WELSH STATUTORY INSTRUMENTS

2005 No. 2680 (W.186)

HOUSING, WALES

The Housing (Right of First Refusal) (Wales) Regulations 2005

Made - - - -	*27 September 2005*
Coming into force - -	*28 September 2005*

The National Assembly for Wales makes the following Regulations in exercise of the powers given to the Secretary of State by sections 36A, 156A and 171C of the Housing Act 1985(**1**), and sections 12A and 17(2) to (5) of the Housing Act 1996(**2**) which are now vested in the National Assembly for Wales so far as exercisable in relation to Wales:

Title, commencement, interpretation and application

1.—(1) The title of these Regulations is the Housing (Right of First Refusal) (Wales) Regulations 2005 and they come into force on 28 September 2005.

(2) In these Regulations—

"the 1985 Act" ("*Deddf 1985*") means the Housing Act 1985;

"acceptance notice" ("*hysbysiad derbyn*") means a notice which complies with the requirements of regulation 12(2);

"former landlord" ("*landlord blaenorol*") means the landlord which disposed of the property under Part 5 of the 1985 Act;

"local housing authority" ("*awdurdod tai lleol*") means a county council or county borough council in Wales;

"offer notice" ("*hysbysiad cynnig*") means a notice which complies with the requirements of regulation 12(1);

(**1**) 1985 c. 68. Section 36A was inserted by section 197 of the Housing Act 2004 (c. 34) and section 156A was inserted by section 188 of that Act. Section 171C was inserted by section 8(1), (3) of the Housing and Planning Act 1986 (c. 63) and was amended by section 127(2), (3) of the Housing Act 1988 (c. 50), and by paragraph 19 of Schedule 21 to the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28), and partly repealed by Schedule 22 to the 1993 Act. The Secretary of State's functions under section 171C, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672), article 2 and Schedule 1. The Secretary of State's functions under sections 36A and 156A are exercisable by the National Assembly for Wales in relation to Wales by virtue of section 267 of the Housing Act 2004 and S.I. 1999/672.

(**2**) 1996 c. 52. Section 12A was inserted by section 200 of the Housing Act 2004. The Secretary of State's functions under section 17(2)-(5), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1. The Secretary of State's functions under section 12A are exercisable by the National Assembly for Wales, in relation to Wales, by virtue of section 267 of the Housing Act 2004 and S.I. 1999/672.

"owner" ("*perchennog*") means the person who is the freehold or leasehold owner of a property and who is bound by a right of first refusal covenant imposed under section 156A of the 1985 Act;

"property" ("*eiddo*") means a property which is subject to a right of first refusal covenant imposed under section 156A of the 1985 Act; and

"rejection notice" ("*hysbysiad gwrthod*") means a notice which complies with the requirements of regulation 12(3).

(3) These Regulations apply where a right of first refusal covenant has been imposed in relation to a dwelling-house situated in Wales.

Operative provisions for leasehold and freehold properties

2.—(1) These Regulations apply where there is to be a relevant disposal, other than an exempted disposal, of the owner's interest in the property.

(2) Where the owner has a leasehold interest the owner must comply with the requirements of regulation 3.

(3) Where the owner has a freehold interest the owner must comply with the requirements of regulation 4.

Service of offer notice — leasehold property

3. The owner must serve an offer notice on—

(a) the former landlord, if it is still the landlord; or

(b) if the former landlord is not still the landlord, the person in which the reversionary interest is currently vested.

Service of offer notice — freehold property

4. The owner must serve an offer notice on—

(a) the former landlord (if that person is still in existence); or

(b) if the former landlord is not still in existence, the local housing authority for the area in which the property is situated.

Acknowledgement of receipt of offer notice

5.—(1) The recipient of an offer notice under either regulation 3 or 4 must send an acknowledgement of receipt to the owner as soon as reasonably practicable.

(2) The acknowledgement of receipt must—

(a) specify the date of receipt of the offer notice; and

(b) explain the effect of regulations 6 to 10, in simple terms.

Acceptance notices

6.—(1) Where the recipient of an offer notice wishes to accept the offer, it must do so within the period of 8 weeks beginning with the date of receipt of the notice.

(2) Acceptance of an offer must be by acceptance notice, in which the recipient of the offer notice must either—

(a) itself accept the offer; or

(b) nominate another person to accept the offer in accordance with regulation 8.

(3) The service of an acceptance notice by any person entitled to do so does not confer any right on the owner of the property to require that person to purchase the property unless and until that person enters into a binding contract for sale in accordance with regulation 10.

Rejection notices

7.—(1) The recipient of an offer notice must serve a rejection notice as soon as it has decided that it does not wish to either—

(a) accept the offer itself; or

(b) nominate another person to accept the offer in accordance with regulation 8.

(2) The rejection notice must be served within 8 weeks from the date of receipt of the offer notice.

Nomination of another person to accept an offer

8.—(1) The recipient of an offer notice may nominate another person to accept the offer.

