in a case where a rent determined by a rent assessment committee is registered in substitution for a rent determined by the rent officer, as a reference to the date on which the rent determined by the rent assessment committee was registered.
- (4) The Secretary of State may, on an application made to him within the said period of 28 days, grant the application and direct that the rent limit for the dwelling-house shall, subject to Part IV of the Schedule to the Fire Precautions Act 1971, be such amount as is specified in the direction, being an amount not more than the said previous rent limit, but more than the rent which is provisionally registered.

The Secretary of State may include in a direction under this subsection such conditions as he thinks fit, and if any condition is not complied with the direction shall cease to have effect.

- (5) The period for which the direction has effect shall begin with the date of the provisional registration, and the date when, subject to subsections (6) and (7) below, that period is to end shall be specified in the direction, being a date not more than three years and six months from the date of the provisional registration.
- (6) The direction shall cease to have effect—
- (a) if on a subsequent application for registration a different rent is registered for the dwelling-house and that rent is equal to or exceeds the rent specified in the direction, or
 - (b) the rent assessment committee determine a rent in substitution for the rent registered by the rent officer, and that rent is equal to or exceeds the rent specified in the direction, or
 - (c) the applicant ceases to be the landlord of the dwelling-house.
- (7) Subject to subsection (6) above, if on the date specified as the end of the period under subsection (5) above a subsequent application for registration is pending, the direction shall continue in force until that application has been disposed of by the rent officer.

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- (8) When the period for which a direction has effect ends, and the provisional registration is not superseded by a new registration under paragraph (a) or paragraph (b) of subsection (6) above, the registration shall cease to be provisional and, except for the purposes of section 40 of the Act of 1971 (right to apply for registration of a new rent after 3 years), shall take effect at the time when the period ends.
- (9) Where a registration is by virtue of this section a provisional registration, the reference in section 40(4)(b) of the Act of 1971 to the date on which the registration of rent took effect shall be construed as a reference to the date of the provisional registration.
- (10) The rent officer shall notify the tenant of any case where a registration is by virtue of this section a provisional registration,
- (11) This section applies whether the registration mentioned in subsection (1) above is the first or any subsequent registration and, in the case of a subsequent registration, whether or not the rent limit immediately before the date of registration was that fixed by a direction under this section.
- (12) A confirmation of a rent by the rent officer shall be treated for the purposes of this section as a registration of a rent which supersedes the registration, whether or not it is a provisional registration, prior to the confirmation.

65 Special rent limit: procedure on application

- (1) An application under the last preceding section shall be in such form as the Secretary of State may direct either generally or in any particular case, and the applicant shall give notice of the application to the rent officer and shall take all reasonable steps to give notice of the application to the tenant of each dwelling-house which would be affected by a direction given on the application.
- (2) The Secretary of State in entertaining the application—
 - (a) shall take into consideration the information about the finances of the applicant given to him on the application, and any further information given by the applicant at his request, and
 - (b) shall not give a direction unless he is satisfied that the direction is necessary having regard to the applicant's normal sources of income and to the expenditure (including loan charges) which in his opinion it is reasonable for the applicant to incur in the exercise of housing functions.
- (3) The Secretary of State shall give notice in writing of his decision on the application to the applicant and to the rent officer and, where the decision is to grant the application, the notice shall include particulars of the direction given on the application.
- (4) The rent officer shall note in the register—
 - (a) any application notified to him by the applicant, and
 - (b) any direction given and the period for which it is effective, and
 - (c) any decision of the Secretary of State not to grant an application.
- (5) The applicant shall take all reasonable steps to notify the tenant of each dwelling-house affected of any case where the Secretary of State decides to grant or not to grant an application and, where the decision is to grant the application, the notice shall include particulars of the direction given on the application.

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66 Increase of rent without notice to quit

Subsections (1) to (4) of section 62 of the Act of 1969 (increase of rents of houses belonging to certain authorities without notice of removal) shall apply to a housing association or the Housing Corporation as they apply to any authority to which that section applies, except that in subsection (4) for the reference to the date of the commencement of that Act there shall be substituted a reference to the date of the coming into force of this Act.

67 Supplemental to sections 60 to 66

- (1) Section 34 of the Act of 1971 (adjustment for differences in lengths of rental periods) shall apply for the purposes of sections 60 to 66 of this Act as it applies for the purposes of Part III of that Act.
- (2) Where a rent determined by a rent assessment committee is registered in substitution for a rent determined by the rent officer, the date of registration shall be deemed for the purposes of sections 60 to 66 of this Act to be the date on which the rent determined by the rent officer was registered:

Provided that a landlord shall not, by virtue of this subsection, be entitled to recover any rent for a rental period beginning before the date when the rent determined by the rent assessment committee was registered.
- (3) The sheriff shall have jurisdiction, either in the course of any proceedings relating to a dwelling-house or on an application made for the purpose by the landlord or the tenant, to determine any question as to the rent limit under the said sections 60 to 66, or as to any matter which is or may become material for determining any such question; and section 123(1) of the Act of 1971 shall apply to any application to the sheriff under this subsection as it applies to any application under any of the provisions mentioned in section 123(3) of that Act.