

EXPLANATORY MEMORANDUM TO
THE SOCIAL HOUSING RENTS (EXCEPTIONS AND MISCELLANEOUS
PROVISIONS) REGULATIONS 2016

2016 No. 390

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.
- 1.2 This memorandum contains information for Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations set out exceptions to the requirements of section 23 of and Part 1 of Schedule 2 to the Welfare Reform and Work Act 2016 (“the 2016 Act”), set out alternative provision in relation to certain of the excepted categories, define certain important terms used in the 2016 Act and prescribe circumstances in which an exemption from the requirements of the Act may be granted to a private registered provider.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The social rent provisions of the 2016 Act require registered providers of social housing to secure that rents are no more than an amount determined in accordance with section 23 or Part 1 of Schedule 2 in each of four relevant years. The first relevant year will, pursuant to section 23(6) generally begin on 1 April 2016. The Government will therefore be bringing the social rent provisions of the 2016 Act into force on 1 April 2016 to coincide with the beginning of the first relevant year. Commencement regulations to bring the substantive provisions into force on that date will be made at the same time that these regulations are made.
- 3.2 These regulations relate to exceptions from and alternative provision to the basic requirements of the 2016 Act and also set out various definitions that are vital to its smooth implementation. The Government therefore considers it necessary that these regulations should come into force on the same day as the substantive provisions in the 2016 Act.
- 3.3 Royal Assent was given on 16 March 2016 meaning that the Government has been unable to comply with the 21-day rule. The regulations were made the day after Royal Assent and laid before Parliament immediately thereafter. Those affected by the Regulations are aware of the contents of them as the Minister made clear during the passage of the Bill that the exceptions to be contained in the Regulations would reflect the existing exceptions to the rent setting regime applicable to social landlords, and that the definitions of formula rent affordable rent housing and provisions relating to rent and service charge would be aligned to present policy.

- 3.4 Were the coming in to force of the Regulations to be delayed beyond 1 April 2016 it would lead to the result that registered providers of social housing would be required by the 2016 Act to implement rent reductions in respect of categories of accommodation between 1 April and the date of the coming into force of the Regulations. Furthermore, as paragraph 3 of Schedule 2 only applies to accommodation defined in regulations as affordable rent housing the more restrictive rent setting regime set out in paragraphs 1 and 2 of Schedule 2 would apply to Affordable Rent properties until that time.

Other matters of interest to the House of Commons

- 3.5 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 These Regulations are made under the 2016 Act which applies to registered providers of social housing in England. These regulations define certain terms which are essential for the effective operation of these measures – formula rent, affordable rent housing and affordable rent, prescribe circumstances in which an exemption from the measures may be granted to a private registered provider and prescribe when rent does or does not include service charge.
- 4.2 During the passage of the Bill the Government indicated that the application of the 2016 Act would be aligned, so far as possible, with the application of previous rent policy and gave a commitment to except supported housing and almshouses and accommodation provided by fully mutual housing associations, co-operative housing associations and community land trusts from the provision of the Bill for a period of 12 months. These regulations implement those commitments and further create exceptions and make alternative provision where necessary to protect tenants or to assist providers (including provision for disapplication of that alternative provision on conditions which mirror the conditions for granting exemptions which are set out in the 2016 Act and in these Regulations in relation to the basic provisions of the 2016 Act).
- 4.3 Section 36(5) brought the regulation making powers of the social rent provisions of the 2016 Act into force on Royal Assent and section 36(1) had the same effect in relation to the provisions relating to exemptions for registered providers. Commencement Regulations are required to bring the remaining substantive provisions of the social rent provisions of the Act into force and those are being made at the same time as these regulations. The majority of the substantive social rent provisions will be brought into force on 1 April 2016 (paragraph 8(1) of Schedule 2 to the Act will be brought into force on the day after the Commencement Regulations are made, paragraphs (3)(b) and (c) of section 33 are not to be brought into force).

