

House of Commons
Regulatory Reform Committee

**PROPOSAL FOR THE
REGULATORY REFORM
(ASSURED PERIODIC
TENANCIES) (RENT
INCREASES) ORDER 2003**

Third Report of Session 2002–03

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Third Report of Session 2002–03

*Report, together with
Proceedings of the Committee*

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REGULATORY REFORM COMMITTEE

The Regulatory Reform Committee is appointed to consider and report to the House on proposals for regulatory reform orders under the Regulatory Reform Act 2001 and, subsequently, any ensuing draft regulatory reform order. It will also consider any “subordinate provisions order” made under the same Act.

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SECOND REPORT

The Regulatory Reform Committee has agreed to the following Report:

PROPOSAL FOR THE REGULATORY REFORM (ASSURED PERIODIC TENANCIES) (RENT INCREASES) ORDER 2003

Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the proposal for the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 in accordance with Standing Order No. 141. We have concluded that a draft order in the same terms as the proposal should be laid before the House.

Introduction

2. On 16 October 2002 the Government laid before Parliament the proposal for the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 in the form of a draft of the order and an explanatory statement from the Office of the Deputy Prime Minister (the Department).¹ The proposed regulatory reform order would amend section 13 of the Housing Act 1988 (the 1988 Act) by amending the existing procedure for assured periodic tenancies to allow landlords to set a fixed day for rent increases.

3. The House has instructed us to examine the proposal against the criteria specified in Standing Order No. 141(6) and then, in the light of that examination, to report whether the Government should proceed, whether amendments should be made, or whether the order should not be made.²

4. Our discussion of matters arising from our examination is set out below. Where a criterion specified in Standing Order No. 141(6) is not discussed in this report, this indicates that we have no concerns to raise about that criterion. In the course of our examination, we requested further information from the Department about five matters. The Department's response is discussed in paragraphs 30, 48, 54, 58 and 64 below.

Background

What is an assured periodic tenancy?

5. Assured periodic tenancies were introduced by the Housing Act 1988. An assured periodic tenancy is a tenancy that started on or after 15 January 1989 (the date on which the Housing Act came into effect) and that has no fixed end date.

6. There are two types of assured tenancy. One type—commonly called a “full” assured tenancy—is generally used by registered social landlords (RSLs, commonly known as housing associations), but may, less commonly, be used by private landlords. The other type—a “short hold” assured tenancy—is more commonly used by private landlords but, in certain circumstances, may be used by RSLs. The basic difference between the two forms of tenancy is that in order for a landlord to bring to an end a “full” assured tenancy, he or she must prove to a court that one of the grounds for possession set out in the

¹ Copies of the proposal are available to Members of Parliament from the Vote Office and to members of the public from the Department. The proposal is also available on the Cabinet Office web site <http://www.cabinet-office.gov.uk/regulation/act/proposals.htm>

² Standing Order No. 141(2)

Housing Act 1988 applies. An assured short hold tenancy can be ended after an initial six months has elapsed (or a longer period if a fixed term of more than six months is agreed) without the landlord giving a reason to the court.

7. The proposal is concerned with both “full” and “short hold” assured tenancies where the tenancy is a “periodic” tenancy. A periodic tenancy is one that runs on from one period to the next until either party seeks to end it. For example, a weekly tenancy is one where the rent is paid each week but may continue indefinitely. Weekly and monthly tenancies are the most common examples of periodic tenancies. By contrast, a “fixed term” tenancy is, as the name suggests, for an agreed period. If the tenant remains after the end of the term, it may turn into a periodic tenancy by agreement, or by legal requirement.

8. If made, the proposed order would affect a large number of tenancies. The vast majority of tenants of those RSLs which are not fully mutual co-operatives or almshouse charities are now assured tenants. There are currently over 1.5 million assured periodic tenancies in England and Wales held by tenants of RSLs and private landlords. There are also approximately 1.2 million assured short hold tenancies in the private rented sector. Of those assured periodic and short hold tenancies, approximately 1.2 million are weekly tenancies and it is these and any other tenancies whose period is less than one month (namely, weekly, fortnightly or four-weekly) that the proposal affects.

How can landlords increase rent for assured periodic tenancies?

9. Landlords of assured periodic tenancies may increase rent in three ways:

- (a) by notice under section 13
- (b) by relying on a provision in an agreement with the tenant (usually the tenancy agreement itself), or
- (c) by express agreement with the tenant.

The proposal is concerned with the first option, option (a). Options (b) and (c) will not be affected by the proposal.

10. The Department states that many landlords are reluctant or unable to use option (b) because they have been advised that, to be sure of a clause in the tenancy agreement being considered as a “provision”, its wording is likely to have to be completely determinative—in other words, the clause would have to set rent increases over the period of the tenancy. Many landlords prefer to retain the flexibility to determine rent levels each year and therefore rely instead on option (a), the section 13 notice, to increase rents.

11. If a landlord seeks to introduce a rent increase by way of a section 13 notice, he or she must do so according to three rules. These are as follows:

- A minimum period of notice must be given before the proposed new rent can take effect. That period is one month for a tenancy which is either monthly or for a lesser period, for instance weekly or fortnightly.³
- The starting date for the proposed new rent must not be earlier than the first anniversary of the date on which the rent was last increased using this statutory notice procedure or, if the tenancy is new, the date on which it started. This rule

³ For a yearly tenancy, the required period is six months; in all other cases, the period is equal to the length of the period of the tenancy—for example, three months in the case of a quarterly tenancy. Such tenancies would not be affected by the proposal.

is referred to as the “anniversary rule”, and is the rule that would be amended by this proposal.⁴

- The proposed new rent must start at the beginning of a period of the tenancy. For instance, if the tenancy is monthly, and started on the 20th of the month, rent will be payable on that day of the month, and a new rent must begin then, not on any other day of the month. If the tenancy is weekly, and started, for instance, on a Monday, the new rent must begin on a Monday.

Extent of the proposal’s application

12. The proposal applies only to England and Wales. The Government’s view is that an order giving effect to the proposal would not remove or modify any functions of the National Assembly for Wales and that therefore the agreement of the National Assembly to an order is not required. In accordance with section 5(1)(d) of the Regulatory Reform Act 2001, the National Assembly has been consulted on the proposal.

Purpose of the proposal

13. The Department has put forward the proposal because, in the last 18 months, a number of RSLs and their professional representative body, the National Housing Federation (the NHF) on their behalf, have complained about the combined effect of the second and third rules on rent increases for assured periodic tenancies where the period is less than one month.⁵ Essentially, the problem arises because one week does not divide equally into 365 days—the “anniversary” is 52 weeks plus one day (or plus two days, in a leap year). Because the proposed new rent must start at the beginning of a period of the tenancy, the effect is that the date on which rent can be increased drifts forward, by approximately one week each year. The problems with the timing requirements in section 13 are greatest for those landlords with significant numbers of tenants whose tenancies are for periods of less than one month. The Department states that 278 RSLs each own or manage more than 1000 homes, and that most of these will be let on assured periodic weekly tenancies.

14. The proposal is intended to address this drift forward of dates, caused by the interaction of the second and third rules governing timing of rent increases, by amending the anniversary rule. The Department proposes that, for the first increase after the proposed date of the coming into force of the draft order (say, 1 March 2003), rent increases for all assured periodic tenancies should take place not fewer than 52 weeks after the start of the tenancy or the date of the last increase. For the second and subsequent increases after 1 March 2003, rent increases for all assured periodic tenancies should take place not fewer than 52 weeks after the last increase unless this will result in an increase on a date falling a week or more before the anniversary of the first increase date following 1 March 2003. In this case, the minimum period will be 53 weeks.

