



The Housing Act 1985: Schedule 3A – consultation
before disposal to private sector landlord

**Statutory guidance – paragraph 3: requirements as to
consultation**



The Housing Act 1985: Schedule 3A – consultation
before disposal to private sector landlord

**Statutory guidance – paragraph 3: requirements as to
consultation**

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

© Crown Copyright, 2009

Copyright in the typographical arrangement rests with the Crown.

This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

Any other use of the contents of this publication would require a copyright licence. Please apply for a Click-Use Licence for core material at www.opsi.gov.uk/click-use/system/online/pLogin.asp, or by writing to the Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU

e-mail: licensing@opsi.gov.uk

If you require this publication in an alternative format please email alternativeformats@communities.gsi.gov.uk

Communities and Local Government Publications
Tel: 0300 123 1124
Fax: 0300 123 1125
Email: product@communities.gsi.gov.uk
Online via the Communities and Local Government website: www.communities.gov.uk

July 2009

Product Code: 09DHF06046

ISBN 978-1-4098-1719-2

Contents

Introduction	4
Who should read this guidance?	4
Extent of the guidance	5
Requirements as to consultation (paragraph 3)	5
Who should be consulted?	7
Reaching all sections of the community	8
Timing of formal consultation and ballot	8
The statutory ballot	8
Post-ballot	9
Annex 1	10

Introduction

Statutory Guidance to English local authorities on meeting their statutory obligations regarding consulting with tenants prior to seeking the Secretary of State’s consent to dispose of those tenants’ homes to a private landlord.

1. An English local authority may with the consent of the Secretary of State dispose of an interest in land as a result of which a secure tenant or an introductory tenant will become the tenant of a private landlord.
2. It is the policy of the Secretary of State that such consent will be granted only where the private landlord is a Registered Social Landlord or, in future, following provisions in the Housing and Regeneration Act 2008 (“the 2008 Act”), a Registered Provider of Social Housing.
3. However the Secretary of State will not consider granting consent unless the local authority can demonstrate that it has properly consulted tenants as required by paragraph 3 of Schedule 3A to the Housing Act 1985 (“paragraph 3”).
4. Paragraph 5A(1) of Schedule 3A (as inserted by section 294 of the 2008 Act) requires the Secretary of State to issue this guidance to English local authorities about complying with the requirements of paragraph 3.
5. Section 294 of the 2008 Act also amended paragraph 3 by making the holding of a ballot a statutory requirement of the consultation process.

Who should read this guidance?

6. This guidance is for English local authorities proposing the transfer of ownership of tenanted homes to a private sector landlord. Paragraph 5A(3) to Schedule 3A requires that such authorities must, in complying with the requirements of paragraph 3, have regard to this guidance.
7. This guidance will however also be of interest to local authority tenants in England, their representatives, and any private sector landlords interested in such stock transfers.

Extent of the guidance

8. This guidance relates only to the requirements imposed by paragraph 3.
9. It complements – and should be read in conjunction with – the more extensive non-statutory guidance on stock transfer (the Housing Transfer Manual – 2005 Programme (October 2004) and the Supplement to the Housing Transfer Manual (June 2006) – both published by this Department), and, in future, any non-statutory guidance produced by the Homes and Communities Agency.

Requirements as to consultation (paragraph 3)

10. The principle behind paragraph 3 is that tenants should be fully involved in any plans and decision making over the future ownership of their homes. The local authority must provide all affected tenants with sufficient information for each to express a fully informed opinion about the proposal in a statutory ballot.
11. In practice, the Secretary of State expects the formal consultation covered by paragraph 3 to be the conclusion of a longer process; ie it should follow an informal period of consultation when the authority introduces and explains its proposals.
12. The formal consultation process covered by paragraph 3 has two stages prior to ballot.

Stage 1 Notice

13. Paragraph 3(2) requires that the local authority first serve a notice on its secure tenants and those with an introductory tenancy setting out:
 - a. the details of the transfer proposal, including the identity of the prospective new landlord;
 - b. the likely consequences of the transfer for the tenant;
 - c. the effect of the provisions of Schedule 3A (i.e. the consultation requirements): and
 - d. the provisions relevant to the Preserved Right to Buy.

