STATUTORY INSTRUMENTS

1989 No. 367

HOUSING, ENGLAND AND WALES

The Housing (Change of Landlord) Regulations 1989

Made - - - -	*6th March 1989*
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The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by sections 98(1)(g) and (5)(b), 99(6), 100(1) and (2)(b), 101(4), 102(1) and (2)(c), 103(1), (2) and (7), 104(2), 111(a) and 114(1)(**a**) of the Housing Act 1988(**b**), and of all other powers enabling them in that behalf, hereby make the following Regulations:

(**a**) *See* the definition of "prescribed". (**b**) 1988 c.50.

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Housing (Change of Landlord) Regulations 1989 and come into force on 5th April 1989.

General interpretation

2.—(1) In these Regulations —

"the Act" means the Housing Act 1988;

"added dwelling-house" means a dwelling-house which is included in the property to which the acquisition relates and which the landlord desired to have included in the acquisition by virtue of section 98(1) (d);

"applicant" means a person who has made an application claiming to exercise the right conferred by Part IV of the Act;

"business tenancy" means a tenancy to which Part II of the Landlord and Tenant Act 1954(a) applies;

"consultation period" has the meaning given by regulation 14;

"landlord" means a public sector landlord to whom an application has been made to exercise the right conferred by Part IV of the Act;

"relevant date", in relation to an added dwelling-house, means the date of the service of the section 98(1) notice but, subject to that, has the meaning given by section 93(5);

"section 98(1) notice" means the notice served under section 98(1);

"statutory successor" means a person who succeeds on the death of a secure tenant in accordance with sections 87 to 90 of the 1985 Act;

"teller" has the meaning given by regulation 16(2);

"the time of acquisition" means the time of completion of the grant or lease (as the case may be).

(2) References in these Regulations to sections by number are references to sections bearing those numbers in the Act.

PART II

PARTICULARS TO BE SUPPLIED BY THE LANDLORD

Particulars to be included in section 98(1) notice

3. The following particulars are prescribed for the purposes of section 98(1)(g) –

(a) details of any property included in the application under section 96(1), or proposed for inclusion in the acquisition by the landlord in its section 98(1) notice, in which the landlord does not hold a fee simple estate;

(b) where details of any tenancy or licence of property proposed to be acquired by virtue of section 93(1) (a) were not given to the applicant in the landlord's notice under section 97(1), the name and address of such tenant or licensee and the general nature of his tenancy or licence;

(a) 1954 c.56.

(c) in respect of any property proposed to be acquired by virtue of section 93(1)(b), or proposed for inclusion in the acquisition by the landlord in its section 98(1) notice, the name and address of every tenant or licensee of all or any part of that property and the general nature of his tenancy or licence;

(d) in respect of any property which was included in the application under section 96(1) and which was not occupied (whether lawfully or unlawfully) on the relevant date, particulars of its occupation at the date of the service of the section 98(1) notice, including the name and address of any tenant or licensee of that property and the general nature of his tenancy or licence, and details of any other person in occupation whether lawfully or unlawfully.

(e) in respect of property included in the application under section 96(1), particulars of any changes in the circumstances of its occupation not reflected in the landlord's notice under section 97(1) including:–

(i) whether the current occupant is a successor to a previous tenant or whether it is unoccupied;

(ii) whether the landlord has taken a decision not to enforce an order by which, on the relevant date, the tenant was obliged to give up possession of the dwelling-house in pursuance of an order of the court or would have been so obliged at a date specified in such an order;

(f) where any dwelling-house in a building proposed to be acquired under section 93(1)(a) is subject to an approved co-operative management agreement, particulars of that agreement and the address or description of each building or property which is subject to that agreement, indicating in respect of any property proposed to be acquired under section 93(1)(b) whether it is a building containing a dwelling-house subject to that agreement;

(g) particulars of any flat which, in the opinion of the landlord, will be required in accordance with regulation 6(2) to be leased back to the landlord because it is occupied by a tenant of a description prescribed by regulation 7(a) to (c), including the circumstances on which the landlord relies in support of its opinion;

(h) such particulars of any rights, covenants and conditions and other proposed terms of the conveyance specified by the landlord in its section 98(1) notice as it is necessary to have in order to understand the need for such rights, covenants, conditions or terms.

PART III

DETERMINATION OF DISPUTES

Disputes as to property to be included etc.

4. Any dispute as to any matters stated in a section 98(1) notice shall be determined by the person referred to in section 98(5)(a) in accordance with the provisions prescribed in Schedule 1.

Disputes as to matters relating to price or disposal cost

5. Any dispute as to any matters stated in a notice under section 99(1) shall be determined by the district valuer in accordance with the provisions prescribed in Schedule 2.

PART IV

EXCLUSION OR LEASE BACK OF DWELLING-HOUSES

Exclusion or lease back of dwelling-houses in accordance with section 100

6.—(1) Any dwelling-house which is a house and is occupied by a tenant to whom section 100(2) applies shall be excluded from the acquisition.

(2) Immediately after the acquisition, a lease of any dwelling-house which is a flat and is occupied by a tenant to whom section 100(2) applies or by a tenant of a description prescribed in regulation 7 below shall be granted by the applicant to the landlord.

