

立法會
Legislative Council

LC Paper No. CB(1)1060/05-06(04)

Ref : CB1/PL/HG

Panel on Housing
Meeting on 17 March 2006

Background brief
on review of rent policy of public rental housing

Purpose

This paper outlines the issues concerning the review of rent policy of public rental housing (PRH) and summarizes the major concerns expressed by Members on the issues.

Background

2. Section 16(1) of the Housing Ordinance (HO) (Cap. 283), provides for the power of the Housing Authority (HA) to determine the rents of its public housing estates. Public housing rents are determined by the HA on the basis of tenants' affordability, i.e. ability to pay. The general principle of affordability has been translated into the median rent-to-income ratio (MRIR) ceiling. MRIR means 50% of households' rent-to-income ratios (RIR) are below the median figure while the other 50% are above it. Administratively the HA set two MRIR ceilings in determining public housing rents as follows –

- (a) 15% for the minimum space allocation standard of 5.5 square metres Internal Floor Area (IFA) per person (set in 1986); and
- (b) 18.5% for the higher space allocation standard of 7 square metres IFA per person (set in 1991).

3. Other factors taken into account by the HA for reviewing PRH rents are the comprehensive values of estates, location and transportation, management and maintenance costs, inflation and rates. Before March 1998, review of PRH rents was conducted by the HA every two years.

Housing (Amendment) Ordinance 1997

4. The former Legislative Council passed at the meeting of 27 June 1997 the Housing (Amendment) (No. 3) Bill 1996. The Bill was a Private Member's Bill introduced by Hon LEUNG Yiu-chung. The Bill as amended (Amendment Ordinance 1997) provides, inter alia, that any determination of variation of rent should only take effect at least three years after coming into effect of the previous rent determination and that the overall MRIR of all public housing estates should not exceed 10% after any rent variation (section 16(1A))¹.

Housing (Amendment) Ordinance 1998

5. To resolve the operational difficulties of the Amendment Ordinance 1997, the Administration introduced and the Provisional Legislative Council passed the Housing (Amendment) Ordinance 1998 on 25 February 1998 to achieve the following effects –

- (a) disapplying the restrictions stipulated in the Amendment Ordinance 1997 in respect of better-off tenants and tenants receiving rent assistance;
- (b) excluding from the scope of the Amendment Ordinance 1997 the license fees charged on cottage areas and interim housing; and
- (c) providing clearly that the calculation of the MRIR should be determined in accordance with a procedure established by the HA.

6. After the enactment of Amendment Ordinance 1998, the then Secretary for Housing appointed 13 March 1998 as the day on which the Amendment Ordinance 1997 came into effect.

¹ Section 16(1A) of the Housing Ordinance provides that –

- (a) Any determination of variation of rent after the commencement of the Housing (Amendment) Ordinance 1997 (108 of 1997) by the Authority under subsection (1)(a) in respect of any class (whether determined by the nature of the land or status of the lessee) of land in an estate for residential purposes shall only take effect at least 3 years from the date on which any immediately preceding determination in respect of the same such class of land came into effect.
- (b) The rent determined under paragraph (a) in respect of any such class of land shall be of such amount that the median rent to income ratio in respect of all classes of land in all estates let for residential purposes, as determined by the Authority, shall not exceed 10%.

Change of MRIR

7. Since the enactment of the Amendment Ordinance 1997, the HA has frozen the rents of newly completed PRH estates at the July 1997 level. It has also deferred repeatedly the rent reviews for existing PRH. However, with the downturn of the economy after the change of sovereignty, the incomes of the general public have been decreasing. Legislative Council (LegCo) Members have been keeping track whether the MRIR has exceeded the statutory ceiling of 10%. Three questions on the subject were raised at the Council meetings during 1999 to 2001. During the period, the Panel on Housing (the Panel) also discussed the rent policy and rent review of PRH on 3 May 1999 and 5 February 2001. Members noted with concern that the overall MRIR for the third quarter of 2000 was at 10.2%, exceeding the statutory ceiling. Some members called upon the Administration to reduce the rents of PRH to comply with the 10% ceiling in the Amendment Ordinance 1997.

