EXPLANATORY MEMORANDUM TO

THE SOCIAL HOUSING RENTS (EXCEPTIONS AND MISCELLANEOUS PROVISIONS) (AMENDMENT) REGULATIONS 2019

2019 No. 682

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 (S.I. 2016/390) ("the principal Regulations") to make a technical change to the definition of Affordable Rent Housing. This change is to reflect the devolution of some affordable housing funding from central Government to the Cambridgeshire and Peterborough Combined Authority ("CPCA") and several local authorities in Oxfordshire, under the Cambridgeshire and Peterborough Devolution Deal[1] and the Oxfordshire Housing and Growth Deal[2] respectively.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Part 1 of Schedule 2 to the Welfare Reform and Work Act 2016 ("the Act") provides that a registered provider of social housing must secure that the rent payable by a tenant of social housing under a new tenancy does not exceed an amount determined

[1] https://www.gov.uk/government/publications/cambridgeshire-and-peterborough-devolution-deal
[2] https://www.gov.uk/government/publications/oxfordshire-housing-deal

in accordance with that Schedule. Schedule 2 sets out different rent setting principles applicable to Affordable Rent Housing and other social housing.

6.2 Paragraph 4(2) of Schedule 2 provides that Affordable Rent Housing is accommodation identified by regulations made by the Secretary of State as accommodation that may be let as social housing at an Affordable Rent. Regulation 19 of the principal Regulations makes this provision.

7. Policy background

What is being done and why?

7.1 Approximately 4 million homes in England are rented from registered providers of social housing, comprising local authorities and private registered providers (the latter are mostly housing associations). The vast majority of this rented social housing is let at Social Rent, where rent is set in accordance with a Government formula.[3] A minority of rented social housing is let as Affordable Rent Housing, where rent may generally be set at up to 80 per cent of the market rate, inclusive of service charges. The rent for Affordable Rent Housing is normally higher than for Social Rent homes.

7.2 Affordable Rent Housing may be let by both local authorities and private registered providers. Since its introduction in 2011, the circumstances in which providers may let accommodation as Affordable Rent Housing have been restricted, chiefly to ensure the additional rental income is used to support the delivery of more affordable homes. Private registered providers are only able to let Affordable Rent Housing if they have entered into a relevant agreement with the Homes and Communities Agency ("Homes England") or the Greater London Authority. Since 2016 this policy has had a statutory basis, as described in paragraph 6.2 above.

7.3 The Government announced the Cambridgeshire and Peterborough Devolution Deal in March 2017. As part of the Deal, the Government committed to providing *"£100m housing and infrastructure fund to help deliver infrastructure for housing and growth and at least 2,000 affordable homes. The combined authority will have flexibility over the right tenure mix to meet the needs of Cambridgeshire and Peterborough, which could include affordable rental homes as well as affordable home ownership"*.

7.4 The Government's Housing White Paper[4] (published in February 2017) included a commitment to agree bespoke housing deals with authorities in high demand areas that have a genuine ambition to build more homes. Housing deals are agreements between central and local government, in which local areas agree to build more homes in return for a package of support from government, which might include funding and planning flexibilities. The Oxfordshire Housing and Growth Deal, announced at Budget 2017, is the first of these deals. It commits up to £60 million of funding for affordable housing to Oxfordshire local authorities. The Delivery Plan[5] (published in March 2018) set out the planned tenure breakdown of the affordable homes to be delivered. Affordable Rent Housing is highlighted as a tenure Oxfordshire wishes to fund, with a target to deliver 390 Affordable Rent starts on site by 2021.

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[3] This formula is set out in the Schedule to the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 (S.I. 2016/390).

