

EXPLANATORY MEMORANDUM TO
THE SOCIAL HOUSING RENTS (EXCEPTIONS AND MISCELLANEOUS
PROVISIONS) (AMENDMENT) REGULATIONS 2017

2017 No. 91

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations (“the amendment Regulations”) amend the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 (S.I. 2016/390) (“the principal Regulations) which, amongst other things, created certain exceptions from the social rent requirements imposed by the Welfare Reform and Work Act 2016 (“the Act”) and made provision for the maximum rent that may be charged for certain of the excepted categories (“alternative provision”).
- 2.2 The Regulations create new exceptions, extend the period for which certain of the exceptions apply, make or amend related alternative provision and make some other minor amendments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The social rent provisions of the Act require registered providers of social housing in England to secure that rents are no more than an amount determined in accordance with either section 23 or Part 1 of Schedule 2 (“the rent requirements”) to the Act in each of four relevant years (“the rent restriction period”). The first relevant year began on 1 April 2016 for most providers, but the Act allows a private registered provider which has aligned rent years for the majority of its tenancies to align its relevant year to that period (in such a case the first relevant year would begin in the period from 2 April 2016 to 31 March 2017).
- 4.2 The principal Regulations made provision dis-applying the rent requirements and made alternative provision for certain of the excepted cases. Certain of the exceptions from section 23 were time limited and applied only for the first relevant year. Though the equivalent exceptions from Part 1 of Schedule 2 were not time limited, the effect of the alternative provision for those cases was to enable initial rents to be set at a

higher level in the first relevant year, before implementation of rent reductions in the second and subsequent relevant years.

- 4.3 The amendment Regulations extend the exceptions relevant to domestic violence refuge accommodation, almshouse accommodation, and accommodation provided by a cooperative or mutual housing association or a community land trust so that they apply for the full rent restriction period, not just the first relevant year. They also make consequential amendments, including to the alternative provision applicable to those cases, in order to enable providers of such accommodation to continue to set initial rents at a higher level and to increase rents by CPI + 1% in each relevant year.
- 4.4 The Regulations also create new exceptions related to social housing administration covering accommodation provided by a private registered provider which is in housing administration and accommodation that has been sold by a housing administrator after the sale. They also make some other amendments described below.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
- 5.2 This instrument applies to social housing in England only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The policy background to the Government's decision to reduce social rents by 1% each year up to 2020 is set out in paragraphs 7.1 to 7.3 of the explanatory memorandum to the principal Regulations. That position has not changed. The earlier memorandum can be found at:
http://www.legislation.gov.uk/ukxi/2016/390/pdfs/ukxiem_20160390_en.pdf.
- 7.2 These Regulations amend the principal Regulations to implement Government policy decisions concerning social rent policy from the start of the second relevant year (i.e. 1 April 2017 for the majority of providers) for domestic violence refuges, community land trusts, almshouses, co-operative and fully mutual housing associations and community land trusts. The Government has decided that these providers should continue to have the flexibility to set initial rents at a higher level and to increase rents by CPI + 1% per annum that the principal Regulations enabled in the first relevant year. These Regulations accordingly extend the period of the relevant exceptions from one year to four and make related amendments to alternative provision for maximum rents for those cases.
- 7.3 The amendment Regulations also except from the rent requirements accommodation provided by a provider under housing administration. Furthermore, if such accommodation is sold by a housing administrator, it is not subject to the rent requirements after the sale. This will ensure that a housing administrator has the ability to achieve a commercial sale valuation for the housing stock, which is likely to be affected by any restrictions on the amount of rent which may be generated.

- 7.4 Finally, the amendment Regulations make some amendments to the definitions of intermediate rent accommodation enabling programme (“IRAEP”) and affordable rent housing to ensure that the intended policies are applied to accommodation provided under IRAEP and Affordable Homes Programmes. (During the passage of the Act it was agreed that homes offered on an intermediate rent should not be subject to the rent requirements and that rents for new tenancies of affordable rent housing should continue to be set at up to 80% of market rent, but subject to the requirement to reduce rents by 1% per annum thereafter.)
- 7.5 Regulation 3 amends the definition of IRAEP in regulation 2 of the principal Regulations and the definition of affordable rent housing in regulation 19 of the principal Regulations. The changes clarify the name of the 2016 – 21 Affordable Homes Programme, rectify an omission from the list of IRAEPs, and, otherwise, incorporate in the definitions newly launched intermediate rent and affordable rent products. Links to details of these programmes can be found at:
- Shared Ownership and Affordable Homes Programme 2016-21
<https://www.gov.uk/government/collections/shared-ownership-and-affordable-homes-programme-2016-to-2021-guidance>
- Homes for Londoners: Affordable Homes Programme 2016-21
<https://www.london.gov.uk/what-we-do/housing-and-land/homes-londoners/homes-londoners-affordable-homes-programme-2016-21>
- Affordable Homes Programme 2011-15
<https://www.gov.uk/government/publications/affordable-homes-programme-2011-to-2015-framework>
- London Housing Zones programme
<https://www.london.gov.uk/what-we-do/housing-and-land/increasing-housing-supply/housing-zones>
- 7.6 Regulation 4(1) inserts a definition of domestic violence refuge accommodation in regulation 2 of the principal Regulations.
- 7.7 Regulation 4(2) amends regulation 3 of the principal Regulations to add domestic violence refuge accommodation, almshouse accommodation and accommodation provided by co-operative or mutual housing associations and community land trusts to the list of cases excepted from section 23 for the entirety of the rent restriction period and makes a consequential amendment to the exception for supported housing.
- 7.8 Regulation 4(3) amends regulation 4 of the principal Regulations to add domestic violence refuge accommodation as a specified case and makes a consequential amendment to the exception for supported housing.
- 7.9 Regulation 5 amends regulation 9 of the principal Regulations which modifies the effect of section 23 of the Act for supported housing, almshouse accommodation etc. Its effect is to enable registered providers to increase rents of established tenants of such accommodation by CPI + 1% in each relevant year in which section 23 is disapplied.
- 7.10 Regulation 6 inserts provision modifying the effect of Part 1 of Schedule 2 for domestic violence refuge accommodation and regulation 7 amends regulation 13 of the principal Regulations which modifies the effect of Part 1 of Schedule 2 to the Act

