
STATUTORY INSTRUMENTS

2016 No. 390

The Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016

Citation, commencement and application

1.—(1) These Regulations may be cited as the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 and come into force on 1st April 2016.

(2) These Regulations apply in England only.

Interpretation

2. In these Regulations—

“the Act” means the Welfare Reform and Work Act 2016;

“the 2008 Act” means the Housing and Regeneration Act 2008(1);

“absolute exception” means any of the exceptions mentioned in regulation 3(1)(a), 3(1)(c) to 3(1)(h), 3(1)(j), 3(1)(k), 4(a), 4(b), and 4(d) to 4(i);

“affordable rent housing” has the meaning given in regulation 19;

“almshouse accommodation” means accommodation in an almshouse provided by an almshouse charity;

“alternative provision regulation” means any of regulations 5 to 14;

“care home” means an establishment that is a care home for the purposes of the Care Standards Act 2000(2);

“community land trust” has the same meaning as in section 79 of the 2008 Act;

“co-operative housing association” and “fully mutual housing association” have the same meaning as in the Housing Associations Act 1985(3);

“Guidance on Rents for Social Housing” means the guidance relating to levels of rent for social housing published in May 2014 by the Secretary of State(4);

“income qualification criterion” means total household income of £60,000 or more in a relevant tax year, where—

(a) “total household income” means, in relation to accommodation—

(i) if there is one resident, the income of that resident,

(ii) if there are two residents, the sum of the residents’ incomes,

(iii) if there are more than two residents, the sum of the two highest incomes of the residents,

(b) “resident” means—

(1) 2008 c. 17.

(2) 2000 c. 14; see section 3 which was amended by the Health and Social Care Act 2008 and the Regulation and Inspection of Social Care (Wales) Act 2016.

(3) 1985 c. 69; see section 1(2) which was amended by the Co-operative and Community Benefit Societies Act 2014.

(4) See the explanatory note for details of how to obtain a copy of this document.

- (i) a person who is the tenant or a joint tenant, and
- (ii) a person who is the spouse, civil partner or partner of the tenant or of a joint tenant if that person resides at the accommodation,
- (c) “income” has the same meaning as “total income” in section 23 of the Income Tax Act 2007⁽⁵⁾,
- (d) “partner” means a person who is not married to, or a civil partner of, the tenant or joint tenant who lives with the tenant or joint tenant in the accommodation as if they were married or in a civil partnership,
- (e) “relevant tax year” means the tax year ending on the 5th April which falls in the financial year prior to the financial year in which the relevant year begins, and
- (f) “financial year” means a year beginning on 1 April;

“intermediate rent accommodation” means low cost rental accommodation which satisfies the condition in (a) or (b)—

- (a) the accommodation—
 - (i) was built or acquired by the private registered provider without public assistance,
 - (ii) is provided on an assured shorthold tenancy (other than an assured shorthold tenancy that is expressed to be a probationary or starter tenancy) or licence either—
 - (aa) to a tenant who is not a person nominated by a local housing authority under section 159(2)(c) of the Housing Act 1996⁽⁶⁾
 - (bb) to a tenant nominated by a local housing authority under section 159(2)(c) where any conditions set by the local housing authority regarding the circumstances in which the registered provider may grant a tenancy of intermediate rent accommodation are satisfied in respect of that accommodation,
 - (iii) has not previously been let on a social rent basis, and
 - (iv) is not affordable rent housing, or
- (b) the accommodation is low cost rental accommodation which was funded wholly or in part by public assistance under an intermediate rent accommodation enabling programme and any conditions under that programme regarding the circumstances in which the accommodation may be let as intermediate rent accommodation are satisfied;

“intermediate rent accommodation enabling programme” means one of the following programmes—

- (a) Keyworker Living Programme 2004 – 2010,
- (b) National Affordable Homes Programme 2008 – 2011,
- (c) Rent to Buy loan within the Affordable Homes Programme 2015 – 2018,
- (d) Rent to Save within the London Mayor’s Housing Covenant Programme 2015 – 2018,
- (e) Rent to Save within the Homes for Working Londoners Programme 2013 – 2017,
- (f) Rent to Save within the Building the Pipeline Programme 2013,
- (g) Rent to Buy grant funding within the Affordable Homes Programme 2016 – 2021,
- (h) London Housing Bank Programme;

“low cost rental accommodation” has the meaning given in section 69 of the 2008 Act;

(5) 2007 c.3; section 23 was amended by the Finance Act 2009, the Finance Act 2013 and the Finance Act 2014.

