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Dear Convener

As I set out in my response to the the Local Government, Housing and Planning Committee's report on the Housing (Scotland) Bill, which I sent on 27 November 2024, I welcome further scrutiny of the Scottish Government's proposal to ensure that rents in a designated rent control area do not increase by more than the CPI annual rate of inflation plus one percentage point each year (up to a maximum of 6%) . This cap on rent increases would apply to any private residential tenancy of a property in any such area (unless the property is exempt or subject to modified restrictions).

To support the committee's further evidence session on 28 January 2025, I attach a partial Keeling schedule which shows the changes that the government is considering making to sections 9 to 14 and 19 of the Bill. I hope that this will assist the Committee in understanding how the Bill might be changed to give effect to the proposals for a cap on rent increases that I have previously set out, and to give stakeholders the opportunity to consider them ahead of the evidence sessions on 28 January.

Alongside the changes that will introduce the cap on rent increases you will also note that a number of other related changes are proposed. I have set out more detail on this in the below Annex A.

We will keep in close contact with the committee as we progress towards Stage 2 and I look forward to continuing to work with you and the wider Parliament on the Bill.

Yours sincerely,

PAUL MCLENNAN

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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Housing (Scotland) Bill – Keeling schedule - Proposed rent cap – Notes

The Keeling schedule shows the changes that the Government is considering making to sections 9 to 14 and 19 of the Bill to give effect to the rent cap previously announced. The purpose of this note is to help inform the Committee of the intended effect of the changes. The notes are not a comprehensive description of the Bill provisions.

Section 9

References in the Bill to fixing the rent cap via regulations (section 9(3)) have been removed as the intention is to set out the formula for the rent cap on the face of the Bill. As the definition of “specified” and “exempt property” are linked to regulations made under section 9(3), these are removed from section 9(3) and moved instead into the relevant Part of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) which deals with rent controls in a rent control area.

Section 10

As the intention is to set out the formula for the rent cap on the face of the Bill rather than by regulations, the references to consulting on the form and level of the rent cap and to reporting on the reasons for the form and level of the cap have been removed.

Section 11

As the intention is that the formula for the rent cap will be set out on the face of the Bill rather than by regulations, the duty on the Scottish Ministers to keep the restriction on the amount, set out in regulations, by which rent may be increased under review would no longer apply. Instead the intention is that the duty would be limited to keeping the designation and size of a rent control area under review. If the Scottish Ministers consider that it is no longer necessary or proportionate to designate all or part of a rent control area, it is intended that they would be under a duty to revoke the regulations or vary them to reduce the size of the area.

Section 12

As the intention is that the rent cap formula will be set out on the face of the Bill, the provisions requiring the Scottish Ministers to consult before laying regulations to vary the form or level of the rent cap have been removed. It is intended that where the Scottish Ministers propose to reduce the size of a rent control area they must carry out a consultation before laying regulations and lay a report setting out why they consider the size of the area should be reduced.

Section 13

The definition of “exempt property” is currently linked to regulations made under section 9(3). As the intention is to set out the rent cap formula in the Bill and not in regulations made under section 9(3), the power to specify what is an exempt property for the purposes of section 9(3) is removed. Instead, the power to define “exempt property” is moved to regulations to be made under Part 4A of the “the 2016 Act”.

Section 14

As the intention is to set out the rent cap formula in the Bill and not in regulations made under section 9(3), references to restricting the amount by which rent can be increased by more than the amount permitted by regulations under section 9(3) are removed. Instead, a definition of “permitted rate” is included in the Bill. The changes to section 14(2)(c) are intended to make it clear that regulations under section 14(1) may include provision to increase the initial rent or the rent payable following a rent-increase notice by an amount that is more than the permitted rate. Before laying any such regulations, the Scottish Ministers must consult persons representing the interests of tenants and landlords. In addition, a draft of the regulations must be approved by the Parliament before the regulations can be made.

Section 19 – Modification to the 2016 Act

Section 17C

As noted above in relation to section 13, it is intended that the power to define an “exempt property” is moved into Part 4 of the 2016 Act which deals with rent controls for properties that are not in a rent control and for properties that are exempt properties.

Section 43A

This updates a cross-reference to the meaning of an “exempt property”, as this would be defined instead by section 17C of the 2016 Act.

Section 43CA

This section sets out how it is intended that the rent cap formula will operate. It sets out that the rent cap will be the lower of (a) the CPI annual rate of inflation plus the additional percentage (initially set at one percentage point) and (b) 6%. But where the total percentage determined under (a) is less than 0%, it will be treated instead as being 0%. The intended effect is that even where the CPI annual rate of inflation plus the additional percentage falls below zero, the rent cap will not fall below 0%. Definitions of the “additional percentage” and “consumer prices index” are included. The definition of CPI% sets out how it is intended landlords will carry out the calculation using figures for the “latest index” and the index published 12 months prior to the “latest index”. Where a landlord is permitted to increase the rent at the start of a new tenancy, it is intended that the “latest index” is the last index published before the tenancy starts. For a rent increase during the term of a tenancy, the “latest index” is that last index published before the day on which the notice is given to the tenant.