for almshouse accommodation etc. Their effect is to enable providers of such accommodation to set initial rents for new tenancies at a higher level and increase rents by CPI + 1% in any subsequent relevant year.

- 7.11 Regulation 8 amends regulations 2 to 4 of the principal Regulations and makes related consequential amendments. Its effects are to except from the rent requirements private registered providers of social housing that are under housing administration and accommodation which has been under housing administration after it is sold to a new provider by a housing administrator.
- 7.12 Regulation 9 makes further amendments to the principal Regulations. Regulation 9(1) clarifies the position under Part 1 of Schedule 2 to the Act as modified by regulation 10 of the principal Regulations where a tenancy of affordable rent housing which began before the beginning of the first relevant year comes to an end or Part 1 of Schedule 2 (as modified) ceases to apply during the first relevant year. Regulation 10(2) corrects a typographic error in paragraph 6 of the Schedule to the principal Regulations.

Consolidation

- 7.13 This instrument amends the principal Regulations for the first time. The Department has no current intention of making consolidating legislation.

8. Consultation outcome

- 8.1 Prior to the introduction into Parliament of the Housing and Planning Act 2016, the Government carried out informal consultation on housing administration proposals with representatives from insolvency practitioners, valuers and the main lenders in the sector. This group represents the organisations which would be engaged in a housing administration process. There was support for the policy that would except homes subject to housing administration or which have been subject to housing administration both whilst under housing administration and after sale by a housing administrator.
- 8.2 The key representative bodies for almshouses, community land trusts, co-operatives and fully mutual housing associations raised the issue that these regulations address and were engaged and consulted fully. Each of the representative bodies submitted evidence and had the opportunity to discuss the policy in detail with the Department. All of the representative bodies advocated the extension that is granted in these regulations.
- 8.3 The key domestic abuse refuge representative bodies were engaged and consulted fully. Evidence was submitted to the Department that demonstrated that an exception from the rent regulations for the remainder of the rent reduction policy up to 2020 is justified. There was wide support for the proposals from key bodies. In particular, from Women's Aid who argued strongly for the exception.
- 8.4 There has been no consultation on the inclusion of further intermediate rent products in the list of programmes which are excepted from the rent reductions (if certain funding and contractual conditions are met) or those to the definition of affordable rent housing. The changes follow established policy decided during the passage through Parliament of the Welfare Reform and Work Act 2016.

9. Guidance

- 9.1 The regulator, key partners and registered providers have already been made aware of the Government's intention to bring forward these Regulations and the revised policy on social rents from which they put in place. No further specific guidance is necessary.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies as private registered providers of social housing have been classified by the Office of National Statistics (ONS) as public sector.
- 10.2 These Regulations have an impact on local government and on private registered providers of social housing, which as noted above are classified as public sector. The impact is positive for providers, who will be able to that increase social rents from 1 April 2017 in the cases covered by the amendments effected by these Regulations, meaning that they will have more income to provide essential services. The decision to allow small increases in rents has been balanced against the impact on tenants and the welfare bill through payments via Housing Benefit. The Government's clear conclusion is that in the cases covered by the Regulations, it is right that the exception from rent reductions is granted.
- 10.3 Whilst no Impact Assessment has been published specifically in relation to these Regulations, an Impact Assessment for the social rent reduction measure in the Welfare Reform and Work Act was published on 29 September 2015 and can be found at <http://www.parliament.uk/documents/impact-assessments/IA15-006.pdf>.

11. Regulating small business

- 11.1 These Regulations have an impact on local government and on registered providers of social housing, which the Office for National Statistics (ONS) has classified as public sector. The impact on these organisations, some of which are small in terms of people employed, are as set out in paragraph 10.2.

12. Monitoring & review

- 12.1 The review requirement under section 28 of the Small Business Enterprise and Employment Act 2015 does not apply as the Regulations amend provision which will cease to have effect within 5 years of coming into force.

13. Contact

- 13.1 Geraldine Rowe at the Department for Communities and Local Government
Telephone: 0303 444 1927 or email: Geraldine.Rowe@communities.gsi.gov.uk can answer any queries regarding the instrument.