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 Social housing rents reflect the Government's rent policy. Since 2001 that policy has been that "Social Rent" (also known as "formula rent" or "target rent") should be determined in accordance with a formula which reflects relative property values and earnings and the size of the property. Formula rent was uprated annually and the policy included a limit on annual rent increases. In 2011, the Coalition Government introduced a new form of social housing, "Affordable Rent", whose rent can be set at up to 80% of market rate, inclusive of service charges, and which is also subject to rent policy and the limit on annual rent increases.
- 7.2 The Government has made clear its objective of tackling the deficit and rebalancing the welfare state, whilst sharpening work incentives and supporting the vulnerable. Over the decade to 2014, social rents have risen by an average of over 60%, outstripping those in the private sector, which increased by 23% between 2005 and 2015. Housing benefit paid to the social sector has increased in real terms by around a quarter over the last ten years, reaching £13.2 billion in 2014-15. The rent policy implemented in April 2015 put greater restrictions on rent increases in the social sector, but to bring public finances under control it is necessary to go further.
- 7.3 The 2016 Act requires registered providers of social housing in England (local authorities and private registered providers) to reduce social housing rents by 1% a year from April 2016 for 4 years from a 2015/16 baseline and to comply with requirements regarding the maximum levels of rents that may be charged in respect of tenancies beginning after the beginning of 8 July 2015. The intention of this measure is to protect taxpayers from the rising costs of subsidising rents through housing benefit and protect social tenants from rising housing costs. This measure will reduce average rents for households in the social housing sector by around 11% by 2020, compared to current forecasts.
- 7.4 These Regulations set out exceptions to and circumstances in which exemptions may be given from the rent regime otherwise applicable under the 2016 Act, make alternative provision for certain excepted categories, and define certain terms used in the 2016 Act.
- 7.5 Regulation 2 defines key terms used in these regulations, in particular, the types of social housing accommodation excepted from the requirements of section 23 of and Schedule 2 to the Act.
- 7.6 One of the key terms defined in Regulation 2 is "intermediate rent accommodation". Intermediate rent accommodation includes accommodation funded wholly or in part by social housing assistance or other public capital grant, subsidy or loan under an "intermediate rent accommodation enabling programme". The programmes which fall within that definition are the following:
- Keyworker Living Programme 2004 – 2010
<http://webarchive.nationalarchives.gov.uk/20110203003832/http://cfg.homesandcommunities.co.uk/kwl-overview>

- National Affordable Homes Programme 2008 – 2011
http://www.housinglin.org.uk/library/Resources/Housing/Policy_documents/nahp_08-11.pdf
- Rent to Buy loan within the Affordable Homes Programme 2015 – 18
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343896/affordable-homes-15-18-framework.pdf
<https://www.gov.uk/government/publications/rent-to-buy-2015-to-2017-prospectus>
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408490/141104_Rent_to_Buy_supplementary_information.pdf
- Rent to Save within the London Mayor’s Housing Covenant Programme 2015 - 2018
https://www.london.gov.uk/sites/default/files/the_mayors_housing_covenant_2015-18_programme_prospectus.pdf
- Rent to Save within the Homes for Working Londoners Programme 2013 - 2017
https://www.london.gov.uk/sites/default/files/housing_covenant_funding_prospectus.pdf
- Rent to Save within the Building the Pipeline Programme 2013
https://www.london.gov.uk/sites/default/files/131002_building_the_pipeline_prospectus_post_budget_revision_update.pdf
- London Housing Bank Programme
https://www.london.gov.uk/sites/default/files/the_london_housing_bank_prospectus_0.pdf
- Rent to Buy grant funding within the Affordable Homes Programme 2016-2021

- 7.7 Regulation 3 sets out the categories of accommodation excepted from the requirements of section 23. Exceptions may apply throughout the 4 years or in the case of supported housing and other accommodation prescribed in regulation 3(2) for one year.
- 7.8 Full exceptions are aligned with the types of accommodation or tenants that were not subject to the existing Rent Policy. Accordingly exceptions cover High Income Social Tenants, Intermediate Rent accommodation, specialised supported housing, PFI social housing, temporary social housing, student accommodation, ‘fair rent’ tenants under the Rent Act 1977 where the registered rent is lower than the social rent rate, care homes, social housing under the Housing Act 1996 that is not low cost rental accommodation. Also excepted is accommodation where the rent was temporarily reduced during the previous relevant year or in respect of which the provider has accelerated the rent reductions required over the 4 year period.
- 7.9 Regulations 5 to 8 set out the alternative provisions relating to the maximum level of rent which may be charged which apply during the period when certain exceptions under regulations 3 or 4 apply or when they cease to apply. These include special

provisions for former high income social tenants, certain Rent Act 1977 tenancies (“fair rent” tenants) and temporary reductions or waivers.

