

EXPLANATORY MEMORANDUM TO
THE TRANSFER OF TENANCIES AND RIGHT TO ACQUIRE
(EXCLUSION) REGULATIONS 2012

2012 No. 696

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 Part 1 of these Regulations excludes tenants with certain types of assured shorthold tenancies (“ASTs”) from participation in a transfer to a new property under section 158 of the Localism Act 2011 (“the 2011 Act”).

- 2.2 Part 2 of these Regulations exempts certain tenants with assured shorthold tenancies from the right to acquire their home at a discount under section 180 Housing and Regeneration Act 2008 (“the 2008 Act”). This right is granted to tenants of private registered providers of social housing, subject to certain criteria.

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

- 3.1 These Regulations are the first time that the powers under section 158(10) Localism Act 2011 and section 180(2A) Housing and Regeneration Act 2008 (inserted by section 165(3) of the Localism Act 2011) have been exercised.

4. **Legislative Context**

- 4.1 These Regulations are in two parts. Part 1 sets out those tenants with ASTs who cannot transfer the terms of their tenancy to another social home under section 158 of the 2011 Act. Section 158 enables tenants in social housing to swap homes with other tenants, whilst keeping the terms of their existing tenancy.

- 4.2 Section 180 of the 2008 Act gives certain tenants of private registered providers the right to acquire their homes at a discount. The 2011 Act expanded the right to acquire to include tenants with ASTs, subject to the exceptions to be provided in these regulations, and the need to meet the existing criteria.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Transfer of Tenancy

7.1 In order to facilitate mobility within the social rented sector, secure tenants have a statutory right to exchange their tenancies, either with other secure tenants or with assured tenants, providing they meet certain conditions. This mutual exchange takes place by way of assignment, that is each tenant takes on the other's tenancy.

7.2 The 2011 Act gives social landlords the option to offer new tenants fixed-term tenancies instead of the traditional periodic secure or non-shorthold assured tenancy. Whilst periodic secure tenants and tenants with non-shorthold assured tenancies could exchange with fixed-term tenants, it is likely that they would be less willing to do so given the reduction in the level of security for them that this would entail. In order to ensure that mobility is not reduced, the Act contains a provision that will allow tenants who had a periodic secure or non-shorthold assured tenancy at the date the provisions commenced to swap their property with a fixed-term tenant and maintain their level of security. This would not be a mutual exchange (a swap of both tenancies and properties), instead, each tenant's tenancy would end and another would be given for their new property. A tenant who had a periodic secure or non-shorthold assured tenancy at the date the provisions commenced would have the same level of security as they had enjoyed in their previous home.

7.3 The exclusions in these regulations ensure that this right does not apply where it may be impractical for the right to be exercised, for example because the other party to the prospective transfer has been granted a tenancy for only a short period or a specific purpose, or where there is a strong case for retaining landlord discretion on the type of tenancy to be offered, e.g. for Affordable Rent properties. In such cases, transfers may still be permitted by the landlord, even though the statutory right to transfer does not apply.

Right to Acquire

7.4 Tenants of private registered providers of social housing who have non-shorthold assured tenancies enjoy the right to purchase their home, known as the 'right to acquire'. This is subject to certain criteria, for example that they have been public sector tenants for five years and that Government funding has contributed to the construction or purchase of the property. Section 165 of the 2011 Act amended section 180 of the 2008 Act to extend

the right to acquire to assured shorthold tenants, subject to existing criteria, in order to ensure that opportunities for home ownership are not limited by the introduction of fixed term tenancies.

7.5 Assured shorthold tenancies may be granted for specific purposes, for example as a probationary tenancy or in the context of a mortgage rescue scheme. A right to acquire in those circumstances would be out of keeping with the short-term or specific nature of these tenancies and these regulations make exclusions accordingly.

8. Consultation outcome

8.1 No consultation has been undertaken for this instrument. The broad policy proposals were subject to consultation between November 2010 and January 2011. A summary of the responses to this consultation was published on the Department's website in February 2011.

9. Guidance

9.1 The Department will not be issuing formal guidance.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to providing exemptions to new rights provided to some tenants and prospective tenants of private registered providers of social housing.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument. These regulations are connected with the implementation of the Localism Act 2011. An Impact Assessment that relates to this aspect of that Act (*Localism Bill: a fairer future for social housing – impact assessment*) was published in January 2011.

11. Regulating small business

11.1 The legislation applies to small business only to the extent that they may be private registered providers of social housing.

12. Monitoring & review

12.1 These regulations will not be subject to specific monitoring or review.

13. Contact

13.1 Graham Knapper at the Department for Communities and Local Government Tel: 0303 444 3667 or email: graham.knapper@communities.gsi.gov.uk can answer any queries regarding the instrument.