8. The stance of the Administration then was that the law only requires the HA, when revising the rents of PRH, to ensure that the overall MRIR of PRH households does not exceed 10%. If the MRIR rises above the ceiling of 10% because of reasons other than an increase in rent, such as a reduction of incomes of public housing tenants, the HA is not required to reduce rent.

9. The MRIRs from the first quarter of 1998 to the fourth quarter of 2004 are shown in **Appendix I**. In the fourth quarter of 2004, the figure already rose to 14.7%.

Judicial Review on rent review

10. In October and November 2002, two PRH tenants applied for leave to apply for judicial review (JR) in respect of the decisions of the HA to defer the review of rents of its rental estates in 2001 and 2002 respectively at the Court of First Instance (CFI) of the High Court.

11. On 11 July 2003, CFI ruled in favour of the applicants. In gist, CFI found that –

- (a) the HA is under a duty to review rent regularly;
- (b) the applicants had a legitimate expectation to have their rents periodically and regularly reviewed; and
- (c) when the HA carries out its duty to review rent, the 10% MRIR ceiling must be abided by.

12. The Panel held a special meeting on 16 July 2003 to discuss the implications of the outcome of the JR. Members considered that the

Administration must respect CFI's ruling and reduce rents for PRH expeditiously. The Panel passed a motion to urge the Administration to adjust the rents of PRH downwards to comply with the ceiling stipulated in the law. The wording of the motion is in **Appendix II**.

13. CFI issued the Order of Relief on 12 August 2003. The Order directs the HA to review and determine the variation of rents of the batch of PRH units to which the applicants' public housing units are part, according to the true meaning and effect of section 16(1A) of HO. In August 2003 the HA appealed against CFI's judgement and the Order. Upon HA's application for a stay of execution of the Order, CFI ruled on 26 August 2003 that the HA does not have to implement rent adjustment after rent review before conclusion of the appeal.

Rent review triggered by the JR

14. The stay of the Order granted on 26 August 2003 was, however, conditional upon HA's undertaking to review the rents of PRH units concerned. In March 2004, the HA put forward its proposed framework for reviewing PRH rent. Two approaches comprising five rent adjustment options were identified as follows –

- (a) A simple across the board approach whereby the rents of all units concerned would be reduced by 38%; and
- (b) A targeted approach whereby differential rent reductions are applied to different classes of tenants or estates with a view to addressing direct the main causes for the rise in the MRIR. Under this targeted approach, four rent adjustment options are set out as follows –
 - (i) reducing by 40% the rents of only those households with RIRs exceeding 10%;
 - (ii) adopting different rent reductions for different estates. Under this option, the rents of new estates, which are usually higher than those of the old ones, would be given a greater rate of reduction, i.e. 31% for estates completed before 1973 (the so-called pre-HA estates); 36% for estates completed between 1974 and 1992; and 41% for post-1993 estates (mainly comprising Harmony blocks and those converted from HOS courts);
 - (iii) waiving the rents of elderly households by invoking the

power under section 17² of HO plus an across the board rent reduction of 17% for other non-elderly households; and

- (iv) waiving the rents of Comprehensive Social Security Assistance (CSSA) households (under section 17 of HO) plus an across the board rent reduction of 10% for other non-CSSA households.

15. The Panel was consulted on these five rent adjustment options on 25 March 2004. Some members were in favour of across-the-board rent reduction as rent increase was implemented in the same manner in the past. Other members considered a targeted approach more effective in addressing the problem of RIR exceeding 10% for certain households and in assisting those who were most in need.

16. On 30 March 2004, the HA decided, subject to the outcome of the appeal, to adopt the option in paragraph 14(b)(iv) above, which would incur the least financial outlay.

17. The appeal against CFI's judgment was heard by the Court of Appeal (CA) in April 2004. On 22 November 2004, CA allowed the appeal and handed down its ruling. In brief, CA ruled that –

- (a) HO does not place a duty on the HA to conduct a rent review every three years or within any time frame;
- (b) the 10% MRIR requirement only applies if there is a decision to vary rent; and
- (c) a deferment of rent review does not amount to a determination of variation of rent.

