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*Changes to legislation: There are currently no known outstanding effects for the Cost of Living (Tenant Protection) (Scotland) Act 2022, Paragraph 2. (See end of Document for details)*

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## SCHEDULE 1 RENT CAP

### *Rent cap for assured tenancies and short assured tenancies*

- 2 (1) Subject to [sub-paragraph \(2\)](#), the Housing (Scotland) Act 1988 (“the 1988 Act”) applies in accordance with the modifications in this paragraph.
- (2) The modifications set out in this paragraph have no effect in relation to—
- (a) a notice under section 24(1) of the 1988 Act that is served by a landlord under an assured tenancy or a short assured tenancy on the tenant—
    - (i) before 6 September 2022, and
    - (ii) in accordance with Form AT2 as specified in the schedule of the Rent Regulation and Assured Tenancies (Forms) (Scotland) Regulations 2017 ([S.S.I. 2017/349](#)),
  - (b) a referral under section 25(1) of the 1988 Act, or an application under section 34(1) of the 1988 Act, made to the First-tier Tribunal for Scotland before the day on which this paragraph comes into force.
- (3) The 1988 Act has effect as if after section 23 there were inserted—

#### **“23A Rent cap controls**

- (1) Except in the case of an exempt tenancy, on or after 6 September 2022, the landlord under an assured tenancy or a short assured tenancy may not increase the rent payable under the tenancy by more than the permitted rate.
  - (2) For the purposes of this Part, the “permitted rate” is 0%.
  - (3) The Scottish Ministers may by regulations substitute a different percentage for the one for the time being mentioned in subsection (2).
  - (4) Regulations under [subsection \(3\)](#) are subject to the affirmative procedure.
  - (5) Any notice served under section 24(1) on or after 6 September 2022 during a period when the permitted rate is 0% is of no effect.
  - (6) In subsection (1), “exempt tenancy” means—
    - (a) a statutory assured tenancy which includes a term of the type mentioned in paragraph (a) of subsection (5) of section 24, or
    - (b) a contractual tenancy which makes provision of the type mentioned in paragraph (b) of that subsection.”.
- (4) Section 24 (increases of rent under assured tenancies) has effect as if—
- (a) before subsection (1) there were inserted—
    - “(A1) This section does not apply where the permitted rate is 0%.”,
  - (b) in subsection (1), at the beginning there were inserted “Subject to subsection (1A)”,
  - (c) after subsection (1) there were inserted—
    - “(1A) The landlord may not serve a notice under subsection (1) proposing an increase in the rent under an assured tenancy of more than the permitted rate.”,

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- (d) in subsection (3)(a), for “the First-tier Tribunal” there were substituted “the relevant rent officer”,
- (e) subsection (3)(b) has effect as if the words “agree on a variation of the rent which is different from that proposed in the notice or” were repealed,
- (f) after subsection (4) there were inserted—

“(4A) The Scottish Ministers may by regulations amend subsection (4) to permit the rent payable under an assured tenancy to be increased a second time within a 12 month period in such circumstances as may be specified in the regulations.

(4B) Regulations under [subsection \(4A\)](#) are subject to the affirmative procedure.”,

- (g) after subsection (6) there were inserted—

“(7) This section is subject to sections 24E to 24G (applications to rent officer and First-tier Tribunal for uplift).

(8) This section and sections [24A](#) to [24K](#) apply in relation to a short assured tenancy as they apply in relation to an assured tenancy (and references in these sections to an assured tenancy are to be read as including references to a short assured tenancy).

- (9) In this Part—

“First-tier Tribunal” means the First-tier Tribunal for Scotland, “relevant rent officer”, in relation to a house let under an assured tenancy or a short assured tenancy, means a rent officer (within the meaning of section 43 of the Rent (Scotland) Act 1984) for the area in which the house is situated.”.