Section 43CB

It is intended that the Scottish Ministers have the power to substitute the economic index with another economic index. It is also intended that they have the power to amend (a) the percentage specified in section 43CA(1)(b) and (b) the “additional percentage” specified in 43CA(2). It is intended that the powers to make regulations to modify either of those percentages can only be used where the Scottish Ministers consider that it is necessary to ensure that the restrictions on rent increases in a rent control area (other than for exempt properties) are necessary and proportionate for the purposes of protecting the social and economic interest of tenants in an area and are a necessary and proportionate control of landlords’ use of their property in the

area. Before laying any such regulations, the Scottish Ministers must consult persons representing the interests of tenants and landlords. In addition, a draft of the regulations must be approved by the Parliament before the regulations can be made.

Section 43D to 43T

The definition of “permitted amount” is deleted as a new definition of “permitted rate” is included in section 14(2). The remaining changes reflect the inclusion of the new definition of “permitted rate” in the Bill, rather than in regulations designating an area as a rent control area and which set the permitted amount of rent increase for that area.

Housing (Scotland) Bill - Keeling schedule

[20 JANUARY 2025]

This document has been prepared as a partial “Keeling schedule” showing the changes that the government is considering making to sections 9 to 14 and 19 of the Bill to give effect to the rent cap that it previously announced. The changes are shown in red and blue. The document is provided to assist the lead committee’s consideration of the Bill. It is illustrative only.

9 Power to designate rent control area

- (1) Having considered a report from a local authority under section 4 or a further report mentioned in section 5(2), the Scottish Ministers may by regulations designate all or part of the area of the local authority as a rent control area.
- (2) But the Scottish Ministers may designate under subsection (1) all or part of the area of a local authority only if they are satisfied that restricting the rate of increase in rent payable under private residential tenancies in the area to be designated—
 - (a) is necessary and proportionate for the purpose of protecting the social and economic interests of tenants in the area, and
 - (b) is a necessary and proportionate control of landlords’ use of their property in the area.
- ~~(3) Regulations under subsection (1) designating an area as a rent control area must provide that the rent payable under a private residential tenancy of a property in the area that is not an exempt property may not be increased by more than an amount specified in the regulations which may include—~~
 - ~~(a) a specified percentage (which may be 0%);~~
 - ~~(b) an amount falling within a specified range;~~
 - ~~(c) an amount calculated with reference to—~~
 - ~~(i) one or more specified factors, or~~
 - ~~(ii) other specified criteria (including a formula).~~
- (4) Any regulations under subsection (1) cease to have effect on the expiry of a period of 5 years from the day on which the regulations come into force (unless they are revoked before the expiry of that period).
- ~~(5) In subsection (3)—~~

~~“an exempt property” has the meaning given by regulations under section 13(1);~~

~~“specified” means specified in regulations under subsection (1).~~

10 Designation of rent control area: consultation

- (1) Before laying a draft of a Scottish statutory instrument containing regulations under section 9(1) designating an area as a rent control area (“the proposed rent control area”), the Scottish Ministers must consult—
 - (a) the local authority within whose area the proposed rent control area is situated,

- (b) persons who appear to them to represent the interests of tenants and landlords under relevant tenancies of properties in the proposed rent control area.
- (2) The Scottish Ministers must—
- (a) consult the persons referred to in subsection (1) in relation to—
- (i) the specification of the area forming the proposed rent control area,
 - ~~(ii) the form of the rent control measure being considered for the proposed rent control area;~~
 - ~~(iii) the level of the rent control measure being considered for the proposed rent control area;~~
- (b) allow a period of not less than 8 weeks for any representations to be made in response to the consultation.
- (3) When laying a draft of a Scottish statutory instrument containing regulations mentioned in subsection (1) before the Scottish Parliament, the Scottish Ministers must also lay before the Parliament a report—
- (a) setting out the reasons why they consider that the regulations should be made including—
- (i) the reasons for the specification of the area to be designated as a rent control area, and
 - ~~(ii) the reasons for the form and level of the rent control measure to be introduced for the area;~~
- (b) describing—
- (i) the consultation carried out under subsection (1),
 - (ii) any representations received in response to the consultation, and
 - (iii) the changes (if any) from what was originally proposed as a result of those representations.
- ~~(4) In this Chapter, a “rent control measure” means a restriction on the amount by which the rent payable under a private residential tenancy of a property in a rent control area may be increased as mentioned in section 9(3).~~

11 Duty to keep rent control area under review

- (1) The Scottish Ministers must keep under review the ~~operation of any regulations under section 9(1) in relation to each rent control area~~ designation and size of each rent control area designated by existing regulations under section 9(1).
- (2) Where the Scottish Ministers consider that ~~a rent control measure applying in a rent control area as provided for in regulations under section 9(1) is no longer necessary or proportionate~~ it is no longer necessary or proportionate to designate all or part of a rent control area as such, the Scottish Ministers must as soon as reasonably practicable lay a draft of a Scottish statutory instrument containing regulations under section 9(1) before the Scottish Parliament to ~~vary or revoke the regulations as they consider appropriate~~—
- (a) revoke the existing regulations, or
 - (b) vary the existing regulations to reduce the size of the rent control area as they consider appropriate.

