



Department for
Communities and
Local Government

The Housing (Right To Transfer from A Local Authority Landlord) (England) Regulations 2013

Statutory Guidance

November 2013
Department for Communities and Local Government
Homes and Communities Agency
Greater London Authority

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1. 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 process of transferring ownership of those homes to a private 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 detrimental effect on the authority's ability to deliver its housing services or regeneration within the local area.
3. Section 34A of the Housing Act 1985 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 private registered provider).
4. The Secretary of State has made the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013 ("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).
5. Except where specified, when referring in this guidance to "tenants", the term includes secure and introductory tenancies where the landlord is a local authority. It does not include long leaseholders of flats, where the local authority owns the freehold of the block of flats (usually where the tenant has exercised the right to buy a flat). The term "house" refers to all accommodation including flats and bedsits.

2. The Regulations

Regulation 4 - The tenant group

6. 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.
7. 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. Even though they will not have a formal role other residents or property owners (most notably leaseholders) will often want to be involved and be members of the group. Whilst their participation is important, the group must be clearly led by secure tenants.
8. It is also important the tenant group can demonstrate that it has a level of local support. The legislation therefore makes clear that both 20% of the secure and 20% of all tenants (including, in this case, leaseholders) of the houses situated in the area affected by the proposal are members of the tenant group. To prevent the proposals failing at later stages due to lack of support from affected 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

9. The proposal notice must include certain details and evidence, otherwise the local authority can refuse to accept it.
10. 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. The constitution should also make clear that all members of the group are able to vote. It is important to note that the vote will be by whoever is the tenant, not others who live in the same home (unless the tenancy is a joint tenancy).
11. 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 – three 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 the 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.
12. In providing evidence to the local authority that the group has met the requirements around the meeting, the group should provide a copy of the notice of the meeting (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 of those attending and a confirmation that the meeting was quorate under the group's constitution and a

record of the vote. In addition they will need to show that the tenants of all affected homes have been notified of the meeting. It must have been made clear that the meeting is to discuss transferring from local authority control and the outcome of the process may be a change of landlord.

13. 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.
14. 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 they have not been unintentionally discriminated against by finding it difficult to attend or participate in meetings of the tenant group.
15. 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. At least 100 of the houses must be let under secure tenancies.

Regulation 6 - Agreement for extension of time

16. 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

17. The Regulations make provision for the appointment of an arbitrator but we would expect parties only to go to arbitration as a last resort and in cases where failure to agree will have substantial implications for either side. Before going to arbitration we would expect both sides to have taken reasonable steps to come to an agreement.
18. All decisions by the arbitrator will be final.
19. The Government will not provide additional funding for arbitration, which will need to be met from existing resources.

Regulation 9 – Determination by the Secretary of State

20. Both the local authority and the tenant group can apply to the Secretary of State for a determination to halt or continue the process. Regulation 13 covers on what grounds the local authority may seek a determination to halt the process and regulation 25 covers the procedure to be followed by local authorities or tenants if they seek a determination.

Regulation 10 - Service of proposal notice

21. The local authority must acknowledge receipt of the notice within at the maximum 28 days, advising the group whether it accepts the notice (see Regulation 11), rejects it (see Regulation 12) or intends seeking a determination by the Secretary of State (see Regulations 13 and 24-25). If the local authority does nothing, it will be regarded as having accepted the notice.

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:

- the Greater London Authority for authorities within London or the Homes and Communities Agency for authorities outside London;
- 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 11 - Acceptance of a proposal notice

22. 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 it (see Regulation 12). Acceptance of the proposal notice does not mean that the local authority supports the process of transfer.

Regulation 12 - Rejection of the proposal notice

23. The local authority may reject the proposal notice if it does not meet the requirements of Regulation 5 or if at least half the houses in the proposal were included in a similar proposal within the previous two years. 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.

24. Where the group believes that the notice meets the requirements and has been wrongly rejected by the authority it can seek, if this cannot be resolved through informal processes, a determination from the Secretary of State for the process to continue.

Regulation 13 - Authority's request to the Secretary of State for a determination

25. Once the proposal has been accepted the local authority can apply at any time for a determination on the grounds that the proposed transfer will have a significant detrimental effect on the provision of housing services in the area of the authority or regeneration of the area.

Regulation 14 – Feasibility study

26. The process moves to the feasibility study stage where-
- a. the local authority does not acknowledge receipt of the proposal notice setting out that the notice is rejected and reasons for rejection; or
 - b. 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; or
 - c. after the authority has requested a determination, the Secretary of State has decided the process should continue; or
 - d. after the tenants have requested a determination, the Secretary of State has decided that the proposal notice was wrongly rejected by the authority and the process should continue to the feasibility stage; or,
 - e. the local authority accepts the proposal notice.
27. It is the responsibility of the tenant 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).
28. The tenant 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 or appears to be unviable, 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.
29. There is no specific format for a feasibility study, though it is likely that the main areas to be covered will be the benefits to tenants, affordability and the viability of the transfer (taking into account issues such as the condition of the stock, including future maintenance and repair costs, the level of rental income, leaseholder service charges etc). In order to establish this, tenant groups will need to obtain an estimate of the value of the stock to be transferred from the local authority and consider who the transfer landlord might be.

