



Department for
Communities and
Local Government

Rents for Social Housing from 2015-16

Consultation: Summary of Responses

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Section 1

Introduction

- 1.1 On 31 October 2013, the Government published a consultation paper setting out proposals for rents for social housing from April 2015, following announcements at Budget 2013 and the Spending Round 2013 on changes to rent policy.
- 1.2 The consultation paper is available at:
<https://www.gov.uk/government/consultations/rents-for-social-housing-from-2015-to-2016>
- 1.3 The consultation sought views on a number of issues, but in particular:
 - Moving from annual rent increases of up to Retail Prices Index inflation (RPI) + 0.5 percentage points (+ up to £2 per week for social rents), to increases of up to Consumer Prices Index inflation (CPI) + 1 percentage point;
 - As a result, removing the flexibility available to landlords to increase social rents each year by an additional £2 per week, above the increase in formula rent, where the rent is below the rent flexibility level and rent cap; and
 - Making clear that rent policy does not apply where a social tenant household has an income of at least £60,000 a year.
- 1.4 We also consulted on a new draft direction to the Social Housing Regulator on rents, and new draft guidance for local authorities on rents.
- 1.5 The consultation process closed on 24 December 2013.
- 1.6 We have considered all of the responses received. Section 3 of this document summarises the responses. Section 4 of this document sets out our decisions on policy on rents for social housing from April 2015.
- 1.7 We are grateful to organisations and individuals who took the time to respond to the consultation.
- 1.8 Copies of this document are available from the Department for Communities and Local Government website at:
<https://www.gov.uk/government/consultations/rents-for-social-housing-from-2015-to-2016>
- 1.9 Enquiries about the document should be addressed to:
rentpolicy@communities.gsi.gov.uk

Section 2

Summary of responses

- 2.1 178 responses were received from local authorities, arms length management organisations, private registered providers of social housing, housing sector representative bodies, tenant and resident organisations, other organisations with an interest in social housing and individuals.
- 2.2 Around 90% of responses were from social housing landlords and sector representative bodies. 45% of responses were from local authorities and arms length management organisations, and 39% were from private registered providers. The table below sets out a breakdown of the origin of responses.

Responses by type of respondent

Type of respondent	Number of responses
Local authorities with social housing stock	68
Non-stock holding local authorities	2
Private registered providers	70
Arms length management organisations	10
Housing sector representative bodies	10
Tenant representative bodies	7
Other organisations	6
Individuals	5
Total responses	178

Section 3

Responses to questions

Social rent policy

Question 1: What are your views on the Government's proposed policy on social rents from 2015-16?

Overview

- 3.1 More than half of respondents welcomed the ten year, index-linked rent settlement and agreed that it will provide the stability and certainty that will enable social housing providers to plan for future investment – and give investors confidence. They agreed that it also provides clarity and stability for tenants and helps ensure that rents are affordable.
- 3.2 There was also support for the continuation of the principle of a consistent national framework for setting social housing rents, which applies to both local authorities and private registered providers.
- 3.3 Overall, around 45% of respondents said that they agreed with some of the proposals but had some concerns. The key concerns expressed related to the removal of the flexibility available to landlords to increase social rents each year by an additional £2 above the increase in formula rent, where the rent is below the rent flexibility level and rent cap (what is known as rent convergence policy). A small number were also concerned about a potential divergence between the Consumer Prices Index and the Retail Prices Index in the long term, which they argued presented a degree of risk to business planning for the long term.
- 3.4 Around 40% were more clearly opposed. Their main objection was to the end of rent convergence. Their main concern related to the potential loss of income arising. Some landlords were also concerned that it would lead to differential rents between existing and new tenants.
- 3.5 Surveys by two tenant representative bodies found that tenants' views were mixed. Overall, more disagreed with the policy than agreed. However, there was some tension between views expressed – while tenants wanted to limit rent increases they were also concerned about the impact of ending rent convergence on the Housing Revenue Account, which they felt could impact on services and investment in new housing.
- 3.6 A local authority representative body felt that it was important that councils continued to have some local discretion in setting reasonable rents to reflect

local circumstances. They welcomed that the Government's rent policy for councils remains non-statutory.

- 3.7 There were some suggestions that reference to the 1999 values and earnings data in the calculation of social rents should be reviewed, to make social rent more responsive to current local housing market trends and conditions.

