

HOUSING AND REGENERATION ACT 2008

EXPLANATORY NOTES

STRUCTURE OF THE ACT

Part 3 – Other Provisions

Chapter 2 – Landlord and tenant matters

Tenant empowerment

Section 294 - Ballots before certain disposals to private landlords

826. *Section 294* makes amendments to Schedule 3A to the Housing Act 1985. Schedule 3A outlines the consultation process necessary before a local housing authority can seek the consent of the Secretary of State to transfer ownership of occupied council housing to a private sector landlord (e.g. a housing association). The amendments add the requirement that the local authority must hold a ballot of affected tenants as part of the consultation process, and that a vote in such a ballot against transfer will prevent the Secretary of State granting consent to the transfer. The powers of the Secretary of State are exercisable in Wales by the Welsh Ministers.
827. *Subsection (2)* sets out at what stage in the consultation process the ballot should take place, requires the local authority to conduct the ballot themselves or appoint an appropriate person to do so, and requires that, once the result of the ballot is known, the local authority must inform tenants of the result and, where the local authority intends proceeding with the transfer, inform them that they can, within 28 days, raise any concerns with the Secretary of State or (as the case may be) the Welsh Ministers.
828. *Subsection (3)* establishes that the Secretary of State cannot grant consent to a transfer where the majority of those voting in the ballot vote against the proposal.
829. *Subsection (4)* requires the Secretary of State or (as the case may be) the Welsh Ministers to issue guidance to local authorities on meeting the requirements in Schedule 3A regarding consultation, and it requires relevant local authorities to have regard to such guidance.
830. *Subsections (5) and (6)* establish that these new provisions do not apply to consultations that have already begun, and make clear at what point a consultation can be deemed to have begun.

Section 295 - Management agreements: extending requirements to co-operate

831. *Section 295* amends section 27AB of the Housing Act 1985. Section 27AB provides powers to the Secretary of State to make regulations requiring local housing authorities to enter into agreements with tenant management organisations over the management of their council housing. The amendments extend the list of what those regulations might include, and make other minor provisions. The powers of the Secretary of State are exercisable in Wales by the Welsh Ministers.

832. *Subsection (2)* permits the regulations to require the local authority to submit certain information to the tenant management organisation, and to require that the local authority co-operate in certain ways with that organisation.
833. *Subsection (3)* permits the regulations to determine that particular questions be determined by the person making the regulations as well as the authority, to set time limits on carrying out the requirements of the regulations, and to require that persons exercising functions under the regulations act in accordance with guidance or directions issued by the Secretary of State.

Section 296 - Requirements to co-operate in relation to certain disposals of land

834. **Section 296** adds a new section 34A to the Housing Act 1985.
835. Section 34A(1) gives the appropriate person (in England the Secretary of State, in Wales the Welsh Ministers) powers to make regulations where a local housing authority has been served a notice by a group of tenants requesting a transfer of occupied council housing from ownership of the local housing authority to a named registered private sector landlord (e.g. a housing association).
836. Section 34A(2) sets out requirements that may be placed on the local housing authority in the regulations. These comprise:
- providing assistance to the tenants (which could be financial support, accommodation, other facilities or training);
 - arranging a feasibility study to look into the tenants' proposals;
 - providing information to the tenants;
 - co-operating in certain ways with the tenants;
 - arranging ballots with respect to the proposals; and
 - entering into an agreement for the disposal.
837. Section 34A(3) sets out two further matters that might be included:
- provision identifying the land and houses affected by the proposal, and
 - provision requiring that the agreement between the local housing authority and the private sector landlord be in a form approved by the appropriate person.
838. Section 34A(4) sets out further procedural arrangements that might be included in the regulations:
- provision that certain questions arising from the regulations be answered by the authority or the appropriate person;
 - setting time limits for carrying out requirements set in the regulations; and
 - requiring persons exercising functions under the regulations to act in accordance with guidance or directions given by the appropriate person.
839. Section 34A(6) provides that the regulations must ensure that the local housing authority can make representations to the appropriate person before a decision to dispose is made.
840. The regulations are subject to the negative resolution procedure.

