

2008 No. 3111

HOUSING, ENGLAND

The Family Intervention Tenancies (Review of Local Authority Decisions) (England) Regulations 2008

<i>Made</i>	- - - -	<i>4th December 2008</i>
<i>Laid before Parliament</i>		<i>11th December 2008</i>
<i>Coming into force</i>	- -	<i>5th January 2009</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 298(5) of the Housing and Regeneration Act 2008(a):

Citation, commencement and application

1.—(1) These Regulations may be cited as the Family Intervention Tenancies (Review of Local Authority Decisions) (England) Regulations 2008 and shall come into force on 5th January 2009.

(2) The Regulations apply in relation to dwelling-houses(b) in England only.

Interpretation

2. In these Regulations—

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

“the authority” means the local housing authority(c);

“behaviour support services” has the same meaning as in paragraph 4ZA of Schedule 1 to the Housing Act 1985(d);

“family intervention tenancy” has the same meaning as in paragraph 4ZA of Schedule 1 to the Housing Act 1985;

“the review” means a review of the authority’s decision to serve a notice to quit upon the tenant under section 298 of the Act; and

“the reviewer” means the person carrying out the review.

Reviewers

3.—(1) A reviewer must be a person who was not involved in the decision to serve a notice to quit upon the tenant.

(a) 2008 c.17. The Secretary of State is the appropriate national authority for making regulations under section 298 in relation to England: *see* section 298(9). Section 298 has been commenced for the purpose of making regulations, *see* S.I. 2008/3068 (C.132), article 4(3).

(b) For the meaning of “dwelling-house”, *see* section 112 of the Housing Act 1985 (c.68).

(c) For the meaning of “local housing authority”, *see* section 1 of the Housing Act 1985.

(d) 1985 c.68. Paragraph 4ZA was inserted by section 297 of the Housing and Regeneration Act 2008.

- (2) Where the review—
 - (a) relates to a decision of an officer of the authority; and
 - (b) the reviewer is another officer of that authority,

the reviewer must hold a more senior position within the authority than the officer whose decision is the subject of the review.

Request for oral hearing

- 4.—(1) The tenant may request a review by an oral hearing.
- (2) The tenant must make such a request within 14 days of receipt of the notice under section 298(2) of the Act.
- (3) Where the tenant has requested a review by oral hearing—
 - (a) the hearing must not take place before the period referred to in paragraph 2 of Schedule 1 has expired; and
 - (b) the authority must give—
 - (i) the tenant; and
 - (ii) any person providing behavioural support services to the tenant, at least 7 days' notice of the date, place and time of the oral hearing.
- (4) The procedure to be followed for an oral hearing is set out in Schedule 1.

Review by written representations

- 5.—(1) The review will take place by written representations, where the tenant—
 - (a) has requested a review by written representations;
 - (b) has not requested a review by oral hearing; or
 - (c) has requested a review by oral hearing, but has not done so within the time limit imposed by regulation 4(2).
- (2) The procedure to be followed for a review by written representations is set out in Schedule 2.

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

4th December 2008

Kay Andrews
Parliamentary Under Secretary of State
Department for Communities and Local Government

SCHEDULE 1

Regulation 4

Procedure for Review by Oral Hearing

Prior to the hearing

- 1. Within 21 days of the period beginning with the service of the notice under section 298(2) of the Act, the tenant must send to the reviewer and the authority—
 - (a) a copy of any written evidence that the tenant will rely upon; and
 - (b) the name and address of any person the tenant intends to call to give evidence.

2. Where the authority—

- (a) receives any information from the tenant under paragraph 1; and
- (b) wishes to respond to that information

it must send its response (which should be limited to matters not already stated in the notice served under section 298(2) of the Act) to the reviewer and the tenant within 14 days of receipt of the information.

The hearing

3.—(1) Subject to the provisions of this Schedule, the reviewer shall determine the conduct of the oral hearing.

(2) The tenant may be accompanied or represented by another person (whether or not that person holds a relevant professional qualification).

(3) The reviewer must allow the authority and the tenant or the tenant's representative equal opportunity—

- (a) to make representations;
- (b) to call persons to give evidence; and
- (c) to put questions to any person who gives evidence.

(4) Where any person providing behavioural support services to the tenant wishes to give evidence, the reviewer must allow—

- (a) that person to give evidence; and
- (b) the authority and the tenant or the tenant's representative to put questions to that person.