(2) The only persons who can be nominated to accept an offer are those who either—

(a) are registered as a social landlord under Part 1 of the Housing Act 1996; or

(b) fulfil the landlord condition in section 80(**3**) of the 1985 Act.

(3) Before a person can be nominated to accept a particular offer, that person must have given an unequivocal indication in writing to the recipient of the offer notice that it wishes to be nominated to accept the offer.

(4) For the purposes of this regulation, "in writing" includes a document transmitted by facsimile or other electronic means.

Disposal of property and requirement for further offer notice

9.—(1) Where an owner has served an offer notice and the recipient—

(a) has not served either an acceptance notice or a rejection notice within 8 weeks from the date of receipt of the offer notice; or

(b) has served a rejection notice,

then, subject to paragraph (2), the owner may dispose of the property as the owner sees fit; and these Regulations will not apply to any subsequent disposal of the property by the owner.

(2) If after the expiry of the period of 12 months, as determined in accordance with paragraphs (3) or (4) as appropriate, the owner retains the interest in the property, these Regulations apply if there is to be a disposal of a kind described in regulation 2(1).

(3) In the circumstances referred to in paragraph (1)(a), the 12 month period begins the day after the expiry of the 8 week period.

(4) In the circumstances referred to in paragraph (1)(b), the 12 month period begins the day after that on which the rejection notice is served.

Time limit for completion of purchase

10.—(1) A person who accepts an offer must enter into a binding contract with the owner for the purchase of the property—

(**3**) Section 80 was amended by paragraph 26 of Schedule 5 to the Housing and Planning Act 1986, sections 83(2) and 140 of, and Schedule 18 to, the Housing Act 1988, sections 140 and 152 of, and Schedules 16 and 18 to, the Government of Wales Act 1998, and S.I. 1996/2325.

(a) not later than 12 weeks after the date on which the acceptance notice is served on the owner; or

(b) not later than 4 weeks after the date of receipt of written notification from the owner that the owner is ready to complete;

whichever is later.

(2) If the time limit in paragraph (1) is not complied with, the owner may dispose of the property as the owner sees fit; and these Regulations will not apply to any subsequent disposal of the property by the owner.

(3) If either or both of the parties request that the District Valuer determine the value of the property in accordance with section 158 of the 1985 Act, the time from the date that the request is received by the District Valuer until the date that the determined value is notified to the parties is excluded from the calculation of the period in paragraph (1).

Computation of time

11. In calculating a period for any purpose of these Regulations, with the exception of the 12 month period in regulation 9, Christmas Day, Good Friday, or a day which under the Banking and Financial Dealings Act 1971(**4**) is a bank holiday, are excluded.

Contents of notices

12.—(1) An offer notice must—

(a) be in writing;

(b) state that the owner wishes to dispose of the property, giving its full postal address;

(c) state that there is a covenant requiring the owner to first offer the property to the recipient of the notice;

(d) in relation to the property to which the notice relates—

(i) specify whether the property is a house, a flat or a maisonette;

(ii) specify the number of bedrooms;

(iii) give details of the heating system;

(iv) specify any improvements or structural changes which have been made since the purchase; and

(e) state the address at which the recipient can serve notices upon the owner.

(2) An acceptance notice must—

(a) be in writing;

(b) indicate clearly whether the person giving the notice is—

(i) accepting the offer; or

(ii) nominating another person to accept the offer; and

(c) provide the full postal address and telephone number of any nominee.

(3) A rejection notice must—

(a) be in writing; and

(b) state that the person is rejecting the offer to purchase the property.

(**4**) 1971 c. 80.

Service of notices

13. Notices under these Regulations may be served either by personal delivery, or by post.

Disposal of property acquired under preserved right to buy

14. With the exception of regulations 15 to 17, these Regulations also apply if there is to be a relevant disposal, other than an exempted disposal, of the owner's interest in a property acquired in exercise of the right conferred by section 171A(**5**) of the 1985 Act.

Disposal of property acquired under right to acquire

15. With the exception of regulations 14, 16 and 17 these Regulations also apply if there is to be a relevant disposal, other than an exempted disposal, of the owner's interest in a property acquired in exercise of the right conferred by section 16 of the Housing Act 1996(**6**).

Disposal of property acquired on voluntary disposal at a discount by local authority

16.—(1) With the exception of regulations 14, 15, and 17, these Regulations also apply if there is to be a relevant disposal, other than an exempted disposal, of the owner's interest in a property acquired at a discount from a local authority using its power to dispose of land in section 32(**7**) of the 1985 Act, subject to the following modifications.

(2) In regulation 1—

(a) for the definition of "former landlord" substitute—

> ""former owner" ("*perchennog blaenorol*") means the local authority which disposed of the property under section 32 of the 1985 Act";

(b) for the definition of "owner" substitute—

> ""owner" ("*perchennog*") means the person who is the freehold or leasehold owner of the property and who is bound by a right of first refusal covenant imposed under section 36A of the 1985 Act"; and

(c) for the definition of "property" substitute—

> ""property" ("*eiddo*") means a property which is subject to a right of first refusal covenant imposed under section 36A of the 1985 Act".

