



Tenancy Policy

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Introduction

The Localism Act 2011 introduced Tenancy Strategies as part of a wider package of social housing reforms. Under the Act, Local Authorities with a strategic housing role are required to have a Tenancy Strategy setting out the issues which registered providers operating in their area must have regard to when deciding what types of tenancies to offer, details of any fixed-term tenancy, and the circumstances in which they will grant a new tenancy when a fixed term tenancy comes to an end. This policy considers the **Tenancy Strategy 2022 – 2027 (which can be found at.....)** which states the council's vision in relation to tenancies for all social housing in the borough.

1. Aims of Policy

This policy sets Eastleigh Borough Council's Affordable Housing Service's (the Council) approach to granting and managing tenancies within its own housing stock. It explains the approach to tenancy management, tenancy support and the types of tenancy we will offer in accordance with our regulatory responsibilities and those of an affordable housing provider. This covers our affordable housing stock tenures.

This policy aims to:

1. Provide clarity on the circumstances in which Housing Solutions will grant each type of tenancy.
2. Offer tenancies which make the most efficient use of our housing stock and which are compatible with the purpose of the accommodation.
3. Balance needs of our customers with best use of our housing stock.
4. Contribute to the Council's strategic housing function
5. 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 or 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.

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2. Scope of Policy

- To grant tenancies which are compatible with the purpose of the accommodation, the needs of the household and the sustainability of the community.
- To maximise use of housing stock and to ensure compliance with the requirements set out in the Regulatory Framework for Social Housing in England.

All staff within the Affordable Housing Service will receive training on this policy.

3. Policy Statement

The Council will support other agencies in meeting local housing strategies and will be responsive to the needs and expectations of our customers.

Sometimes the Council may use its discretion and act outside of this policy. If it does, it will be within the spirit of the policy and only with senior management approval.

4. Legislative Requirements

This policy has been developed considering the following legislation and regulation which is applicable to the types of tenancy we grant:

- Housing Acts 1980, 1985, 1988, 1996 & 2004
- Human Rights Act 1998
- Localism Act 2011
- Anti-social Behaviour Act 2003
- Equality Act 2010 & 2012
- Landlord & Tenant Act 1985
- Local Government Act 1972, 1988, 2000, 2003
- Local Government & Housing Act 1989
- Regulatory Framework for Social Housing in England April 2012
- Immigration Act 2014
- Housing and Planning Act 2016
- Allocation of Housing and Homelessness (eligibility) (England) Regulations 2006 (as amended)
- Regulations made by the Secretary of State sets out persons who may be eligible despite being a person from abroad subject to immigration control
- The Homelessness Reduction Act 2017
- The Homes (Fitness for Human Habitation) Act 2018
- Housing & Regeneration Act 2008
- Secure Tenancies (Victims of Domestic Abuse) Act 2018

[Links to policy](#)

5. Policy Details

The Council treats all our new and existing customers fairly and protects existing customers and the interests of the organisation by using the following principles:

Tenancy Options

The Council will offer new Council tenancies on the following basis:

5.1 Introductory Tenancies

All new tenants of the Council (if they are not transferring from another council or an assured (housing association) tenancy) will be signed up on an introductory tenancy for the first 12 months. This is so that the Council can support them during their first year to ensure that they can successfully convert to a secure tenancy. The introductory tenancy will be

reviewed during the 12-month term to confirm whether the tenant can become a secure tenant, extending their rights within the tenancy agreement. Most tenants will be granted secure tenancies at the end of their introductory term.

An introductory tenancy has;

1. No Right to Buy (although the introductory tenancy year will count towards any future ownership options)
2. No right to a mutual exchange
3. No right to assign the tenancy, except by a court order in family proceedings
4. No right to sublet any part of the home or take in lodgers
5. Does not qualify for Council tenant schemes, such as decorations and the Transfer Incentive Scheme.