15. The Department provides an example to illustrate the effect of the proposal:

Applying the 52 week minimum period to rent increases for a weekly tenancy whose first increase was on 7 April 2003 would cause the increase in 2004 to fall on 5 April and the increase in 2005 to fall on 4 April and so on. The increase in 2008 would fall on 31 March, which is one week earlier than the anniversary of the date of the first increase on 7 April 2003. Therefore, in this

⁴ This rule does not apply in two cases where a new statutory tenancy has followed on from an earlier tenancy. In these cases the landlord can propose a new rent at once, but the first and third rules must still be followed. These cases are (1) where the tenancy was originally for a fixed term (for instance, 6 months), but continues on a periodic (for instance a monthly) basis after the term ends, and (2) where the tenancy came into existence on the death of the previous tenant who had a regulated tenancy under the Rent Act 1977.

⁵ The National Housing Federation has approximately 1400 members, which operate on a non-profit basis and provide between them some 1.8 million homes for people in need of housing.

instance, the 53 week minimum condition would apply to halt the backward drift of rent increase dates and the increase date for 2008 would be 7 April. The same slight backward drift, leading to a subsequent correction, would continue beyond 2008.⁶

The effect of the proposal is demonstrated by the table set out at paragraph 33 below.

16. Under the proposal, landlords could choose to set rent increases by one of two methods. They could choose to establish a fixed day for rent increases, which could be (but would not have to be) the first Monday in April. Alternatively, they could choose to apply the minimum 52 week period—in other words, to increase the rent at the first possible opportunity each year. In any case, for reasons discussed at paragraph 25 below, it is unlikely that any landlord would choose to adopt the latter method.

17. The proposal would not affect the ability of landlords who are currently able to increase rents on the anniversary of the start of the tenancy or the date of the last rent increase (for example, those with monthly, quarterly or annual tenancies) to continue to do so. The right to reach an agreed variation of any kind acceptable to both landlord and tenant (option (c) in paragraph 9 above) would also remain unaffected.

When should the Order be brought into effect?

18. The Department would prefer that the proposed order should be in force as early as possible in February 2003. This is because the preferred position for most RSLs is to set a fixed day for rent increases while retaining the flexibility of the annual notice procedure. Many, but not all, RSLs favour increasing rents on the first Monday in April each year. Given that, in 2002, many RSLs increased rents on Monday, 8 April, if the proposed order were to take effect in early February 2003, RSLs will be able to increase their rents on Monday, 7 April 2003 (the preferred first Monday in April). In subsequent years they will be able to continue with rent increases on the first Monday in April. If the proposed order were not to come into force in time, RSLs would be obliged to follow the anniversary rule and defer the next increase to Monday, 14 April 2003. The earliest date for the increase in 2004 (assuming the draft order was by then in effect) would be Monday, 12 April. It would then take a number of years for RSLs to work back to their preferred practice of increasing rents on the first Monday in April under the proposed order, and then, because of the way the proposal is framed, they would not be able to keep a first Monday in April increase day every year.

19. The date of early February 2003—as opposed to March or early April 2003—is necessary to allow landlords time to give the relevant notice to tenants. The 1988 Act requires landlords to give tenants with tenancies of a period of less than one month a minimum period of one month's notice of any rent increase. Those RSLs with several thousands of tenants will need sufficient time to prepare rent increase notices; thus, the Department would prefer that the proposed order should take effect as early as possible in February 2003.

Assessment of the proposal against Standing Order No. 141(6) criteria

Inappropriate use of delegated legislation

20. We note that, according to the Department, one of the benefits of the proposal will be to enable the smooth transition from one landlord to another in cases where local authority tenants transfer to new RSLs under the Large Scale Voluntary Transfer (LSVT) programme.⁷ LSVTs are a matter of some political controversy; such controversy

⁶ Explanatory statement, para 3.2

⁷ Explanatory statement, para 5.6

constitutes one of the grounds on which we may conclude that a proposal is not appropriate for delegated legislation. In this case, however, we consider that this alleged benefit is sufficiently tangential to the main purpose of the proposal not to cause us any difficulty in respect of this criterion and **we are satisfied that the proposal appears appropriate for delegated legislation.**

Removal or reduction of burdens and creation of new burdens

21. We are satisfied that the proposal reduces a burden imposed on landlords and that, although the proposal imposes a new burden on tenants, this burden is proportionate to the benefit that is expected to result from its creation. We are not convinced that the proposal removes or reduces a burden on tenants, nor that it imposes a burden on landlords, as the Department argues it does. However, it is not necessary for the Department to demonstrate either of these points in order for the proposal to proceed.

22. The Department identifies two burdens imposed by the 1988 Act that the proposal would reduce or remove. It considers that the first burden is imposed on landlords and the second on tenants. It also identifies two new burdens that would be created by the proposal, one on landlords and the other on tenants.

Removing or reducing burdens on landlords

23. The Department considers that landlords are burdened by having to administer arrangements for rent increases that are time consuming and unwieldy to operate. Specifically, the Department identifies the anniversary rule as the legislative provision responsible for "... imposing a burden—an excessive restriction on freedom to set rent increase dates—by allowing landlords to raise rents only after an unnecessarily long period."⁸ The Department considers that, by simplifying the system for rent calculation, the proposal can be said either to reduce or to remove this burden:

The objective of this proposal is therefore a reduction of that burden, in the form of a reduction of the minimum period after which rent can be raised. An alternative legal interpretation might be that we are seeking to remove the burden of the "anniversary rule" and replace it by a different, more convenient, rule.⁹

24. We consider that the better interpretation is that the proposal would reduce, rather than remove, a burden currently imposed on landlords by the 1988 Act. The burden affected is best described as being imposed by section 13 as a whole, which places three restrictions on landlords who wish to increase rents (see paragraph 11 above). The proposal would modify one restriction to make the overall effect of the restrictions less onerous on landlords, rather than removing the restrictions altogether.

Imposition of new burdens on landlords

25. The Department describes the proposal to amend the anniversary rule as imposing a new burden on landlords because it imposes a new restriction on them. However, the Department then adds that the new restriction need not necessarily be described as a new burden, because "... the new burden can be interpreted as either reducing the current burden of the anniversary rule or replacing it with a different, more convenient rule".¹⁰ The Department then appears to seek to qualify its position further by stating that whether a new burden would be imposed will depend on which of the two methods for increasing rent (set out at paragraph 16 above) landlords choose to adopt. Adopting the second method would create an administrative burden for landlords, as they would need to ensure that they log

⁸ Explanatory statement, para 2.2

⁹ Explanatory statement, para 2.2

¹⁰ Explanatory statement, para 6.4

the date of the first increase for each tenancy following the date on which the draft order came into force, and then refer back to this date to ensure that subsequent rent increases do not drift back one week or more before the anniversary of the logged date. When that happened, landlords would have to remember to move the date of the increase forward a week. The Department considers it unlikely that any landlords would choose to adopt this second approach because there would be little or no advantage for them in terms of gaining increased rent sooner.