(3) In regulation 10(3), for "section 158" substitute "section 36B(**8**)".

(4) For all occurrences of the term "former landlord" substitute "former owner".

Disposal of property acquired on voluntary disposal at a discount by registered social landlord

17.—(1) With the exception of regulations 14 to 16, these Regulations also apply if there is to be a relevant disposal, other than an exempted disposal, of the owner's interest in a property acquired at a discount from a registered social landlord using its power to dispose of land in section 9(**9**) of the Housing Act 1996, subject to the following modifications.

(2) In regulation 1—

(a) for the definition of "former landlord" substitute—

(**5**) Section 171A was inserted by section 8(1), (3) of the Housing and Planning Act 1986.
(**6**) Section 16 was amended by section 140 of and Schedule 16 to the Government of Wales Act 1998, section 406(1) of and Schedule 17 to the Communications Act 2003 (c. 21) and section 202(1), (2) of the Housing Act 2004.
(**7**) Section 32 was amended by S.I. 1997/74.
(**8**) Section 36B was inserted by section 197 of the Housing Act 2004.
(**9**) Section 9 was amended by sections 140 and 152 of, and Schedules 16 and 18 to, the Government of Wales Act 1998.

""former owner" ("*perchennog blaenorol*") means the registered social landlord which disposed of the property under section 9 of the Housing Act 1996";

(b) for the definition of "owner" substitute—

""owner" ("*perchennog*") means the person who is the freehold or leasehold owner of the property and who is bound by a right of first refusal covenant imposed under section 12A of the Housing Act 1996"; and

(c) for the definition of "property" substitute—

""property" ("*eiddo*") means a property which is subject to a right of first refusal covenant imposed under section 12A of the Housing Act 1996".

(3) In regulation 10(3), for "section 158 of the 1985 Act" substitute "section 12B(**10**) of the Housing Act 1996".

(4) For all occurrences of the term "former landlord" substitute "former owner".

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**11**)

D. Elis-Thomas

27 September 2005 The Presiding Officer of the National Assembly

(**10**) Section 12B was inserted by section 200 of the Housing Act 2004.

(**11**) 1998 c. 38.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The landlords of secure tenants buying their homes under the Right to Buy scheme (the terms of which are contained in Part 5 of the Housing Act 1985 (the "1985 Act")), are required by section 156A of the 1985 Act to impose a covenant in conveyances and grants of leases to the effect that, for a period of ten years after the property is transferred to the tenant under the Right to Buy, there must be no relevant disposal which is not an exempted disposal (these terms are defined in sections 159 and 160 of the 1985 Act respectively), unless the prescribed conditions have been satisfied (a "right of first refusal covenant"). This instrument contains the prescribed conditions.

These Regulations require that the owners of properties bound by the covenant who wish to make a relevant disposal which is not an exempted disposal, must first offer the property for purchase by its former landlord, its successor in title or a person nominated by it. In relation to a leasehold property, the notice must be served upon the former landlord, or the current landlord under the lease if that is not the former landlord (regulation 5). If the property is freehold, the notice must be served upon the former landlord if that person is still in existence, otherwise upon the local housing authority for the area in which the property is situated (regulation 4).

The recipient of an offer notice has a period of 8 weeks in which to either accept the offer itself, or to nominate another person to accept the offer (regulation 6). If a recipient of an offer notice wishes neither to accept an offer itself, nor to nominate another social landlord, then it must serve a rejection notice upon the owner (regulation 7).

The only persons who can be nominated to accept an offer are the social landlords specified in regulation 8. Before a social landlord can be nominated, they must have confirmed in writing that they wish to accept the offer by nomination.

If no social landlord accepts the offer within the 8 week time limit, then the owner is free to dispose of the property as the owner sees fit. However, if the owner has not done so within 12 months, and then subsequently wishes to dispose of the property, a fresh offer notice must be served (regulation 9).

The social landlord must enter into a binding contract for the purchase of the property within either 12 weeks of accepting the offer, or within 4 weeks of receipt of a written notice from the owner saying that the owner is ready to complete the transaction, whichever is longer. If this time limit is not complied with, then the owner is free to dispose of the property as the owner sees fit (regulation 10).

These Regulations also apply to right of first refusal covenants imposed in relation to properties bought by assured tenants under the Preserved Right to Buy scheme (see sections 171A-H of the 1985 Act), the Right to Acquire scheme (see sections 16 and 17 of the Housing Act 1996), and properties sold voluntarily at a discount by local authorities (see section 32 of the 1985 Act) and registered social landlords (see section 8 of the Housing Act 1996). Properties bought under any of these schemes are generally subject to a right of first refusal covenant. Regulations 16 and 17 contain the necessary modifications in the case of sales of property acquired as a result of these voluntary disposals. In applying regulations 16 and 17 the term relevant disposal and exempted disposal are defined in Part 1 of the 1985 Act and section 15 of the Housing Act 1996 respectively.