The Fair Rent Regime

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Section Social Policy Section

The majority of private sector tenants who have exclusive occupation of their homes and who entered into their tenancy agreements prior to 15 January 1989 (the date on which Part I of the *1988 Housing Act* came into force) are usually referred to as 'regulated' or 'protected tenants'. These tenancies are still subject to rent control governed by the *1977 Rent Act* – the affected tenants are entitled to have a 'fair rent' (also referred to as a registered rent) set on their properties by a Valuation Office Agency Rent Officer.

This note explains who is entitled to a ‘fair rent’ and how these rents are set.

The rights of regulated tenants, including reference to fair rents, are summarised in a DCLG leaflet: *Regulated tenancies* (April 2009).

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1 What is a fair rent?

The majority of private sector tenants who have exclusive occupation of their homes and who entered into their tenancy agreements prior to 15 January 1989 (the date on which Part I of the *1988 Housing Act* came into force) are usually referred to as 'regulated' or 'protected tenants'. The statute governing the rents and security of tenure of these tenants is the *1977 Rent Act*.

Regulated tenants are entitled to have a 'fair rent' (also referred to as a registered rent) set on their properties by a Valuation Office Agency Rent Officer. The rent officer is a statutorily appointed public official who is independent of central and local government.

In determining a fair rent the rent officer must take account of the provisions of s.70 of the *Rent Act 1977.* Factors which will influence the rent level include the age, character, locality and state of repair of the dwelling house and the quality and quantity of any furniture provided. Rent officers are obliged to assume that there is no scarcity of comparable rented accommodation in the locality for the purposes of setting a fair rent; this has traditionally meant that these rents have been held below market levels. The rent officer must also ignore the personal circumstances of the tenant(s).

Once a fair rent is registered by the rent officer it becomes the legal maximum that is chargeable for the tenancy and is reviewable every two years. Tenants and landlords have the right to appeal against a fair rent set by a rent officer to a First-Tier Tribunal Property Chamber. HM Courts and Tribunal Service has produced guidance on rent cases while the Valuation Office Agency has issued a fact-sheet on the role of rent officers and the Tribunal.

When a case is referred the Tribunal will reconsider the whole matter of the rent level again but may decide on a rent which is higher than that originally set by the rent officer. Appeals against the decision of a First-Tier Tribunal can be submitted to the Upper Tribunal (Lands Chamber) but it is advisable for constituents considering an appeal to seek professional legal advice beforehand.

2 Why did fair rents increase in the 1990s?

The 1990s saw an increase in the number of fair rent cases that landlords were referring to Rent Assessment Committees (a role now taken over by First-Tier Tribunals (Property Chamber)). Landlords argued that the growth in the supply of private rented accommodation meant that there was no scarcity and that fair rents should be compared, and set in line with, market rents.

In May 1991 the High Court upheld a landlord's claim that if there was no scarcity of private rented accommodation in an area the RAC would be obliged to consider comparable properties with market rents. In this case, *BTE Ltd v Merseyside & Cheshire RAC* (1991), a RAC had increased the fair rent on a tenant's property from £13 to £16.50 per week. Although the landlord had produced evidence that market rent lettings within the area were of a comparable value to his tenant's protected tenancy, the RAC failed to take this into consideration when reviewing the rent officer's decision. Following the High Court's judgement, a second RAC considered the rent level and set it at £19.50 per week; the landlord had asked for a rent of £30 per week. The second RAC argued that scarcity was indicated by demand as well as supply and was prepared to view the number of people on council and housing association waiting lists as an indication of housing need within the area.

In 1992 an elderly tenant of a property in Kensington appealed to the local RAC against the rent officer's decision to increase her rent from £700 to £2,800 per year. The RAC reconsidered the rent level and finally set it at £7,500 per year. In reaching this decision the RAC was persuaded by the landlord's representative, a chartered surveyor, who argued that homes in Kensington were being let as people could not sell them and as a result there was no scarcity of rented accommodation. The surveyor quoted the *BTE* case; the RAC agreed that if there was no scarcity the tenant should pay the equivalent of a market rent in Kensington. The tenant, Helen Holdsworth, successfully challenged the RAC's decision in 1995.[1]