[4] https://www.gov.uk/government/collections/housing-white-paper

[5] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/692366/Oxfordshire_Housing_Deal_-_Delivery_Plan.pdf

7.5 Through these deals the Government agreed to devolve some affordable homes funding to the Cambridgeshire and Peterborough Combined Authority ("CPCA") and several local authorities in Oxfordshire. However, the principal Regulations effectively prevent private registered providers from letting Affordable Rent Housing that has been delivered with funding provided through the two deals. This is because private registered providers can only let Affordable Rent Housing pursuant to a relevant agreement with Homes England or the Greater London Authority.

7.6 These Regulations amend regulation 19 of the principal Regulations to identify an additional category of accommodation that may be let as Affordable Rent Housing by private registered providers. This is where the accommodation is provided under an agreement with the CPCA or certain local authorities in Oxfordshire. That agreement must be to provide accommodation pursuant to the Cambridgeshire and Peterborough Devolution Deal or the Oxfordshire Housing and Growth Deal (respectively), and it must permit the accommodation to be let as social housing at an Affordable Rent.

7.7 These Regulations (and the principal Regulations that they amend) will cease to have effect after March 2021 at the latest, owing to the time-limited nature of the requirements under the Act. Once they cease to have effect, rent setting by registered providers of social housing will be subject to a Rent Standard issued by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Department has no current intention of making consolidating legislation. These Regulations will cease to have any effect after March 2021 at the latest.

10. Consultation outcome

10.1 No formal consultation has been carried out, although the Government has engaged with the CPCA and local authorities in Oxfordshire before making these Regulations.

10.2 Consultation was carried out before the establishment of the CPCA, as described in the Explanatory Memorandum that accompanies S.I. 2017/521. No formal consultation was carried out on the Oxfordshire Housing and Growth Deal, but its approval was subject to full council decisions across all local authorities concerned. Housing allocations will be tested through the local planning process for each Local Planning Authority, including statutory consultation, and will be tested by the Planning Inspectorate through the examination process. The planning applications for the homes would also be required to hold statutory consultation at that stage.

11. Guidance

11.1 The CPCA, local authorities in Oxfordshire and the private registered providers that are most likely to be affected have been made aware of the Government's intention to bring forward these Regulations. No further specific guidance is necessary.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because this is a technical change that reflects the devolution of some affordable homes funding from central government to the local authorities concerned. Had this funding not been devolved, Homes England would have been using it to invest in the delivery of new affordable housing (including Affordable Rent Housing) through the Affordable Homes Programme.[6] The only change is that the CPCA and certain local authorities will be spending the money rather than Homes England; these Regulations merely update the principal Regulations to reflect this. They do not represent a substantive change to the regulatory requirements to which private registered providers are already well-accustomed. As such this measure does not fall within the scope of the Government's Better Regulation framework where a full regulatory impact assessment would be required. As the funding has already been devolved, these Regulations merely reflect (rather than make) changes within the public sector.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is not to make any substantive change to the existing requirements that already apply to private registered providers (whether small or large). The Regulations merely update the principal Regulations to reflect the devolution of funding from central government to local authorities under the Cambridgeshire and Peterborough Devolution Deal and the Oxfordshire Housing and Growth Deal.

13.3 The basis for the final decision on what action to take to assist small businesses is that, as these Regulations do not make any substantive change to the existing requirements that already apply, no action is required.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is as follows. These Regulations will cease to have effect by the end of March 2021. Given the short-term nature of the Regulations, and the fact that they make only a technical change, we do not consider that there is a need for ongoing monitoring and review. Both the Cambridgeshire and Peterborough Devolution Deal and the Oxfordshire Housing and Growth Deal have their own monitoring arrangements.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Kit Malthouse MP has made the following statement: "The review requirement under section 28 of the Small Business Enterprise and Employment Act 2015 does not apply to these Regulations as they amend provision which will cease to have effect within 5 years of coming into force."

[6] The Government's Affordable Homes Programme provides grant funding to support the delivery of new affordable housing.

15. Contact

15.1 Alec Taylor at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 3779 or email: Alec.Taylor@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kerry Mac Hale, Deputy Director for affordable housing regulation and investment, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kit Malthouse MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.