14. This notice is usually referred to as the formal consultation or Offer Document. It must invite representations within a reasonable period, which the Secretary of State considers to be at least 28 days (ie the deadline must be 28 days or more after the tenant has received the notice). The local authority must consider any representations made within that period and may wish to revise its proposals accordingly.
15. The local authority is not obliged to delay the consultation process by having to consider any representations made after this period. However it must consider any such representations before deciding whether to seek the consent of the Secretary of State to conclude the transfer should that be the wish of the tenants voting in the ballot.
16. The document should set out clearly the terms of the proposed transfer, including tenants' rights under the assured tenancy regime, and should compare those rights to the rights of secure tenants. The document should explain that, although transferring tenants will have broadly similar rights, some rights will be lost while others will be provided by contract rather than by statute. Any promises made by the local authority to tenants at the informal consultation stage should be incorporated into the formal consultation material.
17. Further guidance on the content of this document is at Annex 1.

Stage 2 Notice

18. Paragraph 3(3) requires the local authority to serve a further written notice. This is best in the form of a letter signed by whoever signed the covering letter to the Stage 1 notice. The letter should
 - a. describe any significant changes to the proposal;
 - b. say that objections may be made to the Secretary of State within a period of at least 28 days; and
 - c. draw attention to the fact that the Secretary of State shall not give consent to a transfer if the result of the statutory ballot shows that a majority of tenants voting are opposed.
19. The Secretary of State would normally expect the ballot to commence immediately after the issue of the Stage 2 notice, and for the 28 days (or other specified period) in which objections may be made to the Secretary of State to run concurrently with the ballot.
20. A local authority needs to work with relevant people (the proposed new landlord, tenant representative groups etc) to decide on the length of the ballot period and how it is conducted. The period needs to be appropriate to the local circumstance; 28 days should be considered the norm (especially for transfers of 500 or more homes) but should in any case not be less than 21 days.

21. Both the Stage 1 and Stage 2 notices should give an indication of the likely timing of the statutory ballot and how it will be conducted. Both notices should explain the consequences of a majority vote either way: ie a vote against would mean that transfer could not proceed; whereas a vote in favour would simply permit – not compel – the local authority to seek the Secretary of State’s consent. Similarly the local authority would wish to make clear that the Secretary of State would not be obliged to grant consent simply because a majority had voted in favour (although such a vote is likely to be a strong influence).

Who should be consulted?

22. **Tenants.** The statutory consultation procedures covered by paragraph 3 are concerned solely with secure tenants or those with an introductory tenancy¹. There are likely to be occasions when someone takes up a new tenancy during the formal consultation period. Provided that they have taken up their tenancy before the Stage 2 notice has been issued, they should be included in the ballot.
23. **Leaseholders.** There are no statutory requirements for consulting long leaseholders (ie people who have exercised their Right to Buy on a long leasehold basis or have bought from those who have exercised their Right to Buy) as the terms of their lease would not change if the freehold transferred to a private landlord.
24. However, leaseholders should be kept informed of progress on the transfer proposal and told that they may make any objections to the transfer to the Secretary of State, who will take such objections into account when making a decision on the consent application. Although an authority may, in order to ascertain their views, ballot leaseholders about a transfer proposal (which should run concurrently with the statutory tenant ballot), it is not obliged to do so and it should conduct such a ballot as a separate exercise to ensure that tenants’ views can be clearly demonstrated.

¹ This includes people who have a replacement tenancy under Part 2 of Schedule 11 to the Housing and Regeneration Act 2008.

Reaching all sections of the community

25. Local authorities must ensure that all tenants are fully informed of the proposals, encouraged to vote, and are able to participate. Local authorities will therefore wish to be mindful – in particular, but not exclusively – of the needs of people for whom English is not their first language and people who have difficulty reading.
26. Local authorities will also wish to be mindful of other residents who might be affected by the proposals: for example, the proposal might be to transfer an estate on which live a number of freeholders or tenants of freeholders or leaseholders. It is not necessary to consult such residents, but local authorities would wish to keep them informed.

Timing of formal consultation and ballot

27. It is important that the information given to tenants and promises made regarding future policies on rent and repairs and levels of service are well founded. Formal consultation should not start, therefore, until the authority is sure that this is the case.
28. In order to ensure that a ballot reflects the views of tenants resident at the time of the transfer, a local authority should seek to minimise the time between ballot and transfer. Ideally it should be between six to 12 months. The length of time and the number of new tenancies taken up during that period are matters the Secretary of State will consider before granting consent.

The statutory ballot

29. The ballot paper should be delivered to each tenant under separate cover from any consultation material. During the ballot period, a local authority should generally refrain from issuing any further material about the proposed transfer. However, there may be instances where the local authority considers it reasonable to clarify certain aspects; for example, where people have made

inaccurate claims about the process, the local authority may wish to issue a statement addressing the points made. It should not, however, raise any new issue.

