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Briefing:

Rent reductions

Supporting implementation

Summary of key points:

This briefing sets out how Housing Associations can implement the 1% rent cut in the Welfare Reform and Work Act 2016.

- The rent cut applies, in principle, to almost all tenancies that are currently subject to the Rent Standard (although for supported housing it has been deferred to 2017/18).
- Commencing from 2016/17, landlords are required to reduce the rent due from the tenant by 1% each year until (and including) 2019/20.
- The Act assumes that an April rent review date is the norm, but contains special (and complex) provisions for cases where rents are normally reviewed at other times.
- Social rent for new general needs properties must be charged at the formula rent, with no 5% tolerance.
- Where a social rent property is relet to a new tenant, the association may retain the 5% tolerance to the extent that it was already in use as at 8 July 2015.
- There is no statutory or other official mechanism for reducing the rent. Tenants should receive formal notice of the change but in most cases the statutory form should not be used.
- In October 2017 the Prime Minister announced that the CPI+1 formula will be restored from 2020/21. Although the intention is clear, details are yet to be decided.

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1. Background

At the summer Budget in July 2015, the Government announced plans to reduce rents in the social housing sector by 1% for each of the next four years from April 2016, breaking the 10-year rent settlement of CPI + 1%.

Provisions for the rent reduction are included in the Welfare Reform and Work Act 2016, which received Royal Assent on 16 March 2016. Further important details about the rent cut are included in:

- the Social Housing Rent (Exceptions and Miscellaneous Provisions) Regulations 2016 (SI 2016/390), which were laid on 18 March 2016;
- the General Social Housing Rents Permitted Review Day Consent 2016, issued by the Secretary of State on 18 March 2016; and
- the Social Housing Rents (Exceptions and Miscellaneous Provisions) (Amendment) Regulations 2017 (SI 2017/91), laid on 2 February 2017.

This briefing note supersedes the earlier versions issued on 22 December 2015, 5 February 2016, 29 March 2016, 29 September 2016, 27 January 2017 and 15 June 2017. It sets out the practical implications of implementing the rent cut and is based on the information available to the Federation as of 8 November 2017.

2. Implementing the rent cut – to which homes and services does it apply?

To which housing does the rent cut apply?

The rent cut will, in principle, although subject to a delay in respect of supported housing, apply to almost all tenancies that are currently subject to the Rent Standard:

- Social rented housing in general where the landlord is a registered provider of social housing (whether they are local authorities, housing associations, or for-profit providers).
- Affordable rented housing where the landlord is a registered provider.

It will not apply to properties that are outside the Rent Standard, such as specialized supported housing, market rent, intermediate rent, and shared ownership.

In addition, it does not apply to properties with a tenant enjoying the protection of the Rent Acts where a Fair Rent is registered that is lower than the formula rent for the property (note that it is the registered Fair Rent that counts for this purpose, even if the rent actually charged is less). This means that rent setting for these properties may continue as normal, and associations should continue to reregister the rent every two years. It should be stressed,

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however, that this exception applies only so long as the registered Fair Rent is less than formula; and that formula rent itself will fall by 1% annually throughout the rent cut exercise. If the registered Fair Rent comes to exceed the formula rent, the exception will cease to apply and from that point the rent cut requirement will have effect.

Although, in principle, the rent cut covers supported housing (except specialized supported housing), the Government announced on 27 January 2016 that its application would be delayed for one year, i.e. until April 2017. For more details, see section 3 below.

The Government has also confirmed that the initial one-year deferment for co-operative and fully mutual housing associations, almshouses, refuges and Community Land Trusts will be extended for a further three years: in other words, they will be excluded from the entire rent reduction exercise.

Exclusions from the rent cut

The Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 (SI 2016/390), laid before Parliament on 18 March 2016 and taking effect on 1 April 2016, set out categories of social housing that are completely exempted from the rent cut requirement. These categories, which were amended and extended by further regulations (SI 2017/91) laid on 2 February 2017, are as follows.