Rent increases

- 3.8 As mentioned earlier, most respondents welcome the ten year index-linked rent settlement. The majority (60%) agreed that it is important to maintain an inflation-linked rent policy to ensure changes in rents continue to be linked to changes in costs. They felt that using CPI instead of RPI is reasonable, as CPI appears to have been more stable recently than RPI, and particularly as RPI is no longer considered a measure of inflation that meets international standards. It is also consistent with other inflation measures used in policy by the Government, including for benefits and pensions.
- 3.9 Many respondents noted that, although it is not straightforward to estimate the future difference between RPI and CPI, they thought that, in the short to medium term, it is likely to produce rental incomes that are broadly comparable with the current policy, and that the difference would not be significant.
- 3.10 It was noted, however, that there is a risk that in future the difference between CPI and RPI could be larger, meaning providers would need to factor in a potential fall in rent increases over the long-term in their business plans. It was also suggested that Government would need to be mindful of the implications of this for any future investment programmes.
- 3.11 Tenants' views received from a tenant representative body were mixed. Most said that they did not see a problem in changing from RPI to CPI. However, they felt that rent increases of a similar level to inflation would be fairer to them.
- 3.12 It was also suggested that using CPI would make rent increases more easily explained and more transparent to tenants.
- 3.13 Around one-fifth of respondents disagreed with this aspect of the policy, the majority of which were local authorities. They felt that the move from RPI to CPI has the potential to result in lower rent increases in the long term, as CPI has tended to be lower than RPI. If this is the case, they argued it would result in providers being able to generate less money from rent increases, with a negative impact on Housing Revenue Accounts over 30 years.
- 3.14 Some said that this may have a potential impact in the short to medium term on balancing rental income with housing related expenditure, as costs are likely to increase in line with RPI.
- 3.15 Some also felt that RPI is more appropriate because it includes housing costs and mortgage interest payments in the calculation, while CPI does not. There

were suggestions that a 12-month rolling average should be used instead of a single month index, to avoid short-term volatility.

- 3.16 There were some views that a commitment that the + 1% real term increase would remain beyond the proposed ten year rent policy period would be helpful to guarantee resources are available in later years and allow for more robust business planning.
- 3.17 Some suggested that the Department for Communities and Local Government should work with the Department for Work and Pensions to consider the way that future benefits are increased within Universal Credit. Some providers were concerned that in future rents may increase at a higher rate than Government support for housing costs, and the gap between the two could widen to the extent that it affects affordability and could lead to challenges in collecting rents.

Ending of convergence

- 3.18 The key concern expressed by landlords related to the removal of the flexibility to increase weekly rents by an additional £2 to help achieve convergence with formula rents. Some said that they had not had sufficient time to reach full rent convergence due to historically low rents. Many felt that this could impact on a few organisations' financial viability - particularly for recent stock transfer landlords – with a risk of breaches of lending covenants, and a potential for funders to seek to renegotiate lending agreements. Many also said the policy change would reduce their ability to invest in homes and services.
- 3.19 A number of local authorities and representative bodies said that the removal of the £2 flexibility was not in line with the calculations underpinning the Housing Revenue Account self-financing settlement. They said this would result in a loss of rental income which could affect their business plans. Some also said that they were concerned that this policy change had been proposed so soon after the start of self-financing.
- 3.20 There was also a view that the ending of convergence was a reasonable trade-off for the sector, in exchange for the certainty and stability of ten years of rent increases of CPI + 1%. This view was not widely held.
- 3.21 Some providers felt that ending rent convergence was in conflict with the Government's policy of supporting affordable rent. They argued that continuing with convergence - for 2015/16 at least - would have a minimal impact on housing benefit expenditure, compared to higher housing benefit costs arising from higher rents for affordable rent properties.
- 3.22 Another reason proposed for objecting to ending convergence was around fairness and consistency between tenants. Some respondents argued that the ending of convergence could lead to inequity as it would widen the gap between rents for existing tenants and new tenants for similar type properties. They argued that the original objective of rent restructuring policy, which was that tenants should pay similar rents for similar properties, should remain an important part of social rent policy.

- 3.23 It was suggested that the impact could be more significant in areas where formula rents are higher such as in London and the area around it, and could affect tenants' willingness and ability to move.
- 3.24 Some felt the move could act as a disincentive for under-occupying tenants who may be looking to move to a smaller property.
- 3.25 There were some concerns that ending rent convergence may result in providers, particularly local authority landlords, increasing rents as close as possible to formula rent levels in 2014-15 to mitigate the financial impact on their business plans.
- 3.26 It was argued that the ending of convergence could act as a disincentive to stock transfer.
- 3.27 A number of social housing providers asked the Government to reconsider the proposal to end the £2 flexibility. In particular, some stock-holding local authorities asked that the Government considered re-opening the Housing Revenue Account self-financing settlement.
- 3.28 Many providers and representative bodies said they welcomed that the proposals clearly stated that the Regulator will still be able to offer time-limited waivers from adherence to policy, where a private registered provider sees an impact on their financial viability, to support associations to remain financially viable.
- 3.29 There were concerns, however, that the scope of the proposed granting of waivers may be too limited. Some felt eligibility should be extended to cover situations where there is a demonstrable impact on a landlord's approved business plan, or an inability to maintain the quality of the housing stock.
- 3.30 There were strong views from large scale voluntary transfer landlords that those that are developing homes, who are still in the early years of their transfer and can demonstrate that they are using the funds to invest in development and regeneration, should be given an extension to continue convergence for a limited period, for example, ten years from their transfer date.
- 3.31 There were also views that convergence is particularly important to some landlords who are carrying out major investment and regeneration schemes, where tenants agreed to contribute towards substantial improvements to their homes and neighbourhoods. These providers felt that waivers should be extended to specific schemes or projects, where they can be demonstrated to make a material contribution to the financial viability of these major regeneration projects, and reflect commitments to existing tenants.
- 3.32 It was thought that the policy should clarify or re-state the definition of "viability", as well as "non-core spending", in terms of how waivers requests will be treated.
- 3.33 There were also concerns from the local authority sector that, while there is flexibility for private registered providers to seek a waiver from the Regulator,

no such flexibility exists for local authorities. They felt that similar arrangements should be available for local authority landlords.

