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Date July 2009

Dear Colleague

Statutory guidance on meeting the requirements imposed on Local Authorities by paragraph 3 of Schedule 3A of the Housing Act 1985 (Consultation before disposal to private sector landlord) as amended by section 294(2) of the Housing and Regeneration Act 2008.

As you are aware the Assembly Government recently carried out a consultation exercise in respect of the above. Having considered representations made please find attached the statutory guidance to local authorities on meeting the requirements imposed on them by paragraph 3 to Schedule 3A of the Housing Act 1985 (Consultation before disposal to private sector landlord). Paragraph 3 of Schedule 3A was amended as of 22 September 2008 by virtue of section 294(2) of the Housing and Regeneration Act 2008.

The Welsh Ministers are obliged to give statutory guidance to local authorities about complying with the requirements of paragraph 3 as to consultation (paragraph 5A(1) of Schedule 3A of the Housing Act 1985). Local authorities must, in complying with the requirements of paragraph 3 as to consultation, have regard to the guidance the Welsh Ministers produce (paragraph 5A(3) of Schedule 3A of the Housing Act 1985).

This Statutory guidance, 'Transfer guideline update 1' is to be read in conjunction with the 'Stock Transfer Guidelines 2009'.

The statutory responsibilities of local authorities with regard to this consultation are set out in paragraph 3 of Schedule 3A of the Housing Act 1985.

Section 294(2) of the Housing and Regeneration Act 2008 amends paragraph 3 of Schedule 3A of the Housing Act 1985. Local authorities are now obliged to arrange a ballot of the tenants to establish whether or not the tenants wish the disposal to proceed. The authority must: -

- (a) make arrangements for such person as they consider appropriate to conduct the ballot in such manner as that person considers appropriate; or
- (b) conduct the ballot themselves.

After the ballot has been held the authority shall serve a notice on each tenant (whether or not he voted in the ballot) to inform him: -

- (a) of the ballot result; and
- (b) if the authority intend to proceed with the disposal, that he may within 28 days after the service of the notice make representations to the Welsh Ministers.

Section 294(4) also inserted a new paragraph 5A into Schedule 3A of the Housing Act 1985 requiring that the appropriate person (in England, the Secretary of State, and in Wales, Welsh Ministers) give guidance to local authorities about complying with the requirements of paragraph 3.

This guidance is attached as 'Transfer Guidance Update 1'.

Yours sincerely

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Document 2.

Transfer Guidance Update 1.

Statutory Guidance on the consultation requirements placed on local authorities by paragraph 3 of Schedule 3A of the Housing Act 1985 (Consultation Before Disposal to a Private Sector Landlord). This should be read in conjunction with 'Stock Transfer Guidelines 2009' Stage 3 Section 1 page 54 to Stage 3 Section 1 page 56

Statutory Guidance .

Statutory guidance on meeting the requirements imposed on them by paragraph 3 of Schedule 3A of the Housing Act 1985 (Consultation before disposal to private sector landlord) as amended by section 294(2) of the Housing and Regeneration Act 2008.

The requirements imposed by section 294 are:

- Section 294 of the Housing and Regeneration Act 2008 makes it a **statutory requirement** to hold a ballot of tenants to establish whether or not the tenants wish the proposal to proceed.
- Although the local authority may conduct a ballot themselves the Welsh Assembly Government considers that an independent ballot may be more suitable in order to avoid a conflict of interest.
- Paragraph 3(6) of Schedule 3A of the Housing Act 1985 requires the local authority, at the end of the ballot, to write to all tenants (whether or not they voted) informing them of the result and how they intend to proceed. A majority vote against the transfer would mean that transfer cannot proceed and the local authority should make this clear to tenants.
- Where the majority vote in favour of transfer the local authority must inform tenants of how they intend to proceed and advise the tenants that they have 28 days from the date on which the notice was served to make further representations to the Welsh Assembly Government.

The Welsh Assembly Government has issued this guidance as a supplement to the 'Stock Transfer Guidelines 2009' to reflect the new requirements. (Transfer Guidance Update (TGU 1)) The local authorities should also take their own legal advice to ensure that they meet the statutory requirements imposed by paragraph 3 of Schedule 3A of the Housing Act 1985.

All ballot questions must be expressed impartially and in plain language, and are subject to the agreement of the Welsh Assembly Government prior to issue.

It is recommended that the local authority require that the organisation conducting the ballot is instructed to provide feedback on the results, including an analysis of votes within a post

code area. This may be useful in the event of a “no” vote to determine if there are any areas where tenants voted in favour of transfer. A partial transfer or series of partial transfers in the future may then be considered based on the information provided.

In general, authorities should conduct the ballot of eligible tenants immediately after the service of the Stage 2 notice.

The Welsh Assembly Government will consider a simple majority of those voting in favour sufficient to indicate tenant support for a transfer. Stage 1 and Stage 2 notices should state the mandate required by the local authority from tenants to proceed with its proposals and this should bind the local authority’s future actions.

The ballot paper should be delivered to each tenant under separate cover from any of the local authority’s or the purchaser’s consultation material. It is normal practice to allow 28 days for the ballot period.

The Ballot result

As soon as the result is known the local authority must inform the Welsh Assembly Government by telephone and email with details on:

- The total number of votes received shown as a percentage of eligible voters;
- The number of positive and negative votes shown as a percentage of the valid votes; and

The local authority must also provide a copy of the Electoral Reform Services’ (or other independent organisation) report on the ballot result as soon as possible which should include a breakdown of the results by post code area where available.

At the end of the ballot the local authority must write and serve notice on all eligible tenants (whether or not they voted) informing them of the result and how they intend to proceed.

In the case of a positive ballot tenants will be given a further 28 days following the service of the notice to the tenants to make further representations to the Welsh Ministers.

The local authority should arrange a meeting with the Welsh Assembly Government as soon as possible after the ballot result and proceed to the post ballot stage.