18. Given that the applicants might further appeal to the Court of Final Appeal (CFA), the HA was of the view that the issue of rent reduction should be considered after the detailed grounds for appeals were made available by the applicants, otherwise the rent relief measures would jeopardize the HA's position in the legal proceedings that might arise in future.

19. The Panel met with deputations at a special meeting on 29 November 2004. Deputations expressed disappointment about the HA's decision of delaying rent review and requested for refund of rents charged in excess of the statutory MRIR requirement over the past three years. Some members urged the HA to reduce PRH rents as soon as practicable irrespective of whether the

² Section 17 of the Housing Ordinance stipulates that "The Authority may remit, in whole or in part and for such period as it thinks fit, the payment of any rent, premium or other consideration payable under any lease."

applicants would appeal further.

20. On 18 December 2004, one of the applicants sought leave to appeal to CFA. The case was heard by CFA in October 2005. On 21 November 2005, CFA ruled in favour of the HA and dismissed the appeal. In brief, CFA rules that –

- (a) the HA's decisions to deter rent reviews did not amount to determinations of variation of rent;
- (b) the HA is not under a statutory duty to review rents and revise them so as to ensure that the 10% MRIR is not exceeded;
- (c) the Appellant did not have a legitimate expectation that rents would be revised at 3 yearly intervals or at all so as to ensure that the 10% MRIR is not exceeded;
- (d) the words "any determination of variation of rent" means any decision to increase rent and does not extend to a decision to reduce rent;
- (e) 10% MRIR is not a statutory definition of affordability; and
- (f) the HA is under a statutory duty to ensure that the revenue accruing from its estates shall be sufficient to meet its recurring expenditure.

21. In its reply to a LegCo question on HA's domestic rental income raised at the Council meeting on 8 February 2006, the Administration advised that the HA had no plan to reduce public housing rents across-the-board, but would adopt a targeted approach to provide rental relief for tenants in financial hardship. In this regard, with effect from 1 March 2006, the HA has relaxed the eligibility criteria of the "Rent Assistance Scheme" by providing a 25% rent reduction to non-elderly tenants whose income is between 50% and 60% of the Waiting List Income Limit or whose RIR stands at 20-25%. According to the Administration, the new arrangement has in practice capped the RIR of public housing tenants at 20%.

Review on rent policy of PRH

22. In view of the community concerns over rising MRIR and repeated calls for reviewing the mechanism for adjusting PRH rents, the HA considers it essential to establish a clear, objective and flexible index-linked rent adjustment mechanism in the long run to better reflect tenants' affordability and help ensure a sustainable development of the public housing programme.

Against this background, the HA set up the Ad Hoc Committee on Review of Domestic Rent Policy (the Ad Hoc Committee) in March 2001 to take forward the task of reviewing the domestic rent policy and the mechanism of rent adjustment with a view to formulating a more flexible rent structure. The HA also decided to defer all rent review exercises pending the outcome of the policy review.

23. The work of the Ad Hoc Committee was however adjourned due to the JR to CFI. Following CFI's ruling, the Ad Hoc Committee resumed work in September 2003. The Ad Hoc Committee aimed to submit a report together with its recommendations to the HA after thorough consideration and analysis of the views expressed by various sectors of the community. The Ad Hoc Committee planned to consult the public on its initial findings.

24. The Administration considers that CFA's judgement in November 2005 clearly underlines the importance of identifying an alternative rent adjustment mechanism that is more viable and helps to promote the long-term sustainability of the PRH programme. The HA also sees an urgent need for establishing a new rent adjustment mechanism that would allow for both increases and reductions in rents. The new rent adjustment formula will take into account factors, including the MRIR, the consumer price index and other living standard indicators.

Latest development

25. On 9 March 2006, the Ad Hoc Committee published a consultation paper on "Review of Domestic Rent Policy" to invite public views on proposals for changes and improvement of the PRH rents policy and rents adjustment mechanism. The consultation will last for three months. The Administration will brief the Panel on the initial findings of the review and the proposals concerned at the meeting of the Panel on 17 March 2006.