12 Variation of rent controls in existing rent control area: consultation

- (1) This section applies where the Scottish Ministers propose to ~~amend a rent control measure specified in regulations under section 9(1) that applies in relation to an existing rent control area~~ reduce the size of a rent control area designated by regulations under section 9(1).
- (2) Before laying a draft of a Scottish statutory instrument containing regulations under section 9(1) before the Scottish Parliament to provide for that ~~amendment, the Scottish Ministers must consult—~~
 - ~~(a) the local authority within whose area the existing rent control area is situated,~~
 - ~~(b) persons who appear to them to represent the interests of tenants and landlords under relevant tenancies of properties in the existing rent control area.~~
- ~~(3) The Scottish Ministers must—~~
 - ~~(a) consult the persons referred to in subsection (2) in relation to—~~
 - ~~(i) any revised form of the rent control measure being considered for the existing rent control area,~~
 - ~~(ii) any revised level of the rent control measure being considered for the existing rent control area,~~
 - ~~(b) allow a period of not less than 8 weeks for any representations to be made in response to the consultation~~ variation, the Scottish Ministers must—
 - ~~(c) consult—~~
 - ~~(i) the local authority within whose area the rent control area is situated,~~
 - ~~(ii) persons who appear to them to represent the interests of tenants and landlords under relevant tenancies of properties in the rent control area, and~~
 - ~~(d) allow a period of not less than 8 weeks for any representations to be made in response to the consultation.~~
- (4) When laying a draft of a Scottish statutory instrument containing regulations mentioned in subsection (2) before the Scottish Parliament, the Scottish Ministers must also lay before the Parliament a report—
 - (a) setting out the reasons why they consider that the ~~regulations should be made including the reasons for any revised form or level (or both) of the rent control measure to be introduced for the rent control area~~ size of the rent control area should be reduced, and
 - (b) describing—
 - (i) the consultation carried out under subsection (2),
 - (ii) any representations received in response to the consultation, and
 - (iii) the changes (if any) from what was originally proposed as a result of those representations.

13 ~~Properties exempt from rent control area restrictions~~

- ~~(1) The Scottish Ministers may by regulations define, for the purpose of section 9(3), what is an exempt property:~~

- (2) ~~Regulations under subsection (1) may define a property as an exempt property by reference to such matters (or a combination of matters) as the Scottish Ministers consider appropriate including, in particular—~~
- ~~(a) a description of the circumstances relating to the landlord of the property;~~
 - ~~(b) a description of the circumstances relating to the tenant of the property;~~
 - ~~(c) a description of the property according to its type.~~
- (3) ~~Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1), the Scottish Ministers—~~
- ~~(a) must consult persons who appear to them to represent the interests of tenants and landlords, and~~
 - ~~(b) may consult any other person they consider appropriate.~~

14 Properties subject to modified rent control area restrictions

- (1) The Scottish Ministers may by regulations make provision for or in connection with a landlord ~~of a specified property~~ under a private residential tenancy ~~of a specified property in a rent control area—~~
- (a) to increase, with approval from such person as may be specified in the regulations, the rent payable under the tenancy by an amount that is more than the ~~amount that would otherwise be permitted in the area in which the property is situated by regulations under section 9(1);~~ permitted rate.
 - (b) to increase, without such approval, the rent payable under the tenancy by an amount that is more than the ~~amount that would otherwise be permitted in the area in which the property is situated by regulations under section 9(1);~~ permitted rate.
- (2) In subsection (1), ~~“a—~~
- (a) “permitted rate” has the meaning given by section 43CA of the 2016 Act,
 - (b) “ specified property” means a property defined in regulations under that subsection by reference to such matters (or a combination of matters) as the Scottish Ministers consider appropriate including, in particular—
 - (i) a description of the circumstances relating to the landlord of the property,
 - (ii) a description of the circumstances relating to the tenant of the property,
 - (iii) a description of the property according to its type.
 - (c) references to increases in the rent payable under a private residential tenancy include references to—
 - (i) setting the initial rent under the tenancy (within the meaning of section 43E of the 2016 Act), and
 - (ii) increasing the rent payable under the tenancy following a rent-increase notice (within the meaning of section 43J(1) of the 2016 Act).
- (3) Regulations under paragraph (a) of subsection (1) may, in particular, specify the process by which a landlord may seek approval from a decision maker (such as a rent officer or the First-tier Tribunal) to increase the rent payable under the tenancy by an amount referred to in that paragraph.

