

Tenancy Policy



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Scope: Housing Solutions

Legislation: Localism Act 2011
Housing and Planning Bill 2016

**Date of next
Review:**
07/06/20

Related Policies: Rent Setting Policy 2015
Tenancy Policy 2016
HCA Rent Standards

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1 Statement of Intent

- 1.1 The Localism Act 2011 introduced new flexibilities for registered providers (RPs) to offer social housing tenancies for a fixed-term. The Act also introduced a new statutory duty on local authorities to publish a tenancy strategy that has been developed in consultation with RPs. The new flexibilities of the Act are designed to ensure the best use of social housing stock.
- 1.2 From April 2012 the new regulatory framework requires RPs to publish clear and accessible policies which outline their approach to tenancy management and have due regard to the tenancy strategies published by the local authorities in which they operate.
- 1.3 From April 2013 in all qualifying circumstances Housing Solutions began offering a fixed-term tenancy following satisfactory completion of a probationary starter tenancy.
- 1.4 This policy sets out the circumstances as to when Housing Solutions will offer different tenancy types and how fixed-term tenancies will be reviewed. It will identify the circumstances under which they will not be renewed and the advice and assistance offered when this occurs. The purpose of this policy is to ensure best use of Housing Stock in a high area of need, whilst meeting customers' requirements.

2 Aims

- 2.1 This policy aims to
 - Provide clarity on the circumstances in which Housing Solutions will grant each type of tenancy.
 - Offer tenancies which make the most efficient use of our housing stock and which are compatible with the purpose of the accommodation.

- Balance needs of our customers with best use of our housing stock.
 - Contribute to local authorities strategic housing function
 - Comply with the social housing regulators Tenancy Standard by setting out:
 - The length of terms for fixed term tenancies
 - Any circumstance in which we would grant a tenancy of less than 5 years in general needs housing following any probationary period.
 - The circumstances in which we may or may not grant another fixed term tenancy in the same of another property.
 - How we will take account of the needs of vulnerable households
 - How the customer and prospective customer can appeal against the type of tenancy offered, the length of the fixed term offered and/or the decision not to grant another tenancy on the expiry of the fixed term.
 - The advice and assistance will be offered to find suitable alternative accommodation if the fixed term tenancy is not renewed.
- 2.2 Each offer of a Housing Solutions home will clearly set out at the time of requesting a nomination from the local authority the type of tenancy, the rent charges and the conditions of the offer. Offer letters will include details of the type of tenancy that will be offered and during the viewing and sign up process the implications of the type of tenure being offered will be made clear.
- 2.3 All tenancy types can be offered at either a social target rent or at an affordable rent. Affordable rents may be applied on some new builds delivered under the terms of the Homes and Communities Agency's Delivery Framework Agreement along with an agreed small percentage of relets. The decision to relet a property at affordable rent will be decided at development stage for new developments or made by the Housing Manager (s), with further approval from the Head of Housing and the Customer Services Director.

3 Housing Solutions Tenancies

3.1 An Assured Short hold Starter Tenancy

These are periodic assured short hold tenancies for an initial 12 month probationary period. This probationary period can be extended up to 18 months where there have been breaches of tenancy and Housing Solutions wish to continue to monitor the customer's behaviour. The tenancy may be ended by serving a valid Section 21 Notice or by a valid Possession Order on one of the grounds in Schedule 2 of the Housing Act 1988.

3.1.1 When it will be used

- 3.1.2 It will be offered to new customers who do not hold an assured or secure tenancy prior to their nomination with Housing Solutions. If the customer conducts the starter tenancy in a manner that Housing Solutions considers satisfactory during the 12/18 probationary period then at the end of probationary period, the customer will be offered a Fixed term tenancy for a minimum of two years but our default position on this is normally five years.

If a customer is required to sign a new tenancy at the end of a starter tenancy but they fail to do so, their tenancy continues as a periodic assured short hold tenancy. Housing Solutions will make two attempts to conduct a sign up and will then issue a Section 21 notice to bring the starter tenancy to an end.

