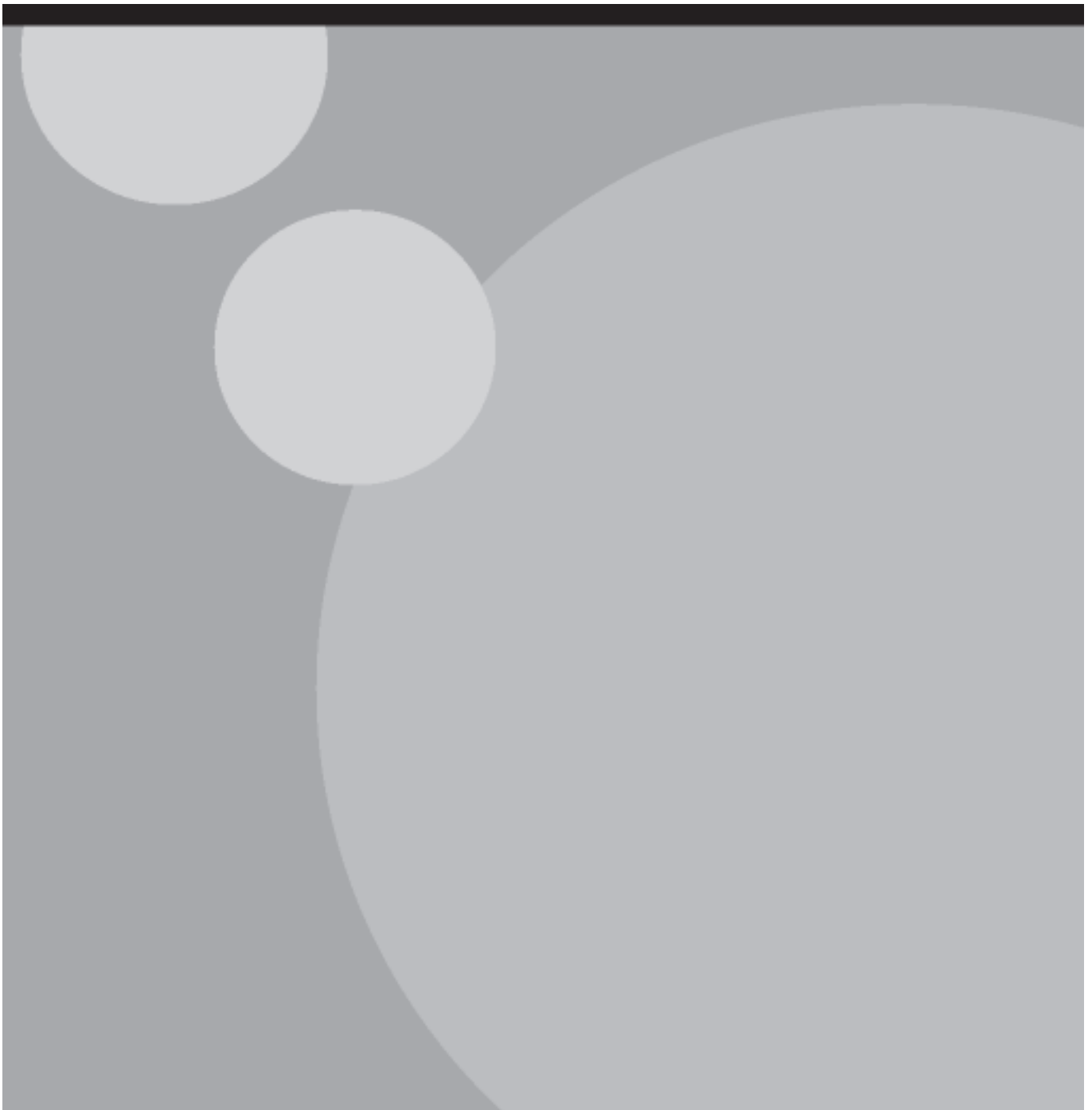




Giving Tenants Control:  
Right to Transfer and Right to Manage Regulations  
Consultation





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## About this consultation

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Department for Business Enterprise and Regulatory Reform and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome;
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all

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circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

DCLG Consultation Co-ordinator  
Zone 4/H10  
Eland House  
London SW1E 5 DU

or, by e-mail to: [consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk)

### Scope of the consultation

<b>Topic of this consultation:</b>	Right to Transfer from a Local Authority Landlord Regulations and Tenant Empowerment and the Statutory Right to Manage
<b>Scope of this consultation:</b>	Responses to this consultation will inform the introduction of the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2012 and its associated guidance and changes to the Housing (Right to Manage) (England) Regulations 2008
<b>Geographical scope:</b>	England
<b>Impact Assessment:</b>	There is no regulatory impact on the private sector and no impact assessment has been prepared.

### Basic Information

<b>To:</b>	This consultation is aimed primarily at local authority tenants and representative groups, local authority landlords and their representative groups, and private sector consultants with an interest in these proposals.
<b>Body/bodies responsible for the consultation:</b>	This consultation is being run by the Affordable Housing Management and Standards Division and the Housing Revenue Account Reform and Decent Homes Division within the Department for Communities and Local Government

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<b>Duration:</b>	This consultation will run for 10 weeks from 14 March 2012 to 5 pm on 23 May 2012.
<b>Enquiries:</b>	For enquiries please contact: Lesley Storer 0303 444 3654
<b>How to respond:</b>	By email to: <a href="mailto:tenant.control@communities.gsi.gov.uk">tenant.control@communities.gsi.gov.uk</a>  Or by post to:  Lesley Storer Department for Communities and Local Government Zone 1/G9 Eland House Bressenden Place London SW1E 5DU
<b>Additional ways to become involved:</b>	Key national interest groups will also be engaged directly during the consultation process.
<b>After the consultation:</b>	A summary of the responses to consultation will be published on the Department's website within 3 months of the end of the consultation period.
<b>Compliance with the Code of Practice on Consultation:</b>	The consultation period has been set at 10 weeks, recognising that the content of the consultation has previously been discussed with interested parties.

## Background

<b>Getting to this stage:</b>	<p>On Right to Transfer the legislative authority to produce these Regulations was included in the Housing and Regeneration Act 2008, which was subject to Parliamentary Scrutiny. The current administration, after reviewing the policy, decided to introduce the Regulations as they met the tenets of localism and support the Housing Strategy.</p> <p>On management, Regulations issued in 1994 (revised in 2008) gave local authority tenants' organisations the statutory right to manage their homes under the Housing Act 1985. The Government's Housing Strategy also promotes the right to manage.</p>
<b>Previous engagement:</b>	On Right to Transfer Tenant-led Stock Transfers was one of the matters the previous Government sought views on in the consultation paper "Tenant Empowerment" (June 2007).

## Background and Context

1. The recent White Paper, '[Open Public Services](#)'<sup>1</sup> set out Government's commitment to providing good public services. It recognised that there are excellent public services, but that not all have access to that excellence and that a new approach to delivery is urgently needed. It also acknowledged that 'top-down' prescription and centralisation had put bureaucratic imperatives above the needs of service users. Government's vision of open public services turns this presumption on its head and places power in the hands of people.
2. Furthermore, on 21 November 2011 the Government launched a radical and ambitious [Housing Strategy](#)<sup>2</sup> aimed at helping people realising their housing aspirations, including making mortgage finance easier to access, allowing more people to buy their council homes, and stimulating the house building industry.
3. As part of this strategy, the Government is keen to promote housing stock transfers that will deliver a robust, long-term sustainable future for estates and neighbourhoods. The Housing Strategy commits the Government to actively encouraging voluntary transfers that offer good value for money and can leverage additional investment. DCLG will bring forward proposals in April for a programme of transfer, clarifying the level of financial support (through writing off housing debt) and the criteria to be applied in prioritising such support. The Government indicated in the Strategy that they would particularly explore the scope for transfers that deliver a robust, long-term sustainable future for estates and neighbourhoods.
4. The Housing Strategy also promotes the Government's commitment to empower tenants to shape their own lives and the services that they receive, and to take control of local housing and offer them the opportunity to take on the management of local housing services.
5. This is especially relevant to local authority housing, which provides security, stability and vital services for around 4 million tenants in England. Although local authority tenants have opportunities to have a say about their housing services, relatively few feel that their landlords listens to them<sup>3</sup>, or feel empowered to participate in the planning, monitoring or delivery of services. That said, there are some outstanding examples of tenant volunteers who lead their communities, influence their landlord and even manage local services.
6. One of the main hurdles that tenants face in taking more responsibility at the local level can arise where local authorities inadvertently block the

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<sup>1</sup> Open Public Services – Cabinet Office, 2011

<sup>2</sup> Laying the Foundations: A Housing Strategy for England - Department for Communities and Local Government, 2011

<sup>3</sup> Existing Tenants Survey, Tenants Services Authority, 2009.



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community's ambitions by not delegating powers or responsibility. This can be particularly frustrating where tenants believe that a new housing association landlord would deliver better services, or where they want to take over responsibility for the management of housing services. In both cases, tenants' ability to explore these options can be constrained by local authorities' failure to co-operate.

7. Research shows that where tenants play a bigger role in managing local services, those services are managed more effectively and are more locally responsive<sup>4</sup>. Government is keen to see more tenants playing a bigger role in managing services and having more say about who owns their housing stock.
8. To help deliver more tenant control, we are consulting on Regulations to make it easier for tenants to exercise their Right to Manage as well as new Right to Transfer Regulations
9. These two sets of Regulations are intended to make it easier for tenants to take the lead locally – either by taking over responsibility for managing housing services, or by exploring options for transfer from their local authority. Giving tenants a greater say about the management or ownership of their homes and communities will help to deliver the Big Society in local authority housing.
10. Government recognises that decisions regarding the ownership or management of local authority housing are important local matters; they directly affect service delivery, and impact on public investment. Consequently, tenants' proposals need to be credible, financially sound, and command support from affected tenants. Recognising this, the Regulations aim to ensure that changes in ownership or management only take place if:
  - the tenants' group is independently assessed as being credible; and
  - their proposals are supported by the tenants whose homes would be affected.
11. Additionally, we consider that safeguards should be built into the legislation to allow a local authority to seek to halt the Right to Transfer process where it has wider negative impact. We are therefore proposing that, where there are wider plans for regeneration that the local authority feels will be detrimentally affected by transfer, they can apply to the Secretary of State to halt the Right to Transfer process.
12. Government also recognises that many local authorities have a strong record of working voluntarily with local tenants on exploring options for transfer or providing the tools and support to manage stock. This partnership approach is encouraged as it enables tenants and landlords to explore less burdensome routes to exercise their options and choices.

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<sup>4</sup> 'Tenants Managing: an Evaluation of Tenant Management Organisations in England' – Office of the Deputy Prime Minister Housing Research Summary No. 174, 2002.

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Through a Local Management Agreement, for example, tenants and landlords have freedom to enter into a voluntary agreement to take over responsibility for managing small, local services. Following model work programme templates in this manner can provide an alternative to taking forward the Right to Manage and its associated processes.