- (5) The 1988 Act has effect as if after section 24 there were inserted—

**“24A Consideration of notice to increase rent by rent officer**

- (1) Where a rent officer receives a referral under section 24(3)(a), the rent officer is to decide whether the new rent specified in the notice under section 24(1) (“the proposed new rent”) would be an increase to the rent under the assured tenancy of more than the permitted rate.
- (2) If the rent officer decides under [subsection \(1\)](#) that the proposed new rent would be an increase to the rent under the assured tenancy of no more than the permitted rate, the rent officer must make an order stating that from the effective date the rent under the assured tenancy is the proposed new rent.
- (3) If the rent officer decides under [subsection \(1\)](#) that the proposed new rent would be an increase to the rent under the assured tenancy of more than the permitted rate, the rent officer must make an order stating that from the effective date the rent under the assured tenancy is the rent determined by the rent officer.
- (4) In determining the rent under [subsection \(3\)](#), the rent officer must determine that the rent is an amount that would be an increase to the existing rent under the assured tenancy of the permitted rate.
- (5) For the purpose of subsection (2) and (3), the effective date is—

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- (a) where the rent officer makes the order 14 days or more before the original effective date, the original effective date,
  - (b) otherwise, the first payment date falling at least 14 days after the day on which the rent officer makes the order.
- (6) In subsection (5)—
- “original effective date” means the date on which the rent would have been increased in accordance with section 24(2) had a referral to the rent officer not been made, and
  - “payment date” means a date on which a rent payment falls to be made in accordance with the terms of the assured tenancy.

#### **24B Right of appeal to First-tier Tribunal against order of rent officer**

- (1) Where a rent officer has made an order under [section 24A\(2\)](#) or [\(3\)](#) in relation to the rent under an assured tenancy, the landlord or the tenant may appeal against the order to the First-tier Tribunal.
- (2) An order under [section 24A\(2\)](#) or [\(3\)](#) may not be appealed against—
  - (a) more than 14 days after the order is made,
  - (b) where the order is made by virtue of [section 24D\(2\)](#).
- (3) Making an appeal under subsection (1) renders the order being appealed against of no effect.

#### **24C First-tier Tribunal’s power to set rent subject to permitted rate**

- (1) Where an appeal is made to the First-tier Tribunal under [section 24B\(1\)](#), the First-tier Tribunal must make an order stating that from the effective date the rent under the assured tenancy is the rent determined by the First-tier Tribunal.
- (2) In determining the rent under [subsection \(1\)](#), the First-tier Tribunal must determine that the rent is an amount that would be an increase to the existing rent under the assured tenancy of the permitted rate.
- (3) For the purpose of [subsection \(1\)](#), the effective date is—
  - (a) where the First-tier Tribunal makes its order on or before the original effective date, the original effective date,
  - (b) otherwise, the first payment date falling on or after the day on which the First-tier Tribunal makes its order.
- (4) In [subsection \(3\)](#)—
  - “original effective date” means the date on which the rent would have been increased in accordance with section 24(2) had a referral to the rent officer not been made, and
  - “payment date” means a date on which a rent payment falls to be made in accordance with the terms of the assured tenancy.

#### **24D Withdrawal of referral or appeal**

- (1) This section applies—

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- (a) where a referral made under section 24(3)(a) is withdrawn by the tenant, or
  - (b) where—
    - (i) an appeal made under [section 24B\(1\)](#) is withdrawn by one party, and
    - (ii) the other party has not made an appeal in respect of the tenancy in question, or any appeal made by the other party has been withdrawn.
- (2) The order maker must make an order under [section 24A\(2\)](#) or (3) or (as the case may be) [24C\(1\)](#) stating that from the effective date the rent under the assured tenancy is—
- (a) the new rent specified in the notice under section 24(1), or
  - (b) if that amount would be an increase to the rent under the tenancy of more than the permitted rate, the rent determined by the order maker.
- (3) In determining the rent under subsection (2)(b), the order maker must determine that the rent is an amount that would be an increase to the rent payable under the assured tenancy of the permitted rate.
- (4) Where the order maker is the First-tier Tribunal, an order may not be made by virtue of [subsection \(2\)](#) until the earlier of—
- (a) the expiry of the period within which an appeal under [section 24B\(1\)](#) may be made, or
  - (b) the date on which both parties become ineligible to make an appeal (whether by withdrawing an appeal or by waiving the right to appeal).