- (4) Regulations under subsection (1) may modify an enactment, so far as it relates to a specified property, for or in connection with—
 - (a) the method by which a landlord of a specified property may increase the rent payable under a private residential tenancy of a property in the area,
 - (b) any review or appeal—
 - (i) in connection with such an increase, or
 - (ii) of a decision relating to such an increase.
- (5) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1), the Scottish Ministers—
 - (a) must consult persons who appear to them to represent the interests of tenants and landlords, and
 - (b) may consult any other person they consider appropriate.

19 Setting and variation of rent

- (1) The 2016 Act is modified as follows.
 - (1A) The title of Part 4 (rent) becomes “Rent: properties not in a rent control area (or properties that are exempt properties)”.
 - (1B) After the title of Chapter 1 of Part 4 but before the italic heading (“Restrictions on rent increases”) insert—

“Application of this Part

17B Application of this Part

- (1) This Part applies in relation to a private residential tenancy of a property that—
 - (a) is not in a rent control area, or
 - (b) is in a rent control area but is an exempt property.
- (2) In this Part, “exempt property” has the meaning given by regulations under section 17C(1).

17C Meaning of “exempt property”

- (1) For the purpose of this Part and Part 4A, the Scottish Ministers may by regulations define what is an exempt property.
- (2) Regulations under subsection (1) may define a property as an exempt property by reference to such matters (or a combination of matters) as the Scottish Ministers consider appropriate including, in particular—
 - (a) a description of the circumstances relating to the landlord of the property,
 - (b) a description of the circumstances relating to the tenant of the property,
 - (c) a description of the property according to its type.

- (3) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1), the Scottish Ministers—
- (a) must consult persons who appear to them to represent the interests of tenants and landlords, and
 - (b) may consult any other person they consider appropriate.
- (4) The requirement to consult under subsection (3)(a) may be met by consultation carried out before this section comes into force.”.
- (2) After Part 4 (rent) insert—

“PART 4A

RENT: PROPERTIES IN A RENT CONTROL AREA (OTHER THAN ~~EXCLUDED~~EXEMPT PROPERTIES)

CHAPTER 1

INITIAL PROVISIONS AND RESTRICTIONS IN RELATION TO RENT ETC.

Application of this Part

43A Application of this Part

- (1) This Part applies in relation to a private residential tenancy (in this Part, a “current tenancy”) of a property that—
- (a) is in a rent control area, and
 - (b) is not an exempt property ~~for the purpose of any regulations made under section 13(1) of the 2025 Act~~
- (2) In this Part, “exempt property” has the meaning given by regulations under section 17C(1).

Key definitions in this Part

43B Meaning of property that is “previously let” and the “immediately preceding tenancy”

- (1) In this Part, a reference to the property let under a current tenancy as having been previously let is a reference to a property that—
- (a) is the same or substantially the same as the property that was let under the immediately preceding tenancy, and
 - (b) is not an excluded property as mentioned in subsection (2).
- (2) For the purpose of subsection (1), the property let under the current tenancy is an excluded property if—
- (a) it was purchased by the landlord under the tenancy with vacant possession, and
 - (b) the tenancy is the first private residential tenancy of the property granted by the landlord since the purchase.
- (3) In this Part, a reference to the immediately preceding tenancy is, in relation to a current tenancy, a reference to a private residential tenancy or an assured tenancy that—
- (a) immediately preceded the current tenancy, and

- (b) ended no more than 12 months before the start of the current tenancy.
- (4) The Scottish Ministers may by regulations modify this section to adjust the meaning of the expressions included in this section.

43C Meaning of “relevant rent increase”

- (1) In this Part, “relevant rent increase”, in relation to a current tenancy, means—
 - (a) an increase in the amount payable in rent under a previous private residential tenancy or an assured tenancy of a property that is the same or substantially the same as the property let (or to be let) under the current tenancy (“a relevant tenancy”),
 - (b) a setting of the initial rent under a relevant tenancy (“tenancy A”) if—
 - (i) that initial rent is an amount exceeding the final rent under the relevant tenancy that immediately preceded tenancy A (“tenancy B”),
 - (ii) tenancy B ended no more than 12 months before the start of tenancy A, and
 - (iii) the property let under tenancy A is not an excluded property as mentioned in subsection (2).
- (2) For the purpose of subsection (1), property let under tenancy A is an excluded property if—
 - (a) the property was purchased by the landlord under tenancy A with vacant possession, and
 - (b) tenancy A was the first private residential tenancy or assured tenancy granted by the landlord since the purchase.

43CA Meaning of “permitted rate”

- (1) In this Part, the “permitted rate” means the lower of—
 - (a) CPI% plus the additional percentage (but see subsection (3)), and
 - (b) 6%.
- (2) In this section—
 - “additional percentage” means one percentage point.
 - “consumer prices index” means—
 - (a) the all items consumer prices index published by the Statistics Board, or
 - (b) if that index is not published for a month, any substituted index or figures published by the Board.
 - “CPI%” means the percentage increase or decrease (rounded to the nearest 0.1%) in the consumer prices index, calculated by reference only to—
 - (a) the latest index, and
 - (b) the index published for the month which was 12 months before that to which the latest index relates.