(6) 1996 c. 52; section 159(2)(c) was amended by S.I. 2010/866.

“PFI social housing” means—

- (a) low cost rental accommodation built, provided or refurbished under a private finance initiative scheme contract where—
 - (i) one of parties (“the public sector party”) to the contract is a local authority,
 - (ii) the consideration received by the public sector party includes—
 - (aa) the building, provision or refurbishment of the social housing for the purposes of, or in connection with, the discharge of its functions in relation to social housing, and
 - (bb) the provision of services for the purposes of, or in connection with, the discharge of those functions, and
 - (iii) the contract contains a statement that it is entered into under the private finance initiative, or
- (b) low cost rental accommodation built, provided or refurbished under a private finance initiative scheme contract where—
 - (i) the public sector party to the contract is not a local authority,
 - (ii) the consideration received by the public sector party includes—
 - (aa) the building, provision or refurbishment of the social housing for the purposes of, or in connection with, the provision of housing to persons working for the public sector party, and
 - (bb) the provision of services for the purposes of, or in connection with, the provision of housing to those persons, and
 - (iii) the contract contains a statement that it is entered into under the private finance initiative;

“qualifying year” has the meaning given in regulation 3(5);

“public assistance” means social housing assistance or other public capital grant, subsidy or loan and includes any transfer of land for less than its unrestricted value;

“relevant Housing Act 1996 accommodation” means property to which section 77 of the 2008 Act (housing stock under Housing Act 1996) applies which is not low cost rental accommodation;

“Rent Act 1977 rent criterion” means—

- (a) in the case of supported housing which is not specialised supported accommodation, that the rent registered under the Rent Act 1977(7) is lower than—
 - (i) the social rent rate as modified by regulation 10 on any date falling within a previous relevant year, or
 - (ii) in a case where the tenancy began at or before the beginning of 8 July 2015, 110% of formula rent for the year 2015-16 calculated in accordance with the Schedule on—
 - (aa) 8 July 2015, or
 - (bb) the permitted review day(8), in a case where the amount payable at the beginning of the permitted review day was greater than the amount payable at the beginning of 8 July 2015,
- (b) in any other case, that the rent registered under the Rent Act 1977 is lower than—

(7) 1977 c. 42; see section 87 which was amended by the Housing Act 1980, the Housing Act 1988 and S.I. 1993/651.

(8) See section 23(3) of the Act for the definition of permitted review day.

- (i) the social rent rate on any date falling within a previous relevant year, or
- (ii) in a case where the tenancy began at or before the beginning of 8 July 2015, formula rent for the year 2015-16 calculated in accordance with the Schedule on—
 - (aa) 8 July 2015, or
 - (bb) the permitted review day, in a case where the amount payable at the beginning of the permitted review day was greater than the amount payable at the beginning of 8 July 2015;

“the Rent Standard” means the standard published in January 2015 by the regulator under section 194(2A) of the Housing and Regeneration Act 2008 (the powers of the regulator to set standards relating to levels of rent)⁽⁹⁾;

“the Rent Standard Guidance 2015” means the guidance on the Rent Standard published in January 2015 by the regulator;

“social housing assistance” has the meaning given in section 32 of the 2008 Act⁽¹⁰⁾;

“social rent basis” means—

- (a) a rent determined in accordance with the principles set out in one of the following—
 - (i) chapter 3 of the Rent Standard Guidance 2015,
 - (ii) chapter 3 of the Rent Standard Guidance 2012 published by the regulator in March 2012,
 - (iii) chapter 2 of the Guidance on Rents for Social Housing,
 - (iv) Rent Influencing Regime guidance published by the Housing Corporation in October 2001, or
 - (v) Guide to Social Rent Reforms published by the Secretary of State in March 2001, or
- (b) subject to a maximum rent determined in accordance with paragraph 1 or 2 of Schedule 2 to the Act;