# Right to Transfer Regulations and Guidance

## Background and history

13. Government is proposing to introduce the 'Right to Transfer to a Local Authority Landlord' Regulations as part of its aim to increase the opportunities available to tenants to exercise their choices. It is also key to Government's ambition to increase tenant empowerment and involvement, in support of the principles of localism. Since the eighties local authorities have been able to transfer stock after formal consultation and the balloting of tenants – and this can be the result of representations from tenants that they wish to take forward this option. However, in some cases tenants have an interest in exploring transfer, but local authorities have not engaged with them. The aim of these Regulations is to address this by placing a requirement on authorities to co-operate with tenants who are minded to take forward a transfer.
14. Where authorities support tenants in exploring options for future ownership of their homes, including providing information and support there is no need to follow the Right to Transfer process. If Transfer is agreed as the preferred option, authorities will need to follow the requirements in schedule 3A to the 1985 Housing Act, including consultation with tenants.
15. In cases where local authorities are not supportive the Right to Transfer Regulations place a new duty on them to co-operate. They also provide various safeguards such as ensuring that there is wider support for any proposals within the community and that any transfer does not have a detrimental impact on an authority's wider housing services.

## Objectives for the Regulations

16. The overall objective of the Regulations is to provide a mechanism for ensuring that tenants who explore the viability of transferring ownership of their homes from the local authority to a registered provider receive support and co-operation from their landlord to enable them to make an informed choice. Where tenants believe that transfer is viable, the Regulations require the local authority to take forward the consultation and balloting process – subject to the safeguards outlined (including the authority's ability to apply to the Secretary of State for determination).
17. The Regulations seek to introduce arrangements that are workable and fit for purpose whilst being robust enough to ensure full and proper exploration of any potential transfer. So, for example, where transfer is the

preferred option, the Regulations provide for a full consultation and ballot process.

**Question 1: Do the Regulations (together with the guidance) meet the objective of being robust, but workable?**

18. In certain circumstances, a local authority's wider needs may mean that transferring stock to a registered provider would have a disproportionately negative impact. For example, the financial implications of transfer may seriously affect the authority's ability to deliver housing services. We consider that a local authority should be able to seek a determination from the Secretary of State to halt the process if it can provide evidence of a wider negative impact on its housing services.

**Question 2: Do the Regulations (together with the guidance) meet the objective of ensuring that the local authority has a route to halt the process if it has a detrimental impact?**

## Overview of the Regulations

19. The Right to Transfer Regulations cover three main stages:

- the Initial Stage;
- the Feasibility Stage;
- Development Stage.

The Regulations are supplemented by guidance.

20. As part of the Initial Stage, the Regulations define the conditions that a tenant group must satisfy to ensure that it represents at least a substantive section of local community opinion. The conditions of the proposal notice supplement this by ensuring that it is clear that there is support within the tenant's group and that any transfer proposal covers a geographically distinct and coherent area.
21. This stage also provides for an assessment of the competency of the tenant group by an independent approved assessor. This is intended to ensure that tenant groups have a workable proposal which can be delivered. We propose placing a limit on the number of times a tenant group can seek to be assessed by an approved assessor to prevent groups from making repeated attempts to be approved without having implemented the improvements required from any such previous assessments.
22. This initial stage also covers the serving of a proposal notice and the grounds on which a local authority is able to reject it. The duty on the authority begins with the delivery of the proposal notice. At any time after its arrival the local authority may apply to the Secretary of State for a determination to halt the process if it believes that transfer would have a significant detrimental impact on their provision of housing services.

23. The Feasibility Study Stage sets out the matters to be included in a feasibility study and the duties of the local authority. It also covers the tenant group's notification of the study to the authority and the grounds on which a local authority can reject the feasibility study. These Regulations ensure that there is active support for any transfer proposal within the tenant group and that the majority of tenants affected by the proposal are not opposed to any transfer. They also ensure that time and money are not wasted in consulting and balloting tenants if there is evidence that tenants would prefer to stay with the authority.
24. Under the Development Stage, the local authority would have a duty to consult with tenants and, where appropriate, to ballot all affected tenants on the disposal of their homes.
25. The Regulations also cover the arrangements regarding applications for determination to the Secretary of State, by either the local authority or the tenants group. They also give the right for interested parties (including the authority or tenant group) to respond to the determination and a right for the applicant to make a further submission.

## **Right to Transfer Guidance**

26. To supplement the Regulations, we are also consulting on guidance. This is intended to be light-touch, explaining the context to the Regulations. Local authorities will need to have regard to this guidance when complying with the Regulations. When answering questions 1 and 2 in this consultation, respondents will wish to take account of the guidance as well as the Regulations.

## Reforming the Right to Manage

25. Local authority tenants have had a statutory Right to Manage since 1993. By forming a Tenant Management Organisation and following Right to Manage Regulations, such tenants can take over responsibility for managing housing services from their landlord. Around 200 Tenant Management Organisations now manage services such as repairs, caretaking, security, and rent collection for up to 70,000 homes.
26. Tenant Management Organisations are proven models of community control of public services. Evidence shows that they improve service quality, secure better value for money and boost satisfaction. Tenant Management Organisation members are unpaid volunteers who want to improve the quality of people's lives by taking on more responsibility for local services. Participating in a Tenant Management Organisation is often the springboard for tenants to play a more active role in civic life.
27. In 2010 Government and its partners reviewed the effectiveness of tenant empowerment policies. Whilst the tenant sector felt that Right to Manage had led to significant improvements for tenants, residents and communities, there were concerns that:
  - the creation of new Tenant Management Organisations had slowed down, and the average time taken by Tenant Management Organisations to exercise their Right to Manage was around 3 years;
  - costs remained high. The total cost of supporting a Tenant Management Organisation through the Right to Manage was estimated at between about £100,000 and £200,000, with the bulk of this expenditure met from Government's Tenant Empowerment Programme and the remainder from local authorities;
  - the Right to Manage process required tenant groups to provide huge amounts of evidence in order to demonstrate their readiness to take over management responsibilities;
  - the Right to Manage process was not viewed as a positive opportunity for local people to take control. Rather, it involved a number of stages (summarised for illustrative purposes at Annex D) that made it relatively easy for uncooperative landlords to slow down the process.
28. Concerns were also expressed by the local authority sector that, in a period of tightening financial controls, the escalating cost of Tenant Management Organisation development was becoming unsustainable.

## Objectives for Right To Manage reform

29. In discussion with partners, we explored how the Right to Manage process could be reformed. Our objective was to make it easier for tenants to take over management responsibility for local services, whilst ensuring appropriate safeguards for key players - the tenants whose properties would be managed by the Tenant Management Organisation; local authorities; council tax payers; Government; and Tenant Management Organisation members.

## Proposed changes

30. In considering this objective, Government and partners agreed that the overall Right to Manage framework provided a sound basis for enabling tenants to take control of public services. In particular, the assessment of Tenant Management Organisation competence by assessors, followed by a ballot of affected tenants and residents, provided a strong basis for reassuring all parties about the Tenant Management Organisation's credentials regarding the effective use of public money, efficient delivery of local services, and strong community leadership.

31. However, the Right to Manage Regulations, and the guidance that underpinned them, was considered too bureaucratic and needed to be streamlined to make it easier for tenants to take over the management of local services. As a result, a number of changes are proposed.

### (a) Requirements on local authorities

32. The current Right to Manage Regulations require local authorities to:

- notify the Secretary of State of the results of the ballot of affected tenants;
- send a copy of the Tenant Management Organisation management agreement to the Secretary of State.

33. These requirements were originally intended to enable Government to satisfy itself about the level of support for tenants' proposals and to monitor take-up of the Right to Manage.

34. However, they are no longer necessary and only serve to reinforce a perception that Government has a role to play in local Right to Manage decisions, or subsequent monitoring. This is not the case. Responsibility for transferring the management of local services to tenants is a matter for local decision; not one for Government.

35. We therefore propose to remove these unnecessary requirements from the Right to Manage Regulations.

**Question 3: Do you agree that we should remove unnecessary requirements for local authorities to notify the Secretary of State of the results of the ballot and to send copies of Tenant Management Organisation agreements to the Secretary of State?**

**(b) Removal of the requirement regarding a feasibility study**

36. The Regulations also require the local authority to prepare a feasibility study of the prospective Tenant Management Organisation's proposals which sets out the:
- management functions the Tenant Management Organisation proposes to exercise;
  - funding or budget to be allocated by the authority to enable the Tenant Management Organisation to exercise those functions;
  - financial accountability and control procedures which the authority and the Tenant Management Organisation will have in place; and
  - management and governance arrangements of the Tenant Management Organisation.
37. Considerable confusion has arisen about this requirement. Practitioners have been unclear how it differs from the requirement for the Tenant Management Organisation, in conjunction with the local authority, to prepare an offer to tenants that explains the benefits of tenant-led control and sets out the Tenant Management Organisation's plans for managing services. This offer document is vital as it is the basis on which those tenants whose homes are affected by the proposals will be voting.
38. Requiring the Tenant Management Organisation to prepare a separate 'feasibility study' document, in addition to the offer document, is unnecessary, confusing and could cause delay. Removing this requirement would enable Tenant Management Organisations to concentrate on preparing a clear, concise and authoritative detailed 'offer' for tenants and residents explaining the benefits of tenant-led control.
39. We therefore plan to remove this requirement and specify more clearly that the offer document should contain the 4 bulleted items listed above.

**Question 4: Do you agree with our proposal to remove the requirement to prepare a feasibility study whilst retaining the 'offer' upon which tenants will vote?**

40. We have attached draft regulations at Annex C, incorporating the proposed changes outlined above.

**(c) Right to Manage guidance**

41. The Right to Manage Regulations are supported by guidance. Whilst this contains much useful advice to help tenant groups, local authorities,



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advisors and approved assessors, the volume of guidance is confusing and off-putting, and some of it is out-of-date.

42. We therefore plan to work with partners to develop streamlined, sector-led, guidance that provides practical help for tenants exercising their Right to Manage. As part of this streamlining of guidance, we are aiming to:
- reduce the number of detailed standards contained within the Common Assessment Model. Prospective Tenant Management Organisations currently demonstrate competence against over 60 separate standards. We would like the tenant sector to explore whether this number could be reduced so that it is more proportionate to Tenant Management Organisations' roles and responsibilities; and whether the Common Assessment Model could be made more accessible;
  - reduce the amount of evidence that Tenant Management Organisations submit to approved assessors in order to demonstrate competence, replacing it with a less bureaucratic approach that draws on real world experiences and local observations of good practice;
  - encourage tenant groups to obtain training and support needs from a variety of sources, rather than relying on lead advisers. Local players may have an equally valuable perspective. For example, experienced Tenant Management Organisations could provide practical insight into community engagement and voluntary groups could provide advice about effective governance;
  - encourage Tenant Management Organisations to obtain practical management experience which could prove valuable in understanding how tenant-controlled services might operate (eg exploring the benefits of shadow boards or limited local authority delegations);
  - encourage stronger relationships between local authorities and Tenant Management Organisations by exploring the potential for sector-led guidance to help councils work collaboratively with prospective Tenant Management Organisations.