In the case of *Spath Holme Ltd v Greater Manchester and Lancashire Rent Assessment Committee* (1995) the landlord successfully argued that, as the company was offering similar properties in the same block at much higher assured tenancy rents, those of regulated fair rent tenants should be allowed to rise to levels higher than allowed by the RAC. The Court of Appeal held that the tenancies were similar and that scarcity of rented accommodation was not a factor in the case.[2] The case established that rent officers should set fair rents by looking at market rents, including rents under assured tenancies, discounted for scarcity. The outcome prompted concern that landlords, particularly in London, would use it as a basis to increase fair rent levels.[3]

The Conservative Government at that time rejected calls to intervene to stop substantial increases in fair rent levels following the *Spath Holme* case:

> **Mr. Raynsford**: To ask the Secretary of State for the Environment if he proposes to introduce (a) amending legislation, (b) revised guidance to rent officers and rent assessment committees or (c) any other action to reverse the effect of the Court of Appeal judgment on the use of comparables in setting fair rents in the case of Spath Holme Ltd. v. Greater Manchester and Lancashire Rent Assessment Committee.

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1 See: *The Observer* "Is all fair in tenant law?" 17 December 1995

2 See: *Independent Law Report* 28 August 1995

3 *Inside Housing,* 'Landlord's court victory opens up the floodgates for huge rises in fair rents,' 11 August 1995

> **Mr. Clappison**: The statutory basis on which fair rents are determined is set out in section 70 of the Rent Act 1977, which consolidated the Rent Act 1968. In essence, a fair rent is what a landlord could achieve in a market in which the supply of, and demand for, accommodation are in balance-that is, in the absence of scarcity. This has been the understanding since fair rents were introduced, and the judgment of the Court of Appeal does nothing to change that. We therefore do not propose to legislate to change the current statutory basis.
>
> The Secretary of State does not issue guidance to rent officers and rent assessment committees to seek to influence them in the exercise of their independent statutory jurisdiction, and it would be wrong to do so.[4]

In early 1997 the High Court quashed a Merseyside and Cheshire RAC decision to set a fair rent at £33.50 per week following the rent officer's determination of £31. The court found that the RAC had failed to take account of open market rents and had failed to properly quantify scarcity of rented accommodation within the area. A subsequent RAC set a rent of £54.50. Housing commentators predicted further rises in fair rents towards market rent levels as a result of this case.[5]

On 9 October 1997 the Court of Appeal delivered what was described as a 'landmark' judgement on the method of determining a fair rent and on the content of written reasons given by RACs. In *Curtis v London Rent Assessment Committee*[6] the landlord (Curtis) challenged the rent officer's determination of rent for two flats in a block at the local RAC. The rents registered of £3,900 and £3,640 were substantially lower than the £5,720 and £5,200 applied for by the landlord despite evidence that rents obtainable for flats let on assured tenancies in similar blocks ranged between £5,720 and £6,240. The RAC accepted the landlord's comparables as evidence then reported that it had made 'appropriate deductions for differences commented upon…as well as a discount for the scarcity element', and that having done so, saw no need to alter the registrations. The RAC also said that it did not consider it appropriate to offer artificial calculations, detailed workings or hypothetical percentages, arguing that as an expert tribunal, they were entitled to rely on a broad, well-founded approach.[7]

The landlord appealed to the High Court on a number of grounds but won only on a procedural point. He took the case to the Court of Appeal because he maintained that the judge had wrongly rejected the substance of his appeal and that the RAC had failed to apply the principles of the *Spath Holme* judgement. The Court of Appeal ruled that the fact that the landlord's appeal to the lower court had been successful did not bar him from appealing to a higher court to clarify the law.[8]

On the substance of the appeal, the Court reaffirmed the principle established in *Spath Holme;* namely, that the starting point for a determination of a fair rent under section 70 of the *1977 Rent Act* could only be the market rent, adjusted for scarcity. In the Court's view the market in private rented housing had undergone profound changes since the *1988 Housing Act* and the best evidence in most cases would now be assured tenancy comparables since these were the natural successors to fair (registered) rents. Accordingly, the Court felt that

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4 HC Deb 16 October 1995 c165W
5 *Housing Today,* 'Fair rents set to go up after new ruling', 3 April 1997
6 [1997] EGCS 132
7 British Property Federation, *Residential News,* 7 November 1997
8 *Curtis v London rent Assessment Committee* [1999] QB 92

there should be no reason to refer to registered rents at all in cases such as this and less reason to consider their soundness as market indicators.

