

EXPLANATORY MEMORANDUM TO
THE ASSURED TENANCIES (AMENDMENT)(ENGLAND) ORDER 2010

2010 No. 908

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

The instrument raises the annual rental threshold for assured tenancies to £100,000.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Housing Act 1988 (“the 1988 Act”) introduced assured tenancies, a new type of tenancy to be used for both private sector and housing association residential tenancies in England and Wales from 15 January 1989. The Act provides that all tenancies take the form of assured tenancies or assured shorthold tenancies unless they come within one of the exceptions set out in Schedule 1 to the Act. As originally enacted tenanted dwellings with high rateable values (£1,500 in Greater London and £750 elsewhere) could not be assured tenancies.

4.2 Following the abolition of domestic rates, the References to Rating (Housing) Regulations 1990 SI 1990/434 replaced the references to rateable values with a single annual rental threshold of £25,000. Tenancies entered into on or after 1 April 1990 with annual rents above the threshold could not be assured or assured shorthold tenancies. This threshold has not been amended since it was introduced.

4.4 The new rental threshold will affect the existing rights of those landlords and tenants who have already taken out tenancy agreements. We consider the proposed increase in rental threshold is prospective rather than retrospective because it will not affect the rights of tenants and landlords prior to its commencement.

4.5 The new threshold will have an effect on assured tenancies entered into prior to commencement of the Housing Act 1996 (“the 1996 Act”) on 28 February 1997, which have subsequently stopped being assured because the rent increased to above £25,000. This group of tenants will not have been served with a notice under s. 20 of the 1988 Act. The s. 20 notice informed the tenant, prior to commencement of his or her tenancy, that they were being granted an assured shorthold tenancy rather than a fully assured one. This means that when we raise the threshold, those tenants will again become assured. Because they were never served notice under s. 20 and entered into their tenancy agreements before the law changed on 28 February 1997 they will automatically become assured tenants. This means that a landlord would not be able to recover possession by giving two months’ notice which is possible for landlords of assured shorthold tenants. We do not anticipate that this will affect a large group of tenants because the bulk of tenancies will be entered into after this date and will automatically be assured shorthold tenants.

4.6 The Housing Act 2004 made provision for a tenancy deposit scheme for the purposes of safeguarding tenancy deposits. Landlords of all assured shorthold tenancies entered into on or after 6 April 2007 had to protect their tenants’ deposits in a recognised scheme. We consider that

those common law tenancies entered into on or after this date, and which will become assured shorthold tenancies when the rental threshold is increased, must protect their tenants' deposits in a recognised scheme. Failure to comply with this requirement means a landlord will not be able to use notice only possession to recover his or her property.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 In the view of John Healey, the Minister for Housing and Planning, the provisions of the Assured Tenancies (Amendment) (England) Order 2010 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 The annual rental threshold is being raised because tenancies that would benefit from the protection of the legislation, such as lettings of shared houses to students, run the risk of being excluded from being assured tenancies because although their rent is not exceptionally high by today's standards, it is above the threshold.

7.2 The rental threshold was originally introduced because, historically, tenancies with very high or very low rents have always been excluded from the legislation. It was considered that tenants paying very high rents did not need statutory protection. An annual rent of £25,000 equates to a calendar monthly rent of about £2,083 or a weekly rent of about £480. In 1990, a rent of £25,000 per year would have been considered very high and would only have been achievable by a very small number of properties at the very top end of the market.

7.3 The effect of the rental limit is that tenancies for which the rent is above the threshold are no longer governed by the provisions of the Housing Act 1988. Such a tenancy continues to be a tenancy, but is outside the scope of the Act. Therefore, it would be regarded as a common law tenancy and would be governed by the terms of the contract (if one was agreed) and any relevant common law requirements.

7.4 One effect of this is that the tenancy can be ended by notice to quit without the landlord needing to give any reason. Long term security of tenure is not such a significant issue for assured shorthold tenancies, as a landlord can normally seek possession after the initial six months of the tenancy or at the end of any longer fixed term agreed with the tenant without having to prove a specific ground for possession (known as 'notice-only' possession.) However, the landlord still has to give the tenant two months' notice. If the rent level breaches the threshold, the tenant loses this protection.

7.5 In addition, a number of important tenant/landlord benefits have been tied to use of shorthold tenancies and these are at risk of not applying as intended where rents breach the threshold:

- a. *Tenancy deposit protection* - this applies only to assured shorthold tenancies. The legislation was applied specifically to assured shorthold tenancies as these are used by the vast majority of private landlords and enable effective penalties to apply (failure to protect a deposit results in loss of the ability to use 'notice-only' possession).