Family intervention tenancies

Section 297 - Family intervention tenancies: general

841. This section will enable local housing authorities and registered providers of social housing (in England) and registered social landlords (in Wales) to offer tenancies which will not be secure or assured tenancies to certain tenants who have lost or are potentially at risk of losing their secure or assured tenancy. These tenancies will be offered for the purposes of providing behavioural support services to tenants against whom a possession order for anti-social behaviour has been made or to tenants who could face possession proceedings on the grounds of anti-social behaviour.
842. *Subsection (1)* inserts a new paragraph 4ZA into Schedule 1 to the Housing Act 1985 (tenancies which are not secure tenancies).
843. Sub-paragraph (1) of the new paragraph provides that family intervention tenancies are not secure tenancies.
844. Sub-paragraph (2) provides that the tenancy can become a secure tenancy if the landlord so notifies the tenant.
845. Sub-paragraph (3) defines a family intervention tenancy for the purposes of this paragraph as a tenancy granted by a local authority to a person for the purposes of the provision of behaviour support services and against whom a possession order in respect of another dwelling-house:
- has been made in relation to a secure tenancy on the grounds of anti-social behaviour or;
 - could have been so made in relation to a secure tenancy; or
 - could have been so made if the tenant had had such a tenancy.
846. Sub-paragraph (4) provides the new tenancy will not be a family intervention tenancy unless the local housing authority has served a notice under sub-paragraph (5).
847. Sub-paragraph (5) provides the information the notice must contain including that the tenant is under no obligation to enter into the tenancy or unless otherwise required to do so to surrender any existing tenancy or possession of a dwelling-house. Entry into the tenancy will be voluntary.
848. Sub-paragraph (6) provides that the contents of the notice may be amended by regulations made by statutory instrument. These regulations may contain transitional, transitory or saving provisions. Where regulations amend or repeal the contents of the notice set out in sub-paragraph (5) they will be subject to affirmative procedure.
849. In addition the notice must contain advice to the tenant as to how they may be able to obtain assistance in relation to the notice (sub-paragraph (7)). The type of advice to be provided in the notices may be provided for by regulations (sub-paragraph (8)) made by statutory instrument.
850. Sub-paragraph (12) provides definitions for the terms used in the new paragraph 4ZA. “Behaviour support services” is defined as those support services that are identified in a behaviour support agreement and are provided by any person to the new tenant or persons living with them for the purposes of addressing the anti-social behaviour which has led to the local authority taking possession action or of being of the opinion that such a possession claim could be made. Behaviour support agreements are defined as agreements between the tenant and the local housing authority about behaviour and the provision of support services.
851. *Subsection (2)* inserts new paragraph 12ZA into Part 1 of Schedule 1 to the Housing Act 1988 (tenancies which cannot be assured tenancies).

852. New paragraph 12ZA mirrors the provisions in new paragraph 4ZA above in respect of family intervention tenancies granted by registered providers of social housing (in England) and registered social landlords (in Wales).
853. *Subsection (3)* provides that the new provisions in new paragraph 4ZA of Schedule 1 to the Housing Act 1985 and paragraph 12ZA of Part 1 of Schedule 1 to the Housing Act 1988 will not apply to any tenancy granted before this section comes into force.

Section 298 - Certain family intervention tenancies: termination

854. This section makes provision in relation to the termination of local housing authority family intervention tenancies.
855. *Subsection (1)* provides that a local authority should not serve a notice to quit on a tenant of a family intervention tenancy unless a notice under *subsection (2)* has been served on the tenant and either:
- the tenant has not requested a review of the kind specified in the notice (right to request, within 14 days of the service of the notice, a review of the authority’s decision to evict);
 - the tenant withdraws the request for a review; or
 - a notice under *subsection (4)(b)* has been served on the tenant (notice of the reasoning and decision of the requested review).
856. *Subsection (2)* sets out the required contents of the notice.
857. *Subsections (3) and (4)* explain what a local authority must do if a tenant requests a review of the local authority’s decision within 14 days of the service of the notice under *subsection (2)*. The local authority must carry out the review and serve notice of their decision and the reasons for it on the tenant.
858. *Subsection (5)* provides that an “appropriate authority” (i.e. the Secretary of State for England or the Welsh Ministers for Wales) may make regulations about the review procedure.
859. The procedure to be followed on review may be provided by regulations made by statutory instrument. The regulations may contain:
- a description of the person who makes the review decision;
 - the circumstances under which the tenant would be entitled to an oral review;
 - whether or not and by whom the tenant can be represented during the review hearing.

These regulations will be subject to the negative resolution procedure.

860. *Subsection (7)* provides that any notice to quit or notice under *subsection (2)* served in respect of a family intervention tenancy, must also contain advice to the tenant about obtaining assistance in relation to the notice.
861. *Subsection (8)* provides that the type of advice the notice to quit or notice under *subsection (2)* must include may be provided by regulations subject to the negative resolution procedure.
862. *Subsection (10)* effectively applies the provisions of this section only to tenancies granted on or after the coming into force of this section.