26. For the reasons set out at paragraph 24 above, we consider that the proposal does not impose any new burden on landlords, even if a landlord were to choose to adopt the second method of increasing rent. Rather than imposing a “new restriction” on landlords, as the Department suggests, the proposal is better described as modifying the application of an existing burden to make its effect less onerous when combined with the other section 13 rules.

Removing or reducing burdens on tenants

27. The 1988 Act has the effect of causing rent increase dates for assured periodic tenancies to drift forward each year. In its explanatory statement, the Department stated that this imposes a burden on tenants because it causes confusion and uncertainty, “... especially for vulnerable groups such as the elderly”.¹¹ The Department believes that the burden imposed on tenants by the 1988 Act is compounded by the following factors:

- those tenants also receiving a housing benefit will receive their rent increase notice separately to their annual housing benefit review, thus causing greater confusion and uncertainty to many
- tenants may find it difficult to budget their own finances because of the drift forward in rent increase dates
- tenants may receive a poorer quality of service from landlords, who can be affected when they do not receive an increase in revenue at the beginning of the financial year.

28. The Department suggests that the proposal would reduce the burden on tenants by providing greater clarity and certainty. It considers that the proposal will enable tenants to receive their rent increase notices at the same time each year and to budget their finances more effectively.

29. It is not necessary for the Department to demonstrate that the proposal would remove or reduce a burden imposed on tenants by the 1988 Act, because it is clear that the proposal would reduce a burden imposed on landlords by that Act. For that reason, we regard the Department’s attempt to do so as something of an over-egging of the pudding. Indeed, we suspect that most tenants would welcome a delay in any rent increase, however caused, and would therefore not regard such a delay as any kind of burden. We were not convinced by the Department’s analysis of the burden currently imposed on tenants by the 1988 Act, nor by its analysis of how that burden would be reduced. As regards the question of whether section 13 of the 1988 Act imposes a burden on tenants, we consider that the purpose of section 13 is clearly to protect tenants by restricting the frequency with which landlords can levy rent increases. It appears that section 13 also has an unintended effect of causing a drift forward of rent increase dates; however, this in itself does not detrimentally affect tenants. The Department’s argument was that, in practice, section 13 imposes an unintended burden on tenants. If this is in fact the case, we considered that the Department needed to produce evidence to substantiate its claim; on the basis of the explanatory

¹¹ Explanatory statement, para 2.6

statement, the Department's argument appeared to be purely speculative. We therefore asked the Department what evidence it had to substantiate its assessment that section 13 imposes a burden on tenants because it causes confusion and uncertainty, especially for vulnerable groups such as the elderly.

30. To substantiate its assessment, the Department referred us to responses received to its consultation paper on the proposal, which was published prior to the proposal being laid.¹² The Department repeated its initial assessment of the burden on tenants, as set out in the consultation paper. It considered that the fact that some tenants have a minimum rent increase date which advances each year, as a consequence of the interaction of two of the three section 13 rules on timing, is inconvenient for landlords and "less than clear from the point of view of tenants". The Department drew our attention to the responses to the following questions in the consultation paper:

- *Do the current rules on timing of rent increases place a burden on landlords and/or tenants? Can that burden be quantified?*

Of the 62 responses that addressed this question, 26 specifically agreed that current rules place a burden on tenants.

- *Are we correct in thinking that our analysis of the burdens of the proposal [as set out in the consultation paper] is accurate?*

Fifty-six responses agreed that the Department's analysis was accurate; only one of these specifically mentioned the burdens on tenants.

- *Are we correct in thinking that the proposal will benefit tenants if a fixed day for increases is established? Can these benefits be quantified?*

Of the 58 responses that addressed this question, 53 were positive.

The Department also pointed to other relevant comments made in responses to other questions: 40 responses said the proposal would provide more certainty or clarity for tenants, ten responses said the proposal would help with timing and administration of housing benefit reviews and nine responses said loss of income affects service provision by landlords.

31. The Department's response does not persuade us that section 13 imposes an burden on tenants, let alone that this burden would be removed or reduced by the proposal. The responses to the consultation paper suggest that a number of consultees believe that the proposal would be beneficial for tenants. However, this in itself is not sufficient to show that the proposal removes or reduces a burden; the creation of such benefits is a matter properly considered under the criterion relating to estimates of increases or reductions in costs or benefits, as discussed in paragraphs 61 to 66 below. Consequently, even if we accept that section 13 causes confusion and uncertainty for tenants, we are not convinced that this is necessarily sufficient to constitute a burden for the purposes of the Regulatory Reform Act.

32. We look forward to seeing the Cabinet Office's promised guidance on the meaning of "burden", which should assist in clarifying this issue.¹³

¹² Further information about the consultation process is set out under our consideration of whether the proposal was the subject of adequate consultation, in paragraphs 45, 46 and 50 below.

¹³ Regulatory Reform Committee, First Special Report of Session 2001–02, *Further Report on the Handling of Regulatory Reform Orders*, HC 389, para 22; Regulatory Reform Committee, Second Special Report of Session 2001–02, *The Operation of the Regulatory Reform Act: Government's Response to the Committee's First Special Report of Session 2001–02*, HC 1029, para 2.35

Imposition of new burdens on tenants

33. The Department acknowledges that the proposal "... may affect tenants [because] they might be liable to start to pay higher rents at very slightly less than full yearly intervals in some years".¹⁴ A slight drift back of rent increase dates will occur at a rate of one day each year, except for leap years when it will drift back two days. Currently, rent increase dates drift forward at a rate of one week per year. The practical effect of the proposal is set out in the table below; as is evident from the table, the two methods by which landlords may choose to implement rent increases under the proposal (as set out in paragraph 16 above) in fact produce the same outcome, in this instance. The table assumes that the draft order will come into effect in time for the first rent increase date to be 7 April 2003.

Postulated situation	Dates that rent increases would fall on
Current situation: if the draft order is not made, landlords would continue to apply the anniversary rule	7 April 2003 → 12 April 2004 → 18 April 2005 → 24 April 2006 → 30 April 2007 → 5 May 2008 → 11 May 2009 → 17 May 2010
Proposal: if landlords adopt the first method and increase rent on a fixed day (in this case, the first Monday in April)	7 April 2003 → 5 April 2004 → 4 April 2005 → 3 April 2006 → 2 April 2007 → 7 April 2008 → 6 April 2009 → 5 April 2010
Proposal: if landlords adopt the second method and increase rent at the earliest possible opportunity ¹⁵	7 April 2003 → 5 April 2004 → 4 April 2005 → 3 April 2006 → 2 April 2007 → 7 April 2008 → 6 April 2009 → 5 April 2010

34. Clearly, the proposal would impose a new burden on holders of assured periodic tenancies, as they may be required to pay an increased rent at slightly less than full yearly intervals. Furthermore, if we compare the future position of tenants if the draft order were to be made with their position if section 13 were to remain unamended, the longer term burden on tenants is shown to be significant. The cumulative effect of the draft order, if made, would be that, in 2004, rents could be increased one week earlier than would have been the case had the draft order not been made; in 2005, it would be two weeks; in 2006, three weeks; in 2007 and 2008, four weeks, 2009, five weeks, 2010, six weeks; and so on. Nevertheless, in any single year, the burden on tenants is very slight: the burden imposed is the difference of one or two days' extra rent payments. Furthermore, it would be reasonable to expect that, if rent increases are to be levied at lesser intervals than is currently the case, then, correspondingly, the amount by which rentals increase should be less than is currently the case.