Limit rents

- 3.34 Stock-owning local authorities questioned how limit rents will be treated in 2014-15 and the following years. Authorities were concerned that, with the proposed ending of rent convergence, limit rents may continue to lag behind formula rents in the long-term.
- 3.35 Many authorities felt that to reflect the end of convergence in 2014-15, limit rents should be brought to the same level as formula rents in that year. They argued this would provide them with the flexibility to re-let vacant properties at formula rent levels. One local authority stated that if this approach is followed, it would help the majority of their stock reach their formula rent levels, and will significantly mitigate the impact of the removal of the £2 flexibility.
- 3.36 There were also questions around how the system will continue to operate in the longer term under Universal Credit. It was thought that an early clarification on this issue will be helpful in enabling councils to manage their Housing Revenue Accounts and plan their investment effectively. Local authorities also argued they should be involved in the design of the new mechanism.
- 3.37 There was also a suggestion that we should remove the limit rent mechanism altogether from 2015-16. This was based on the argument that local authorities are democratically accountable to their tenants and other residents, and have a duty to set 'reasonable rents'. It was felt that this should counterbalance any impetus to raise rents unjustifiably.

Re-letting

- 3.38 Many respondents said that the proposal for rent uplift to formula rent levels on re-let is welcome, as it ensures affordability for existing tenants, while enabling all properties to reach formula rent levels in the long term. A number of landlords said that this aspect of the policy will provide some mitigation to the loss of income for properties that are lower than formula rents. However, it was noted by many landlords that their re-let rates are low in general and have been falling. As a result, they said that it would take a long time until all properties reach formula rents.
- 3.39 A local authority said that it would require a change of their local policy in order to re-let vacant properties at formula rents, while some authorities said that they already apply this policy.

Rent flexibility level

- 3.40 The intention to continue with the 5% flexibility was welcomed by respondents. There were a number of questions as to whether the current 10% flexibility for supported and sheltered housing will be maintained. The 10% flexibility was reflected in the draft rent direction and draft guidance.

- 3.41 Respondents said that they welcome the proposal to allow rents that are over the rent flexibility level to reduce over time. Some stated that they had understood that it was expected that rents should be reduced immediately and asked for this to be clarified.

Question 2: Should the rent caps be removed? If you are a landlord, how (if at all) do the caps impact on you currently?

Impact of rent caps

- 3.42 Most social landlord respondents said that rent caps do not impact on them, often because their properties do not have values that generate formula rents that would exceed the cap. Only 16% of respondents stated that rent caps impact on them. More than half of these said that the impact is limited, while only around 3% (of all respondents) said that the caps have a significant impact on them. All of those who said they are significantly impacted operate in London and the area around it.
- 3.43 A group of housing associations said that the number of households affected is small but the impact on them is pronounced – particularly in relation to larger homes, which the caps make it less viable to deliver.
- 3.44 It was noted that the removal of caps would only have an impact on rent levels when properties with capped rents are vacated, which some felt tended to be less regularly than the average.

Whether the rent caps should be removed

- 3.45 Around a quarter of respondents did not have strong views about removing rent caps, while just under half of respondents said that the caps should be removed. Those who thought they should be removed argued that doing so would simplify the rent policy framework and provide greater certainty for landlords, and would enable providers to move all social rent properties to formula rents at re-lets (with the caveat that this would only be helpful for councils if movements to formula rent are not caught by the limit rent), thus providing additional income that can be used towards the provision of new affordable housing.
- 3.46 Some argued the caps do not take account of variations in house prices and earning differentials between areas, and that removing them would provide more flexibility for landlords to set rents that reflect local conditions in terms of house prices, earning differentials and investment needs.
- 3.47 Some also said that it is hard to make a case for the continuing use of caps in the context of the Government's policy which encourages affordable rents, which are, in general, higher than the caps.
- 3.48 It was noted, however, that the removal of rent caps would only impact in areas where formula rents are high, primarily London and the area around it, and would not increase capacity for investment in most areas.

- 3.49 Around 10% of respondents felt that rent caps should continue to be applied, mainly based on the reasoning that they provide an extra level of protection to tenants in terms of affordability, particularly in high value areas such as London and the area around it. Some of these argued that the removal of rent caps may hinder the ability for local people to remain in their local areas. They also argued that removing the caps would disincentivise under-occupiers who may wish to move to a smaller property, and that the caps help manage the welfare bill.
- 3.50 Some suggested that the caps should be retained but in different ways. An example given was to increase the caps to respond better to market conditions, or provide differential caps for different areas. Another was to set the caps at 80% of market rate to align with affordable rent policy, or for it to be decided locally if caps should be set by landlords in consultation with tenants.
- 3.51 Most respondents agreed that, if rent caps are to be retained, they should increase by $\text{CPI} + 1.5\%$, reflecting the current policy of rent cap increases of 0.5% higher than the formula rent increase.

