

Fair Rents (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 76-EN), a Financial Memorandum (SP Bill 76-FM), a Policy
Memorandum (SP Bill 76-PM) and statements on legislative competence (SP Bill 76-LC).**

Fair Rents (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to protect private sector tenants by introducing measures to limit rent increases, to allow a tenant to apply for a fair rent to be determined, and to increase the availability of public information about private rent levels in Scotland.

PART 1

RIGHT TO A FAIR RENT FOR PRIVATE SECTOR TENANTS

1 The fair rent consumer prices index cap

- (1) The 2016 Act is amended as follows.
- (2) In section 22 (landlord's power to increase rent), after subsection (6) insert—
- “(7) A rent increase notice under this section cannot increase rent by more than the percentage increase equivalent to the consumer prices index for the 12 months preceding the date of the rent increase notice plus 1% (“the fair rent CPI cap”).
- (8) A rent increase notice that fails to comply with the fair rent CPI cap is of no effect and is not binding on the tenant.
- (9) In this section, “consumer prices index” means the all items consumer prices index published by the Statistics Board.
- (10) The Scottish Ministers may by regulations make further provision about the fair rent CPI cap, including provision—
- (a) amending subsection (7) so as to substitute, for the percentage figure for the time being specified there, a different percentage figure (and, for the avoidance of doubt, providing that the percentage figure may be a figure to be subtracted from the consumer prices index),
- (b) modifying or removing its application,
- (c) making different provision for different circumstances.”.
- (3) In section 77(3) (regulation-making powers), after “12,” insert “22(10),”.

2 Tenant's right to apply for a fair rent to be determined

- (1) The 2016 Act is amended as follows.

(2) After section 22 insert—

“22A Tenant's right to apply for a fair open market rent to be determined

- (1) A tenant under a private residential tenancy may apply to a rent officer for the area in which the let property is situated for a fair rent to be determined under this section.
- (2) Where a rent officer receives an application under this section, the rent officer must make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the rent officer in accordance with section 22B.
- (3) For the purpose of subsection (2)—
- (a) "effective date" is the first payment date falling at least 14 days after the day on which the rent officer makes the order, and
- (b) “payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.
- (4) In an order made under subsection (2), the rent officer must record the amount of the rent that is fairly attributable to the provision of services, unless the amount is negligible or no amount is so attributable.
- (5) An application to a rent officer under this section must be—
- (a) in the prescribed form,
- (b) intimated by the tenant to the landlord in the prescribed manner, and
- (c) made no more than on one occasion within any 12 month period.
- (6) In subsection (5), “prescribed” means prescribed by the Scottish Ministers by regulations.

22B Determination of a fair open market rent

- (1) Where an order maker is to determine a fair rent under section 22A or (as the case may be) section 29(1), the determination is to be made on the basis that the property in question would be let by a willing landlord to a hypothetical willing tenant under a new tenancy which would—
- (a) be a private residential tenancy,
- (b) begin on the date of the tenant's application under section 22A,
- (c) have the same terms as the tenancy to which the application or (as the case may be) appeal relates,
- but subject to paramount consideration being given to the matters in subsection (3).
- (2) In determining the fair open market rent of the property under subsection (1), the order maker is to disregard—
- (a) any positive effect on the rental value of the property that is attributable to work paid for or carried out by the tenant or a previous tenant under the same tenancy, unless the work was paid for or carried out pursuant to a requirement under the terms of the tenancy,

(b) any negative effect on the rental value that is attributable to a failure by the tenant or a previous tenant under the same tenancy to comply with the terms of the tenancy.

5 (3) In determining the fair open market rent of the property under subsection (1), the order maker must reduce the rent payable where it appears reasonable to do so having regard to—

(a) the general poor condition of the property,

(b) any failure to meet the repairing standard,

10 (c) the poor energy efficiency of the property or its appliances for space heating and hot water,

(d) the inadequate standard of internal decor and furniture provided, and

(e) the overall amenity of the property,

to such extent as any of these matters apply.

15 (4) In a case where two or more persons jointly are the tenant under a tenancy, a reference to the tenant in subsection (2) includes any one of them.

(5) An order maker cannot increase rent on an application made under section 22A or an appeal made under section 28(1) against an order under section 22A.

20 (6) An order made in accordance with this section under section 22A or section 29 will remain in force for a period of 12 months from the effective date, and a rent increase notice by the landlord under section 22 will be of no effect until the expiry of that period.”.

(3) In section 27 (rent officer’s power to correct final order)—

(a) in subsection (1), after the word "section" insert "22A or",

25 (b) in subsection (2), after the word "with" insert "subsection (3) of section 22A or",

(c) in subsection (3)(b), after the word "section" insert "22A(2) or".

(4) In section 28 (right of appeal to First-tier Tribunal)—

(a) in subsection (1), after the word "section" insert "22A(2) or",

30 (b) in subsection (2), after the word "section" in the introductory words insert "22A(2) or".

(5) In section 29 (First-tier Tribunal’s power to set rent)—

(a) in subsection (1), after the word "section" where it first occurs insert "22B or",

(b) in subsection (2), after paragraph (a) insert—

35 “(aa) where the First-tier Tribunal makes its order on an application under section 22A, the effective date as defined in section 22A(3),”.

(6) In subsection (2) of section 32 (determination of open market rent), after paragraph (a) insert—

“(aa) a proposed increase in the rental value that fails to comply with section 22(7),”.

PART 2

AVAILABILITY OF INFORMATION ABOUT RENTS

3 Requirement for private landlords to register rents for tenancies

- (1) In subsection (1) of section 83 (application for registration) of the Antisocial Behaviour etc. (Scotland) Act 2004 ("the 2004 Act"), after paragraph (c) insert—

“(cza) the monthly rent charged, the number of occupiers, and the number of bedrooms and living apartments for each house specified in paragraph (b),”.

- (2) In subsection (1) of section 88A (access to register) of the 2004 Act, after paragraph (b) insert—

“(c) a particular person, or house, the information it holds in relation to section 83(1)(cza),”.

4 Statement on impact of right to a fair rent

- (1) The Scottish Ministers must, not later than 3 years after the date of Royal Assent prepare, publish and lay before the Scottish Parliament a statement setting out—

- (a) the impact of the fair rent CPI cap on the affordability of rents for tenants under the 2016 Act, and
 (b) the operation of section 2 of this Act.

- (2) The statement must specify—

- (a) the number of applications made under section 22A of the 2016 Act,
 (b) a summary of the outcomes of applications made under section 22A of the 2016 Act, and
 (c) an assessment on the affordability of rents in relation to different income groups.

PART 3

GENERAL

5 Interpretation

In this Act—

“2016 Act” means the Private Housing (Tenancies) (Scotland) Act 2016,

“repairing standard” means the repairing standard in section 13 of the Housing (Scotland) Act 2006,

“Statistics Board” means the body corporate established by section 1 of the Statistics and Registration Service Act 2007.

6 Commencement

- (1) This Part comes into force on the day after Royal Assent.
 (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint, but no later than 31 May 2021.

- (3) Regulations under subsection (2) may include transitional, transitory or saving provision.

7 Short title

The short title of this Act is the Fair Rents (Scotland) Act 2020.

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Introduced by: Pauline McNeill
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