

2009 No. 2097

HOUSING, ENGLAND

The Housing (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009

<i>Made</i>	- - - -	<i>4th August 2009</i>
<i>Laid before Parliament</i>		<i>12th August 2009</i>
<i>Coming into force</i>	- -	<i>7th September 2009</i>

The Secretary of State for Communities and Local Government, in exercise of the powers conferred by paragraphs 3A(1) and (2), 4A(1) and (2) and 5 of Schedule 4A to the Leasehold Reform Act 1967(a), makes the following Order:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Housing (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009 and shall come into force on 7th September 2009.

(2) These Regulations apply in relation to the granting of a long tenancy(b) for a house in England at any time after the coming into force of these Regulations except where such tenancy arises from a written agreement for the grant of that tenancy made before the coming into force of these Regulations.

Interpretation

2. In these Regulations “the Act” means the Leasehold Reform Act 1967.

Meaning of “market value price”, etc

3.—(1) For the purposes of these Regulations, “market value price” means the amount which the interest in the house of the tenant would fetch, if sold on the open market by a willing vendor, on the assumption that the tenant had previously purchased 100 per cent of the shares in the house, disregarding the following matters—

- (a) any mortgage of the tenant’s interest;
- (b) any interest in or right over the house created by the tenant;
- (c) any improvement made by the tenant or any predecessor in title of the tenant; and

(a) 1967 c. 88 (“the Act”). The powers conferred by paragraphs 3A(1) and (2) and 4A(1) and (2) of Schedule 4A to the Act are exercisable, as respects England, by the Secretary of State. See paragraph 5 of Schedule 4A, as amended by section 302(2) of the Housing and Regeneration Act 2008 (c. 17) and the definition of the “appropriate national authority” in paragraph 7 of Schedule 4A to the Act. Schedule 4A to the Act was inserted by Schedule 4 to the Housing and Planning Act 1986 (c. 63.) Paragraphs 3A, 4A and 7 of Schedule 4A to the Act were inserted by sections 301 and 302(1) of the Housing and Regeneration Act 2008.

(b) For the meaning of “long tenancy” see section 3 of the Act.

(d) any failure by the tenant or any predecessor in title of the tenant to carry out any repairing obligations under the lease.

(2) Subject to paragraph (3), the market value price shall be agreed between the landlord and the tenant, or determined in a manner agreed between them..

(3) Where the landlord and tenant are unable to agree the manner in which the market value price should be determined they may appoint an independent expert to determine the price.

(4) If the landlord and tenant are unable to agree on the person to be appointed, either party may apply to the President of the Royal Institution of Chartered Surveyors for the market value price to be determined by the President or such person as he may nominate.

Prescribed condition under paragraph 3A(1)(b) of Schedule 4A to the Act

4. The condition prescribed under paragraph 3A(1)(b) of Schedule 4A to the Act is that the lease must set out the amount of any rent payable and the basis for calculating or determining any increase in the rent payable.

Acquisition of additional shares in the house: requirements prescribed under paragraph 3A(2)(c) of Schedule 4A to the Act

5.—(1) The following requirements are prescribed under paragraph 3A(2)(c) of Schedule 4A to the Act for the purposes of paragraph 3A(1)(a) of that Schedule.

(2) The tenant is to be entitled to acquire additional shares in the house, up to a maximum of 100 per cent, in instalments of 25 per cent or such lesser percentage as may be specified in the lease.

(3) If the lease specifies the date after which the tenant may acquire additional shares in the house, such date must not be later than 12 months after the date the tenant first acquired shares in the house.

(4) The tenant is to be able to exercise the entitlement to acquire additional shares in the house by serving notice in writing on the landlord at any time during the term of the lease, stating the additional shares the tenant proposes to acquire.

(5) Where the tenant serves a notice under paragraph (4) the landlord must not act in a way that would unreasonably delay the acquisition by the tenant of the additional shares.

(6) The price for the additional shares is to be an amount no greater than the same percentage of the market value price at the date of service of the tenant’s notice under paragraph (4) as is represented by the percentage of the additional shares being acquired.

(7) The rent payable by the tenant to the landlord under the lease (excluding amounts payable, directly or indirectly, for services, repairs, maintenance, insurance, or management costs) is to be reduced, on the tenant’s acquisition of additional shares, in the same proportion as is represented by the reduction in the percentage of shares remaining un-acquired by the tenant.

