



Reduction in social housing rents

Briefing note: April 2016

This note provides an outline of The Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016, which contain detail on the exceptions permitted when implementing the reduction in social housing rents under section 23 of the Welfare Reform and Work Act 2016. It is designed to assist officers, housing association boards and local authority elected members in understanding the intended operation of the new regulations.

The first part of this briefing note gives a general overview of the regulations focusing on their potential impact and the scope for flexibility. The second part of the note provides a more detailed analysis of the main points of interest.

Overview

Potential impact

There is no doubt that the regulations will reduce substantially the rent generated by local authorities and housing associations over the next four years, and that this will have a significant adverse impact on their business plan projections. There is potential for the impact to be mitigated or delayed in some circumstances, and a possibility that rent reduction will not apply in future years to certain types of accommodation, which is subject to a one-off exception (pending further research by DCLG).

Landlords do have the option of making a case for an exemption because of the impact that rent reductions have on viability, as indicated by their business plan. However, there is a presumption against making such exemptions, and it is clear that the landlord would have to demonstrate that they have exhausted all other options for maintaining viability.

It seems clear that the bar for granting exemptions will be set at a high level, and so landlords may wish to seek external assistance if they wish to build their business case in support of an exemption.

Flexibility

The regulations provide little room for manoeuvre around the calculation of rents for existing tenants during the period that rent reductions must be applied. However, there are a number of areas, including the following, where there is scope for flexibility.

- Landlords may apply a 10% flexibility to formula rents for supported accommodation
- Almshouses, co-operative housing associations, mutual housing associations and community land trusts may implement a 5% rent flexibility on social rents
- Some landlords could elect to de-pool service charges for social rented properties, if they haven't already fully de-pooled their charges
- There is an option to use a depreciated replacement cost basis when calculating formula rents for supported housing
- Landlords may choose to implement accelerated rent reductions, if it suits them to reduce rents to 2019/20 levels in an earlier year, and then maintain rents at those levels until the end of the rent reduction period
- There may be potential for landlords to retain additional rent charged to high income social tenants during 2016/17

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Next steps

Landlords and their legal advisors should check through the definitions provided by the regulations and ensure that they have interpreted them correctly when implementing social rent reductions. They should also review their business plans and conduct further scenario analysis, in order to help manage the impact.

CIH consultancy

CIH consultancy is available to provide additional support to any landlord wishing to consider the detailed impact of these regulations. We can help you to assess the impact of different approaches to setting rents and service charges, explore the flexibilities that are available under the regulations, develop a business case for an exemption from the requirement for rent reduction, or refresh your existing business plan projections.

For further information or to discuss the support that we can provide please contact Glenn Smith, associate director of financial consultancy on 07974 675731 or email glenn.smith@cih.org.

The regulations

The Secretary of State has published The Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 under powers conferred by sections 24, 25, 27 and 33, plus Schedule 2 to the Welfare Reform and Work Act 2016. These regulations provide greater clarity on the types of tenancy and tenant that are exempted from the requirement to make rent reductions for four years from April 2016/17.

The regulations come into force on 1 April 2016 and apply to registered providers (including both local authorities and housing associations).

Note that the regulations form a key part of the legal framework governing social rents and affordable rents. The regulations are subject to interpretation, and we strongly advise all landlords to seek their own legal advice when deciding how to implement them.

Changes introduced

Definitions

The regulations include a number of definitions for terms in paragraph 2 that are core to implementing social rent reductions. These definitions include:

- Absolute exception (identifies types of accommodation that are always exempted)
- Affordable rent housing (must be provided under specified funding routes)
- Income qualification criterion (applies to the assessment of household income for high earning social tenants)
- Intermediate rent accommodation (specific types of accommodation provided by a PRP)
- Public assistance (includes grant, subsidy, loan or land provided to a landlord)
- Qualifying year (used if making accelerated reductions)
- Specialised supported housing (supported accommodation for people who would otherwise be in care)
- Supported housing (low cost rental accommodation, provided with support)
- Temporary social housing (low cost rental accommodation for homeless people)
- Unrestricted value (used to assess whether accommodation received public assistance)

The interpretation of these and other definitions contained within the regulations is a matter for individual landlords and their legal advisors. There may be differences in the definitions used for the regulations and similar terms used for other purposes, and so we advise checking through the definitions carefully when implementing the reduction in social housing rents.



Exceptions from S23 of the Act

Paragraph 3(1) of the regulations specifies 12 types of accommodation, where the requirement for reducing social rents does not apply in any year. These are:

- (a) accommodation where total household income meets the income qualification criterion;
- (b) in cases where sub-paragraph (a) does not apply, accommodation where total household income met the income qualification criterion in the previous relevant year;
- (c) intermediate rent accommodation;
- (d) specialised supported housing;
- (e) PFI social housing;
- (f) temporary social housing;
- (g) student accommodation;
- (h) accommodation where the rent registered under the Rent Act 1977 is lower than the social rent rate;
- (i) in cases where sub-paragraph (h) does not apply, accommodation where the Rent Act 1977 rent criterion is met;
- (j) care homes;
- (k) relevant Housing Act 1996 accommodation;
- (l) accommodation where the rent payable by the tenant was temporarily reduced or waived for any period during the previous relevant year.

