
STATUTORY INSTRUMENTS

2013 No. 2898

HOUSING, ENGLAND

The Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013

<i>Made</i>	- - - -	<i>7th November 2013</i>
<i>Laid before Parliament</i>		<i>14th November 2013</i>
<i>Coming into force</i>	- -	<i>5th December 2013</i>

The Secretary of State, in exercise of the powers conferred by section 34A of the Housing Act 1985⁽¹⁾, makes the following Regulations:

PART 1

General Provisions

Citation, commencement and application

1.—(1) These Regulations may be cited as the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013.

(2) These Regulations shall come into force on 5th December 2013 and apply in relation to England only.

Interpretation

2. In these Regulations—

“authority” means the local housing authority on which a proposal notice is served;

“house”⁽²⁾ includes—

- (a) part of a house;
- (b) land let together with a house; and
- (c) land held for a purpose related to a house;

“interested parties” means—

(1) 1985 c.68; section 34A was inserted by the Housing and Regeneration Act 2008 (c. 17), section 296.
(2) “House” is defined for the purposes of Part 2 of the Housing Act 1985 in section 56 of that Act.

- (a) any organisation which has entered into a management agreement with the authority under section 27 of the Housing Act 1985⁽³⁾ which relates to the houses specified in a proposal notice; and
 - (b) in a case in which the houses specified in the proposal notice are not located in the area of the authority, the local authority in whose area the houses are located;
- “introductory tenant” means a tenant with an introductory tenancy granted under section 124 of the Housing Act 1996⁽⁴⁾;
- “PRP” means a private registered provider of social housing⁽⁵⁾;
- “tenant” means a person who holds a secure tenancy (within the meaning of section 79 of the Housing Act 1985), or other tenancy of a house from an authority; and
- “tenant group” means a group of persons which meets the conditions contained in regulation 4.

Guidance

3. Authorities must, when complying with the requirements of these Regulations, have regard to any guidance given by the Secretary of State relating to these Regulations.

Tenant Group

4. To be eligible to serve a proposal notice under these Regulations, a tenant group must satisfy the following conditions—

- (a) it has a constitution, available in written form;
- (b) its constitution specifies an area in relation to which the proposal notice will apply;
- (c) its constitution provides that any tenant of a house in that area may become a member of the tenant group;
- (d) at least 20% of the tenants of houses in that area are members of the tenant group;
- (e) at least 20% of the secure tenants of houses in that area are members of the tenant group; and
- (f) the majority of the members of the tenant group must be secure tenants.

Proposal Notice

5.—(1) For the purposes of these Regulations, a proposal notice is a notice—

- (a) stating that the tenant group serving the notice wishes the authority on which the notice is served to consider disposing of the houses to which the notice relates to a PRP; and
- (b) complying with paragraphs (2) and (3) of this regulation.

(2) A proposal notice must also—

- (a) state that it is a proposal notice served pursuant to these Regulations;
- (b) contain or be accompanied by evidence that the tenant group meets the conditions set out in regulation 4;
- (c) specify the houses and the area to which it relates;

(3) Section 27 was substituted by the Regulatory Reform (Housing Management Agreements) Order 2003 (S.I. 2003/940).

(4) 1996 c.52. Section 124 was amended by Schedule 2 to the Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866).

(5) See section 34A(9) of the Housing Act 1985. Section 34A(9) was amended by the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010 (S.I. 2010/844).

- (d) provide or be accompanied by evidence that the houses and the area so specified meet the conditions contained in paragraph (3);
 - (e) contain evidence that the majority of the members of the tenant group attending a meeting satisfying the conditions set out in paragraph (4), voted to serve the proposal notice;
 - (f) state that members of the tenant group are willing to work together with the authority; and
 - (g) contain evidence to show that the tenant group has used reasonable endeavours to notify tenants of the houses identified in the proposal notice of the following—
 - (i) the intention to serve the proposal notice; and
 - (ii) the effect of the notice.
- (3) The houses and area identified in the proposal notice must satisfy the following conditions—
- (a) the houses must be owned by the same authority;
 - (b) at least 100 of the houses must be let under secure tenancies; and
 - (c) the houses must form a geographically coherent area.
- (4) Where a tenant group convenes a meeting for the purpose of deciding whether to serve a proposal notice, that meeting must satisfy the following conditions—
- (a) reasonable notice must be given to all members of the tenant group of the time and place of the meeting;
 - (b) the notice of the meeting must explain that a vote upon whether to serve a proposal notice will take place; and
 - (c) all members of the tenant group must be entitled to vote.