Payment for outstanding shares in the house: circumstances prescribed under paragraph 3A(2)(e) of Schedule 4A to the Act

6.—(1) (1) The circumstances prescribed under paragraph 3A(2)(e) of Schedule 4A to the Act for the purposes of paragraph 3A(1)(a) of that Schedule are that the lease must provide—

(a) that there shall have been a disposal, other than an exempt disposal, of any interest in the house by the tenant; and

(b) that the amount payable by the tenant to the landlord is to be an amount no greater than the same percentage of the market value price at the date of the disposal as is represented by the percentage of the shares in the house remaining un-acquired by the tenant.

(2) In paragraph (1) “exempt disposal” means—

(a) a disposal under a will or intestacy;

- (b) a disposal under section 24 of the Matrimonial Causes Act 1973^(a) or section 2 of the Inheritance (Provision for Family and Dependents) Act 1975^(b);
- (c) a grant of a sub-tenancy in respect of which a notice has been given under section 52(1)(b) of the Housing Act 1980^(c) (notice that a tenancy is to be a protected shorthold tenancy) or of a kind mentioned in any of Cases 11 to 18 or 20 in Schedule 15 to the Rent Act 1977^(d);
- (d) a grant of a sub-tenancy of part of the house, if any other part of the house remains in the possession of the tenant; or
- (e) a grant of a mortgage.

Acquisition of the landlord’s interest in the house: requirements prescribed under paragraph 3A(2)(f) of Schedule 4A to the Act

7.—(1) The following requirements are prescribed under paragraph 3A(2)(f) of Schedule 4A to the Act for the purposes of paragraph 3A(1)(a) of that Schedule.

(2) The lease must provide that the tenant may not acquire the landlord’s interest until the tenant has acquired 100 per cent of the shares in the house.

(3) If the lease specifies the date after which the tenant may acquire the landlord’s interest, such date must not be later than 12 months after the date the tenant first acquired shares in the house.

(4) Where the lease does not provide for the landlord’s interest to be transferred automatically to the tenant once the tenant has acquired 100 per cent of the shares in the house, it must provide for the tenant to acquire the landlord’s interest—

- (a) by serving notice in writing on the landlord at any time during the term of the lease; and
- (b) requiring the landlord’s interest to be transferred to the tenant as soon as practicable after the coming into effect of the notice referred to in sub-paragraph (a).

(5) The lease must not make provision entitling the landlord to make any charge for the conveyance or assignment of his interest in the house.

Protected areas: conditions prescribed under paragraph 4A(1)(c) of Schedule 4A to the Act

8.—(1) The following conditions are prescribed under paragraph 4A(1)(c) of Schedule 4A to the Act.

(2) The lease must contain a condition enabling the tenant to acquire at least 80 per cent of the total shares in the house.

(3) If the lease enables the tenant to acquire more than 80 per cent of the shares in the house the lease must also contain conditions to the effect that where the tenant holds more than 80 per cent of the shares and wants to sell those shares—

- (a) except in the circumstances described in paragraph (4)(h), the tenant must sell the shares to the landlord, or to a housing association or registered social landlord nominated by the landlord; and
- (b) on a sale of the shares the landlord, nominated housing association or nominated registered social landlord, as the case may be, must pay to the tenant an amount no greater than the same percentage of the market value price at the date of service of the tenant’s notice under sub-paragraph (4)(e) as is represented by the percentage of the shares being sold.

(4) Where the lease contains conditions to the effect specified in paragraph (3) the lease must also—

(a) 1973. c. 18.
 (b) 1975. c. 63.
 (c) 1980. c. 51.
 (d) 1977. c. 42. Case 11 was amended by the Housing Act 1980 (c. 51) and the Rent (Amendment) Act 1985 (c. 24). Case 12 was amended by, and Case 20 inserted by, the Housing Act 1980.

