EXPLANATORY MEMORANDUM TO

THE FLEXIBLE TENANCIES (REVIEW PROCEDURES) REGULATIONS 2012

2012 No. 695

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 The Flexible Tenancies (Review Procedures) Regulations 2012 ("the Regulations") specify the procedure to be followed in an internal review of a landlord's decision as to the length of the term of a flexible tenancy. The Regulations also specify the procedure to be followed in an internal review of a landlord's decision to seek an order for possession of a property let under a flexible tenancy.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations are the first time that the powers under section 107B(6) and 107E(4) of the Housing Act 1985 have been exercised. These powers were inserted into the Housing Act 1985 by section 154 of the Localism Act 2011.

4. Legislative Context

4.1 Sections 107A to 107E into the Housing Act 1985 (as inserted by section 154 Localism Act 2011) enable local authority landlords to grant flexible tenancies, which are secure tenancies granted for a term of no less than two years. The landlord must have a policy which sets out the length of the terms of the flexible tenancies it grants. Where a landlord offers to grant a flexible tenancy to a person that person may request a review of the landlord's decision about the length of the tenancy, only on the basis that the length of the term does not accord with the policy of the landlord. These Regulations set out the procedure to be followed in connection with a review of the landlord's decision, and make provision for the decision on review to be made by a person of appropriate seniority who was not involved in the original decision, the circumstances in which the person concerned is entitled to an oral hearing and whether and by whom the person may be represented at such a hearing.

4.2 On the coming to an end of a flexible tenancy if the landlord decides not to issue another tenancy the landlord may seek an order for possession of the dwelling house. A person has the right to request a review of a landlord's decision to seek an order for possession of a dwelling house let under a flexible tenancy. These Regulations set out the procedure to be followed in connection with such a review and make provision for the decision on review to be made by a person of appropriate seniority who was not involved

in the original decision, the circumstances in which the person concerned is entitled to an oral hearing and whether and by whom the person may be represented at such a hearing.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

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 The Housing Act 1985 (as amended by the Localism Act 2011) enables local authority landlords to grant flexible tenancies to new tenants for a minimum term of at least two years.

7.2 In light of concerns expressed during debate on the tenure reform provisions in the Localism Bill at Lords Committee (Hansard HL vol 729 col 1475 (20 July 2011)), the Secretary of State's direction to the Social Housing Regulator on tenure clarified that, in general, in addition to any probationary period, tenancies should be granted for a minimum term of five years. Only in exceptional circumstances, which should be made clear in the landlord's policy, should tenancies be granted for a minimum of less than five years. The Secretary of State's Directions on Regulatory Standards are available on the Department's website: www.communities.gov.uk. The Social Housing Regulator's consultation on the proposed tenancy standard, which includes tenure, is available on the Tenant Services Authority website: www.tenantservicesauthority.org.

7.3 These changes to legislation and the regulatory framework, which provide for the types of tenancies which can be granted, give greater flexibility to local authorities and private registered providers of social housing to offer longer term security where it is needed, but to set shorter tenancy terms, in accordance with their own policies, where that is more appropriate.

7.4 Central to the Government's reform is ensuring that decisions by social landlords on the types of tenancies they grant and whether to re-issue a tenancy are made transparently and fairly. That includes ensuring that local authority tenants may seek an internal review if a landlord does not follow its own tenancy policy when deciding on the length of tenancy to offer or the landlord decides to seek possession at the end of a flexible tenancy.

7.5 This instrument sets out the basic requirements to be followed by local authority landlords on conducting both types of review.

7.6 There has been considerable public interest in theses changes, with over 650 responses to the tenure reform element in a public consultation on social housing reform.

8. Consultation outcome

8.1 No consultation has been undertaken for this instrument. The broad policy proposals were subject to consultation between November 2010 and January 2011. A summary of the responses to this consultation was published on the Department's website in February 2011.

9. Guidance

9.1 No guidance will be published for this instrument.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies, as these regulations simply specify the form that review procedures will take when a local authority chooses to operate flexible tenancies, rather than imposing an obligation to have such a procedure.

10.2 The impact on the public sector will be limited to local authority landlords that choose to grant flexible tenancies.

10.3 An Impact Assessment has not been prepared for this instrument. These regulations are connected with the implementation of the Localism Act 2011. An Impact Assessment that relates to this aspect of that Act (*Localism Bill: a fairer future for social housing – impact assessment*) was published on the Department's website in January 2011.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 These Regulations will not be subject to specific monitoring or review.

13. Contact

13.1 Graham Knapper at the Department of Communities and Local Government Tel: 03034 44 44367 or email: graham.knapper@communities.gsi.gov.uk can answer any queries regarding the instrument.