The Court also ruled that where disputed adjustments had to be made when discounting scarcity, there was no rational way of giving effect to section 70 without some sort of arithmetical calculations, however few or approximate. In failing to give these calculations the RAC in this case was found to have fallen short of the standards required of decision making bodies.

3 The Government's response to fair rent increases

Karen Buck raised the issue of increases in fair rents during a debate on the Adjournment of the House on the 26 January 1998.[9] The then Minister for London and Construction, Nick Raynsford, responded:

> Both my hon. Friends will know that the Government are very concerned about the disproportionate increases that some regulated tenants have faced in recent years. My hon. Friend the Member for Regent's Park and Kensington North has been in correspondence with my Department about the plight of some of her constituents and will be aware that we have been looking to see what can be done to help tenants who face such problems.
>
> Before I outline the possible measures that we are exploring, it might be helpful if I summarise the background to the setting of fair rents and why they have increased significantly in recent years.
>
> When the Housing Act 1988 introduced assured tenancies at market rents for all new lettings from January 1989, existing tenants' rights to security of tenure and rent control were not changed. Those regulated tenants and their landlords have the right to have a fair rent registered for the tenancy by an independent rent officer. Both also have a right to appeal to a rent assessment committee if they are dissatisfied with the rent officer's decision. The registered rent is the maximum rent the landlord can charge and it cannot normally be re-registered for two years.
>
> When assessing fair rents, rent officers and rent assessment committees must follow the rules laid down in section 70 of the Rent Act 1977. That requires them to take into account the age, character, locality and state of repair of the dwelling but to disregard any premium resulting from a scarcity of similar accommodation in the area. A fair rent is therefore what a landlord could achieve in a market in which the supply of and demand for accommodation are in balance. Rent officers cannot take a tenant's or a landlord's personal circumstances into account.
>
> Until the introduction of assured tenancies, there was little evidence of open-market rents because of rent control, so rent officers and rent assessment committees tended in the past to determine fair rents using the evidence of their own previous decisions. Before 1989, when there was no evidence of decontrolled market rents, that was the only practicable approach. More recently, it has been possible to determine fair rents by starting from the market rent and subtracting any element due to scarcity.
>
> The way in which rent officers and rent assessment committees determine fair rents was the subject of a Court of Appeal case in 1995 -- Greater Manchester and Lancashire Rent Assessment Panel v. Spath Holme. The effect of the judgement was to give more weight to the market rent less the scarcity method of rent determination. That approach has been reaffirmed in a series of subsequent judgements, most recently the Curtis case, which

[9] HC Deb 26 January 1998 cc121-128

came before the Court of Appeal in October 1997. Changing to that method has caused fair rents to rise steeply. Increases in recent years have been well above increases in the retail prices index over the same period. In some areas, particularly but not exclusively in London, increases on re-registration have been more than 20 per cent. higher than the retail prices index for the same two-year period.

Most of the tenants affected could never have expected increases of that magnitude under a fair rent system. As my hon. Friend said, many regulated tenants are elderly and on fixed incomes. They have planned their affairs on the assumption that they would be able to remain in their present home and I know that these increases are causing some of them not only great hardship, but great anxiety as they face the alternatives of giving up their home of many years, or seeing their savings rapidly disappear.

I do not believe that landlords of regulated tenants expected such increases. Regulated tenancies have generally been acquired in anticipation of substantial capital gains when the tenancies come to an end. These tenancies have always traded at a discount to vacant possession value. The discount may have reduced in recent years, but even now those properties trade at some 30 per cent. to 45 per cent. below vacant possession value. Moreover, the landlords bought those properties in the knowledge that the rents were subject to fair rent controls and that potential rental yields would be lower than those obtainable from assured shorthold tenancies. Therefore, we feel that there is a strong case for considering Government intervention to moderate rent increases for the small group of existing tenants in that position.

What options are we considering? First, I must make it clear that we do not have it in mind to change either the existing system of fair rent determinations by rent officers and rent assessment committees, or the rent criteria in section 70 of the Rent Act 1977. That would require primary legislation and, in view of the many other pressures on parliamentary time, any opportunity for that would be likely to lie some way ahead.