26. The relevant papers concerning the subject of review of PRH rents with their hyperlinks are in **Appendix III**.

Council Business Division 1
Legislative Council Secretariat
15 March 2006

Appendix I

Median Rent-to-Income Ratio for Housing Authority Public Rental Housing (excluding Interim Housing)

Year /Qtr	MRIR (%)
1998 Q1	8.8
1998 Q2	8.9
1998 Q3	9.3
1998 Q4*	8.6
1999 Q1*	9.4
1999 Q2	9.8
1999 Q3	9.6
1999 Q4	10.0
2000 Q1	9.9
2000 Q2	10.2
2000 Q3	10.2
2000 Q4	10.3
2001 Q1	10.4
2001 Q2	10.7
2001 Q3	11.5
2001 Q4 [#]	7.6
2002 Q1*	11.2
2002 Q2*	11.7
2002 Q3*	12.0
2002 Q4*	12.1
2003 Q1	13.8
2003 Q2	14.2
2003 Q3*	12.8
2003 Q4	14.2
2004 Q1	14.5
2004 Q2	14.4
2004 Q3	14.7
2004 Q4	14.7

Notes:

[#] The figure has reflected the rent waiver for public rental housing units for December 2001.

* The figures have reflected the rates rebates taken place during the respective periods.

(Data Source: General Household Survey conducted by Census and Statistics Department.)

Appendix II

Wording of the motion passed at the special meeting of the Panel on Housing held on 16 July 2003

“That, in the light of the High Court’s judgment on the rent review of public housing, this Panel urges the Housing Authority to meet as soon as possible following the High Court’s making of an order in respect of the judgment to review the rent of public housing units and adjust the rent in accordance with the law to a level not exceeding the median rent-to-income ratio ceiling of 10%.”

Review of rent policy of public rental housing

List of references

Council/Committee	Date of meeting	Paper
Council Meeting	27 June 1997	Hansard (http://www.legco.gov.hk/yr96-97/english/lc_sitg/hansard/970627fb.doc)
Bills Committee	6 February 1998	PLC Paper No. CB(2) 1126 (http://www.legco.gov.hk/yr97-98/english/bc/bc57/minutes/bc570602.htm)
Council Meeting	25 February 1998	Hansard (http://www.legco.gov.hk/yr97-98/english/counmtg/hansard/980225fa.doc)
Housing Panel	3 May 1999	LC Paper No. CB(1)1235/98-99(06) (English version only) (http://www.legco.gov.hk/yr98-99/english/panels/hg/papers/hg03056a.htm) LC Paper No. CB(1)1235/98-99(07) (http://www.legco.gov.hk/yr98-99/english/panels/hg/papers/hg03056b.htm) LC Paper No. CB(1)1235/98-99(08) (http://www.legco.gov.hk/yr98-99/english/panels/hg/papers/hg03056c.htm) LC Paper No. CB(1)1796/98-99 (http://www.legco.gov.hk/yr98-99/english/panels/hg/minutes/hg030599.htm)
Council Meeting	20 October 1999	Hansard (http://www.legco.gov.hk/yr99-00/english/counmtg/hansard/991020fe.pdf)

Council/Committee	Date of meeting	Paper
Council Meeting	31 May 2000	Hansard (http://www.legco.gov.hk/yr99-00/english/counmtg/hansard/000531fe.pdf)
Council Meeting	10 January 2001	Hansard (http://www.legco.gov.hk/yr00-01/english/counmtg/hansard/010110fe.pdf)
Housing Panel	5 February 2001	LC Paper No. CB(1)525/00-01(06) (http://www.legco.gov.hk/yr00-01/english/panels/hg/papers/a525e06.pdf) LC Paper No. CB(1)525/00-01(07) (http://www.legco.gov.hk/yr00-01/english/panels/hg/papers/a525e07.pdf) LC Paper No. CB(1)1742/00-01 (http://www.legco.gov.hk/yr00-01/english/panels/hg/minutes/hg050201.pdf)
Housing Panel	16 July 2003	LC Paper No. CB(1)2217/02-03(01) (http://www.legco.gov.hk/yr02-03/english/panels/hg/papers/hg0716cb1-2217-1e.pdf) LC Paper No. CB(1)2217/02-03(02) (English version only) (http://www.legco.gov.hk/yr02-03/english/panels/hg/papers/hg0716cb1-2217-2e-scan.pdf) LC Paper No. CB(1)2459/02-03 (http://www.legco.gov.hk/yr02-03/english/panels/hg/minutes/hg030716.pdf)
Housing Panel	25 March 2004	LC Paper No. CB(1)1361/03-04(01) (http://www.legco.gov.hk/yr03-04/english/panels/hg/papers/hg0325cb1-1361-1e.pdf) LC Paper No. CB(1)1399/03-04(02) (http://www.legco.gov.hk/yr03-04/english/panels/hg/papers/hg0325cb1-1399-2e.pdf)

