

2012 No. 695

HOUSING, ENGLAND

The Flexible Tenancies (Review Procedures) Regulations 2012

Made - - - - *5th March 2012*

Laid before Parliament *8th March 2012*

Coming into force - - *1st April 2012*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 107B(6) and 107E(4) of the Housing Act 1985(a):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Flexible Tenancies (Review Procedures) Regulations 2012 and come into force on 1st April 2012.

(2) In these Regulations—

- (a) “the Act” means the Housing Act 1985;
- (b) “applicant” means a person who has requested a review;
- (c) “landlord” means a person to whom a request for review is made;
- (d) “original decision” means a decision of the kind referred to in section 107B(2) or 107E(1) of the Act;
- (e) “review” means a review of the kind referred to in section 107B(2) (Review of decisions relating to flexible tenancies) or 107E(1) (Review of decision to seek possession) of the Act.

Application

2. An application for a review must be made in writing and must include—

- (a) the applicant’s name and address;
- (b) a description of the original decision in respect of which the review is sought including the date on which the decision was made;
- (c) if the review is requested pursuant to s107B of the Act, a statement of the reasons why, in the applicant’s opinion, the length of the tenancy does not accord with a policy of the landlord as to the length of the terms of the flexible tenancies it grants;
- (d) in any other case, a statement of the grounds on which the review is sought;
- (e) a statement to the effect that the applicant does, or does not, require the review to be conducted by way of an oral hearing;

(a) 1985 c. 68.

- (f) a statement to the effect that the applicant does, or does not, agree to receive communications relating to the review by email, and if the former, the email address to which such communications should be sent.

Right to a hearing

3.—(1) Where an application includes a statement to the effect that the applicant requires the review to be conducted by way of an oral hearing, the review must be conducted in accordance with regulations 6 to 10.

- (2) In any other case, the review must be conducted in accordance with regulation 5.

Communications

4.—(1) Where an application includes a statement to the effect that the applicant agrees to receive communications relating to the review by email any notice, document or other communication sent in connection with the review by the landlord by email to the email address referred to in regulation 2(f) is to be taken as having been received by the applicant at the time the email is sent to that address.

(2) In any other case, a notice, document or other communication sent in connection with the review by the landlord is to be taken as having been received by the applicant when it is—

- (a) given to the applicant in person;
- (b) sent by the landlord by first class post to the address referred to in regulation 2(a); or
- (c) delivered by hand to the address referred to in regulation 2(a).

Review without a hearing

5.—(1) Where regulation 3(2) applies, the landlord must send a written notice to the applicant stating that the applicant may make written representations in support of the application before a time specified in the notice.

(2) The time specified pursuant to paragraph (1) must not be earlier than five days after the day on which the notice referred to in that paragraph is received by the applicant.

(3) In making a decision on the review the person conducting the review must take into account any representations received in accordance with this regulation.

(4) The review must be conducted by a person appointed for that purpose by the landlord, who may be an officer or employee of the landlord.

(5) A person appointed under paragraph (4) who is an officer or employee of the landlord must be a person of greater seniority than the person who made the original decision.

(6) The person referred to in paragraph (4) must not be a person who was involved in the making of the original decision.

Review by way of a hearing

6.—(1) Where regulation 3(1) applies the landlord must send a written notice to the applicant stating the day on which, and the time and place at which it is proposed that the oral hearing is to take place.

(2) The day referred to in paragraph (1) must not be earlier than five days after the day on which the notice referred to in that paragraph is received by the applicant.

(3) If at any time before the day on which the hearing is due to take place the applicant so requests, the landlord may postpone the hearing to a later date.

(4) The date referred to in paragraph (3) must be no earlier than five days after the day on which the applicant receives notice in writing from the landlord of the new hearing date.

Procedure at hearing

7.—(1) The hearing must be conducted by a person appointed for that purpose by the landlord, who may be an officer or employee of the landlord.

(2) A person appointed under paragraph (1) who is an officer or employee of the landlord must be a person of greater seniority than the person who made the original decision.

(3) The person referred to in paragraph (1) must not be a person who was involved in the making of the original decision.

(4) The hearing must be conducted with the minimum amount of formality and in accordance with any directions given by the person conducting it.

(5) At the hearing the applicant may—

- (a) make oral or written representations relevant to the decision to be made on the review;
- (b) be accompanied or represented by another person appointed by the applicant for that purpose (whether that person is professionally qualified or not);
- (c) call persons to give evidence on any matter relevant to the decision to be made on the review; and
- (d) put questions to any person who gives evidence at the hearing.

(6) The person who made the original decision may attend the hearing and may do any of the things the applicant may do pursuant to paragraph (5).

(7) A person appointed as a representative pursuant to paragraph (5)(b) has the same rights and obligations as the applicant (or, as the case may be, the person who made the original decision) for the purposes of the conduct of the hearing.

Absence of applicant at hearing

8. If the applicant fails to attend the hearing, the person conducting it may, having regard to all the circumstances (including any explanation offered for the absence) proceed with the hearing or give such directions with a view to the further conduct of the review as that person may think appropriate.

Adjournment of hearing

9.—(1) The hearing may be adjourned by the person conducting it (on the application of the applicant or otherwise).

(2) Where the hearing is adjourned for more than one day, the person conducting it must specify a date on which the hearing is to be resumed by sending a notice in writing to that effect to the applicant and any other person whose attendance is required at the resumed hearing.

Decision on review

10. Where regulation 3(1) applies the decision on the review must be made by the person who conducted the hearing.

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

5th March 2012

Grant Shapps
Minister of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part IV of the Housing Act 1985 provides for a regime of flexible tenancies. If the landlord offers to grant a flexible tenancy and the length of the term does not, in the opinion of the prospective tenant, accord with the policy of the landlord as to the length of terms of the flexible tenancies it grants, the prospective tenant may request a review. These Regulations make provision about the procedure to be followed in conducting such reviews.

Where the landlord decides not to grant another tenancy on the coming to an end of a flexible tenancy, the landlord must provide the tenant with a written notice of the decision to seek an order for possession, setting out the reasons for this decision and informing the tenant of his right to request a review of the decision. These Regulations also make provision about the procedure to be followed in conducting such reviews.

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