3.2 **Fixed Term Assured Short hold Tenancy**

These are Assured tenancies granted for a fixed period usually five years .In some circumstances (examples of this are the letting of property for short term pending regeneration or major works, or in supported accommodation) Housing Solutions may issue them for less than 5 years but the term offered will not be less than 2 years)

3.2.1 **When will it be used**

These tenancies will be used for all general needs lets.

For new customers they will follow a Starter Tenancy as referred to above.

The following will be offered a 5 year Fixed Term tenancy;

- transferring customers of Housing Solutions or other social landlord customers who currently have a Fixed Term tenancy
- transferring customers of Housing Solutions or other social landlord customers who currently have a secure or assured tenancy that commenced after 1st April 2012
- existing customers of Housing Solutions or other social landlord customers who are transferring or exchanging to an Affordable Rent property.
- An exception to this is where a current customer with lifetime security of tenure is transferring or exchanging to an Affordable Rent property in order to downsize, in which case we would offer the equivalent security of tenure (if possible)

3.2.2 Housing Solutions will also use it to offer a new 5 year tenancy at the end of a Fixed Term providing there is a continued entitlement under this policy. If a customer fails to sign up to the new tenancy Housing Solutions will start possession proceedings once the section 21 notice has expired.

3.3 **A Periodic Assured Short hold Tenancy**

These are weekly or monthly assured short hold tenancies which can be brought to an end after an initial 6 months by either a customer or landlord by serving a section 21 notice or if there are any breaches of tenancy at any time, by obtaining a valid Possession Order. The customer can usually end the tenancy at any time by giving a notice to quit.

3.3.1 **When will it be used**

For key worker and market rent properties: properties approved for regeneration or possible disposal to let on a short term basis, or for some specialist supported housing to enable us to better manage customer's changing care and support needs.

3.4 **An Assured Tenancy**

These are either weekly or monthly tenancies that have no fixed period of time stated so are often referred to as *lifetime* tenancies. The tenancy can only be

brought to an end on specified grounds set out in the Housing Act 1988 after securing a valid Possession Order.

Some existing customers who transferred from a local authority under a large scale voluntary transfer arrangement (LSVT in 1995) have an Assured Tenancy with preserved rights which give similar rights to their former Secure tenancy including the Preserved Right to Buy.

3.4.1 When will these be used

Where a current customer of Housing Solutions or another social landlord who already has an Assured or Secure tenancy that started prior to 1st April 2012 is transferring (including exchanging) to another property, (unless it is to an Affordable Rent property, in which case a 5 year fixed term will be offered).

3.5 Secure Tenancy

These are older lifetime tenancies granted before 15th January 1989 for Housing Association customers or granted to Council customers. Housing Solutions customers who transferred to us from the Council at LSVT in 1995 became assured customers with preserved rights.

3.5.1 When will these be used

Housing Solutions cannot grant new Secure tenancies unless an existing customer is legally entitled to a further Secure tenancy for example if another housing association transfer a property to us and the occupant of that property holds a secure tenancy.

3.6 Temporary Tenancy

These are short term contractual agreements that do not provide any security of tenure but allow occupation for a specific purpose.

3.6.1 When will these be used

They will be used for very specific purposes such as when assisting the Local Authority with their Part VII homelessness duties.

3.7 Licence/Excluded licence

An agreement to allow occupation without any security of tenure.

3.7.1 When will they be used

For temporary decant situations; or hostel accommodation or other accommodation where the occupant does not have exclusive possession or Housing Solutions has no intention to create a landlord and tenant relationship.

3.8 Caravan Act Licences and Mobile Home Act Statements.

These are agreements that allow caravans or mobile homes be stationed on plots and land belonging to or managed by Housing Solutions. They are governed by the Mobile Homes Act 1983 (as amended) and the Caravan Sites Act 1968(as amended)

3.8.1 When will they be used?

Mobile Homes Act statement will be granted to customers who own their caravan/mobile homes who can station their mobile home/caravan on our land or land that we manage. The Mobile Homes Act governs when and how the agreement can be terminated.