Council/Committee	Date of meeting	Paper
		LC Paper No. CB(1)2029/03-04 http://www.legco.gov.hk/yr03-04/english/panels/hg/minutes/hg040325.pdf
Council meeting	10 November 2004	Hansard http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm1110ti-translate-e.pdf
Housing Panel	29 November 2004	LC Paper No. CB(1)118/04-05(02) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg1101cb1-118-2e.pdf LC Paper No. CB(1)118/04-05(03) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg1101cb1-118-3e.pdf LC Paper No. CB(1)328/04-05(01) (Chinese version only) http://www.legco.gov.hk/yr04-05/chinese/panels/hg/papers/hg1129cb1-328-1c-scan.pdf f) LC Paper No. CB(1)328/04-05(02) (Chinese version only) http://www.legco.gov.hk/yr04-05/chinese/panels/hg/papers/hg1129cb1-328-2c.pdf LC Paper No. CB(1)328/04-05(03) http://www.legco.gov.hk/yr04-05/chinese/panels/hg/papers/hg1129cb1-328-3c-scan.pdf f) LC Paper No. CB(1)328/04-05(04) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg1129cb1-328-4e.pdf LC Paper No. CB(1)357/04-05(01) (Chinese version only) http://www.legco.gov.hk/yr04-05/chinese/panels/hg/papers/hg1129cb1-357-1c.pdf LC Paper No. CB(1)357/04-05(02) (Chinese version only) http://www.legco.gov.hk/yr04-05/chinese/panels/hg/papers/hg1129cb1-357-2c.pdf

Council/Committee	Date of meeting	Paper
		<p>LC Paper No. CB(1)357/04-05(03) http://www.legco.gov.hk/yr04-05/chinese/panels/hg/papers/hg1129cb1-357-3c.pdf</p> <p>LC Paper No. CB(1)369/04-05(01) (Chinese version only) http://www.legco.gov.hk/yr04-05/chinese/panels/hg/papers/hg1129cb1-369-1c.pdf</p> <p>LC Paper No. CB(1)369/04-05(02) http://www.legco.gov.hk/yr04-05/chinese/panels/hg/papers/hg1129cb1-369-2c-scan.pdf</p> <p>LC Paper No. CB(1)369/04-05(03) (Chinese version only) http://www.legco.gov.hk/yr04-05/chinese/panels/hg/papers/hg1129cb1-369-3c.pdf</p> <p>LC Paper No. CB(1)369/04-05(04) (Chinese version only) http://www.legco.gov.hk/yr04-05/chinese/panels/hg/papers/hg1129cb1-369-4c-scan.pdf</p> <p>LC Paper No. CB(1)369/04-05(05) (Chinese version only) http://www.legco.gov.hk/yr04-05/chinese/panels/hg/papers/hg1129cb1-369-5c.pdf</p> <p>LC Paper No. CB(1)1032/04-05 http://www.legco.gov.hk/yr04-05/english/panels/hg/minutes/hg041129.pdf</p> <p>LC Paper No. CB(1)390/05-06(01) http://www.legco.gov.hk/yr05-06/english/panels/hg/papers/hgcb1-390-1-e.pdf</p>
Council meeting	1 June 2005	<p>Hansard http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm0601ti-translate-e.pdf</p>

Council/Committee	Date of meeting	Paper
Housing Panel	21 October 2005	LC Paper No. CB(1)26/05-06(01) (http://www.legco.gov.hk/yr05-06/english/panels/hg/papers/hg1021cb1-26-1-e.pdf) LC Paper No. CB(1)399/05-06 (http://www.legco.gov.hk/yr05-06/english/panels/hg/minutes/hg051021.pdf)
Council meeting	8 February 2006	Hansard