- b. *HMO and selective licensing* – Similarly, where a landlord fails to comply with a requirement to obtain a licence he cannot seek ‘notice-only’ possession.
- c. *Accelerated possession* – for assured shorthold tenancies where ‘notice-only’ possession is sought landlords may use an accelerated possession procedure as opposed to the ordinary possession route. This can significantly speed up the time taken to obtain an order for possession as the case may be dealt without the need for a court hearing.

7.6 Now that an annual rent of £25,000 is not so unusual, particularly where groups of sharers such as students sign up to a joint tenancy, many tenancies that would have traditionally benefited from the protection of the legislation now fall outside its scope. There have been many calls to review the threshold, including an Early Day Motion in 2008 which attracted 37 signatures. The Early Day Motion suggested that the present day equivalent to £25,000 was £52,000 and that the threshold should be raised to that level.

7.7 The Review of the Private Rented Sector, carried out by Julie Rugg and David Rhodes of the Centre for Housing Policy at the University of York in 2008 (the Rugg Review) reported that there was strong support from the stakeholders they consulted for a change to the threshold and quoted the same figure of £52,000 as a more appropriate one.

7.8 Raising the threshold to £100,000 brings all tenancies, except those with the very highest rents, under the protection of the Housing Act 1988 and restores the position intended in the original legislation, to exclude only the tenancies at the very top end of the market. It also means that the threshold will not need to be reviewed again for several years.

- ***Consolidation***

7.9 No consolidation is needed as a result of this instrument.

8. Consultation outcome

8.1 The proposal to raise the annual rental threshold for assured tenancies was included in the Government’s consultation on its response to the Rugg Review. The response was issued for consultation on 12 May 2009 and the consultation closed on 7 August 2009. The consultation stated the Government’s intention to raise the threshold to £100,000 and asked:

Is this the right level for the threshold?

Should there be regular reviews of the threshold?

How frequently should these be carried out?

253 responses to the consultation were received. Of these 100 commented on the proposal to raise the £25,000 threshold. Around 80 supported the proposal to raise the threshold to £100,000. The remaining 20 supported a threshold of around £52,000 or suggested that the threshold should be abolished altogether. Most supported regular reviews, taking place every 1-5 years, although some suggested longer review periods of 5-10 years, or linking the threshold to inflation or a similar index.

9. Guidance

9.1 No guidance has been prepared on the implementation of this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is likely to be very small. Landlords with tenancies that are affected by the change will benefit from being able to use standard forms under the Housing Act 1988 rather than having to produce their own. We acknowledge that there

will be an impact on those landlords who find tenants have now become assured or assured shorthold tenants. However, additional costs, such as those arising from the need to protect their tenants' deposits, will be administrative only as deposits can be protected for free.

10.2 The impact on the public sector is expected to be negligible as these tenancies are used by the private sector.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business as many private landlords operate on a very small scale.

11.2 Many landlords operate as individuals and do not employ any staff. No additional measures are needed to minimise the impact of the requirements on firms employing up to 20 people.

11.3 Publicity on the change to the legislation will assist all landlords to become aware of any implications for their lettings.

12. Monitoring & review

12.1 The policy will be reviewed in five years.

13. Contact

Julia Gristwood at the Department for Communities and Local Government Tel: 0303 444 3695 or email: Julia.gristwood@communities.gsi.gov.uk can answer any queries regarding the instrument.#

Summary: Intervention & Options

Department /Agency: Communities and Local Government	Title: Impact Assessment of the raising of the £25k annual rental threshold for assured tenancies	
Stage: Final proposal	Version:	Date: 28 January 2010
Related Publications: The private rented sector: professionalism and quality The Government response to the Rugg Review		

Available to view or download at:

<http://www.communities.gov.uk/corporate/publications/consultations>

Contact for enquiries: julia.gristwood@communities.gsi.gov

Telephone: 0303 444 3695

Historically, tenancies with very high or very low rents have been excluded from the protection of the landlord and tenant legislation. The annual rental threshold for assured tenancies was set at £25,000 in 1990 and has not been revised since. While this, as intended, excluded only a very small number of tenancies at the very top end of the market in 1990, as rents have risen, many more tenancies are now excluded. Tenancies that would benefit from the protection of the legislation such as lettings to students are now excluded, thus the rationale is to address the issue of fairness in the Private Rented Sector (PRS). An amendment to the legislation now would remedy this situation.

The main policy objective is to restore the position intended in the original legislation, to exclude only the tenancies at the very top end of the market.

The effect would be to bring a substantial number of tenancies that would currently be excluded, under the protection of the Housing Act 1988 (as amended).

What policy options have been considered? Please justify any preferred option.