Question 3: Do you agree with the move from basic rent increases of $\text{RPI} + 0.5$ percentage points to $\text{CPI} + 1$ percentage point (for social rent and affordable rent)?

- 3.52 Views and comments on the move from basic rent increases of $\text{RPI} + 0.5\%$ to $\text{CPI} + 1\%$ have been covered in part in relation to Question 1 above.
- 3.53 Most respondents thought that using the same formula for rent increases of $\text{CPI} + 1\%$ for both social rents and affordable rents is sensible and consistent.
- 3.54 However, there was a contradictory view that affordable rent should not be tied to a rent increase formula, because it is set based on market value.
- 3.55 It was also suggested that, while there is an upper limit on affordable rent at 80% of market rates, there is no such limit for social rent, particularly when taking service charges into account. In some areas, respondents thought that social rents including service charges might exceed 80% of market rents. It was suggested that social rents should, when re-let, also be subject to 'rebasings' to ensure that rents do not exceed 80% of market rates, similar to affordable rent.
- 3.56 Some felt further clarification around service charge policy would be helpful, as some charges do not increase by the same index.

Policy on rents for social tenants with high incomes

Household

Question 4: Do you agree with the definition of “household” proposed?
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- 3.57 The majority (65%) of those who responded to this question agreed with the definition of household proposed, while 20% of those who responded disagreed.
- 3.58 Those who agreed felt that the proposed definition of household was reasonable and clear. They also felt the clarification that, where there are more than two incomes in the household, only the two highest incomes should be taken into account was helpful and the right approach.
- 3.59 These respondents felt that those who are not the named tenant(s) and / or their partners should not be included. They argued that including other occupants who may be financially independent from the named tenant could lead to increased financial hardship for the named tenant, without subsequent penalty passed on to the other occupiers.
- 3.60 There was a view among some of those who were supportive that a clarification of the circumstances under which someone is considered to reside at the property would be helpful to ensure the definition was as robust as possible. Some respondents suggested that a main residency test should be applied, and only those who live at the property as their sole and principal home should be defined as being part of the ‘household’.
- 3.61 Another option suggested was that the threshold should be variable based on household composition and, where there are more than two tenants with incomes, the threshold of £60,000 should apply to up to two incomes, but then should increase for each additional individual with an income that falls within the household definition.
- 3.62 While around 20% of those who answered this question disagreed with the proposed definition, there were various views among these of what the definition should include.
- 3.63 The most expressed view among these was that the definition should include all non-dependent adult members of the household, similar to the current definitions within the Housing Benefit Regulations. Some felt that otherwise it would be inconsistent and unfair to households where there are only one or two tenants.
- 3.64 Conversely, other respondents felt that if all adult members are included it could impact on young adults attempting to get their foot on the housing market, and suggested that the definition should only include all non-dependent members age 25 or over.

- 3.65 A smaller number of those who disagreed thought that the definition should only include the person or persons named on the tenancy agreement, because (they argued) the arrangement between a landlord and tenant is set out within the tenancy agreement, which is the basis for agreeing roles and responsibilities, as well as resolving disputes.
- 3.66 There were concerns amongst landlords that including 'partners' who are not the tenant's spouse or civil partner may necessitate the need for extra investigation work and create additional administrative burdens for landlords.
- 3.67 A survey by a tenant representative body found that 57% of their members who responded thought that the definition of 'household' was suitable, while 32% thought it was not. The majority of those who disagreed thought that children, dependents or other adults residing at the property should be included.

Income

Question 5: Do you agree with the definition of income proposed?

Question 6: In particular, should capital be included and if so, how?

Question 7: Do you agree with the income period proposed?

- 3.68 Around 60% of respondents agreed with the proposed definition of income based on total taxable income, while 12% disagreed. About a third did not answer this question.
- 3.69 Among those who disagreed, some felt that only income from employment and from self-employment should be included, as including interests from savings or dividends from investments could discourage people from savings and investments. Some felt that disposable income would be a better way to identify the ability of households to pay the higher rents, but in practice it would be difficult to accurately obtain.
- 3.70 There were concerns about how the definition of income will apply to people working on fixed-term contracts, those who are self-employed or those who work in unstable or transient industries, where they may be well paid during a short period of time but lack job security.
- 3.71 Some commented that it would be more effective and efficient to manage and verify 'income' via the tax system or with at least some input from Her Majesty's Revenue and Customs.
- 3.72 There were also comments on the level of the income threshold. A number of respondents felt that the income threshold should take account of differences between areas in terms of house prices and local earnings. They also argued that the threshold should be more nuanced in terms of taking account of factors such as travel costs, existing financial commitments and personal circumstances. Some felt that, in London specifically, the thresholds should

be set in line with the income limits for the Mayor of London's First Steps Programme i.e. £66,000 for smaller households and £80,000 for larger families.

