

APPENDIX B

Explanatory note: Social Housing Policy Context: Flexible (fixed term) tenancies

This explanatory note provides additional information about the two main forms of tenancy which are currently available to the Councils in the provision of settled accommodation (as opposed to temporary accommodation for persons experiencing homelessness which is outside of the scope of this policy).

Name	Description
<p>Secure tenancy</p> <p><i>Periodic tenancy</i> <i>Lifetime tenancy</i></p>	<p>A secure tenancy is the traditional form of tenancy in Council housing.</p> <p>It is the form of tenancy that Babergh and Mid Suffolk have issued to tenants since the 1985 Housing Act.</p> <p>The tenancy is periodic and has no fixed end date. It runs from period-to-period, i.e. from week to week, until the agreement is ended by landlord or tenant intervening. It is often referred to as being a 'lifetime' tenancy as it can provide a home for life.</p> <p>The Tenant can serve notice to quit to end the agreement, the landlord may only seek to recover possession using the grounds for possession in the Housing Act 1985 in the County Court.</p>
<p>Flexible Tenancies</p> <p><i>Fixed term tenancy</i></p>	<p>A flexible tenancy is very different type of secure tenancy, which is granted for a fixed term, meaning that it ends on a specified date. Local authorities typically grant flexible tenancies for at least five years, the minimum period is two years. Referring to these tenancies as 'flexible' can be confusing, the name refers to the flexibility they offer landlords to manage tenancies how they see fit, the tenancies themselves are in fact <i>inflexible</i> in that they are for a set period.</p> <p>At the end of the fixed term the landlord has a mandatory ground for possession which would require the tenant to move out. In light of this, flexible tenancies are often referred to as fixed-term tenancies.</p> <p>Flexible Tenancies were introduced to Councils in 2011 with the Localism Act to provide a mechanism for reviewing tenants' need for social housing on a regular basis when the tenancy is due to come to an end.</p> <p>Renewing a tenancy: When a tenancy is approaching the end of the fixed term, but the tenant continues to need the social housing property, a new flexible tenancy can be offered for a further period.</p> <p>Terminating a tenancy: where the tenant is deemed no longer to need the property or social housing more generally, the Council</p>

	<p>can recover possession under s107D Housing Act 1985. The property can then be re-let to a household in greater need. The departing tenant would be helped and encouraged to source suitable alternative accommodation within the social or private sector, dependant on their needs and status.</p> <p>The criteria for assessing whether a tenant would be required to stay, or to go, would be contained within a Tenancy Policy.</p>
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1.1 For clarity, the tenancy agreements above can be preceded by an Introductory Tenancy which creates a probationary period of 12 months. This probationary period allows for swift possession action to be taken for very serious breaches of the tenancy agreement or fraudulent applications for social housing. This report does not provide details of these tenancy types, further information is available in the Tenancy Policy. The intention is to continue to use Introductory Tenancies to deter anti-social behaviour and tenancy fraud.

2. CONTEXT

2.1 Long-term security of tenure, the ‘lifetime tenancy’, was introduced for most council housing tenants by the Housing Act 1980 (later consolidated into the Housing Act 1985). This security of tenure has been generally considered an important and attractive aspect of social housing in England since its introduction.

2.2 The lifetime tenancy means, with some limited exceptions, that if a secure tenant does not breach the conditions of their tenancy agreement then they cannot be evicted from their home.

2.3 The Localism Act 2011 introduced a power for local authorities and housing associations to offer ‘flexible tenancies’ to new social tenants after 1 April 2012. Flexible tenancies are secure fixed-term tenancies with a minimum term of two years. The Government’s rationale for giving social landlords more flexibility over the length of tenancy offered was that a “one size fits all” model was no longer appropriate and was seen to contribute to under- and over-occupation ([Local decisions: a fairer future for social housing](#), para 1.11-12 and 2.11 – 12)

2.4 The Government published an [Impact Assessment](#) in January 2011 for the Localism Bill, which set out its evidence base for changes to tenure policy:

- *The current statutory and regulatory framework requires social landlords to grant ‘life-time’ tenancies in most cases – irrespective of how households’ circumstances might change in the future.*
- *Some social tenancies can be inherited by family members (other than partner/spouse), who may be in no housing need. Landlords have little control over this process.*
- *Current provisions fail to ensure that the support social housing provides to vulnerable households is sufficiently focused on those people who need it most.*

- *It is unfair – both on the most vulnerable households and taxpayers who subsidise its provision – that the current tenancy and succession arrangements prevent landlords from addressing as many people’s housing needs as they could.*

- *The preferred option would increase the freedom social landlords have to determine the sort of tenancy they grant to new tenants, allowing them to vary conditions such as tenancy length (subject to a statutory minimum). Existing social tenants would be unaffected.*

2.5 The Department for Communities and Local Government (DCLG) stated that fixed term tenancies would be offered for two years in exceptional circumstances, with five years or more being the norm. Local authorities were able to offer secure tenancies if they wish but must publish a tenancy policy setting out whether and how they intend to use fixed term tenancies.