Where a tenancy is not managed properly during the introductory period the council may seek to end it during that term or to extend the period of the introductory tenancy. An introductory tenancy can be extended for a further period of 6 months. The reasons for extending may include:

1. Low levels of rent arrears or irregular payments
2. Breaches of tenancy that have not merited possession action
3. Indications that the tenant is having difficulty managing the tenancy, even with support.

The Council can ask the court to end the introductory tenancy if the tenant breaks any of the terms of the tenancy agreement. The reasons for terminating a tenancy may include:

1. High levels of rent arrears
2. Anti-social behaviour of a level to warrant serving of a legal notice
3. Other significant breaches of tenancy conditions
4. Indications that the tenant is unable to manage the tenancy, even with support.

When granting introductory tenancies to new tenants the Council will notify the prospective tenant that on expiry of the trial period, their introductory tenancy will become a flexible tenancy.

Introductory tenants can appeal against:

1. An extension of the introductory tenancy from 12 months to 18 months,
2. Appeal against their introductory tenancy being terminated

5.1.1 a - After the successful completion of the introductory period the tenant will be granted a flexible tenancy.

Full details of the Council's approach to introductory tenancies are contained within the Council's "[Tenancy Management Policy & Procedure Guide](#)"

5.2 Five Year Flexible Tenancy

A flexible tenancy is a **type of secure council tenancy**. It only lasts for a fixed period of time. The council can decide not to offer you another tenancy at the end of the fixed term. You have the same rights and responsibilities as other secure tenants during the fixed term.

As a secure tenant, you can normally live in the property for the rest of your life, if you do not break the conditions of the tenancy.

You can:

1. rent out rooms - but you cannot sub-let the whole property
2. buy your property through the Right to Buy scheme
3. swap your home with another council or housing association tenant - with your council's permission
4. transfer your tenancy to someone else in some circumstances
<https://www.gov.uk/council-housing/types-of-tenancy>
5. make improvements to your home - you'll need permission from your council for some types of work

A 5-year flexible tenancy, subject to **5.1.1(a)** above, will be offered to the following groups:

1. Applicants (not covered by 'secure tenancies' below) that are taking up the tenancy of a property
2. All categories of applicants who are being re-housed in adapted properties for disabled tenants (applies to extensive adaptations).
3. All categories of applicants who are being re-housed in a property where it is planned to undertake significant disability adaptations to cater for a person with disability within the household (applies to extensive adaptations).

<https://www.gov.uk/government/publications/disabled-facilities-grant-dfg-delivery-guidance-for-local-authorities-in-england/disabled-facilities-grant-dfg-delivery-guidance-for-local-authorities-in-england>

Before the end of the 5 years the tenancy will be reviewed as set out below and a further 5-year periodic secure tenancy may be offered in accordance paragraph 5.1.3 below.

The regulatory framework (link) requires local authorities to serve a notice of intention before the end of the fixed term stating that they will either grant another tenancy or propose to bring it to an end. A flexible tenancy will be replaced by a periodic secure tenancy.

5.2.1 Replacement of a Flexible Tenancy to a Periodic Secure Tenancy

The flexible tenancy will be replaced by a periodic secure tenancy, for a further 5 years unless: -

1. The property is under occupied by one bedroom or more as determined by the Housing Allocation Scheme
2. The property is overcrowded as determined by the Housing Allocations Policy
3. The property is an adapted property allocated to (or adapted for) someone with a disability who no longer lives in the property
4. The tenant is in breach of a current order for possession for arrears of rent, anti-social behaviour and other tenancy breaches.

When deciding whether to issue a periodic secure tenancy the Council will have regard to its tenancy policy, any reasons not to renew the tenancy and the tenant's circumstances.

The Council will write to the tenant(s) 7-12 months before the flexible tenancy is due to expire and arrange a tenancy review interview; assuming the tenant(s) wish to renew their tenancy. At the tenancy review interview the tenant will discuss their current housing situation with the relevant Council officers.

The Council will issue a renewal decision notice to the tenant on whether they will replace the tenancy at least six months before the end of the flexible tenancy. If the tenancy is not being renewed the renewal decision notice will outline the reason(s) why the flexible tenancy is not being renewed.