Tenants prescribed for the purposes of section 100(1)(b)

7. The following descriptions of tenants of flats are prescribed for the purposes of section 100(1)(b) –

(a) a tenant whose tenancy is as described in any of paragraphs 2 to 7, 10 or 11 of Schedule 1 to the 1985 Act (tenancies which are not secure tenancies) who was in occupation on the relevant date, unless that tenancy is a business tenancy or a long tenancy;

(b) a tenant of a flat which, on the relevant date, was occupied by a secure tenant in the circumstances set out in any of paragraphs 5, 7, or 9 to 11 of Schedule 5 to the 1985 Act (exceptions to the right to buy);

(c) a secure tenant who –

(i) on the relevant date was obliged to give up possession of the flat in pursuance of an order of the court or was to have been so obliged at a date specified in the order, and

(ii) does not satisfy regulation 8(b) below;

(d) a statutory successor to a qualifying tenant where the qualifying tenant had been consulted in accordance with section 102 and indicated his wish to continue to occupy the dwelling-house as tenant of the landlord;

(e) a statutory successor to a qualifying tenant, where that qualifying tenant occupied on the relevant date but did not give notice in the prescribed manner whether or not he wished to remain a tenant of the landlord, and where that successor within the 21 day period ending at the end of the consultation period has provided the applicant with a certificate from his landlord to the effect that he is such a successor;

(f) a qualifying tenant who has, within the 21 day period ending at the end of the consultation period, provided the applicant with a certificate from the landlord to the effect that his tenancy was, after the relevant date, assigned to him by way of exchange, by a qualifying tenant whose tenancy commenced before the relevant date.

Tenants prescribed for the purposes of section 100(2)(b)

8.—(1) Tenants of the following descriptions are prescribed for the purposes of section 100(2)(b) where they continue to occupy the dwelling-house during the consultation period –

(a) a qualifying tenant of an added dwelling-house whose tenancy commenced before the relevant date;

(b) a secure tenant who is precluded from being a qualifying tenant by section 93(4)(a) and who, not less than 21 days before the end of the consultation period, has provided the applicant with a certificate from the landlord to the effect that it no longer intends to enforce the possession order against him;

(c) a tenant whose tenancy began in the circumstances described in any of paragraphs 4, 5 or 10 of Schedule 1 to the 1985 Act and who, not less than 21 days before the end of the consultation period, has provided the applicant with a certificate from the landlord to the effect that, on the expiry of such period as is mentioned in the relevant paragraph, he has become a secure tenant.

(2) A statutory successor to a qualifying tenant who occupied the dwelling-house on the relevant date and who, not less than 21 days before the end of the consultation period, has provided the applicant with a certificate from the landlord to the effect that he is such a successor is also prescribed for the purposes of section 100(2)(b).

PART V

TENANCIES OR LICENCES GRANTED AFTER THE RELEVANT DATE

Tenancies or licences to which section 101 does not apply

9. Section 101 does not apply to –

(a) a lease of a dwelling-house granted after the relevant date to a tenant of that dwelling-house whose tenancy commenced before the relevant date;

(b) a tenancy or licence granted after the relevant date in respect of a dwelling-house which, on the relevant date, was as described in any of paragraphs 5, 7, or 9 to 11 of Schedule 5 to the 1985 Act;

(c) a tenancy or licence of property which the landlord proposes for exclusion in its section 98(1) notice on any of the grounds mentioned in paragraphs (a) to (c) of that provision, being a tenancy or licence granted –

(i) where the applicant does not dispute its exclusion, after the expiry of the period of four weeks from the service of that notice, or

(ii) where he disputes its exclusion, on the resolution of the dispute in favour of its exclusion.

Notice to applicant of grant of a tenancy or licence to which section 101 applies

10. The landlord shall at the same time as it grants a tenancy or licence to which section 101 applies, serve notice of that grant on the applicant at the address given by it in its notice under section 96.

Notice to tenant or licensee of a tenancy or licence to which section 101 applies

11. The landlord shall, when granting a tenancy or licence to which section 101 applies, give notice of the effect of that section to the tenant or licensee.

Vacant possession

12.—(1) The landlord shall, on the service of the notice of intention to proceed under section 103(1), serve a notice to quit on each tenant or licensee to whose tenancy or licence section 101 applies.

(2) The landlord shall use its best endeavours to secure vacant possession at the date of the grant referred to in section 104(1)(a) of any property which is subject to a tenancy or licence to which section 101 applies, including, if necessary, enforcing the right to recover possession by applying to the court for, and enforcing, an order for possession.

(3) If, at the date of such grant, the landlord fails to give vacant possession of any property subject to a tenancy or licence to which section 101 applies, any costs or expenses attributable to the recovery of vacant possession by the applicant and any losses consequent upon the failure of the landlord to give vacant possession shall be recoverable by the applicant as a simple contract debt.

Disapplication of section 101

13.—(1) Section 101 ceases to apply –

(a) when any relevant period (or such period as extended in accordance with section 110(2)) expires without the applicant doing what he is required to do within that period, to all property proposed to be acquired; or

(b) where the landlord has specified property in its section 98(1) notice as property to be excluded on the grounds mentioned in paragraphs (a) to (c) of section 98(1), in relation to that property –

(i) where the applicant does not dispute its exclusion, on the expiry of the period of four weeks from the service of that notice, or

(ii) where it disputes its exclusion, on the resolution of the dispute in favour of its exclusion.

(2) Where section 101 ceases to apply to property at any time, the landlord shall forthwith notify the tenant or licensee and may, within the period of four weeks beginning with the date of that notification, serve notice to quit in accordance with section 101(3), but nothing in this regulation shall make a tenancy or licence to which section 101 applies a secure tenancy unless the landlord notifies the tenant or licensee that the tenancy or licence is so to be regarded.

PART VI

CONSULTATION

The prescribed period for consultation

14. The prescribed period for consultation (in these Regulations referred to as "the consultation period") is the period beginning with –

(a) if there is a determination by the district valuer under section 99, notification to the applicant of that determination;

(b) if there is no such determination, service of the landlord's notice under section 99;

and ending at the end of the period of fourteen weeks beginning with the date of the giving of that notification or the service of that notice as the case may be.