Possession orders

Section 299 – Possession orders relating to certain tenancies

863. **Section 299** introduces Schedule 11.

Leasehold enfranchisement

Section 300 – Right to acquire freehold: abolition of low rent test

864. **Section 300** amends section 1 and repeals sections 1A(2), 1AA and 4A of the Leasehold Reform 1967 (“the 1967 Act”). These amendments have the effect of removing the low rent test contained in Part 1 of the 1967 Act as a means of determining eligibility for enfranchisement in relation to shared ownership houses.

865. The low rent test will remain for some purposes, for example, in determining the basis for valuing the freehold and when the claim is for a lease extension.

866. The test will continue to apply in respect of existing leases.

Section 301 - Shared ownership leases: protection for certain leases

867. Schedule 4A to the Leasehold Reform Act 1967 provides for the exclusion of certain shared ownership leases of houses from the operation of Part 1 (the enfranchisement provisions) of that Act. Section 301 inserts paragraph 3A into Schedule 4A. Paragraph 3A sets out the conditions that must be satisfied in order for a shared ownership lease granted by a landlord, other than a housing association, to be excluded from the operation of Part 1.

868. The conditions are similar to those that apply in relation to shared ownership leases granted by housing associations, but additionally the appropriate national authority (being the Secretary of State in England, and the Welsh Ministers in Wales) may prescribe other conditions that must be satisfied or prescribe exemptions.

869. The aim is to encourage more shared ownership housing to be made available, by giving non-housing association providers of such accommodation the same protection against the risk of enfranchisement as is afforded to housing associations. In particular, the provisions can be used to prevent a tenant from acquiring the right to enfranchise before the tenant has acquired 100% of the equitable interest in the house.

870. The amendment will not apply to leases granted prior to the commencement of the section.

Section 302 - Shared ownership leases: protection for hard to replace houses

871. **Section 302** inserts paragraph 4A into Schedule 4A to the 1967 Act. The effect of paragraph 4A is that shared ownership leases granted by any provider that are not excluded from the operation of Part 1 of the Act by virtue of either paragraph 3 or 3A of Schedule 4A (because they do not comply with the conditions set out in either of those paragraphs) will nevertheless be excluded from the operation of Part 1 if they are situated within an area that is designated as a protected area and if they satisfy all the other requirements set out in paragraph 4A. The appropriate national authority (i.e. the Secretary of State in England, and the Welsh Ministers in Wales) has power to prescribe additional conditions that must be satisfied.

872. The appropriate national authority is also given power under paragraph 4A to designate an area as a protected area where it considers it is appropriate to do so to support the provision in the area of houses, or types of houses, which are available for occupation in accordance with shared ownership arrangements. The appropriate national authority must publish the criteria which will be taken into account by it in deciding whether to

designate an area as a protected area, and must consult those likely to be affected by the designation.

873. Subject to the conditions in paragraph 4A being satisfied, this provision will allow any provider of shared ownership housing to grant leases that restrict the percentage share of the house that the tenant may acquire, and may also prevent the tenant from acquiring the freehold interest, if the house is in an area that has been designated as a protected area.
874. This section is intended to help retain shared ownership properties as affordable housing for future purchasers in areas where such housing would be hard to replace. It is also intended to help to make land available for affordable housing by giving landowners greater assurance that the properties will be retained as affordable housing for future purchasers.

Service charges

Section 303 – Service charges: provision of information and designated accounts

875. **Section 303** introduces Schedule 12 in relation to the provision of information about service charges and designated accounts.

Right to buy etc: miscellaneous

Section 304 – Exclusion of the right to buy: possession orders

876. **Section 304** clarifies the circumstances where section 121(1) of the Housing Act 1985 applies so that a tenant subject to a possession order cannot exercise the right to buy, ensuring that these include a possession order which does not initially specify a date for possession.

Section 305 – Exclusion of the right to buy: demolition notices

877. **Section 305** introduces Schedule 13.

Section 306 – Review of determination of value

878. Section 128 to the Housing Act 1985 (“the Act”) provides that where a tenant who has applied for the right to buy is dissatisfied with the valuation provided by his landlord under section 125 of the Act, he may ask the district valuer (an officer of the Valuation Office Agency, a non-profit-making public body) for a determination of value. Section 306 inserts new sections 128A and 128B into the Act to enable a district valuer, either at the request of the landlord or the tenant or on his own initiative, to review a determination of value which appears to have been based on faulty facts. A request or decision to review the original determination must be made within specified time limits, be in writing and set out the reason it is being made. A review may not be undertaken after the sale of the property has been completed. The specified time limits run from the date the landlord serves a notice on the tenant informing him of the determination under section 128. The district valuer will not know when such a notice has been served so provision is made to ensure that the district valuer is made aware of the service of the notice.