“specialised supported housing” means supported housing—

- (a) which is designed, structurally altered, refurbished or designated for occupation by, and made available to, residents who require specialised services or support in order to enable them to live, or to adjust to living, independently within the community,
- (b) which offers a high level of support, which approximates to the services or support which would be provided in a care home, for residents for whom the only acceptable alternative would be a care home,
- (c) which is provided by a private registered provider under an agreement or arrangement with—
 - (i) a local authority, or
 - (ii) the health service within the meaning of the National Health Service Act 2006⁽¹¹⁾,
- (d) in respect of which the rent charged or to be charged complies with the agreement or arrangement mentioned in paragraph (c), and
- (e) in respect of which either—
 - (i) there was no public assistance, or
 - (ii) if there was public assistance, it was by means of a loan secured by means of a charge or a mortgage against a property;

⁽⁹⁾ See the explanatory note for details of how to obtain a copy of this document.

⁽¹⁰⁾ There has been an amendment to section 32 which is not relevant.

⁽¹¹⁾ 2006 c.41. See section 275.

“student accommodation” means low cost rental accommodation provided by a registered provider pursuant to an agreement which grants a right of occupation in a building or dwelling that is used wholly or mainly for the accommodation of persons who are in full-time education at a university, college, school or other educational establishment;

“supported housing” means low cost rental accommodation provided by a registered provider which—

- (a) is made available only in conjunction with the supply of support,
- (b) is made available exclusively to residents who have been identified as needing support, and
- (c) falls into one or both of the following categories—
 - (i) accommodation that has been designed, structurally altered or refurbished in order to enable residents to live independently,
 - (ii) accommodation that has been designated as being available only to individuals within an identified group with specific support needs;

“support” includes—

- (a) sheltered accommodation,
- (b) extra care housing,
- (c) domestic violence refuges,
- (d) hostels for the homeless,
- (e) support for people with drug or alcohol problems,
- (f) support for people with mental health problems,
- (g) support for people with learning disabilities,
- (h) support for people with disabilities,
- (i) support for offenders and people at risk of offending,
- (j) support for young people leaving care,
- (k) support for teenage parents
- (l) support for refugees;

“temporary social housing” means low cost rental accommodation made available to a person who is homeless, within the meaning of the Housing Act 1996⁽¹²⁾—

- (a) by a private registered provider under an assured shorthold tenancy agreement or a licence where—
 - (i) a local authority has nominated that person as a tenant of the accommodation on a temporary basis,
 - (ii) that local authority owes a duty under Part 7 of the Housing Act 1996 to that person, and
 - (iii) the registered provider—
 - (aa) holds the social housing on a lease or a licence which has a term of more than two years and fewer than 30 years, or
 - (bb) holds the social housing on a lease with a term of 30 years or greater, or holds the freehold title to the social housing, and acquired the social housing without public assistance, or
- (b) by a local authority under a licence where—

⁽¹²⁾ 1996 c. 52. See section 175.

- (i) that local authority owes a duty under Part 7 of the Housing act 1996 to that person,
- (ii) the accommodation provided is accommodation to which the account held pursuant to section 74(1) of the Local Government and Housing Act 1989 (duty to keep Housing Revenue Account)(13) does not relate, and
- (iii) the local authority holds the social housing on a lease or a licence which has a term of more than two years and fewer than 30 years;

“unrestricted value” means the best price reasonably obtained for a property on terms that are intended to maximise the consideration.

Cases where section 23 of the Act does not apply

3.—(1) The following cases are prescribed under section 24(5) of the Act (exceptions) as cases where section 23 of the Act (reduction in social housing rents) does not apply—

- (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.

(2) The following cases are prescribed under section 24(5) of the Act as cases where section 23 of the Act does not apply during the first relevant year—

- (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.

(3) Subject to paragraph (4), section 23 of the Act does not apply in relation to a tenant from the beginning of the relevant year following the qualifying year.