Tenants prescribed for the purposes of section 102

15. Tenants of the following descriptions are prescribed for the purposes of section 102 –

(a) a tenant who was on the relevant date a business tenant and continued to be such a tenant during the consultation period;

(b) a tenant of an added dwelling-house under a long tenancy who occupied the dwelling-house on the date of the service of the section 98(1) notice and continued to occupy it during the consultation period;

(c) a qualifying tenant of a dwelling-house who has, not less than 21 days before the end of the consultation period, provided the applicant with a certificate from the landlord to the effect that his tenancy was, after the relevant date, assigned to him by way of exchange, by a qualifying tenant whose tenancy commenced before the relevant date and who did not give notice in the prescribed manner whether or not he wished to remain a tenant of the landlord.

Prescribed provisions as to consultation

16.—(1) The applicant shall, within seven weeks of the beginning of the consultation period, serve on each tenant to whom section 102 applies who has not given a notification in accordance with paragraph (7) below the information specified in and in accordance with Schedule 3.

(2) The applicant shall engage a person independent from him (in these Regulations referred to as the "teller") to whom the tenants consulted under section 102 shall give notice of whether or not they wish to continue as tenants of the landlord.

(3) The applicant shall secure that the teller shall, not sooner than 7 days or later than 10 days from the service of the information described in paragraph (1) above, serve on each tenant referred to in that paragraph (or, where the tenancy is held by two or more persons jointly, those tenants jointly) –

(a) a notice for giving notice of his (or their) wishes (in the form prescribed by regulation 3(g) (form 7) of the Housing (Change of Landlord) (Prescribed Forms) Regulations 1989(a)) (in this and the following regulation referred to as "the notice of decision");

(b) a description of the provisions in regulation 17 below;

(c) a reply paid envelope for return of the notice to the teller by post;

(d) a statement as to the nature of his tenancy, and the consequences for him of giving notice of a wish to continue as the tenant of the landlord or of a wish to become a tenant of the applicant, or of giving no notice in the event that the acquisition takes place.

(4) The applicant shall secure that anything required by this regulation to be served on the tenant is served on him at his address at the property proposed to be included in the acquisition or, if he notifies the applicant before the service of the information referred to in paragraph (1) above that he wishes to be served at a different address, at that address.

(5) The applicant shall secure that, where a tenant served with information in accordance with paragraph (1) above has not within a period of four weeks beginning with the date of service of that information returned the form giving notice of his wishes, the teller shall use his best endeavours to visit the tenant within the consultation period to explain the effect of regulation 17 and the consequences of failure to give notice of his wishes.

(6) Where a tenant provides the applicant with a certificate as described in regulation 8(1)(b) or (c), (8)(2) or 15(c) above after the applicant has complied with paragraph (1) above in relation to other tenants, the applicant shall within seven days of that provision serve on the tenant the information specified in Schedule 3, and shall secure that the teller shall, within those seven days, serve on the tenant the items referred to in paragraph (3) above, but the applicant need not comply with paragraph (5) above.

(7) Where, before the service of the information referred to in regulation 16(1), a tenant other than a joint tenant notifies the applicant that he will, or is likely to, be absent from the property in which he holds his tenancy during the whole or a substantial part of the period between that notification and the end of the consultation period, and there is no convenient different address for service, the applicant shall, after the beginning of the consultation period, supply that tenant with an absentee's notice of decision, and a reply paid envelope for the return of the notice to the applicant by post, and where the tenant within the consultation period returns the notice by post or by delivering it to the applicant, he shall give it unopened to the teller.

(8) In this and the following regulation "an absentee's notice of decision" means the notice for giving notice of a tenant's wishes prescribed by regulation 3(f) (form 6) of the Housing (Change of Landlord) (Prescribed Forms) Regulations 1989.

(a) S.I. 1989/374.

Prescribed manner for tenants to indicate their wishes

17.—(1) Subject to paragraph (2) below, a tenant giving notice of his wish to continue as the tenant of the landlord or to become the tenant of the applicant shall complete the decision notice and shall within the consultation period return such notice to the teller by one of the following methods –

(a) by post;

(b) by delivering the notice to the teller.

(2) Where a tenant has been supplied by the applicant with an absentee's notice of decision in accordance with regulation 16(7) he shall give notice of his wish by completing that notice of decision and returning it by post or by delivering it to the applicant within the consultation period.

PART VII

PRESCRIBED COVENANTS

Covenants under section 103

18.—(1) An applicant may in all circumstances inform the landlord that he wishes to enter into a prescribed covenant in accordance with section 103(1).

(2) The covenant prescribed for the purposes of section 103(1) is a covenant in writing by the applicant to pay the landlord an amount determined in accordance with paragraph (4) on the occasion of any prescribed disposal occurring not more than 15 years after the time of acquisition.

(3) A disposal of a dwelling-house to a tenant of that dwelling-house is a disposal prescribed for the purposes of section 103(1)(a).

(4) The amount referred to in paragraph (2) is 65 per cent., or such other percentage as may be agreed by the parties, of the total consideration for the disposal of the dwelling-house by the applicant.

PART VIII

REQUIREMENTS OF GRANT OF FEE SIMPLE AND LEASES BACK

Requirements of grant of fee simple and leases back

19. A grant of an estate in fee simple absolute in accordance with section 104(1)(a) or a grant of a lease in accordance with section 104(1)(b) shall comply with the requirements prescribed in Schedule 4.

