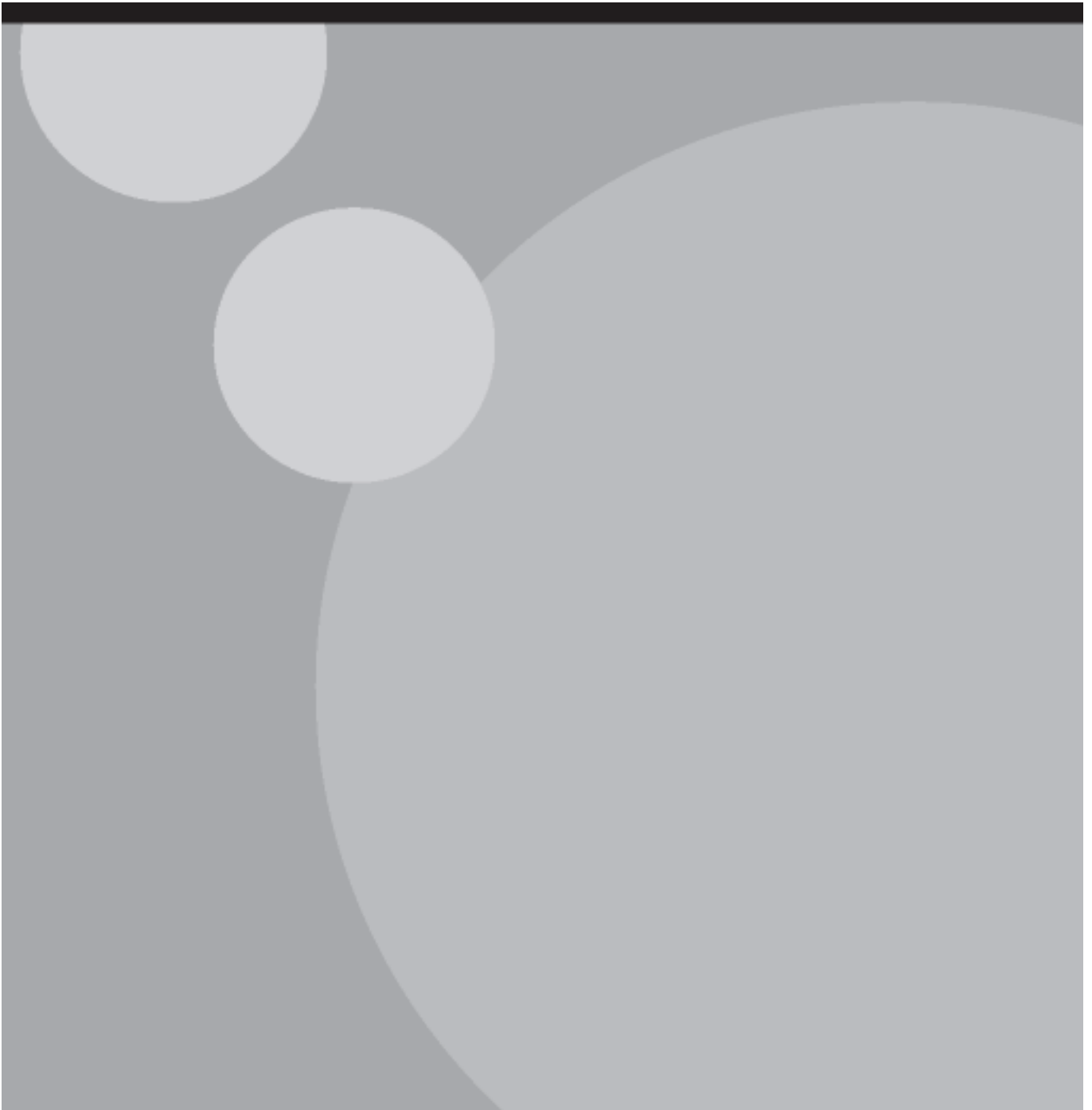




High Income Social Tenants

Pay to Stay Consultation paper





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June 2012
Department for Communities and Local Government