**Question 5: Do you agree with plans to work with the sector to streamline the guidance to help tenants exercise their Right to Manage?**

### **(d) Other routes to housing management**

43. Whilst the Right to Manage provides a well-established route for tenants to take over the management of housing services, tenants can also take over responsibility for managing small, local, services through a voluntary Local Management Agreement with their landlord.
44. Local Management Agreements can be a quicker route to tenant management at a local level than via the Right to Manage. They involve services under the EU procurement threshold. To make it easier for landlords and tenants to put Local Management Agreements in place the

Social Housing Regulator is providing a general consent to Local Management Agreements which conform, wholly or mainly, to a model agreement approved by the Regulator. This removes the need to seek individual consent in most cases.

45. We also plan to work-up ideas for developing a fast-track approach to enabling tenants to exercise their Right to Manage. We will explore whether, under Right to Manage Regulations, Tenant Management Organisations might use model work programme templates to take over management responsibilities for a limited number of services. This would enable them to proceed through the Right to Manage processes faster than a Tenant Management Organisation wishing to cover a wider range of services.

**Question 6: Are there other ways in which Government could encourage voluntary or alternative routes to housing management?**

## **Cost Impact on Local Authorities**

47. The streamlined Right to Manage will reduce burdens on local authorities by removing requirements on them to prepare and publish, jointly with the Tenant Management Organisation, a feasibility document on the proposal; and to notify the Secretary of State of the results of the ballot and to send the agreement to the Secretary of State. Additionally, key partners have agreed to work to reduce the development costs of Tenant Management Organisation, and this includes plans to cap grant levels. These changes will enable more Tenant Management Organisations to access grant support, whilst reducing the cost impact on Government and local authorities.
48. In the case of Right to Transfer there may be a number of discretionary costs that a local authority could incur, for example in putting together a case to go to the Secretary of State to make a determination to stop the process. As these costs are both voluntary and to the benefit of the local authority Government believes that they should be met by local authorities within their existing budgets.
49. The Right to Transfer will impose a small non-discretionary financial burden on local authorities. These are the costs of supporting tenants groups eg the administrative costs involved in arranging meeting rooms and the provision of information. We will fund these through New Burdens.
50. Finally there are a number of costs which mirror the normal transfer requirements under Schedule 3A to the Housing Act 1985, ie the need to hold a ballot and to consult with tenants. We are not seeking to include these as a new burden as firstly, these are already requirements on local authorities who transfer stock and secondly, these costs are accounted for in the transfer valuation. In the event of a failed ballot, the Council has

to bear the cost. This is likely to be a legitimate consideration in deciding whether or not to proceed to ballot, and in any arbitration process.

## Equalities Impact Assessment

51. Equalities Impact Screenings have been prepared on the proposals contained in this consultation. We consider that the proposals will not have a disproportionate impact, nor will they treat unfairly any particular group. The tenant groups, which will represent tenants' interests in pursuing Right to Transfer or Right to Manage, must be open to all and cannot exclude any tenants. There has been no evidence to date that either of these Regulations will lead to discriminatory outcomes.

**Question 7: Could these Regulations lead to any unintended discriminatory impacts?**

## Summary of Questions

**Question 1: Do the Regulations (together with the guidance) meet the objective of being robust, but workable?**

**Question 2: Do the Regulations (together with the guidance) meet the objective of ensuring that the local authority has a route to halt the process if it has a detrimental impact?**

**Question 3: Do you agree that we should remove unnecessary requirements for local authorities to notify the Secretary of State of the results of the ballot and to send copies of Tenant Management Organisation agreements to the Secretary of State?**

**Question 4: Do you agree with our proposal to remove the requirement to prepare a feasibility study whilst retaining the 'offer' upon which tenants will vote?**

**Question 5: Do you agree with plans to work with the sector to streamline the guidance to help tenants exercise their Right to Manage?**

**Question 6: Are there other ways in which Government could encourage voluntary or alternative routes to housing management?**

**Question 7: Could these Regulations lead to any unintended discriminatory impacts?**

# Annex A

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STATUTORY INSTRUMENTS

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**2012 No. XXXX**

## **HOUSING, ENGLAND**

### **The Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2012**

<i>Made</i> - - - -	XXXX
<i>Laid before Parliament</i>	XXXX
<i>Coming into force</i> - -	XXXX

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The Secretary of State, in exercise of the powers conferred by section 34A of the Housing Act 1985<sup>(a)</sup>, 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 2012.

(2) These Regulations shall come into force on XXXX and apply in relation to England only.

#### **Interpretation**

2. In these Regulations—

“approved assessor” means a person approved by the Secretary of State for the purpose of assessing the competence of a tenant group under regulation 10;

“approved assessor service” means a person appointed by the Secretary of State to appoint an approved assessor on the application of a tenant group under regulation 10;

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

“house”<sup>(b)</sup> 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—

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<sup>(a)</sup> 1985 c. 68. Section 34A was inserted by section 296 of the Housing and Regeneration Act 2008 (c. 17). The Secretary of State is the appropriate person for the purposes of these Regulations, *see* section 34A(9).

<sup>(b)</sup> *See* section 27AB(8) of the Housing Act 1985.

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- (a) any organisation which has entered into a management agreement with the authority under section 27 of the Housing Act 1985<sup>(a)</sup> which relates to the houses specified in a proposal notice; and
- (b) in a case in which the houses specified in the proposal are not located in the area of the authority, the local authority in whose area the houses are located;

“RPSH” means a registered provider of social housing<sup>(b)</sup>;

“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 RPSH; 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) contain or be accompanied by evidence that the tenant group has been assessed as competent by an approved assessor under regulation 10;
- (d) specify the houses and the area to which it relates;
- (e) provide or be accompanied by evidence that the houses and the area so specified meet the conditions contained in paragraph (3);

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

<sup>(b)</sup> See section 34A(9) of the Housing Act 1985.

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- (f) 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;
  - (g) state that members of the tenant group are willing to work together, co-operate with the authority, and undergo any necessary training to enable members to make informed choices about options available for the disposal and management of the houses; and
  - (h) contain evidence to show that the tenant group has used reasonable endeavours to notify tenants of the houses identified 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 25 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 upon 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.

(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

#### **Assessment of the competency of the tenant group**

**10.**—(1) Prior to the service of a proposal notice the tenant group must apply to the approved assessor service to appoint an approved assessor.

(2) The approved assessor must report on the competence of the tenant group to pursue a proposal for the disposal of the houses identified in the constitution of the tenant group to a RPSH.

(3) The report described in paragraph (2) must—

- (a) state whether or not the approved assessor concludes that the tenant group is competent; and
- (b) if the approved assessor concludes that the tenant group is not competent, suggest the action the approved assessor believes the tenant group should take to ensure that the tenant group becomes competent.

(4) The approved assessor service may refuse to appoint an approved assessor where, on two occasions during the 12 month period preceding the application for his or her appointment, an approved assessor has previously assessed the tenant group and reported that the tenant group was not competent.

#### **Service of proposal notice**

**11.**—(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; or
  - (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**

**12.** 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**

**13.**—(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) a proposal is rejected on the ground set out in paragraph (1)(a); and

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- (b) the Secretary of State has determined that the proposals contained in the previous proposal notice would have a significant detrimental effect on the provision of housing services in the area

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 because there has been a significant change in circumstances since the previous determination.

(3) Where the proposal is rejected on grounds other than the ground set out in paragraph (1)(a), the tenant group may, within 21 days of receipt of the authority's acknowledgement of receipt of the proposal notice, refer the matter to an arbitrator.

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

14. 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 RPSH set out in the proposal notice will have a significant detrimental effect on the provision of housing services in the area of the authority.

## PART 3

### Feasibility Study Stage

#### **Feasibility study**

15.—(1) Where—

- (a) the authority has accepted a proposal notice under regulation 11(2);
- (b) the Secretary of State has determined that the proposal notice should be accepted under regulation 13(2) or regulation 14;
- (c) an arbitrator has decided that there were no grounds for the authority to reject the proposal notice upon a reference to an arbitrator under paragraph (3) of regulation 13; or
- (d) the authority has not lodged an application with the Secretary of State for a determination under regulation 14 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 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 RPSH; and
- (c) the feasibility of each option.

#### **Duties of the authority – feasibility study stage**

16.—(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.

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(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 notice

**17.**—(1) On the completion of the feasibility study, the tenant group must send notice of that fact (“a feasibility study notice”) to the authority.

(2) The notice under paragraph (1) must also be accompanied by—

- (a) a statement that it is a notice 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 RPSH, 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—

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

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

- (j) the feasibility study notice is accepted;
- (k) the feasibility study notice is rejected and set out the grounds for rejection; or
- (l) 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 notice in accordance with paragraph (4), the authority is deemed to have accepted the notice.

### Rejection of the feasibility study notice

**18.**—(1) The authority may reject the feasibility study notice on the grounds that it does not meet one or more of the conditions in regulation 17(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 notice, refer the matter to an arbitrator.

## PART 4

### Development Stage

#### Duties of the authority - development stage

**19.**—(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 notice and the decision of the tenant group is to proceed with an option or options for the disposal to a RPSH of the houses identified in the feasibility study notice;
- (b) the arbitrator has decided that there are no grounds for the authority to reject the feasibility study notice;
- (c) there has been a determination by the Secretary of State that the disposal of the houses specified in the proposal notice to a RPSH will not have a significant detrimental effect on the provision of housing services in the area of the authority; or
- (d) the authority has not applied to the Secretary of State for a determination under regulation 14 within 21 days of the authority's acknowledgement of receipt of the feasibility study notice.

(2) The authority must—

- (a) agree a timetable with the tenant group providing for the matters set out in regulation 20; 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 RPSH.

#### Content of the timetable

**20.** The timetable agreed in paragraph (2)(a) of regulation 19 must provide for—

- (a) the development of the option or options for the disposal of the houses to a RPSH 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 RPSH, the time by which the authority must seek the Secretary of State's consent under paragraph 2 of Schedule 3A of the Housing Act 1985<sup>(a)</sup>.

#### Failure to agree a timetable

**21.** 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 19; or
- (b) fails to or unreasonably refuses to provide facilities and information to the tenant group pursuant to paragraph (2)(b) of regulation 19.

#### Consultation with tenants

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

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<sup>(a)</sup> Schedule 3A was inserted by the Housing and Planning Act 1986 (c. 63) section 6(2), (3) and Schedule 1 and amended by S.I. 1997/74, article 2, Schedule paragraph 3(1)(i) and the Housing and Regeneration Act 2008, section 294.

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- (a) the proposal selected by the tenant group including the identity of the RPSH 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 23 and Schedule 3A 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<sup>(a)</sup> (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.
- (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 23 (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 tenants to ascertain whether or not the tenants wish for the disposal of the houses and land to the specified RPSH 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; and
  - (b) whether the consent of the Secretary of State to the disposal of the houses and land pursuant to regulation 23 will be sought by the authority.
- (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

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<sup>(a)</sup> 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.