#### **24E Landlord application to rent officer to increase rent above permitted rate**

- (1) A landlord under an assured tenancy may make an application to the relevant rent officer to increase the rent under the tenancy by more than the permitted rate in order to recover up to 50% of the increase in any prescribed property costs that the landlord has incurred during the relevant period.
- (2) An application under [subsection \(1\)](#) must include—
- (a) evidence of an increase in any prescribed property costs of the landlord incurred during the relevant period, and
  - (b) a statement of—
    - (i) the rent under the tenancy, and
    - (ii) what the new rent under the tenancy would be if the proposed rent increase took effect (“the proposed rent”).
- (3) The landlord must give notice in writing to the tenant under an assured tenancy of any application under [subsection \(1\)](#) which must include—
- (a) a statement of the proposed rent,
  - (b) a statement that the proposed rent would be an increase to the rent under the tenancy of more than the permitted rate,
  - (c) a statement that the rent payable under the tenancy is not increased unless and until—

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- (i) the relevant rent officer makes an order determining the rent payable under the tenancy, or
    - (ii) if the order is appealed to the First-tier Tribunal, the Tribunal makes an order determining the rent payable under the tenancy,
  - (d) a description of the prescribed property costs of the landlord that have increased during the relevant period prompting the proposed rent, and
  - (e) where an increase mentioned in [paragraph \(d\)](#) includes an increase in the landlord's service costs, details of the nature of the increase in the service costs and the amount.
- (4) In this Part, “prescribed property costs”, in relation to a landlord, are—
- (a) interest payable in respect of a mortgage or standard security relating to the house that is let,
  - (b) a premium payable in respect of insurance (other than building and contents insurance) relating to the house that is let and the offering of the house for let,
  - (c) service charges relating to the house that is let that are paid for by the landlord but the payment of which the tenant is responsible for (in whole or in part) in accordance with the terms of the tenancy.
- (5) The Scottish Ministers may by regulations modify the list in [subsection \(4\)](#) so as to amend, remove or add to the matters for the time being mentioned in the list.
- (6) Regulations under [subsection \(5\)](#) are subject to the affirmative procedure.
- (7) In this Part—
- “proposed rent” has the meaning given in [subsection \(2\)\(b\)\(ii\)](#),
  - “relevant period” means the period of 6 months occurring immediately before the day on which the application is made under [subsection \(1\)](#).

#### **24F Rent officer's power to apply rent increase above permitted rate**

- (1) Where a rent officer receives an application under [section 24E\(1\)](#), the rent officer must decide whether the following conditions are met—
- (a) the rent officer is satisfied that the landlord's prescribed property costs that are specified in the application have increased during the relevant period, and
  - (b) the rent officer is satisfied that the amount of the proposed increase to the rent under the assured tenancy represents no more than 50% of the increase in the landlord's prescribed property costs incurred during the relevant period as specified in the application.
- (2) If both conditions mentioned in [subsection \(1\)](#) are met, the rent officer must make an order stating that from the effective date the rent under the assured tenancy is the lower of—
- (a) the proposed rent, or
  - (b) the existing rent under the tenancy as increased by 3%.