30. Tenants groups are advised to refer to the Transfer Manual at an early stage to help ensure a successful transfer.

Regulation 15 – Duties of the authority - feasibility study stage

31. The local authority has a duty to provide necessary facilities e.g. meeting rooms, reasonable photocopying / print facilities. The feasibility study stage should work to a timetable agreed with the tenant group.
32. The provision of information must be enough for the tenant group to fully explore the feasibility of transfer. Local authorities will need to ensure they meet the requirements of the Regulations around providing sufficient information. The information is likely to include the tenancy status of the homes that may be transferred, plus details relating to them such as rent and service level charges for leaseholders and annual maintenance costs. The authority should provide relevant information from stock condition surveys and any future plans it has for redevelopment or use of the land for new housing stock. In addition the local authority should provide data on the amount of housing debt attributed to the properties and the amount that it would need to receive to sell the property without there being a detrimental impact on its wider Housing Revenue Account.
33. In providing information, the local authority must be mindful of the privacy of individual tenants. It should not 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 providing it in a format which anonymises the information.
34. The authority should also be mindful of commercial confidentiality, which unlike personal data may be difficult to anonymise. It is likely that this data may be required by tenants (eg details of contract costs with outside maintenance companies) and any consultants they hire. The local authority should ensure that in providing it to the tenants, and the tenants in receiving it, that reasonable steps are taken to prevent further disclosure. Deliberate misuse or negligent disclosure by the tenants or their consultants would be regarded as a salient point in any Determination.

Regulation 16 - Feasibility study statement

35. At the conclusion of the study the tenant group must present its decision to the local authority. This decision will be either be:
- 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 (though they should be clear whether this will be to a newly created landlord or existing private registered provider); or,

- c. a statement that a majority of members of the group wish to remain tenants of the local authority.
36. 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.
37. 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. The tenant group should agree with the local authority at the start of the feasibility study process how they should evidence that the majority of tenants are not opposed to transfer
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 stage as a means of demonstrating support. Holding two ballots on different but closely related questions is likely to cause confusion.

Regulation 17 – Rejection of the feasibility study statement

40. The local authority can only reject the feasibility study statement if it fails to contain the information requested under Regulation 16 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. If it believes the chosen option is unworkable or unfeasible this may be a factor which they would wish to include when making a determination to the Secretary of State.

Regulation 18 - Duties of the authority - development stage

42. If the group's favoured option is transfer and the local authority has not rejected the feasibility study statement, 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 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. Where a landlord to take ownership of the homes has not yet been identified, this should happen as a matter of priority. 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 new landlord must be a private registered provider. Whilst it is possible to look to create a new private registered provider to take ownership of the housing, the relatively small amounts of housing likely to be transferred is likely to make this uneconomical in most cases. In all cases the Social Housing Regulator will need to assess the competency and viability of the private registered provider that takes on the stock before the Secretary of State will consent to a transfer.
46. It is the tenant group's interest to start the process of identifying a suitable private 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 represents good value for money.
47. To ensure consistency with wider transfer policy, we would expect tenant groups to follow the same process as in the draft transfer manual and to provide a business case to, and seek approval from, the Homes and Communities Agency (HCA) or, in London, the Greater London Authority (GLA) before formal consultation, even if no Government funding for debt write-off is required.
48. It is unlikely the Secretary of State will consent to transfer if this approval has either not been sought or where the HCA/GLA have not approved the business case. It should be noted that the HCA/GLA not approving a business case will not, in itself, stop the process – though it is likely that in practice it will lead either to the tenant group stopping the process or the local authority requesting a determination from the Secretary of State.
49. In addition where Government funding support for debt write-off is sought, Government, as well as HCA or GLA, will need to approve the business case. Government will not provide support for debt write-off for Small Scale Voluntary Transfers (less than 500 homes) but may provide support for debt write-off for tenant led Large Scale Voluntary Transfer (500 homes or more). Where support for debt write-off is required a full business case will need to be submitted and approved and

the tenant group should engage at an early stage with the HCA or, in London, the GLA to discuss the process and what is required.

50. Again it is important to note that a decision by the Government not to provide support for debt write-off does not in itself stop the process. This still requires either the tenant group to notify the local authority it no longer wishes to continue or for the local authority to request a determination from the Secretary of State to halt the process. We would expect though, since the transfer is likely to be unviable without Government financial support, the tenant group will end the process or that the local authority will request a determination under Regulation 13 and Part 5 of the Regulations.

Regulation 21 - Consultation of tenants

51. Once the tenant group's business case for transfer has been approved, the local authority is required to formally seek the views of tenants in the affected houses. Regulation 21 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 21 will 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.

52. In serving a notice under Regulation 21 the local authority should follow the Guidance on meeting the requirements of paragraph 3 to [Schedule 3A to the Housing Act 1985](#). In addition, the local authority may make clear any reasons for opposing the proposed transfer, 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 or in the development stage, 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.

