EXPLANATORY MEMORANDUM TO

THE FAMILY INTERVENTION TENANCIES (REVIEW OF LOCAL AUTHORITY DECISIONS) (ENGLAND) REGULATIONS 2008

2008 No. 3111

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Family intervention tenancies ("FITs") are new tenancies offered to certain tenants for the purpose of providing behaviour support services. The tenancies will be offered to tenants facing possession proceedings (or who may, in the opinion of their local authority landlord or registered social landlord ("RSL"), face such proceedings) in relation to their current home on the grounds of anti-social behaviour. FITs are not secure tenancies and can be ended on notice to the tenant by the landlord. Where a decision to end a FIT is made by a local authority landlord, the tenant has a right to request a review of that decision. These Regulations provide for the procedure to be followed on review of a decision by a local authority to end a family intervention tenancy.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 These are the first Regulations made under section 298(5) of the Housing and Regeneration Act 2008.

4. Legislative Context

4.1 These Regulations are made under section 298(5) of the Housing and Regeneration Act 2008 and this is the first use of this power.

4.2 These Regulations set out the procedure to be followed on review of a local authority landlord's decision to end a FIT.

4.3 The power under which these Regulations are made is brought into force by the Housing and Regeneration Act (Commencement No.2 and Transitional, Saving and Transitionary Provisions) Order 2008 (SI 2008/XXX).

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 FITs were introduced in the Housing and Regeneration Act 2008 to enable local housing authorities ("LHAs") and RSLs to offer tenancies which are not secure or assured tenancies to certain tenants who have lost or are potentially at risk of losing their secure or assured tenancy. FITs will be offered as part of a behavioural support package (known as a "family intervention project" or "FIP") for tenants against whom a possession order for anti-social behaviour has been made or those tenants who could face possession proceedings on the grounds of anti-social behaviour.

7.2 FIPs are designed to help a small number of families who have been found to be amongst the most challenging to LHAs and RSLs. They are likely to be families with serious anti-social behaviour problems, possible drug and alcohol abuse and other interrelated problems.

7.3 While support under a FIP is sometimes offered on an outreach basis (where the family retains its original tenancy) in some cases the best means of delivering support is to move the family into special accommodation for the duration of their support programme. This is done in one of two ways - either in dispersed accommodation (i.e. alternative RSL or LHA accommodation to that which they currently occupy) where it is often intended the family will live in the longer term should they successfully engage with support, or in purpose-built units (which often accommodate more than one family at a time). FITs will only be offered to those families who are moved into dispersed accommodation or purpose-built units.

7.4 LHA and RSL landlords have experienced problems delivering support to the families via FIPs because of difficulties over what tenancy a family should hold while living in dispersed accommodation or purpose built units. FITs were therefore created to provide for a robust, easily understood framework. They do this by establishing an appropriate tenancy for families while they receive support and a simple means of moving families between mainstream and dispersed accommodation or purpose-built units.

7.5 Where a family's anti social behaviour continues during the FIP, the LHA landlord may decide to terminate the tenancy. Should the LHA decide to terminate the tenancy (issue a notice to quit), it must first serve the family with notice of this intention. The notice must set out that the family is entitled to a review of the decision to terminate the tenancy. Should the right to a review be exercised by the family, the LHA must undertake a review of the decision to terminate the tenancy. These Regulations provide the detail of how these reviews should be carried out by LHAs.

8. Consultation outcome

8.1 No formal consultation was undertaken on these Regulations. The Department has, however, kept practitioners (i.e. FIP workers and LHA and RSL landlords) fully informed about its proposals, not only as regards these Regulations but also as regards FIPs and FITs, through regionally-based meetings of practitioners.

9. Guidance

9.1 The Government will be publishing guidance, which will include advice on the use of FITs and the review process. The guidance will be published in early January 2009 so that it is available at the same time, or very shortly after, these Regulations come into force.

10. Impact

10.1 The legislation does not apply to business, charities or voluntary bodies.

10.2 A full Impact Assessment has been prepared for introduction of FITs, of which this instrument forms a part. Costings in that assessment are based on the existing 65 FIPs. At this stage in the development of programme, we do not know what proportion of households per annum will receive support through specialist accommodation. On the basis of a throughput of 1500 families, we estimate that between 10% and 40 % (150- 600 households) will be moved into specialist accommodation.

10.3 Only a small number of families are likely to disengage with FIPs. We estimate that this is likely to apply to between 2% and 5% of families. (The top end of this range may prove a significant over-estimate.) Evidence to date strongly suggests that eviction from dispersed accommodation or purpose built units is rare, given the extensive assessment process which precedes the offer of support (undertaken with the close involvement of the family subject to a referral). FIPs, through the use of dedicated key workers, are adept at tailoring support to the particular needs of a family as well as negotiating the inevitable setbacks and difficulties which arise when dealing with some of the most challenging families. Accordingly, we estimate that only between 3 and 30 cases will occur each year where a review might be requested by a tenant subject to possession procedures under a FIT. The costs of conducting these reviews by authority are likely to be minimal.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department will seek to assess the effectiveness of this instrument through gathering feedback from FIPs and LHAs through regional practioner forums. The Department plans to seek this feedback 12 months after these Regulations come into force. Success criteria for this instrument will include an evaluation of how effective it proves in providing practitioners with clear

procedures to conduct a robust, fair and reasonable review of a decision to seek possession where a review is requested by a tenant.

13. Contact

Graham Knapper at the Department for Communities and Local Government Tel:020 7944 6874 or email: graham.knapper@communities.gsi.gov.uk can answer any queries regarding the instrument.