1. Do nothing. 2. Raise the threshold £100,000 from 1 April 2010. 3. Raise the threshold to £100,000 from 1 October 2010 4. Raise the threshold to £52,000 (as mentioned in Rugg Review)

There has been considerable pressure, including an Early Day Motion in support of raising the threshold to address any unfairness in the PRS. Under 1 that unfairness will remain. The figure of £100,000 in 2 and 3 was included in the Response to Rugg consultation and received widespread support. Raising the threshold to this level would achieve the intended effect and not need adjusting again for a long time and address the fairness issue. The preferred option of 3 would allow time to publicise the change before it comes into force and would mitigate the potential costs to unaware landlords. Option 4 would mean that the threshold would need to be revisited sooner.

The policy will be reviewed in 5 years.

John Healey

22nd March 2010

Summary: Analysis & Evidence

Policy Option: 2	Description: Raise the threshold to £100,000 on April 1st 2010
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COSTS	ANNUAL COSTS	<p>Description and scale of key monetised costs by 'main affected groups'</p> <p><i>Landlords:</i></p> <p>Forgo the interest they could have received on the deposit as they have to protect the deposit with a third party. (£0.4)</p> <p>Unaware landlords could face a fine if they fail to protect their deposit. (3 times the deposit). This is a one off cost. (£0.9)</p> <p>Range of PV costs: £1.2m-£17.2m</p>
	<p>One-off (Transition) Yrs</p>	
	<p>£ 0.9m</p>	
	<p>Average Annual Cost (excluding one-off)</p>	
<p>£ 0.4m</p>	<p>Total Cost (PV) £ 4.4m</p>	

Other key non-monetised costs by 'main affected groups'

Landlords:

Admin costs of having to go and protect the deposit (likely to be minimal)

Now have to give a minimum 2 month notice to tenants.

BENEFITS	ANNUAL BENEFITS	<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p><i>Landlord:</i></p> <p>Accelerated possession procedures mean that court proceedings are not necessary in cases of dispute. (£0.4)</p> <p><i>Deposit Protection Scheme Operators:</i></p> <p>Will receive an increase in the volume of deposits as those landlords that have to protect their deposits must use their services. (£0.2)</p> <p>Range of PV benefits: £3.2m-4m</p>
	<p>One-off Yrs</p>	
	<p>£ 0.2m</p>	
	<p>Average Annual Benefit (excluding one-off)</p>	
<p>£ 0.4m</p>	<p>Total Benefit (PV) £ 3.2m</p>	

Other key non-monetised benefits by 'main affected groups'

Landlord:

Potential benefits of using 'off the shelf' tenancy rather than drawing up their own

Reduced voids as a result of accelerated possession

Tenants:

Have the security of a protected deposit and the minimum two month notice period.

We have assumed that landlords would chose to protect deposits using the free custodial scheme rather than the insurance based deposit protection schemes that require an insurance premium to be paid to use the service.

We have assumed that the stock of tenancies remains static over the appraisal period.

Analysis is based on Survey Data (Survey of English Housing).

The number of tenancies assumed to be affected is likely to be highly conservative estimate (likely that fewer tenancies will be affected).

Note that this analysis assumes that interest foregone by landlords is not transferred to other parties and so implies a real cost to the economy, though in reality there is likely to be at least a partial transfer to other parties such as the deposit protection operators.

The combination of the latter two points results in a likely downward bias to the analysis and subsequent net benefit.

Price Base Year 2010	Time Period Years 10	Net Benefit Range (NPV) £ -13.2m to +2.8m	NET BENEFIT (NPV Best estimate) £ -1.1m
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				England
				1 st April 2010
				Courts
What is the total annual cost of enforcement for these organisations?				£ n/a
				Yes
				Yes
What is the value of the proposed offsetting measure per year?				£ n/a
What is the value of changes in greenhouse gas emissions?				£ n/a
				No
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
	No	No		

Key: **Annual costs and benefits:** (Net) Present

Summary: Analysis & Evidence

Policy Option: 3

Description: Raise the threshold to £100,000 on October 1st 2010

ANNUAL COSTS		Yrs	Description and scale of key monetised costs by 'main affected groups'
One-off (Transition)			
	£ 0m		<p><i>Landlords:</i></p> <p>Forgo the interest they could have received on the deposit as they have to protect the deposit with a third party. (£0.4)</p> <p>Unaware landlords could face a fine if they fail to protect their deposit. (3 times the deposit). This is a one off cost. (£0)</p> <p>Range of PV costs: £1.2m-£11.8m</p>
Average Annual Cost (excluding one-off)			
	£ 0.4m		Total Cost (PV)
			£ 3.5m
<p>Other key non-monetised costs by 'main affected groups'</p> <p><i>Landlords:</i></p> <p>Admin costs of having to go and protect the deposit (likely to be minimal)</p> <p>Now have to give a minimum 2 month notice to tenants.</p>			
ANNUAL BENEFITS		Yrs	Description and scale of key monetised benefits by 'main affected groups'
One-off			
	£ 0.2m		<p><i>Landlord:</i></p> <p>Accelerated possession procedures mean that court proceedings are not necessary in cases of dispute. (£0.4)</p> <p><i>Deposit Protection Scheme Operators:</i></p> <p>Will receive an increase in the volume of deposits as those landlords that have to protect their deposits must use their services. (£0.2)</p> <p>Range of PV benefits: £3.2-£4m</p>
Average Annual Benefit (excluding one-off)			
	£ 0.4m		Total Benefit (PV)
			£ 3.2m
<p>Other key non-monetised benefits by 'main affected groups'</p> <p><i>Landlord:</i></p> <p>Potential benefits of using 'off the shelf' tenancy rather than drawing up their own</p> <p>Reduced voids as a result of accelerated possession</p> <p><i>Tenants:</i></p> <p>Have the security of a protected deposit and the minimum two month notice period.</p>			

