

LEGISLATIVE COUNCIL BRIEF

**HOUSING ORDINANCE
(CHAPTER 283)**

HOUSING (AMENDMENT) BILL 2007

INTRODUCTION

A At the meeting of the Executive Council on 16 January 2007, the Council **ADVISED** and the Chief Executive **ORDERED** that the Housing (Amendment) Bill 2007 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (LegCo) to replace the statutory 10% median rent-to-income ratio¹ (MRIR) cap with a rent adjustment framework that provides for both upward and downward rent adjustments according to changes in public rental housing (PRH) tenants’ household income.

JUSTIFICATIONS

Drawbacks of the MRIR Cap

2. The current statutory median MRIR cap of 10% on rent adjustment is seriously flawed for the following reasons –

- (a) tenants’ affordability should be the main factor in determining PRH rent. While the MRIR may serve as an indicator to assist the Housing Authority (HA) to track PRH tenants’ rental affordability, adopting it as a rent adjustment mechanism in the current legislation is highly inappropriate since an increase in the ratio can be triggered by a number of extraneous factors other than changes in individual tenants’ rent and household income per se. These extraneous factors include, inter alia, increase in the number of PRH tenants receiving Comprehensive Social Security Assistance (CSSA), increase in the number of elderly or small households who tend to have lower income, exit of high income tenants, allocation of bigger flats and replacement of old PRH estates with new ones;
- (b) the MRIR reached 14.3% in the third quarter of 2006 as compared to 9.1% when the statutory 10% cap was passed by the LegCo in 1997 by

¹ Rent-to-income ratio is the expression of rent as a percentage of household income. The MRIR gives the median value of the rent-to-income ratios of all the PRH households. By definition, 50% of the relevant households’ rent-to-income ratios are below the MRIR and the other 50% above it.

way of a Private Member's Bill. The upsurge was largely due to the extraneous factors cited in (a) above, which are unlikely to subside and will keep the MRIR well above the 10% ceiling in the foreseeable future. We reckon that an across-the-board rent reduction of over 30% would be required to bring it down to 10%;

- (c) the requirement under the existing Housing Ordinance that following any rent increase the MRIR should not exceed 10% effectively means that once the MRIR cap is exceeded, PRH rent can only go down but not go up. Such a rent regime is neither reasonable nor sustainable; and
- (d) while the MRIR provision imposes a tight restriction on the HA's power to increase rent, it falls short of providing any objective basis for the HA to determine when and, if so, to what extent a rent reduction is warranted².

New Rent Adjustment Mechanism

3. In order to identify a more flexible and rational rent adjustment mechanism that matches more closely tenants' affordability and helps to promote the long-term sustainability of the PRH programme, the HA has conducted a review of its domestic rent policy. A key recommendation of the review is to develop an income-based rent adjustment mechanism to determine the extent of rent adjustments according to changes in PRH tenants' household income. To track the income movement of PRH tenants, the HA will introduce a mandatory declaration system to collect income data from PRH tenants and the Census and Statistic Department will use the data to compile an income index on behalf of the HA. A variation of rent may take place not more frequently than every two years.

4. We need to amend the Housing Ordinance to remove the MRIR cap in order to enable the HA to introduce the new income-based rent adjustment mechanism. Although the new mechanism could be introduced through administrative means, feedback from all the major political parties and a number of tenant concern groups indicate a strong demand for statutory control over the HA's power to vary rent according to the new mechanism. We have therefore included a section in the Bill regarding the operation of the new mechanism.

5. Given the technical complexity of the methodology for compiling the income index, it is neither practicable nor desirable to spell out the detailed computing formula in the Housing Ordinance. The HA should be given the statutory power to determine how to compile the income index within certain parameters as specified in the Bill.

6. Changes in MRIR will no longer play any part in determining rent adjustments. The HA will only use it to help track tenants' rental affordability. The HA will also introduce a number of improvements to its assessment, including the introduction of a declaration system to collect more reliable data from PRH tenants and the exclusion of "well-off" tenants and CSSA households from its calculation.

² CFA ruled in November 2005 that the 10% MRIR cap would only apply to a decision to increase rent. Please refer to para. 15 and Annex D for details of CFA's ruling.