35. We therefore consider that the imposition of this burden is proportionate within the meaning of section 1(1)(c) of the Regulatory Reform Act. The Department considers that this burden "... is offset by the advantage of greater clarity and predictability as to the date on which new rents must be paid ... [t]his minimal new burden is considered to be proportionate to the benefit of removing the current burden of advancing rent increase dates and instead providing greater clarity and certainty, particularly where a landlord chooses a fixed day for increasing the rent."¹⁶ Given this increased certainty, for both landlords and tenants, and the "smoothing out" effect of the 53 week correction mechanism, we conclude

¹⁴ Explanatory statement, paragraph 6.1; emphasis added.

¹⁵ Assuming landlords log the "peg" date of 7 April and remember to move the date forward a week from 31 March in 2008.

¹⁶ Explanatory statement, paras 6.2 and 6.3

that the new burden imposed on tenants is proportionate to the benefit which is expected to result from its creation.

Fair balance

36. We are satisfied that, although the proposal would impose a new burden, it nevertheless satisfies the tests of fair balance and desirability set out in section 3(2)(a) and (b) of the Regulatory Reform Act. Section 3(2) of the Regulatory Reform Act provides that an order may create a new burden only if:

- the provisions of the order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burden being created (section 3(2)(a)), and
- the extent to which the order would also remove or reduce other burdens, or have other beneficial effects for those affected by current burdens, makes the order desirable (section 3(2)(b)).

Both tests are relevant here because, as discussed in paragraph 34 above, the proposal creates a new burden. Whether the creation of this new burden is justified must be assessed in terms of the overall effect of the proposal, rather than in terms of individual burdens affecting landlords or tenants.

37. In relation to the fair balance test, the Department considers that “... the new burden strikes a fair balance between the interests of tenants with tenancies whose period is less than one month and the public interest in the operation of the housing rental market.”¹⁷ The question is whether the proposal strikes a fair balance between:

- the public interest in having rental housing that is efficiently and fairly administered and that, in the case of RSLs, provides housing of an appropriate standard at a reasonable cost, and
- the interests of holders of assured tenancies with periods of less than a month in paying rent increases on no more than an annual basis.

38. We consider that the proposal strikes a fair balance because such tenants would face rent increases on only very slightly more than an annual basis, and then only in some years; in the longer term, any monetary detriment to tenants would be neutralised by the operation of the 53 week minimum period. The public interest in having rental housing that is efficiently and fairly administered would be served because the proposal would create a simpler system for landlords to administer. The particular public interest in having RSLs that provide housing of an appropriate standard at a reasonable cost would not be detrimentally affected by the proposal, and may be assisted by savings resulting from reduced administration costs for landlords.

39. In relation to the desirability test, the Department states only that the proposal “... is desirable when balanced against the benefits for both landlords and tenants ...”¹⁸ As discussed above, we consider that the proposal would reduce the burden imposed on landlords. It would also have beneficial effects in terms of the improved efficiencies it is likely to bring, which would enable landlords to provide a better service to tenants. We conclude that the extent to which the proposal would produce these results means that it is desirable for the order to be made.

¹⁷ Explanatory statement, para 6.3

¹⁸ Explanatory statement, para 6.3

Necessary protection

40. **We are satisfied that the proposal continues the necessary protection provided by the 1988 Act.** Although the proposal does remove a protection, we consider it is not a necessary one.

41. The Department considers that the reduction of legal burdens surrounding rental increases would not entail any lessening of necessary protection for landlords and tenants. It acknowledges that the current anniversary rule was intended to provide what was regarded by Parliament as a reasonable annual period between those rent increases where the section 13 notice procedure is used by landlords, but considers that “[t]his position is to be broadly maintained.”

42. We consider that the proposal would encroach upon a protection provided by the 1988 Act. In enacting section 13 of the 1988 Act, Parliament clearly intended to protect tenants against facing rent increases on more than an annual basis. Strictly speaking, the proposal would encroach upon the section 13 protection because, if it is enacted, certain tenants will sometimes face rent increases at slightly less than full yearly intervals (as discussed in paragraph 34 above).

43. However, the test laid down by the Regulatory Reform Act is not merely whether a protection is continued but whether that protection is necessary. The proposal would encroach upon the section 13 protection to such a minimal extent that the nature of that protection cannot be said to have diminished to any meaningful extent. The proposal preserves the fundamental nature of the section 13 protection by providing for a 53 week correction mechanism, whereby rent increase dates cannot drift back by more than a cumulative period of six days.

Adequate consultation

44. The proposal has been the subject of a substantial consultation process. In assessing whether this process was adequate, and whether the Department has taken appropriate account of the consultation responses, we sought further information from the Department on three matters, one relating to the adequacy of the consultation process and two seeking to establish whether the Department had taken appropriate account of responses to the consultation process. These matters are discussed below.

Adequacy of the consultation process

45. The Department published a consultation paper on the proposal on 21 June 2002, in the form of a questionnaire based on the criteria set out in section 6(2) of the Regulatory Reform Act. The document was sent all RSLs in England and Wales,¹⁹ and to approximately 120 other interested organisations; it was also made available on four government web sites. Consultees were given 12 weeks to respond.

46. Responses were received from 76 organisations, including 54 RSLs. Of these, 44% were from RSLs responsible for more than 2,500 properties. The other responses were mainly from representative organisations, including the NHF and the Housing Corporation.²⁰ Solicitors, a firm of surveyors and a local authority also responded. However, no responses were received from individuals, tenants or tenants’ groups during the consultation period. Consequently, the Department contacted a number of tenant groups and tenant representatives for their reaction to the proposal. In its explanatory statement, the Department quoted positive responses received from two tenants who sit on

¹⁹ Excluding fully mutual co-operatives and almshouse charities.

²⁰ The Housing Corporation is the statutory body responsible for registering and regulating RSLs in England.

the Housing Corporation's Tenant Consumer Panel and from the Association for Tenant Involvement and Control; however, it was not clear from the statement whether these respondents made any further comment or whether comment was also received from other relevant parties.

47. We therefore asked the Department to detail the consultation process it undertook to elicit the views of tenant groups, tenant representatives and bodies which advise tenants. If those consulted responded in writing, we asked to view the written responses. If those consulted responded orally, we sought an assurance from the Department that consultees raised no concerns about the proposal.

48. The Department told us that, following the consultation period, it contacted the Black and Minority Ethnic Tenants and Residents Advisory Network, the Tenant Participation Advisory Service and the Tenants and Residents Organisation of England. It attempted to contact the Housing Association Residents and Tenants Organisation of England but found that it had been disbanded. It also consulted for the first time the Association for Tenant Involvement and Control and two tenants on the Housing Corporation's Tenant Consumer Panel.²¹ The Department provided us with the written responses of the Association for Tenant Involvement and Control and an individual respondent, and with a note of its conversations with the two tenant representatives on the Tenant Consumer Panel.²²

49. Having considered the additional information provided by the Department, we are satisfied that the proposal has been the subject of adequate consultation.

Taking appropriate account of consultation responses

50. Responses to the main consultation process were broadly supportive of the proposal. Of the 76 respondents, 70 responded to the question about replacing the anniversary rule with the proposal; of these, 64 (or 91%) were in favour. One respondent did not agree with the proposal and 20% raised other points they felt the proposal should have addressed. The Department explains that the respondent that disagreed with the proposal, Rockingham Forest Housing Association, based its objection on an incorrect calculation.²³ The points that respondents felt the proposal should have addressed, together with the Department's responses to them, are set out in the explanatory statement at paragraph 10.5.