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- (3) If either or both of the conditions mentioned in [subsection \(1\)](#) is or are not met, the rent officer may make an order stating that from the effective date the rent under the assured tenancy is the rent determined by the rent officer.
- (4) In determining the rent under [subsection \(3\)](#), the rent officer—
- (a) may not determine that the rent under the assured tenancy from the effective date is an amount that would be an increase to the existing rent under the tenancy of more than an amount representing 50% of the increase in the landlord's prescribed property costs incurred during the relevant period as specified in the application under [section 24E\(1\)](#), and
  - (b) in any event, may not determine that the rent under the tenancy from the effective date is more than the existing rent under the tenancy as increased by 3%.
- (5) For the purpose of [subsection \(2\)](#) or [\(3\)](#), the effective date is—
- (a) where the rent officer makes the order under either of those subsections 14 days or more before the original effective date, the original effective date,
  - (b) otherwise, the first payment date falling at least 14 days after the day on which the rent officer makes the order.
- (6) A rent officer may, within 14 days of making an order under [subsection \(2\)](#) or [\(3\)](#), re-make the order for the purpose of curing an error in the original order.
- (7) The effective date of the re-made order is to be specified in accordance with [subsection \(5\)](#) as though it were an order made under [subsection \(2\)](#) or [\(3\)](#).
- (8) Where an order has been re-made under [subsection \(6\)](#)—
- (a) the original order is of no effect,
  - (b) references in this Part to an order made under [subsection \(2\)](#) or [\(3\)](#) are to be read as references to the re-made order,
  - (c) if the original order has been appealed against under [section 24G\(1\)](#), the appeal is to be regarded as having been made against the re-made order.
- (9) [Subsection \(8\)\(b\)](#) does not apply in relation to [subsection \(6\)](#).
- (10) In this section—
- “original effective date” is the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under [section 24E\(3\)](#),
- “payment date” means a date on which a rent payment falls to be made in accordance with the terms of the assured tenancy.

### **24G Appeal to the First-tier Tribunal**

- (1) Where a rent officer makes an order under [section 24F\(2\)](#) or [\(3\)](#) in relation to the rent under an assured tenancy, the landlord or the tenant may appeal against the order to the First-tier Tribunal.

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- (2) An order under [section 24F\(2\)](#) or [\(3\)](#) may not be appealed against more than 14 days after the order is made.
- (3) Where an appeal is made to the First-tier Tribunal under [subsection \(1\)](#), the First-tier Tribunal may make an order stating that from the effective date the rent under the assured tenancy is the rent determined by the First-tier Tribunal.
- (4) In determining the rent under [subsection \(3\)](#), the First-tier Tribunal—
  - (a) may not determine that the rent under the assured tenancy from the effective date is an amount that would be an increase to the existing rent under the tenancy of more than an amount representing 50% of the increase in the landlord’s prescribed property costs incurred during the relevant period as specified in the application under [section 24E\(1\)](#), and
  - (b) in any event, may not determine that the rent under the tenancy from the effective date is more than the existing rent under the tenancy as increased by 3%.
- (5) For the purpose of [subsection \(3\)](#), the effective date is—
  - (a) where the First-tier Tribunal makes its order 14 days or more before the original effective date, the original effective date,
  - (b) otherwise, the first payment date falling at least 14 days after the day on which the First-tier Tribunal makes its order.
- (6) Making an appeal under [subsection \(1\)](#) renders the order under [section 24F\(2\)](#) or [\(3\)](#) that is being appealed against of no effect.
- (7) In this section—

“original effective date” is the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under [section 24E\(3\)](#),

“payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

#### **24H Withdrawal or dismissal of appeal to the First-tier Tribunal**

If an appeal under [section 24G\(1\)](#) is withdrawn or dismissed, [subsection \(6\)](#) of that section ceases to have effect (and the order under [section 24F\(2\)](#) or [\(3\)](#) that was being appealed against is reinstated).

#### **24I Finality of First-tier Tribunal’s decision**

- (1) An order under [section 24C\(1\)](#) or [24G\(3\)](#) may be reviewed in accordance with this section only.
- (2) Accordingly (and without prejudice to the generality of [subsection \(1\)](#)), a decision of the First-tier Tribunal to make an order under [section 24C\(1\)](#) or [24G\(3\)](#) may be neither—
  - (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor
  - (b) appealed against under section 46 of that Act.