7. To provide a fair starting point for the proposed income-based rent adjustment mechanism to operate effectively, the HA has also decided that, before that mechanism comes into operation, the current PRH rent should be adjusted to a level that is considered appropriate and acceptable to the community. Given that the rent of the majority of the existing PRH units as well as that for newly completed units were last reviewed in 1997, the HA has proposed to adjust the existing PRH rent according to the extent of changes in the income index since 1997, i.e., an across-the-board rent reduction of 11.6%. It would implement the rent reduction once we have secured passage of the Bill.

THE BILL

8. The main provisions of the Bill are as follows -

- (a) **Clause 3** repeals the relevant 10% MRIR provisions under sections 16(1A), (1B), (1C), (1D) and (1E);
- (b) **Clause 4** adds a **new section 16A** to require the HA to vary PRH rent with reference to the changes in an income index to be compiled to reflect the household income of PRH tenants;
- (c) **new subsection 16A(1)** introduced under **Clause 4** requires the HA to review PRH rent every two years;
- (d) **new subsection 16A(3)** introduced under **Clause 4** excludes certain rent adjustments from the application of section 16A. Broadly speaking, they are adjustments that require additional rent to be paid by “well-off tenants” whose income has exceeded the threshold specified by the HA and adjustments that permit reduced rent to be paid by low-income tenants who are eligible for the HA’s Rent Assistance Scheme;
- (e) **new subsection 16A(4)** added under **Clause 4** requires the HA to vary PRH rent with reference to the rate of the increase or decrease of the income index. But, as stipulated in **new subsection 16A(6)**, the HA is not required to vary the rent if the amount of the variation is considered by the HA to be insignificant;
- (f) **new subsection 16A(5)** added under **Clause 4** provides that the HA shall not vary PRH rent within two years after the commencement of the Amendment Ordinance or after the preceding rent variation; and
- (g) **new subsection 16A(8)** added under **Clause 4** empowers the HA to determine that an income index is to be compiled in relation to a rent review and how the income index is to be compiled. The HA may also determine that the income index is to be compiled by a tertiary institution or a public body.

B The existing provisions being amended are at **Annex B**.

LEGISLATIVE TIMETABLE

9. The legislative timetable will be as follows -

Publication in the Gazette	19 January 2007
First Reading and commencement of Second Reading debate	31 January 2007
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

C 10. The proposal has financial, economic, civil service as well as sustainability implications as set out at **Annex C**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity or environmental implications. The Bill does not change the binding effect of the Housing Ordinance.

PUBLIC CONSULTATION

11. Before finalizing the proposal for an income-based rent adjustment mechanism, the HA has undertaken very extensive consultations with stakeholders since the commencement of its rent policy review in 2001. These included a three-month public consultation on the initial findings of the review from March to June last year as well as over 100 forums and meetings involving local residents, housing concern groups, District Councils and major political parties. We also briefed and consulted the Legislative Council Panel on Housing at its meetings in March, October, November and December 2006.

PUBLICITY

12. A press release will be issued today (17 January 2007). Detailed briefings will be conducted for the media. A spokesman will be made available to answer enquiries.

BACKGROUND

13. Prior to 1997, the HA used to review and adjust PRH rent at two-year intervals taking into account a number of factors, including tenants' affordability, consumer price movement, Government rates, wage movement, comparative estate values, running costs of the estates under review and the HA's financial conditions. The objective was to ensure that rent was affordable to PRH tenants while adequate to cover the recurrent expenditure for managing and maintaining its estates.

14. The HA has adopted the MRIR as a general measure of tenants' affordability. Two MRIR benchmarks are used, i.e. 15% for an allocation standard of 5.5 m² internal floor area (IFA) per person (adopted since 1986) and 18.5% for 7 m² IFA per person (adopted since 1991).

15. Section 16(1A) of the Housing Ordinance, which was amended by way of a Private Member's Bill on 30 June 1997, came into effect in March 1998. It provides that any determination of variation of rent by the HA for any particular estate shall only take effect at least three years after the preceding determination for that estate, and that the overall MRIR of all rental estates shall not exceed 10% after a rent determination in any estate. In a recent judicial review case, the CFA ruled in November 2005 that the 10% MRIR cap would only apply to a decision to increase rent and would not extend to a decision to reduce rent. A summary of CFA's ruling is at **Annex D**.