- *Accommodation where the household income exceeds £60,000* – This apparent concession was introduced at a very late stage; in practice it is of little value because landlords are unlikely to know which households fall in this category.
- *Intermediate rent* – Housing let at a rent less than the market level but not a social rent or an affordable rent; this will include ‘key worker’ schemes and some types of scheme developed outside the HCA investment programme (schemes defined as ‘intermediate rent’ were set out in the original regulations (SI 2016/390) and some further categories were added by the amending regulations (SI 2017/91)).
- *Specialized supported housing*
- *Domestic violence refuge accommodation*
- *PFI social housing* – This exception applies only where the housing was developed as part of a PFI scheme specifically identified as such in the contracts.
- *Temporary social housing*
- *Fair Rent properties* – Specifically, properties with a tenant entitled to a Fair Rent under the 1977 Rent Act, provided the registered Fair Rent is below formula.
- *Care homes*

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- *Almshouses*
- *Housing co-operatives* – Please note that this applies only to fully mutual co-operatives.
- *Community Land Trusts*
- *Properties not meeting the usual definition of ‘social housing’ in s68 of the Housing and Regeneration Act 2008*
- *Accommodation where the rent normally payable had been temporarily waived or reduced*

What about formula rent, also known as ‘target rent’?

Just as actual rents are to be reduced by 1% annually, so the formula rent will also, in effect, be reduced. When this briefing refers to ‘formula rents’, we are referring to formula rent as decreased by 1% annually from 2016 until 2020 (except for supported housing, to which a different formula applies – see section 3 below).

Are service charges included?

The Social Housing Rents Regulations provide that, for social rents, the ‘rent’ for the purposes of the rent reduction excludes the service charge. This applies whether the service charge is fixed or variable.

By contrast, the ‘rent’ for affordable rents includes the service element – again, whether fixed or variable (most associations operate a fixed service charge in affordable rent properties).

Properties where the affordable rent level (80% of the market rent) implies a rent below social rent in the area, so that they are effectively let at social rents, are treated as social rent properties for this purpose and the ‘rent’ is thus exclusive of service charge.

How does it all work when it comes to relets?

Where a property is relet to the same tenant (for instance, if a fixed-term tenancy comes to an end and the landlord renews it), this is regarded as a continuation of the same tenancy and the rent should continue to fall by 1% annually (see section 33(3) of the Act). This applies to both social rents and affordable rents.

Where a social rent property is relet to a new tenant, the rent may be either:

- (a) the formula rent (as reduced by 1% each year), termed in the Bill the ‘social rent rate’, or
- (b) the rent charged as at (in most cases) 8 Jul 2015 (again, as reduced by 1% each year). This is the ‘assumed rent rate’.

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The overall effect of this is that the property can be relet above formula rent only if (and then to the extent that) it was above the formula rent on 8 July 2015.

The following cases illustrate the point. In each case, it is assumed that the property is let as general needs, that the landlord's first 'relevant year' begins on 1 April 2016, and that the rent was not increased between 8 July 2015 and 31 March 2016.

CASE 1

The formula rent for a property on 8 Jul 2015 is £100 and the actual rent is £105 (i.e. at the top of the 5% tolerance). In Apr 2016, with the same tenant still *in situ*, the landlord reduces the rent to £103.95 (a 1% cut) and the formula goes down to £99.00. (However, the actual rent continues to be 5% above formula, albeit both have been reduced.) In Apr 2017 the rent is further reduced to £102.91, while formula falls to £98.01. At some point during 2017/18 (i.e. the second relevant year), the property becomes vacant and falls to be relet. The maximum rent on relet is the higher of the social rent rate (i.e. 98.01) and the assumed rent rate (i.e. £102.91).

CASE 2

If, on the other hand, the same property had been let on 8 Jul 2015 at £95 (i.e. at the bottom of the 5% tolerance), then by 2017/18 the formula would have fallen to £98.01 (as in Case 1) and the actual rent would have fallen to £93.10 (i.e. two years' 1% cut). In this case, the property falls vacant the landlord may relet it at the higher of these two figures, namely the (reduced) formula rent of £98.01.

CASE 3

If the same property had been let on 8 Jul 2015 at £100, i.e. exactly at formula, then the social rent rate and assumed rent rate would be identical and would both reduce in step during the rent reduction exercise, so in 2017/18 the maximum rent on relet would be £98.01.

For supported housing, however, the 10% tolerance is retained even if it not in use as of 8 July 2015 (see section 3).

Where an affordable rent property is let to a new tenant, including conversions of social rent properties, the rent can be set at 80% of the market in the usual way.

... And for new lets?