A more attractive option, which may be possible through secondary legislation, is the application of a maximum limit to the size of the rent increase which could be imposed by rent officers and rent assessment committees under the existing system. We have in mind linking rent increases to the retail prices index, as a well-established measure of affordability, by way of an "RPI plus X" formula. However, there are some tricky issues to be resolved. We would need to ensure that we got the right balance between the interests of tenants and the interests of landlords. Another issue is that we do not want to discourage landlords from carrying out necessary improvements to their property; but, equally, we must be sure that any mechanism which allows rent increases to reflect those improvements does not simply provide the landlord with a loophole for circumventing the new limit.

There are difficult and detailed technical and legal issues which still need further study, but assuming that we can overcome these to our satisfaction, we shall issue a public consultation document setting out our proposals and seeking comments on the details. I cannot say precisely when that might be, but I can assure my hon. Friend that we are moving as rapidly as we can.

Concerns have also been expressed that fair rent levels are not consistent between rent office areas or between rent officers and rent assessment committees. The Government share those concerns and we are looking at ways to improve performance. We have already announced that we have decided to create a unified national structure for the rent officer service in England by establishing it as a next steps agency of the Department of the Environment, Transport and the Regions. That should ensure that a more consistent and accountable service is provided to the public. We are currently planning on the assumption that the agency will be established in October 1999.

> We are also reviewing, in the light of the Nolan report and the code of practice for public appointments, the composition of rent assessment panels and the procedures for appointing members. In doing so, we are responding to the anxiety expressed by my hon. Friend about possible imbalances in the membership of rent assessment panels.
>
> I have been concerned that members of the panel should be drawn from a broader constituency. The panels are now making greater use of lay members on their committees and tribunals. The Department has already started advertising on an annual basis for panel members to widen the catchment from which they are drawn. More information is now required from candidates for appointment and declarations of interest are required from members on both appointment and re-appointment. I know that panel presidents are very aware of the need to ensure that members do not consider cases in which they may have either a personal or professional interest. However, we are looking to strengthen the safeguards still further. We want to see greater openness in the appointment process, with tenants and landlords having ready access to information about the members considering their case. That is why I have asked the panels to look at how a register of members' interests can be made available for public inspection.
>
> Another development that I can report is that a working group comprising members of the Institute of Rent Officers and rent assessment panels has been set up to consider, in the light of the recent fair rent court cases, how to achieve general consistency of approach to the registration of fair rents. I welcome that initiative and look forward to seeing the good practice guide that it proposes to issue in due course.
>
> I know that the very fact that we are looking at the problem of unjustifiably high rent increases in the regulated sector has set alarm bells ringing in some quarters. Landlords' associations are suggesting that moderating fair rent increases could be the thin end of the wedge -- the prelude to wider rent control. They are also predicting that it would scare away the financial institutions, which are at last beginning to show renewed interest in investing in private residential housing. I have to say, and keep on saying, that there is no rational basis for such fears. They are groundless. The factors that have led us to consider moderating fair rent increases simply do not apply in the deregulated sector of the market. We have no plans to change the legal framework for deregulated private tenancies, where rents and rent increases follow market trends.
>
> I hope that my hon. Friend the Member for Regent's Park and Kensington, North is reassured from what I have said that the Government share her concerns about the plight of fair rent tenants. We are developing proposals to impose a maximum limit on the size of fair rent increases and we hope to be in a position to issue a public consultation paper shortly, setting out our proposals and seeking comments on the details. [10]

The Government's Consultation Paper, issued on 21 May 1998, proposed that all tenants with a rent registered under the *Rent Agriculture Act 1976* or the *Rent Act 1977* would have their rent increases limited by an Order made under the *Landlord and Tenant Act 1985*. The proposed limits were RPI plus 10% for the first re-registration after the Order came into effect and RPI plus 5% for subsequent re-registrations.