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- (3) The First-tier Tribunal may review an order under [section 24C\(1\)](#) or [24G\(3\)](#)—
- (a) at its own instance, or
  - (b) at the request of the landlord or the tenant under the assured tenancy to which the order relates.
- (4) In a review under [subsection \(3\)](#), the First-tier Tribunal may—
- (a) take no action, or
  - (b) correct a minor error contained in the order.

#### **24J Powers to adjust maximum amount of increased costs by which rent may be increased**

- (1) The Scottish Ministers may by regulations substitute a different percentage for the one for the time being mentioned in each of the following provisions—
- (a) [section 24E\(1\)](#),
  - (b) [section 24F\(1\)\(b\)](#),
  - (c) [section 24F\(4\)\(a\)](#),
  - (d) [section 24G\(4\)\(a\)](#).
- (2) The Scottish Ministers may by regulations substitute a different percentage (which percentage must be no lower than the permitted rate) for the one for the time being mentioned in each of the following provisions—
- (a) [section 24F\(2\)\(b\)](#),
  - (b) [section 24F\(4\)\(b\)](#),
  - (c) [section 24G\(4\)\(b\)](#).
- (3) Regulations under [subsection \(1\)](#) or [\(2\)](#) are subject to the affirmative procedure.

#### **24K Liability for underpaid rent**

- (1) This section applies where—
- (a) the rent payable under an assured tenancy has been changed by an order made under any of the following provisions—
    - (i) [section 24A\(2\)](#),
    - (ii) [section 24A\(3\)](#),
    - (iii) [section 24C\(1\)](#),
    - (iv) [section 24F\(2\)](#),
    - (v) [section 24F\(3\)](#),
    - (vi) [section 24G\(3\)](#),
  - (b) the effective date stated in the order (“the actual effective date”) falls later than the originally proposed effective date, and
  - (c) the rent payable from the actual effective date (“the new rent”) is more than the rent payable immediately before that date (“the old rent”).
- (2) For the purpose of subsection (1), “the originally proposed effective date” is—



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- (a) in the case of an order under section 24A(2) or (3) or section 24C(1), the date on which the rent would have been increased in accordance with section 24(2) had the referral to the rent officer not been made,
  - (b) in the case of an order under section 24F(2) or (3) or section 24G(3), the day after the expiry of the period of three months beginning with the day on which notice is given to the tenant under section 24E(3).
- (3) On the date the order is made the tenant becomes liable under this subsection to pay the landlord the difference between—
  - (a) the amount that would have been payable in rent between the originally proposed effective date and the actual effective date had the new rent been the rent payable from the originally proposed effective date, and
  - (b) the amount that should have been paid in rent during the same period (whether or not it was actually paid).
- (4) [Subsection \(5\)](#) applies if, at the end of the day falling 28 days after a tenant’s liability under [subsection \(3\)](#) arose, that liability is (in whole or in part) still outstanding.
- (5) For the purpose of Grounds 11 and 12 in schedule 5, the liability mentioned in [subsection \(3\)](#) is to be regarded as a sum that fell to be paid by way of rent on the day the liability arose.
- (6) In this section, a reference to a period between two dates includes both of those dates.”.
- (6) The 1988 Act has effect as if section 25 (determination of rent by the First-tier Tribunal) were repealed.
- (7) The 1988 Act has effect as if section 34 (reference of rents under short assured tenancies to the First-tier Tribunal) were repealed.
- (8) Section 53(2) (orders and regulations) has effect as if after “above” there were inserted “or regulations under section [23A\(3\)](#), [24\(4A\)](#), [24E\(5\)](#) or [24J\(1\)](#) or [\(2\)](#)”.

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**Commencement Information**

**II** Sch. 1 para. 2 in force at 28.10.2022, see [s. 13\(1\)](#)

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