Nicholas Ridley
Secretary of State for the Environment

6th March 1989

Peter Walker
Secretary of State for Wales

6th March 1989

SCHEDULE 1 Regulation 4

DISPUTES AS TO PROPERTY TO BE INCLUDED ETC

1.—(1) The provisions of this Schedule apply where the applicant notifies the landlord in accordance with section 98(4) of any matters in the section 98(1) notice which he does not accept, and in this Schedule such a notifiction is referred to as a "section 98(4) notification".

(2) The person agreed to by the parties or appointed by the Secretary of State in default of agreement to determine the dispute is referred to in this Schedule as "the adjudicator" .

2. The applicant shall together with his section 98(4) notifiction send the landlord a statement of his grounds for disputing each matter which he does not accept.

3.—(1) The applicant shall, within 7 days of the parties agreeing to, or the Secretary of State's appointing, an adjudicator, send him –

(a) a copy of the application under section 96(1);

(b) a copy of the notices served by the landlord under section 97(1) and 98(1);

(c) a copy of the section 98(4) notification;

(d) a copy of the statement referred to in paragraph 2 above; and

(e) any further information which is, in his opinion, relevant to determination of that dispute.

(2) Where the applicant sends the adjudicator information in accordance with paragraph (e) above, he shall at the same time send a copy of it to the landlord.

4.—(1) The adjudicator shall, on receipt of the copies referred to in paragraph 3 above, forthwith –

(a) notify the applicant and the landlord in writing that he has received them; and

(b) notify the landlord that its response to the applicant's case is required within 21 days of the date of the adjudicator's notification under this sub-paragraph.

(2) Where the applicant does not send all the copies referred to in paragraph 3 above to the adjudicator, the adjudicator shall notify the applicant that he is required to send them forthwith to both the adjudicator and the landlord.

5. The landlord shall send copies of its written response to the applicant's case within the period referred to in paragraph 4(1)(b) above both to the adjudicator and to the applicant, and, where the landlord does not accept the applicant's case, as respects any mattter, the response shall include a statement of its grounds for disputing it.

6. The applicant shall, within 7 days of the date of the landlord's response, notify the adjudicator and the landlord in writing whether he accepts the landlord's response as respects any matter, together with, where he does not, a statement of his grounds for disputing it.

7.—(1) Where –

(a) it appears to the adjudicator that it would be desirable to inspect all or any part of the property to which the acquisition relates; or

(b) either the applicant or the landlord requests such an inspection in writing;

the adjudicator shall notify the applicant and the landlord that at a specified date and time within 14 days of the applicant's notification in accordance with paragraph 6 above or, where the period for that notification has ended and there has been no such notification, within 14 days of that period ending he shall inspect all or any part of the property to which the acquisition relates.

(2) The applicant and the landlord may accompany the adjudicator when he inspects property, but he is not bound to defer the inspection where the applicant or the landlord is not present at the time notified.

8. Where it appears to the adjudicator that it would be desirable to hear the cases put by the landlord and applicant as respects any matter, he shall make arrangements for a hearing, and shall give the landlord and applicant not less than 7 days notice of the date, time and place of such a hearing.

9. The adjudicator may at any time after service of the section 98(4) notification and before determining the dispute require either the applicant or the landlord to supply information which in his view it is desirable to take into account and which it is reasonable for that person to supply, and the person to whom that requirement is addressed shall supply that information within 7 days sending a copy at the same time to the other.

10. The adjudicator shall, as soon as is reasonably practicable after conclusion of the proceedings provided for in this Schedule, notify the applicant and the landlord in writing of his determination of the matters referred to in the section 98(4) notification.

11.—(1) Subject to sub-paragraph (2) below, the costs of the adjudicator in determining the dispute shall be borne in equal shares by the applicant and the landlord.

(2) Where it appears to the adjudicator that the applicant or the landlord has behaved unreasonably in presenting his or its case, by failing to comply with any of the time limits in this Schedule or otherwise, he may order the applicant and the landlord to bear such costs in whatever proportion seems to him appropriate.

(3) Any costs which are to be borne by one of the parties under this paragraph may be recovered from that party by the adjudicator as a simple contract debt.

SCHEDULE 2

Regulation 5

DISPUTES AS TO PRICE OR DISPOSAL COST

1. The provisions of this Schedule apply where the applicant notifies the landlord in accordance with section 99(5) of any matters which he does not accept, and in this Schedule such a notification is referred to as "a section 99(5) notification".

2. The applicant shall send to the landlord together with his section 99(5) notification a statement of his grounds for disputing each matter which he does not accept.

3.—(1) At the same time as the applicant sends his section 99(5) notification to the landlord, he shall send the district valuer –

(a) a copy of the application under section 96(1);

(b) a copy of the notices served by the landlord under sections 97(1), 98(1) and 99(1);

(c) a copy of the section 99(5) notification;

(d) a copy of the statement referred to in paragraph 2 above; and

(e) any further information which is, in his opinion, relevant to the determination of the dispute.

(2) Where the applicant sends the district valuer information in accordance with paragraph (e) above, he shall at the same time send a copy of it to the landlord.

4.—(1) The district valuer shall, on receipt of all the copies referred to in paragraph 3 above, forthwith –

(a) notify the applicant and the landlord in writing that he has received them; and

(b) notify the landlord that its response to the applicant's case is required within 21 days of the date of his notification under this sub-paragraph.

(2) Where the applicant does not send all the copies referred to in paragraph 3 above to the district valuer, the district valuer shall notify the applicant that he is required to send them forthwith to both the district valuer and the landlord.