- (a) specify the circumstances in which the tenant may notify the landlord of the tenant's intention to sell the shares in the house;
 - (b) require the tenant to notify the landlord that the tenant intends to sell those shares;
 - (c) specify the time by which the landlord must respond to the tenant's notice of intended sale, which must be no later than 3 months after the date of receipt by the landlord of the tenant's notice;
 - (d) specify that the landlord's response—
 - (i) will confirm that the landlord will purchase the shares; or
 - (ii) will state the name, address and contact details of the housing association or registered social landlord nominated by the landlord to purchase the shares;
 - (e) specify that the landlord, the nominated housing association or the registered social landlord will complete the purchase of the tenant's shares no later than 6 months after the date of receipt by the landlord, the nominated housing association or the nominated registered social landlord of the tenant's notice that the tenant is ready to sell the tenant's shares specified in the notice referred to in sub-paragraph (b);
 - (f) prohibit the tenant from giving the notice referred to in sub-paragraph (e) until the market value price has been ascertained in accordance with regulation 3;
 - (g) specify the manner in which notices referred to in this regulation may be served, including any circumstances in which service shall be deemed to have taken place; and
 - (h) specify the remedies available to the tenant in the event of a failure by the landlord, the nominated housing association or the nominated registered social landlord to complete the purchase of the tenant's shares in the house in accordance with the conditions of the lease, which must include enabling the tenant—
 - (i) to dispose of the shares as the tenant sees fit; and
 - (ii) to recover from the landlord compensation for any loss occasioned by the tenant as a result of delay or failure on the part of the landlord, the nominated housing association or the nominated registered social landlord to complete the purchase in accordance with the conditions of the lease.
- (5) The lease must contain conditions to the effect that—
- (a) the landlord may not nominate a housing association or registered social landlord to purchase the tenant's shares unless that housing association or registered social landlord has confirmed in writing to the landlord that it wishes to be nominated to purchase the tenant's shares; and
 - (b) where a housing association or registered social landlord has been nominated by the landlord, the housing association or registered social landlord will be substituted for the landlord during the process of acquiring the tenant's shares (whether or not the tenant's shares are acquired by the nominated association or landlord) and, in particular, will be subject to the same conditions as would apply to the landlord if the landlord were purchasing the shares, with the exception of that referred to in paragraph (4)(h)(ii).
- (6) A lease granted by a person other than a housing association or registered social landlord must set out the amount of any rent payable and the basis for calculating or determining any increase in the rent payable.
- (7) In this regulation a "registered social landlord" is a landlord that is registered as a social landlord in England under Part 1 of the Housing Act 1996 (a).

(a) 1996 c. 52.

Protected areas: acquisition of additional shares in the house - requirements prescribed under paragraph 4A(2)(c) of Schedule 4A to the Act

9.—(1) The following requirements are prescribed under paragraph 4A(2)(c) of Schedule 4A to the Act for the purposes of paragraph 4A(1)(a) of that Schedule.

(2) The tenant is to be entitled to acquire additional shares in the house, up to the maximum specified in the lease (being not less than 80 per cent of the total shares in the house), in instalments of 25 per cent or such lesser percentage as may be specified in the lease.

(3) If the lease specifies the date after which the tenant may acquire additional shares in the house, such date must not be later than 12 months after the date the tenant first acquired shares in the house.

(4) The tenant is to be able to exercise the entitlement to acquire additional shares in the house by serving notice in writing on the landlord at any time during the term of the lease, stating the additional shares the tenant proposes to acquire.

(5) Where the tenant serves a notice under paragraph (4) the landlord must not act in a way that would unreasonably delay the acquisition by the tenant of the additional shares.

(6) The price for the additional shares is to be an amount no greater than the same percentage of the market value price at the date of service of the tenant's notice under paragraph (4) as is represented by the percentage of the additional shares being acquired.

(7) The rent payable by the tenant to the landlord under the lease (excluding amounts payable, directly or indirectly, for services, repairs, maintenance, insurance, or management costs) is to be reduced, on the tenant's acquisition of additional shares, in the same proportion as is represented by the reduction in the percentage of shares remaining un-acquired by the tenant.

Protected areas: payment for outstanding shares in the house - circumstances prescribed under paragraph 4A(2)(e) of Schedule 4A to the Act

10.—(1) The circumstances prescribed under paragraph 4A(2)(e) of Schedule 4A to the Act for the purposes of paragraph 4A(1)(a) of that Schedule are that the lease must provide—

- (a) that there shall have been a disposal, other than an exempt disposal, of any interest in the house by the tenant; and
- (b) that the amount payable by the tenant to the landlord is to be an amount no greater than the same percentage of the market value price at the date of the disposal as is represented by the percentage of the shares in the house remaining un-acquired by the tenant.

(2) In paragraph (1) "exempt disposal" means—

- (a) a disposal under a will or intestacy;
- (b) a disposal under section 24 of the Matrimonial Causes Act 1973^(a) or section 2 of the Inheritance (Provision for Family and Dependents) Act 1975^(b);
- (c) a grant of a sub-tenancy in respect of which a notice has been given under section 52(1)(b) of the Housing Act 1980^(c) (notice that a tenancy is to be a protected shorthold tenancy) or of a kind mentioned in any of Cases 11 to 18 or 20 in Schedule 15 to the Rent Act 1977^(d);
- (d) a grant of a sub-tenancy of part of the house, if any other part of the house remains in the possession of the tenant; or
- (e) a grant of a mortgage.