From 1 April 2016, new lets for social rent properties can be at formula rent. The 5% tolerance no longer applies for new lets of general needs housing.

If a social rent property was let for the first time between 9 July 2015 and 31 March 2016, the initial rent will have been governed by the Rent Standard and consequently it will have been in order to apply the tolerance at that time; but the base rent for calculating the rent cut in the first relevant year will be the formula rent without any tolerance element.

New lets for affordable rent can be set at 80% of the market in the usual way.

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How will waivers work?

The Welfare Reform and Work Act includes a provision for the regulator to grant an organisation either a whole or partial waiver (technically called an 'exemption') from the obligation to reduce rents by 1% per year.

The Act sets out the power of the Regulator, the Homes and Communities Agency (HCA), to issue a direction in respect of a registered provider exempting it from the requirements to reduce rents if one of the following conditions is satisfied. The conditions are:

- the Regulator considers that complying with the rent reduction would jeopardize the financial viability of the provider, or
- the circumstances of the private registered provider satisfy requirements prescribed in regulations.

The HCA has published a note on the waiver system ('Explanatory note for making a formal application for an exemption to the rent reductions in the Welfare Reform and Work act 2016'). There is no standard application form: the onus is very much on the organisation concerned to approach the HCA with particulars justifying its case. These should set out the risk to the organisation's financial viability if it implements the rent cut, as well as everything it has done, or intends to do, in order to mitigate the risk.

The HCA will examine the application and consider whether a partial or complete waiver is justified. Before granting a waiver, the HCA must obtain the consent of the Secretary of State.

What happens after the rent cut ends in 2019/20?

In October 2017 the Prime Minister, Theresa May, announced that with effect from 2020/21 the rent formula of CPI+1 will be restored for all social housing. This includes general needs housing as well as supported housing.

Clearly this is a very welcome announcement. However, although it clearly establishes the broad intention, the announcement did not go into detail and associations are cautioned against any assumption that this simply means a return to the *status quo ante*. In fact, there are practical and technical reasons why this is unlikely to be the case, and we anticipate dialogue with CLG on the detailed operation of the post-2020 rent regime.

3 Supported housing

How will the rent reduction apply to supported and sheltered housing?

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In March 2016 the Government put in place a year-long exception for all supported housing from the 1% rent reduction in the social rented sector. For these properties social landlords were able to raise rents in line with the Rent Standard by CPI plus 1% (i.e. by 0.9%) in the 'relevant year' commencing in 2016/17.

The scope of the exception is set out in the Social Housing Rents Regulations. 'Supported housing' means

'low cost rental housing provided by a registered provider which –

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

The Regulations also provide that '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.

It is notable that in the first four categories (and only for these), it is the housing itself (as opposed to any services provided in association with it) that is regarded as the 'support'.

What happens in 2017/18 and beyond?

The exception for supported and sheltered housing was for one year. Government announced on 15 September 2016 that from April 2017 the rent reduction would apply to supported housing, with rents in these properties decreasing by 1% a year up to and including 2019/20. This means that supported housing will be subject to the rent cut for only three years rather than four. The existing exemption for specialized supported housing remains in place and the

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initial one-year suspension for fully mutual co-operatives, almshouses, Community Land Trusts and refuges has been extended over the remaining three years of the policy.

The underlying requirement for supported housing is the same as for social housing generally: that for each relevant year in which the requirement applies, the rent due should be 1% less than the rent due in the previous year. The rules about defining the term 'relevant year' are the same, as is the rule that when the property is relet, the rent may be set at formula (although the formula rent is calculated in a different way that automatically incorporates the 10% tolerance – see below).

For supported housing let on an affordable tenancy, the same requirement applies in general as for a social tenancy: the rent due in each relevant year must be 1% less than in the previous year. For affordable rent tenancies that were in being on 8 July 2015, the baseline is the rent being charged at that time, subject to the normal CPI+1% (+0.9%) in 2016/17. This is the figure that must be reduced by 1% to calculate the maximum rent due in the 'relevant year' commencing in 2017/18.

Where an affordable tenancy of supported housing began after 8 July 2015, but before 1 April 2016, the rules assume that the affordable rent calculated as 80% of the 2015/16 market rent will have been charged until the anniversary of the granting of the tenancy, whereupon it will have been increased to 80.9% of the 2015/16 market rent (i.e. CPI+1%). The assumed rent due in 2016/17 must be calculated on this basis (regardless of whether this is what the association actually did) and the resulting figure is then reduced by 1% to obtain the maximum rent due in the 'relevant year' commencing in 2017/18.

