EXPLANATORY MEMORANDUM TO

THE HOUSING (RIGHT TO TRANSFER FROM A LOCAL AUTHORITY LANDLORD) (ENGLAND) REGULATIONS 2013

2013 No. 2898

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 These Regulations enable local authority tenants to form a tenant group (defined in the Regulations) for the purpose of putting forward proposals in a written notice to their local authority landlord to dispose of the houses described in the written notice to a private registered provider of social housing (a housing association).

2.2 The Regulations set out the procedure to be followed and require the local authority landlord to enter into an agreement to dispose of the houses where the requirements set out in the Regulations are met.

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

3.1 None.

4. Legislative Context

4.1 Section 34A of the Housing Act 1985 enables the Secretary of State to make regulations for imposing requirements on a local housing authority where a tenant group serves a written notice on the authority proposing that the authority should dispose of land described in the notice to a relevant housing provider.

4.2 A tenant group means a body or other person which satisfies such conditions determined by or under the regulations (section 34A(9)). A relevant housing provider, in relation to England, is a private registered provider of social housing (section 34A(9)).

4.3 The regulations may require the local housing authority to (section 34A(2)):

- provide, or finance the provision of office accommodation and facilities, and such training as the tenant group reasonably requires for the purpose of pursuing the proposal;
- arrange for feasibility studies to be conducted by persons determined under the regulation;

- provide to the tenant group information in connection with the proposal;
- to take steps to co-operate with the tenant group in connection with the proposal; and
- to arrange for ballots or polls with respect to the proposal.

4.4 The regulations may also (section 34A(4)):
- provide for particular questions arising from the regulations to be determined by the Secretary of State;
- set time limits for the carrying out of requirements under the regulations; and
- require any person exercising functions under the regulations to act in accordance with any guidance or directions given by the Secretary of State.

4.5 Section 32 of the Housing Act 1985 enables a local housing authority to dispose of housing land subject to Secretary of State consent. Where the disposal of land will mean that a secure or introductory tenant of the local authority will become the tenant of a private sector landlord (which includes a private registered provider of social housing) the Secretary will not entertain an application for consent under section 32 unless the requirements of Schedule 3A of the Housing Act 1985 have been met.

4.6 Schedule 3A requires the local authority to consult with secure and introductory tenants who will be affected by the disposal on the proposal to dispose of the land to a private sector landlord. Where the majority of the tenants who voted in the ballot are opposed to the disposal, the Secretary of State shall not give consent under section 32.

4.7 Part 4 of the Regulations provide for consultation with tenants and compliance with Part 4 should ensure compliance with Schedule 3A of the Housing Act 1985.

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 These Regulations aim to increase the opportunities for local authority tenants to exercise choice over their landlord. Currently, whilst local authority tenants must vote in favour of any proposal to transfer of their homes to a private registered provider of social housing, it will

usually be the local authority which leads that process. Private registered providers of social housing are usually referred to as "housing associations" and that is the term used in the rest of this Explanatory Memorandum. Local authority tenants cannot secure the transfer their homes to either a newly created or existing housing association landlord unless their local authority landlord supports the transfer.

7.2 Local authority tenants already have a statutory right to take over the management of their homes. These Regulations seek to further involve and empower local authority tenants by requiring local authority landlords to co-operate with a tenant group who wish to explore the benefits of a change of landlord by transferring their homes to a housing association.

7.3 Where the group of tenants can demonstrate that the transfer proposal is viable and supported by a majority of tenants through a ballot, the Regulations compel the local authority to seek the consent of the Secretary of State to transfer ownership of those homes to a housing association.

7.4 The Regulations enable a local authority to, at any time, request that the Secretary of State halt the transfer proposal on the grounds that it would have significant detrimental effect on the authority's ability to deliver housing services or regeneration in the local area. The tenant group is able to respond to this request from the local authority. The detail of this process is covered in Part 5 of the Regulations.