30. Ballots should normally run for at least 28 days to ensure maximum voter turnout and the local authority should make every effort to ensure as high a turnout as possible. The Secretary of State would usually expect the ballot period to end at the same time as the period for objections. It is not acceptable for a ballot to close before the period for objections is over. All correspondence relating to the holding of the ballot must state clearly and unambiguously the date the ballot closes.
31. It may be that the local authority invites tenants to cast their votes in a ballot box. Such a box should be placed in a neutral venue and not in the vicinity of any publicity encouraging a vote either way.
32. The question posed must be as unambiguous and direct as possible and reflect the terms in which the consultation material has been expressed. The Secretary of State would always wish to see tenants asked the following question:

'Are you in favour of the Council's proposal to transfer the ownership and management of your home to [proposed new landlord]?'
33. Tenants should then have the choice of ticking either a "yes" or a "no" box.

Post-ballot

34. Paragraph 3(6) requires the local authority at the end of the ballot to write to all tenants (whether or not they voted) informing them of the result. A majority vote against transfer would mean that transfer cannot proceed and the local authority should make this clear to tenants.
35. Where the majority vote in favour of transfer the local authority must inform tenants of how they now intend to proceed. If the local authority intends seeking the Secretary of State's consent to the transfer, then they must advise their tenants that they have up to 28 days to make further representations to the Secretary of State.
36. The Secretary of State may not consider any representations received after this 28 day period.
37. It is vitally important that details of who voted and how should be kept confidential.

**The Secretary of State for Communities and Local Government
July 2009**

Annex 1

Stage 1 Notice

1. The purpose of this Annex is to provide further guidance to local authorities on preparing a Stage 1 notice, more commonly known as the formal consultation, or Offer Document, such that it complies with the requirements imposed by paragraph 3.
2. Tenants should receive comprehensive information about the proposed transfer on a single occasion, presented in simple, concise language, without unnecessary repetition and with a clear explanation of why they are being sent the information. The document should provide complete information on why the transfer is being proposed and the terms of the offer presented clearly and accurately, while emphasising the consultative nature of the process at this, pre-ballot, stage.
3. Local authorities should ensure that the information provided gives a full, fair and objective picture of the proposed transfer so that they can demonstrate that tenants have been properly consulted and informed. They should tailor their consultation document according to specific local circumstances and with particular reference to the interests and needs of their tenants.

Covering letter

4. The local authority should include a covering letter, introducing the consultation document, which sets out the offer being made to its tenants. The Leader of the Council or the Chair of Housing should sign the letter or, at the very least, a senior officer such as the Chief Executive or Director of Housing.
5. The letter should make clear that the transfer is still at the stage of a proposal and that the detail could still change. An indication of the later stages of the process should be given ie that any amendments to the offer that are made as result of tenant comments, or other circumstances, will be included in a further (Stage 2) notice, which will be issued before a ballot is held.
6. A form on which tenants can express their views (with a pre-paid reply envelope) should be enclosed with the document or clearly flagged within it on a tear out page.

Language and tone

7. It is crucial that the consultation document be expressed in plain, jargon free English. If specialist language or unfamiliar terms have to be used, their meaning should be explained in simple words straightaway.
8. The document should be honest and open about the reasons for and implications of the proposals. It should avoid statements implying that decisions have already been taken when they have not, and throughout the document the future conditional tense (ie would, rather than will), should be used to describe the implications of a proposed transfer. Tenants should be left in no doubt that any undertakings being made about a proposed transfer are conditional on the majority of tenants who take part in the ballot voting in favour of the transfer.

Reasons for Proposing Transfer

9. Tenants need to understand why the local authority is proposing to transfer their housing, but should not feel that the main purpose of the consultation document is to sell the transfer; rather, it should give neutral information. A balanced and informative approach is needed, which provides brief information on all the options that have been considered.
10. If the transfer is being proposed to enable significant investment in the homes, tenants should be told why it is not possible for the local authority to make that investment. Housing finance is a complex area. But tenants should be made aware of the constraints under which local authorities operate and have the specifics of their local authority's position explained to them.
11. Other information that should be available is:
 - how the value (sale price) of the housing covered by the proposal has been calculated, and why this is different from the price a tenant would pay for the property under the Right to Buy
 - how the local authority proposes to use any proceeds from the sale and
 - information on the housing role the local authority would retain post transfer, and their continuing interest through the transfer contract

Basic facts about the Transfer

12. Information should be included on:
 - identification of housing to be transferred (eg whole stock, named estates)
 - identity and status of the proposed new landlord