Signed by authority of the Secretary of State for Communities and Local Government

(a) 1973. c. 18.

(b) 1975. c. 63.

(c) 1980. c. 51.

(d) 1977. c. 42. Case 11 was amended by the Housing Act 1980 (c. 51) and the Rent (Amendment) Act 1985 (c. 24). Case 12 was amended by and Case 20 inserted by the Housing Act 1980.

4th August 2009

John Healey
Minister for Housing and Planning
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply in relation to England.

Part 1 of the Leasehold Reform Act 1967 (c. 88) (“the Act”) enables tenants of leasehold houses to exercise the right to enfranchisement in respect of the landlord’s interest in the house, subject to certain exceptions. Schedule 4A to the Act (which was inserted by Schedule 4 to the Housing and Planning Act 1986 (c. 63)) makes provision for certain shared ownership leases to be excluded from the provisions of Part 1 of the Act. Sections 301 and 302 of the Housing and Regeneration Act 2008 (c. 17) amend Schedule 4A by providing for the other types of shared ownership lease that are described in paragraphs 3A and 4A of that Schedule to be excluded from the provisions of Part 1 of the Act if certain conditions are met.

Paragraph 3A(1) of Schedule 4A provides that a lease other than one falling within paragraph 3 (which deals with housing association leases) is excluded from Part 1 of the Act if it meets certain conditions and does not fall within any prescribed exemptions. Regulations 4 to 7 of these Regulations prescribe additional conditions, circumstances and requirements in relation to leases other than housing association leases.

Regulation 3 defines the term “market value price” which is used for the purpose of ascertaining the amount payable by the landlord or the tenant for shares in a house under these Regulations.

Regulation 4 requires such leases to set out the amount of any rent payable, and the basis for calculating or determining any increase in the rent payable.

Regulation 5 prescribes the requirements as to additional shares that a tenant may purchase in the house, when those shares may be purchased, and the way in which the price for those shares is to be ascertained.

Regulation 6 prescribes the circumstances in which a landlord may require payment by the tenant for outstanding shares in the house, including when there has been a disposal of the house, and the way in which the amount payable for the shares is to be ascertained.

Regulation 7 prescribes the requirements that apply for the purpose of enabling the tenant to acquire the landlord’s interest in the house, including when that interest may be acquired.

Paragraph 4A(1) of Schedule 4A to the Act provides that a lease that does not fall within paragraph 3 or 3A of Schedule 4A is excluded from the provisions of Part 1 of the Act if the lease meets the conditions described in that paragraph and paragraph 4A(2) and does not fall within any prescribed exemptions; and if the house is in a protected area. The Housing (Right to Enfranchise) (Designated Protected Areas) (England) Order 2009 (SI 2009/2098) designates certain areas as protected areas under paragraph 4A(1) of Schedule 4A. Regulations 8 to 10 of these Regulations prescribe additional conditions, circumstances and requirements under paragraph 4A(1) and (2) of Schedule 4A.

Regulation 8(1) prescribes the conditions that must be contained in a lease. A lease must either restrict the shares a tenant may acquire in the house to 80 per cent of the total shares or, where a tenant is able to acquire more than 80 per cent, the lease must provide that where a tenant has acquired more than 80 per cent and wishes to sell any shares, the tenant must sell all of them back to the landlord or to a housing association or registered social landlord nominated by the landlord. If the landlord (or nominated housing association or registered social landlord) fails to purchase the shares within the period required under the conditions of the lease, the lease must enable the tenant to dispose of the shares in such manner as the tenant sees fit. Regulation 8(3)(b) prescribes

how the sale price of the shares in the house is to be ascertained. Regulation 8(6) requires the lease granted by a landlord other than a housing association or registered social landlord to set out the amount of any rent payable and the basis for calculating or determining any increase in the rent payable.

Regulations 9 and 10 prescribe requirements relating to the acquisition by the tenant of additional shares in the house and the circumstances in which a landlord may require payment by the tenant for outstanding shares in the house. These mirror the provisions contained in regulations 5 and 6 described above.

An impact assessment has been prepared in respect of these Regulations. It has been deposited in the Library of each House of Parliament and is available from the Department for Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DR or email leaseholdfranchisement@communities.gsi.gov.uk

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STATUTORY INSTRUMENTS

2009 No. 2097

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The Housing (Shared Ownership Leases) (Exclusion from
Leasehold Reform Act 1967) (England) Regulations 2009

£5.50