2.6 Local authority tenants who have a fixed term tenancy enjoy similar rights as secure tenants, including the Right to Buy their home after a qualifying period and the Right to Repair. However, under section 155 of the Localism Act, flexible tenants do not have a statutory right to improve their properties or be compensated for those improvements. These rights are enjoyed by secure tenants of local authorities.

2.7 There was a limited take-up of fixed-term tenancies by councils and housing associations. The [Equality Impact Assessment on Lifetime Tenancies](#) (May 2016) said that in 2014/15 “only 15% of social housing tenancies were let on a fixed-term basis.”

2.8 The Housing and Planning Act 2016 introduced new provisions aimed at phasing out lifetime tenancies. The new provisions would prevent local authorities in England from offering secure tenancies for life in most circumstances. Housing associations would retain discretion over whether to offer a flexible tenancy.

2.9 Existing council tenants would not lose their security of tenure. If these tenants were forced to move, e.g. due to a regeneration scheme, they would retain their existing tenancy rights. However, where they chose to move their landlord would have had “limited discretion” to offer “further lifetime tenancies.” If the move was part of a mutual exchange, then local authorities would be allowed to continue to grant lifetime tenancies.

2.10 Regulations setting out the detail of how local authorities would operate this new regime were expected; however, on publication of the social housing Green Paper on 14 August 2018, [A new deal for social housing](#), the Government announced that it will not implement these provisions “at this time”.

2.11 There was wide agreement among providers of social housing and organisations representing tenants that lifetime tenancies, which offer security and stability for residents, are a core underpinning principle. [Shelter](#) said;

“The best starting point for people needing to rebuild their lives, or for those wanting to settle down and start a family, is a secure and stable home. The stability provided by a permanent tenancy means that people can make their accommodation a real home – decorate, get to know neighbours, and feel part of the local community.”

- 2.12 Shelter went on to say that it “strongly supports social landlords continuing to let their home on permanent or longer-term tenancies” and went on to highlight several negative consequences it believes could arise from the use of fixed-term tenancies:

The needs of individual households: For vulnerable people, the security given by their home can be especially valuable and can provide the basis for rebuilding their lives.

The efficient use of housing stock: One of the main arguments for tenure reform is to focus scarce social housing resources on those who need it most. However, the Government has an assessment that tenure reform will not significantly increase the number of vacant homes available until the late 2030s. It also highlights the administration and costs involved in conducting tenancy reviews, which the DCLG estimates at between £35 million and £74 million over 30 years.

The purpose of the accommodation: It is possible that making tenure dependent on proof of continuing need for social housing could disincentivise tenants from seeking or taking up work.

The sustainability of the community: There is a risk that the use of fixed-term tenancies could undermine the sustainability of communities by increasing the transience and social exclusion of neighbourhoods leading to the need for increased housing management resources, such as dealing with neighbour disputes.

- 2.13 The [Chartered Institute of Housing](#) said that it “supports in principle a more flexible approach to tenure”, but wishes to see this used to offer tenants positive and supported choices to improving their housing options and to support the development of sustainable communities:

We are clear that social housing should not be exclusively used as part of the welfare system and we are very resistant to any proposals which could see tenancies ended after a fixed term on the basis of an income-based means test. We are concerned that this would lead to social housing becoming more residualised, and further stigmatise those living in the sector.

- 2.14 The Communities and Local Government Select Committee considered the position on lifetime tenancies during its [2015-16 inquiry into housing associations and the Right to Buy](#). Evidence was taken from Stephen Hills, Director of Housing for South Cambridgeshire District Council:

We are 350 square miles, 103 villages. We have not got any towns at the moment. Those village communities are really important to people, and, if people have got caring commitments, local work or childcare commitments, they need to be able to live and to form part of that community. As to the thought that we would somehow have to move people on every few years, I cannot see how that would work. There are so few houses that come available in most of those villages, and if you move to the other side of the district, you might as well be moving to Mars for some people ... I think it would have quite a negative effect on the ability to sustain rural life in those areas.