- 3.73 There were suggestions that the threshold should be uplifted, subject to annual indexation, or be reviewed over time, to ensure that the level of threshold reflects the current costs of living and inflation. It was suggested that this may be at a similar rate as social rent increases, of CPI + 1%, or using an index such as average weekly earnings. Respondents argued that any uplift formula should be set out in the rent standard so that any future changes would not require further directions and changes to the rent standard.
- 3.74 Some landlords who have considered applying different rents for high income social tenants said that they would use the threshold as a trigger for a more detailed assessment of household circumstances, then set appropriate rents based on those circumstances, which may not be full market rents in all cases.

Capital

- 3.75 More than half of respondents thought that capital should not be included, to avoid complexities and administrative burdens, and because incomes generated from capital (interests, dividends or rental income) are already included in the definition of taxable income.
- 3.76 They also argued that capital is not an accurate measure of ongoing ability to pay higher rents. Some also felt that including capital would create a perverse incentive in terms of discouraging people from saving for a pension or other long term needs such as older relatives' care costs.
- 3.77 There were views that, if capital is to be included, the same levels as for benefit calculations should be used for consistency and to reduce complication for both providers and tenants, and that exemptions should apply to money received from compensations such as medical, disability or criminal compensation payments made to victims, for example.
- 3.78 However, there were also views among those who agreed with the proposed definition that, where tenants have a source of capital sufficient to enable them to house themselves without the need for social rent, capital should be considered.
- 3.79 These respondents felt that there should be a threshold limit, potentially based on the cost of purchasing a home (with a national average cost), or capital equal to, for example, 10 year's rent at market rent level, or simply set at capital of more than £100,000. A local authority said that they already consider capital assets as part of the allocations approach.
- 3.80 Around 14% felt that capital should be included for fairness. Around a third of these felt that, given that capital is included as income for purposes of receiving welfare benefits, it would seem reasonable to be included for this purpose.

- 3.81 There were views that additionally, savings and assets could be considered when reviewing income, potentially as part of the review at the end of a fixed term tenancy.
- 3.82 It was noted, however, that in practice the holding of capital and assets would be difficult to identify or prove.

Income period

- 3.83 Over half of respondents agreed with the income period proposed. Under one-fifth disagreed.
- 3.84 Those who agreed felt that using the tax year preceding the rent year in question is the most reasonable and practical approach, and provides a consistent approach to monitoring taxable income and the provision of official tax documentation.
- 3.85 Those who disagreed (17%) argued that the income period does not reflect the period in which the rent will be set and calculated. This would be exacerbated in cases where providers apply rent increases in October, in which case the gap between the actual income period and rent year would be longer.
- 3.86 The main concern on this issue expressed by respondents, including some of those who agreed with the proposed approach, was how to deal with changes in circumstances which result in a loss of income, or fluctuating incomes, where the end result is the household falls below the income threshold.
- 3.87 Some argued that if the onus is on the landlords to make decisions on dealing with these cases it could expose them to challenge. Many social landlords felt that there would need to be a clear procedure for how changes in personal circumstances are managed during the rent year, and that further guidance on this point would be helpful. There was a suggestion that instead of centrally-led guidance, landlords who wish to apply the policy should publish their own approach to ensure such circumstances are dealt with fairly and appropriately.

Self declaration approach

Question 8: What are your views on the proposed self-declaration approach?

- 3.88 Overall, whether agreeing or disagreeing with the proposed self-declaration approach, respondents generally felt that providing flexibility for social landlords to charge higher rents (rather than mandating a policy) was the correct approach, as landlords were best placed to understand their local housing needs and the circumstances of their current and future tenants. Social landlords were also in favour of policies which allow more freedom and flexibility in rent setting. The decision not to put the onus on landlords (and instead on tenants) was widely welcome.

- 3.89 Over half of respondents who answered this question felt that the self-declaration approach proposed is sensible, proportionate and administratively simple, compared to an approach which requires landlords to gather and check income information from all tenants. They also thought it would enable implementation sooner. Around a quarter of respondents said they did not agree with the proposed approach.
- 3.90 Respondents also generally welcomed the flexibility given to landlords on how they wish to apply the policy locally, and the appropriate level of rents to be charged to high income social tenants.
- 3.91 Half of those who agreed, as well as some who disagreed, felt that there could be problems with compliance with the duty to self-declare due to households being unaware or not understanding the duty, or simply choosing to ignore it. They said that there remained questions on how the legislation would be framed, the sanctions for a failure to declare and how they would be enforced. There were also questions around how landlords would be able to obtain sufficient proof of non-disclosure. It was thought that the approach would be most effective if the potential sanctions were sufficiently strong and enforceable. Many landlords said that clear guidance would be needed on sanctions and enforcement.
- 3.92 There were differences between local authority landlords' views and those of private registered providers on the application of enforcement. While many private registered providers said that they did not feel that it should be the landlord's role to enforce the requirement for tenants to declare their income, local authorities felt that the policy should clearly explain what powers landlords would possess to enforce these requirements, and that local authorities should be given appropriate powers to investigate and enforce punishment for fraudulent activities, and the ability for financial redress without resorting to separate legal action. There were suggestions that the sanctions could include a new ground for fraud, for example, in tandem with the legislative criteria set out within the Prevention of Social Housing and Fraud Act 2013.
- 3.93 There were also questions around how these self-declaration requirements would be communicated to tenants. Some landlords were concerned about whether they would be required to inform and remind tenants of the duty to declare, and what "duty of care" would be expected of them to check and verify declarations. Some (mostly local authorities) said that guidance and support on informing tenants of the changes will be helpful.
- 3.94 Respondents also expressed concerns about practical issues in implementing the policy based on the self-declaration approach. For example, some landlords felt that they may need to alter their tenancy agreements which stipulate how rents are to be charged, to amend these provisions and potentially to include a clause relating to declaring income (so that the failure to do so would be a breach and therefore enforceable), unless this is overridden by new legislation. Some respondents felt that at this stage the policy would therefore be more viable for new tenants.

