

**EXPLANATORY MEMORANDUM TO  
THE HOUSING MANAGEMENT AGREEMENTS (BREAK CLAUSE)(ENGLAND)  
REGULATIONS 2010**

**2010 No. 663**

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**

These Regulations are made to ensure a break clause is included where a local housing authority delegates management functions in an agreement made under Section 27(4) of the Housing Act 1985(a). This will mean that local housing authorities are in a position to comply with a management requirement imposed by the Regulator of Social Housing (known as the Tenant Services Authority or “TSA”) under Part 2 of the Housing and Regeneration Act 2008.

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

None.

4. **Legislative Context**

4.1 Section 27 of the Housing Act 1985 gives local housing authorities the power to delegate the management of its housing by means of a management agreement.

4.2 Part 2 of the Housing and Regeneration Act 2008 (“the Act”) establishes a new regulatory regime for English providers of social housing under the TSA. The enforcement powers of the TSA under the Act include the power to require a registered provider of social housing to put the management functions out to tender or to transfer them to a specified provider under sections 247 and 249 of the Act respectively.

4.3 A draft order, The Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010 (“the Order”) is currently before Parliament for approval. If approved, it is intended to come into force on 1st April and will require English local authorities who provide or intend to provide social housing to be registered with the TSA. This will mean such local authorities will be subject to enforcement powers of the TSA and so could be required to put management of any social housing provided by them out to tender or to transfer it to a specified provider. The Order inserts a new section 250A into the Act so that a local authority may not give effect to a management agreement as respects functions which are the subject of an arrangement imposed by the TSA under section 247 or 249 of the Act. The TSA will be able to impose these requirements on local housing authorities where they have already entered into a management agreement.

4.4 The Regulations will come into force on the day section 111 of the Act (registration) comes into force. It is intended the remainder of Parts 1 and 2 of the Act, including section 111, will be brought into force by a separate Commencement Order on 1st April 2010.

4.5 The Regulations impose an obligation on local housing authorities to include a break clause in any management agreement entered into under section 27 after 1st April 2010. This will ensure that local housing authorities will be in a position to comply with a management requirement imposed by the TSA under section 247 or 249 in any agreements entered into after 1st April.

## **5. Territorial Extent and Application**

This instrument applies to England.

## **6. European Convention on Human Rights**

The Minister of State for Housing and Planning, The Rt. Hon. John Healey MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Housing Management Agreements (Break Clause)(England) Regulations 2010 are compatible with the Convention rights”

## **7. Policy background**

7.1 The policy will affect all local authorities in England who either;

- have retained social housing stock and wish to transfer the management of that housing to an external provider; or
- have retained social housing stock which is already managed by an external provider and wish to enter into a new management agreement

after 1<sup>st</sup> April 2010.

*Policy objectives of the Housing Management Agreements (Break Clause)(England) Regulations 2010*

7.2 The purpose behind sections 247 and 249 of the Act is that the Tenant Services Authority should be able to act quickly to force a change of manager in serious cases of poor performance in order to secure better services for tenants. It would not be tenable to defer a change in management until an existing management agreement had expired or had reached a previously agreed review point.

7.3 We wish to avoid a situation where a local authority is placed in the problematic position of having to break its existing management contract where no such break clause was included in the original agreement. The Regulations should ensure that this will not be the case for all new agreements.

7.4 This position will, however, exist for all current management agreements. If the situation arises where the regulator needs to use the powers included in sections

247 and 249 then it is probable that the manager is failing to comply with its obligations under the existing agreement and it is likely that the agreement may be brought to an end. It is reasonable to expect the majority of existing agreements will already include a clause that allows termination of the agreement in the case of serious underperformance. If no such break clause exists then it will be up to the local housing authority to ensure it takes appropriate steps to comply with the arrangements put in place by the TSA (see note on section 250A of the Act in paragraph 4.3, above).

## **8. Consultation**

8.1 No separate consultation was undertaken for these Regulations as they follow from the decision to apply the regulatory framework under Part 2 of the Housing and Regeneration Act 2008 to local authorities.

8.2 The consultation on the application of the regulatory framework to local authorities opened on the 7<sup>th</sup> of August 2009 and closed on the 30<sup>th</sup> of October 2009, lasting 12 weeks. This included whether the TSA should have the powers to impose management transfer under sections 247 and 249 of the Housing and Regeneration Act 2008. Of the 54 responses that were received during the consultation period none objected to the TSA being given these powers,

## **9. Guidance and publicity**

9.1 The Government does not have any plans to issue specific guidance. We will, however, recommend that the TSA issues guidance on this to local authorities as part of its wider guidance on complying with the new regulatory regime.

## **10 Impact**

10.1 The impact on businesses, charities, or voluntary bodies is none.

10.2 The impact on the public sector is that it will require local authorities to include break clauses in any new management agreements for their social housing from 1<sup>st</sup> April 2010.

10.3 A full Impact Assessment was prepared for *Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009* on the potential impact of complying with the TSA's new regulatory regime.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 No review is scheduled.

### **13. Contact**

Peter Fenn at the Department for Communities and Local Government tel:0303 444 3652 or email: [peter.fenn@communities.gsi.gov.uk](mailto:peter.fenn@communities.gsi.gov.uk) can answer any queries regarding the instrument.