- 7.10 Regulation 5 sets out the maximum level of rent to be charged in relation to a tenant who was a high income social tenant in the previous relevant year but who does not satisfy the income qualification criterion in the current relevant year. The level of rent is to be what the rent would have been if the relevant exception had not previously applied.
- 7.11 Regulation 6 set out the maximum level of rent to be charged where the exception for a Rent Act 1977 tenancy ceases to apply because the registered rent set under the Rent Act 1977 by the Rent Officer becomes higher than the social rent rate. In these cases, the rent to be charged in the remainder of the relevant year is the social rent rate.
- 7.12 Regulation 7 provides that the maximum rent for a tenancy where the registered rent was previously less than the social rent rate is the social rent rate during following relevant years.
- 7.13 Regulation 8 sets out the maximum level of rent to be charged where there has been a temporary reduction of the rent payable in a relevant year. In determining the maximum level of rent to be charged, the effect of the temporary reduction should be disregarded.
- 7.14 Regulation 9 modifies the application of section 23 of the 2016 Act where the exceptions under regulation 3(2) apply. This applies to supported housing, almshouse accommodation and accommodation provided by a fully mutual housing association, a co-operative housing association or a community land trust. The regulations allow rents for these types of accommodation to be increased by up to CPI + 1% (0.9%) in the first relevant year, as under the previous policy.
- 7.15 Regulations 10 and 11 modify the effect of Part 1 of Schedule 2 to the 2016 Act in respect of supported housing. Their effect is to uplift the rate of formula rent (the starting point for the calculation of the social rent rate in Schedule 2) by 10% – a continuation of present policy which gives providers an additional 10% flexibility above formula rent in the case of supported housing. The social rent rate and assumed rent rate are then further uplifted by 0.9% in the first relevant year, followed by a 1% reduction in subsequent years. Provision regarding maximum rents for affordable rent housing let after the beginning of 8 July 2015 and the beginning of the first relevant year is also modified in the first relevant year to enable a rent increase of 0.9% to be implemented from the anniversary of when that rent was set.
- 7.16 Regulations 12 and 13 modify the effect of Part 1 of Schedule 2 to the 2016 Act in respect of almshouse accommodation and accommodation provided by fully mutual housing associations, co-operative housing associations or community land trusts. Their effect is to modify Part 1 of Schedule 2 in a similar way to that set out in paragraph 7.14 above, save that the permitted flexibility above formula rent is 5% rather than 10% and available only in relation to tenancies that began before the beginning of the second relevant year. Part 1 of Schedule 2 is further modified to provide that where that applies, in the case of a tenancy which started after the beginning of the first relevant year the maximum rent is 1% less than the rent payable in the relevant year in which the rent was set.
- 7.17 Regulation 14 enables providers of social housing to accelerate the reductions required by the 2016 Act if they wish. This has been included because some providers have requested such provision. Once providers have achieved a reduction equivalent

to a 1% annual reduction in each of 4 years they will be able to freeze rents in the following years. In respect of tenancies which fall within section 23 from the beginning of the first relevant year (tenancies which began before the beginning of 8 July 2015) the equivalent reduction is 3.94% compared with the rent in the previous 12 months. This figure derives from the final sum of an annual reduction of 1% for 4 years, after which all providers will have made a reduction of 3.94% from their previous levels of rents. In case of other tenancies (which must comply initially with the requirements of Schedule 2), the point of comparison is the social rent rate or assumed rent rate that would have applied in the first relevant year (which already included a 1% reduction) from which providers will have to make a 2.97% reduction. This regulation does not apply to Affordable Rent tenancies unless they are set based on the social rent rate (where it is higher than 80% of the market rate), as it is not practical to do so.