4. The authority and the tenant must be notified in writing of the decision of the reviewer within 7 days of the end of the hearing.

Absence of the tenant

5. Where notice of the hearing has been given to the tenant and the tenant or the tenant's representative does not attend the hearing, the reviewer may—

- (a) proceed with the hearing; or
- (b) give directions on the further conduct of the review.

6. Where the hearing proceeds in the absence of the tenant under paragraph 5(a), the reviewer may reach a decision and if the reviewer does so, paragraph 4 of this Schedule will apply.

7. Where the reviewer gives directions under paragraph 5(b), the reviewer must notify the tenant and the authority of the directions within 7 days of the end of the hearing.

Postponement of hearing

8. The tenant may request the reviewer to postpone a hearing and the reviewer may grant or refuse such a request.

9. Where the reviewer—

- (a) grants a request for the postponement of a hearing under paragraph 8; or
- (b) makes a direction under paragraph 5(b) postponing the hearing,

the reviewer must give the tenant and the authority reasonable notice of the date, time and place of the postponed hearing.

Adjournment of hearing

10. The reviewer may adjourn the hearing—

- (a) at the request of the authority;
- (b) at the request of the tenant or the tenant's representative; or
- (c) otherwise as the reviewer sees fit.

11. Where more than one individual is carrying out the review by oral hearing, the hearing must be adjourned on each occasion on which any of those individuals is absent unless the authority and tenant agree otherwise.

12. The reviewer must give the authority and the tenant reasonable notice of the date, time and place of the adjourned hearing.

13. Where the reviewer of the adjourned hearing is not the same individual as the individual who heard the earlier hearing, the review must proceed as a complete rehearing unless the authority and tenant agree otherwise.

SCHEDULE 2

Regulation 5

Procedure for Review by Written Representations

Prior to the review

14. Within 21 days of the period beginning with the service of the notice under section 298(2) of the Act, the tenant must send to the reviewer and the authority any evidence to be taken into account by the reviewer.

15. Where the authority—

- (a) receives any information from the tenant under paragraph 1; and
- (b) wishes to respond to that information

it must send its response (which should be limited to matters not already stated in the notice served under section 298(2) of the Act) to the reviewer and the tenant within 14 days of receipt of the information.

The review

16. When reviewing the decision of the authority, the reviewer must take account of—

- (a) the notice served under section 298(2) of the Act;
- (b) any evidence submitted by the tenant and authority under paragraphs 1 and 2;
- (c) any representations received from any person providing behavioural support to the tenant; and
- (d) any other information the reviewer considers relevant.

17. The authority and the tenant must be notified in writing of the decision of the reviewer—

- (a) where the tenant has not submitted evidence under paragraph 1, within 28 days of the period beginning with the service of the notice under section 298(2) of the Act;
- (b) where the authority has submitted a response under paragraph 2, within 14 days of the submission of the response; or
- (c) where the tenant has submitted evidence under paragraph 1 but the authority has not submitted a response under paragraph 2, within 28 days of the authority receiving the evidence submitted by the tenant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 297(1) of the Housing and Regeneration Act 2008 (“the 2008 Act”) inserted a new paragraph 4ZA into Schedule 1 to the Housing Act 1985 to create a new type of tenancy, the family intervention tenancy, which can in certain circumstances be offered by local housing authorities.

Section 298 of the 2008 Act provides that the local housing authority (“the authority”) must not serve a notice to quit on a tenant of a family intervention tenancy unless the authority has served a notice stating the matters set out in subsection (2) of that section.

Where a tenant makes a request for a review of the decision to serve a notice to quit, the authority must review the decision and serve a notice on the tenant informing the tenant of the decision and the reasons for it.

These Regulations set out the procedure to be followed in connection with such a review.

Regulation 3 states that the review must be carried out by a person who was not involved with the decision to serve the notice to quit on the tenant. Where the person carrying out the review (“the reviewer”) is an official of the authority, the reviewer must hold a more senior position than the official who took the decision to serve the notice to quit.

Regulation 4 provides that the tenant may request a review by way of an oral hearing provided the request is submitted within the time limit set out. Schedule 1 sets out the procedure to be followed.

Regulation 5 provides that in all other cases, the review will take place by way of written representations. Schedule 2 sets out the procedure to be followed.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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