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- (b) the authority does not consider it appropriate to arrange a ballot under paragraph (5)(b).

### Seeking consent of the Secretary of State

#### 23. Where—

- (1) the result of the ballot held pursuant to paragraph (5) of regulation 22 indicates—
  - (a) the majority of secure tenants and introductory tenants wish the proposal to proceed; and
  - (b) the majority of the tenants wish the proposal to proceed; and
- (2) the tenant group wishes to proceed,

the authority must seek the consent of the Secretary of State under paragraph 2 of Schedule 3A to the Housing Act 1985 for the disposal of the houses and land contained in the proposal.

## PART 5

### Determination by the Secretary of State

#### Interpretation

#### 24. In this part—

“applicant” means—

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

“respondent” means—

- (c) the authority where the tenant group is the applicant; or
- (d) 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 notice (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), 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

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- (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.

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

date

Minister of State  
Department for Communities and Local Government

### **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 here 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 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 6 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 state and provides for:

- (h) assessment of the competency of the tenant group (regulation 10);
- (i) service of the proposal notice (regulation 11);
- (j) acceptance of the proposal notice (regulation 12);
- (k) rejection of the proposal notice (regulation 13); and
- (l) request for a determination by the Secretary of State (regulation 14).

Part 3 is the feasibility study stage and provides for:

- (m) a feasibility study (regulation 15);
- (n) the duties of the authority (regulation 16);
- (o) the content of the feasibility notice (regulation 17); and
- (p) the grounds on which an authority may reject a feasibility notice (regulation 18).

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Part 4 is the development stage and provides for:

- (q) the duties of the authority (regulation 19);
- (r) the timetable to take forward an proposal (regulation 20);
- (s) procedure on the failure to agree a timetable (regulation 21);
- (t) consultation with tenants (regulation 22); and
- (u) Secretary of State consent (regulation 23).

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



# Annex B

## **STATUTORY GUIDANCE**

### **THE HOUSING (RIGHT TO TRANSFER LOCAL AUTHORITY LANDLORD) (ENGLAND) REGULATIONS 2012**

#### **Statutory guidance to English local authorities and groups of their tenants on exercising their powers under, and meeting the requirements of, the Housing (Right to Transfer Local Authority Landlord) (England) Regulations 2012**

##### **Introduction**

1. These Regulations compel local authorities to co-operate with a group of its tenants who wish to explore the benefits of a change of landlord. Where a transfer proves to be the favoured and viable option the Regulations compel the local authority to commence the formal process of transferring ownership of those homes to a registered provider of social housing.
2. Any such transfer proposal is still subject to existing legislation on stock transfers: that is, the transfer cannot go ahead unless a majority of secure and introductory tenants of the homes in question vote in favour in a ballot organised by the local authority and the Secretary of State has granted consent. The Regulations also allow the authority to, at any time, request the Secretary of State to halt the proposal if it would have a significant impact on the authorities ability to deliver its housing services outside the affected area.
3. Section 296 of the Housing and Regeneration Act 2008 inserted a new section (Section 34A) into the Housing Act 1985. Section 34A provides powers to the appropriate person (which in England is the Secretary of State) to make Regulations for imposing requirements on a local housing authority in any case where a tenant group serves written notice on the authority proposing that the authority should dispose of particular land held by them for the purposes of Part II of the Housing Act 1985, or a particular description of such land, to a relevant housing provider (which, again in England, is a registered provider of social housing).
4. Using the powers provided the Secretary of State has made the Housing (Right to Transfer Local Authority Landlord) (England) Regulations 2012 (“the Regulations”). The Regulations include a requirement that any person exercising functions under the Regulations must act in accordance with any guidance or directions given by the Secretary of State. This is such guidance (see Regulation 3).

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### **The Regulations**

#### Regulation 4 - the tenant group

5. The tenant group must meet certain criteria before it can serve notice on its local authority: i.e. before it can use these Regulations to compel its local authority landlord to co-operate.
6. These Regulations are primarily concerned with empowering local authority tenants who hold secure tenancies. It is a condition therefore that such tenants form the majority of the group. Other tenants (most notably leaseholders) will want and need to be members, their participation is important, but the group must be clearly led by secure tenants.
7. It also important the tenant group can demonstrate that it has a level of local support; the legislation therefore makes clear that at least 20% of the tenants of the houses situated in the area affected by the proposal are members of the tenant group. To prevent the proposals falling at later stages due to lack of support from effected tenants it is in the best interests of all that as many tenants as possible are members and involved in the discussions.

#### Regulation 5 - the Proposal Notice

8. The proposal notice must include certain details and evidence, otherwise the local authority can refuse to accept it.
9. The group will have to provide evidence that it meets the criteria in Regulation 4 around membership of the tenant group. This need be simply a copy of the group's constitution plus a list of members and their tenancy status. It is possible that the group will not know the tenancy status of people who are not members of the group but who nonetheless occupy homes in the proposal. The local authority should therefore inform the group of the total number of tenants and of secure and introductory tenants in the area covered by the notice if requested to do so. The constitution should also make clear that all members of the group are able to vote, which will satisfy the requirement on this when voting on serving the proposal notice.
10. The group need to provide evidence that reasonable notice was given of the time and place of the meeting at which the attending members supported the serving of the notice – two weeks would normally be adequate notice. This notice will also have needed to be clear that the meeting was to discuss the serving of the proposal notice on the local authority to begin the process of exploring potential transfer of the housing from local authority ownership. The notice to attend should have also made clear that the proposal notice was going to be voted on at the meeting.
11. In providing evidence to the local authority that the group has met the requirements in paragraph 10, the group should simply provide a copy of the notice (with the date it was sent out and a confirmation it was sent to all members of the group), a record of the meeting at which the vote to serve was taken, a list

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of those attending and a confirmation that the meeting was quorate under the group's constitution and a record of the vote.

12. The tenant group can serve notice only if it wishes to explore the benefits of a change of ownership and this should be clear in the proposal notice. The group cannot compel its local authority to co-operate if it wishes to explore changes of management that do not require a change of ownership. Where this is the case, the tenant group may wish to consider powers available to it under the Housing (Right to Manage) (England) Regulations 2012.
13. The tenant group and local authority must be mindful at all times that the proposal could affect tenants who are not members of the group. They should pay particular attention to those tenants for whom English is not their first language and other groups, such as disabled people who may have problems accessing meetings and information (for example information displayed on local notice boards). The group will want to provide evidence that they have kept such people informed of its plans and have not been unintentionally discriminated against by finding it difficult to attend or participate in meetings of the Tenant Group.
14. The Regulations require that the homes in question form a "geographically coherent" area. That is, the homes in question must represent as a whole something clearly recognisable as a single locality; for example, a block of flats or a single street. We wish to avoid proposals coming forward that include properties spread out over a wide area or are physically separate from one another.

### Regulation 6 - Agreement for extension of time

15. It is important that the Regulations allow a flexible common-sense approach. Where it is reasonable that a deadline be postponed then the Regulations permit this where both parties agree.

### Regulation 8 - Appointment of an arbitrator

16. The tenant group and local authority should agree the appointment of an arbitrator as soon as possible and not wait until a dispute occurs. Where the two parties cannot agree after a reasonable period of time either of them can apply to the Secretary of State to make the appointment. The Secretary of States decision on who to appoint will be binding.
17. All decisions by the arbitrator will be final.

### Regulation 10 - Assessment of the competency of the tenant group

18. When serving the proposal notice the tenant group must also provide evidence that it has been assessed as competent by an "approved assessor". The assessor will question the group's collective knowledge, understanding and willingness to undertake the task before them. Government does not want local authorities to be compelled to co-operate with groups of tenants who are unable to take forward the process effectively. Where the group is failing to meet the standard the assessor will tell them where they are failing, and if appropriate advise on who they could

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approach to support them in improving to meet the necessary standard. It is not the responsibility of the assessor to tell the tenants what they need do to meet the standard.

19. The approved assessor service can refuse to appoint an assessor if the group has been deemed not competent twice in the 12 months before the group applied for an assessor to be appointed.
20. The tenant group can obtain the services of an approved assessor by contacting the approved assessor service at [.....].

### Regulation 11 - Service of proposal notice

21. The local authority must acknowledge receipt of the notice within 28 days, advising the group whether it accepts the notice (see Regulation 12), rejects it (see Regulation 13) or intends seeking a determination by the Secretary of State (see Regulation 25). If the local authority does nothing, it will be regarded as having accepted the notice.
22. At this, and other points in the process, the local authority needs to inform “interested parties” of the proposal and its progress. Such parties must include
  - any organisation that has entered into an agreement with the local authority to manage any of the homes subject to the proposal (this could be another social landlord, an Arms Length Management Organisation, or a private company), and
  - the local authority where the homes are located if this is not the landlord authority (some local authorities own homes outside their administrative boundaries).

### Regulation 12 - Acceptance of a proposal notice

23. Acceptance of the proposal notice by the local authority is a requirement before the process moves to the feasibility stage. The default position is that a local authority will accept the proposal notice, unless there is a specific reason under the Regulations which allows them to reject (see Regulation 13). Acceptance of the proposal notice, does not mean that the local authority supports the process of transfer.

### Regulation 13 - Rejection of the proposal notice

24. The local authority may reject the proposal notice if it feels it does not meet the requirements of Regulation 5 (see paras 8-14). The local authority must make it clear which aspects of Regulation 5 the notice does not meet and Government would encourage the local authority to be helpful in suggesting to the group how the notice might be re-presented to make it acceptable.
25. Where the group believes that the notice meet the requirements and has been wrongly rejected by the authority it can seek arbitration.

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26. The local authority may also reject the proposal notice if at least half the houses in the proposal were included in a similar proposal within the previous two years.
27. It is possible that the earlier proposal failed because the Secretary of State had previously determined that the proposed transfer of the houses set out in a previous proposal notice would have a significant detrimental effect on the provision of housing services in the area. Where the group feels that there has been such a significant change in circumstances since the earlier determination that the Secretary of State's decision may be different - the group may serve a determination notice on the Secretary of State to determine that the notice should be accepted. (See also Regulation 25.)
28. In presenting such a notice the tenant group would have to present clear evidence of the change in circumstances.

### Regulation 15 – Feasibility study

29. The process moves to the Feasibility Stage
  - a. if the local authority does not acknowledge receipt of the proposal notice setting out that the notice is rejected and reasons for rejection
  - b. if after the authority has requested a determination the Secretary of State has decided the process continues
  - c. if, after arbitration, the arbitrator decides that there are no grounds for the authority not to accept the proposal notice
  - d. the authority has not asked the Secretary of State to make a determination that the process be halted within 21 days of receipt of the proposal notice
  - e. the local authority accepts the proposal notice.
30. It is the responsibility of the tenants group to prepare the feasibility study. The feasibility study must confirm the houses to be transferred and that these are the same as identified in the proposal notice. They should also make clear what the options are and this should specifically include the option of no-change (ie the houses stay with the local authority).
31. The group should then address the feasibility of each option, including the no-change option. It is in the best interests of the tenant group at this stage to provide a detailed feasibility case, detailing both the pros and cons. If at this stage the case does not show advantages to tenants it will save time and effort being wasted in later stages and allow tenants to look into other options, which will give them greater control over the properties, short of transfer.