Affordable rents tenancies beginning after 1 April 2016 will presumably have been based on 80% of the 2016/17 market rent so no special provision is necessary: the maximum rent due in the 'relevant year' commencing in 2017/18 will simply be 1% less than the rent due in the previous year (calculated *pro rata* if not a full year).

NOTE: Because the determination of the 'relevant year' is the same for supported housing as for general needs, the first 'relevant year' (for organisations that normally increase their rents in April) runs from April 2016 to March 2017 regardless of whether the housing is supported or general needs. The one-year delay for supported housing was achieved not by delaying the first 'relevant year' but by providing that during that year, rents could be set in accordance with the Rent Standard rather than the rent cut requirements. Supported housing providers should bear in mind that the expression 'first relevant year' thus means 2016/17, not 2017/18.

How is the formula rent calculated for supported housing?

For the purposes of the rent cut requirement, the baseline is the formula rent as it stood in 2015/16. For general needs social housing, which became subject to the rent cut in 2016/17, the baseline formula is simply reduced by 1% each year as explained in section 2 above.

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For supported housing, the calculation is more complicated in order to reflect the fact that the rent cut takes effect a year later. This is set out on paragraph 11 of the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 (SI 2016/390).

The formula rent in 2015/16 remains the starting point.

- This figure should be multiplied by 110% to reflect the 10% tolerance.
- For the first relevant year (i.e., for most providers, April 2016 to March 2017), this figure should be multiplied by 0.9%. This is to reflect the Rent Standard uplift for 2015/16 (i.e. CPI in September 2015 (-0.1%) plus 1%).
- For the second relevant year (i.e. 2017/18, the first year for which the rent cut is required), the resulting figure is reduced by 1%.
- A further reduction of 1% is applied in each succeeding relevant year.

Please note that this calculation is about working out the formula rent, as modified by the rent cut requirement. The formula is, in some circumstances, relevant to the rent that can actually be charged (for instance, where there is a change of tenant, or in deciding whether the Fair Rent exemption applies); but it is not the same as the actual rent, which in most cases (subject to the various exceptions and qualifications) must be set so as to ensure that the rent due in each relevant year is 1% less than the rent due in the previous year.

Does the 10% tolerance still apply?

Providers of supported housing can set rents for new and relet supported housing at 10% above the social rent rate (i.e. formula less the appropriate reduction). During the exception period the intention is that providers will be able to set new rents at 10% above the 2015/16 formula rate uprated by CPI+1. In relation to supported housing, the formula rent is calculated in a way that automatically incorporates the 10% tolerance, so it does not need to be added separately.

What about schemes that are outside the rent standard?

Rents in 'specialist supported housing' are outside the HCA Rent Standard. These homes will be excepted from the rent reductions completely and for the entire four-year period. Specialist supported housing' is defined in the [Rent Standard](#). The definition as set out in the Regulations is summarized below.

Accommodation:

- which is designed or designated for residents who require specialised services or support;
- which offers a high level of support, which approximates to the services or support which would be provided in a care home;

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- which is provided under an agreement or arrangement with a local authority, or the health service; and
- for which there was no public assistance, or if there was public assistance, it was by means of a loan secured by means of a charge or a mortgage against a property.

4 Implementing the rent cut – the process for reducing rents and serving notice

So when does the rent reduction need to take place?

The Government's policy intent is that the rent cut should take place at the start of the landlord's 'relevant year'. The 'relevant year', for each association, depends on when it normally increases its rents. Thus, for an association that normally increases its rents at the beginning of April, its first 'relevant year' runs from April 2016 to March 2017. The majority of associations will be in this position.

Associations that increase the rent of a majority of their tenants at a date other than April should adjust their 'relevant year' accordingly. For an association with an October increase date, for instance, the first 'relevant year' runs from October 2016 until September 2017.

The central requirement of the legislation is that, for each tenant, the rent due in respect of the first 'relevant year' should be 1% less than the rent due from that tenant in the last full year before the first 'relevant year'. This should normally be calculated on the basis that the rent charged on 8 July 2015 had applied throughout the last full year before the first 'relevant year' (but note that the Secretary of State has power to allow reference to another date if the rent was (or is to be) increased in accordance with the Rent Standard between 8 July 2015 and 31 March 2016 – see notes below on increase dates other than April).