If the decision is to renew the Council will issue a periodic secure tenancy for the same period as previously granted.

5.3 Secure Tenancy

Secure tenancies, subject to above, will be offered to those that have met one of the following criteria:

1. Applicants who are moving into designated sheltered accommodation,
2. Applicants who are moving into properties specifically designated for the elderly

Where, immediately before the tenancy began, the applicant was:

1. A secure tenant, except for disability adapted property ([see Disabled Adaptations Policy](#)) or
2. An assured tenant in Eastleigh Borough where the landlord is a registered social landlord except for disability adapted property ([see Disabled Adaptations Pol](#)

Waiting List Applicants who have been forced by circumstances to relinquish a secure or assured tenancy for exceptional housing management reasons as long as the relinquishment was with prior agreement from the landlord Housing Association or the Council.

6. Shared Ownership

The Council offer shared ownership on new properties built by the council to provide a broader housing offer to local people and to have a more diverse housing portfolio.

- The council will consider the number of homes to be made available as Shared Ownership properties on a scheme-by-scheme basis.
- The terms of the shared ownership will be set out in the lease agreement and schemes will be delivered in line with relevant legislation and guidance.
- The use and numbers of Shared Ownership properties will be made in alignment with the council's Local Plan.

7. Victims of Domestic Abuse

The council will operate in line with current legislation in relation to accommodating victims of domestic abuse and ensure that, when re-housing an existing lifetime tenant who needs to move or has recently moved from their social home to escape domestic abuse, a lifetime tenancy is to be granted for their new home. This will ensure that the victims will not fear losing security of tenure and will provide their families stability and security in their new home.

8. Minors and tenancies

A person under the age of 18 cannot hold a legal tenancy. Although a minor cannot hold a tenancy they can 'benefit' from a tenancy. The tenancy can be granted to a third party, a 'trustee', and held on trust for the minor until they reach the age of 18.

The minor has a beneficial interest, which means they have the right to live in the property. The Council may grant an equitable tenancy, which is an agreement to grant a tenancy when they reach 18. Until this time the trustee holds the legal title to the tenancy.

The trustee could be an adult relative or friend or a social worker and is in effect a caretaker of the tenancy. The trustee is responsible for ensuring the rent is paid but is not liable to pay the rent out of their own resources unless they give a personal guarantee to do so.

https://england.shelter.org.uk/professional_resources/legal/housing_options/young_people_and_care_leavers_housing_rights/tenancies_for_children_and_young_people

At the age of 18 an introductory tenancy will be offered (provided no previous breaches have been made), and any further tenancies granted in accordance with the Tenancy Policy.

9. Tenancy agreements, responsibilities and sign up

The Council will ensure that all tenants are fully informed about their tenancy rights and obligations at the pre-tenancy sign up stage and beyond.

The sign-up process will generally be a 2 stage process;

- firstly a pre-tenancy appointment with Housing Officers where a financial assessment and other tenancy checks will be made, and
- secondly the sign-up appointment involving the formal paperwork signing and other associated processes involved in granting the tenancy.

The Council will ensure that tenants fully understand their rights and responsibilities and the conditions of the tenancy agreement. The Council will also discuss what the tenant can expect from the Council, what support the Council can provide and also opportunities for involvement in shaping the Housing service.

Any tenant who is refused a tenancy will be provided with the reasons why and will be given appropriate advice on what they can do to improve their chance of being housed by the Council in the future.

The Council requires rent in advance from the tenant at the sign up and will request up to a months rent in advance based on the tenants financial situation.

10. Tenancy reviews and visits

The Council visits all tenants within the first month of their tenancy. This is to check how the tenant is settling in and is a chance for both the tenant and the Council to raise any issues of concern. All introductory tenancies will be reviewed at their ninth month to assess whether the tenancy can convert to a secure flexible one on the first anniversary of the tenancy commencement. Where issues are identified, further reviews will be completed to ensure all appropriate action has been taken. Where an introductory tenancy is extended to 18

months, further reviews will take place during the extension period to ensure that it is appropriate for the tenancy to become secure or take action to end the tenancy. More information about possession action for introductory tenancies and appeal rights is available in the Tenants Handbook and the Introductory Tenancy Procedure.