Agreement for extension of time

6. Where any person is required or authorised to exercise any function under Parts 2 to 4 of these Regulations within a specified period, the authority and the tenant group may by agreement before the expiry of that period, extend the period by a further specified period.

Written communications

7. Any requirement under these Regulations to make, prepare, provide or send a notice, proposal, report, request or other communication, is a requirement to do so in writing.

Appointment of an arbitrator

8.—(1) Where the authority or tenant group may refer a matter to an arbitrator under any provision of these Regulations, the appointment of the arbitrator is to be agreed between them or, in default of agreement, appointed by the Secretary of State; and

(2) The authority and the tenant group must comply with the decision of an arbitrator appointed under these Regulations.

Determination by the Secretary of State

9. Where the authority or tenant group apply to the Secretary of State for a determination, the procedure to be followed is contained in Part 5 of these Regulations.

PART 2

Initial Stage

Service of proposal notice

10.—(1) Where the tenant group serve a proposal notice on the authority, the authority must, within 28 days of receipt of the notice—

- (a) reply to the tenant group acknowledging receipt of the notice and stating—
 - (i) that the proposal notice is accepted;
 - (ii) that the proposal notice is rejected and, if so, set out the grounds for rejection; or
 - (iii) that a request for a determination will be lodged with the Secretary of State within 21 days; and
- (b) send a copy of the reply sent to the tenant group under paragraph (1)(a) to any interested parties.

(2) Where the authority does not acknowledge receipt of the proposal notice in accordance with paragraph (1)(a), the authority is deemed to have accepted the proposal notice.

Acceptance of the proposal notice

11. Where the proposal notice is accepted, the authority must proceed to the feasibility study stage for which provision is made by Part 3 of these Regulations.

Rejection of the proposal notice

12.—(1) The authority may reject the proposal notice on either of the following grounds—

- (a) at least half of the houses specified in the notice were the subject of a previous proposal notice served within the two years preceding the date on which the current notice was received; or
- (b) the notice does not meet one or more of the conditions contained in regulation 5.

(2) Where a proposal is rejected, the tenant group may apply to the Secretary of State, within 21 days of receipt of the authority's acknowledgement of receipt of the proposal notice, to determine whether the proposal notice should be accepted by the authority.

Authority's request to the Secretary of State for a determination

13. At any time after the service of the proposal notice, the authority may request the Secretary of State to determine whether the proposed transfer of houses to a PRP set out in the proposal notice will have a significant detrimental effect on the provision of housing services in the area of the authority or the regeneration of the area.

PART 3

Feasibility Study Stage

Feasibility study

14.—(1) Where—

- (a) the authority has accepted a proposal notice under regulation 10;

- (b) the Secretary of State has determined that the proposal notice should be accepted under regulation 12(2) or regulation 13; or
- (c) the authority has not lodged an application with the Secretary of State for a determination under regulation 13 within 21 days of receipt of the acknowledgement of service by the tenant group

the tenant group may proceed to prepare a feasibility study.

- (2) The feasibility study must set out—
 - (a) confirmation that the houses and area to which to which the feasibility study relates are those specified in the proposal notice;
 - (b) the possible options for the disposal of the houses and area specified in the proposal notice to a PRP (in particular whether to an existing PRP or a new PRP); and
 - (c) the feasibility of each option.

Duties of the authority – feasibility study stage

- 15.**—(1) The authority must—
- (a) agree a timetable and reasonable changes to any agreed timetable for the completion of the feasibility study with the tenant group;
 - (b) provide reasonable facilities to enable the tenant group to carry out the feasibility study; and
 - (c) provide sufficient information to enable the tenant group to complete the feasibility study.
- (2) Where, in the view of the tenant group, the authority—
- (a) does not agree a timetable or changes to an agreed timetable in a reasonable period;
 - (b) provides insufficient facilities or refuses to provide reasonable facilities; or
 - (c) provides insufficient information or fails to provide sufficient information

contrary to paragraph (1), the tenant group may refer the matter to an arbitrator.