### Regulation 16 - Duties of the authority - feasibility study stage

32. If the local authority has not refused the notice, the process moves to the feasibility study; ie where the group's explores various change of ownership options. The local authority has a duty to provide necessary facilities e.g. meeting rooms, reasonable photocopying / print facilities, plus the provision of information relevant to each of the options (e.g. the tenancy status of occupants of the homes, rent and service charge levels, annual cost of maintenance etc). The feasibility stage should work to a timetable agreed with the tenant group.

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33. In providing information the local authority must be mindful of the privacy of individual tenants. It should refuse to supply information that is house or occupant specific unless the tenant agrees to them doing so. However, in cases where they cannot provide individualised information they should look at other ways of doing so, eg by removing data which would identify individuals or households or by providing it in a format which anonymises the information.

### Regulation 17 - Feasibility study notice

34. At the conclusion of the study the tenant group must present its decision to the local authority. This decision will be either:
- a. a statement that the group wishes to take forward the transfer of their homes to an identified new landlord; or,
  - b. a statement that the group wishes to take forward the transfer of their homes to an as yet unidentified new landlord; or,
  - c. a statement that a majority of members of the group wish to remain tenants of the local authority.
35. Where a majority of members of the group wish to remain local authority tenants, then the process ends along with any further obligations under these Regulations on either the local authority or the group.
36. Where transfer of ownership remains the favoured option, the group must provide evidence that a majority of all tenants of the homes in question (i.e. not just those who are members of the group) do not oppose the transfer of their homes to another social landlord. This does not need to be evidence that tenants are in favour of transfer; simply evidence that the majority do not object in principle to a change.
37. This is probably best demonstrated by the results of a test of opinion carried when the feasibility study is near completion but before the end. If conducted too early in the process tenants may not have been fully exposed to arguments and evidence that might result in a change of mind.
38. The tenant group must be very clear in communicating to their neighbours in any properties that would be transferred that this is the group's proposal and that at this stage it is simply seeking informal views without commitment. The group should invite tenants to express whether they support or oppose transfer, or have no firm views. Most importantly, the group must explain that the process will not continue if the majority object in principle to the notion of transfer and remind people that any transfer would still be subject to a formal ballot later in the process and the Secretary of State's consent.
39. Because there is a formal ballot later in the process we would strongly encourage tenant groups **NOT** to use a ballot before the end of the feasibility study as a means of demonstrating support. Holding two ballots on different but closely related questions is likely to cause confusion.

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### Regulation 18 – Rejection of the feasibility study notice

40. The local authority can only reject the feasibility study if it fails to contain the information requested under Regulation 17 which is:
- a statement that this is a notice given under these Regulations;
  - the feasibility study itself;
  - a record of the tenants group's decision on the transfer of the houses;
  - that at the meeting to agree the group's decision on the transfer of the houses that the majority of members voted for this decision;
  - a statement that the tenant group are of the view that the majority of tenants do not oppose the decision to transfer the housing; and
  - evidence which supports this statement
41. The local authority cannot reject the feasibility study on the grounds it disagrees with the feasibility study evidence and the outcomes; though if it believes the chosen option is unworkable or unfeasible it would want to make this clear during the consultation with tenants.

### Regulation 19 - Duties of the authority - development stage

42. If the group's favoured option is transfer and the local authority has not refused the feasibility study notice, then the local authority must proceed to work with the tenant group on finalising its proposals and, if necessary, progressing to the formal consultation process - all to a timetable agreed with the tenant group.
43. It is important that the timings set out in the timetable are both reasonable and realistic; whilst a tenant's group may wish to move ahead quickly with the proposal they should not underestimate the scope of work involved and how long this will take.
44. The next stage (which may have been completed already) is to move to identifying a landlord to take ownership of the homes. The tenant group should lead on this, but as with all actions in the development stage the local authority should provide reasonable facilities and information as appropriate.
45. The landlord must be a Registered Provider of Social Housing. Whilst it is theoretically possible to look to create a new Registered Provider to take ownership of the housing, the relatively small amounts of housing likely to be transferred will make this uneconomical in most cases.
46. It is the tenant group's interest to start the process of identifying a suitable registered provider as soon as possible in the process; not least because the providers themselves may wish, as part of the feasibility stage, to satisfy themselves that any transfer fits with their wider business and presents value for money (eg by taking on new stock they are not committing to costs which would need to be funded by their existing tenants).

### Regulation 22 - Consultation of tenants

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47. Once a landlord has been identified, the local authority is required to formally seek the views of all tenants in the affected houses. Regulation 22 mirrors the requirements of Schedule 3A to the 1985 Housing Act, which sets out the need to consult with secure tenants and introductory tenants. Following the requirements of Regulation 22 is likely to satisfy the requirements of Schedule 3A paragraph 3(2) to (6), so there should be no need to have a separate ballot to fulfil the requirements in Schedule 3A.
48. The regulation requires the local authority, to a timetable agreed with the tenant group, to serve notice in writing on each tenant informing them of:-
- the proposal to transfer properties from the local authority and the identity of the proposed new landlord,
  - the likely consequences of the disposal for the tenant, both positive and negative,
  - that following a ballot, if the majority of tenants wish for a transfer (and a majority of secure and introductory tenants within that) the authority will seek the formal agreement of the Secretary of State; and
  - for secure tenants the preservation of their right to buy rights
  - informing them that they can comment on the proposal to the authority within a specified period of time. When agreeing this period of time, the authority and tenant group should take account of the fact that some tenants may not have followed the discussions and will need time to understand the proposal and potentially seek advice before responding. Both the authority and tenants group should also be aware that for some tenants English may not be their first language or they have disabilities which will impact on their ability to give a swift response.
49. In serving a notice under Regulation 22 the local authority should follow the statutory Guidance on meeting the requirements of paragraph 3 to [Schedule 3A to the Housing Act 1985](#). In addition, the local authority should be prepared to make clear any reasons for opposing the proposed transfer and clearly set out its reasons why, but it should also include a statement from the tenant group explaining its reasons for pursuing transfer. There could also be evidence available which has been collected and analysed as part of the feasibility study, which may also be utilised in the consultation. The local authority must also explain the ballot process and what a majority vote either way would mean.
50. The authority shall consider with the tenant group any representations made to them within the period. If needed, and with the agreement of the tenant group, the authority should serve a further written notice on the tenants informing them of any significant changes the tenant group has decided to make to its proposal and that the tenant group may write to the Secretary of State with any objections to the proposal within 28 days (or longer if both the tenant group and authority agree). It should also confirm that there will be no transfer if the majority of tenants do not support it.
51. It is possible that the response to either notice would give a very clear indication that a ballot would be highly unlikely to result in a vote in favour of transfer and the worth of such a ballot would be called into question. In such situations the



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local authority would wish to discuss with the tenant group whether to abandon the proposal. If the local authority and the tenant group fail to agree on whether it would be appropriate to proceed to a ballot, the tenant group could if necessary go to arbitration.

52. If the proposal is to be put to the test of a ballot, then in order to demonstrate compliance with the ballot requirements in Schedule 3A, it will be necessary to distinguish the votes of secure tenants and introductory tenants from those of other tenants. Using different coloured ballot papers would be a simple but effective device to consider. This will also be necessary to show compliance with Regulation 23 (see below). People should understand that the ballot relates to the consultation with tenants under Regulation 22 and to Schedule 3A of the Housing Act 1985.

### Regulation 23 - Seeking consent of the Secretary of State

53. The transfer proposal can move to the next stage (i.e. Secretary of State consent) only if:
- a. a majority of all those voting supports transfer, AND
  - b. within that majority there is also a majority of secure and introductory tenants supporting transfer
54. Where this is the case, the local authority must seek the consent of the Secretary of State to transfer the homes.
55. If this is not the case, the proposal ends; as do any requirements imposed on the local authority by these Regulations, including any requirement to seek the Secretary of State's consent to transfer.
56. It is worth noting that these are the only conditions that need be met: it is not necessary, in addition, to secure a majority vote amongst tenants who are not secure tenants in order to proceed to the next stage.
57. The Secretary of State is not obliged to grant consent to transfer. As with any transfer, he will wish to consider the wider public interest and, in particular, any representations he has received on the matter, especially those from tenants or the local authority. However, if a local authority has not sought a determination before balloting, or the Secretary of State has previously refused to stop the process after receiving a determination from the local authority, it is likely he will place strong weight on the fact that tenants have democratically voted to transfer their stock.

### Regulation 25 - procedure (Determination by Secretary of State)

58. At any point after the tenant group serves its first notice on the local authority either party can serve a determination notice on the Secretary of State. Either party can serve such a notice at any time and for any reason. The notice effectively seeks the Secretary of State to direct whether the process should or should not continue.

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59. It is most likely that the tenant group would serve such a notice where its proposal notice had been previously rejected (see Regulation 13) and before an arbitrator is appointed.
60. The local authority is likely to serve such a notice where it feels the transfer would not be in the wider public interest, or be significantly detrimental to the housing service it would be able to provide to its tenants post-transfer, or be significantly detrimental to its remaining tenants who would be affected by the transfer.
61. The tenant group or local authority must provide clear evidence to support whatever is its case.
62. The Secretary of State will not consider a determination notice where the local authority simply objects to the transfer in principle. Nor will he consider one where the local authority believes that the outcome of transfer is detrimental to the tenants in stock being transferred. An authority can object only where it can show clear evidence of a significant detrimental impact on the local authority's ability to provide housing or other services in the wider authority area.
63. Similarly, the Secretary of State will not consider a determination notice that seeks to protest about the decision of the arbitrator. The arbitrator's decision is final.
64. It is important that the other party (the tenant group if the applicant is the local authority, the local authority if the applicant is the tenant group) has the opportunity to comment on the determination notice. Regulation 25 provides for this.
65. It is no one's interest to work on a proposal that would never be effected. Government would therefore strongly encourage either party to serve a determination notice on the Secretary of State as soon as it has evidence to support its case.
66. There is no limit to the number of times either party can serve such a notice. This is because it is possible that further evidence may come to light not available at the time of an earlier notice. Government would however strongly encourage both parties where they have more than one reason to issue a determination notice to present all evidence in one go. Government wishes to discourage the drip-feeding of notices: i.e. making representations on one ground, having it rejected, then making representations on separate grounds, but ones known at the time of the first notice. Where further evidence comes to light that was not available at the time of an earlier notice, parties will be expected to demonstrate or explain why the further evidence was not available previously.