“the latest index”—

- (a) in a case of setting the initial rent under the current tenancy, means the last index published before the day on which the tenancy starts,
 - (b) in a case of a rent-increase notice, means the last index published before the day on which the notice is given to the tenant.
- (3) If the total percentage determined under subsection (1)(a) is less than 0%, it is to be treated instead as if it were 0%.

43CB Meaning of “permitted rate”: further provision

- (1) The Scottish Ministers may by regulations modify section 43CA to substitute a different economic index for the one for the time being mentioned there.
- (2) The Scottish Ministers may by regulations modify section 43CA to—
 - (a) substitute a different percentage for the one for the time being specified in subsection (1)(b) of that section,
 - (b) substitute a different percentage point for the one for the time being specified in the definition of “additional percentage” in subsection (2) of that section.
- (3) The Scottish Ministers may make regulations under subsection (2) only if they consider that the modification is necessary to ensure that restrictions imposed by this Part on the rent payable under private residential tenancies of properties in a rent control area (other than exempt properties) are—
 - (a) necessary and proportionate for the purpose of protecting the social and economic interests of tenants in the area, and
 - (b) a necessary and proportionate control of landlords’ use of their property in the area.
- (4) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) or (2) before the Scottish Parliament, the Scottish Ministers—
 - (a) must consult persons who appear to them to represent the interests of tenants and landlords, and
 - (b) may consult any other person they consider appropriate.

43D Meaning of other terms

- (1) In this Part—

“assured tenancy” means an assured tenancy under the Housing (Scotland) Act 1988,

“final rent”, in relation to a tenancy, means the amount that was payable in rent at the end of the tenancy,

“initial rent”, in relation to a tenancy, means the amount that is (or is to be) payable in rent at the start of the tenancy,

~~“permitted amount”, in relation to an area, means the maximum amount that is specified in regulations under section 9(1) of the 2025 Act as the~~

~~amount that any increase in the rent payable under a current tenancy of a property in the area may not exceed,~~

“previous rent increase”, in relation to a current tenancy, means—

- (a) a setting of the initial rent under the current tenancy that exceeds the final rent under the immediately preceding tenancy, or
 - (b) a relevant rent increase.
- (2) For the purpose of this Part, whether property let under a tenancy is the same or substantially the same as property let under a previous tenancy is to be determined with reference to a comparison between the description of each property in the terms applying to each tenancy.

Restriction on setting of initial rent by landlord

43E Restriction on setting of initial rent by landlord

- (1) This section applies if the property let (or to be let) under a current tenancy was previously let.
- (2) If there was a relevant rent increase during the period of 12 months before the start of the current tenancy, the initial rent under the current tenancy may not be more than the final rent under the immediately preceding tenancy.
- (3) If there was not a relevant rent increase during the period of 12 months before the start of the current tenancy, the initial rent under the current tenancy may not be more than the final rent under the immediately preceding tenancy as increased by the permitted ~~amount for the area in which the property is situated~~rate.

Restrictions on rent increases

43F Method by which rent may be increased

The rent payable under a current tenancy may be increased only in accordance with Chapter 2.

43G Frequency with which rent may be increased

- (1) The rent payable under a current tenancy may not be increased—
 - (a) if the let property was previously let—
 - (i) on the first occasion after the setting of the initial rent under the current tenancy, unless the most recent previous rent increase took effect more than 12 months previously,
 - (ii) thereafter, more than once in a 12 month period,
 - (b) if the let property was not previously let—
 - (i) during the first 12 months of the current tenancy except in such circumstances as may be prescribed by the Scottish Ministers in regulations,
 - (ii) more than once in any other 12 month period.
- (2) For the purpose of subsection (1)(a)(ii) or (b)(ii), where the last rent increase resulted from an order of a rent officer or the First-tier Tribunal, the 12 month

period is to be regarded as commencing on the date on which the rent would have been increased in accordance with section 43J(4) had a referral to a rent officer not been made.

Restrictions on other charges and diligence

43H No premiums, advance payments, etc.

- (1) Sections 82, 83 and 86 to 90 of the Rent (Scotland) Act 1984 apply in relation to a current tenancy as they apply in relation to a tenancy of the kind to which those sections refer.
- (2) But—
 - (a) section 83(5) of that Act is to be ignored,
 - (b) the date mentioned in section 88(1) of that Act is to be read as if it were the date on which this section comes into force.

43I Restriction on diligence

Except with the leave of the First-tier Tribunal, no diligence is to be done in respect of—

- (a) the rent due by a tenant or former tenant under a current tenancy,
- (b) any liability of a tenant or former tenant arising under section 43S.