3.1 Responses to the Government's proposals

The National Federation of Residential Landlords (NFRL) described the proposed ceiling on fair rents as 'grotesquely unfair'.[11] Not surprisingly the interests of landlords and tenants were (and are) diametrically opposed on the question of rent levels. Landlords were of the view that fair rents had been held at an artificially low level since the 1970s and that the rate

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[10] *ibid*

[11] NFRL press notice, 20 May 1998

of return had led to poor maintenance records. It is widely accepted that rent controls, coupled with security of tenure, made private lettings a relatively poor investment in the 1970s and 80s and that this contributed to the decline of the sector. The NFRL's position was set out in its 1996/97 Report:

> Fair rents are the subject of a fundamentally flawed system as evidenced by great inconsistencies in rent levels and serious misinterpretations of the law by rent officers and rent assessment committees. From a low base, fair rents fell by over 40% against retail prices and by over 60% against house prices during the 1970s. Subsequent above inflation increases (quietly phased) were inevitable but understandably unpalatable to some regulated tenants who came to regard the low point of fair rents as the norm. In 1989, the then new director of the Rowntree Trust, Richard Best, had the rent of his £65,000 dwelling calculated on a 4% net return plus official management and maintenance allowances. The resultant figure of £67 per week was three times local fair rent levels. Today many fair rents are still well below the 'fair market rents' postulated by section 70 of the Rent Act and some rent officers and rent assessment committees are alleging that nine years after the deregulation of new lets, there is still substantial scarcity sufficient to justify the discounting of market rents by as much as 40%. Landlords have learned with dismay that just when the courts are very belatedly making correct judgements about the determination of fair rents, the Department of the Environment, Transport and the Regions are seriously considering the capping of increases of fair rents on two yearly review.[12]

On the other hand, tenant activists criticised the proposals for setting the cap too high. The Camden Federation of Private Tenants expressed disappointment over the cap on the grounds that it could allow increases above the market level and that it would not assist tenants who could not afford their existing rents.[13]

4 The Rent Acts (Maximum Fair Rents) Order 1999

The Government announced how it intended to proceed on the issue of limiting fair rent increases on 17 December 1998:

> **Ms Moran**: To ask the Secretary of State for the Environment, Transport and the Regions if, following the consultation paper Limiting Fair Rent Increases, published in the summer, he intends to introduce measures to help tenants facing exceptionally high fair rent increases.
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> **Ms Armstrong**: Tenants have been facing exceptionally high fair rent increases, following recent court cases. We received more than 500 responses to the consultation paper we issued in the summer which proposed limiting fair rent increases by applying a formula linked to the Retail Prices Index (RPI). There was overwhelming support for this from individual tenants and tenants' organisations. They considered our proposed limits were too high, however, and we have responded to this.
>
> We propose, therefore, to go ahead and introduce new limits by making an Order under Section 31 of the Landlord and Tenant Act 1985.
>
> Rent officers and rent assessment committees will continue to determine fair rents as they do now. Where applications for re-registration are made to the rent officer after the Order comes into effect, however, fair rent increases will be limited to RPI + 7.5 per cent. for the first re-registration (rather than RPI + 10 per cent. as originally proposed)

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12 NFRL, *Responsible Residential Renting,* 1996/97

13 *Inside Housing* , 'Tenants bitter over rent levels', 29 May 1998

> and RPI + 5 per cent. For subsequent re- registrations. This will ease the anxiety faced now by thousands of tenants, many of whom are elderly or on fixed incomes. It will give them certainty that their rents cannot be increased by more than these limits.
>
> If there is no existing fair rent registration for the property, these limits will not apply. Nor will they apply if the rent officer or rent assessment committee considers that repairs or improvements carried out by the landlord have changed the condition of the property or common parts so much that the new rent should be at least 15 per cent. more than the existing registered rent. I believe that, in these limited circumstances only, it is fair for landlords to charge the full fair rent increase.
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> The new limits will apply to private tenants and secure tenants of registered social landlords who have a fair rent registered under the Rent (Agriculture) Act 1976 or the Rent Act 1977. They will not apply to rent increases for assured or assured shorthold tenancies under the Housing Act 1988. We have no plans to change the legislative framework for these tenancies.
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> The Order will be laid immediately after the Parliamentary Recess and will come into force shortly afterwards. My Department will make a further announcement when the Order is laid. We will issue a leaflet for landlords and tenants explaining in detail when the limits apply and how rent officers and rent assessment committees will calculate them, and details will appear on our internet site.[14]

The *Rent Acts (Maximum Fair Rent) Order 1999* (SI 1999/6) was laid before Parliament on 11 January 1999 and came into force on 1 February 1999.

4.1 The quashing of the Rent Acts (Maximum Fair Rents) Order 1999

Spath Holme Ltd sought an order for judicial review of the *Rent Acts (Maximum Fair Rent) Order 1999* based on the contention that the Order was ultra vires the powers conferred on the Government under section 31 of *Landlord and Tenant Act 1985*.