We have assumed that landlords would chose to protect deposits using the free custodial scheme rather than the insurance based deposit protection schemes that require an insurance premium to be paid to use the service.

We have assumed that the stock of tenancies remains static over the appraisal period.

Analysis is based on Survey Data (Survey of English Housing).

The number of tenancies assumed to be affected is likely to be highly conservative estimate (likely that fewer tenancies will be affected).

Note that this analysis assumes that interest foregone by landlords is not transferred to other parties and so implies a real cost to the economy, though in reality there is likely to be at least a partial transfer to other parties such as the deposit protection operators.

The combination of the latter two points results in a downward bias to the analysis and subsequent net benefit.

Price Base Year 2010	Time Period Years 10	Net Benefit Range (NPV) £ -7.8m to +2.8m	NET BENEFIT (NPV Best estimate) £ -0.2m
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				England	
				1 st October 2010	
				Courts	
What is the total annual cost of enforcement for these organisations?				£ n/a	
				Yes	
				Yes	
What is the value of the proposed offsetting measure per year?				£ n/a	
What is the value of changes in greenhouse gas emissions?				£ n/a	
				No	
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
		No	No		

Key: **Annual costs and benefits:** (Net) Present

Summary: Analysis & Evidence

Policy Option: 4

Description: Raise the threshold to £52,000 on October 1st 2010

ANNUAL COSTS		Yrs	Description and scale of key monetised costs by 'main affected groups' <i>Landlords:</i> Forgo the interest they could have received on the deposit as they have to protect the deposit with a third party. (£0.4m) Unaware landlords could face a fine if they fail to protect their deposit. (3 times the deposit). This is a one off cost. (£0) Range of PV costs: £0.9m-£12.6m
One-off (Transition)	£ 0.8m		
Average Annual Cost (excluding one-off)	£ 0.4m		Total Cost (PV) £ 4m
Other key non-monetised costs by 'main affected groups' <i>Landlords:</i> Admin costs of having to go and protect the deposit (likely to be minimal) Now have to give a minimum 2 month notice to tenants.			
ANNUAL BENEFITS		Yrs	Description and scale of key monetised benefits by 'main affected groups' <i>Landlord:</i> Accelerated possession procedures mean that court proceedings are not necessary in cases of dispute. (£0.3m) <i>Deposit Protection Scheme Operators:</i> Will receive an increase in the volume of deposits as those landlords that have to protect their deposits must use their services Range of PV benefits: £2.9
One-off	£ 0.2m		
Average Annual Benefit (excluding one-off)	£ 0.3m		Total Benefit (PV) £ 2.9m
Other key non-monetised benefits by 'main affected groups' <i>Landlord:</i> Potential benefits of using 'off the shelf' tenancy rather than drawing up their own Reduced voids as a result of accelerated possession <i>Tenants:</i> Have the security of a protected deposit and the minimum two month notice period.			

We have assumed that landlords would chose to protect deposits using the free custodial scheme rather than the insurance based deposit protection schemes that require an insurance premium to be paid to use the service.

We have assumed that the stock of tenancies remains static over the appraisal period.

Analysis is based on Survey Data (Survey of English Housing).

The number of tenancies assumed to be affected is likely to be highly conservative estimate (likely that fewer tenancies will be affected).

Note that this analysis assumes that interest foregone by landlords is not transferred to other parties and so implies a real cost to the economy, though in reality there is likely to be at least a partial transfer to other parties such as the deposit protection operators.

The combination of the latter two points results in a downward bias to the analysis and subsequent net benefit.

Price Base Year 2010	Time Period Years 10	Net Benefit Range (NPV) £ -13.2m to +2.8m	NET BENEFIT (NPV Best estimate) £ -1.1m
-------------------------	-------------------------	------------------------------------------------------------	----------------------------------------------------------

				England
				1 st October 2010
				Courts
What is the total annual cost of enforcement for these organisations?			£ n/a	
			Yes	
			Yes	
What is the value of the proposed offsetting measure per year?			£ n/a	
What is the value of changes in greenhouse gas emissions?			£ n/a	
			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
	No	No		

Key:

Annual costs and benefits:	(Net) Present

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Introduction

This Impact Assessment covers the proposal to increase the annual rental threshold for assured tenancies from £25,000 to £100,000.