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Introduction

1. In times of economic hardship it is more important than ever that social housing helps the most vulnerable in society. In November, the Prime Minister and the Deputy Prime Minister launched our radical new strategy for housing, *Laying the Foundations: A Housing Strategy for England*¹. This includes major reforms to social housing that will give landlords far greater freedom to target their resources at those who need it for as long as they need it. In particular, our tenure reforms will allow social landlords to offer lifetime security where it is needed but also to set shorter terms for new tenants where that makes more sense. And reforms to social housing allocations will give councils the freedom to manage their own waiting list and allow them to give more priority to long-standing local residents.
2. In addition, our new statutory guidance on social housing allocations will make clear that we expect councils to avoid providing social housing to people who already own a property. We are also changing the law to ensure that former service men and women with urgent housing needs receive high priority on waiting lists, and to ensure that those who move from base to base do not lose their qualification rights.
3. However these reforms will not fully address the problem of precious social housing resources being occupied by high income households. The Government is committed to take action to tackle this problem and give social landlords the tools to target support at those who need it. Following on from the commitment made in the Housing Strategy² to tackle the problem of households earning high incomes who continue to occupy subsidised housing, we now propose to introduce a 'Pay to Stay' scheme whereby landlords could charge higher rents to tenants on high incomes who want to stay in their social homes.
4. This is an issue of principle and fairness. The Government believes that it is right that landlords should be able to require high income social households to pay a higher rent. This consultation invites views on how this policy could be delivered. The Government plans to bring forward more detailed proposals following this consultation.

¹ <http://www.communities.gov.uk/documents/housing/pdf/2033676.pdf>

² 'Laying the Foundations, A Housing Strategy for England' p29, November 2011

The consultation process and how to respond

Topic of this consultation:	This consultation invites views on the proposal that social landlords should be able to require tenants in social rented housing on high incomes to pay higher rents.
Scope of this consultation:	The consultation invites views on how this proposal might be delivered. Specific delivery issues include: <ul style="list-style-type: none"> • The income threshold above which high income tenants might be asked to pay a higher rent • What the higher level of rent should be • Disclosure of income by tenants • Whether the policy should be voluntary or compulsory for social landlords
Geographical scope:	England.

Basic information

To:	This consultation is aimed primarily at local authorities, registered providers of social housing, tenants and representative organisations. The Department will of course consider any consultation responses received from other interested bodies and individuals.
Body/bodies responsible for the consultation:	The Housing Growth and Affordable Housing Directorate in the Department for Communities and Local Government is responsible for this consultation.
Duration:	The consultation starts on 13 June 2012 and finishes on 12 September 2012.
Enquiries:	For further information on this consultation document please email [paytostay@communities.gsi.gov.uk] or telephone 0303 444 3724.
How to respond:	Consultation responses should be submitted by email to: [paytostay@communities.gsi.gov.uk] Or by post to: Pay to Stay Consultation Department for Communities and Local Government [Zone 1/D1]

	Eland House Bressenden Place London SW1E 5DU
After the consultation:	The Department for Communities and Local Government will publish a summary of the responses to the consultation.
Compliance with the code of practice on consultation:	This consultation document and consultation process have been planned to adhere to the Government code of practice on consultation. The period of consultation will be 12 weeks.

The case for reform

5. It is estimated that in social rented housing in England there are between 1,000 and 6,000 households where the Household Reference Person and partner have a combined income over £100,000 per annum; and 12,000 to 34,000 earning £60,000 or more.

Income threshold	% of top earners ³	Estimate of number of households	
		Low	High
£100,000	5%	1000	6000
£80,000	5%	2000	11000
£60,000	10%	12000	34000

6. Figures suggest that on average across England the economic subsidy provided by sub-market rents on social housing is worth an estimated £3,600 per annum. These subsidies are significant and the Government is concerned that they are unfair when provided to those on high incomes, both to taxpayers and to those in housing need on waiting lists. Social housing should go to those who genuinely need and deserve it the most. The Government believes that there is no case for very high earners to be benefiting from significant annual housing subsidies, even taking account of the case in favour of a mix of incomes in social housing. As the table above shows, our proposals target only the very richest, so any reduction in income mix is likely to be very minor. In a comparable move, the Government has already taken action to restore fairness by limiting Housing Benefit so that claimants are faced with the same types of housing choices as ordinary working families. This consultation considers options for tackling the situation so that tenants earning high incomes can be asked to pay more to stay in their homes.

Question 1: *Do you agree with the principle that very high earners living in social housing should pay higher than social rents?*

Delivering reform

7. The Government has taken forward a package of social housing reforms to provide greater freedom for social landlords to target support at those who most need it. In common with this approach, and with regard to rents, we therefore wish to focus on options that enable landlords to charge a higher rent to high-income households, by which we mean a single tenant earning at or above the agreed threshold or the two highest earning individuals whose joint income is at or above that threshold.