(4) Regulation 3(3) does not apply in the case of affordable rent housing where at the time when the tenancy began—

- (a) the amount found in accordance with paragraph 3(2)(a) of Schedule 2 to the Act was higher than the amount found in accordance with paragraph 3(2)(b); or

- (b) the amount found in accordance with paragraph 3(4)(a) of that Schedule was higher than the amount found in accordance with paragraph 3(4)(b).
- (5) In these Regulations “qualifying year” means—
 - (a) in the case of a tenancy beginning at or before the beginning of 8 July 2015, the first of any relevant year in respect of which the amount of rent payable by the tenant was at least 3.94% less than the amount of rent payable in respect of the 12 months preceding the first relevant year calculated in accordance with section 23(3) of the Act;
 - (b) in the case of a tenancy beginning after the beginning of 8 July 2015—
 - (i) where the tenancy begins before or at the beginning of the first relevant year or at the beginning of the second or third relevant year, the relevant year in which the maximum rent payable by the tenant was determined under Schedule 2 to the Act, and
 - (ii) where the tenancy begins after the beginning of the first relevant year and not at the beginning of a later relevant year, the final relevant year in which the maximum rent payable by the tenant was determined under Schedule 2 to the Act, if in that year the amount of rent payable by the tenant was at least 2.97% less than the maximum rent that would have been payable in the first relevant year if the tenancy had begun at the beginning of the first relevant year; and
 - (c) in the case of a tenancy beginning after the beginning of 8 July 2015 to which subparagraph (b) does not apply, the first of any subsequent relevant year in respect of which the amount of rent payable by the tenant was at least 2.97% less than the maximum rent that would have been payable in the first relevant year if the tenancy had begun at the beginning of the first relevant year.
- (6) In paragraph (1)(h), in the case of supported housing which is not specialised supported housing, the reference to the social rent rate should be read as a reference to that rate as modified by regulation 10.

Cases where Part 1 of Schedule 2 to the Act does not apply

4. The following cases are prescribed under paragraph 5(5) of Schedule 2 to the Act (exceptions) as cases where Part 1 of that Schedule (provision about levels of social housing rents) does not apply—
- (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.

High Income Social Tenants

5.—(1) Subject to paragraphs (3) and (4), the maximum rent payable to a registered provider in respect of a relevant year by a tenant of social housing to whom section 23 of the Act does not apply because of the exception in regulation 3(1)(b), is the amount described in paragraph (2).

(2) The amount is the amount that would have been the maximum rent determined in accordance with section 23 of the Act if—

- (a) the exception in regulation 3(1)(a), or exceptions in regulation 3(1)(a) and 4(a), had not previously applied; and
- (b) in a case where—
 - (i) the registered provider is a private registered provider and in the period beginning with 1 April 2015 and ending on the day preceding the beginning of the first relevant year the tenancy was one to which the Rent Standard did not apply for reasons relating to the tenant's household's income, that standard had applied, or
 - (ii) the registered provider is a local authority and in the period beginning with 1 April 2015 and ending on the day preceding the beginning of the first relevant year the tenancy was one to which the expectations in chapters two and three of Guidance on Rents for Social Housing did not apply for reasons relating to the tenant's household's income, those expectations had applied.

(3) This regulation does not apply if an absolute exception or the exception in regulation 3(1)(i) applies.

(4) In the case of supported housing which is not specialised supported housing, the reference in paragraph (2) to the maximum rent determined in accordance with section 23 of the Act should be read as a reference to section 23 as modified by regulation 9.

Certain Rent Act 1977 tenancies

6.—(1) Subject to paragraphs (2) and (3), the maximum rent payable to a registered provider by a tenant of social housing in respect of the part of the year after the exception in regulation 3(1)(h) ceases to apply is the amount that would be payable in respect of the period in question if the tenant were paying rent at the social rent rate.

(2) This regulation does not apply if an absolute exception applies.

(3) In the case of supported housing which is not specialised supported housing, the reference in paragraph (1) to the social rent rate should be read as that rate as modified by regulation 10.

7.—(1) Subject to paragraphs (2) and (3), the maximum rent payable to a registered provider by a tenant of social housing to whom section 23 of the Act does not apply because of the exception in regulation 3(1)(i), is the social rent rate.

(2) This regulation does not apply if an absolute exception applies.