Background

Assured and assured shorthold tenancies were introduced by the Housing Act 1988 as the type of tenancy to be used for private sector and housing association residential tenancies in England and Wales from 15 January 1989. The Act provides that all such tenancies are either assured or assured shorthold tenancies unless they come within one of the exceptions set out in Schedule 1 to the Act. Dwellings with high rateable values were originally exempted under the Schedule. In 1990 the reference to high rateable values was replaced by an annual rental threshold of £25,000, introduced by the References to Rating (Housing) Regulations 1990 SI 1990/434.

Key facts/Evidence

In 2008, just over 14% of all English households were housed in the private rented sector (CLG analysis of ONS Labour Force Survey data). The Rugg Review estimated that the private rented sector in England contained around 2.6 million properties in 2006, up from 1.8 million in 1988 ("The Private Rented Sector: its contribution and potential", Julie Rugg and David Rhodes, Centre for Housing Policy, University of York, 2008 (page 39)). The sector has continued to grow since 2006 and more recent estimates suggest that by the end of 2008 there were over 3 million English households in the private rented sector.

By far the majority of tenancies in the private rented sector, 75% in 2006/07 and 80% in 2007/08, are assured or assured shorthold (CLG live table 731). Those that don't fall into any other category (regulated etc) amounted to 1.2% (33,000 tenancies) of the sector in 2006/07 and 0.5% (14,000 tenancies) in 2007/08. This will include those that are already caught by the annual rental threshold but are not assured or assured shorthold tenancies.

The case for review

The rental threshold was originally introduced because, historically, tenancies with very high or very low rents have always been excluded from the legislation. It was considered that tenants paying very high rents did not need statutory protection.

An annual rent of £25,000 equates to a calendar monthly rent of about £2,083 or a weekly rent of about £480. In 1990, a rent of £25,000 per year would have been considered very high and would only have been achievable by a very small number of properties at the very top end of the market.

Work carried out in the Department in 2007 which used the all items retail prices index to determine how much the threshold would be if it had kept pace with general price increases showed:

RPI (all items) Jan 1989 = 111

RPI (all items) Sept 2007 = 208

This demonstrated that the 2007 equivalent of a rent of £25,000 in 1989 would be in the region of £47,000.

The effect of the rental limit is that tenancies for which the rent is above the threshold are no longer governed by the provisions of the Housing Act 1988. Such a tenancy continues to be a tenancy, but is outside the scope of the Act. Therefore, it would be regarded as a common law tenancy and would be governed by the terms of the contract (if one was agreed) and any relevant common law requirements.

One effect of this is that the tenancy can be ended by notice to quit without regard to any of the grounds for possession in the Housing Act 1988. This is of particular concern to former long-leaseholders who attained assured tenancies on the expiry of their leases under Schedule 10 to the Local Government and Housing Act 1989 in the expectation that they would be able to remain in their homes as renting tenants. Anecdotal evidence suggests some former leasehold residents in central London are concerned that if their rents breach the threshold they will lose their security of tenure and may be evicted.

While long term security of tenure is not such a significant issue for assured shorthold tenancies, as a landlord can normally seek possession after the initial six months of the tenancy or at the end of any longer fixed term agreed with the tenant without having to prove a specific ground for possession (known as 'notice-only' possession), the landlord still has to give the tenant two months' notice. If the rent level breaches the threshold, the tenant loses this protection.

In addition, a number of important tenant/landlord benefits have been tied to use of assured shorthold tenancies and these are at risk of not applying as intended where rents breach the threshold and tenancies are no longer assured shortholds:

- d. *Tenancy deposit protection* - this applies only to assured shorthold tenancies. The legislation was applied specifically to assured shorthold tenancies as these are used by the vast majority of private landlords and enable effective penalties to apply (failure to protect a deposit results in loss of the ability to use 'notice-only' possession).
- e. *Accelerated possession* – for assured shorthold tenancies where 'notice-only' possession is sought landlords may use an accelerated possession procedure as opposed to the ordinary possession route. This can significantly speed up the time taken to obtain a possession notice as the case may be dealt without the need for a court hearing.

Pressure to change

The intention of the threshold was that only those tenancies at the very top end of the market should be affected and that the majority of private tenants should have the protection of the legislation. Now that an annual rent of £25,000 is not as unusual as it was in 1989, particularly where groups of sharers, particularly students, sign up to a single tenancy, many tenancies that would have traditionally benefited from the protection of the legislation now fall outside its scope. There have been many calls to review the threshold, including the following Early Day Motion in 2008 tabled by Greg Mulholland MP which attracted 37 signatures.