51. The first point we raised with the Department related to respondents' concern about the complexity of the proposal and the difficulty that landlords and, especially, tenants may have in understanding its operation. The Residential Property Tribunal Service commented that "[o]ur concern with the proposals outlined in the document is that they are very complicated. Our legally-qualified Presidents have struggled to understand them. We feel it is frankly going to be difficult for our users, both landlords and tenants, to understand the proposed system."²⁴ The Department itself described the proposal as being "... a particularly challenging issue to explain" although it went on to comment that "[t]he majority of respondents have confirmed that they would have no difficulty in explaining [the proposal] to tenants if a fixed date is to be set."²⁵

52. In relation to the question of what guidance will be issued to assist understanding of the proposal, the Department stated:

²¹ See Annex B to Appendix A for a complete list of all tenant-related organisations and individuals consulted either at the start of or following the consultation period.

²² Annex C to Appendix A

²³ Explanatory statement, para 10.22

²⁴ Response of the Residential Property Tribunal Service to the consultation document, dated 17 September 2002, response 72

²⁵ Explanatory statement, para 11.7

All consultees and others who responded to the consultation document will be notified by [the Department] of the laying of the draft Order before Parliament, the coming into force of the Order and the new prescribed forms of rent increase notice. In addition, guidance on the changes to the rules and forms is likely to be issued to RSLs by the NHF.²⁶

53. We therefore asked the Department to comment on whether it intended to issue guidance on the changes to the rules and forms to private landlords and to tenants, both of RSLs and of private landlords. If the Department did intend to issue such guidance, we asked when that guidance was likely to be issued, what information it was likely to contain and how it would be disseminated to its target audience.

54. The Department told us that it did intend to issue such guidance. As regards private landlords and their tenants, the Department publishes two free guidance booklets for private landlords and their tenants on assured tenancies. If the draft order is made, the booklets will be updated to reflect the changes to the anniversary rule. The Department told us that the booklets are readily available to the public and can also be accessed on the Department's web site. As regards tenants of RSLs, the Department told us that the Housing Corporation produces guidance for such tenants, which the Department and the Corporation are currently discussing updating to reflect the proposed changes to the anniversary rule. The Department also told us that, if the draft order comes into effect, the NHF will recommend to RSLs a form of words to be included in a letter to all RSL tenants affected by the rule change. RSLs will be encouraged to despatch this letter with the notices of rent increases taking place after the order comes into effect.

55. The second point we raised with the Department related to concerns raised by two RSLs about the form prescribed for landlords who wish to give notice of a new rental to assured periodic tenants. This form is prescribed for England and Wales by the Secretary of State by way of statutory instrument made under the 1988 Act and was issued earlier this year.²⁷ The form refers to the anniversary rule and, if the draft order is made, new forms will need to be prescribed to take account of the proposed amendment to the rule and in time to be available for notifying the increases taking effect in April 2003.

56. The current prescribed form was appended to the consultation document circulated in June 2002. Respondents were concerned that the form was not user-friendly, did not allow variable service charge amounts to be included and did not take account of the "Supporting People Programme".²⁸ The Department responded to these concerns by undertaking to consider these comments when revising the form to take account of the proposal.

57. We acknowledge that the form does not constitute part of the proposal before us. However, we consider the form is important because it is the principal means by which most of the people affected by the proposal, particularly tenants, would be informed of the effects of the proposal. If the order is made, the form will need to provide an effective explanation to the layperson of the order's legal effect. This is particularly important given the complexity of the proposal, as discussed in paragraph 51 above.

58. We therefore asked the Department to provide us with a copy of the revised form prescribed for landlords giving notice of a new rental as soon as possible, and in any case prior to the Minister laying the draft order before Parliament. The Department has

²⁶ Explanatory statement, para 4.5

²⁷ In England, see Form 4A in the schedule to The Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 (SI 1997/194) (as substituted by The Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2002 (SI 2002/337)). In Wales, the form of rent increase notice is as originally prescribed in Form 4 in the schedule to the 1997 regulations.

²⁸ The Department describes this programme as "a new programme bringing together from April 2003 a number of existing funding streams which support services to a wide range of vulnerable people"; see the explanatory statement, para 10.5, text box 8.

undertaken to do so. The Department also told us that it is concerned to ensure that, if the draft order is made, the prescribed forms will include accurate guidance on the anniversary rule as soon as possible afterwards and that adequate publicity will be given to the change in the rules and the new forms.

59. Having considered the additional information provided by the Department, we are satisfied that the proposal has taken appropriate account of adequate consultation.

Preventing exercise of right or freedom

60. We are satisfied that the proposal does not prevent any person from continuing to exercise any right or freedom which he or she might reasonably expect to continue to exercise. In particular, tenants would continue to enjoy their current rights were they not to accept a proposed rent increase, that is to discuss the increase with their landlord and/or refer the rent increase notice to a rent assessment committee.

Costs and benefits

61. We are concerned that the Department's assessment of the increases or reductions in costs or other benefits likely to result from the proposal's implementation is incomplete. The Department considers that the costs and other benefits to be gained from the proposal will vary according to which of the two methods of rent increase landlords choose to adopt (see paragraph 16 above). If the first method is adopted, whereby a fixed day is set for rent increases, the Department considers that the proposal could result in the following reductions in landlords' current administrative costs:

- reducing administrative costs for landlords, due to reducing the administrative burden on them, particularly those who have a mix of different tenancies with increasingly divergent increase dates during the year
- enabling savings in landlords' staff time, allowing staff to be deployed more effectively elsewhere in the organisation
- reducing the time spent by landlords in responding to tenants' queries relating to rent increase issues.

The Department also considers that the proposal is likely to increase landlords' rental income: one RSL estimated that it would save the difference in rent for one week each year and calculated this as £1,860 per year for 600 tenancies. We consider that any such savings should be passed on directly to tenants, to cancel out the effect of the slightly more frequent rent increases which they would face as a result of the proposal.

62. However, if the second method, of increasing the rent at the first possible opportunity each year, is adopted, the Department states only that "... [t]he additional administration of applying the 52 week minimum period with the 53 week condition may make it more costly than setting a fixed day."²⁹ The explanatory statement makes no further attempt to estimate the increases or reductions in costs or other benefits which could result from the proposal being implemented in this manner.

63. We therefore asked the Department what account it had taken of estimates of increases or reductions in costs or other benefits which may result from landlords choosing, under the proposal, to apply the minimum 52 week period and increase rent at the first

²⁹ Explanatory statement, para 9.1

possible opportunity, rather than setting a fixed day for rent increases (that is, the second method of rent increase, rather than the first method).

64. The Department referred us to the responses received to the consultation paper (see paragraph 50 above). In particular, the consultation paper asked respondents whether savings would accrue from the proposal if a fixed day for increases were established—in other words, if the first method of rent increase were adopted. The Department states that, “while respondents have not quantified the savings, six have commented on the benefits of increasing rent at the first available opportunity or on a fixed day.”³⁰

65. We do not consider that the Department’s response properly answers our question. The response establishes only that landlords are more likely to set a fixed day for rent increases (the first method of rent increase) than to apply the minimum 52 week period and increase rent at the first possible opportunity (the second method)—in other words, it assesses the savings or increases in costs of the second method of rent increase only in so far as they differ from the savings or increases of the first method. What is required is for the Department to assess the savings or increases of the second method relative to the *current* situation.