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ENQUIRIES

16. For enquiries on this brief, please contact Mr. Carlson K S Chan, Assistant Director of Housing (Strategic Planning) at 2761 5025.

Housing, Planning and Lands Bureau
17 January 2007

A BILL

To

Amend the Housing Ordinance to replace section 16(1A), (1B), (1C), (1D) and (1E) of the Ordinance with –

- (a) provisions relating to review of the rent of certain residential units;
- (b) provisions requiring the Housing Authority to vary the rent of those units with reference to the change in an index reflecting the level of household income of certain tenants of residential units;
- (c) provisions specifying when the Housing Authority shall not, or is not required to, make such a variation; and
- (d) provisions empowering the Housing Authority to round down the amount of the rent in such a variation and to make determinations in relation to the compilation of such an index.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Housing (Amendment) Ordinance 2007.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Housing, Planning and Lands by notice published in the Gazette.

3. Leases of land in estates

Section 16(1A), (1B), (1C), (1D) and (1E) of the Housing Ordinance (Cap. 283) is repealed.

4. Section added

The following is added –

“16A. Variation of rent for residential estates

(1) The Authority shall review the relevant rent as soon as practicable after the second anniversary of the commencement date, and as soon as practicable after the second anniversary of the date of the last review under this subsection, but not otherwise.

(2) Despite section 16, the Authority shall not vary the relevant rent unless the variation is carried out under subsection (4).

(3) This section –

(a) does not apply to –

- (i) an adjustment in the rent of a residential tenant where the total household income or total value of the household assets, as determined by the Authority, is greater than a threshold established by the Authority for the purposes of an increase in the rent; and
- (ii) a re-adjustment in the rent of that tenant where the total household income or total value of the household assets, as determined by the Authority, is less than that threshold; and

(b) does not apply to –

- (i) an adjustment in the rent of a residential tenant where the total household income or total value of the household assets, as determined by the Authority, is less than a threshold established

by the Authority for the purposes of a reduction in the rent; and

- (ii) a re-adjustment in the rent of that tenant where the total household income or total value of the household assets, as determined by the Authority, is greater than that threshold.

(4) Subject to subsections (5) and (6), the Authority –

- (a) if satisfied on a review of the relevant rent that the income index for the second period is higher than the income index for the first period, shall as soon as practicable after the review increase the relevant rent by the rate of the increase of the income index; and
- (b) if satisfied on a review of the relevant rent that the income index for the second period is lower than the income index for the first period, shall as soon as practicable after the review reduce the relevant rent by the rate of the reduction of the income index.

(5) The Authority shall not vary the relevant rent –

- (a) within 2 years after the commencement date; or
- (b) where the relevant rent is varied under subsection (4), within 2 years after the date of the last variation.

(6) The Authority is not required to vary the relevant rent if, in the Authority's opinion, the amount of the variation required under subsection (4) is insignificant.

(7) In varying the relevant rent, the Authority may round down the amount of the relevant rent to the nearest dollar.

- (8) For the purpose of a review of the relevant rent, the Authority –
- (a) may determine that –
 - (i) an index is to be compiled to reflect the level of the mean monthly household income of any class of residential tenant over the first period; and
 - (ii) an index is to be compiled to reflect the level of the adjusted mean monthly household income of that class of residential tenant over the second period;
 - (b) may determine whether such an index is to be compiled by the Authority itself or by a tertiary institution in Hong Kong, or public body, appointed by the Authority for the purpose; and
 - (c) may determine how such an index is to be compiled by the Authority or the appointed institution or body.
- (9) In this section –

“adjusted mean monthly household income” (經調整後的家庭每月平均收入), in relation to any class of residential tenant identified for the purpose of a review of the relevant rent, means the mean monthly household income of that class of residential tenant assessed on the basis of the distribution of the household size of that class of residential tenant over the first period for that review;

“commencement date” (生效日期) means the date on which the Housing (Amendment) Ordinance 2007 (of 2007) comes into operation;