The Review of the Private Rented Sector, carried out by Julie Rugg and David Rhodes, reported that there was strong support from the stakeholders they consulted for a change to this regulation and quoted a figure of £52,000 as a more appropriate threshold.

Consultation

The proposal to raise the annual rental threshold for assured tenancies was included in the Government's response to the Rugg Review. The response was issued for consultation on 12 May 2009 and the consultation closed on 7 August 2009. The consultation focused on the Government's intention to raise the threshold to £100,000 and asked:

Is this the right level for the threshold?

Should there be regular reviews of the threshold?

How frequently should these be carried out?

253 responses to the consultation were received. Of these 100 commented on the proposal to raise the £25,000 threshold. Around 80% supported the proposal to raise the threshold to £100,000. The others supported a threshold of around £52,000 or suggested that the threshold should be abolished altogether. Most supported regular reviews, taking place every 1-5 years, although some suggested longer review periods of 5-10 years, or linking the threshold to inflation or a similar index.

Costs/Benefits

The standard form of tenancy in the private rented sector is the assured shorthold tenancy which gives the landlord and tenant certain protections and obligations under the Housing Acts 1988, 1996 and 2004. If the tenancy is not an assured shorthold because it is above the rental threshold, a common law contractual tenancy will arise. While such a tenancy will not be covered by the Housing Acts, the tenant will still have statutory protection from eviction and the landlord will still have statutory repairing obligations etc under other legislation. In practice, therefore, there will be very little difference. The main significant difference is that tenancy deposit protection only applies to assured shorthold tenancies.

Costs

- Protecting the deposit need not cost anything, however, as the custodial scheme is free to use (and is, in any case, good practice).
- The landlords that have to protect the deposit will incur a cost in the form of the interest forgone on the deposit (if use the custodial scheme) or the fee to join the insurance based deposit protection scheme.
- They may also face admin costs of having to protect the deposit.
- Unaware landlords face a potential fine if they fail to protect the deposit- though the courts are likely to take a sympathetic view as the intention was not to catch landlords out. Having an implementation date of October will also allow us the opportunity to publicise the change before it comes into force. Further mitigation will be achieved through MoJ notifying the courts of the change.

Benefits

- Bringing a tenancy within the threshold could reduce a landlord's costs. For example, the landlord would be able to use an off the shelf assured shorthold tenancy agreement, rather than having to devise their own contract.
- Also, with an assured shorthold tenancy, accelerated possession procedures can be used (without the need for a court hearing), while if a tenant fails to move out at the end of a contractual tenancy, this would normally need to be settled through the courts. Landlords would benefit from being able to use standard assured shorthold tenancy agreements and notices for possession etc and benefit from reduced void periods.
- Tenants would benefit in the knowledge that their deposit is protected by law. In addition they have the security of knowledge that they must receive a 2 month notice before eviction.
- The operators of the deposit protection schemes would see an increase in the volume of the deposits received as those landlords now encompassed by the threshold have to use their services.

Summary Table

	Cost	Benefit
Landlords	<ul style="list-style-type: none">- Interest foregone- Admin costs- minimum 2month notice (previously was the frequency of the rent payments)- Potential cost for unaware landlords	<ul style="list-style-type: none">- use off the shelf tenancy- Accelerated possession procedures- reduced voids (less foregone rent)
Tenants		<ul style="list-style-type: none">- Deposit now protected by law- Eviction notice now 2months minimum
DPS operator		<ul style="list-style-type: none">- increased volume of deposits (and subsequent ability to charge higher fees)

Assumptions used

1. Data from the Survey of English Housing disaggregates tenancies by type. The category labelled as 'other' we have assumed to be the residual tenancies that the proposed policy change would impact. Because the number of tenancies in the 'other' category appear volatile with no clear trend we have taken a 5 year average of the proportion of 'other' tenancies and applied it to the total number of occupied tenancies quoted in the English Housing Survey headline report 2008/09 (table10). The result is that we estimate 24000 'other' tenancies. Given that the mean rent of 'other' tenancies is well below the threshold we assume that at least half will not be impacted by the policy change. For illustrative purposes our best estimate of potential tenancies affected is therefore 12000. To assess sensitivities we use 15000 when calculating ranges. We assume the number of tenancies do not change over the appraisal period.

2. 6 per cent of tenancies are terminated early (mostly because of non-payment of rent)¹. We therefore assume that around 6% of tenancies become subject to serious dispute, involving costs such as non-payment of rent, and potentially legal and administrative costs for landlords and tenants. An average cost to landlords, tenants and the legal system per dispute could be conservatively assumed to be at least £1,000 per dispute (extremely conservative). Assuming that the increase in the threshold results in 3% of these affected tenancies no longer needing to go to court we estimate these 'accelerated possession' procedures to be (number of tenancies * 3%) * £1000 legal fees.