The 1985 Act was a consolidating statute and section 31 substantially repeated a provision that had first appeared as section 11(1) of the *Counter Inflation Act 1973.* The Court of Appeal stated that it was 'common ground' that the purpose of the power conferred by section 31 was to control inflation in the economy by restricting or preventing rent increases. Spath Holmes Ltd contended that the Order had not been made to further the purpose for which section 31 had been enacted, but to achieve an 'extraneous purpose.' This purpose was identified as 'the alleviation of a perceived hardship or unfairness to residential tenants produced not by general inflation but by recent decisions prescribing the lawful and proper method of determining fair rents'.

The Court of Appeal agreed with Spath Holmes' contention and held that because the Order did not come within the counter-inflationary aims of section 31 of the 1985 Act it was ultra vires. Thus the Court quashed the Order. The DETR was refused leave to appeal to the House of Lords; the Government petitioned the Lords directly to reopen the case.[15] The DETR issued guidance on the treatment of fair rents (capped and uncapped) in the light of the Court of Appeal's decision.

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[14] HC Deb 17 December 1998 cc638-9W

[15] *Evening Standard,* 'Rents set to rise as judges quash Prescott capping bid', 25 January 2000

4.2 House of Lords ruling on rent capping policy

The House of Lords granted the Government leave to appeal the decision of the Court of Appeal to quash the *Rent Acts (Maximum Fair Rent) Order 1999;*[16] the hearing took place on 9 and 10 October 2000.

Judgement was handed down on 7 December 2000. The House of Lords held that the Government had acted lawfully in introducing a limit on fair rent increases. The full text of the judgement can be viewed on the House of Lords website.[17]

Commenting on the judgement Nick Raynsford said:

> This significant milestone will be greeted with a huge sigh of relief by thousands of tenants who have a fair rent registered on their property, many of whom are retired and live on fixed incomes. We introduced a limit to protect them at a time when fair rents in some parts of the country were rising unabated.
>
> "The judgement will bring welcome relief to those who have been living under a cloud, not knowing how they will be able to afford to pay their rent following the Court of Appeal's ruling that the legislation we introduced was ultra vires.
>
> "The decision is also a vindication of the Government's decision to introduce the limit by way of a reserve power in housing legislation. We were confident that we acted lawfully and this has now been confirmed in the most senior court.[18]

The Government said that rent officers and RACs would act quickly to ensure that all rents decided since the legislation had been introduced would be corrected to fully reflect the amount lawfully due.[19]

4.3 The European Court of Human Rights challenge

Spath Holme subsequently applied to the European Court of Human Rights (ECHR) to overturn the *Rent Acts (Maximum Fair Rent) Order 1999.* The ECHR rejected Spath Holme's challenge in 2002; no further appeal was possible.

5 Guidance on fair rents following the HOL judgement

The following guidance was published on 15 December 2000:

> **The Fair Rent for my property was set by the Rent Officer before the Court of Appeal quashed the Order. How am I affected?**
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> If the rent was registered prior to 20 January 2000 (when the Order was quashed) on an application made on or after 1 February 1999 (when the Order came into effect) and the amount registered was limited to the maximum fair rent, the Rent Officer will write to you as soon as possible:
>
> - If the registered rent was changed by the Rent Officer following the Court of Appeal's decision, it will revert to the amount originally registered.
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> - If the registered rent was exempt from the maximum fair rent due to repairs or improvements undertaken by the landlord, the registered rent will not change.

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16 HC Deb 21 June 2000 c 210W
17 http://www.publications.parliament.uk/pa/ld200001/ldjudgmt/jd001207/spath-1.htm
18 DETR Press Notice 754, 7 December 2000
19 *ibid*

- The registered rent will not change if the amount registered was lower than the maximum fair rent. The Rent Officer will not write to you in this case.

The Fair Rent for my property was set by the Rent Officer after the Court of Appeal quashed the Order. How am I affected?

If a Fair Rent was registered between 20 January 2000 (when the Order was quashed and 7 December 2000 (when it was reinstated) the Rent Officer will write to you as soon as possible:

- If the maximum fair rent the Rent Officer works out now is higher than the rent already registered, the registered rent will not change.