### **Circumstances under which the duty on a local authority ends**

67. The duties and obligations under these Regulations end when:
  - the tenant group formally advises the local authority it no longer wishes to consider transfer of ownership of the homes in question;

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- the tenant group does not comply with the Regulations and does not seek to challenge the authority's decision to cease co-operation with the arbitrator;
- the arbitrator determines that tenant group has not complied with the Regulations to such an extent that the local authority does not need to continue to co-operate;
- the Secretary of State in response to a determination notice directs that the local authority does not need to co-operate;
- a majority of all tenants or a majority of secure and introductory tenants of all the homes in question vote against transfer;
- the Secretary of State withholds consent to transfer; or
- transfer of ownership of the homes to a registered provider is completed.

End of Guidance

# Annex C

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STATUTORY INSTRUMENTS

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**2012 No. XXXX**

## **HOUSING, ENGLAND**

### **The Housing (Right to Manage) (England) Regulations 2012**

<i>Made</i> - - - -	XXXX
<i>Laid before Parliament</i>	XXXX
<i>Coming into force</i> - -	XXXX

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The Secretary of State in exercise of the powers conferred by sections 27(4) and (17) and 27AB of the Housing Act 1985<sup>(a)</sup>, makes the following Regulations:

## PART 1 GENERAL PROVISIONS

### **Citation, commencement and application**

1.—(1) These Regulations may be cited as the Housing (Right to Manage) (England) Regulations 2012 and shall come into force on XXXX 2012.

(2) These Regulations apply in relation to houses and authorities in England only.

### **Partial revocation of the Housing (Right to Manage) Regulations 2008**

2. Subject to Part 6 of the Regulations, the Housing (Right to Manage) (England) Regulations 2008<sup>(b)</sup> are revoked.

### **Interpretation**

3. In these Regulations—

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<sup>(a)</sup> 1985 c.68. Section 27 was substituted by S.I.2003/940, article 2 and amended by S.I. 2010/844. Section 27AB was inserted by the Leasehold Reform, Housing and Urban Development Act 1993 (c.28) section 132(1) and amended by the Housing Act 1996 (c.52) section 222, Schedule 18, paragraph 3(5); the Local Government Act 2003 (c.26) section 127(2), Schedule 8, Part 1; S.I.1997/74 article 2, Schedule paragraph 3(c); Housing and Regeneration Act 2008 (c.17) section 195 and S.I. 2010/844.

<sup>(b)</sup> S.I.2008/2361 .

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“the 2008 Regulations” means the Housing (Right to Manage)(England) Regulations 2008;

“acceptance date” means the date on which a tenant management organisation receives a notice under regulation 11(a) that an authority has accepted its proposal notice;

“approved assessor” means a person approved by the Secretary of State for the purposes of assessing the competence of tenant management organisations under regulation 13(1);

“approved assessor service” means a person designated by the Secretary of State to appoint an approved assessor on the application of a tenant management organisation under regulation 13(1);

“area” in relation to a tenant management organisation, means the area specified in its constitution in accordance with regulation 4(1)(b);

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

“commencement date” means the date on which these Regulations come into force;

“competence” refers to the competence of a tenant management organisation to exercise the management functions set out in the offer notice;

“house”<sup>(a)</sup> includes—

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

“management functions” has the same meaning as in section 27 of the Housing Act 1985;

“offer notice” means the offer notice prepared by the authority and TMO under regulation 14;

“proposal notice” means a notice which complies with regulation 9;

“support” means the provision or financing by an authority of office accommodation, facilities or training;

“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;

“TMO” means a tenant management organisation; and

“TMO agreement” means an agreement required to be made between an authority and a tenant management organisation under regulation 16.

### Definition and general duties of tenant management organisations

**4.**—(1) A tenant management organisation is an organisation which satisfies the following conditions<sup>(b)</sup>—

- (a) it has a constitution, available in written form;
- (b) its constitution specifies an area in relation to which it seeks to enter into a TMO agreement with an authority;
- (c) its constitution provides that any tenant of a house in that area may become a member of the TMO;
- (d) its constitution provides that, in conducting its affairs, the TMO must avoid any unlawful discrimination;
- (e) its constitution provides that the affairs of the TMO must be conducted either—
  - (i) by the members of the TMO at a general meeting; or
  - (ii) by a committee or board of directors elected by members of the TMO.

(2) For the purposes of these Regulations, a TMO—

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<sup>(a)</sup> “House” is defined for the purposes of Part 2 of the Housing Act 1985, in section 56.

<sup>(b)</sup> See section 27AB(8) of the Housing Act 1985.

## Giving Tenants Control: Right to Transfer and Right to Manage Consultation

- (a) is not disqualified from being a TMO if its constitution contains provision for matters other than those specified in paragraph (1); and
  - (b) does not cease to be a TMO if its constitution is at any time amended to contain such provision.
- (3) In exercising its functions under these Regulations, a TMO—
- (a) must act in accordance with the provisions of its constitution relevant to the exercise of its functions under these Regulations; and
  - (b) must have regard to any guidance provided from time to time by the Secretary of State relevant to the exercise of its functions under these Regulations.

### Agreement for extension of time

5. Where any person is required or authorised to exercise any function under these Regulations within a specified period, the TMO and the authority concerned may by agreement before the expiry of that period, extend the period for a further specified period.

### Security of ballot

6. Any ballot held under these Regulations must be organised so that the vote cast by any individual is kept secret.

### Written communications

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

### Disputes between authorities and TMOs

8.—(1) Where an authority and a TMO cannot resolve a dispute that has arisen between them concerning the application or interpretation of any provision of these Regulations or the TMO agreement, either party may refer the matter for determination to an arbitrator agreed between them or, in default of agreement, appointed by the Secretary of State.

(2) In making the referral described in paragraph (1), the authority and the TMO must have regard to any guidance provided from time to time by the Secretary of State as to the procedure and conduct of the arbitration.

## PART 2

### INITIATING THE PROCESS STAGE

#### Proposal notices

9.—(1) A notice is a proposal notice if it complies with paragraphs (2) and (4) and is served on an authority by a TMO.

(2) The notice must contain the following—

- (a) a statement that the authority on which it is served enter into a TMO agreement with the TMO serving the notice;
- (b) a statement that the subject of the proposed TMO agreement be the management of houses within the TMO's area of which, at the time the notice is served, at least 25 are let under secure tenancies; and
- (c) a statement that those houses to which the proposed TMO agreement relates are within the TMO's area.

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- (3) The notice must be accompanied by evidence demonstrating that the requirements in regulation 10 have been complied with.
- (4) A proposal notice must not contain a proposal relating to houses already included in an existing management agreement between a TMO and an authority unless—
- (a) all of those houses are included in the proposal and the TMO which serves the notice is a party to that existing management agreement; or
  - (b) the number of houses which are the subject of the existing agreement is greater than 2500.

### Consultation and membership requirements relevant to proposal notices

#### 10. A TMO must—

- (a) before serving a proposal notice on an authority, use its best endeavours to deliver a copy of the notice to every house which is identified in the proposal notice;
- (b) be satisfied that before serving a proposal notice—
  - (i) a majority of members of the TMO voted in favour of serving the notice at a ballot of all members; or
  - (ii) a majority of members of the TMO in attendance at a properly constituted general meeting voted in favour of a resolution to serve a notice;
- (c) at the time the notice is served, ensure that the membership of the TMO includes—
  - (i) at least 20% of the tenants; and
  - (ii) at least 20% of the secure tenants, of the houses identified in the proposal notice.

### Acceptance and refusal of proposal notices

11.—(1) Subject to paragraphs (4) and (5), an authority on which a proposal notice is served must accept it.

- (2) An authority must notify the TMO within 28 days of receiving the proposal notice—
- (a) whether it has accepted or refused the proposal notice; and
  - (b) where it has refused, the reasons for the refusal.
- (3) Where an authority accepts a proposal notice, it must at the time of notification under paragraph (2)—
- (a) inform the TMO of any other management organisation or person which already exercises management functions in relation to the houses identified in the proposal notice; and
  - (b) provide a copy of the proposal notice to any other such management organisation or person.
- (4) An authority may refuse to accept a proposal notice if it contains a similar proposal to one contained in a previous proposal notice, and—
- (a) at least half of the houses identified in the current proposal notice were also identified in the previous proposal notice; and
  - (b) within the two years preceding the date on which the current notice is received, the previous proposal notice was withdrawn voluntarily, by the TMO, or was deemed to be withdrawn as mentioned in—
    - (i) regulation 13(8) (competence of TMO);
    - (ii) regulation 15(4) (refusal of offer to tenants); or
    - (iii) regulation 17 (failure to register TMO).



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(5) An authority may refuse to accept a proposal notice if it has reasonable grounds for believing that the TMO which served the notice has failed to comply with the requirements of regulation 10(a) or (b), or that the requirements of regulation 10(c) have not been met.

### **Authority support following proposal notice**

**12.**—(1) Where an authority has accepted a proposal notice, the TMO which served the notice may make a request to the authority for such support as is specified in the request, being support that is reasonably required for the purposes of pursuing the proposal notice.

(2) On receipt of a request under paragraph 1, the authority must—

- (a) determine the support which it considers the TMO reasonably requires for the purposes of pursuing the proposal notice; and
- (b) notify the TMO of the determination within 28 days of receipt of the request.

(3) Subject to paragraphs (7) and (8) the authority must provide support in accordance with the determination under paragraph (2)(a).

(4) If a TMO is dissatisfied with an authority's determination under paragraph (2)(a) it may, within 28 days of being notified of the determination, refer the request to an arbitrator.

(5) Where a TMO makes a referral under paragraph (4) it must at the same time give notice of that referral to the authority.

(6) Within 28 days of a referral under paragraph (4) the arbitrator must—

- (a) determine the support which the arbitrator considers the TMO reasonably requires for the purposes of pursuing the proposal notice; and
- (b) notify the authority and the TMO of the determination.

(7) Where a determination has been notified under paragraph (6), the authority must provide support in accordance with that determination.

(8) Paragraph (3) does not apply if the proposal notice is withdrawn voluntarily by the TMO, or is deemed to be withdrawn under these Regulations.

## PART 3

### DEVELOPMENT STAGE

#### **Appointment of approved assessor to assess competence of TMO**

**13.**—(1) Where an authority has accepted a proposal notice, the TMO must within 3 months of the acceptance date, apply to the approved assessor service to appoint an approved assessor to report on the competence of the TMO to exercise the management functions set out in the proposal.

(2) The authority must arrange for the approved assessor to carry out the report.

(3) The report described in paragraph (1) must—

- (a) state whether or not the approved assessor concludes that the TMO is competent; and
- (b) if the approved assessor concludes that the TMO is not competent, suggest the action the authority and the TMO should take to ensure that the TMO becomes competent.

(4) The approved assessor must, within 15 months of the acceptance date, complete the report and provide it to the authority and the TMO.