(3) In the case of supported housing which is not specialised supported housing, the reference in paragraph (1) to the social rent rate should be read as a reference to that rate as modified by regulation 10.

Temporary reductions or waivers

8.—(1) Subject to paragraphs (2) and (3), the maximum amount of rent payable to a registered provider in respect of a relevant year by a tenant of social housing to whom section 23 of the Act does not apply because of the exception in regulation 3(1)(l) is the amount that would have been the maximum determined in accordance with section 23 of the Act, disregarding the effect of the temporary rent reduction or waiver.

(2) This regulation does not apply if an absolute exception, or an exception in regulation 3(1)(b), 3(1)(i), or 3(3) applies.

(3) In the case of supported housing which is not specialised supported housing, the reference in paragraph (1) to the maximum rent determined in accordance with section 23 of the Act should be read as a reference to section 23 as modified by regulation 9.

Supported housing, almshouse accommodation etc. – modification of section 23

9.—(1) Subject to paragraph (2), where an exception under regulation 3(2) applies, section 23 of the Act has effect as if in subsection (1) for “at least 1% less” there were substituted “no more than 0.9% more”.

(2) This regulation does not apply if an absolute exception applies.

Supported housing – modifications of Part 1 of Schedule 2

10.—(1) Subject to paragraph (2), where the exception in regulation 4(c) applies, Part 1 of Schedule 2 to the Act has effect with the modifications specified by regulation 11.

(2) This regulation does not apply if an absolute exception applies.

11. The modifications to the application of Part 1 of Schedule 2 to the Act mentioned in regulation 10 are as follows—

(a) in paragraph 1(4)(a) for “the rate of formula rent” substitute “110% of the rate of formula rent”;

(b) for paragraph 1(4)(c) substitute—

- “(c) (i) at the beginning of the first relevant year, making a 0.9% increase in the rate, and
(ii) at the beginning of each subsequent relevant year (up to and including the relevant year in question), making a 1% reduction in the rate.”;

(c) for paragraph 1(5)(c) substitute—

- “(c) (i) at the beginning of the first relevant year, making a 0.9% increase in the rate, and
(ii) at the beginning of each subsequent relevant year (up to and including the relevant year in question), making a 1% reduction in the rate.”;

(d) after paragraph 3(1) insert—

“(1A) If the tenancy begins before the beginning of the first relevant year, the registered provider must secure that the maximum amount of rent payable to the registered provider by the tenant in respect of the first relevant year is the higher of the amounts described in sub-paragraphs (1B) and (1C).

(1B) The amount found by—

- (a) determining the rate of the market rent for that social housing when the tenancy began; and
(b) determining the amount that is the sum of—
(i) 80% of the amount that would be payable in respect of the part of the relevant year that preceded the anniversary of the beginning of the tenancy if that rate had applied during that period, and
(ii) 80.9% of the amount that would be payable in respect of the part of the relevant year beginning with the anniversary of the beginning of the tenancy if that rate had applied during that period.

(1C) The amount that would be payable in respect of the first relevant year if the tenant were paying rent at the social rent rate.”; and

(e) in paragraph 3(2) omit “before or”.

Almshouse accommodation etc. – modifications of Part 1 of Schedule 2

12.—(1) Subject to paragraph (2), where an exception in regulation 4(j), (k) or (l) applies, Part 1 of Schedule 2 of the Act has effect with the modifications specified by regulation 13.

(2) This regulation does not apply if an absolute exception applies.

13. The modifications to the application of Part 1 of Schedule 2 to the Act mentioned in regulation 12 are as follows—

(a) at the beginning of paragraph 1(4) insert “Subject to sub-paragraphs (4A) and (4B),”;

(b) for paragraph 1(4)(c) substitute—

“(c) (i) at the beginning of the first relevant year, making a 0.9% increase in the rate, and

(ii) at the beginning of each subsequent relevant year (up to and including the relevant year in question), making a 1% reduction in the rate.”;

(c) after paragraph 1(4) insert—

“(4A) In the case of a tenancy beginning before or at the beginning of the first relevant year, the social rent rate in the first relevant year is 105% of the rate found in accordance with sub-paragraph (4).