³ http://www.hmrc.gov.uk/stats/income_distribution/3-1table-feb2012.pdf

8. While we wish to formulate a common policy for all social housing, the differing nature of the local authority and housing association sectors will necessitate some differences in approach.
9. For **local authorities**, central Government's current social rent policy establishes local authority rent increases according to a formula linked to the property rather than to the individual tenant's income. The Government's rental policy statements have the status of non-statutory guidance. Authorities have the flexibility to set rents at another level, or using another basis, if that appears to them more appropriate to local circumstances.
10. Nevertheless, many local authorities follow rent policy. To bring this new policy into effect, we would therefore issue supplementary guidance, setting out a framework for local authorities to charge certain Higher Income Social Tenants a higher rent. We would also revise published policy statements on rents in the local authority sector to include this change. (A draft illustration of a revised statement of local authority social rent policy is at [Annex A](#).) This approach would allow councils to choose to implement the policy according to local circumstances. Subject to feedback on this consultation, we propose to issue the supplementary guidance as soon as possible after the end of the consultation period. This would immediately give local authorities more support if they wanted to increase rents for high-income households.
11. **Private registered providers of social housing** are subject to regulatory controls on the level of rent they may charge and maximum annual rent increases. In order to allow housing associations to charge higher rents to high income households which meet the criteria specified above, the Secretary of State would need to direct the Social Housing Regulator to amend its standard on rent. The Secretary of State's direction and the resulting standard would be subject to statutory consultation. The detail of how this will work is more complex, and we are seeking your views on these issues in the section below.

Question 2: *Do you agree that this approach would be the best way of delivering additional flexibility for local authorities and private registered providers?*

Question 3: *What are your views on the guidance at Annex A?*

Question 4: *Do you think that landlords should be required to charge high income households a higher rent?*

12. There are a range of practical and, potentially, legal barriers that would need to be overcome in order to implement the Government's final proposals. These include decisions on the income threshold, the need for landlords to know about the income of the tenant, the level of rent that should be charged and the impact of income changes.

13. The key issues are set out below and your views are invited on them.

The income threshold

14. In setting the income threshold, the Government wants to strike the right balance without penalising aspiration or creating work disincentives. However, as has been shown in the debate around Welfare Reform, people believe it is wrong for hard working taxpayers to subsidise those who are easily able to support themselves. That is why we believe it is fair to seek views on possible options for an income threshold, and wish to hear views on the potential to set the threshold at £60,000, £80,000 or £100,000.
15. We consider that it is most likely that £80,000 or £100,000 would be the level which would best avoid perverse incentives. However, we believe there could also be a case for setting the threshold at £60,000, which would do more to achieve our aims in terms of fairness and is in line with the current maximum household income of £60,000 (or £74,000 in London) for access to Government funded affordable home ownership schemes, such as First Buy, in most parts of the country. Setting the threshold at £60,000 would therefore be consistent with the level below which people trying to get onto the housing ladder would be eligible to receive Government support to access housing.
16. We also invite comments on whether there is a case for setting the threshold below £60,000. The proposed policy could create disincentives to work, if people reduce hours worked in order to fall under a threshold, and thus avoid the higher rent levels we propose. There is increased risk the lower the threshold particularly where two tenants' incomes are taken account of.
17. Any incentive to reduce work, together with increased rents, could lead to higher benefit costs. The Government's policy is to maintain downward pressure on the welfare bill. We are keen, therefore, in setting the threshold to find a balance so the tipping point is not reached where avoiding triggering the threshold becomes a significant consideration.
18. While we remain open to views about whether there is a sound case for lowering the income threshold below £60,000, low income tenants are excluded from these proposals and the Government is committed to protecting the rents of those on low incomes and the vulnerable.

Question 5: *Do you consider that £60,000, £80,000 or £100,000 would be an appropriate threshold, avoiding the impacts referred to above?*

Question 6: *Could levels below £60,000 be considered without disadvantaging other households on low incomes or the vulnerable? Where should the line be drawn?*

Question 7: *At what level do you think the income threshold could start impacting on welfare or affecting work incentives?*

Question 8: *Should the policy apply only to those whose names are on the tenancy agreement?*

Question 9: *Should income other than pay be included in the threshold amount, such as Lottery windfalls or inheritances?*

Question 10: *Should certain groups be exempted from higher rents, such as disabled people, or pensioners? If so, please set out your reasoning.*

How high should rents for high income social tenants be set?