In respect of each successive 'relevant year', the rent due from the tenant should fall by a further 1% until, and including, the fourth and final 'relevant year', which, for an association with an April increase date, will run from April 2019 to March 2020.

Where an association has a standard rent review date for the majority of its tenants, therefore, the practical effect of the Act is to require a rent cut of 1% each year, at the same time as the rent would otherwise have increased.

The reason that the Act refers to 8 July 2015 is that this is the date of the summer budget at which the rent reduction policy was announced. These references, therefore, are designed to prevent artificial rent increases that would allow the landlord to effect the 1% reduction from a higher level of rent. It does, however, create a problem for associations whose normal rent increase date falls after 8 July. These associations will quite legitimately have increased their rents since that date, not as an avoidance device but simply in compliance with the Rent Standard. These associations should note that the Secretary of State has power under the Act to vary the 'permitted review day' and this power has been used in the General Social Housing Rents Permitted Review Day Consent 2016, published on 18 March 2016. The effect is to specify,

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for these associations, a 'review day' that legitimates rent increases taking place between 8 July 2015 and 31 March 2016, provided that the rent would normally have been increased at that time and the percentage increase was in accordance with the Rent Standard (i.e. CPI+1%) and provided that the new rent was above formula, if at all, only to the same extent as it had been on 8 July 2015.

What about landlords with a number of different rent review dates?

Where a landlord has a number of different rent review dates during the year, its first 'relevant year' will begin at some point between April 2016 and March 2017:

- a. if there is a particular date that applies to a majority of its tenants, on that date; or
- b. if there is no date that applies to a majority of tenants (e.g. if the association increases rents on the anniversary of the start of the tenancy, so that dates are scattered throughout the year), on 1 April 2016.

This means that an association with a variety of increase dates will inevitably have some tenants whose normal rent review date does not coincide with the start of the association's 'relevant year'.

For these tenants, the requirement nevertheless applies that the rent due in respect of the first 'relevant year' must be 1% less than it was previously. The previous rent is normally calculated as it was on 8 July 2015, but a later date will apply if the rent was increased in accordance with the Rent Standard between 8 July 2015 and 31 March 2016. However, this will not alter the timing of the first 'relevant year', which will begin when the association normally increases the rent of the majority of its tenants or, if there is no such majority date, in April 2016.

In short, the practical effect is that the landlord will still need to cut its tenants' rent by 1% at the start of the first 'relevant year' even for tenants whose rents would normally have been increased at some other time. It is understandable that associations might be tempted to defer the reduction until the normal rent increase date, but the effect of such a delay is that the reduction will apply for only part of the 'relevant year' so it will have to be greater than 1% in order to produce the required reduction across the 'relevant year' as a whole. It is assumed that most associations will prefer to avoid such an outcome.

What statutory process do I need to go through to reduce rents for assured tenancies?

There is no statutory or other official mechanism for reducing the rent. The existing statutory mechanisms, specifically sections 13 and 14 of the Housing Act 1988, which apply to almost every periodic assured tenancy (whether shorthold or 'lifetime'), apply only to rent increases.

Accordingly, the familiar statutory form should not be used when it comes to implementing the 1% annual rent reduction. Crucially, this means the 12-month (or 52-week) rule has no

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application (because this is a rule about the interval between rent increases), and the tenant has no statutory right of appeal.

In the unlikely event that the tenancy agreement itself sets out a rent reduction mechanism, the Welfare Reform and Work Act provides that a registered provider may nonetheless reduce rents without giving prior notice.

Are there any other legal requirements about the timing of rent reductions?

Although there is no statutory restriction on when rents may be reduced, for periodic tenancies the reduction must comply with the common law requirement that the rent can be changed only at the beginning of a tenancy period.

For fixed-term tenancies, there is no such requirement but it has been normal practice to increase the rent with effect from the point at which a payment becomes due and it makes sense to apply the same approach to a reduction.

How and when do I give my tenants notice of the rent reduction?

While there is no standard format for notifying the tenant of a rent reduction, it would be advisable to do this in writing with your organisation's letterhead.