(4B) In the case of a tenancy beginning after the beginning of the first relevant year but before the beginning of the second relevant year—

(a) the social rent rate in the first relevant year is 105% of the rate found in accordance with sub-paragraph (4); and

(b) if in the first relevant year the rent payable by the tenant was higher than the maximum rent found in accordance with sub-paragraph (4) then in the second relevant year the social rent rate is the amount found by—

(i) determining the rate of rent payable by the tenant in the first relevant year when expressed by reference to a period of 12 months, and

(ii) making a 1% reduction in the rate.”;

(d) for paragraph 1(5)(c) substitute—

“(c) (i) at the beginning of the first relevant year, making a 0.9% increase in the rate, and

(ii) at the beginning of each subsequent relevant year (up to and including the relevant year in question), making a 1% reduction in the rate.”;

(e) after paragraph 3(1) insert—

“(1A) If the tenancy begins before the beginning of the first relevant year, the registered provider must secure that the maximum amount of rent payable to the registered provider by the tenant in respect of the first relevant year is the higher of the amounts described in sub-paragraphs (1B) and (1C).

(1B) The amount found by—

(a) determining the rate of the market rent for that social housing when the tenancy began, and

(b) determining the amount that is the sum of—

- (i) 80% of the amount that would be payable in respect of the part of the relevant year that preceded the anniversary of the beginning of the tenancy if that rate had applied during that period, and
- (ii) 80.9% of the amount that would be payable in respect of the part of the relevant year beginning with the anniversary of the beginning of the tenancy if that rate had applied during that period.

(1C) The amount that would be payable in respect of the first relevant year if the tenant were paying rent at the social rent rate.”; and

- (f) in paragraph 3(2) omit “before or”.

Accelerated reductions

14.—(1) Subject to paragraph (2), the maximum rent payable to a registered provider in respect of a relevant year by a tenant to whom section 23 of the Act does not apply because of the exception in regulation 3(3) is no more than the rent that was payable in respect of the qualifying year.

- (2) This regulation does not apply if an absolute exception applies.

Exemptions for registered provider of social housing: alternative provision regulations

15.—(1) The requirements of an alternative provision regulation as it relates to a private registered provider may be disapplied or modified by a direction issued by the regulator if—

- (a) the condition in paragraph (3) or (4) is satisfied; and
- (b) the Secretary of State consents.

(2) The regulator may specify in a direction—

- (a) the period during which it is to have effect; and
- (b) the social housing in relation to which it is to have effect.

(3) The condition in this paragraph is that the regulator considers that complying with the alternative provision regulation would jeopardise the financial viability of the private registered provider.

(4) The condition in this paragraph is that—

- (a) the private registered provider has received a transfer of particular social housing from another registered provider (“the transferee”); and
- (b) immediately before the social housing became the transferee’s social housing a direction under this regulation or under section 25 of, or paragraph 6 of Schedule 2 to, the Act applied in relation to the social housing.

(5) The requirements of an alternative provision regulation as it relates to a local authority may be disapplied or modified by a direction issued by the Secretary of State if the condition in paragraph (7) is satisfied.

(6) The Secretary of State may specify in a direction—

- (a) the period during which it is to have effect; and
- (b) the social housing in relation to which it is to have effect.

(7) The condition in this subsection is that the Secretary of State considers that the local authority would be unable to avoid serious financial difficulties if it were to comply with the alternative provision regulation.

Provision relating to rent and service charge

16.—(1) Subject to paragraph (2), in the social housing rents provisions(14), a reference to an amount of rent payable to a registered provider—

- (a) in the case of affordable rent housing, includes a reference to such amount payable to the registered provider as constitutes service charge; and
- (b) in the case of other social housing, does not include a reference to such amount payable to the registered provider as constitutes service charge.

(2) In the case of affordable rent housing where—

- (a) setting the rent on a social rent basis is permitted under the relevant agreement if the rent determined on that basis is higher than a percentage of market rent specified in the agreement; and
- (b) (i) in the case of a tenancy beginning at or before the beginning of 8 July 2015, at the time when the rent was last set the rent calculated on that basis was higher than that percentage of market rent, or
 - (ii) in the case of a tenancy beginning after the beginning of 8 July 2015 at the time when the rent is set the social rent rate is higher than that percentage of market rent,

a reference to the amount payable does not include a reference to such amount payable to the registered provider as constitutes service charge.