- 3.95 Many respondents felt that the implications on tenancy agreements should be clearly spelt out in the legislation.
- 3.96 The majority of those who disagreed argued that it would be difficult for private registered providers to enforce self-declaration. They expressed concerns over the means by which landlords would identify those who may be earning over the threshold and what sanctions they could reasonably apply for non-compliance, particularly under existing legislation.
- 3.97 Another reason for objection was the additional administrative and costs implications for landlords. Some argued that, even with a self-declaration approach, there would be costs in terms of maintaining income details on an ongoing basis. They felt that additional staffing may also be required to investigate or audit cases to prevent potential fraud.
- 3.98 Other approaches suggested included bringing in an element of taxation to high income social tenants who would be required to register once they earn over the threshold, and a deduction could be made directly from their pay.
- 3.99 There were concerns that self-declaration could lead to a situation where some tenants fail to declare higher incomes while some do. There was also a view that if landlords choose not to apply the policy, their high income residents should not be required to disclose their incomes to them.
- 3.100 A survey by a tenant representative body stated that 57% of their members who responded to this question agreed that high income tenants should be required to declare their income, and that sanctions should be introduced as part of this proposal, while 40% were not supportive.

Other issues

- 3.101 It was suggested that it would be equitable for the policy to apply to both social and affordable rent tenants, as many providers are still offering life time tenancies to affordable rent tenants, and, particularly in London, affordable rents are often very much lower than market rents.
- 3.102 Some respondents had concerns about the implications for charitable providers of charging full market rents to non-charitable beneficiaries, and the treatment of such potentially non-charitable income. Some noted that non-charitable income is potentially taxable, and administration costs could increase if this has to be taken into account. However, there were also views that if there is an expectation that additional income is to be spent on new affordable housing then it would be seen as a charitable objective.
- 3.103 As in the previous consultation on high income social tenant households, some respondents noted that there may be barriers to charging market rents on properties subject to other controls such as Section 106 agreements.

Treatment of historic grant

Question 9: Do you agree with how we propose to treat historic grant?

- 3.104 Over 80% of those who answered this question supported how we proposed to treat historic grant and the principle of protecting the Government's previous investment in social housing.
- 3.105 A large number of these respondents explicitly supported introducing a flexibility to allow landlords to retain grant in the property on the basis that additional income generated would be spent on new affordable housing. They thought this was fair and gave landlords some discretion. They also thought that it would give landlords greater flexibility and freedom to manage the properties according to their business plans, and would remove a disincentive to moving properties to market rent.
- 3.106 They added that this flexibility would support charitable providers who wish to implement the policy with the treatment of corporation tax, as profits arising in a charity are exempt from tax, as long as they are applied for a charitable purpose. The requirement for the additional rental income to be spent on new affordable housing makes this explicit.
- 3.107 Most agreed that it is right that any surpluses made from market rents should be spent on social housing. However, some local authority landlords wanted more flexibility: they felt that discretion should be given to local authorities on how additional rental income will be used, provided it is spent on Housing Revenue Account activities, which could include supporting the development of affordable housing, or investment in refurbishment.
- 3.108 A strategic housing authority said that if additional rental income can only be spent on affordable housing development for private registered providers, they would like to see some direction given to providers to consult with the host borough on the use of such funding, in line with the current arrangements where the grant funding body would consult with the host borough on affordable housing investment proposals put forward.
- 3.109 There were comments on the requirement to inform the grant funding agency up front. Many providers suggested that this process should be kept simple, particularly given the number of properties and consequently additional income were likely to be small at the provider level.
- 3.110 For most respondents who disagreed with the proposals for treating historic grant, their main concerns were that they felt the process for ensuring the use of additional income would be too complex for the amounts of money involved, which were likely to be small for individual providers.

Section 4

Rent policy from 2015/16

- 4.1 The previous section summarises responses to the consultation. This section sets out our policy on rents for social housing from April 2015.