CHAPTER 2

RENT VARIATION INSTIGATED BY LANDLORD'S NOTICE

Rent-increase notice given by landlord

43J Landlord's power to increase rent by no more than the permitted amount

- (1) The landlord under a current tenancy may increase the rent payable under the tenancy by giving the tenant a notice in accordance with this section (“a rent-increase notice”).
- (2) But the landlord under a current tenancy may not increase the rent payable under the tenancy by more than the permitted ~~amount for the area in which the let property is situated~~ [rate](#).
- (3) The rent-increase notice must—
 - (a) specify—
 - (i) the rent that will be payable once the increase takes effect,
 - (ii) the day on which the increase is to take effect, and
 - (b) fulfil any other requirements prescribed by the Scottish Ministers in regulations.
- (4) The rent increase takes effect on the effective date, unless before that date—
 - (a) the landlord intimates to the tenant that the notice is rescinded,
 - (b) the tenant makes a referral to a rent officer under section 43L(2), or
 - (c) the tenant applies to the First-tier Tribunal under section 43Q(1).

- (5) For the purpose of subsection (4), the effective date is the date of the later of—
- (a) the day specified in the notice in accordance with subsection (3)(a)(ii), or
 - (b) the day after the day on which the minimum notice period ends.
- (6) In subsection (5)(b), “the minimum notice period” means the period that—
- (a) begins on the day the notice is received by the tenant, and
 - (b) ends on the day falling—
 - (i) three months after it began, or
 - (ii) whatever longer period after it began as the landlord and tenant have agreed between them.
- (7) In subsection (6), the reference to a period of three months is to a period that ends in the month that falls three months after the month in which it began, either—
- (a) on the same day of the month as it began, or
 - (b) if the month in which the period ends has no such day, on the final day of that month.

43K Modification of rent-increase notice by parties

- (1) This section does not apply in relation to a current tenancy ~~of a property in an area for which the permitted amount is zero (or equivalent to zero) if the permitted rate is 0%.~~
- (2) Anything specified in a rent-increase notice in accordance with section 43J(3)(a) may be modified by agreement between the landlord and tenant under the current tenancy.
- (3) But the landlord and the tenant may not modify a rent-increase notice under subsection (2) so as to increase the rent payable under the current tenancy by more than the permitted ~~amount for the area in which the let property is situated~~rate.
- (4) A modification made to a rent-increase notice by virtue of subsection (2) ceases to have effect if the notice subsequently prompts a referral to a rent officer under section 43L(2).

Tenant's referral of rent-increase notice to rent officer

43L Tenant's right to refer rent-increase notice to rent officer

- (1) If a tenant who has received a rent-increase notice considers that the proposed increase in the rent payable under the current tenancy is more than the permitted ~~amount for the area in which the let property is situated~~rate, the tenant must notify the landlord in writing of the tenant's view before the end of the day falling 21 days after the tenant receives the notice.
- (2) The tenant may make a referral to a rent officer for the area in which the let property is situated seeking a decision under section 43M in relation to the

rent-increase notice if, before the end of the day falling 21 days after the landlord receives notification from the tenant under subsection (1), either—

- (a) where the permitted ~~amount for the area is zero (or equivalent to zero)~~rate is 0%, the landlord has not notified the tenant in writing that the rent-increase notice has been withdrawn, or
 - (b) in any other case, the landlord and the tenant have not agreed to a modification of the rent-increase notice so as to increase the rent payable in respect of the let property by no more than the permitted ~~amount for the area in which the let property is situated~~rate.
- (3) A referral to a rent officer under subsection (2) must be—
- (a) in the prescribed form,
 - (b) accompanied by the prescribed fee (if any),
 - (c) intimated by the tenant to the landlord in the prescribed manner, and
 - (d) made before the end of the day falling 42 days after the landlord receives notice from the tenant under subsection (1).
- (4) In subsection (3), “prescribed” means prescribed by the Scottish Ministers in regulations.

43M Rent officer's power to set rent

- (1) Where a rent officer receives a referral under section 43L(2), the rent officer is to decide whether the rent specified in accordance with section 43J(3)(a)(i) in the rent-increase notice would be an increase in the rent payable under the current tenancy of more than the permitted ~~amount for the area in which the let property is situated~~rate.
- (2) If the rent officer decides under subsection (1) that the rent specified in the rent-increase notice would be an increase in the rent payable under the current tenancy of no more than the permitted ~~amount for the area in which the let property is situated~~rate, the rent officer must make an order stating that from the effective date the rent payable under the tenancy is the rent specified in the rent-increase notice.
- (3) If the rent officer decides under subsection (1) that the rent specified in the rent-increase notice would be an increase in the rent payable under the current tenancy of more than the permitted ~~amount for the area in which the let property is situated~~rate, the rent officer must make an order stating—
 - (a) where the permitted ~~amount for the area is zero (or equivalent to zero)~~rate is 0%, that the rent-increase notice has no effect,
 - (b) in any other case, that from the effective date the rent payable under the current tenancy is the rent determined by the rent officer.
- (4) The rent determined by the rent officer under subsection (3)(b) must be the rent payable under the current tenancy as increased by the permitted ~~amount for the area in which the let property is situated~~rate.
- (5) For the purpose of subsections (2) and (3), the effective date is—
 - (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 43J(4) had the referral to the rent officer not been made under section 43L(2),

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

43N Rent officer’s power to correct order

- (1) A rent officer may, within 14 days of making an order under section 43M(2) or (3), remake the order for the purpose of curing an error in the original order made under that subsection.
- (2) The effective date of the remade order is to be specified in accordance with subsection (2) or (3) of section 43M as though it were an order made under either of those subsections.
- (3) Where an order is remade under this section—
 - (a) the original order is of no effect,
 - (b) other than in subsection (1), references in this Part to an order made under section 43M(2) or (3) are to be read as references to the remade order,
 - (c) if a request for review of the original order has been made under section 43O(1), the review is to be regarded as having been made against the remade order.