(3) Where the matter is referred to an arbitrator, the timetable is suspended until the decision of the arbitrator is notified to the authority and the tenant group.

Feasibility study statement

- 16.**—(1) On the completion of the feasibility study, the tenant group must send a statement of that fact (“a feasibility study statement”) to the authority.
- (2) The statement under paragraph (1) must also be accompanied by—
- (a) confirmation that it is a statement given under this regulation;
 - (b) a copy of the feasibility study;
 - (c) a record of the tenant group’s decision regarding the disposal of the houses;
 - (d) evidence that the majority of the members of the tenant group attending a meeting, satisfying the conditions set out in paragraph (3), voted in favour of the decision;
 - (e) a statement that the tenant group are of the view that the majority of tenants of the houses identified in the feasibility study do not oppose the decision to dispose of the houses to a PRP, where this is the decision of the tenant group; and
 - (f) the evidence on which the view of the tenant group referred to in sub-paragraph (e) is based.

(3) Any meeting of the tenant group convened to make the decision regarding the disposal of the houses must meet the following conditions—

- (a) reasonable notice must be given to all members of the tenant group of the time and place of the meeting;
- (b) the notice of the meeting must explain that a vote will be taken upon whether to proceed with the disposal of the houses set out in the proposal notice; and
- (c) all members of the tenant group must be entitled to vote.

(4) Within 28 days of receipt of the feasibility study statement, the authority must acknowledge receipt and state whether—

- (a) the feasibility study statement is accepted;
- (b) the feasibility study statement is rejected and set out the grounds for rejection; or
- (c) a request for a determination will be lodged with the Secretary of State within 21 days.

(5) Where the authority does not acknowledge receipt of the feasibility study statement in accordance with paragraph (4), the authority is deemed to have accepted the statement.

Rejection of the feasibility study statement

17.—(1) The authority may reject the feasibility study statement on the grounds that it does not meet one or more of the conditions in regulation 16(2).

(2) Where the feasibility study is rejected, the tenant group may, within 21 days of receipt of the authority’s acknowledgement of receipt of the feasibility study statement, refer the matter to an arbitrator.

PART 4

Development Stage

Duties of the authority – development stage

18.—(1) The authority must carry out the functions set out in paragraph (2) in any of the following cases, namely where—

- (a) the authority has accepted the feasibility study statement and the decision of the tenant group is to proceed with an option or options for the disposal to a PRP of the houses identified in the feasibility study statement;
- (b) the arbitrator has decided that there are no grounds for the authority to reject the feasibility study statement;
- (c) there has been a determination by the Secretary of State that the disposal of the houses specified in the proposal notice to a PRP will not have a significant detrimental effect on the provision of housing services in the area of the authority or the regeneration of the area; or
- (d) the authority has not applied to the Secretary of State for a determination under regulation 13 within 21 days of the authority’s acknowledgement of receipt of the feasibility study statement.

(2) The authority must—

- (a) agree a timetable with the tenant group providing for the matters set out in regulation 19; and

- (b) continue to provide reasonable facilities and sufficient information to enable the tenant group to develop the option or options for the disposal of the houses to a PRP.

Content of the timetable

- 19.** The timetable agreed in paragraph (2)(a) of regulation 18 must provide for—
- (a) the development of the option or options for the disposal of the houses to a PRP contained in the feasibility study with a view to the tenant group deciding which option to take forward as a proposal; and
 - (b) where the tenant group wish to take forward a proposal for the disposal of the houses to a PRP, the time by which the authority must seek the Secretary of State’s consent under section 32(6) or 43(7) of the Housing Act 1985 (general requirement for consent for disposal of houses or land held for housing purposes).

Failure to agree a timetable

- 20.** The tenant group may refer the matter to an arbitrator where the authority—
- (a) fails to agree a timetable or unreasonably delays agreeing a timetable pursuant to paragraph (2)(a) of regulation 18; or
 - (b) fails to or unreasonably refuses to provide facilities or information to the tenant group pursuant to paragraph (2)(b) of regulation 18.