Caravan Act licence agreements will be granted to customers who can occupy a caravan owned by Housing Solutions, such caravan being stationed on land owned or managed by Housing Solutions. Caravan Act licence agreements can be terminated by Notice to Quit.

4 Tenancy Type for each Rental Product

Which tenancy type offered depends on the type of housing being let, as follows:

4.1 General Needs (social rent)

For general needs social rent housing Housing Solutions will offer new customers a starter tenancy followed by a 2-5 year fixed term Assured Shorthold Tenancy unless the customer is of retirement age and Housing Solutions are offering sheltered accommodation in which case they will be offered an Assured Tenancy.

Existing customers who currently hold an assured (non shorthold) or secure tenancy which started before 1st April 2012 and who transfer will be offered the equivalent of their current tenancy (unless they are transferring to an Affordable Rent property in which case they will be offered a 2-5 Fixed Term tenancy although an exception will be made if the customer is transferring or exchanging to an AR property in order to downsize) In this case they will be offered a 5 year fixed term tenancy.

Existing customers whose current tenancy started after 1st April 2012 and will transfer will be offered a 2-5 year Fixed Term tenancy but will not be required to undergo another probationary year, (it will normally be a 5 year fixed term tenancy in most circumstances).

4.2 General Needs (Affordable Rent via nominations)

For general needs affordable rent housing Housing Solutions will offer a Starter Tenancy followed by a 5 year Fixed Term Assured Short hold Tenancy and rebase the rent based on market rental values at each re-let.

4.3 Supported Housing

4.3.1 For self-contained supported housing with floating support Housing Solutions will usually use a five year fixed term tenancy, although it may be shortened where there are shorter related support contracts.

4.3.2 For shared and other supported accommodation where it is intended for use for a limited period of time while the customer has support needs, we will use a periodic assured short hold tenancy or a licence where it is intended as short term specialist supported accommodation.

4.4 Key Worker and Market Rents

For these properties Housing Solutions will use a periodic assured shorthold tenancy.

4.5 Properties subject to regeneration plans

Housing Solutions will use a periodic Assured Shorthold Tenancy.

5 Affordable Rents

- 5.1 All tenancy types can be offered at either a social target rent or at an affordable rent. The decision to relet a property at affordable rent will be decided at development stage for new developments or made by the Housing Manager, with further approval from the Head of Housing.
- 5.2 Those properties already let at an affordable rent will be re-valued against the current market levels prior to your new tenancy being offered, all valuations are undertaken by an independent RICS qualified surveyor. Affordable rent levels are then set at 80% of the market rental valuation, service charges if applicable must be included in the total 80% rent charge.

6 Requests for a Review of Tenancy Type

- 6.1 The social housing regulator's Tenancy Standard requires registered providers to have an appeals process covering the length of fixed term tenancy offered and type of tenancy offered.
- 6.2 If a Customer believes that they have not been offered or granted the correct type or length of tenancy as outlined in this Tenancy Policy, they can request for the decision to be reviewed. Where a tenancy has started, any request to review the type of tenancy awarded should be made within 3 months of the tenancy start date.
- 6.3 The request must be in writing and will be considered by the Head of Housing (unless they were involved in the original decision when it will be reviewed by the Customer Services Director) who will respond within 14 days. The review will consider the customer's representations, the application documentation, the applicable nomination agreement and a written submission from the Housing Manager/Head of Housing detailing why that type of tenancy was offered or granted. This is the final stage of the appeal process.

7 Requests for a review of decision to continue/extend a probationary period or to end the tenancy during the probationary period

- 7.1 Housing Solutions starter tenancies will normally run for the first twelve months of tenancy, but it can be continued for up to 18 months.
- 7.2 If a customer believes that they have not breached their tenancy terms and conditions and the starter tenancy should not be continued beyond twelve months they have the right to ask for the decision to be reviewed. They must

make the request within 10 days of being informed of the decision.