43O Right of review to another rent officer

- (1) Where a rent officer has made an order under section 43M(2) or (3) in relation to the rent payable under a current tenancy, the landlord or the tenant may request a review of the order by a different rent officer.
- (2) A request for a review of an order under subsection (1) must—
 - (a) be made before the end of the day falling 14 days after the order is made,
 - (b) be in the prescribed form,
 - (c) be intimated by the landlord or the tenant (as the case may be) to the other party to the tenancy by sending a copy of the request to the other party.
- (3) Requesting a review under subsection (1) renders the order being reviewed of no effect.
- (4) In subsection (2), “prescribed” means prescribed by the Scottish Ministers in regulations.

43P Other rent officer’s power to set rent

- (1) Where a rent officer receives a request for a review under section 43O(1), the rent officer is to decide whether the rent specified in accordance with section

- 43J(3)(a)(i) in the rent-increase notice prompting the referral to the first rent officer under section 43L(2) would be an increase in the rent payable under the current tenancy of more than the permitted ~~amount for the area in which the let property is situated~~rate.
- (2) If the rent officer decides under subsection (1) that the rent specified in the rent-increase notice would be an increase in the rent payable under the current tenancy of no more than the permitted ~~amount for the area in which the let property is situated~~rate, the rent officer must make an order stating that from the effective date the rent payable under the current tenancy is the rent specified in the rent-increase notice.
- (3) If the rent officer decides under subsection (1) that the rent specified in the rent-increase notice would be an increase in the rent payable under the current tenancy of more than the permitted ~~amount for the area in which the let property is situated~~rate, the rent officer must make an order stating that from the effective date the rent payable under the current tenancy is the rent determined by the rent officer.
- (4) The rent determined by the rent officer under subsection (3) must be the rent payable under the current tenancy as increased by the permitted ~~amount for the area in which the let property is situated~~rate.
- (5) For the purpose of subsections (2) and (3), the effective date is—
- (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 43J(4) had the referral to the rent officer not been made under section 43L(2),
- “payment date” means a date on which a rent payment falls to be made in accordance with the terms of the current tenancy.
- (7) Where the rent officer makes an order under subsection (2) or (3), the order under section 43M(2) or (3) to which the request for review under section 43O(1) relates is of no effect.

Tenant's application to First-tier Tribunal relating to rent-increase notice

43Q Tenant's right to apply to First-tier Tribunal in relation to rent-increase notice

- (1) A tenant under a current tenancy of a property that was previously let who has received a rent-increase notice on the first occasion under the tenancy may apply to the First-tier Tribunal for determination of whether—
- (a) a previous rent increase took effect less than 12 months before the day on which the increase is to take effect (as specified in the notice in accordance with section 43J(3)(a)(ii)),
 - (b) the initial rent under the tenancy (that is proposed to be increased by the rent-increase notice) was not set in accordance with section 43E(2) or (3) (as the case may be).

- (2) A tenant may make an application under subsection (1) only if—
 - (a) the tenant has notified the landlord in writing before the end of the day falling 21 days after the tenant receives the rent-increase notice as to why the tenant considers that the circumstances mentioned in paragraph (a) or (b) (as the case may be) of subsection (1) are met, and
 - (b) before the end of the day falling 21 days after the landlord receives notification from the tenant under paragraph (a), the landlord and tenant have not agreed to a modification of the rent-increase notice as mentioned in subsection (3).
- (3) The modification referred to in subsection (2)(b) is—
 - (a) where the tenant considers that the circumstances mentioned in subsection (1)(a) are met, a modification so that the increase in rent is to take effect 12 months or more after the most recent previous rent increase took effect,
 - (b) where the tenant considers that the circumstances mentioned in subsection (1)(b) are met, a modification so that the increase in the rent payable is based on increasing an amount of rent that is set in accordance with section 43E(2) or (3) (as the case may be).
- (4) An application to the First-tier Tribunal under subsection (1) must be—
 - (a) intimated by the tenant to the landlord in the prescribed manner, and
 - (b) made before the end of the day falling 42 days after the landlord receives the notice from the tenant in accordance with subsection (2)(a).
- (5) In subsection (4), “prescribed” means prescribed by the Scottish Ministers in regulations.