Consultation with tenants

21.—(1) The authority must serve a notice upon all the tenants of houses contained in the feasibility study statement informing them of the following—

- (a) the proposal selected by the tenant group including the identity of the PRP to whom the disposal is to be made;
- (b) the likely consequences of a disposal for the tenant;
- (c) the effect of the provisions of this regulation, regulation 22 and Schedule 3A(8) to the Housing Act 1985;
- (d) in the case of a secure tenant, the effect of sections 171A to 171H of the Housing Act 1985(9) (preservation of right to buy on disposal to private sector landlord); and
- (e) details of such reasonable period as is specified in the notice during which a tenant may make representations about the proposed disposal to the authority.

(2) The authority must also serve a copy of the notice served under paragraph (1) on any interested parties.

(6) Section 32 of the Housing Act 1985 was amended by article 2 of S.I. 1997/74, article 6 of S.I. 2010 and other amendments that are not relevant.

(7) Section 43 of the Housing Act 1985 was amended by sections 132 and 140 of the Housing Act 1988 (c.50); section 194 of the Local Government and Housing Act 1989 (c.42); section 78 of the Environment Act 1995 (c.25); section 227 of the Housing Act 1996 (c.52); section 311 of the Housing and Regeneration Act 2008 and S.I. 2010/844.

(8) Schedule 3A of the Housing Act 1985 was inserted by section 6(2) and (3) of and Schedule 1 to the Housing and Planning Act 1986 (c.63). The Schedule has been amended by section 294 of the Housing and Regeneration Act 2008 (c.17) and S.I. 1997/74.

(9) Sections 171A to 171H were inserted by the Housing and Planning Act 1986 (c.63) section 8(1) and (3) and modified by S.I. 1993/2240 article 3 Schedule paragraph 55, S.I. 1993/2241 regulation 2, Schedule 1 and other statutory instruments not relevant to this instrument. Section 171B was also amended by the Anti-social Behaviour Act 2003 (c. 38) section 14(5) Schedule 1 paragraph 2(1) and (3); the Housing Act 1988 (c.50) section 127(1); the Housing Act 1996 (c.52) section 222, Schedule 18 paragraph 26(1); the Family Law Act 1996 (c.27) section 66(1), Schedule 8 paragraphs 34 and 56 and the Civil Partnership Act 2004 (c. 33) section 81, Schedule 8 paragraph 31. Sections 171C and 171H were also amended by the Housing Act 1988 section 127(2) and (3) and the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) section 187(2) Schedule 22. Section 171H was also amended by the Housing Act 1988 section 140 Schedule 17 Part 1 paragraph 42.

- (3) Subject to paragraph (4), the authority must—
- (a) consider with the tenant group any representations made by tenants and interested parties within the period stated in the notice; and
 - (b) where the tenant group agrees, serve a further written notice on the tenants containing—
 - (i) details of any significant changes to the proposal;
 - (ii) a statement that the tenant may within such period as is specified in the notice (which must not be less than 28 days) communicate any objection to the proposal to the Secretary of State; and
 - (iii) information about the effect of regulation 22 (seeking consent of the Secretary of State) and paragraph 5 of Schedule 3A to the Housing Act 1985 (consent to be withheld if the majority of secure tenants and introductory tenants are opposed).
- (4) Where the tenant group notifies the authority within 14 days of the end of the period specified in the notice served under paragraph (1) that it does not want to proceed with the proposal, the authority is not required to serve a further written notice under paragraph (3).
- (5) Where—
- (a) the tenant group wishes to proceed with the proposal; and
 - (b) the authority consider it appropriate to proceed with the proposal;
- the authority must arrange a ballot of secure tenants and introductory tenants to establish whether or not the secure and introductory tenants wish for the disposal of the houses and land to the specified PRP to proceed.
- (6) After the ballot has been held, the authority must notify each tenant (whether or not the tenant voted) and any interested party of—
- (a) the outcome of the ballot;
 - (b) whether the consent of the Secretary of State to the disposal of the houses and land pursuant to regulation 22 will be sought by the authority; and
 - (c) where the consent of the Secretary of State is to be sought, the fact that the tenant may within such period as is specified in the notice (which must not be less than 28 days) communicate any objection to the proposal to the Secretary of State .
- (7) The tenant group may refer the matter to an arbitrator where—
- (a) the authority and the tenant group fail to agree to serve a further notice under paragraph (3) (b); or
 - (b) the authority does not consider it appropriate to arrange a ballot under paragraph (5).