Section 307 – Approved lending institutions

879. If a tenant buys his home under the right to buy and then resells it within five years, his former landlord may require him to repay some or all of the discount he received. This obligation is secured by a charge on the property. Usually a right to buy purchaser will rely on a loan by way of mortgage, and the lender will also protect the loan by a charge on the property. Charges are ranked chronologically, and the landlord’s charge would take precedence over the lender’s. However, if the lender is one of those specified in

section 156 of the Housing Act 1985 or approved by the Secretary of State under that section (“approved lending institutions”) their charge may take precedence over the discount charge - i.e. they have the first charge on the property, giving them the best security for their loan.

880. **Section 307** removes the Secretary of State’s powers under section 156 to specify bodies as approved lending institutions and to revoke that status. The section instead adds “authorised mortgage lenders” to the list in section 156(4) of automatically approved lending institutions. It also adds a definition of authorised mortgage lenders to section 622 of the 1985 Act. These are (i) bodies which are authorised by the Financial Services Authority (FSA) and (ii) European lenders automatically entitled to operate in the United Kingdom. The overall effect is to combine the process of approving lenders for right to buy purposes, currently carried out by the Secretary of State, with the process of authorising lenders carried out by the FSA. “Authorised insurers” and “authorised deposit-takers” are also automatically approved lending institutions under section 156(4) of the Act, and section 316 (see below) amends the definitions of those bodies in section 622 of the Act to conform with the definition of authorised mortgage lender.

Section 308 – Former right to buy flats and other flats: service charge loans

881. **Section 308** amends section 450C of the Housing Act 1985 to provide that in regulations made by the Secretary of State (or, in Wales, the Welsh Ministers) regarding loans by landlords to leaseholders to assist in payment of service charges, such loans may be on terms other than an interest bearing loan. The power under section 450C is extended to provide for charging for the services of the district valuer, since it may be appropriate to specify valuation of the flat by a district valuer in regulations. Fees charged by the district valuer are limited to recovery of expenses, and are governed by usual administrative law principles of reasonableness.

Section 309 – Former right to buy and other flats: equity share purchases

882. **Section 309** adds a new section 450D to the Housing Act 1985. This provides that the appropriate national authority may provide by regulations that where a local authority is the landlord of a flat let on a long lease to a tenant (commonly known as a leaseholder) who is liable to pay service charges in respect of repairs or improvements to the flat, the landlord may, with the tenant’s agreement, buy an equitable interest (i.e. a share) in the flat in order to help the tenant to pay service charges. The regulations may provide that this power is not available to specified types of landlords, and also how the purchase price is to be calculated (including provisions in respect of discounts, charges for the services of district valuers, and the tenant’s liability for the landlord’s administrative expenses in connection with the purchase). Fees charged by the district valuer are limited to the recovery of expenses and are governed by usual administrative law principles of reasonableness.

Section 310 - Other amendments

883. **Section 310** corrects two errors in schedules to the Housing Act 1985 (“the Act”). The first correction, to Schedule 5 to the Act, removes an unintended right of further appeal to the High Court against the decision of a residential property tribunal, where tenants who have been refused the right to buy on the ground that the property is particularly suitable for occupation by elderly persons have appealed to a residential property tribunal. It was intended that the tribunal’s decision should be final; further appeal to the Lands Tribunal is already excluded. A possible right of further appeal to the High Court was inadvertently suggested by interaction between Schedule 5 and section 231 of the Housing Act 1996. The second correction amends a paragraph reference in Schedule 5A to the Act.

Other

Section 311 – Disposals of dwelling-houses by local authorities

884. **Section 311** introduces Schedule 14.

Section 312 - Financial assistance for information and other services

885. **Section 312** widens the existing power contained in section 94 of the Housing Act 1996 for the Secretary of State in England and the Welsh Ministers in Wales to provide financial assistance for the giving of general advice in respect of residential landlord and tenant law, including advice about estate management schemes in connection with enfranchisement.

886. Financial assistance may now also be provided for the giving of information and training, and for the running of an alternative dispute resolution service.

887. The ability to provide assistance in such form and on such terms as the Secretary of State in England and the Welsh Ministers in Wales consider appropriate will remain.