“first period” (第一期間) –

(a) in relation to the first review of the relevant rent after the commencement date, means a period of 12 months expiring on the day immediately before the commencement date;

(b) in relation to a subsequent review of the relevant rent, means –

(i) the second period for the last review of the relevant rent in consequence of which the relevant rent was varied; or

(ii) in the absence of a review in consequence of which the relevant rent was varied, the first period for the first review of the relevant rent after the commencement date;

“income index” (收入指數) means the index referred to in subsection (8)(a) and compiled in the manner determined under subsection (8)(c);

“land” (土地) does not include land in respect of which the Authority has granted to a person a licence, or a permit, to occupy;

“relevant rent” (有關租金) means the rent subject to the payment of which any land in an estate is let for residential purposes under section 16(1) but does not include the rent of a residential tenant who is required to pay a

higher rent after an adjustment under subsection (3)(a)(i) or is permitted to pay a lower rent after an adjustment under subsection (3)(b)(i);

“residential tenant” (住宅租戶) means a tenant of the land in an estate let for residential purposes under section 16(1);

“second period” (第二期間) –

- (a) in relation to the first review of the relevant rent after the commencement date, means a period of 12 months expiring on the second anniversary of the expiry date of the first period for the review; or
- (b) in relation to a subsequent review of the relevant rent, means a period of 12 months expiring on the second anniversary of the expiry date of the second period for the last review.”.

Explanatory Memorandum

The object of this Bill is to amend the Housing Ordinance (Cap. 283) (“the principal Ordinance”). The main purpose is to replace section 16(1A), (1B), (1C), (1D) and (1E) of the principal Ordinance with provisions requiring the Housing Authority (“the Authority”) to vary the rent of certain residential units with reference to the change in an index reflecting the level of household income of certain tenants of residential units.

2. Clause 3 repeals section 16(1A), (1B), (1C), (1D) and (1E) of the principal Ordinance.

3. Clause 4 adds a new section 16A to the principal Ordinance. The new section 16A –

- (a) relates to review of the rent of certain residential units;
- (b) requires the Authority to vary the rent of those units with reference to the change in an index reflecting the level of household income of certain tenants of residential units;
- (c) specifies when the Authority shall not, or is not required to, make such a variation; and
- (d) empowers the Authority to round down the amount of the rent in such a variation and to make determinations in relation to the compilation of such an index.

Chapter:	283	HOUSING ORDINANCE	Gazette Number	Version Date
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Section:	16	Leases of land in estates	L.N. 212 of 1998	24/04/1998
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PART III

DISPOSAL OF PROPERTY

- (1) Subject to this Ordinance, the Authority may-
- (a) let to any person, for any period, any land in an estate, subject to the payment of such premium, rent or other consideration as the Authority may determine; and
 - (b) fix the terms, covenants and conditions on which any land in an estate may be let or occupied.
- (1A)(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%. (Added 108 of 1997 s. 2)
- (1B) Subsection (1A) does not apply to land in respect of which the Authority has granted to a person a licence to occupy it or a permit to occupy it. (Added 3 of 1998 s. 2)
- (1C) Subsection (1A) does not apply to an adjustment in the rent of a tenant where-
- (a) the total household income;
 - (b) the total value of the household assets; or
 - (c) a combination of paragraphs (a) and (b),
- as determined by the Authority, is-
- (i) greater than a threshold established by the Authority for the purposes of an increase in the rent; or
 - (ii) lesser than a threshold established by the Authority for the purposes of a decrease in the rent. (Added 3 of 1998 s. 2)
- (1D) For the purposes of subsection (1A)(b), the median rent to income ratio ("the ratio") shall be determined in accordance with a procedure established by the Authority and, without prejudice to the generality of the foregoing, the Authority may establish a procedure involving sampling to determine the incomes to be used for the purpose of calculating the ratio. (Added 3 of 1998 s. 2)
- (1E) A certificate purporting to be signed by the Director of Housing stating what the median rent to income ratio (as determined in accordance with the procedure established by the Authority) is on a specified date, is conclusive proof of the fact stated therein and shall be admitted in evidence in any proceedings before a court without further proof and shall be presumed, until the contrary is proven, to have been signed by the Director of Housing. (Added 3 of 1998 s. 2)
- (2) The terms, covenants and conditions fixed by the Authority pursuant to subsection (1)(b) may include terms, covenants and conditions which provide for-
- (a) the subletting by a lessee or sublessee of the whole or any part of the land or for the granting by such person of a licence to any person to occupy the whole or any part of the land; or
 - (b) the management by a lessee of any land in an estate let to or occupied by him. (Replaced 16 of 1993 s. 5)