3. Average deposits are typically one month rent and on average around £1000. However to produce our range of estimates we have assumed that average deposits of tenancies affected

¹ See Govt response to Rugg Review Consultation <http://www.communities.gov.uk/documents/housing/pdf/1229922.pdf>.

are between £2100 and £3000 (to capture the notion that these tenancies are paying over £25000 in rent per year).

4. In order to assess the cost to landlords that are unaware of the change and are subsequently fined (3 times the deposit) we have assumed that between 0% and 5% of landlords are unaware and are fined. This is will be dependant on other measures taken to mitigate the number of unaware landlords.

For simplicity to assess the interest foregone we have assumed a tenancy duration of 12 months over which the interest compounds. An interest rate of between 0.5% and 3%pa have been used as anecdotal evidence suggests that many small landlords do not opt or search for high interest accounts and many simply retain deposits in current accounts.

5. We have assumed that landlords opt for the custodial deposit scheme rather than the insurance scheme as the former is free to use. This is also consistent with anecdotal evidence that most small landlords prefer to use this scheme- assuming that those landlords that will be impacted are small landlords.

6. To calculate the benefits to deposit protection scheme operators we have used the custodial scheme's current fees at £17.39 per deposit. Note that this is the fee that the scheme operator receives but is not paid directly by the landlord, for which the scheme is free to use. The scheme operator is entitled to recoup this fee from the interest gained on the 'deposit pool' they hold.

7. Appraisal time period is 10 years

8. A real discount rate of 3.5% is used

9. All one-off costs are assumed to be incurred up-front, with annual costs and benefits accruing over years 1 to 10.

Options

1. Do nothing:

Potential costs to landlords and tenants of future disputes over those tenancies not covered by the threshold.

2. Raising the threshold to 100k on April 1st 2010²

ASTs would become the default tenancy for those under £100,000 per annum from April 1st 2010

Range Assumptions

Assumption	NPV Range		
	Low	Best estimate	High
Average Deposit	£3000	£2500	£2100
Interest Rate	3%	1.5%	0.5%
Number of tenancies	15000	12000	15000
Proportion of unaware landlords	5%	1%	0%
Deposit protection fee per deposit	£17.39	£17.39	£17.39

² Note that as a result of data available and the subsequent analysis method used the only change between costs and benefits between raising the threshold with inflation or to 100k would be an arbitrary adjustment made to reflect the tenancies between 52k and 100k

Percentage of disputes	3%	3%	3%
Legal fees	£1000	£1000	£1000

Costs and Benefits of 'best estimate'

Year	0/One off	1	2	3	4	5	6	7	8	9	10
Costs (£millions)											
<i>Landlord</i>											
Interest foregone		-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42
Unaware landlords	-£0.90										
Admin costs	negligible										
2month notice	not quantified										
off shelf tenancy	not quantified										
Total	-£0.90	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42
Benefit (£millions)											
<i>Landlord</i>											
Accelerated possession		£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36
<i>Tenant</i>											
Deposit protected											
2month notice	not quantified										
<i>DPS operator</i>											
more deposits	£0.21										
Total	£0.21	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36
One off costs	-£0.90										
One off benefits	£0.21										
Total cost PV	-£4.35										
Total benefit PV	£3.20										
Net annual benefit	-£0.69	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06
NPV	-£1.15										

3. Raising the threshold to 100k on October 1st 2010 (Preferred Option)

ASTs would become the default tenancy for those under £100,000 per annum from October 1st 2010

Range Assumptions

Assumption	NPV Range		
	Low	Best estimate	High
Average Deposit	£3000	£2500	£2100
Interest Rate	3%	1.5%	0.5%
Number of tenancies	15000	12000	9000
Proportion of unaware landlords	1%	0%	0%
Deposit protection fee per deposit	£17.39	£17.39	£17.39
Percentage of disputes	3%	3%	3%
Legal fees	£1000	£1000	£1000

Costs and Benefits of 'best estimate'

Year	0/One off	1	2	3	4	5	6	7	8	9	10
Costs (£millions)											
<i>Landlord</i>											
Interest foregone		-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42
Unaware landlords	£0.00										
Admin costs	negligible										
2month notice	not quantified										
off shelf tenancy	not quantified										
Total	£0.00	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42	-£0.42
Benefit (£millions)											
<i>Landlord</i>											
Accelerated possession		£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36
<i>Tenant</i>											
Deposit protected											
2month notice	not quantified										
<i>DPS operator</i>											
more deposits	£0.21										
Total	£0.21	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36	£0.36
One off costs	£0.00										
One off benefits	£0.21										
Total cost PV	-£3.45										
Total benefit PV	£3.20										
Net annual benefit	£0.21	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06	-£0.06
NPV	-£0.25										

4. Raising the threshold to 52k³ (assumed to be implemented on 1st April 2010)

ASTs would become the default tenancy for those under £52,000. There is not sufficient evidence to suggest that the costs/benefits would be significantly different from the previous option as this option simply excludes those tenancies between 52-100k, towards the tail end of the distribution. It would mean that the threshold might need to be revisited sooner implying administrative costs. For illustrative purposes I have assumed that the number of tenancies affected would be 1000 less, approximately 8%.

