

Technical note:

53-week rent years, rent reduction and Universal Credit

20 December 2018

Summary of key points:

- For a housing association with weekly rents due on Mondays, whose rental year starts on the first Monday in April, there will be 53 gales (payment due dates) of rent during the financial year.
- For the purposes of the Welfare Reform and Work Act 2016 the relevant year 2019/20 will involve 52 rental gales.
- The 2016 Act does not restrict the rent payable 'during' a relevant year. Instead, it is concerned with the rent payable 'in respect of' such a year.
- For the purposes of the Universal Credit calculation there will be 53 rent weeks in the 2019/20 financial year running April to March.
- Universal Credit legislation states that the calculation must be done on the basis of multiplying the weekly rent and eligible service charge by a maximum of 52 and then dividing by 12 to produce a monthly figure.
- In a 53 week year tenants with weekly (or fortnightly or four-weekly) tenancies will receive a week's less Universal Credit than their annual rent charge.

1. A 53-week rent year and the rent cut requirement

For members with weekly rents, there are ordinarily 52 gales of rent during a financial year (less any rent-free weeks). Every five or six years, however, a year will have 53 rental gales. For an association with weekly rents due on Mondays, whose rental year starts on the first Monday in April, 2019/20 will be such a year.

A number of members have raised queries about the correct application of the statutory rent cut, and of rent regulation more broadly, in this context.

The short answer is that:

- a. a close reading of the Welfare Reform and Work Act makes it clear that for most associations (i.e. those with weekly tenancies starting on Mondays, normally adjusting the rent on the first Monday in April) the 'relevant year' 2019/20, as defined for the purposes of the legislation, will involve 52 rental gales rather than 53; and
- b. in any case, the Act restricts the rent payable 'in respect of' any given relevant year, and this is a slightly different concept from the rent payable 'during' that year.

The rent cut requirement is found in the Welfare Reform and Work Act 2016 and in particular in s23(1).

In relation to each relevant year, registered providers of social housing must secure that the amount of rent payable in respect of that relevant year by a tenant of their social housing in England is at least 1% less than the amount of rent that was payable by the tenant in respect of the previous 12 months.

The key words here are 'relevant year' and 'in respect of'.

'Relevant year' is defined in s23(6) of the Act. For an association with weekly rents due on Mondays, which normally adjusts its rent with effect from the first Monday in April, the effect of the definition is that its first relevant year will have begun on the first Monday in April in 2016, which was 4 April, and each subsequent relevant year will begin on the anniversary of that date.

The first relevant year will have run from Monday 4 April 2016 to Monday 3 April 2017. There were 53 rental gales during this year. The second relevant year ran from Tuesday 4 April 2017 to Tuesday 3 April 2018 (52 gales). The third year runs from Wednesday 4 April 2018 to Wednesday 3 April 2019 (again, 52 gales). And the fourth and final relevant year of the rent cut exercise will run from Thursday 4 April 2019 to Friday 3 April 2020. This means that, although it is correct to say that there will be 53 gales during the corresponding financial year (Monday 1 April 2019 to Tuesday 31 March 2020), during the relevant year 2019/20 there will be only 52.

A further key point is that the 2016 Act does not restrict the rent payable 'during' a relevant year. Instead, it is concerned with the rent payable 'in respect of' such a year, and this is a slightly different concept.

Taking as an example the first relevant year (Monday 4 April 2016 to Monday 3 April 2017), the rent payable 'during' this year would be found simply by adding together the 53 weekly gales. But the 53

and final gale covered the weekly period running from Monday 3 April 2017 (when it was due) to Sunday 9 April 2017: that is, only one-seventh of it was 'in respect of' 2016/17, and the remainder was 'in respect of' 2017/18.

Likewise, for the relevant year 2019/20, the final gale of 2018/19 (due on Monday 1 April 2019) will have been three-sevenths 'in respect of' 2018/19 and four-sevenths 'in respect of' 2019/20; and the final gale of 2019/20 (due on Monday 30 March 2020) will be five-sevenths 'in respect of' 2019/20 and two-sevenths 'in respect of' 2020/21. The intervening 51 gales will all, of course, have been wholly 'in respect of' 2019/20.

Having said all of that, it is highly likely that, in practice, if an association simply reduces its weekly rent, for each gale during any given relevant year, by 1% compared with the weekly rent during the previous financial year, it seems very likely that, as a matter of common sense and practicality, this will be accepted both by tenants and by the regulator as acting in conformity with the spirit of the rent cut regulation. The same comment applies if the association adopts a similar approach based on its financial year rather than the slightly different relevant year.

It is emphasized that this discussion has assumed weekly tenancies starting on Monday, and a rent review date of the first Monday in April. For associations with different arrangements, the specific examples set out above may not necessarily be applicable but the general intent of the legislation will be similar.

2. 53 week rent year and Universal Credit

The 53-week year issue arises every 5 or 6 years as a consequence of the calculation used in Universal Credit to convert weekly rent to a calendar monthly figure. 2019/20 is the first financial year this will happen alongside significant number of tenants in receipt of Universal Credit rather than Housing Benefit. Schedule 4, Part 3 of the Universal Credit 2013 regulations state that to convert a weekly rent figure to monthly figure DWP should multiply by 52 and divide by 12. In a financial year that has 53 weeks a tenant whose rent is charged weekly will not receive enough rent to cover the whole year – he or she will be 1 week short.