Paragraph 3(2) lists four further types of accommodation where there is a one year exception for 2016/17 only. These types are:

- (a) supported housing which is not specialised supported housing;
- (b) almshouse accommodation;
- (c) accommodation provided by a co-operative housing association or a fully mutual housing association;
- (d) accommodation provided by a community land trust.

It is possible that this exception could be extended into future years, as a result of an ongoing assessment by DCLG. Results of that assessment are due to be published in the spring of 2016.

Where there is an exception, the existing rent guidance should apply. This means that housing associations need to observe the Rent Standard, published by HCA in April 2015 and local authorities should have regard to the Guidance on Rents for Social Housing published by DCLG in May 2014.

Paragraph 3(3) enables landlords to reduce social rents by more than 1% in any year and then make a lower reduction (or possibly no reduction) in subsequent years – provided that they reduce rents by at least 3.94% from their starting level (2.97% for tenancies starting after 8 July 2015). Note that paragraph 3(3) does not apply in respect of affordable rent housing, where the social rent was higher than 80% of the market rent at the time the tenancy began.

Finally, paragraph 3(6) of the regulations permits the social rent rate for supported housing to be set in line with regulation 10, which allows for them to be up to 110% of the formula rent.

Exceptions from Part 1 of Schedule 2 to the Act

Part 1 of Schedule 2 to the Act specifies the calculation of maximum rents. Paragraph 4 of the regulations prescribes 12 types of accommodation where these calculations do not apply. This list includes:

- (a) accommodation where total household income meets the income qualification criterion;
- (b) intermediate rent accommodation;
- (c) supported housing which is not specialised supported housing;
- (d) specialised supported housing;
- (e) PFI social housing;
- (f) temporary social housing;
- (g) student accommodation;
- (h) care homes;
- (i) relevant Housing Act 1996 accommodation;
- (j) almshouse accommodation;
- (k) accommodation provided by a co-operative housing association or a fully mutual housing association;
- (l) accommodation provided by a community land trust.



Note that there are differences between the lists that apply under regulation 4 and regulation 3 (shown earlier in this note).

Where there is an exception, the existing rent guidance should apply. This means that housing associations need to observe the Rent Standard, published by HCA in April 2015 and local authorities should have regard to the Guidance on Rents for Social Housing published by DCLG in May 2014.

High income social tenants

The regulations define high income social tenants as those where the household income was £60,000 or more in the tax year ending in the previous year. Household income relates to income that is subject to income tax earned by the tenant(s) and partners living at the address. The two highest incomes are taken into account when calculating household income.

Regulation 5 sets the maximum rent in respect of high income social tenants at the level that would have applied under current guidance. This means that the 2014 DCLG Guidance on Rents for Social Housing applies to high income social tenants of a local authority, while the April 2015 HCA Rent Standard applies to high income social tenants of a private registered provider.

The accompanying Guidance on the Welfare Reform and Work Act 2016 social rent reduction from DCLG makes it clear that updated provisions will be introduced for high income social tenants when the Housing and Planning Bill comes into effect. These are likely to include arrangements for local authorities to pay additional rent collected to the government.

There are currently difficulties for landlords in accessing the information they need on household income in order to identify high income social tenants, which are likely to remain until the government has put arrangements in place for sharing information on personal incomes. This means that any schemes implemented under these regulations would rely on voluntary co-operation by the tenants who stand to pay higher rents.

Accordingly, it seems unlikely that landlords will implement higher rents for high income social tenants until further legislation is in place.

Rent Act 1977 tenancies

The regulations specify that S23 of the Act does not apply in the case of:

- Accommodation where the rent is registered under the Rent Act 1977, and the registered rent is lower than the social rent; or
- Other accommodation where the Rent Act criterion is met.

In these cases, the maximum rent payable by the tenant is the social rent (plus up to 10% in the case of non-specialised supported housing).

Temporary reductions or waivers

Paragraph 8 of the regulations requires a landlord to disregard any temporary reductions or waiver of rent when calculating the maximum rent for a dwelling.

Supported housing

At paragraphs 10 and 11 the regulations permit a landlord to set higher rents for supported housing.

Where a supported housing tenancy begins during 2016/17 and the tenant is charged a social rent, regulation 11 allows for the formula rent used to calculate the social rent to be increased by up to 10%. Landlords may also implement a CPI + 1% rent increase for 2016/17 in respect of supported housing where the tenant pays a social rent (followed by 1% reductions).

Where a supported housing tenancy begins before 1 April 2016, and the accommodation is let at an affordable rent, regulation 11 also allows the maximum rent for 2016/17 to include the effects of a CPI + 1% increase in the market rent, if that rent is higher than the social rent.