(5) The authority and the TMO must—

- (a) use all reasonable efforts to take the action suggested by the approved assessor in accordance with paragraph (3)(b); and

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- (b) jointly agree an action plan to enable them to do so.
- (6) The authority must notify the approved assessor within 7 days of the action being completed.
- (7) The approved assessor must within 35 days of receipt of the authority's notification under paragraph (6) reassess whether or not the TMO is competent and notify the authority and TMO of his conclusion.
- (8) The proposal notice is deemed to be withdrawn—
  - (a) if a TMO and authority fail to comply with the requirements of this regulation; or
  - (b) if the approved assessor concludes under paragraph (7) that the TMO is not competent.

### Offer Notice

**14.**—(1) Within 15 months of the acceptance date, the TMO and the authority must jointly prepare an offer notice.

- (2) The offer notice must contain a statement describing—
  - (a) the management functions the TMO propose to exercise;
  - (b) the funding or budget to be allocated by the authority to enable the TMO to exercise those functions;
  - (c) the financial accountability and control procedures which the authority and the TMO will have in place; and
  - (d) the management and governance arrangements of the TMO.
- (3) In preparing the offer notice, the TMO and the authority must have regard to any guidance issued from time to time by the Secretary of State.

### Offer to tenants

**15.**—(1) Where the approved assessor concludes under regulation 13 that the TMO is competent, the authority must within 3 months of receiving his conclusion, make to the tenants of each house identified in the proposal notice, an offer containing—

- (a) the offer notice;
  - (b) the conclusion of the approved assessor; and
  - (c) information submitted by the TMO concerning the proposal.
- (2) The authority must arrange for a ballot to be carried out within 3 months of making the offer, with a view to establishing whether the tenants referred to in paragraph (1) wish to accept the offer.
- (3) The authority must within 14 days of carrying out the ballot notify the TMO of whether a majority of the tenants who voted and a majority of the secure tenants who voted—
- (a) accepted the offer; or
  - (b) refused the offer.
- (4) The proposal notice is deemed to be withdrawn where the offer is refused by—
- (a) a majority of the tenants who voted in the ballot; or
  - (b) a majority of the secure tenants who voted in the ballot.

**PART 4**  
**IMPLEMENTATION STAGE**

**Duty to enter into TMO agreement**

**16.**—(1) Subject to regulation 17, where—

- (a) a majority of the tenants who voted in the ballot under regulation 15(2), and
- (b) a majority of the secure tenants who voted in that ballot,

have accepted the offer, the authority must within 9 months of the date of the authority's notification under regulation 15(3), enter into a TMO agreement with the TMO.

(2) That TMO agreement must take into account any guidance issued from time to time by the Secretary of State relating to TMO agreements.

**Incorporation of TMO**

**17.** Unless within 9 months of the local authority's notification under regulation 15(2), the TMO is registered as—

- (a) an Industrial and Provident Society under the Industrial and Provident Societies Act 1965<sup>(a)</sup>; or
- (b) a company under the Companies Act 2006<sup>(b)</sup>

the proposal notice is deemed to be withdrawn and the authority is not required to enter into a TMO agreement.

**PART 5**  
**OTHER PROVISIONS RELATING TO TMOS**

**Guidance by Secretary of State**

**18.** Without prejudice to regulations 4(3)(b), 8(2), 14(3) and 16(2), any person exercising functions under these Regulations must have regard to any guidance given by the Secretary of State relevant to the exercise of those functions.

**Break clause in other housing management agreements**

**19.**—(1) This regulation applies to every agreement made under section 27(1) of the Housing Act 1985 between an authority and a manager<sup>(c)</sup> after the commencement date, where the agreement relates to—

- (a) the same houses; and
- (b) the same management functions in relation to those houses,

that are the subject of a subsequent TMO agreement.

(2) An agreement to which this regulation applies must contain the following terms—

- (a) that the authority must determine the agreement where it is required to enter into a TMO agreement; and

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<sup>(a)</sup> 1965 c.12.

<sup>(b)</sup> 2006 c.46.

<sup>(c)</sup> “Manager” is defined in section 27(2) of the Housing Act 1985, which was substituted by the Regulatory Reform (Housing Management Agreements) Order 2003 (S.I.2003/940.)

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- (b) that on the determination of the agreement, the authority and the manager must make arrangements for the transfer of the management functions from the manager to the TMO, if such arrangements are necessary.

(3) An agreement to which this regulation applies that, when made, does not contain the terms specified in paragraph (2) and (5), shall be treated as if it had always contained those terms.

(4) An authority must determine the agreement as soon as reasonably practicable after the date it is required to enter into a TMO agreement under regulation 16.

(5) The authority and the manager must make arrangements in accordance with paragraph (2)(b) within 3 months of the determination of the agreement.

### **Participation by authority in TMOs**

**20.** Where an authority proposes to enter into a TMO agreement with a TMO or has entered into a TMO agreement with a TMO, it may, at the invitation of the TMO concerned, nominate one or more persons to be directors or other officers of the TMO.

### **Agreements entered into voluntarily**

**21.** An authority may enter into a TMO agreement otherwise than in accordance with these Regulations where that agreement satisfies any requirements of sections 27 and 27AB of the Housing Act 1985.

## PART 6

### TRANSITIONAL AND SAVING PROVISIONS

#### **General transitional provision**

**22.** Except as mentioned in this Part, any function exercised, step taken or requirement satisfied in accordance with a provision in the 2008 Regulations before the commencement date must be treated on and after that date as a function exercised, step taken or requirement satisfied in accordance with the equivalent provision, where there is such a provision, of these Regulations.

#### **Proposal notices served under the 2008 Regulations**

**23.—**(1) This regulation applies where before the commencement date—

- (a) a TMO served a proposal notice pursuant to regulation 9 of the 2008 Regulations (referred to in the following provisions of this Part as a “regulation 9 notice”); and
- (b) the authority on which the notice was served neither accepted nor declined to accept the proposal notice.

(2) The authority may accept the regulation 9 notice on or after the commencement date and where it does so regulations 11(3) and 12 to 17 of these Regulations shall have effect as if the regulation 9 notice were a proposal notice within the meaning of these Regulations.

(3) The authority may, in accordance with regulation 11(2), (4) and (5) of the 2008 Regulations, refuse the regulation 9 notice but the authority shall not be treated as having done so unless, within the period specified in regulation 11(2) of those Regulations, it gives notice to that effect, stating its reasons for declining to accept the proposal notice.

#### **Local authority support following proposal notice**

**24.—**(1) Where, before the commencement date—

- (a) a TMO requested support under paragraph (1) of regulation 12 of the 2008 Regulations; and

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- (b) the authority did not make the determination referred to in paragraph (2) of that regulation,

the request for support shall be treated as a request made under regulation 12 of these Regulations and regulations 13 to 20 of these Regulations shall have effect as if the regulation 9 notice were a proposal notice within the meaning of these Regulations.

(2) Where—

- (a) on or after the commencement date—
- (i) the authority agrees to the TMO's request; or
  - (ii) an arbitrator notifies the authority and the TMO under paragraph (6) of regulation 12 of the 2008 Regulations of a determination made in relation to that request; and
- (b) the authority and the TMO have not commenced preparation of the feasibility study,

the TMO may appoint an approved assessor under regulation 13 of these Regulations and the authority and the TMO prepare an offer in accordance with regulation 14 of these Regulations.

(3) Regulations 13 to 20 of these Regulations shall apply in a case to which paragraph (2) applies as if the regulation 9 notice were a proposal notice accepted under regulation 11.

### **Subsequent procedure in relation to regulation 9 notices**

**25.**—(1) This regulation shall apply where, before the commencement date, the authority accepted a regulation 9 notice and agreed to provide support but did not enter into a management agreement under the 2008 Regulations.

(2) Subject to paragraph (3), regulations 13 to 20 of the 2008 Regulations shall continue to have effect.

(3) The 2008 Regulations cease to have effect at the end of the period of 3 years beginning with the date on which these Regulations come into force.

(4) A regulation 9 notice is deemed to have been withdrawn where a management agreement under the 2008 Regulations has not been entered into by the date the 2008 Regulations cease to have effect under paragraph (3).

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

Date \_\_\_\_\_  
Parliamentary Under Secretary of State  
Department for Communities and Local Government  
*Name*

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations, which are made under sections 27 and 27AB of the Housing Act 1985, set out the procedure to be followed where a tenant management organisation (“TMO”) proposes to enter into a management agreement with a local housing authority under section 27 of that Act. The Regulations impose an obligation on the authority in specified circumstances to enter into a management agreement, and contain related provisions.

These Regulations apply to England only. They revoke the Housing (Right to Manage) Regulations 2008 (“the 2008 Regulations”) in so far as they apply to houses and authorities in England.

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The Regulations are divided into 6 parts.

Part 1 provides for:

- (a) conditions that the TMO must satisfy (regulation 4);
- (b) extension of time (regulation 5);
- (c) security of any ballot (regulation 6);
- (d) written communications under the regulations (regulation 7) and
- (e) resolution of disputes by arbitration (regulation 8).

Part 2 sets out the initiating the process stage and provides for:

- (a) service and contents of the proposal notice (regulation 9);
- (b) consultation and membership requirements in respect of the proposal notice (regulation 10);
- © procedure and requirements for acceptance and refusal of proposal notices (regulation 11) and
- (d) requests for support from the local authority for the TMO in pursuing the proposal notice (regulation 12).

Part 3 sets out the development stage and provides for:

- (a) appointment of an approved assessor to assess the competence of the TMO (Regulation 13);
- (b) preparation of an offer notice setting out the management functions to be exercised by the TMO, the budget available and arrangements for financial accountability, governance and management of the TMO (regulation 14); and
- © ballots and offer to all tenants of TMO proposal (regulation 15).

Part 4 sets out the implementation stage and provides for:

- (a) the duty of the authority to enter into the agreement (regulation 16) and
- (b) the incorporation of the TMO (regulation 17).

