
STATUTORY INSTRUMENTS

2012 No. 696

HOUSING, ENGLAND

The Transfer of Tenancies and Right to Acquire (Exclusion) Regulations 2012

<i>Made</i>	- - - -	<i>5th March 2012</i>
<i>Laid before Parliament</i>		<i>8th March 2012</i>
<i>Coming into force</i>	- -	<i>1st April 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 158(10) of the Localism Act 2011(1) and 180(2A) of the Housing and Regeneration Act 2008(2):

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Transfer of Tenancies and Right to Acquire (Exclusion) Regulations 2012 and come into force on 1st April 2012.

(a) These Regulations apply only in relation to dwellings in England.

Interpretation

2.—(1) In these Regulations—

“the 1985 Act” means the Housing Act 1985(3);

“the 2008 Act” means the Housing and Regeneration Act 2008;

“the 2011 Act” means the Localism Act 2011;

“Affordable Rent” means the rent payable in respect of a fixed term assured shorthold tenancy with a minimum two year term where the rent—

(a) is excluded from the National Rent Regime, but

(b) is regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the 2008 Act which requires the initial rent to be set at no more than 80% of local market rent (including service charges);

(1) 2011 c.20

(2) 2008 c.17. Subsection (2A) is inserted into section 180 of the Housing and Regeneration Act 2008 by section 165(3) of the Localism Act 2011.

(3) 1985 c. 68.

“dwelling” has the meaning given in section 275 of the 2008 Act;

“funding condition” means a condition imposed by the Homes and Communities Agency or, in London, the Greater London Authority, when giving a grant to a private registered provider for the provision of social housing;

“Intermediate Rent” means the rent payable in respect of a periodic or fixed term assured shorthold tenancy where the rent—

- (a) is excluded from the National Rent Regime and is not regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the 2008 Act, but
- (b) is subject to a funding condition which requires it to be no more than 80% of local market rent;

“Mortgage Rescue Rent” means the rent payable in respect of an assured shorthold tenancy of a dwelling let on a fixed term of three years where—

- (a) the freehold or superior leasehold of the dwelling was purchased by a private registered provider of social housing due to mortgage arrears; and
- (b) the rent is not included in the National Rent Regime, but is subject to a funding condition which requires it to be no more than 80% of local market rent;

“National Rent Regime” is the rent influencing regime set out in the Housing Corporation document of October 2001 and entitled “Rent influencing regime”, supplemented by the Explanatory Note to Decision Instrument No.5, issued by the Regulator of Social Housing to accompany its decision of 13th April 2011 entitled “Revision to the Tenancy Standard: Affordable Rent” (4);

“private registered provider” and “social housing” have the same meanings as in the 2008 Act(5);

“shared ownership rent” means the rent payable in respect of a lease of the kind referred to in section 70(4) of the 2008 Act.

Exclusion of certain assured shorthold tenancies from transfer of tenancy provisions

3. Section 158 of the 2011 Act does not apply in relation to—

- (a) an assured shorthold tenancy for a fixed term of less than two years,
- (b) a periodic assured shorthold tenancy,
- (c) an assured shorthold tenancy where the rent payable under the tenancy is—
 - (i) Affordable Rent;
 - (ii) Intermediate Rent;
 - (iii) Mortgage Rescue rent; or
 - (iv) shared ownership rent

(and accordingly, the transfer of tenancy provisions in that section do not apply in relation to assured shorthold tenancies of those kinds).

(4) “Rent influencing regime: implementing the rent restructuring framework”, October 2001, Housing Corporation. (This guidance is available to download at <http://www.tenantservicesauthority.org/upload/pdf/rentir.pdf>). Decision and Explanatory Note issued by Regulator of Social Housing available at—http://www.tenantservicesauthority.org/upload/pdf/Decision_Statement_5_-_Final2.pdf; http://www.tenantservicesauthority.org/upload/pdf/AR_Explanatory_Note_-_Final.pdf.

(5) See sections 80(3) and 68-70 of that Act respectively.

Exclusion of certain assured shorthold tenancies from the Right to Acquire

4. The following are not tenancies within section 180(2) of the 2008 Act—
- (a) an assured shorthold tenancy for a fixed term of less than two years,
 - (b) a periodic assured shorthold tenancy, or
 - (c) an assured shorthold tenancy where the rent payable under the tenancy is—
 - (i) Intermediate Rent, or
 - (ii) Mortgage Rescue rent

(and accordingly, the right to acquire referred to in that section does not apply in relation to assured shorthold tenancies of those descriptions).

Signed by the authority of the Secretary of State for Communities and Local Government

Grant Shapps
Minister of State
Department for Communities and Local
Government

5th March 2012

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out descriptions of assured shorthold tenancies that are excluded from tenancy transfer under section 158 of the Localism Act 2011 and the right to acquire under sections 180 to 185 of the Housing and Regeneration Act 2008.

The right to transfer the terms of an existing secure or assured tenancy was introduced by section 158 of the 2011 Act to protect tenants' security of tenure if they moved to another property by agreement with the other tenant(s) and both landlords.

The tenant's right to acquire their dwelling is set out at Section 180 of the 2008 Act, as amended by the 2011 Act. This provides that a tenant of a private registered provider in England has the right to acquire their dwelling after five years as a public sector tenant, subject to conditions set out in the 2008 Act.

These Regulations disapply the right to transfer of tenancies and the right to acquire for certain types of tenancy set out regulations 3 and 4.

A full regulatory impact assessment has not been produced for this instrument, as the impact on the private or voluntary sectors is limited to excluding certain tenants from rights introduced by the Localism Act 2011.