- 7.3 Equally, if a section 21 notice is served for a breach of tenancy, the customer can ask for the decision to end the tenancy to be reviewed. They must make the request in writing within 10 days of the Section 21 notice being served on them.
- 7.4 The review will be conducted by the Head of Housing and a member of the Executive team not previously involved in managing the tenancy, who will respond within 14 days.

8 Fixed Term Tenancy Reviews

- 8.1 A fixed term tenancy review will be conducted in the final year of the fixed term.
- 8.2 Housing Solutions intends the fixed term tenancy review to be an opportunity for customer's current housing needs and aspirations to be explored with the customer and to tailor any housing options advice, assistance and support offered, to enable customers to live in the right home at the right time.
- 8.3 It will involve an interview and assessment to establish the customer's current personal circumstances and review the need for the current home they occupy. Following the review one of the following options will be taken:
- Offer a further 5 year fixed term tenancy at the same property
 - Offer a further fixed term tenancy, usually 5 years, but in alternative accommodation where the current home is no longer suitable e.g. the customer is under occupying.
 - Offer a shorter or temporary tenancy because there are particular reasons why a five year is not appropriate. For example, alternative accommodation is to be offered which is not available or there are other support needs or issues (such as financial problems) which make it likely the tenancy will not be sustained for a further 5 years; or the property is due for redevelopment/substantial working within the next 5 years.
 - The Fixed term tenancy is not renewed and a six month "minded to notice" to end the fixed term tenancy is issued together with a prescribed form section 21 notice.
 - An alternative housing option is offered to the household enabling them to buy a shared ownership property or other home ownership opportunity.
 - An alternative housing option will be explored for customer residing in a property with an affordable rent who are experiencing financial hardship
- 8.4 Exceptions to this policy may include where:
- Care and support needs can only be met if the customer remains in the property.
 - The tenancy falls within an area operating a local lettings policy and ending

the fixed term tenancy will conflict with the regeneration objectives of the area. Examples of this would include:

- Activity to create mixed income neighbourhoods in a single-tenure area
- Activity to increase levels of people in work in a particular neighbourhood .

9 Ending Fixed Term Tenancies

9.1 A further 5 year fixed term tenancy will be granted unless:

- The property has significant adaptations and no one residing at the property requires those adaptations
- The property is under-occupied- see Appendix A 'Over/under occupation criteria'
- The property is severely overcrowded as defined by our Transfer and Lettings policies- see Appendix A 'Over/under occupation criteria'
- The customer's financial circumstances have changed so that other housing options are available, such as home ownership, shared ownership, renting at full market value and/or other tenures based on a financial assessment which deems their income too high to qualify for this type of social housing
- Any breaches of tenancy or tenancy fraud are identified during the fixed term tenancy review process which would result in enforcement in under tenancy management or ASB policies and procedures. If such events occur during the term it is likely that we would have already taken steps to recover possession but such processes may not have concluded by the end of the fixed term or the breaches may not have been discovered until the latter part of the term and in such circumstances a further Fixed Term tenancy will not be offered
- The customer and or their advocate do not engage in the fixed term tenancy review
- The customer is found to have made a false statement in relation their housing application, their tenancy review and the type of tenancy agreement they are subsequently offered
- The property is one for which redevelopment or demolition is planned during the next five years
- The customer's health or other circumstances would mean they can no longer sustaining or manage a tenancy and supported housing may be more appropriate
- The property is for some other reason no longer suitable for the customer needs or the customers continued occupation is not compatible with our regulatory aim to make the most efficient use of our housing stock
- Where care and support needs can only be met if the customer remains in the property, even if one or more of the factors outlined above applies, Housing Solutions will consider granting a further tenancy, but it may be for a shorter period.

9.2 Other circumstances in which Housing Solutions may not grant another tenancy on the expiry of the fixed term in the same property, or a different property may also include (but are not limited too):

- Anti-social behaviour (e.g. noise, graffiti, abusive behaviour)
- Criminal activity at the property (e.g. drug offences, prostitution)
- Damage to the property (e.g. broken windows)
- Disrepair issues (e.g. not keeping the property in good order) including gas safety checks
- Keeping pets if the tenancy agreement expressly forbids this
- Keeping uncontrolled animals such as dogs
- Harassment
- Lack of cleanliness (e.g. refuse, fly tipping, dirty conditions inside the property)
- Rent arrears
- Sub-letting if the tenancy agreement expressly prohibits this
- Not moving out even after expiry of the tenancy.