53. The Regulation requires the local authority, to the timetable agreed with the tenant group, to serve notice in writing on each tenant (including leaseholders) 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 secure and introductory tenants wish for a transfer the authority will seek the formal agreement of the Secretary of State to transfer the properties;
- that in the event of transfer secure tenants will retain their right to buy as under sections 171A-171H of the Housing Act 1985;
- informing them that they can comment on the proposal to the authority within a specified period of time. When agreeing this period of time (which should be a minimum of twenty-eight days), the authority and tenant group should take account of the fact that some tenants may not have followed previous communications and will need time to understand the proposal and potentially seek advice before responding. Both the authority and tenant group should also

be aware that for some tenants English may not be their first language or they may have disabilities which will impact on their ability to give a swift response.

54. Serving this first notice meets the requirement under paragraph 3(2) of Schedule 3A to the Housing Act 1985.
55. Following the end of this consultation there should be a reasonable period before issuing the second notice. During this period the authority should consider any representations made to them within the consultation period with the tenant group.
56. It is possible that the response to this first stage of the consultation will 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 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, a determination may be sought to halt the process.
57. 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. It should also confirm that there will be no transfer if the majority of secure and introductory tenants do not support it. It should also inform them that if they have any objections they can communicate them to the Secretary of State
58. The ballot should normally commence immediately after the issue of this second notice, and the period in which objections may be made to the Secretary of State (which should be at least 28 days) should normally run concurrently with the ballot.
59. Tenants should understand that the ballot relates to the consultation with tenants under Regulation 21 and Schedule 3A to the Housing Act 1985. The Secretary of State will want to know that there is a majority of secure and introductory tenants in support of transfer. Whilst the local authority and tenants may also wish to ballot leaseholders this is not encouraged as it may lead to a situation where a majority of secure and introductory tenants vote one way, but by including leaseholders the majority of people balloted vote for the opposite. In this situation, the Secretary of State is likely to consider the votes of the secure and introductory tenants only, as Schedule 3A provides that the Secretary of State must not give consent to any disposal where the majority of the secure and introductory tenants do not wish the transfer to proceed (see paragraph 5 of Schedule 3A).

Regulation 22 - Seeking consent of the Secretary of State

60. The transfer proposal can move to the next stage (i.e. Secretary of State consent) only if there is a majority of secure and introductory tenants supporting transfer.
61. Where this is the case, the local authority must seek the consent of the Secretary of State to transfer the homes.

62. 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.
63. The local authority should seek Secretary of State approval as soon as possible after the date of the result. However, it is unlikely that the Secretary of State will give consent until the Social Housing Regulator has agreed that the receiving private registered provider is viable. As this process can take between six to twelve months it is important that the tenants group and local authority manage expectations so that tenants do not expect an immediate transfer.
64. In addition, as mentioned in paragraph 48, it is unlikely that the Secretary of State will consent to transfer unless approval to proceed to consultation has been given by the HCA or GLA.
65. The Secretary of State is not obliged to grant consent to transfer. Apart from the reasons above, 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 request for a determination from the local authority, and the business case was approved by the HCA/GLA and been agreed as viable by the Social Housing Regulator, 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)

66. At any point after the tenant group serves its proposal notice on the local authority, the local authority can serve a determination notice on the Secretary of State (regulation 13). The tenant group can serve a determination notice where the authority has rejected a proposal notice (regulation 12). The notice effectively seeks the Secretary of State to direct whether the process should or should not continue.
67. The Department is unlikely to provide funding to support local authorities or tenants groups in either producing the determination notice or in producing a response to a determination notice sent by other parties.
68. The tenant group or local authority must provide clear evidence to support whatever is its case.
69. It is important that the Secretary of State's discretion is not fettered by giving detailed guidance about what would be regarded as significantly detrimental. However, this could include proposals which would lead to a negative impact on the Housing Revenue Account or where the loss of stock would lead to significant loss of economies of scale in provision of services. When looking at the impact on regeneration the Secretary of State is likely to require evidence of concrete progress on the regeneration scheme (eg it should be more than a long-term aspiration). Detrimental impacts could include issues around the loss of land and property reducing

the value to developers and making the process unviable as well as impacts on employment and the local economy.

70. 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 effect on the local authority's ability to provide housing or other services in the wider authority area or on the regeneration of the area.
71. 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.
72. 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.
73. Government expects that proposals for tenant led stock transfers should be given proper consideration by the local authority, but also that where the local authority believes, based on the evidence, that a transfer would have a significantly detrimental effect on the housing service it is able to provide or regeneration in the local area, it should seek a determination at an early stage. It is no one's interest to expend time and resources that could be avoided through an early decision.
74. There is no limit to the number of times a local authority can serve a determination 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 local authorities, where they have more than one reason to issue a determination notice, to present all the 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, local authorities 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

75. 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;
 - 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 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 private registered provider is completed.

End of Guidance