After that, the Council will visit tenants as and when required.

Tenancy visits allow the Council to:

- Make sure the tenant is living in the property
 - Update records if there have been any changes in the household
 - Make sure the property, including any garden areas, are being maintained and looked after
 - Identify any repairs
 - Identify any other needs that the tenant may have which the Council can help with
- Tenancy visits allow the tenant to:
- Report repairs
 - Raise any issues of concern
 - Update the Council's records
 - Ask any questions they may have about their home or their tenancy

11. Managing tenancies

The Council will ensure that tenants are aware of their rights and obligations when they sign up for their tenancy. These terms are set out in the tenancy agreement. Housing Services have several tenancy management policies and procedures documenting its approach to tenancy issues and the management of the housing stock. Some of the key documents are outlined below and further details can be found in the Tenancy Agreement and Tenants Handbook.

12. Assignment

Assignment is the process whereby a tenancy can be passed on to another person whilst the tenant is still alive. The Housing Act 1985 sets out the law in relation to assignment and this section provides a summary of the relevant parts.

- A sole tenant can pass their tenancy on to a person who would be entitled to succeed if they have not previously succeeded to or been assigned the tenancy themselves. It can only be achieved through a legal document called a Deed of Assignment unless the assignment is by way of a court order.
- The tenant will require the Council's permission to assign the tenancy. The Council recommends tenants seek independent legal advice before assigning their tenancy to another person.

13. Tenancy changes

Sole to joint

There is no right to 'add' a tenant to an existing tenancy. The sole tenancy would have to be terminated and a new joint tenancy granted. This is not something the Council will normally facilitate. Where the tenant wishes to add their spouse or civil partner, this person should

already be afforded rights to the tenancy under the law of succession and assignment as set out in the Housing Act 1985 together with other statutes such as the Family Law Act 1996 and the Civil Partnership Act 2004 and this will be explained to the tenant.

Joint to sole

Where a joint tenant wishes to remove themselves or the other joint tenant from the tenancy there are circumstances when we can facilitate this by ending the joint tenancy and creating a new sole tenancy. In the first instance, the tenant/s will be required to explore other legal remedies available to them, such as a Property Transfer Order or an Occupation Order. Where these legal remedies are not available or an option, the Council will confirm whether it can grant a new sole tenancy at the property considering all relevant circumstances. If the Council decides to decline the request to create a new sole tenancy at the property, the tenant/s will be advised of the reasons in writing and how and where to obtain advice regarding the other options available.

14. Ending a tenancy

- Tenants must give four weeks' written notice to end their tenancy, unless they are transferring to another property owned by the Council in which case two weeks' written notice is required.
- A joint tenancy will end if one or both tenants give notice.
- When a tenant dies, we expect their next of kin or executor to give four weeks' notice to end the tenancy.

Tenancies with no security

The Council may bring a tenancy to an end if the tenant has lost their security of tenure, for example they no longer occupy the property as their only or principle home, by serving a Notice to Quit. The Council will then take proceedings through the courts to end the tenancy where needed.

Court order

All tenancies issued by the Council can be ended by a court order. This requires the Council to serve the correct notice advising the tenant that possession proceedings are to be taken. The discretion of the court to grant possession differs depending on the type of tenancy.

15. Right to review council decisions

Review of Decision to Offer to grant a Flexible Tenancy/Periodic Secure Tenancy.

A person to whom an offer to grant a flexible tenancy/ Periodic Secure Tenancy is made may request a review in writing in accordance with S107B of the Localism Act 2011 about the length of the term of the tenancy offered (and type) if that differs from the Council's tenancy policy. The request for a review must be in writing and received by the Council within 21 days of the offer. The appeal will be considered by a Principal Officer or an officer at an equivalent level of the Council and the decision will be notified within 15 days of receipt.

If, in exceptional cases the Council is prepared to consider a review after a longer period of time agreement will be confirmed in writing.