- If the maximum fair rent the Rent Officer works out now is lower than rent already registered, the Rent Officer will invite you to make representations within 14 days on whether one of the exemptions from the maximum fair rent should apply. If no representations are made or if, following representations, the Rent Officer decides that the case is not exempt, the Rent Officer will write again to advise you of the revised registered rent.

- If representations are made and the Rent Officer decides that one of the exemptions does apply, the Rent Officer will write again to advise you that the registered rent will not change.

The Fair Rent for my property is not due for registration until after the House of Lords decision. How am I affected?

For registrations made after 7 December 2000 (when the Order was reinstated) the Rent Officer will determine a fair rent and apply the rules set out in the Order:

- The Rent Officer will consider whether either the exemption for first registration or repairs or improvements applies. If the case is exempt, the Rent Officer will register the rent without applying the maximum fair rent limit set out in the Order.

- If the Rent Officer considers that the case is not exempt, he or she will work out the maximum fair rent.

- If the maximum fair rent is higher than the fair rent, the fair rent will be registered as the highest rent payable for the property.

If the maximum fair rent is lower, the maximum fair rent will be registered as the highest rent payable for the property.

The Fair Rent for my property was set by the Rent Assessment Committee. How am I affected?

The Order applies to cases referred on appeal to Rent Assessment Committees in exactly the same way as it applies to cases determined by Rent Officers. Therefore if the Committee decided the rent prior to 20 January 2000 (when the Order was quashed) on an application made to the Rent Officer on or after 1 February 1999 (when the Order came into effect) and the amount registered was limited to the maximum fair rent, the Rent Officer will write to you as soon as possible:

- If the rent decided by the Committee was changed following the Court of Appeal's decision, the registered rent will revert to the amount originally decided by the Committee.

- If the rent decided by the Committee was exempt from the maximum fair rent due to repairs or improvements undertaken by the landlord, the registered rent will not change.

- The registered rent will not change if the amount registered was lower than the maximum fair rent. The Rent Officer will not write to you in this case.

If a Fair Rent was decided by the Committee between 20 January 2000 (when the Order was quashed and 7 December 2000 (when it was reinstated) the Rent Assessment Committee will write to you as soon as possible:

- If the maximum fair rent the Committee works out now is higher than the rent already registered, the registered rent will not change.

- If the maximum fair rent the Committee works out now is lower than rent already registered, the Committee will invite you to make representations within 14 days on whether on whether one of the exemptions from the maximum fair rent should apply. If no representations are made or if, following representations, the Committee decides that the case is not exempt, the Committee will write again to advise you of the revised registered rent.

- If representations are made and the Committee decides that one of the exemptions does apply, the Committee will write again to advise you that the registered rent will not change.

If the registered rent changes will I have the right to appeal against the decision?

If the Rent Officer changes the registered rent you will be entitled to object. If you do so within 28 days the Rent Officer will refer the matter to the Rent Assessment Committee. If the registered rent changes following a decision of the Rent Assessment Committee your only right of appeal is to a County Court on a point of law.

If the registered rent changes should the rent payable also change?

The registered rent is the highest amount payable under the tenancy (except for certain variable amounts for services). If the rent payable exceeds the amount registered following a revision to the register, the rent payable must be reduced accordingly. There is no special formality for doing this, but landlords and tenants should agree the revised rent to avoid any misunderstanding.

What happens if the rent previously payable was not properly agreed?

Unlike a rent reduction, before an increase in the rent payable can take effect the landlord must serve a special form on the tenant, called a Notice of Increase. A higher rent is not payable until the effective date set out in the notice. If the rent payable was increased following an increase in the registered rent without following this procedure, you should seek legal advice.

Can tenants recover overpaid rent?

If the landlord increased the rent payable following registration, and the registered rent has since been revised downwards, the tenant may be entitled to recover any overpaid sum. If the amount to be repaid cannot be agreed on recovery may be sought through legal methods. Section 57 of the Rent Act 1977 sets out a procedure for withholding further payments of rent where the full amount of rent paid by the tenant was "irrecoverable" by the landlord (e.g. because the rent limit was exceeded or because no effective notice of increase had been given).

This procedure is complicated and time limited. Before attempting to use it tenants should seek advice from a solicitor, Citizens Advice Bureau or Housing Advice Centre. An alternative method of recovery might be to take direct action in the County Court based on a mistake of law. Again, tenants should seek proper legal advice before pursuing a claim.