(3) In paragraph (2) “relevant agreement” means an agreement of the type mentioned in regulation 19(2) to (4).

Exemptions for private registered providers of social housing

17.—(1) The circumstances prescribed for the purposes of section 25(5) of and paragraph 6(5) of Schedule 2 to the Act as the condition for the issue of a direction by the regulator are as set out in paragraph (2).

(2) The circumstances are that—

- (a) the private registered provider has received a transfer of particular social housing from another private registered provider (“the transferee”); and
- (b) immediately before the social housing became the transferee’s social housing a direction under regulation 15, or under section 25 of, or paragraph 6 of Schedule 2 to, the Act applied in relation to the social housing.

Formula rent

18. For the purposes of paragraph 1(4)(a) of Part 1 of Schedule 2 to the Act (provision about levels of rents) formula rent is a rent set in accordance with the method specified in the Schedule to these Regulations.

Affordable rent housing

19.—(1) For the purposes of paragraph 4(2) of Part 1 of Schedule 2 to the Act affordable rent housing is accommodation which—

- (a) satisfies one of the conditions in paragraphs (2) to (4); and
- (b) is let at an affordable rent.

(14) See section 30(1) of the Act for a definition of “the social housing rents provisions”.

(2) Subject to paragraph (5), the accommodation is provided pursuant to a relevant agreement with the Homes and Communities Agency or the Greater London Authority and the accommodation is permitted by the agreement to be let as social housing at an affordable rent.

(3) The accommodation is provided by a local authority and the Secretary of State, the Homes and Community Agency or the Greater London Authority has agreed that it is appropriate for that accommodation to be let as social housing at an affordable rent.

(4) Subject to paragraph (5), the accommodation is provided by a local authority using funding obtained wholly or in part from capital receipts which are the subject of an agreement between the Secretary of State and that local authority pursuant to section 11(6) of the Local Government Act 2003 (use of capital receipts)⁽¹⁵⁾ which permits the accommodation to be let as social housing at an affordable rent.

(5) Accommodation is not affordable rent housing where the terms of an agreement require that a proportion or a number of units of accommodation provided pursuant to the agreement are to be accommodation let on a social rent basis and, in a particular case, the registered provider has designated or intends to designate the accommodation as accommodation let on a social rent basis in order to comply with that agreement;

(6) In paragraph (2) “relevant agreement” means an agreement under one of the following programmes—

- (a) The Affordable Homes Programme 2011 – 15;
- (b) The Affordable Homes Programme 2015 – 18;
- (c) The Affordable Homes Programme 2016 – 21;
- (d) The Bringing Empty Homes Back Into Use Programme, November 2011;
- (e) The Bringing Empty Properties Back Into Use as Affordable Housing Programme, December 2012;
- (f) The Care and Support Specialised Housing Fund Programme, Phase 1, October 2012;
- (g) The Care and Support Specialised Housing Fund Programme, Phase 2, February 2015;
- (h) The Affordable Homes Guarantees Programme 2013 – 17;
- (i) The Homelessness Change Programme 2015 – 2017;
- (j) The Platform for Life Programme 2015 – 2017;
- (k) The London Mayor’s Housing Covenant Programme 2015 – 2018;
- (l) The London Mayor’s Care and Support Specialised Housing Fund Programme, Phase 1, October 2012;
- (m) The London Mayor’s Care and Support Specialised Housing Fund Programme, Phase 2, March 2015.

(7) In this regulation “affordable rent” means an initial rent which is no more than 80% of the market rent⁽¹⁶⁾ or rent set on a social rent basis (if higher).

⁽¹⁵⁾ 2003 c. 26. Subsection (6) was inserted by the Localism Act 2011.

⁽¹⁶⁾ See paragraph 4(7) of Schedule 2 to the Act which provides that a reference to market rent includes a reference to an amount payable by service charge.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Signed by authority of the Secretary of State for Communities and Local Government

Williams of Trafford
Parliamentary Under Secretary of State
Department for Communities and Local
Government

17th March 2016