16. Review of a Decision to Seek Possession

In accordance with the Localism Act 2011 Section 107E a tenant may request a review of a decision to seek possession and not to grant another flexible tenancy. This request must be received within 21 days of the date that the renewal decision notice is served on the tenant notifying them of the intention not to grant another flexible tenancy.

Exceptional cases

If, in exceptional cases the Council is prepared to consider a review after a longer period of time agreement will be confirmed in writing.

- The review will be undertaken by a Principal Officer at the Council. The exception to this would be where he/she has had previous involvement in the case in which case it would be dealt with by another senior officer within the Council.
- When undertaking the review the Council will consider the tenancy policy and the tenant's circumstances. It will also follow the Governments procedural requirements.
<https://www.gov.uk/government/publications/understanding-the-possession-action-process-guidance-for-landlords-and-tenants/understanding-the-possession-action-process-a-guide-for-social-rented-tenants-in-england-and-wales>
- The review will be concluded *before* the tenant is issued with a notice requesting vacant possession of the property.
- On completion of the review the tenant will be sent a letter confirming the outcome, and if the decision is to confirm the original decision the reasons for the decision.
- Where the Council has decided not to renew the tenancy, the Council will also issue a notice to the tenant(s) giving at least two months' notice stating that the Council requires possession. This notice must be issued on or before the flexible tenancy is due to expire.
- Where tenancies are not renewed the Council will provide advice and support on their future housing options either directly or indirectly; this may be by offering alternative accommodation or assistance to secure accommodation in the private sector.

17. Right of succession

All new secure and flexible tenancies will have a right to one succession, limited to a spouse, or civil partner as defined in Section 87 of the Housing Act 1985, who at the time of the tenant's death was occupying the dwelling as their only or principal home and this will not entail the creation of a new tenancy.

- Other members of the family, including but not limited to; children, parents, other relatives and carers of the (deceased) tenant, whether resident at the property or not, are excluded from succeeding to the tenancy.

- If the deceased tenant was already a successor then no further succession rights will apply.
- Successions to a flexible tenancy will only be for the remainder of the life of that tenancy, and subject to a full review when the end of the tenancy is due.
- Those previously eligible to have succeeded to a secure tenancy, but are no longer eligible, will be assessed for re-housing under the Allocations Scheme.
- Those previously eligible to have succeeded but are within a flexible tenancy will be assessed for re-housing under the Allocations Policy.

18. Exceptional Circumstances

The Council work with other partners when we let our homes and they may request that different types of tenancy are issued to reflect the needs of the individual. This will be agreed in conjunction with the local authority and the Lettings Manager or Head of Service.

- The Council will comply with any instructions from the county court following legal action. An example may include demoting tenancies or assigning joint tenancies.
- Joint tenancies are usually only issued to different or same sex partners who are in a relationship. Occasionally we will be asked to consider issuing a joint tenancy to siblings or cross generations – e.g. mother and daughter. This will be considered on a case-by-case basis, taking the individual circumstances into account.
- The Council reserve the right to issue tenancies outside the principles and guidance of this policy where there are grounds to do so. This can only be approved by the Lettings Manager or Head of Service.

19. Right to Buy, Right to Acquire and Rent to Buy

- Existing customers who previously held a tenancy with another local authority may have retained the right to buy their homes. Customers who have this retained right can apply to buy their home subject to meeting the necessary criteria.
- Some existing customers may have the right to purchase their home under the right to acquire scheme subject to the criteria detailed in appendix 1.
- Some homes are let under the Rent to Buy scheme which allows the tenant to rent the property by offering a fixed term tenancy at an intermediate market rent for 5 years, enabling them to save the other 20% for a deposit which they can use to purchase that property via the shared ownership route.

20. Tenant mobility / mutual exchanges

Mutual exchanges will be supported by the council where appropriate unless there are reasonable grounds to refuse the exchange and/or statutory grounds for refusal as set out in the Housing and Planning Act 1985 (Schedule 3).