- 7.18 Regulation 15 makes provision for directions to be made by the Regulator of Social Housing in respect of private registered providers of social housing and by the Secretary of State in respect of local authorities, to disapply or modify the effect of regulations 5 to 14.
- 7.19 Regulation 16 sets out when references to “rent payable” by a tenant includes or does not include service charges. In the case of most Affordable Rent housing, the rent payable includes service charges. In the case of other social housing and Affordable Rent housing where the rent is set on a social rent basis (where it is higher than the percentage of the market rate specified in the agreement – usually 80%), the rent payable does not include service charges.
- 7.20 Regulation 17 enables the Regulator, with the Secretary of State’s consent, to grant an exemption to a private registered provider when that provider takes over stock from another registered provider and a direction already applies in respect of that stock. This is an alternative condition to that set out in section 22(4) of the 2016 Act.
- 7.21 Regulation 18 and the Schedule set out the method for calculating “formula rent” for the purposes of Schedule 2 to the 2016 Act. The method is based on that set out in the Guidance on Rents for Social Housing from April 2015 published by the Department for Communities and Local Government in May 2014 and the Rent Standard Guidance published by the Regulator of Social Housing in January 2015.
- 7.22 The Schedule sets out the formula for calculating rent for the year 2000 – 2001:

$$FR = (£38.23 \times RCE \times BW) + (£16.39 \times RPV)$$

Where:

FR is formula rent

RCE are relative county earnings calculated in accordance with paragraph 2 of the Schedule

BW is bedroom weighting calculated in accordance with paragraph 3 of the Schedule

RPV is relative property value calculated in accordance with paragraph 4 of the Schedule

This formula derives from the formula set out in the documents referred to in paragraph 7.20 above which is:

70% of the national average weekly rent in April 2000 (£54.62). This equals £38.23.

Multiplied by relative county earning (the average manual earnings for the county in which the property is located which are set out in table 1 of the Schedule, divided by the national average manual earnings which is £316.40)

Multiplied by the bedroom weighting

Plus

30% of the national average weekly rent in April 2000 (£54.62). This equals £16.39.

Multiplied by relative property value (an individual property's value, divided by the national average property value as at January 1999 prices which is £49,750)

- 7.23 The formula rent for 2015-16 is then determined by multiplying the formula rent for the year 2000 -2001 by 1.6657. This figure derives from applying each year's annual uprating factors based on the previous rent policies, as set out in the table below.

Year	Inflation	Additional	Total
2001-02	3.3%	1.0%	4.3%
2002-03	1.7%	0.5%	2.2%
2003-04	1.7%	0.5%	2.2%
2004-05	2.8%	0.5%	3.3%
2005-06	3.1%	0.5%	3.6%
2006-07	2.7%	0.5%	3.2%
2007-08	3.6%	0.5%	4.1%
2008-09	3.9%	0.5%	4.4%
2009-10	5.0%	0.5%	5.5%
2010-11	-1.4%	0.5%	-0.9%
2011-12	4.6%	0.5%	5.1%
2012-13	5.6%	0.5%	6.1%
2013-14	2.6%	0.5%	3.1%
2014-15	3.2%	0.5%	3.7%
2015-16	1.2%	1.0%	2.2%

- 7.24 Regulation 19 defines “affordable rent housing”. The Regulations align the application of rent setting on affordable rent principles under the 2016 Act with the existing rent policy expressed in the documents referred to in paragraph 7.20. The definition of Affordable Rent Housing includes housing provided pursuant to a relevant agreement with the Homes and Communities Agency or the Greater London Authority. A relevant agreement is one of the following programmes:

- The Affordable Homes Programme 2011 – 15
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371817/affordable-homes-framework.pdf
- The Affordable Homes Programme 2015 – 18
<https://www.gov.uk/government/publications/affordable-homes-programme-2015-to-2018-prospectus>
- The Affordable Homes Programme 2016 – 21
- The Bringing Empty Homes Back into Use Programme, November 2011

<https://www.gov.uk/government/publications/empty-homes-programme-round-1-bidding-guidance>

