

Local Government, Housing and Planning Committee

11th Meeting, 2023 (Session 6)

Tuesday, 18 April 2023

SSI cover note for: Private Residential Tenancies and Assured Tenancies (Prescribed Notices and Forms) (Temporary Modifications) (Scotland) Regulations 2023

SSI 2023/58

Title of Instrument: Private Residential Tenancies and Assured Tenancies
(Prescribed Notices and Forms) (Temporary Modifications) (Scotland) Regulations
2023

Type of Instrument: Negative

Laid Date: 2 March 2023

Circulated to Members: 2 March 2023

Meeting Date: 18 April 2023

Minister to attend meeting: No

Motion for annulment lodged: No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform
Committee?** No

Reporting deadline: 24 April 2023

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.

2. An electronic copy of the instrument is available at: <https://www.legislation.gov.uk/ssi/2023/58/contents/made>
3. Copies of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

Purpose

4. The Policy Note states that the purpose of the instrument is to make temporary changes to the prescribed notices and forms within the Private Housing (Tenancies) (Scotland) Act 2016 and the Housing (Scotland) Act 1988, in order to:
 - enable a landlord from 1 April 2023 to issue a rent increase notice to a tenant, in line with the permitted rate or 'rent cap' set by Scottish Ministers via the Cost of Living (Tenant Protection) (Scotland) Act 2022; and
 - enable a tenant to refer a rent increase notice to a Rent Officer because they think the increase may be above the amount permitted by the rent cap.

Delegated Powers and Law Reform Committee consideration

5. At its meeting on 15 March 2023¹ the DPLR Committee considered the instrument and agreed not to draw it to the attention of the relevant lead committee.

Procedure for Negative Instruments

6. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

7. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually

¹ <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2023/3/15/e88d1e7f-d8e2-4a9c-a9b2-540e0b9dab2b#Annex-A>

be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Clerks,
Local Government, Housing and Planning Committee**

Annexe A

Scottish Government Explanatory Note

These Regulations temporarily modify the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 and the Rent Regulation and Assured Tenancies (Forms) (Scotland) Regulations 2017 in response to emergency measures introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022, which came into force on 28 October 2022.

Regulation 2 and schedule 1 modify the rent-increase notice issued to tenants under the Private Housing (Tenancies) (Scotland) Act 2016.

Regulation 3 and schedule 2 temporarily substitute the form of a tenant's referral of a rent increase notice to a rent officer for the area in which the let property is situated under the Private Housing (Tenancies) (Scotland) Act 2016.

Regulation 4 and schedule 3 temporarily substitute Form AT2 which is required to be issued by a landlord who intends to increase the rent for a tenant of an assured tenancy under the Housing (Scotland) Act 1988.

Regulation 5 and schedule 4 temporarily substitute the Form AT4 to create a route for a tenant's referral of a rent increase notice to a relevant rent officer under the Housing (Scotland) Act 1988.

These Regulations make changes to certain forms and notices in light of emergency measures introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022, which was subject to a Business Regulatory Impact Assessment. No further impact on business is foreseen as a result of these Regulations.

A copy of all impact assessments for the Act can be obtained online at www.legislation.gov.uk.

POLICY NOTE

THE PRIVATE RESIDENTIAL TENANCIES AND ASSURED TENANCIES (PRESCRIBED NOTICES AND FORMS) (TEMPORARY MODIFICATIONS) (SCOTLAND) REGULATIONS 2023

SSI
2023/58

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred on them by sections 24(1) and (3), and 53(3) of the Housing (Scotland) Act 1988⁽¹⁾ and sections 22(2)(b), 24(4) and 77(2) of the Private

Housing (Tenancies) (Scotland) Act 2016⁽²⁾ and all other powers enabling them to do so.

Purpose of the instrument

The purpose of this instrument is to make temporary changes to the prescribed notices and forms within the Private Housing (Tenancies) (Scotland) Act 2016 and the Housing (Scotland) Act 1988, in order to:

- enable a landlord from 1 April 2023 to issue a rent increase notice to a tenant, in line with the permitted rate or 'rent cap' set by Scottish Ministers via the Cost of Living (Tenant Protection) (Scotland) Act 2022; and
- enable a tenant to refer a rent increase notice to a Rent Officer because they think the increase may be above the amount permitted by the rent cap.

The temporary versions of these forms are in place until such time as section 1 and schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 is suspended or expired.

Legislative background

2. The Cost of Living Act came into force on 28 October 2022 and has provided powers and measures which have helped to protect tenants by stabilising their housing costs through the introduction of a temporary, variable rent cap. The cap is set at 0% until 31 March 2023 in relation to in-tenancy rent increases.

3. On 27 January 2023, draft regulations and an accompanying Statement of Reasons were published, which – subject to Parliamentary approval – will extend the expiry date of Part 1 of the Act from 31 March 2023 to 30 September 2023. The draft regulations would also from 1 April 2023 raise the rent cap in the private rented sector to allow within-tenancy rent increases of up to 3% and for the associated 'Prescribed Property Costs' safeguard to increase to 6%.

Policy objectives

4. Should Parliament approve the draft Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023, private landlords will be able to issue their tenant with a rent increase notice following the relevant statutory process from 1 April 2023, provided that the increase is within the amount permitted by the rent cap and that the rent has not been increased in the preceding 12 months.

5. On receipt of a rent increase notice, a tenant will be able to refer a rent increase notice they have received to a relevant rent officer (part of Rent Service Scotland) if they think that the proposed increase would be above the amount permitted by the rent cap.

6. These regulations make temporary changes to relevant prescribed forms in line with the Cost of Living (Tenant Protection) (Scotland) Act 2022: rent increase notices, and also the form required for referral by a tenant of a rent increase to a rent officer. If approved, these regulations would remain in place until such time as section 1 and schedule 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 is suspended or expired.

Consultation

7. A specific formal public consultation exercise has not been undertaken in relation to this instrument.

Impact Assessments

8. No impact assessments have been completed for this instrument. However, a range of impact assessments were carried out for the Act.

Financial Effects

9. The Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Better Homes
Division February
2023