2.15 Research carried out by Professor Suzanne Fitzpatrick and Dr Beth Watts from Heriot Watt University. [Welfare Conditionality Initial findings: fixed term tenancies in social housing](#) (February 2016) outlined interim findings from the initial stages of a five-year longitudinal study assessing the effectiveness and ethicality of welfare conditionality in the social housing sphere in England and Scotland. The key findings on existing use of fixed-term tenancies included:

- *A small number of highly 'interventionist' housing associations in England view fixed-term tenancies as an important mechanism in their broader attempts to recalibrate their relationship with tenants and 'nudge' them towards more socially and economically engaged lifestyles.*

- *Other 'early adopters' of fixed-term tenancies now appear disillusioned about their merits, particularly with regard to the scope for using them to generate additional social lettings in high demand areas. There is likewise scepticism about the efficacy of fixed-term tenancies as a tool to promote social mobility or to encourage positive tenant conduct, as well as concerns about administrative cost and complexity and the potential for community destabilisation.*

- *Some social tenants with fixed-term tenancies or probationary tenancies were unaware or unconcerned about their tenancy status, but it was a cause of considerable anxiety for some tenants, especially those with a disability or health problems and for families with children.*

2.16 The [final results of the research](#) were published in May 2018, the key findings are reproduced below:

- *There is little evidence that social tenants adjust their behaviour as a result of having a fixed-term rather than open-ended tenancy, other than in relatively minor ways (for example, some may be less likely to invest in home improvements).*

- *Most social tenants with fixed-term tenancies were only mildly or moderately anxious about their tenancy status, in part because the termination date in all cases was at least two years away. But it was a cause of considerable distress for a minority, especially older tenants, those with a disability or health problems, and some families with children.*

- *Tenants generally had only a vague idea of the grounds upon which their fixed-term tenancies may be terminated, though most had formed the (probably accurate) impression that their tenancies would be renewed so long as they did not run up rent arrears or engage in serious antisocial behaviour.*

- *The prospect that people's fixed-term tenancies could be terminated on the grounds of a rise in income was disapproved of by most tenants, and only a small minority saw the idea of income-related rents (sometimes called 'pay to stay') as fair.*

- *There was likewise very little support for the notion that renewal of tenancies should be linked to job search or volunteering activities, even some shock that such a proposition should be entertained.*
- *There were considerably more mixed views on the notion that, in a context of acute pressure on the housing stock, under-occupation could be a legitimate reason for non-renewal where alternative suitable accommodation could be made available.*

2.17 Shelter described the introduction of mandatory fixed-term tenancies as “toxic”:

So, is the government’s amendment really so toxic if it looks like the majority of tenancies will be renewed? We’d argue yes. The government’s insistence on reviewing everyone, even households with long-term health needs and disabilities, to see if their circumstances have changed seems unnecessary onerous and will cause bureaucratic cost for landlords and unnecessary stress for tenants.

Many people on low incomes are realistic about their prospects of purchasing property, despite the aspiration to own one. Only a quarter of current social tenants say they expect to ever be able to buy. Losing a social home would not propel them into social mobility but relegate them to a lifetime of insecurity in the private rented sector.

Landlords will be able to give scant reassurance to households, as they will have to go through the bureaucratic, costly and intrusive process of reviews before they can say with certainty that a household will be allowed to remain in their home. The ban on security of tenure is an example of policy being damned if it works and damned if it doesn’t.

Whatever happens to the roof above their heads, households will have lost the essential security of knowing they can call a place home.

2.18 The social housing Green Paper, [A new deal for social housing](#) on 14 August 2018, set out the Government’s position as follows:

Given the pressures on social housing the Government introduced further changes in the Housing and Planning Act 2016 to restrict the use of lifetime tenancies by local authority landlords. These changes are not yet in force but would require local authorities generally to grant tenancies on a fixed term basis and to review them towards the end of the fixed term period to decide whether to grant a further tenancy.

Since this legislation there has been a growing recognition of the importance of housing stability for those who rent. The challenges facing renters, including those in the private sector, were recognised in our White Paper, ‘Fixing our broken housing market’, and we are consulting on how to overcome the barriers to longer tenancies in the private rented sector.

Many residents spoke about the benefits of security in their tenancies, saying that they created strong, supportive communities, and particularly enabled people with vulnerabilities to thrive. Some felt that residents were more likely

to look after their property, their neighbours, and the community if they had a lifetime tenancy. While some people thought it was right that residents should move out of social housing if they no longer needed it given the pressures on housing, many also had concerns about the uncertainty when fixed term tenancies came to an end and the impact this could have on their families and communities.

We have listened carefully to the views and concerns of residents and have decided not to implement the provisions in the Housing and Planning Act 2016 at this time (paras 183-186).

- 2.19 The [Social Housing White Paper](#) was published on 17 November 2020. An underpinning theme of the White Paper is to address the stigma and treatment of tenants in social housing. The Paper described how tenants have been made to feel like 'second class citizens' and a shift is needed in the way they are treated and perceived in our Society. The balance has shifted significantly from treating social housing as one aspect of a welfare system, to providing secure, healthy, inclusive and safe homes and services.
- 2.20 Announced in the Renters Reform White Paper in June 2022, the Government plans to abolish all fixed term tenancies in the private and social housing sectors by 2030.