(3) Where-

(a) the Authority grants a lease under subsection (1) of Government land in an estate vested in or under the control and management of the Authority under section 5, 37 or 38; or

(b) by virtue of and in accordance with such a lease, a sublease or licence to occupy any part of the land is granted to any person,

the person occupying the land under and in accordance with the lease, sublease or licence shall be deemed for the purpose of sections 4 and 6 of the Land (Miscellaneous Provisions) Ordinance (Cap 28), to be occupying the land under a licence issued under section 5 of that Ordinance. (Added 16 of 1993 s. 5. Amended 29 of 1998 s. 60)

(4) Without prejudice to the general power mentioned in subsection (1)(a), the Authority may in writing require tenants of lands in an estate to pay different rents based on their total household income or total household income and assets. (Added 24 of 1998 s. 4.)

(5) For the avoidance of doubt the Authority shall be deemed always to have had the power conferred on it by subsection (4). (Added 24 of 1998 s. 4.)

Note:

* **Commencement date: 13 March 1998**

Implications of the Bill

FINANCIAL IMPLICATIONS

The reduction of the rent of PRH by 11.6% upon enactment of the Bill will give rise to an annual rental revenue foregone of around \$1.41 billion to the HA. As an amount represented by the rent reduction will be deducted by the Social Welfare Department (SWD) from the CSSA allowance payable to the CSSA households in PRH, there will be an annual saving of about \$277 million on the part of the Government. Future PRH rent, and hence the HA's rental revenue as well as SWD's rent allowance payable to CSSA recipients in PRH, will vary according to the changes in the income index. Apart from the implications for the rent allowance payable to CSSA recipients as outlined above, we do not anticipate any other financial implications for the Government as a result of the proposal.

ECONOMIC IMPLICATIONS

2. In the long run, the proposed income-based rent adjustment framework would help align PRH rent with tenants' affordability. This would provide a more transparent and objective basis for rent adjustment, and would ensure a more efficient and justifiable use of public resources. An across-the-board rent reduction of 11.6% would reduce the average monthly PRH rent from \$1,480 to \$1,310. This would increase the disposable income and possibly the consumption of the 650,000 PRH households. On the price front, the proposed rent reduction and the one-month rent holiday are estimated to bring down the CPI(A) by 0.68% during the first year of rent reduction.

CIVIL SERVICE IMPLICATIONS

3. The extra workload stemming from the collection and vetting of income data would be absorbed by the existing HA staff. Likewise, the Census and Statistics Department would take on the extra work for compiling the income index with its existing staff.

SUSTAINABILITY IMPLICATIONS

4. The Bill replaces the statutory 10% MRIR cap with an income-based rent adjustment mechanism that allows for both upward and downward rent adjustments according to changes in PRH tenants' household income. This would help ensure tenants' rental affordability and a more stable stream of rental revenue for the HA, thereby contributing to the long-term sustainability of the PRH programme.

Summary of CFA's Ruling

In October and November 2002, two PRH tenants applied for judicial review of the HA's decisions to defer rent reviews. At the heart of the judicial review lies the important question as to whether under the Housing Ordinance the HA has a statutory duty to review rents every three years and to ensure that the MRIR does not exceed 10%.

2. The Court of First Instance and Court of Appeal respectively ruled in favour of the judicial review applicants and the HA. The case eventually went to CFA. In November 2005, CFA handed down its judgment in favour of the HA. In brief, it ruled that –

- (a) the HA's decisions to defer 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 three-year intervals or at all so as to ensure that the 10% MRIR is not exceeded;
- (d) the words "any determination of variation of rent" in section 16(1A) of the Housing Ordinance mean any decision to increase rent and do 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 recurrent expenditure.