66. Consequently, we consider that the Department has provided insufficient evidence that the proposal has been the subject of, and takes appropriate account of, estimates of increases or reductions in costs or other benefits which may result from its implementation. However, we consider the aspect of the proposal which has not been the subject of appropriate estimates is relatively minor. We are therefore content for the proposal to proceed to draft order stage, provided that the Minister’s statement accompanying the draft order confirms the Department’s opinion that no landlords, or only very few landlords, are likely to apply the minimum 52 week period and increase rent at the first possible opportunity.

Conclusion

67. We conclude that a draft order in the same terms as the proposal should be laid before the House, provided that the Minister’s statement accompanying the draft order provides the confirmation sought in paragraph 66 above.

³⁰ See Annex F to Appendix A for the full text of the six responses.

PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

WEDNESDAY 11 DECEMBER 2002

Mr Peter Pike, in the Chair

Mr Russell Brown
Mr Dai Havard
Mr Mark Lazarowicz
Mr Chris Mole

Mr Denis Murphy
Dr Doug Naysmith
Mr Andrew Rosindell
Mr Brian White

The Committee deliberated.

Draft Report, proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.—(*The Chairman.*)

Paragraphs 1 to 67 read and agreed to.

A paper was ordered to be appended to the Report.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

[Adjourned till Tuesday 17 December at half past nine o'clock.]

APPENDIX

ADDITIONAL INFORMATION CONCERNING THE PROPOSAL

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Appendix

Letter to Committee and annexes supplying further information from Office of the Deputy Prime Minister

Proposal for the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003

Thank you for your letter of 30 October 2002. The further information requested by the Committee is set out in the attached paper which responds to each of the questions in the order they appear in your letter.

I hope the Committee will find this additional information helpful.

MARY DYER

Team Leader, Housing Associations and Private Finance

13 November 2002

1. What evidence does the Department have to substantiate its claim that section 13 of the 1988 Act imposes a burden on tenants because it causes confusion and uncertainty, especially for vulnerable groups such as the elderly?

- 1.1 ODPM's consultation paper "Proposal to change the rules on the timing of rent increases for assured periodic tenancies in England and Wales" set out our initial assessment of the burdens imposed by the current rules in section 13 of the Housing Act 1988 on the timing of rent increases. In the paper we said that the interaction of two of the three rules on timing, which produces for some tenants a minimum rent increase date which advances each year, was an inconvenience to landlords and "less than clear from the point of view of tenants."(paragraph 31). We identified as benefits from the proposal "...the potential for greater clarity, certainty and predictability for tenants, and the prevention of the potential unfairness arising from the progressive divergence in the rent increase dates of those with weekly tenancies from those with monthly or longer tenancies."(paragraph 40).
- 1.2 The views expressed in the consultation paper were the Department's assessment of the potential burdens of the current rules and potential benefits of the proposal for tenants. The assessment was concerned with likelihoods and possibilities. However, we asked consultees the specific question (Q(b)) as to whether the current rules on timing of rent increases place a burden on landlords and/or tenants. Sixty-two responded to this question and of these, 61 confirmed there was a burden, with 26 specifically agreeing that there was a burden on tenants.
- 1.3 We further asked whether our analysis of the burdens on both landlords and tenants of the proposal was accurate (Q (f)). Fifty-six responded saying our analysis was accurate but of these only 1 specifically mentioned the burdens on tenants. We also asked whether we were correct in thinking that the proposal would benefit tenants if a fixed day for increases was established (Q(h)). Fifty-eight responded and of these, 53 were positive.
- 1.4 Our analysis of the potential burdens also showed that in responses to several questions consultees raised the issue of certainty/clarity, housing benefit reviews and service provision. Forty respondents said the proposal would provide more certainty/clarity for tenants, 10 respondents said the proposal would help with the timing and administration of housing benefit reviews and 9 respondents said the loss of income affects service provision by landlords. The Housing Corporation confirmed our suggestion that the proposal prevented the potential unfairness arising from progressive divergence in the rent increase dates of those with weekly tenancies from those with monthly or longer tenancies. A sample of the consultation responses on these issues is at Annex A.
- 1.5 We consider that these consultation responses provide evidence to substantiate our initial assessment about the potential burden imposed on tenants by the current rules and the benefits to tenants from the proposal.
- 1.6 We acknowledge in the explanatory document that the proposal will give rise to a new burden on tenants. It seems to us that this burden arises because we are trying to adhere to the intention of the legislation, which appears to have been to limit rent increases to fixed minimum intervals of one year. At present, this is only possible for tenancies whose period is one month or more. For tenancies whose period is one week, the minimum interval between rent increases under the current rules is one year and one week, with the increase date continually moving forward.
- 1.7 Fifteen respondents to the consultation commented that the effects of the anniversary rule were not originally intended by legislation. The proposal seeks to ensure that the original intention of the legislation is fulfilled as far as possible for tenancies of all periods. Because of the way the calendar works and the need to start a new rent at the start of the period of the tenancy, we do not believe that a fixed minimum interval of one year is possible for tenancies whose period is less than one month. However, we have framed the proposal so that the minimum period between rent increases for tenants with (the most common) weekly tenancies will be limited to a maximum of 2 days less than one year in leap years, and 1 day in other years, with a maximum cumulative drift back of 6 days over a 5 or 6 year period (depending upon leap years). We believe that this burden of a minimum rent increase interval of slightly less than a full year is mitigated by the benefit for tenants of having certainty over the timing of future rent increases ie having a fixed day, even if a fixed date is not possible. Forty respondents to the consultation agreed with our view that the proposal provides greater certainty for tenants.

2. What are the details of the consultation process the Department undertook to elicit the views of tenant groups, tenant representatives and bodies that advise tenants?

- 2.1 At Annex B is a list of organisations and individuals who have been consulted on the proposal, either at the start of or following the consultation period. These are organisations and individuals that provide a service or advice to tenants, campaign on their behalf or in some way represent them.
- 2.2 Following the consultation period, we contacted the Black and Minority Ethnic Tenants and Residents Advisory Network, the Tenant Participation Advisory Service and the Tenants and Residents Organisation of England. We attempted to contact the Housing Association Residents and Tenants Organisation of England but found that it had been disbanded. We also consulted for the first time the Association for Tenant Involvement and Control and tenants on the Housing Corporation's Tenant Consumer Panel in order to get the views of the major national tenants representative groups and to widen the net for comments as far as possible.

3. If those consulted responded in writing, the Committee would like to view the written responses. If those consulted responded orally, can the Department offer an assurance that consultees raised no concerns about the proposal?

- 3.1 I enclose copies of all 5 written responses received after the end of the consultation period, including those from the Association for Tenant Involvement and Control and Mr Michael Gelling. The latter was received on the day before the copies of the draft order and explanatory document were delivered to the Scrutiny Committees and after the copies had been printed. At Annex C is a record of the conversations about the proposal between officials in ODPM and Ms Brenda Thomas and Mr Frank Mummery. Neither of these consultees raised concerns about the proposal.

4. Does the Department intend to issue guidance on the changes to the rules and forms to (a) private landlords and (b) tenants, both of RSLs and private landlords?

- 4.1 Yes, we do propose to issue guidance.