19. There is a very strong case to allow rents to be increased to full market rents for high income households. However, in the housing association sector, it may be problematic to immediately introduce market rents in view of the charitable status and objectives of providers; although, equally, charitable providers have a clear interest in avoiding giving support to those who do not need it. In this context we propose to look at these issues further and to encourage landlords to increase rents to 80% of market rents in the interim, with the aim of introducing full market rents for higher income tenants as soon as possible.

Question 11: *Do you agree that landlords should be able to charge 80% of market rates to high income households which meet the proposed criteria, that is an individual or two individuals with a high joint income?*

Question 12: *Would allowing landlords to charge full market rents be appropriate in your area in your view?*

Question 13: *Are there any practical barriers to charging full market rents?*

Question 14: *If the power to charge a higher rent was optional for landlords, would you be likely to make use of it?*

Disclosure of income

20. Social sector landlords currently have no powers to require tenants to disclose income for the purpose of setting their rents.
21. Linking rents to income would be breaking new ground. Our present view is that primary legislation will be required to enable landlords to access tenant income data if this policy is to be fully effective.
22. We intend to explore what such legislation might look like, with the aim of introducing it at a suitable opportunity. In the interim, we intend to

explore how we could support landlords by providing them with greater flexibility to charge higher rents to high income households; for example, through supplementary guidance for local authority landlords.

23. We also intend to fully explore timing issues including the “income” year to which the new rent should be applied. There may be arguments for introducing the higher rent based on either the previous year’s income, or the forthcoming year. Your views are invited on the period to which the new rent should apply.

Question 15: *Your views are invited on how we could best enable landlords to set higher rents to high income households in advance of any legislation.*

Question 16: *We would also welcome your views on the practicalities of requiring income disclosure; and specifically, what kind of mechanism would be needed and how this would best work.*

Question 17: *Do you already hold or have access to information about tenants’ income levels that could be used to support a “pay to stay” approach?*

Question 18: *Would you be likely to make use of any new statutory powers to require tenants to disclose their income?*

Question 19: *Should the income year be the tax year, the calendar year or a rolling year? Do you see difficulties with adjusting a tenant’s rent based on a previous year?*

Applying the policy to existing and new tenants

24. Existing local authority tenants are largely secure tenants under the Housing Act 1985, whose terms and conditions of tenure are set out in their tenancy agreements, which would have been agreed prior to the introduction of the policy proposed here. Local authority landlords are able to renegotiate tenancy agreements and they generally set rent levels each year, but not generally in relation to tenants' incomes. Existing social tenants will have legitimate expectations of existing arrangements continuing, and would need to be given adequate notice of any proposed changes in rent levels. The high incomes of the affected tenants and their corresponding capacity to make alternative arrangements if needed would clearly be a major factor in determining the amount of notice that would be sufficient in particular cases.
25. The vast majority of tenants of private registered providers have assured tenancies under the Housing Act 1988. Usually rent increases are a matter for the terms of the tenancy. Such tenancies will often give landlords discretion to vary rents, subject to giving tenants adequate notice. However, if rent provisions in tenancies make promises as to the level of future increases, private registered providers would have to renegotiate those tenancies in order to charge existing tenants a higher

rent.

26. The position for new tenants should be more straightforward. There are reforms in the Localism Act to provide that local choice for social landlords and new tenancies moving forward. For new tenants with fixed term tenancies it may be possible at review time for agreement to be reached on a different level of rent suited to the tenant's circumstances. It may also be easier to make further adjustments where those circumstances changed.

Question 20: *What practical issues do you see in charging existing high income tenants a higher rent?*

Moves and income changes

27. A new system would need to be sufficiently sensitive to respond to changed circumstances quickly, for instance where a tenant's income was abruptly reduced due to a redundancy, a failed business, or where the tenant moved out; or conversely where a new partner moved in and income significantly increased.

Question 21: *How quickly could local authority and housing association rent processes respond to changed tenant circumstances? What issues might arise? For instance would there be a need to seek regular updates from tenants on their circumstances? Would this just be in relation to known high income social tenants, or all tenants?*

Tenant protections

28. Landlords may need to have a review/appeal mechanism so that tenants can challenge decisions to put them onto a higher rent. This would not need to be a statutory procedure, but could be introduced as an internal arrangement for each social landlord. We envisage that landlords will be able to make use of their existing internal and external complaint procedures for this purpose.

