



Department for  
Communities and  
Local Government

# Information for local authorities on exemptions from the requirements of the Welfare Reform and Work Act 2016 and related regulations



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## **Introduction**

The Welfare Reform and Work Act 2016 (“the Act”) contains provisions which introduce a new rent regime for registered providers of social housing. This means local authorities are required to reduce social rents by 1% a year for four years from April 2016 and to comply with restrictions on levels of rents set out in Schedule 2 to the Act and in the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 (“the Regulations”).

The Act and the Regulations contain powers for the Secretary of State to exempt a local authority from their requirements if he considers that the local authority would be unable to avoid serious financial difficulties if it were to comply.

The Act also gives the Secretary of State power to set out in regulations other circumstances in which an exemption could be granted to a local authority. There are currently no plans to make such regulations.

Exemptions may only be granted where the local authority would be unable to avoid serious financial difficulties if it were to comply with a requirement. For those local authorities with a significant stock of homes and who therefore operate a Housing Revenue Account (HRA), consideration of serious financial difficulty will focus in particular on the impact of the requirement on the HRA.

There will be an expectation that a local authority should explore thoroughly what it can do to mitigate any financial risk without recourse to an exemption, including looking at all contractual commitments. Accordingly, the Department would expect the number of applications for exemptions to be limited.

If it is decided that an exemption should be granted, this will take the form of a direction to the local authority as to the extent to which a requirement will apply to them. The direction may dis-apply the requirement completely or modify it, for example, in the case of an exemption from section 23, by prescribing a reduction of less than one per cent.

## **Process for obtaining an exemption**

Should a local authority seek an exemption from any of requirements of the Act or the Regulations the Secretary of State must assess whether the local authority would be unable to avoid serious financial difficulties if it were to comply.

Local authorities with a significant stock of housing must account for that housing separately in a HRA. The local authority must prepare the HRA budget in the January and February preceding the financial year. Using their best assumptions on income and expenditure, they must budget to avoid a deficit (although surpluses carried forward from previous years can be used to offset an in-year deficit).

The authority must implement the budget and review it during the year and in the light of that must make any revisions reasonably practicable in-year that are necessary to avoid a deficit. If, in spite of that, a deficit is recorded it must be carried forward to the next financial year and the authority must budget to eliminate it during that year.

Therefore, in considering whether a local authority has demonstrated that it would be unable to avoid serious financial difficulties if it were to comply with the requirement or requirements in question, the Secretary of State would consider the authority's ability to meet the budgeting requirements placed on the operation of the HRA. In determining whether all possible steps have been considered to avoid the need for an exemption, the Secretary of State will consider whether:

- Any further reductions in expenditure would jeopardise the ability of the local authority to maintain its stock at a level sufficient to allow it to continue to be used as social housing;
- The local authority has considered all options for reducing expenditure, including looking at all contractual commitments;
- The local authority has considered all possible options to avoid serious financial difficulties.

If after considering the above, and any other circumstances that might be relevant for the particular local authority, the Secretary of State is satisfied that an exemption is necessary to avoid serious financial difficulties, he will consider what direction is necessary to avoid that consequence. In any other scenario, the Secretary of State will either notify the local authority that its application has been unsuccessful or request further information/evidence.

## **Applying for an exemption**

There is no prescribed format for applications. It is the responsibility of the applicant to demonstrate the need for an exemption or exemptions from one or more of the requirements of the Act and the Regulations and to present a robust and detailed business case in support. The Department would expect that this will set out in

detail (with supporting evidence) how the provider has satisfied itself that it meets the qualification for an exemption, including (but not limited to):

- The financial and non-financial effects on the local authority of implementing the requirements.
- The conclusions of a detailed and comprehensive review of its cost base and all activity undertaken or proposed to mitigate the effect of the requirements without the need for an exemption.
- Full details of the local authority's financial concerns after all possible mitigating action has been undertaken and/or fully reflected in financial forecasts.
- Full details of the key underlying assumptions, including current and future inflation and interest rates, future rent levels, Right to Buy sales etc. that the case is based on.

The application should also be supported by financial forecasts and accompanying narrative based on each of the following scenarios:

1. A base line forecast based on the local authority's previous assumptions on future rent levels in its area.
2. A scenario implementing the requirements of the Act and the Regulations to establish the impact of full compliance with the legislation.
3. A revised scenario incorporating the applicant's proposals to mitigate the impact of the requirements on finances. This assessment should demonstrate the extent to which any mitigations fall short of avoiding serious financial difficulties and should be supported by narrative outlining the alternative strategies considered. The local authority should also consider partial compliance with the requirements.
4. A proposed resolution scenario incorporating both the applicant's proposals to mitigate potential financial difficulties and the exemption request(s) necessary to achieve that. This will demonstrate the local authority's financial viability under the proposed resolution arrangements, should the exemption(s) be granted.

The overarching requirement for the grant of an exemption from any of the requirements of the Act or the Regulations is that the local authority must demonstrate and evidence that full compliance with the requirement would result in the local authority being unable to avoid serious financial difficulty.

A local authority considering applying for an exemption or exemptions, may wish to discuss the matter informally before submitting an application. If you would like to do so please contact:

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[James.Prestwich@communities.gsi.gov.uk](mailto:James.Prestwich@communities.gsi.gov.uk) (telephone: 030344 43265)

The Department will seek to consider applications in a timely fashion, but even where discussion has taken place before submission it may be necessary to seek further information/clarification from the applicant. On that basis, we would not expect decisions to be communicated to applicants in less than [eight] weeks from application.