5. If the Department does intend to issue such guidance, when is the guidance likely to be issued, what information is it likely to contain and how will it be disseminated to its target audience?

- 5.1 Our main guidance to landlords and tenants will be included in the notes to the prescribed forms of rent increase notice. I enclose at Annexes D and E copies of the current prescribed forms of rent increase notice for assured tenancies and agricultural occupancies in, respectively, England and Wales. The form applying in England was revised earlier this year and includes notes for guidance for both tenants and landlords. The overall response to the consultation undertaken prior to the revision was that the new form was simpler and easier to understand.
- 5.2 At present the Department thinks it will probably be most appropriate for the current form 4A (used in England) and form 4 (used in Wales) to be revoked (but see paragraph 6.5 below as to the timing) and for two new forms to be prescribed. One will be for increasing the rents for agricultural occupancies, which will be similar to form 4A and continue to refer to the anniversary rule. The other will be for assured periodic tenancies and this will refer to the new 52/53 week rule. Apart from a number of relatively minor consequential changes to the current form 4A to reflect the fact that there will be a separate form for increasing the rents for agricultural occupancies, this new form for assured periodic tenancies will need to specify the first increase date after the coming into effect of the proposed order, say, 1 March 2003 (included here and in the following draft wording as a working assumption to enable explanation of our proposals). The main substantive change from form 4A for this new form will be to the wording of guidance note 14. Our initial proposed revision of this note is as follows, although I must emphasise that this wording may be subject to further change:

Secondly, the starting date for the proposed new rent is set by reference to the first increase using this standard notice procedure after [1 March 2003]. This date should be inserted in section 4 of the notice. This rule has two parts:

- (a) the starting date for the proposed new rent must not be earlier than 52 weeks after the date on which the rent was last increased using this statutory notice procedure or, if the tenancy is new, the date on which it started, **unless**
- (b) that would result in an increase date falling one week or more before the anniversary of the date in section 4, in which case the starting date must not be earlier than 53 weeks from the date on which the rent was last increased.

- 5.3 The views of the National Assembly for Wales are being sought as to this approach.
- 5.4 Paragraphs 6.2 to 6.6 explain our proposals for making and publicising new prescribed rent increase notice forms.
- 5.5 ODPM publishes two free guidance booklets for private landlords and their tenants on assured and assured shorthold tenancies. These are used in England and Wales and are available on the ODPM website, through the ODPM's free literature service and from a wide range of advice agencies such as Citizens' Advice Bureaux. Copies of the current versions are enclosed with this letter. Assuming the order is approved by Parliament, we will ensure that the new versions of both booklets reflect the change to the rules on timing of rent increases and are available as soon as the order takes effect.

- 5.6 In addition, we are discussing with the Housing Corporation the amendment of the booklets it produces, and is currently engaged in updating, for the tenants of registered social landlords. Registered social landlords will be encouraged to explain the change to the rules in a letter to all their tenants affected by the rule change. The letter will be despatched with the notices of rent increases taking place after the order comes into effect. The National Housing Federation will recommend to its members a form of words to be included in these letters. The letters will seek to explain, where a fixed day is being set, that the effect of the rules described in the notice is simply to allow the tenant's rent to be increased once each year on a standard day (such as the first Monday in April).
- 5.7 Any landlord who after the order comes into effect continues to increase rents for tenancies whose period is less than one month on the anniversary date of the last increase will not breach the new 52/53 week rule.

6. The Committee asks the Department to provide it with a copy of the revised form prescribed for landlords giving notice of a new rental as soon as possible and in any case prior to the Minister laying a draft order and statement before Parliament for second stage scrutiny.

- 6.1 The Department will provide the Committee with copies of the proposed new prescribed forms for use in England in advance of the laying of a draft order at the second stage of scrutiny. We will at the same time explain how we propose to respond to the comments in the recent consultation about the current form applying in England.
- 6.2 Regulations to revise the prescribed forms are needed only if the regulatory reform order is made after Parliamentary approval of a draft of the order. The draft order currently provides for it to come into force the day after it is made. The reasons for this are set out in Chapter 4 of the Explanatory Document, which also sets out the intended approach for revising the prescribed forms as respects England. The power to make prescribed forms was devolved to the National Assembly for Wales under the Transfer of Functions Order 1999, which will make its own regulations.
- 6.3 The Department is concerned to ensure that, as soon as possible after the regulatory reform order comes into force, the prescribed forms include accurate guidance on the statutory rules for the timing of rent increases. It is also concerned to ensure adequate publicity about the change in the rules and the new forms.
- 6.4 Assuming Parliament approves the draft order, the Department proposes to make the regulations prescribing the new forms on the day the regulatory reform order is made to come into force on the next day, at the same time as the order. We recognise that this does not allow for notice to be given of the making of the forms regulations. Provided the Scrutiny Committees report that the draft order can be laid before both Houses of Parliament, our intention is to write in early January 2003 to all organisations and individuals whom we have consulted on the proposal (both at the start of and after the consultation period) explaining that, subject to Parliamentary approval of the draft order, we intend to amend the prescribed forms of notice of rent increases to reflect the change to the anniversary rule, and that new forms will come into effect on the day after the order comes into force. The letter will explain how the current forms are to be amended and will ask advisory/representative groups for both landlords and tenants to publicise the proposed change.
- 6.5 ODPM will publicise the new forms on its website. Once the order and regulations come into force, a landlord wishing to increase rent using the statutory notice procedure will be required to follow the amended statutory rules on timing and use a prescribed form. The Department is concerned that some landlords, in spite of the publicity we propose, may not become aware of the changes and may, through ignorance or error, use the current prescribed form after new forms have been prescribed. It therefore proposes not to revoke the current form until 1 or 2 months after the date the new prescribed forms takes effect. During that period landlords who continue to use the current form will still be using a prescribed form.
- 6.6 The Department recognises that this approach will allow continued use of a prescribed form which does not accurately state the rule on timing which replaces the "anniversary rule." However it considers that it would be acceptable to do so for this short period because there will be no ill effects. A landlord who follows the rule described in Note 14 to the current form 4A and the notes to section 3 in form 4 (used in Wales) after the coming into force of the regulatory reform order, will, in the short period before the current form is revoked, still be complying with the new 52 week rule. This is because the period beginning not earlier than the anniversary date of the start of a new tenancy or of the last increase by notice of an existing tenancy is greater than the period beginning not earlier than 52 weeks after either of those events. Tenants will not be disadvantaged, and landlords will not risk having their rent increases held to be invalid for failing to use the new prescribed form.

7. What account has the Department taken of estimates of increases or reductions in costs or other benefits which may result from landlords choosing, under the proposal, to apply the minimum 52 week period and increase rent at the first possible opportunity, rather than setting a fixed day for rent increases?

- 7.1 In the consultation paper we expressed the view that the additional administration involved in applying the 52 week minimum period with the 53 week condition may make it more costly than setting a fixed day. However, we wanted, through the consultation, to quantify any costs and savings and so we asked two specific questions about costs and savings. In particular, in relation to savings, we asked "Would savings accrue from the proposal if a fixed day for increases was established?" (Q(g)). While respondents have not quantified the savings, 6 have commented on the benefits of increasing rent at the first available opportunity or on a fixed day. A summary of these responses is at Annex F.