- Existing secure (and assured) tenants will be able to retain a similar level of security even on exchanging their property with a social/affordable tenant with a less secure tenancy, such as a flexible tenancy.

- Flexible tenants retain the right to mutual exchange for the duration of that flexible tenancy. They will not have the right to attain a secure tenancy through the mutual exchange process.

Agreement by the Council to all mutual exchanges will be dependent on the Housing Act 1985 and the Council's **mutual exchange policy** at the time of application.

21. Housing Fraud

Eastleigh Borough Council recognises that social housing is a valuable public resource and as such will take decisive action to deal with instances of tenancy fraud and anti-social behaviour. Tenancy fraud covers any situation where the person or people living in a council property is not the person who is entitled to be there.

This includes:

- Giving false information on an application for housing
- Subletting the property to another person
- Not using the property as their only or principle home
- Claiming succession when there is no entitlement

22. Support for Tenants to Maintain a Tenancy

The Council will continue to offer support to tenants where appropriate in order to help sustain their tenancy. The Council recognises its role in supporting vulnerable households to sustain their tenancy and will always seek to balance the interests of individual residents with the needs of the wider neighbourhood, community and Housing Revenue Account.

Support for tenants in maintaining a tenancy are contained within;

1. Anti-Social Behaviour policy
2. **Income Management Policy & Procedures**
3. **Tenancy Support Service**

The Council will also manage tenants and their requests for tenancy changes, mutual exchanges, and the Right to Buy with the aim of managing any impact of changes on the local community.

The Council may look to develop a 'reward scheme' for well managed tenancies, following consultation with tenants.

23. Related Policies and Procedures

This policy must be read in conjunction with:

- Rent Setting Policy
- **Disabled Adaptations Policy**
- Lettings Policy
- Lettings Procedure
- Income Management Policy
- Housing Management Policy
- Equalities & Diversity Policy
- Complaints Policy

- Anti-social Behaviour Policy
- Data Protection policy
- Rent to Buy/Acquire policy

24. Monitoring and Review

This policy will be reviewed every annually, to incorporate legislative, regulatory amendments, best practice developments, or to address any operational issues with the procedure.

Input and approval will be sought from our residents (via a residents committee or similar) prior to making any substantive changes. This is in line with our Corporate Values ('Engaging with customers to continually improve our services') and is intended to ensure our policy continues to meet the needs and aspirations of our residents.

<https://www.eastleigh.gov.uk/media/2349/corporate-plan-2015-2025.pdf>

25. Document History and Approval

Identity and Version Control

- This document is the final approved version and will be a controlled document with an individual assigned to version review/amendment.

Appendix Definitions

Type	Right to Acquire
Description	The ability to acquire a home at a discount through the Right to Acquire scheme.
Circumstances	<p>Customers have the right to acquire their home if:</p> <ul style="list-style-type: none"> • They've been a tenant of a housing association, arms length management organisation or council for at least five years and; • Their home was built or bought by a housing association with public funds from 1 April 1997 onwards or transferred from a local council to a housing association after 1 April 1997. <p>Exclusions:</p> <p>Property designated for people over 60 years of age;</p> <p>Property designated for people who have special needs or who are physically disabled.</p>

Type	Assured tenancy
Description	Can last indefinitely unless the tenant gives notice to end the tenancy, dies or the terms of the tenancy are broken. If the terms are breached we can seek a court order to bring the tenancy to an end.
Circumstances	Issued to all existing and new customers who have held a tenancy with a another registered social housing provider prior to moving into one of our homes.

Type	Secure tenancy
Description	Has a significant level of security particularly in relation to rights such as the right to buy. Can last indefinitely unless the tenant gives notice to end the tenancy, dies or the terms of the tenancy are broken. If the terms of the tenancy are breached we can seek a court order to bring the tenancy to an end.
Circumstances	A tenancy with protected terms will be issued to our existing secure tenants who are moving within our own stock or to a new tenant if they held a social tenancy with another registered housing provider on 15 th January 2012. If there is a break in the tenancy the protected terms will not be re-issued.

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