5.—(1) The landlord shall send copies of its written response to the applicant's case within the period referred to in paragraph 4(1)(b) above both to the district valuer and to the applicant, and, where the landlord does not accept the applicant's case as respects any matter, the response shall include a statement of its grounds for disputing it, and any modification which the landlord proposes to the price in the light of the applicant's case.

(2) The landlord shall within that same period inform the district valuer and the applicant in writing of the extent to which the following factors (where relevant to the dispute) have been taken into account in reaching the proposed purchase price or disposal cost –

(a) any subsidence attributable to mining which affects or may affect the property to which the acquisition relates;

(b) the existence of any defects in the structure of any buildings included in the property to which the acquisition relates or any disrepair in such buildings, and the existence of any relevant designation under Part XVI of the 1985 Act;

(c) the nature and extent of any works reasonably necessary to put the buildings included in the acquisition into the state of repair required by the landlord's repairing obligations;

(d) the number of properties which have become available for reletting to new tenants during each of the last four years;

(e) details of any costs and income associated with the property to which the acquisition relates not detailed elsewhere;

(f) information about sales to persons having the right to buy under Part V of the 1985 Act of dwelling-houses occurring within the property to which the acquisition relates and its locality during the period of four years preceding the relevant date, and details of any claims to exercise the right to buy which have not yet been completed.

6. The applicant shall, within 14 days of the date of the landlord's response, notify the district valuer and the landlord in writing whether he accepts the landlord's response as respects any matter together with, where he does not, a statement of his grounds for disputing it.

7.—(1) Where –

(a) it appears to the district valuer that it would be desirable to inspect all or any part of the property to which the acquisition relates; or

(b) either the applicant or the landlord requests such an inspection in writing;

the district valuer shall notify the applicant and the landlord that at a specified date and time within 14 days of the applicant's notification in accordance with paragraph 6 above or, where the period for that notification has ended and there has been no such notification, within 14 days of that period ending he shall inspect all or any part of the property to which the acquisition relates.

(2) The applicant and the landlord may accompany the district valuer when he inspects property, but he shall not be bound to defer the inspection where the applicant or the landlord is not present at the time notified.

8. Where it appears to the district valuer that it would be desirable to hear the cases put by the landlord and applicant as respects any matter, he shall make arrangements for a hearing, and shall give the landlord and applicant not less than 7 days notice of the date, time and place of such a hearing.

9. The district valuer may at any time after service of the section 99(5) notification and before determining the dispute require either the applicant or the landlord to supply information which in his view it is desirable to take into account and which it is reasonable for that person to supply, and the person to whom that requirement is addressed shall supply that information within 7 days sending a copy at the same time to the other.

10. The district valuer shall, as soon as is reasonably practicable after conclusion of the proceedings provided for in this Schedule, notify the applicant and the landlord in writing of his determination of the matters referred to in the section 99(5) notification.

11.—(1) Subject to sub-paragraph (2) below, the costs of the district valuer in determining the dispute shall be borne in equal shares by the applicant and the landlord.

(2) Where it appears to the district valuer that the applicant or the landlord has behaved unreasonably in presenting his or its case, by failing to comply with any of the time limits in this Schedule or otherwise, he may order the applicant and the landlord to bear such costs in whatever proportion seems to him appropriate.

(3) Any costs which are to be borne by one of the parties under this paragraph may be recovered from that party by the district valuer as a simple contract debt.

SCHEDULE 3

Regulation 16

CONSULTATION MATERIAL

1. The information served in accordance with regulation 16(1) –

(a) shall be written in clear and straightforward language;

(b) where there is a significant foreseeable demand from tenants by whom written English is unlikely to be readily comprehended, shall include for those tenants material in alternative language or medium, including, where appropriate, braille and audio tape recording; and

(c) without prejudice to paragraph (b) above, where served in Wales, may be in English and Welsh.

2. The information shall explain –

(a) that the information is served in accordance with regulations prescribed under section 102(1);

(b) that it is served by the applicant and its purpose is to enable the tenant to decide whether he wishes to continue as a tenant of the landlord or to become a tenant of the applicant;

(c) that the tenant may serve a notice of his wishes and that the manner of voting will be explained in information which is being circulated by a teller together with a form of notice for the tenant to express his wishes;

(d) the role of the teller in general terms;

(e) that joint tenants will each receive a copy of the items supplied by him but one form only for giving notice of their wishes;

(f) the effect of section 103(6) on any offer to a tenant relating to the terms on which, after the acquisition, he is to occupy a dwelling-house occupied by him on the relevant date;

(g) the circumstances in which the transfer may proceed;

(h) the circumstances in which the tenant will become a tenant of the applicant;

(j) the effect on –

(i) a secure tenant,

(ii) a tenant under a long tenancy, and

(iii) a business tenant,

of becoming a tenant of the applicant;

(k) the circumstances in which a tenant of the applicant has the right to refer proposals for a rent increase to a rent assessment committee to determine rent in accordance with section 17;

(l) an explanation of his rights, if he becomes a tenant of the applicant, under sections 18 to 30 of the Landlord and Tenant Act 1985(a) and section 42 of the Landlord and Tenant Act 1987(b);

(m) that the information served by the teller engaged by him will inform each tenant of the nature of his tenancy;

(n) the applicant's policy for determining priority as between people seeking tenancies in the allocation of his housing accommodation, including means of taking account of special difficulties as respects housing experienced by particular groups including elderly people, people from ethnic minorities, people suffering domestic violence, people suffering from physical or mental disability and those caring for people suffering such disability, and any arrangements it will maintain to facilitate the move by his tenants to other accommodation;

(o) the applicant's proposals (if any) for day to day management including numbers, location and responsibilities of management staff.