Annex A

Potential Benefits for Tenants

Certainty/Clarity = 40 respondents (landlords, solicitors, representative organisations and 1 tenant) said the proposal would provide more certainty/clarity for tenants

- *Mill Street Housing Society Ltd* – “Anniversary rule advances the date of review by one week per annum. *Tenants do not understand the reason*”.
- *East Boro Housing Trust* – “...and also considerable stress and confusion to tenants and especially tenants from vulnerable groups such as the sheltered elderly”
- *East Boro Housing Trust* – “The clarity and understanding of a common fixed day for rent increases would therefore be beneficial to tenants and all other agencies that support tenants...”.

Housing Benefit date = 10 respondents (landlords and representative organisation) said the proposal would help with the timing and administration of housing benefit reviews

- *London and Quadrant Housing Trust* – “There may also be additional burdens upon local authority housing benefit teams which are used to reviewing all benefits payments yearly when rents change”.
- *Anglia Housing Group* – “Housing Benefit changes are fixed - this means 2 changes, one for uprating benefits and one for rent increases – duplicating work”.
- *Jephson Housing Association* – “...tenants would benefit as would Local Authority Housing Benefit departments who would be aware of the one fixed increase day for rents”.

Service provision = 9 respondents (landlords and representative organisations) said that the loss of income affects service provision by landlords

- *Nehemiah Housing Association* – “...loss of income which will eventually impact on tenants – less money for improvements”.

Annex B

Groups Advising/representing tenants who received in June 2002 the Consultation Paper on the Proposal to Change the Rules on the Timing of Rent Increases

Age Concern Cymru
 Association of Housing Advisory Services
 Black and Minority Ethnic Tenants and Residents Advisory Network
 Brent Private Tenants' Rights Group
 Camden Federation of Private Tenants
 Cardiff Housing Help Centre
 Cardiff Law Centre
 Care & Repair Cymru
 Churches Coalition
 Disability Right Commission
 Disability Wales
 Equal Opportunities Commission
 Federation of Independent Advice Centres
 Housing Organisation Mobility and Exchange Service (HOMES)
 Housing Association Residents and Tenants Organisation of England [listed as *Housing Association Tenants Associations and Residents of England* in the Consultation Paper]
 National Association of Citizens Advice Bureaux
 Priority Estates Project
 Shelter
 Shelter Cymru
 Tenant Participation Advisory Service
 Tenants and Residents Organisation of England [listed as *Tenants Associations and Residents of England* in the Consultation Paper]
 The Law Centres Federation
 TPAS Cymru
 Wales Council for Voluntary Action
 Welsh Consumer Council
 Welsh Tenants Federation
 Welsh Women's Aid

Groups and Individuals consulted for the first time after the end of the consultation period

Association for Tenant Involvement and Control
 The members of the Housing Corporation's Tenant Consumer Panel ie
 Atique Khan
 John Bacon
 Debbie Hay
 Michael Gelling
 Roy Harding
 Brenda Thomas
 Gloria Biggs
 Frank Mummery
 Allan Skiggs

Annex C

Conversations with Tenants

This is a note of the telephone conversations held with Brenda Thomas and Frank Mummery during the week beginning 7 October. Both tenants sit on the Housing Corporation's Tenant Consumer Panel.

Brenda Thomas (Testway Housing Ltd) was supportive of the proposal and thought that it was "more sensible and a logical step".

Frank Mummery (tenant representative of Linx Homes) was also supportive and thought that it was "in the interests of tenants" and that it would "remove confusion and doubt". Mr Mummery also said that the proposal would benefit the administration of housing benefit and hopefully regularise the issue within one exercise.

Annex F

Benefits of increasing rent at the first available opportunity or on a fixed day

- *London & Quadrant Housing Trust* – "We are unlikely to use the option of reviewing rents at the earliest opportunity as this would involve programming changes to our computer system. It would also be too confusing to explain to tenants as to why the date had to be amended by the catch up mechanism periodically. The option to keep to a common increase date is much easier to explain".
- *Notting Hill Housing Group* – "The part of the rules that prevent backward slippage make the administration of this method very complex. It would require an administrative process to track back to the first increase date" and "A fixed day would lead to administrative savings because the increase process would be more straightforward".
- *Devonshires Solicitors* – "There will be a burden on landlords who choose 52 week increases and who must therefore remember to correct the date of increase every few years. However, our experience of working with and advising RSLs on the issue is that they will use a fixed increase day such as the first Monday in April each year. We believe well-advised private landlords will follow suit to avoid the consequences of identifying the wrong date or forgetting to correct the date of increase".
- *Local Government Association* – "...paragraph 24 which refers to the introduction of a '53 week rule' to prevent backward drift of rent increase dates seems to go against the spirit of the paper and its overall intentions to introduce a simpler system".
- *Northern Counties Housing Association Ltd* – "A proposed change to allow increases to take effect after a minimum 52 week period, rather than a full calendar year, would greatly assist this Association in both budgeting around rental income and administering our rent review processes".
- *Broomleigh Housing Association* – "We need the one year rule changed to 52 weeks. We have always used the 'first Monday in April' rule – 52 weeks most years with a 53 week adjustment every 4 years – in common with local authorities.... Para 24 realigns the law to custom and good practice. And it is simple to apply".

**LIST OF COMMITTEE REPORTS PUBLISHED IN THE
PREVIOUS SESSION OF PARLIAMENT**

The following reports were published during the previous Session of Parliament by the Regulatory Reform Committee under its previous name, the Deregulation and Regulatory Reform Committee.

Session 2001–02

Report	Title	HC number
First	Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2001	265
Second	Draft Regulatory Reform (Special Occasions Licensing) Order 2001	388
Third	Draft Deregulation (Disposals of Dwelling-Houses By Local Authorities) Order 2001	449
Fourth	Proposal for the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002	583
Fifth	Draft Deregulation (Restaurant Licensing Hours) Order 2002 Draft Deregulation (Bingo and other Gaming) Order 2002 Proposal for the Regulatory Reform (Golden Jubilee Licensing) Order 2002	599
Sixth	Proposal for the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002	663
Seventh	Draft Regulatory Reform (Golden Jubilee Licensing) Order 2002 Draft Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002	677
Eighth	Proposal for the Regulatory Reform (Carer's Allowance) Order 2002	691
Ninth	Draft Deregulation (Correction of Birth and Death Entries in Registers or Other Records) Order 2002 Proposal for the Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	708
Tenth	Draft Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 Draft Regulatory Reform (Carer's Allowance) Order 2002	807
First Special Report	Further report on the Handling of Regulatory Reform Orders	389

The following Reports were published by the Regulatory Reform Committee during the previous Session of Parliament under the Committee's current name.

Session 2001–02

Report	Title	HC number
Eleventh	Draft Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	867
Twelfth	Proposal for the Regulatory Reform (Removal of the 20 Member Limit) Order 2002	1104
Thirteenth	Proposal for the Regulatory Reform (Sugar Beet Research and Education) Order 2003	1247
Fourteenth	Draft Regulatory Reform (Removal of 20 Member Limit in Partnerships Etc.) Order 2002	1303
Second Special Report	The Operation of the Regulatory Reform Act: Government Response to the Committee's First Special Report of Session 2001-02	1029
Third Special Report	The Handling of Regulatory Reform Orders (III)	1272

The following reports have been published during this Session of Parliament.

Session 2002–03

Report	Title	HC number
First	Proposal for the Regulatory Reform (Credit Unions) Order 2002 Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2002	82

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