Where there is a fixed service charge, the notification should state:

- The existing gross rent (and how much of this is service charge)
- The new gross rent (and how much of this is service charge)
- The date on which the new rent will take effect.

Where the service charge is variable, the notification should state:

- The existing net rent (and how much service charge is being levied in addition to this)
- The new net rent (and how much service charge will be levied in addition to this)
- The date on which the new rent will take effect.

The tenant should be given reasonable notice of the change in rent. This should certainly be long enough to allow the tenant to make any necessary arrangements, such as informing the local authority, or altering bank mandates. It is suggested that one month would be reasonable notice.

It is possible that a few tenancy agreements may specify a notice period for a rent cut, but any such term is set aside by the Bill so that a rent cut for the purposes of the Bill may be implemented without notice.

My organisation's tenancy agreements have ouster clauses. Does that make any difference?

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Some associations may have clauses in their tenancy agreements that operate so as to oust the statutory rent mechanism in assured periodic tenancies. These associations will be accustomed to use their own mechanisms for increasing the rent, in accordance with the tenancy agreement.

Associations in this position should carefully study the rent clause in their tenancy agreement. Because clauses of this kind are bespoke to the association concerned, it is not possible for the Federation to give general advice except to say that it is essential to check whether the clause applies to any change in the rent (up or down) or only to increases.

If the rent clause covers reductions, the association should give effect to the rent cut in accordance with the clause (although any notice period in such a clause is set aside by the Bill). If the clause covers increases only, then the association should simply give reasonable notice as outlined in the previous section.

A handful of associations may have included 'upward-only' rent clauses in the tenancy agreement. Such a clause is common in commercial leases but it is unusual in residential tenancies. It is likely that the legislation will have the effect of overriding the upward-only clause, but associations in this position may wish to seek their own legal advice on the point.

How does this all apply to fixed-term assured tenancies?

Since 2011 associations have been able to grant fixed-term assured tenancies (i.e. 'flexible' tenancies as opposed to 'lifetime' tenancies). Fixed-term tenancies are excluded from the statutory rent increase mechanism and consequently the tenancy will include its own mechanism for varying the rent. It is likely that this mechanism will apply to increases only; in which case, a reduction can be effected by serving reasonable notice as outlined in the previous sections. (In the unlikely event that the tenancy creates a mechanism that applies to rent reductions as well as increases, it should be followed to the letter.)

What happens if the service charges increase by an amount greater than the 1% rent reduction?

Associations should also note the possibility that, in some cases, it is possible that the service charge might increase by a sum that outweighs the reduction in rent.

This is likelier in supported housing than in general needs, because the service charge is likely to be larger in proportion to the net rent; but even in general needs housing, it may happen occasionally, for instance if expenditure on services in the coming year is expected to be much higher than usual.

In certain circumstances, this will make an important difference to the way the change is notified to tenants. This is because, for the purposes of the rent increase mechanism in sections 13 and 14 of the Housing Act 1988, a fixed service charge (unlike a variable charge) counts as part of the rent. If the charge has increased by more than the net rent has fallen,

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therefore, a rent increase has occurred and the statutory rent notice should be used in the usual way. But it is stressed that this will be an unusual situation, because it requires all of the following to apply:

- The tenancy must be assured periodic without an ouster clause.
- The service charge must be fixed.
- The service charge must increase by a larger amount, in cash terms, than the 1% reduction in the net rent.

What does this all mean for Fair Rent tenancies?

The Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 exclude properties occupied by a tenant entitled to a Fair Rent, provided that the registered rent is less than formula rent. This is a significant change of approach, apparently decided upon at a very late stage before the Regulations were laid, because CLG had previously indicated that no special provision would be made for fair rent tenancies and consequently the rent would have to be cut by 1% annually.

The Federation had strongly urged CLG to exclude Fair Rents (where below formula) on the grounds that these tenants already benefit from a very strong statutory rent regime; such an exclusion would allow associations gradually to converge remaining Fair Rents with the rents charged to other tenants. We therefore welcomed CLG's decision, albeit it came at a very late stage.

Accordingly, associations should continue to reregister Fair Rents every two years. They should continue to apply increases in the usual way, unless they reach the point at which the Fair Rent has caught up with the formula rent. From this point, the exclusion will cease to apply and the formula rent should be charged (and reduced by 1% annually).

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