3. The information shall include a statement as to what the applicant is offering or has offered to secure tenants (and if he is making or has made no such offer, that no such offer is made) in respect of the following matters –

(a) the amount of rent and the amount of any service charge which will be payable under the proposed tenancy and the procedure for reviewing such amounts and the frequency of such review and any limitation on the level of increases in rent and service charges;

(b) the tenant's entitlement to allow persons to reside in the dwelling-house as lodgers and any entitlement to sublet or part with possession of part of the dwelling-house;

(c) the tenant's entitlement to carry out works of improvement;

(d) the arrangements which the applicant will maintain to ensure that his tenants are informed of those of his proposals which are likely to affect them and that the tenants are able to make their views known to the applicant before he makes decisions based on those proposals;

(e) the respective obligations of the applicant and the tenant under the proposed tenancy as to repair of the dwelling-house and any common parts included in the acquisition (including the making good of structural defects);

(f) any works of repair (including the making good of structural defects) which the applicant proposes to carry out including the time within which they are to be completed;

(a) 1985 c.70. (b) 1987 c.31.

(g) the arrangements which the applicant will maintain for assessing the need for works of maintenance and repair (including the frequency of visits for such assessment) and for enabling tenants to notify the applicant of the need for such works;

(h) the time within which the applicant undertakes to carry out emergency works and other works;

(j) the tenant's entitlement under the terms of the tenancy to assign his tenancy to a tenant who assigns his tenancy to the first mentioned tenant;

(k) any arrangements which the applicant will make as to arbitration to determine any dispute arising under the tenancy, or between tenants arising from their occupation of property acquired under Part IV of the Act;

and that statement should include information as to whether the applicant's consent is to be required for any purpose, and the circumstance in which such consent is to be withheld, and shall say how, if at all, the terms offered differ from the tenant's existing secure tenancy.

4. The information shall include –

(a) an address and telephone number at which the tenant may seek further information and assistance from the applicant;

(b) a statement that the Corporation may provide information, advice and assistance to tenants of landlords under section 106.

SCHEDULE 4 Regulation 19

REQUIREMENTS OF GRANT OF FEE SIMPLE OR LEASE BACK

INTERPRETATION

Interpretation

1. In this Schedule –

" the 1925 Act" means the Law of Property Act 1925(a);

"grant" means the grant of an estate in fee simple absolute in accordance with section 104(1)(a) by the public sector landlord to the applicant;

"lease" means the grant of a lease in accordance with section 104(1)(b) by the applicant to the public sector landlord;

"grantor" means the person or body who makes the grant or grants the lease; and

"grantee" means the person or body to whom the grant is made or the lease granted;

"public sector landlord" means the landlord as defined in these Regulations;

"relevant secure tenancy" means the secure tenancy of the flat in question in favour of the tenant who immediately prior to completion of the grant had a secure tenancy of that flat;

"right to buy lease" means a lease granted by the public sector landlord under Part V of the 1985 Act;

"tenancy subsisting at the time of acquisition" includes a relevant secure tenancy.

(a) 1925 c.20.

Grants and leases – general

2. The grant or lease shall not exclude or restrict the general words implied under section 62 of the 1925 Act unless:

(a) in the case of a grant, the exclusion or restriction is made for the purposes of reserving a right or interest to be retained by the public sector landlord by or in accordance with these Regulations or of preserving or recognising an existing right or interest of another person, or

(b) in the case of a lease, the public sector landlord consents or the exclusion or restriction is made for the purpose of preserving or recognising an existing right or interest of another person, or relates to a right or interest required by or in accordance with these Regulations to be retained by the applicant.

Rights of support, passage of water etc.

3.—(1) The grant or lease shall have the effect stated in sub-paragraph (2) as regards –

(a) rights of support for a building or part of a building;

(b) rights to the access of light and air to a building or part of a building;

(c) rights to the passage of water or of gas or other piped fuel, or to the drainage or disposal of water, sewage, smoke of fumes, or to the use or maintenance of pipes or other installations for such passsage, drainage or disposal;

(d) rights to the use or maintenance of cables or other installations for the supply of electricity, for the telephone or for the receipt directly or by landline of visual or other wireless transmissions.

(2) The effect is –

(a) to grant with the property which is the subject of the grant or lease all such easements and rights over other property as existed at the time of acquisition and such further easements and rights (if any) as are necessary for the reasonable enjoyment of the property (in either case so far as the grantor is capable of granting them);

(b) to make such property subject to such easements and rights for the benefit of other property to which it was subject at the time of acquisition and to such further easements and rights (if any) as are necessary for the reasonable enjoyment of other property, being property in which at the time of acquisition the grantor has an interest, (in either case so far as the same are capable of existing in law).

(3) This paragraph –

(a) does not restrict any wider operation which the grant or lease may have apart from this paragraph; but

(b) is subject to any provision to the contrary that may be included in the grant pursuant to paragraph 11 of this Schedule or in the lease pursuant to paragraph 14 of this Schedule.

Rights of way

4.—(1) The grant or lease shall include –

(a) such provisions (if any) as the grantee may require for the purpose of securing to him rights of way over other property so far as the grantor is capable of granting them, being rights of way that are necessary for the reasonable enjoyment of the property which is the subject of the grant or lease; and

(b) such provision (if any) as the grantor may require for the purpose of making the property to be granted or leased subject to rights of way necessary for the reasonable enjoyment of other property, being property in which at the time of acquisition the grantor has an interest, or to rights of way granted or agreed to be granted before the relevant date by the grantor or by any predecessor in title of the grantor.