- summary of consultation requirements, stressing that tenants views are sought at this stage and can make a difference
- details of the ballot, and the mandate required for transfer to go ahead
- proposed timetable for consultation, ballot, consent application and transfer and
- contacts for advice and further information, including named independent tenant adviser and local authority contact

Information about the proposed New Landlord

13. Tenants may not be familiar with the terms Registered Social Landlord, Registered Provider of Social Housing or non-profit distributing company so these concepts should be clearly explained.
14. Other information should include:
 - name and status of the proposed new landlord (whether registered or seeking registration with the Tenant Services Authority, intention with regard to charitable status, if applicable)
 - the regulatory framework within which it will operate, including information about the Tenant Services Authority's role and the Regulatory Code for Registered Social Landlords / Registered Providers of Social Housing
 - why the proposed new landlord would be able to borrow money when the local authority cannot
 - from whom it would borrow, and the length of the repayment period
 - what safeguards will exist if the proposed landlord cannot repay the money it has borrowed
 - composition of the voluntary Board or Shadow Board of Management, including information about relevant experience
 - an explanation of how tenants, independents and Councillors have been selected as Shadow Board Members (if a new Local Housing Company is proposed) and how this process will work in future, or, where a transfer is proposed to an existing Registered Social Landlord, details of the tenant representation structures that will be put in place
 - objectives of the proposed new landlord and
 - information on other properties managed by the same landlord, where appropriate, so that tenants have an idea of its track record

Capital Expenditure Programme

15. The prospective landlord might offer a programme of repairs and improvements. The consultation document should enable each tenant to identify the works that will be carried out to his / her home if the transfer goes ahead.

Rents and other Charges

16. Rents are one of the key issues for tenants. They should be presented in a clear and accessible way. Any likely changes to the financial cost to the tenant caused by any transfer must be very clearly spelled out.
17. Local authorities will need to consider in this section including information not only on rent, but service charges, rent increases necessary to effect improvements, arrangements for the payment of rent, the effect on Housing Benefit, and the future landlord's policy on rent arrears. This list however is not exclusive.

Management Standards

18. An equally important reason for proposing a transfer is to deliver improved housing management services to tenants. The document should explain the standards of service that will be offered by the proposed new landlord, making clear in precise terms where these differ from and improve upon the local authority's current standards.

Tenants' Rights after Transfer

19. The document should explain what rights tenants would have if the transfer were to go ahead and how they will differ from their existing rights. It should also make clear which of those rights would be statutory, which would simply be contractual rights founded on tenancy agreements. We would suggest that this information is presented in a tabulated form, by type of tenancy, to allow tenants to compare easily their rights before and after any transfer.
20. The document needs to explain that, like the local authority, the proposed new landlord would be able to recover possession of a property only if it obtained a court order. There are additional grounds for possession available to the new landlord that may be used against existing tenants in the event that the transfer goes ahead and these should be explained.

Right to Buy and Preserved Right to Buy

21. The document should explain the Right to Buy for local authority tenants and the Preserved Right to Buy (PRTB), including the fact that tenants would continue to qualify for Right to Buy discounts if they were to move to another home owned by a local authority or to another property owned by the proposed new landlord. The document should include an explanation of how the discount available to a tenant is calculated), and should set out the maximum discount limits that apply in each Government Office region (different discounts are available in different areas of the country). It should also mention the 'cost floor'. This provides that the Right to Buy sale price of a property may not fall below the total amount spent by the landlord on building, acquiring or improving it during the 10 to 11 year period before the tenant applies to buy it. In practical terms, this may reduce the Right to Buy discount available to a tenant.
22. The position in relation to introductory tenants should be covered. If the transfer goes ahead, they are given a contractual Right to Buy on the same terms as the PRTB for secure tenants.
23. In the case of commercial properties, the local authority has to decide whether it intends to transfer the freehold of the properties or retain it and lease any homes above to the proposed new landlord. Should the local authority decide to lease the properties, the tenants in these properties should be informed that, if the transfer goes ahead, and they decide to exercise the PRTB, they would be purchasing a long lease from the RSL or Registered Provider. In addition, the arrangements for insuring, improving and maintaining the building (interior and exterior) should be detailed.

Other Rights

24. The following further rights should be fully explained (explaining clearly which elements would be lost):
 - right to succession
 - right to exchange homes
 - right to sub-let
 - right to repair
 - right to be consulted and receive information
 - rent to mortgage
 - right to manage
 - right to take in lodgers
 - right to be balloted on any future change of ownership

ISBN 978-1-4098-1719-2

ISBN 978-1-4098-1719-2



9 781409 817192