Social rent policy

- 4.2 **Social rents should continue to be set on the current basis.**
- 4.3 We favour this approach – as opposed to updating the social rent formula – because it provides stability. The current formula also takes into account a range of relevant factors.
- 4.4 **Social rents should increase by no more than CPI + 1 percentage point a year.**
- 4.5 This was supported by many respondents. Where it was opposed, this was typically because respondents thought that it was likely to lead to lower rent increases than RPI + 0.5 percentage points over the long term.
- 4.6 In practice, whether rent increases are more or less than they would have been if we had maintained current policy will depend on the level of future inflation. Over the last twelve months RPI has been around 0.5 per cent higher than CPI, on average, suggesting the formula should give broadly the same rent change in the short-term. In the long-run, the difference between RPI and CPI is more uncertain, and will obviously vary year-on-year.
- 4.7 Overall, in coming to a decision on our new rent increase policy, we have tried to balance the need to ensure that rent increases are manageable for tenants, and not excessive, with the need to ensure that landlords have the income needed to invest in new affordable homes and services. We remain of the view that CPI + 1 percentage point strikes the right balance.
- 4.8 We have committed to this policy for ten years. We have made this commitment so that tenants and landlords have long-term clarity and stability, and landlords are able to benefit from this in terms of planning for future investment, accessing funding and achieving value for money.
- 4.9 **We will end the policy of rent increases of up to £2 above the annual increase in formula rent to support convergence with formula rents.**

- 4.10 We appreciate that this decision has caused concern to some landlords, particularly those who have a significant proportion of properties with rents below formula rent levels.
- 4.11 The Government committed to a social rent policy until 2014-15 in a Written Ministerial Statement to Parliament of 14 February 2011. In that Statement, we confirmed that we would continue with the rent increase policy that the previous Government had said would apply for ten years from April 2002.
- 4.12 Until we set out last year our proposals for 2015-16 onwards, therefore, there was no established social rent policy for after 2014-15.
- 4.13 We developed our rent policy proposals as part of the June Spending Round. This was a very challenging Spending Round, because of the fiscal position. It required reductions of £11.5 billion to the Government's revenue (resource) budgets in 2015-16, and generally provided capital funding for 2015-16 only.
- 4.14 Our new rent policy should be seen in this context. It should also be considered in the context of the overall package for affordable housing, which included £3.3 billion of Government investment in new housing over the three years to 2018, announced in the Spending Round.
- 4.15 Policy decisions on rents feed through to the Office for Budget Responsibility's forecasts for public expenditure. Changing our plans to allow for higher rents across the board would therefore require public spending reductions to be made elsewhere, if we are to remain within our spending plans.
- 4.16 We recognise that this change will reduce capacity for some landlords, compared to continuing with the policy which is in place until 2014-15. We are encouraging landlords to re-let vacant properties at formula rent, which should help to make up some of the gap.
- 4.17 We also recognise that for a very small group of social landlords, the impact will be more pronounced.
- 4.18 In any cases where it impacts on the financial viability of private registered providers, the Regulator is able to provide waivers from adherence to rent policy requirements – so a strong safeguard will be in place.
- 4.19 We have made an amendment to the direction (see paragraph 5(7)) to codify the Regulator's ability to offer waivers. This replaces the text that was in the direction on extensions.
- 4.20 The Regulator will set out, in its consultation on changes to the Rent Standard and Rent Standard Guidance, the circumstances in which it would consider issuing waivers. Its priority will be to address risks to financial viability. But it will also consider waivers in situations where the ending of the policy of rent increases above the annual increase in formula

rent prevents providers from meeting existing contractual commitments to tenants – for example, relating to promises for investment resulting from stock transfer.

- 4.21 In considering a request for a waiver, the Regulator will expect an organisation to explore thoroughly what it can do to mitigate without recourse to a waiver.
- 4.22 Some consultation respondents requested that local authorities are able to access waivers too. However, local authorities, unlike housing associations, are not subject to regulation on rents; and we do not intend to regulate local authority rents.
- 4.23 We have recently written to local authorities to set out arrangements for limit rents in 2014-15 and 2015-16. The limit rent is used in the calculation to determine how much housing benefit subsidy each stock-owning authority receives from the Department for Work and Pensions under the rent rebate subsidy limitation scheme.
- 4.24 Limit rents for 2014-15 have been calculated on the basis of rent convergence in that year. This means that the limit rent will converge with the formula rent in 2014-15.
- 4.25 This is a change in approach from the previous one, under which the limit rent would have converged with the formula rent in 2015-16. It should give authorities who are below the formula rent more flexibility to apply increases of up to RPI + 0.5 percentage points + £2 in 2014-15 if they wish to do so, without seeing their housing benefit subsidy reduced as a result of exceeding the limit rent.
- 4.26 It will mean that, from 2015-16, limit rents will (subject to any changes in the stock and value data provided by authorities) increase annually by the same amount as formula rents – CPI + 1.0 percentage points. And where an authority moves a property that has been below the formula rent to formula rent, on re-let, they will receive full housing benefit subsidy, provided their average rent is not above the formula rent.
- 4.27 **We will maintain the rent flexibility level, at 5% above the formula rent for general needs housing, and 10% for supported housing.**
- 4.28 Where the rent flexibility level was referred to in consultation responses, it was generally supported. We are maintaining this flexibility as it gives landlords some discretion to take account of local factors and concerns in rent setting, in discussion with their tenants.
- 4.29 We also set out in the consultation paper that we expect rents above the flexibility level to be brought within the flexibility level over time. We expect this to be done in a way that brings rents within flexibility levels within a reasonable period of time, whilst ensuring financial viability is maintained. We have updated the guidance (paragraph 2.15) to clarify this point.