(2) This paragraph –

(a) does not restrict any wider operation which the grant or lease may have apart from this paragraph; but

(b) is subject to any provision to the contrary that may be included in the grant pursuant to paragraph 11 of this Schedule or in the lease pursuant to paragraph 14 of this Schedule.

Covenants and conditions

5. The grant or lease shall include such provisions (if any) as the grantor may require to secure that the grantee is bound by, or to indemnify the grantor against breaches of –

(a) restrictive convenants (that is to say, covenants or agreements restrictive of the use of any land or premises) affecting the property to be granted or leased and enforceable for the benefit of other property;

(b) any other covenants affecting the property to be granted or leased.

6. Subject to the following provisions of this Schedule, the grant or lease may include such covenants and conditions as are reasonable in the cirumstances.

Charges for consent or approval

7. No provision shall enable the grantor to charge the grantee a sum for or in connection with the giving of a consent or approval, but the grantor may require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with the giving of a consent or approval.

REQUIREMENTS OF GRANT OF FREEHOLD

Grant – General

8. The grant shall not exclude or restrict the all estate clause implied under section 63 of the 1925 Act unless the exclusion or restriction is made for the purpose of –

(a) reserving a right or interest to be retained by the public sector landlord pursuant to paragraph 11 of this Schedule; or

(b) preserving or recognising an existing right or interest of another person.

9.—(1) The grant shall be of an estate in fee simple absolute, subject to –

(a) any rights of interests to be retained by the public sector landlord;

(b) the rights or interests of any other person;

(c) restrictive covenants (as defined in paragraph 5(a) above) and other covenants affecting the property which are enforceable for the benefit of other property;

(d) burdens (other than burdens created by the grant) in respect of the upkeep or regulation for the benefit of any locality of any land, building, structure, works, ways or water courses;

but otherwise free from incumbrances.

(2) Nothing in sub-paragraph (1) shall be taken as affecting the inclusion in the grant of provisions pursuant to paragraph 11 of this Schedule.

Covenants

10. The grant shall be expressed to be made by the public sector landlord as beneficial owner (thereby implying the covenant set out in Part I of Schedule 2 to the 1925 Act (covenant for title)).

Extent of grant

11. The grant shall accord with the terms of the section 98(1) notice, subject to any agreement to vary or amend such terms, but where –

(a) any matter has been determined in accordance with the procedure provided for under section 98(5), or

(b) any houses have been excluded in accordance with regulations made under section 100(1)(a),

the grant shall accord with that determination or exclusion.

Price

12. The price paid for the grant shall be the price determined under section 99, taking into account the sum referable to excluded houses in accordance with section 100 and to any reduction in the price determined by the district valuer in accordance with section 103(7).

The term

13. The term of any lease is to be 999 years from the time of acqisition.

Extent of lease

14. The lease shall accord with the terms of the notice served under section 103(1) but where –

(a) any variation from these terms has been agreed to by the parties; or

(b) any matter which the public sector landlord has notified the applicant it does not accept in accordance with section 103 has been resolved or determined;

the lease shall accord with that agreement, resolution or determination.

Determination on ending of tenancy subsisting at the time of acquisition or right to buy lease

15.—(1) The lease is to be determinable by notice given in accordance with terms complying with paragraph 18 of this Schedule by the applicant or his successors in title or by the public sector landlord on the happening of either of the following events –

(a) the ending of the tenancy subsisting at the time of acquisition; or

(b) the relevant secure tenancy ceasing to be a secure tenancy within Part IV of the 1985 Act;

subject to the exceptions mentioned in sub-paragraph (2) below.

(2) The exceptions mentioned in this sub-paragraph are –

(a) where the lease is of a flat which was, on the relevant date, occupied by a secure tenant in the circumstances set out in any of paragraphs 5, 7, or 9 to 11 of Schedule 5 to the 1985 Act; or

(b) where the relevant secure tenancy ceases to be a secure tenancy on the granting of a right to buy lease.

(3) Where a right to buy lease has been granted the lease shall be determinable by notice given in accordance with terms complying with paragraph 18 of this Schedule by the applicant or his successors in title or the public sector landlord on the ending of the right to buy lease.

Determination on variation of tenancy subsisting at the time of acquisition

16. The lease is to be determinable by notice given in accordance with terms complying with paragraph 18 of this Schedule by either the applicant or his successors in title or by the public sector landlord where the tenancy subsisting at the time of acquisition is varied –

(a) from a periodic to a fixed term tenancy; or

(b) where such variation results in rights of succession which are more favourable to the tenant than those arising under that tenancy as it subsisted at the time of acquisition.

Prohibition of determination in other circumstances

17. The lease shall not be capable of being determined in circumstances other than those mentioned in paragraphs 15 and 16 of this Schedule; this paragraph shall not prevent forfeiture for non-payment of rent or breach of covenant by the public sector landlord.

Requirements of Notice of Determination

18.— The lease shall contain terms requiring that –

(a) a notice of determination for the purposes of paragraphs 15 and 16 shall be given in writing after the occurrence of the determinable event mentioned in those paragraphs ;

(b) the notice shall provide that the term of the lease shall expire on a specified date;

(c) the notice shall be served in accordance with section 196(3) and (4) of the 1925 Act.

Assignment

19. The lease shall contain an absolute prohibition against assignment either in whole or in part.

Common use of premises and facilities

20. The lease shall include the like rights to use in common with others any premises, facilities or services as the tenant of the flat enjoyed prior to the time of acquisition so far as the applicant is capable of granting them.