Tenants with rent free weeks will also be affected. The regulations were amended in 2014 to specify that the calculation for cases with rent-free weeks will be 52 minus the number of rent free weeks. This will apply even in years where there are 53 rent weeks. Tenants with monthly tenancies are not affected by this rule and the Universal Credit they receive will be based on the total rent charged for that year.

The issue is one of unfairness across different tenants – the 52 week limit only affects tenants paying rent on a weekly basis – and of people being worse off under Universal Credit compared to Housing Benefit. All that is needed to avoid this is a change in the Universal Credit Regulations so that (a) the numerator is always the number of rental gales in the year (instead of capping it as 52 as at present), and (b) the divisor is always 12 (to arrive at a monthly figure). This would be a slight simplification of the current regulation.

2.1 Department of Work and Pensions (DWP) response and monthly tenancies

The Federation has received a response back from DWP suggesting that the solution to this problem is for social landlords to move to monthly tenancies. Given the current drafting of Universal Credit regulations, the only way of ensuring that claimants' rent is fully met is to adopt a tenancy period that is an exact division of a calendar year such as a month or a quarter.

Weekly tenancies remain the norm in the social sector and while some landlords are moving to monthly tenancies for new tenants under this approach it will take a long time for this to be the majority. It is both unrealistic and unreasonable to expect landlords to move all tenants to monthly tenancies. For existing tenants, a switch from weekly to monthly tenancies would have to be agreed with each affected tenant, by the issuing of fresh tenancies. It could not be done unilaterally by the landlord. Any arrears on the account would no longer be recoverable through possession proceedings.

2.2 Federation action

The Federation will continue to press for a change to the regulation so that tenants are not left worse off. Members should contact their local MPs to set out their concerns.

2.3 What if landlords only collect the rent 52 times?

In response to the failure of the Universal Credit regulations to cope with the 53 rental gales in the financial year 2019/20, some members have suggested collecting the rent only 52 times during the year whilst maintaining their income by taking the rental yield that would have been spread over 53 weeks and dividing that sum by 52 instead.

There are serious problems with this course of action. In the first place, it is very likely that the tenancy agreement provides for weekly rents and does not contain any provision allowing the landlord unilaterally to change the rent liability in this way. It would therefore be a breach of tenancy.

Secondly, it would increase the weekly rent by 1.9% compared with what it would otherwise have been, more than outweighing the 1% rent cut. While there is an arguable case that it would not, technically, breach the letter of the rent cut legislation (because of the rent-free week), it is likely that tenants would regard it as breaching the spirit. This is particularly true of tenants not on benefit, who will be paying the increase from their own pocket.

We therefore recommend that associations with weekly tenancies should continue to charge the weekly rent in the usual way whether there are 52 or 53 gales in any given year. We recognise that this means that tenants on Universal Credit will not have their rent fully met in a 53-week year but this is the result of DWP policy and the drafting of the Universal Credit regulations.

3. Contact details

If you have any questions or want to discuss any aspect of this briefing contact:

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4. Reference

The [Universal Credit Regulations](#) 2013 Schedule 4, Part 3, Paragraph 7 set out the calculation for a tenant's entitlement to help with housing costs through Universal credit. This regulation was amended in 2014 so that tenants with rent free weeks would also have their entitlement calculated on the basis of a 52 week year, in line with other tenants with weekly tenancies.

Relevant payments calculated monthly

7.—(1) Where any relevant payment is to be taken into account under paragraph 6, the amount of that payment is to be calculated as a monthly amount.

(2) Where the period in respect of which a renter is liable to make a relevant payment is not a month, an amount is to be calculated as the monthly equivalent, so for example—

- (a) weekly payments are multiplied by 52 and divided by 12;
- ▶¹(aa) two-weekly payments are multiplied by 26 and divided by 12;◀
- (b) four-weekly payments are multiplied by 13 and divided by 12;
- (c) three-monthly payments are multiplied by 4 and divided by 12; and
- (d) annual payments are divided by 12.

¹Sub-para. (aa), words in reg. 7(3) & para. (3A) inserted in Sch. 4(7) by reg. (13)(a)-(c) of S.I. 2014/597 as from 28.4.14.

(3) Where a renter is liable for relevant payments under arrangements that provide for one or more rent free periods, ▶¹subject to sub-paragraph (3A),◀ the monthly equivalent is to be calculated over 12 months by reference to the total number of relevant payments which the renter is liable to make in that 12 month period.

▶¹(3A) Where sub-paragraph (3) applies and the relevant payments in question are—

- (a) weekly payments, the total number of weekly payments which the renter is liable to make in any 12 month period shall be calculated by reference to the formula—

$$52 - RFP;$$

- (b) two-weekly payments, the total number of two-weekly payments which the renter is liable to make in any 12 month period shall be calculated by reference to the formula—

$$26 - RFP;$$

- (c) four-weekly payments, the total number of four-weekly payments which the renter is liable to make in any 12 month period shall be calculated by reference to the formula—

$$13 - RFP$$

where "RFP" is the number of rent free periods in the 12 month period in question.◀

(4) "Rent free period" means any period in respect of which the renter has no liability to make one or more of the relevant payments which are to be taken into account under paragraph 6.