7.5 Parts 2 to 4 of the Regulations cover the three key stages of a transfer under the Regulations which are the:

- Initial Stage
- Feasibility Stage
- Development Stage

7.6 The Initial Stage entails the tenant group meeting certain conditions around the level of local support it enjoys before it can require the local authority to co-operate under these Regulations. A majority of the group must hold secure tenancies and at least 20% of tenants and leaseholders of the homes it is proposed transfer must be members of the group. The Regulations can only be used where the proposal is to transfer at least 100 homes let under secure tenancies and they comprise a "geographically coherent" area.

7.7 At the end of the Initial Stage, assuming it wishes to proceed, the tenant group must serve a proposal notice on the local authority stating that they meet the conditions above and that a meeting to discuss the proposal to explore transfer has voted in favour of this happening. Unless the authority rejects the proposal notice as failing to contain this information or requests that the Secretary of State halt the transfer process, this moves onto a consideration of the feasibility of a transfer.

7.8 The Feasibility Study Stage will involve: the tenant group exploring the advantages and disadvantages of a transfer; a preliminary assessment of whether and how this could be financed; whether to seek to create a new housing association or join and existing housing association; and, assessing the level of support for these options. The Regulations place a duty on the local authority to provide necessary facilities and required information and agree a timetable with the tenant group.

7.9 At the end of the feasibility study, the tenant group is required to provide a statement to the local authority setting out whether it wishes to proceed with transfer or not and, if it wishes to proceed, providing evidence that the majority of tenants are not opposed to transfer. Unless the authority rejects the statement as failing to contain the required information or requests that the Secretary of State halts the transfer process, this moves onto the Development Stage.

7.10 During the Development Stage, the tenant group will work up a business case for transfer and seek approval for this in line with the Government's wider policy on stock transfer set out in the Transfer Manual. Provided approval is given and transfer remains the tenant group's favoured option, the Regulations require the local authority to work with them to progress to a formal consultation and ballot of the tenants affected.

7.11 If there is a positive vote in favour of transfer by tenants, then the local authority must seek the Secretary of State's consent to transfer the ownership of their homes and, provided that is given, enter into an agreement to transfer those homes to the selected housing association .

7.12 These Regulations built on the Government's wider agenda to involve and empower social tenants and unlock, through the transfer of social homes from the public to the private sector, additional investment in new affordable housing and the existing stock. We know that around ten tenant groups across England who already have responsibility for managing their homes are interested in exploring transfer under these Regulations.

8. Consultation outcome

8.1 Consultation on a draft of these Regulations ran for a ten week period concluding on the 23 May 2012. The consultation outcome is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224535/130717_Response_on_Right_to_Transfer_Regulations.pdf

8.2 We have made minor changes to the draft Regulations in the light of consultation responses, in particular to: simplify the initial stage of the

process; increase the minimum number of homes to which a proposed transfer under these Regulations may be taken forward to one hundred; and, include a detrimental effect on the regeneration of the area as a reason that a local authority may request that the Secretary of State halts the transfer.

9. Guidance

9.1 Statutory Guidance on these Regulations is available on the GOV.UK website

10. Impact

10.1 The Regulations will only impact on business, charities or voluntary bodies to the extent that a tenant group decides that they wish to pursue transfer of their homes under these Regulations. Where they do so funding may be available from the Department for Communities and Local Government to support the group in taking their transfer proposals forward.

10.2 No costs will be incurred by existing housing association businesses unless a tenant group decides and a housing association agrees that their homes should be transferred to the housing association in the event of a successful ballot.

10.3 A small amount of local authority resource may be required where a tenant group seek to take forward a transfer under these Regulations, for example in order to fulfil the local authority's duty to provide information and organise a consultation and ballot process. Where a transfer takes place those costs may be offset against the receipt for the stock. A local authority may at any stage request that the Secretary of State halt the proposed transfer if they consider it will have a significant detrimental effect on the provision of housing services in the area

10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to existing small businesses, although it is possible that a new small housing association business could be created as a result of a tenant led transfer under these Regulations.

12. Monitoring & review

12.1 We will monitor how many tenant organisations seek to use these Regulations to transfer their homes to a housing association landlord and how many successfully do so, with a view to undertaking a more formal review after five years.

13. Contact

Patrick Owen at the Department for Communities and Local Government Tel: 0303 4443666 or email: patrick.owen@communities.gsi.gov.uk can answer any queries regarding the instrument.