Covenants by the applicant

21.—(1) The lease shall include covenants by the applicant –

(a) to keep in repair the structure and exterior of the flat and of the building in which it is situated (including drains, gutters and external pipes) and to make good any defect affecting that structure;

(b) to keep in repair any other property included in the grant over or in respect of which the public sector landlord has rights by virtue of these Regulations;

(c) to ensure, so far as practicable, that services which are to be provided by the applicant and to which the public sector landlord is entitled (whether by itself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services.

(2) The lease shall include a covenant requiring the applicant to rebuild or reinstate the flat and the building in which it is situated in the case of destruction or damage by fire, tempest, flood or any other cause against the risk of which it is the normal practice to insure.

Covenants by the public sector landlord

22. The lease shall include a convenant by the public sector landlord to pay the rent reserved in the lease.

23. The lease shall include a covenant by the public sector landlord to ensure that the interior of the flat is kept in good repair (including decorative repair).

24.—(1) The lease shall include a covenant requiring the public sector landlord to notify the applicant by notice in writing on its becoming aware of the happening of any of the following events

(a) the ending of the tenancy subsisting at the time of acquisition; or

(b) the relevant secure tenancy having ceased to be a secure tenancy for any reason (including as a result of the grant of a right to buy lease); or

(c) the ending of the right to buy lease.

(2) The notice shall give the reason why the relevant secure tenancy has ceased to be a secure tenancy and a copy of any right to buy lease shall be provided.

Rent and service charges payable by the public sector landlord

25.—(1) The lease shall require the public sector landlord to make payments in respect of rent and may require payments in respect of service charges.

(2) The lease shall contain terms securing that –

(a) the amount to be paid for rent shall not exceed –

(i) any amount proposed as rent to the tenant of the flat in any offer made by the applicant during the consultation period, or

(ii) where the applicant's offer proposed that the rent be calculated in a manner specified, an amount calculated in that manner;

(b) if no offer was made to such tenant, then the amount or amounts to be paid should be comparable to those offered by the applicant during the consultation period in respect of similar flats to be included in the grant;

(c) if there is no similar flat, the rent should be comparable to the rent of any similar flats in similar or comparable locations let on comparable terms by a person approved under section 94 under an acquisition under Part IV of the Act whether or not to a public sector landlord;

(d) where none of paragraphs (a) to (c) applies, any increase or decrease of rent shall be comparable to the average increases or decreases charged by the applicant in respect of flats included in the acquisition.

(3) If payments are to be made in respect of service charges then the provisions of sub-paragraph (2) shall apply to such payments as if for rent there were substituted service charges.

Premiums and other payments

26. No premium is to be payable on the grant of the lease, and the lease shall not contain any provisions providing for the payment of any sum of money by the applicant or his successors in title to the public sector landlord or vice versa in consideration for the determination of the lease following the happening of any of the events specified in paragraphs 15 and 16 of this Schedule.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under Part IV of the Housing Act 1988 ("the Act") under which the secure tenant of a public sector landlord ("the landlord") may choose to become the tenant of an approved person who has applied under Part IV of the Act to become his new landlord.

Part I contains general provisions.

Part II prescribes the particulars which the landlord must include in its notice under section 98(1) of the Act (landlord's proposals as to property which the applicant proposes to acquire).

Part II provides procedure for the determination of certain disputes. Schedule 1 prescribes the provisions in accordance with which an adjudicator is to determine a dispute as to any matters stated in a notice served under section 98(1). Schedule 2 prescribes the procedure in accordance with which a district valuer is to determine a dispute as to any matters stated in a notice under section 99(1) of the Act (matters relating to price or disposal cost).

Part IV deals with tenants who are to continue as tenants of the landlord. Regulation 6 makes provision for the exclusion of certain houses from the applicant's acquisition. It also provides for the lease back by the applicant to the landlord of certain flats the tenants of which are either specified in section 100 of the Act or prescribed under regulations 7 or 8.

Part V is concerned with section 101 of the Act and tenancies or licences of property granted after the inclusion of that property within the application. The principal effect of section 101 of the Act is that tenancies or licences granted by the landlord after the dates mentioned in section 101 cannot be secure or assured tenancies. Certain statutes which afford protection to tenants are disapplied, and such tenancies and licences are determinable by the landlord by giving not less than four weeks notice to quit. Regulation 9 specifies tenancies and licences to which section 101 of the Act is not to apply. Regulations 10 and 11 provide for the landlord which grants a tenancy of licence to which section 101 applies to give notice of that fact to the applicant and to give notice to the tenant or licensee of the effect of that section. Regulation 12 requires the landlord to secure vacant possession of property to which section 101 applies at the time of acquisition. Regulation 13 provides for section 101 to cease to apply where the applicant does not proceed with the acquisition of the property.

Part VI deals with consulting certain tenants about their wishes in relation to an acquisition under Part IV of the Act. Regulation 14 prescribes the consultation period during which certain tenants may say whether they would like to continue as tenants of the landlord or to become tenants of the applicant. Regulation 15 prescribes tenants, additional to those specified in section 102 of the Act, who may express this opinion. Regulation 16 and Schedule 3 provide for the manner of and the procedure for consulting these tenants and regulation 17 for the manner in which their wishes are to be expressed.

Part VII deals with the covenant which an applicant may enter into with the landlord to make further payments to the landlord on the occasion of prescribed disposals. Regulation 18 prescribes the circumstances in which the covenant may be entered into, the nature of the covenant, the disposals on which payment is to be made and the amount of the payment.

Part VIII and Schedule 4 set out the requirements with which the grant of the fee simple estate by the landlord to the applicant and the lease of a flat back to the landlord by the applicant are to comply.