Question 22: *Is an internal appeal or complaint process the best way of allowing tenants to appeal against decisions to put them onto a higher rent? Are there existing appeal or complaint mechanisms within your structures that could be adapted for this purpose?*

Question 23: *Should there be a uniform set of rules across the social housing sector on how any appeals should be handled? If so, who should make these rules?*

Administrative implications and costs

29. Charging rents for some tenants on a different basis than the majority could create additional administrative work for the landlord, such as

collecting information on incomes, and assessing tenants to adjust rents where their circumstances change. However, the new policy also provides the opportunity for additional income generation and for ensuring that the valuable housing stock is being used effectively.

30. As noted above, the maximum amount by which private registered providers can raise social rents is controlled by regulation. We could amend these controls, via a direction to the Social Housing Regulator, in order to give providers the option to charge higher rents to high income households. This change could create additional costs for the Regulator. It would be up to the Regulator to decide how to monitor landlords' decisions to charge higher rents and how to monitor and enforce compliance with the amended regulatory standard.

Question 24: *What is your view of the administrative costs that might be incurred in implementing these proposals? What opportunities do you see for minimising additional costs?*

Question 25: *Do you have any comments about the regulatory implications of giving private registered providers these additional flexibilities?*

Use of increased rental income

31. Increasing rents for high income social tenants would lead to additional income for landlords. The extent of this additional income would depend on the income threshold, definition of income and to what level rents were increased. We welcome views on how the additional income generated should be used.

Question 26: *How should additional income generated by this policy be used?*

Treatment of historic grant

32. Where a provider converts a grant-funded social rent property to a higher rent, some or all of the grant might need to be recovered by the Homes and Communities Agency or reinvested by the provider in new affordable housing supply. There are already mechanisms in place to ensure that developing providers will reinvest the grant in providing new affordable housing, but non-developers may need to pay grant back to the Homes and Communities Agency. This could become more complicated if the property subsequently reverts back to social rent (e.g. if the high income household moves on or its circumstances change).

Question 27: *What are the practical implications of requiring grant reinvestment / recovery when a property moves to a higher rent (or reverts back to social rent)?*

Other issues

Question 28: *Are there any other issues you wish to raise?*

Annex A: Draft Supplementary Guidance to Local Authorities in Setting Their Social Rents

Charging a Reasonable Rent for High Income Social Tenants

This guidance supplements the social rent policy statement issued in December 2000, which set out the rent restructuring policy, and approach for social rents. This guidance should be read alongside the existing guidance.

The Government believes that it is right in principle that landlords should be able to charge high-income households a higher rent to stay in their social homes. The consultation paper 'High Income Social Tenants: Pay to Stay' set out our intention to give councils and housing associations new powers to charge social tenants a higher rent where the household income of a sole occupier, or the two highest earning individuals whose joint income is at or above a threshold of [figure to be determined. See 'Income Threshold' section of consultation document]. We are committed to helping social landlords take action to tackle the problem of scarce social housing resources being occupied by high-income households by giving them the tools to charge a 'Pay to Stay' rent.

Local authorities have existing statutory powers, under section 24 of the Housing Act 1985, to charge reasonable rents. Each local authority would need to consider whether charging a high income-earning tenant a higher rent was appropriate, but the Government considers the existing statutory powers should allow for Higher Income Social Tenants rents.

The limits we would expect to see applied to Higher Income Social Tenants Rents would be full market rent, with an increase in rent to 80% of market rents in the interim, plus annual increases of no more than the level of Retail Price Index (RPI) inflation plus 0.5%. However, the Government is proposing to move to enable these rents to be set at market rates as soon as possible.

At present there is no requirement for tenants to disclose their incomes to their social landlords. We have said we may consider bringing in primary legislation in due course to make income disclosure a requirement.

Authorities should consider whether in local circumstances they want to use this new flexibility to charge tenants in the high income category a higher rent.

Under this policy the key elements are:-

- The new rents should apply to tenants with incomes of [figure to be determined. See 'Income threshold' section of consultation document];

- The policy applies to an individual tenant earning [figure to be determined. See 'Income Threshold' section of consultation document], or the two highest earners in the household with a joint income of [figure to be determined. See 'Income Threshold' section of consultation document];
- Tenants on low incomes should continue to be protected from unreasonable rent increases;
- For now the rent increase should be a maximum of 80% of local market rates, but with full market rents for high earning social tenants as soon as possible.

Where a tenant ceases to be subject to a Higher Income Social Tenant rent, and remains in the property, we would expect that tenant to revert to the social rent that would have been charged on the property if a Higher Income Social Tenant rent had not been applied.

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