- The Bringing Empty Homes Back into Use as Affordable Housing Programme, December 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344617/bringing_empty_properties_full_2013.pdf
- The Care and Support Specialised Housing Fund: Phase 1, October 2012
https://cfg.homesandcommunities.co.uk/sites/default/files/our-work/care_and_support_specialised_housing_fund_prospectus.pdf
- The Care and Support Specialised Housing Fund: Phase 2, February 2015
<https://www.gov.uk/government/publications/care-and-support-specialised-housing-fund-phase-2-prospectus>
- The Affordable Homes Guarantees Programme 2013 – 2017
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344495/ahgp.pdf
- The Homelessness Change Programme 2015 – 2017
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490885/150309_homelessness_change_prospectus_full.pdf
- The Platform for Life Programme 2015 – 2017
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490885/150309_homelessness_change_prospectus_full.pdf
- The Mayor's Housing Covenant: Homelessness Change and Platform for Life Fund, March 2015
<https://www.london.gov.uk/sites/default/files/GLA%20Homelessness%20Change%20and%20Platform%20for%20Life%20prospectus%20v5.pdf>
- The London Mayor's Housing Covenant 2015-18 Programme
https://www.london.gov.uk/sites/default/files/the_mayors_housing_covenant_2015-18_programme_prospectus.pdf
- The London Mayor's Care and Support Specialised Housing Fund: Phase 1, October 2012
<https://www.london.gov.uk/what-we-do/housing-and-land/increasing-housing-supply/mayors-care-and-support-specialised-housing>
- The London Mayor's Care and Support Specialised Housing Fund: Phase 2, March 2015
https://www.london.gov.uk/sites/default/files/funding_prospectus_mcsshf_phase_2_2.pdf

Consolidation

- 7.25 This is the first exercise of the enabling powers and the issue of consolidation therefore does not arise.

8. Consultation outcome

- 8.1 During the passage of the Bill, the Department engaged with the social housing sector, the Regulator and other stakeholders and have listened to their concerns. We have addressed some of the issues raised by the sector during the passage of the Bill by way of amendments to the Bill, and continue to engage with the sector as they develop plans to manage these changes.
- 8.2 We recognise that the rent reduction may have a bigger impact on some providers and some specific types of housing. The Government is in the process of reviewing supported housing and initial findings are expected to be available in the Spring. With this in mind, the Government has decided to put in place a one-year exception for all supported housing, almshouses, fully mutual housing associations, co-operative housing associations and community land trusts, to give it the time to get the review right and to consider workable and sustainable solutions for this Sector.

9. Guidance

- 9.1 No guidance specific to these regulations is intended, however the committee may wish to note that the Regulator intends to issue an explanatory note for private registered providers regarding exemptions from the social rent requirements of the 2016 Act. The Department for Communities for Local Government also intends to issue a similar document in respect of exemptions for local authorities as well as guidance about determining the rate of rent that is likely to have been payable by a tenant of particular social housing at a particular time for the purposes of calculating the assumed rent rate under paragraph 1(5)(a)(iii) or (iv) of Schedule 2 to the 2016 Act.

10. Impact

- 10.1 These regulations set out exceptions from and alternative provisions to the basic requirements of the 2016 Act, which in so far as they impact on business, charities or voluntary bodies generally mitigate the impact of the rent reduction measure. Key definitions within these regulations, exceptions and alternative provision largely maintain the existing position in relation to the application of rent policy, and accordingly their impact on business, charities or voluntary bodies has been largely reflected in the impact assessment for the Act.
- 10.2 These regulations set out exceptions from and alternative provisions to the basic requirements of the 2016 Act, which in so far as they impact on public sector housing providers generally mitigate the impact of the rent reduction measure. Key definitions within these regulations, exceptions and alternative provision largely maintain the existing position in relation to the application of rent policy, and accordingly their impact on public sector housing providers has been largely reflected in the impact assessment for the Act.
- 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 2016 was published on 29 September 2015 and can be found at: <http://www.parliament.uk/documents/impact-assessments/IA15-006F.pdf>

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people) particularly specialised supported housing and small charity providers, the Government is in the process of reviewing supported housing and initial findings are expected to be available in the Spring. With this in mind, the Government has decided to put in place a one-year exception for all supported housing, almshouses, fully mutual housing associations, co-operative housing associations and community land trusts, to give it the time to get the review right and to consider workable and sustainable solutions for this Sector.

12. Monitoring & review

- 12.1 The Government is in the process of reviewing supported housing and initial findings are expected to be available in the Spring. We will use these findings to consider workable and sustainable solutions for this Sector.

13. Contact

- 13.1 Kara Kashemsanta at the Department for Communities and Local Government Telephone:0303 444 3118 or email:Kara.Kashemshanta@communities.gsi.gov.uk can answer any queries regarding the instrument.