It is important to note that the definition of "support" provided at regulation 2 is very specific, and provides greater clarity on the types of supported housing that are excluded from the rent reduction requirement.



It is also clear that, in applying the exception for supported housing, it is important to take into account the characteristics of the tenant, as well as the accommodation itself. For example, supported housing must be:

- Low cost rental accommodation
- Made available only in conjunction with the supply of support
- Only available to residents who have been identified as needing support
- Either:
 - Designed, altered or refurbished to enable independent living; or
 - Available to people from a designated group with specific support needs

This may mean, for example, that tenants who live in a supported housing scheme and live independently without support are not covered by the exception.

Almshouses, co-operative/ mutual housing associations and community land trusts

Regulations 12 and 13 allow the following in respect of almshouses, co-operative housing associations, mutual housing associations and community land trusts:

- Landlords may increase the formula rent used to calculate the maximum social rent in 2016/17 by up to 5%
- If the rent payable by the tenant is higher than the maximum social rent, then a 1% reduction should be applied in 2017/18
- The maximum rent for 2016/17 includes the effects of a CPI + 1% increase in the rent payable by the tenant (followed by 1% reductions)

Where a tenancy begins before 1 April 2016, and the accommodation is let at an affordable rent, regulation 13 also allows the maximum rent for 2016/17 to include the effects of a CPI + 1% increase in the market rent, if that rent is higher than the social rent.

Accelerated reductions

Landlords may decide to implement rent reductions of more than 1% in the case of properties let at a social rent. If they do so, the qualifying year for those properties occurs when:

- For properties let before 8 July 2015, the rent payable reaches 3.94% less than the rent payable in 2016/17
- For properties let on or after 8 July 2015, the rent payable reaches 2.97% less than the rent that would have been payable in if the tenancy had started at the start of 2016/17.

Landlords making accelerated rent reductions do not need to make further reductions after the qualifying year.

Financial viability impact

Regulation 15 outlines the criteria, under which a landlord may seek modification or disapplication of the requirement for rent reductions.

In the case of a housing association, the requirement may be modified or dis-applied if:

- Complying with the requirement would jeopardise its financial viability
- It has recently received a transfer of housing from another registered provider, and either:
 - The specific housing concerned was subject to a direction that modified or dis-applied the requirement for rent reductions; or
 - The regulator has already issued a direction to the transferee permitting them to modify or dis-apply the requirement for rent reductions

Further guidance for housing associations on applying for an exemption was published recently in the HCA note Explanatory note for making a formal application for an exemption to the rent reductions in the Welfare Reform and Work Act 2016.



A local authority may also apply for an exemption if the Secretary of State considers that it would be unable to avoid serious financial difficulties if it were to implement rent reductions. Further guidance on the application process for local authorities is expected.

It is reasonable to assume that the bar for granting an exemption is likely to be set at a high level for both housing associations and local authorities. We anticipate that a successful application would need to demonstrate that the applicant is unable to avoid the difficulties, even after taking actions such as:

- Reducing operating costs
- Utilising all of the flexibilities permitted by the regulations
- Revising plans for investing in the existing stock
- Changing plans for developing new housing
- Disposing of dwelling and non-dwelling assets
- Working in partnership with other providers
- Transferring stock to another landlord
- Switching tenures for some dwellings

It is also clear that any exemption may apply for a specific period, and may be limited to part of the landlord's stock.

Service charges

Regulation 16 clarifies whether service charges are included within "rent" for the purposes of rent reductions. In the case of affordable rent properties, "rent" includes service charges (in line with the definition of affordable rent used elsewhere), unless the property is let at a social rent because the social rent rate is greater than 80 per cent of the market rent. For properties let at a social rent, "rent" excludes service charges. This means that landlords continue to have flexibility to apply different increases in respect of the service charges they make for social rented properties, reflecting changes in the actual cost of the services. This flexibility appears to permit service charge de-pooling, if a landlord wishes to de-pool service charges from an inclusive rent.

Formula rent

The schedule to the regulations defines the method of calculating the formula rent. The formula is in line with previous formulae prepared by DCLG and HCA.

For supported housing, the regulations permit the use of depreciated replacement cost, when calculating formula rents, instead of the existing use value. This is already permitted in the HCA Rent Standard, but is not included in the DCLG Guidance on Rents for Social Housing. This change provides local authorities with additional flexibility when setting rents for supported housing, and applies to the base formula rent calculated for 2000/01.

The formula rent calculation laid out in the Schedule to the regulations also specifies the Rent caps that apply for 2015/16.

References and links

[The Social Housing Rents \(Exceptions and Miscellaneous Provisions\) Regulations 2016 \(SI 2016 No. 390\)](#)

[Welfare Reform and Work Act 2016](#)

[Guidance on Rents for Social Housing](#)

[Rent Standard](#)

[Guidance on the Welfare Reform and Work Act 2016 social rent reduction](#)

[Explanatory note for making a formal application for an exemption to the rent reductions in the Welfare Reform and Work Act 2016](#)