Seeking consent of the Secretary of State

- 22.**—(1) Where the result of the ballot held pursuant to paragraph (5) of regulation 21 indicates—
- (a) the majority of secure tenants and introductory tenants wish the proposal to proceed; and
 - (b) the tenant group wishes to proceed,
- the authority must seek the consent of the Secretary of State under sections 32 or 43 of the Housing Act 1985 for the disposal of the houses and land to the PRP set out in the proposal.
- (2) Where the authority seeks consent under paragraph (1), the authority may make representations to the Secretary of State as to whether consent should be granted.

Transfer of the Housing and Land

23. Where the Secretary of State grants consent under sections 32 or 43 of the Housing Act 1985 to the disposal of the houses and land to the PRP set out in the proposal, the authority must enter into an agreement to dispose of the houses and land to the PRP.

PART 5

Determination by the Secretary of State

Interpretation

24. In this part—

“applicant” means—

- (a) the authority, where the authority applies for the determination; or
- (b) the tenant group, where the tenant group applies for the determination; and

“respondent” means—

- (a) the authority, where the tenant group is the applicant; or
- (b) the tenant group, where the authority is the applicant.

Procedure

25.—(1) The applicant must send to the Secretary of State—

- (a) a notice (“a determination notice”) stating that the applicant is seeking a determination under these Regulations;
- (b) any evidence relating to the determination that the applicant wishes the Secretary of State to take into consideration; and
- (c) a copy of the proposal notice and feasibility study statement (where applicable).

(2) The authority must send copies of the documents set out in paragraph (1) to the respondent and any interested parties.

(3) The respondent and interested parties—

- (a) must indicate to the Secretary of State and the applicant, within 7 days of receipt of the determination notice, whether they wish to respond to the determination notice; and
- (b) where they have indicated that they wish to respond, must submit their response within 28 days of the receipt by them of a copy of the determination notice, to the Secretary of State, the applicant and any interested parties.

(4) Where the respondent or an interested party has submitted a response to the determination notice pursuant to paragraph (3)(b), the applicant and any other interested party—

- (a) must indicate to the Secretary of State, the respondent and any interested party, within 7 days of receipt of the response, whether it wishes to submit further evidence; and
- (b) if it does so indicate, must submit that further evidence within 28 days of receipt of the response, to the Secretary of State, the respondent and any interested parties.

(5) Notification of the determination of the Secretary of State must be sent to the authority, tenant group and interested parties.

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

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

Kris Hopkins
Parliamentary Under Secretary of State
Department for Communities and Local
Government

7th November 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 34A of the Housing Act 1985, set out the procedure to be followed where a tenant group wishes to serve a notice on an authority proposing that the authority should dispose of particular land used for housing purposes under Part 2 of the Housing Act 1985 to a private registered provider of social housing. The Regulations impose requirements on the authority to co-operate where a notice is served pursuant to these Regulations.

The Regulations apply to England only.

The Regulations are divided into 5 parts.

Part 1 provides general provisions for:

- (a) Secretary of State guidance relating to these Regulations (regulation 3);
- (b) conditions that the tenant group must satisfy (regulation 4) ;
- (c) content of the proposal notice (regulation 5);
- (d) extension of time (regulation 6);
- (e) written communications (regulation 7);
- (f) appointment of an arbitrator (regulation 8); and
- (g) determination by the Secretary of State (regulation 9).

Part 2 is the initiating the process stage and provides for:

- (a) service of the proposal notice (regulation 10);
- (b) acceptance of the proposal notice (regulation 11);
- (c) rejection of the proposal notice (regulation 12); and
- (d) request for a determination by the Secretary of State (regulation 13).

Part 3 is the feasibility study stage and provides for:

- (a) a feasibility study (regulation 14);
- (b) the duties of the authority (regulation 15);
- (c) the content of the feasibility study statement (regulation 16); and
- (d) the grounds on which an authority may reject a feasibility study statement (regulation 17).

Part 4 is the development stage and provides for:

- (a) the duties of the authority (regulation 18);
- (b) the timetable to take forward a proposal (regulation 19);
- (c) procedure on the failure to agree a timetable (regulation 20);
- (d) consultation with tenants (regulation 21); and
- (e) Secretary of State consent (regulation 22).

Part 5 provides for the procedure to be followed on an application to the Secretary of State for a determination.