9.3 In the event that another tenancy is not being offered Housing Solutions will provide offers of advice and support as outlined in section 11. See 'Appendix B- Tenancy Types and termination reasons' for further information

9.4 Housing Solutions may apply for a court order if the grounds for possession can be proved, we are required to give at least 6 months notice in writing of the decision and provide information about how to seek help and advice

9.5 The decision to end a tenancy can be reviewed at the request of the customer within 21 days of service of the first notice and the customer is entitled to request an oral hearing. See section 12 for further information

10 Vulnerable Customers

10.1 For vulnerable customers such as older and disabled people in general needs housing, Housing Solutions will offer a fixed term tenancy

10.2 Housing Solutions is committed to ensuring they can remain as Housing Solutions customers providing there are not serious breaches of tenancy

10.3 If at the tenancy review the property is too large or adapted and they no longer have a need for such a property, Housing Solutions may rehouse the customer depending on the level of any unmet demand for that type of property; the age and vulnerability of the customer and the availability of suitable alternative accommodation.

11 Housing Options Advice and Assistance

11.1 During fixed term tenancy reviews Housing Solutions will provide customers with advice about the different housing options and how these may assist in achieving personal aspirations

- 11.2 Where it is decided not to renew a tenancy, the customer will be given appropriate housing options advice and assistance
- 11.3 Housing Solutions will make a referral to the Local Authority Housing Options team at this stage and ensure that the customers are aware of the package of housing alternatives depending on their particular circumstances and have appropriate support to access the different options.

12 Appeals against Ending Fixed Term Tenancies

- 12.1 Any customer who has been informed that their fixed term tenancy is to be terminated following a Tenancy Review in the final year of their tenancy and a further tenancy is not being offered, can appeal against that decision. The customer should be advised of the right of appeal when the 6 month notice is served.
- 12.2 The customer has 28 days to submit their appeal in writing which should identify the reasons why the tenancy should not be terminated. Where necessary, support will be offered to produce the appeal in writing
- 12.3 The Appeal will be heard by an independent senior manager normally a member of the Executive Team not previously involved in managing the tenancy. The appeals process will be a review of the tenancy file, facilitating an oral hearing where requested by the Customer and/ or reviewing the customer's appeal letter and will consider:
 - If the decision to end the fixed-term tenancy is in accordance with the Tenancy Policy
 - If the procedure for ending the fixed term tenancy has been correctly followed
 - If it is proportionate not to renew the fixed-term tenancy considering the change in circumstances or needs of the customer.
- 12.4 The reviewing officer will record and communicate the reason for their decision to the customer, the Tenancy and Neighbourhood teams with their recommendations within 21 days from the date of the customer's appeal. This is the final stage of the process. See Appendix C 'Guidance note- Fixed term tenancy appeals process'.

13 Legislation

- 13.1 Housing Act 1988
- 13.2 Housing Act 1998
- 13.3 Housing Act 2004
- 13.4 Localism Act 2013
- 13.5 Mobile Homes Act 1983
- 13.6 Caravan Sites Act 1968

14 Equal Opportunities

- 14.1 Housing Solutions is committed to its Equality & Diversity Strategy. Changes and additions were made to this policy following an equality impact assessment from which this policy is considered Medium impact due to the effect this may have on customers housing situations at the end of a fixed term tenancy.

15 Monitoring and Review

- 15.1 The Association monitors a range of key performance indicators for its Rent Recovery services. These are listed in full in Appendix 4.
- 15.2 The Association produces regular detailed performance statistics for review by management teams, staff, board members and tenant representatives.

16 Appendices

- 16.1 Appendix A- Under/over occupation criteria
Appendix B- Tenancy Types and termination reasons
Appendix C – Guidance Note- Fixed term tenancy appeals process.

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