43R First-tier Tribunal’s powers on an application under section 43Q(1)

- (1) Subsection (2) applies where the First-tier Tribunal receives an application under section 43Q(1)(a) in relation to a rent-increase notice given under a current tenancy.
- (2) If the Tribunal determines—
 - (a) that any previous rent increase took effect less than 12 months before the original effective date, the Tribunal must make an order that the rent-increase notice is of no effect (and accordingly the rent payable under the current tenancy is unchanged),
 - (b) that any previous rent increase took effect 12 months or more before the original effective date, the Tribunal must make an order stating that from the effective date the rent payable under the current tenancy is the lower of—
 - (i) the rent specified in the rent-increase notice in accordance with section 43J(3)(a)(i), and
 - (ii) the rent payable under the tenancy as increased by the permitted ~~amount for the area in which the let property is situated~~[rate](#).
- (3) Subsection (4) applies where the First-tier Tribunal receives an application under section 43Q(1)(b) in relation to a rent-increase notice given under a current tenancy.

- (4) If the Tribunal determines—
- (a) that the initial rent under the current tenancy (that is proposed to be increased by the rent-increase notice) was not set in accordance with section 43E(2) or (3) (as the case may be), the Tribunal must make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the Tribunal,
 - (b) that the rent payable at the start of the current tenancy (that is proposed to be increased by the rent-increase notice) was set in accordance with section 43E(2) or (3) (as the case may be), the Tribunal must make an order stating that from the effective date the rent payable under the tenancy is the lower of—
 - (i) the rent specified in the rent-increase notice in accordance with section 43J(3)(a)(i), and
 - (ii) the rent payable under the tenancy as increased by the permitted ~~amount for the area in which the let property is situated~~[rate](#).
- (5) In determining the rent under subsection (4)(a), the First-tier Tribunal may not determine that the rent payable under the current tenancy from the effective date is more than the base rent as increased by the permitted ~~amount for the area in which the let property is situated~~[rate](#).
- (6) For the purpose of subsection (2) or (4), the effective date is—
- (a) where the Tribunal 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 Tribunal makes the order.
- (7) In this section—
- “base rent” means the amount of rent that would have been payable from the start of the current tenancy had the rent been set in accordance with section 43E(2) or (3) (as the case may be),
- “original effective date” means the date on which the rent would have been increased in accordance with section 43J(4) had the referral to the First-tier Tribunal not been made under section 43Q(1),
- “payment date” means a date on which a rent payment falls to be made in accordance with the terms of the current tenancy.

Matters arising from referral to rent officer or application to First-tier Tribunal

43S Tenant’s liability for underpaid rent

- (1) This section applies where—
- (a) the rent payable under a current tenancy has been changed by an order made under—
 - (i) section 43M(2) or (3),
 - (ii) section 43P(2) or (3), or
 - (iii) section 43R(2)(b) or (4)(a) or (b),
 - (b) the effective date stated in the order (“the actual effective date”) falls later than the date on which the rent would have been increased in

accordance with section 43J(4) had a referral to a rent officer not been made under section 43L(2) or, as the case may be, had an application to the First-tier Tribunal not been made under section 43Q(1) (“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) 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).
- (3) Subsection (4) applies if, at the end of the day falling 28 days after a tenant’s liability under subsection (2) arose, that liability is (in whole or in part) still outstanding.
- (4) For the purposes of paragraph 12 of schedule 3, 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.
- (5) In this section, a reference to a period between two dates includes both of those dates.

43T Withdrawal of referral or request for review by rent officer or application to First-tier Tribunal

- (1) This section applies—
- (a) where a referral to the rent officer made under section 43L(2) is withdrawn by the tenant,
 - (b) where—
 - (i) a request for a review by another rent officer made under section 43O(1) is withdrawn by one party, and
 - (ii) either—
 - (A) the other party has not requested a review in respect of the tenancy in question, or
 - (B) any request for a review by the other party has been withdrawn, or
 - (c) where an application to the First-tier Tribunal made under section 43Q(1) is withdrawn by the tenant.
- (2) The order maker must make an order under section 43M(2) or (3), section 43P(2) or (3), or section 43R(2)(b) or (4)(a) or (b) (as the case may be), stating

that from the effective date the rent payable under the current tenancy concerned is the lower of—

- (a) the rent specified in the rent-increase notice, and
 - (b) the rent payable under the tenancy as increased by the permitted ~~amount for the area in which the let property is situated~~[rate](#).
- (3) Where the order maker is another rent officer in relation to the making of an order under section 43P(2) or (3), an order may not be made by virtue of subsection (2) until the expiry of the period within which a request for a review made under section 43O(1) may be made.
- (4) In subsection (2)—

“order maker” means—

- (a) in the case of the making of an order under section 43M(2) or (3), the rent officer,
- (b) in the case of the making of an order under section 43P(2) or (3), another rent officer,
- (c) in the case of the making of an order under section 43R(2)(b) or (4)(a) or (b), the First-tier Tribunal,

“the rent-increase notice” means the rent-increase notice that, as the case may be—

- (a) prompted the referral to the rent officer,
- (b) led to the request for review by another rent officer, or
- (c) led to the application to the First-tier Tribunal.”.