- 4.30 **We will maintain the rent caps.**
- 4.31 In the consultation paper we set out that we were considering removing the formula rent caps.
- 4.32 Having considered responses, we are not convinced that there is an overwhelming case for removing the caps, or that doing so will have a significant positive impact. So we have decided to maintain the caps. This will help to ensure that social rent properties in high value areas remain affordable.
- 4.33 We explained in the consultation paper that, if rent caps were maintained, they would increase by CPI + 1.5 percentage points each year. This approach is intended to reflect the approach taken in current policy – where rent caps inflate by 0.5 percentage points more than the formula rent – but for our new formula of CPI + 1 percentage point.

Affordable rent policy

- 4.34 **Affordable rents should continue to be set on the same basis.**
- 4.35 We favour this approach for the reasons set out in the consultation paper – it allows landlords to increase their financial capacity for investment in new homes, whilst ensuring tenants continue to benefit from a sub-market rent; and allows for lower rents to be set in those circumstances where this is more appropriate.
- 4.36 **Affordable rents should increase by no more than CPI + 1 percentage point a year.**
- 4.37 The reasons for this approach are the same as those set out for social rent increases, outlined above.

Rent policy for high income social tenants

- 4.38 **We will define “household” for the purposes of rent policy for high income social tenants as covering tenants named on the tenancy agreements, and their partners where they reside in the accommodation; and we will only take the two highest incomes in the household into account, in the determination of whether a household is over the income threshold.**
- 4.39 **We will define “income” for the purposes of rent policy for high income social tenants as covering total taxable income.**
- 4.40 These are the definitions that were consulted on, and they were both supported by a majority of respondents.
- 4.41 This means that we do not propose to include existing capital in the definition of income, though we are including the income that this capital generates. Excluding capital was supported by a majority of respondents; and we remain of the view that this is the best approach for the reasons outlined in the consultation paper.
- 4.42 **We will use the tax year ending in the financial year prior to the financial (i.e. rent) year in question as the income period for the purposes of the policy.**
- 4.43 This is the approach that was consulted on, and it was supported by a majority of respondents.
- 4.44 A number of landlord respondents asked what action they should take where a household fell below the income threshold in the rent year. This was discussed in the consultation paper, but, we have now amended the guidance (new paragraph 4.8) to say that where a household is subject to a sudden and ongoing loss of income, we would expect the landlord to reconsider the rent being charged and amend if appropriate.
- 4.45 **We will allow landlords to retain historic grant in the property where a higher rent is charged to a high income social tenant, provided the additional income generated is spent on new affordable housing.**
- 4.46 We consulted on providing this flexibility, which already exists in relation to conversions to affordable rent within the Affordable Homes Programme. Offering it here too was widely welcomed by respondents.
- 4.47 We intend to introduce it because it will support investment in new affordable housing; and social housing properties which are converted to market rents returning to sub-market rents when the high income social tenant's tenancy comes to an end.

- 4.48 As set out in the consultation paper, where a landlord proposes to retain the grant in the property, they should make the relevant grant-giving authority aware up front; we will set out further details of who they should contact and what information they need to provide in due course. Changes required to the Capital Funding Guide to support this approach will be published in advance of implementation of the new rent policy (April 2015) and will be notified by the Homes and Communities Agency and Greater London Authority in the normal way.
- 4.49 In the consultation we also discussed the potential for landlords to repay or recycle the grant and permanently convert the property to market rent. Should a private registered provider wish to permanently convert the property to a market rent, it should discuss its plans with the Regulator. Although charging a market rent level, the property would remain social housing and subject to the Regulator's standards and consent regime. Whilst requests for permanent conversion will be considered by the Regulator on an individual basis, our general preference, in relation to this policy, is that grant is retained in the property, for the reasons outlined in the paragraph above. We have made an addition to the guidance (new paragraph 4.9) to reflect our preference that properties converted to market rent under this policy should typically be re-let in line with their previous rent (be it social or affordable rent), on the ending of the high income tenant's tenancy.

Changes to the draft guidance and direction

- 4.50 In addition to the changes to the draft direction and guidance referred to above, we have made a few further small changes. In the main these are minor changes to improve the drafting. But there are two that we wish to highlight, both of which relate to the guidance.
- 4.51 First, we have added an objective to the rent policy objectives section of the guidance. This says that one of our aims is to ensure that rents take account of local conditions. We have made this change to codify a long-standing aim of rent policy that we did not include in the draft guidance.
- 4.52 Second, we have set out at the start of the social rent chapter of the guidance our expectation that unless the conditions relating to affordable rent policy or high income social tenants rent policy are met, social housing properties let by local authorities should have their rents typically set on a social rent basis.
- 4.53 This is similarly intended to codify the current approach. It also provides a clear statement of the starting point for determining how rents for social housing should be set.
- 4.54 For the purposes of clarity, affordable rent remains the core product within the Government's new Affordable Homes Programme, and we encourage bidders to bring forward proposals to convert vacant properties to affordable rent, to generate income for investment in new affordable

housing. We also strongly encourage landlords to bring forward proposals for new affordable rent housing using their own resources, in line with the conditions outlined in the guidance.