Assumption	NPV Range		
	Low	Best estimate	High
Average Deposit	£3000	£2500	£2100
Interest Rate	3%	1.5%	0.5%
Number of tenancies	15000	11000	15000
Proportion of unaware	5%	1%	0%

³ Note that as a result of data available and the subsequent analysis method used the only change between costs and benefits between raising the threshold with inflation or to 100k would be an arbitrary adjustment made to reflect the tenancies between 52k and 100k

landlords			
Deposit protection fee	£17.39	£17.39	£17.39
per deposit			
Percentage of disputes	3%	3%	3%
Legal fees	£1000	£1000	£1000

Costs and Benefits of 'best estimate'

Year	0/One off	1	2	3	4	5	6	7	8	9	10
Costs (£millions)											
<i>Landlord</i>											
Interest foregone		-£0.38	-£0.38	-£0.38	-£0.38	-£0.38	-£0.38	-£0.38	-£0.38	-£0.38	-£0.38
Unaware lē	-£0.83										
Admin cos negligible											
2month noot quantified											
off shelf teiot quantified											
Total	-£0.83	-£0.38	-£0.38	-£0.38	-£0.38	-£0.38	-£0.38	-£0.38	-£0.38	-£0.38	-£0.38
Benefit (£millions)											
<i>Landlord</i>											
Accelerated possessi	£0.33	£0.33	£0.33	£0.33	£0.33	£0.33	£0.33	£0.33	£0.33	£0.33	£0.33
<i>Tenant</i>											
Deposit prot quantified											
2month noot quantified											
<i>DPS operator</i>											
more depo	£0.19										
Total	£0.19	£0.33	£0.33	£0.33	£0.33	£0.33	£0.33	£0.33	£0.33	£0.33	£0.33
One off co:	-£0.83										
One off bei	£0.19										
Total cost	-£3.99										
Total bene:	£2.94										
Net annual	-£0.63	-£0.05	-£0.05	-£0.05	-£0.05	-£0.05	-£0.05	-£0.05	-£0.05	-£0.05	-£0.05
NPV	-£1.05										

Process

Section 1(2A) of the Housing Act 1988 allows the Secretary of State to alter the threshold by Order. An enabling Statutory Instrument would be subject to negative resolution.

Section 2A of the Act allows any 'amount' set out in Schedule 1 to be replaced by 'such amount as is specified in the order'. This means that a threshold must be retained but that the Government is free to propose any amount to replace the existing £25,000 annual threshold that it considers appropriate.

For this reason we are proposing to revise the threshold rather than abolish it, as some responses to the consultation have suggested, as this would enable early implementation.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

	No	Yes
	Yes	No
	No	Yes
	No	Yes
	No	Yes
	No	Yes
	No	Yes
	No	Yes
	No	Yes
	No	Yes
	No	Yes
	No	Yes
	No	Yes
	No	Yes

Annexes

Competition assessment. No impact. The proposed measure will apply across the private rented sector.

Small Firms impact test. Minimal impact. Many landlords operate as individuals and do not employ any staff. No additional measures are needed to minimise the impact of the requirements on small firms. Publicity on the change to the legislation will assist all landlords to become aware of any implications for their lettings.

Legal Aid. No impact/possible reductions in costs. Landlords are generally not eligible for Legal Aid. The change would therefore have no impact on Legal Aid payments.

Sustainable Development. No impact. The measure applies to tenancies, not buildings.

Carbon Assessment. No impact. The measure applies to tenancies, not buildings.

Other environment. No impact. The measure applies to tenancies, not buildings.

Health Impact Assessment. Minimal impact. Statutory protection could have a positive impact on tenants' health.

Race Equality. No impact. The change will apply to all tenancies and will not differentiate between particular groups. The change will not have any different or disproportionate affect those in these groups compared to those in the private rented sector as a whole. It will only affect a small proportion of tenancies, but will increase protection and rights for all those tenants affected.

Disability Equality. No impact. The change will apply to all tenancies and will not differentiate between particular groups.

Gender Equality. No impact. The change will apply to all tenancies and will not differentiate between particular groups.

Human Rights. Positive impact. Statutory protection will improve tenants' rights.

Rural Proofing. No impact. Properties at the higher end of the rental market will tend to be in ur