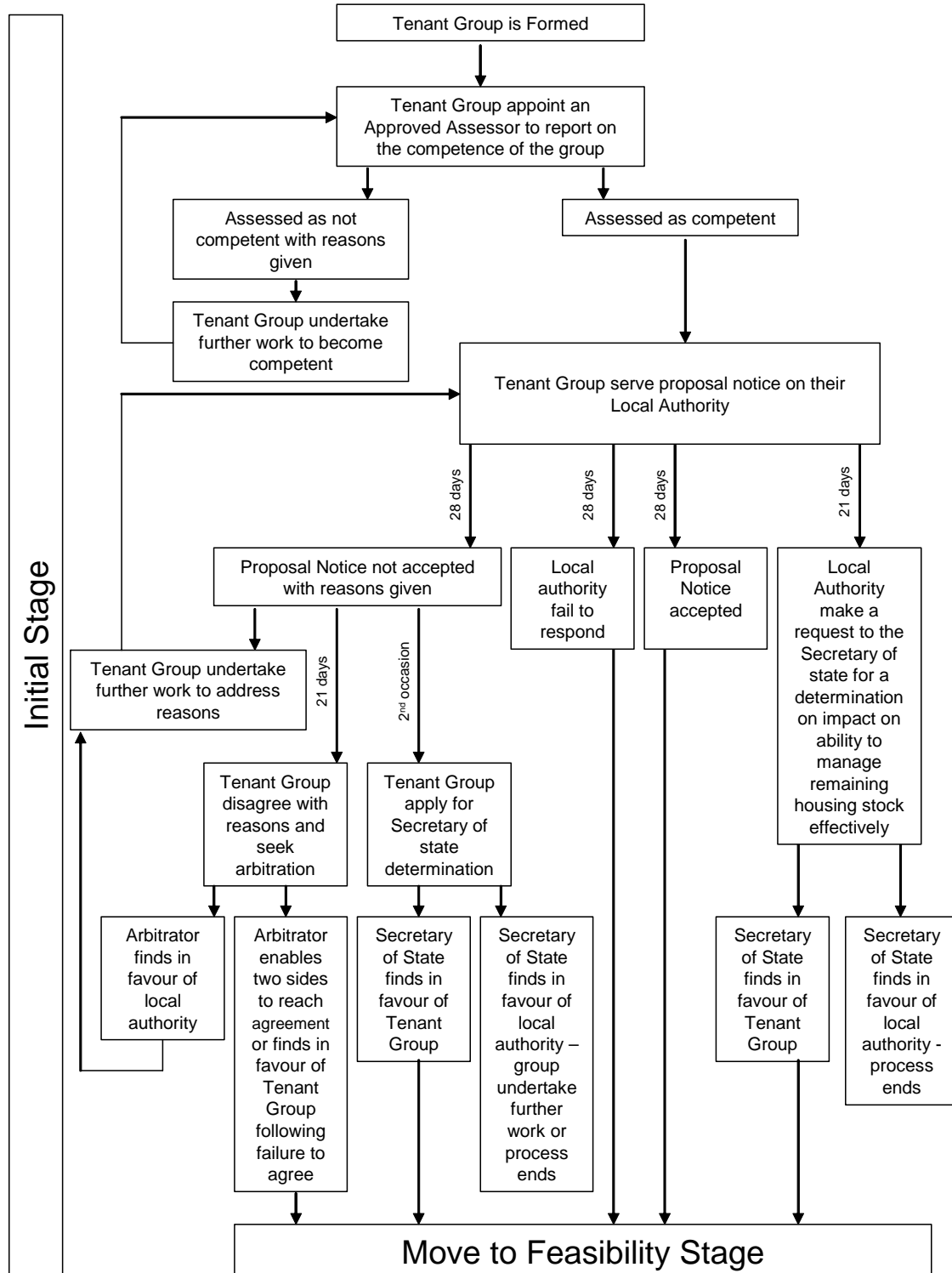
Part 5 contains other provisions relating to TMOs:

- (a) guidance by the Secretary of State (regulation 18);
- (b) break clauses in other management agreements (regulation 19);
- © participation by the authority in the TMO (regulation 20); and
- (d) voluntary management agreements (regulation 21).

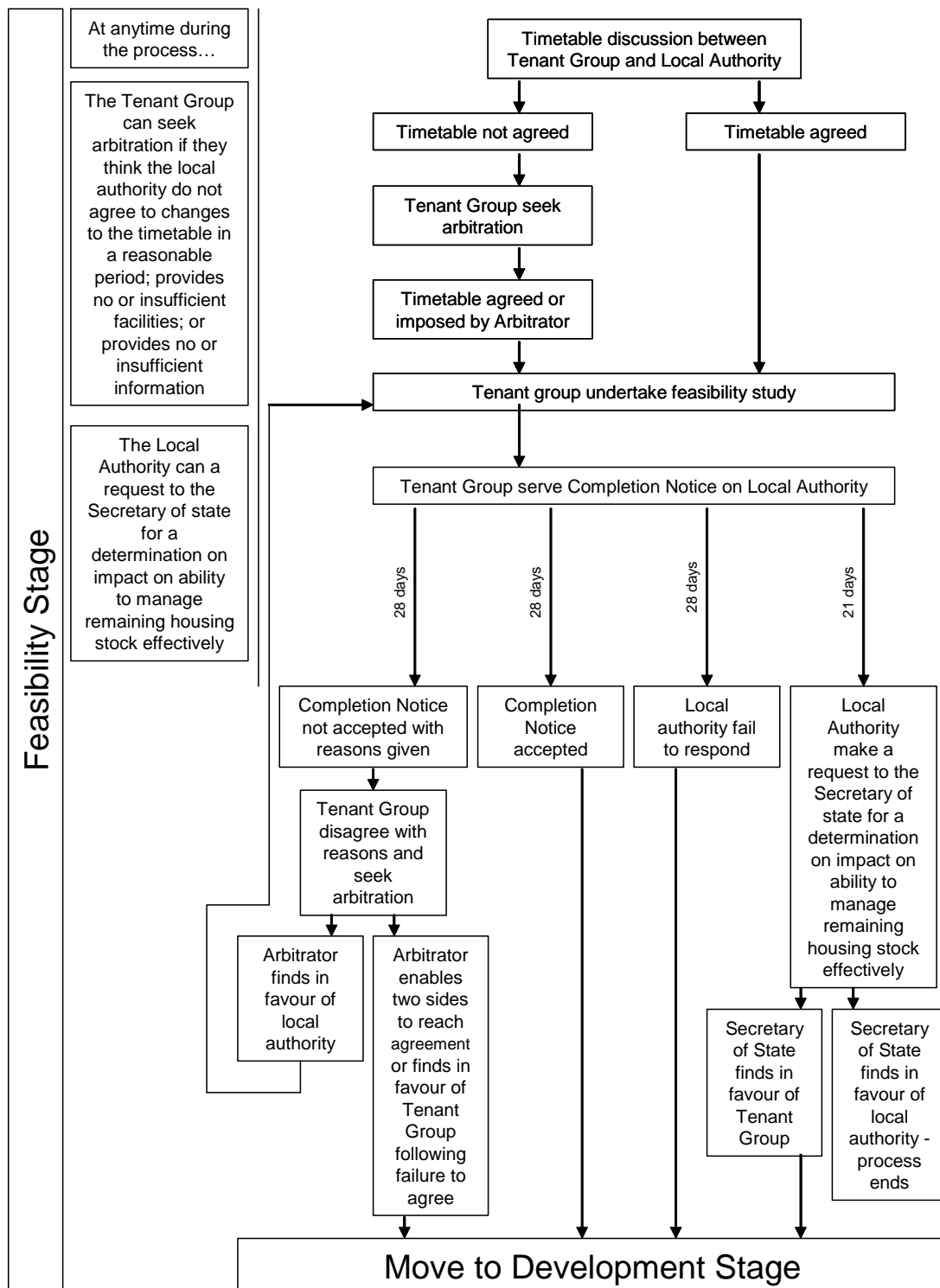
Part 6 provides for transitional and saving arrangements in respect of applications made under the 2008 Regulations.

# Annex D

## Right to Transfer Flow Diagram 1

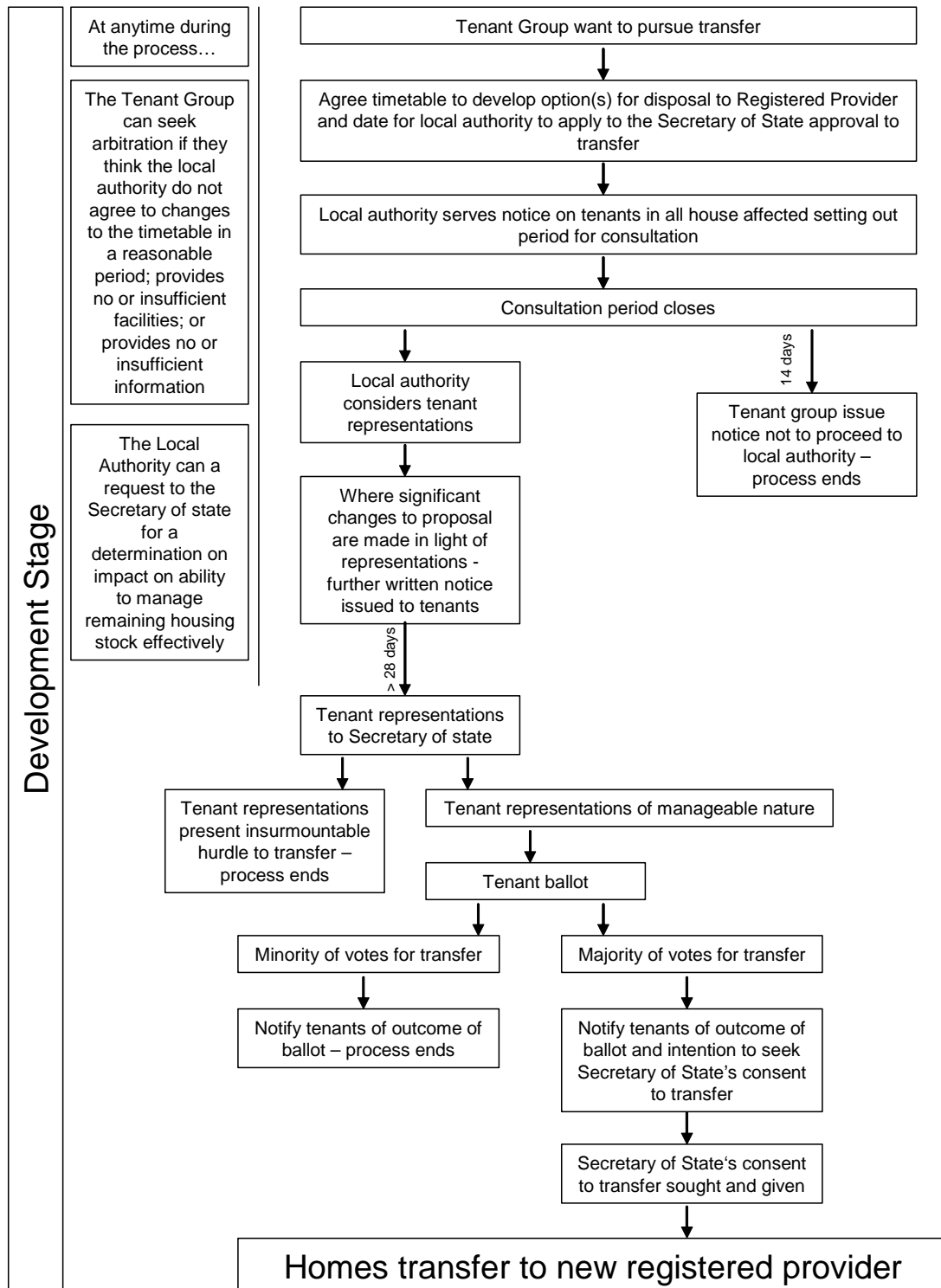


## Right to Transfer Flow Diagram 2





### Right to Transfer Flow Diagram 3



# Giving Tenants Control: Right to Transfer and Right to Manage Consultation

## RIGHT TO MANAGE: BROAD OUTLINE OF KEY STAGES – FOR ILLUSTRATIVE PURPOSES

