



How to...

develop your tenancy policy



What is a tenancy policy?

The concept of tenancy policies was introduced initially as part of the wider package of social housing reforms set out by the government in [Local decisions: a fairer future for social housing](#). The reforms included the introduction of fixed term tenancies and affordable rent, changes to allocations and homelessness and promotion of increased mobility for social tenants. These proposals are being implemented through the Localism Act and changes to the regulatory standards that all social landlords are expected to meet.

A tenancy policy, which the regulator's new tenure standard will require all housing providers to publish, is intended to be an overarching document that sets out how you will use the new range of options that are available to you (specific requirements are set out on page 2). In addition there is an expectation that it also clarifies how you will support tenancy sustainment and prevent unnecessary eviction, tackle tenancy fraud and grant discretionary succession rights. Overall they should help to provide clarity to tenants, ensure consistency and transparency of approach and also protect you from legal challenge.

This briefing does not aim to be prescriptive, but provides a broad framework to help you understand what issues and considerations you need to take into account when developing your tenancy policy. You will need to work with local authority partners, applicants, tenants and other relevant partners to develop a tenancy policy that reflects local needs, the make-up of your own stock and the strategic expectations of the local authorities you work with.

What is the relationship between tenancy policies and tenancy strategies?

The Localism Act creates a statutory requirement for all local authorities to develop a tenancy strategy. These will:

- set out high level objectives for the area which registered providers will have to 'have regard to' when considering their policy
- signpost people to where the registered providers' tenancy policies can be found, or summarise them
- have been developed with consideration to the local allocations policy and homeless strategy and in consultation with registered providers
- be reviewed from time to time.

The Act sets out clear expectations that local authorities must produce their tenancy strategy in consultation with registered providers. Therefore, the relationship between your tenancy policy and the local authority's tenancy strategy should be collaborative and joined up.

The timings around the publication of tenancy strategies (local authorities will not be statutorily required to publish these until January 2013) and the development of tenancy policies (which housing providers are likely to have to start developing from April 2012) may cause some issues for providers, as tenancy policies are expected to be informed by and have regard to the tenancy strategy. In practice, local authorities may develop and publish their strategies well in advance of the statutory deadline but some tenancy policies may have to be developed in a vacuum and fitted retrospectively around local authority tenancy strategies.

However, we would strongly recommend that registered providers discuss their tenancy policies with their partner local authorities from the outset.

What are the legal and regulatory expectations?

The Localism Act does not place a statutory obligation on housing providers in relation to tenancy policies. Instead, a new regulatory requirement to develop a tenancy policy will be created through changes to the regulatory standards framework, expected to be in place from April 2012.

The current regulator, the Tenant Services Authority (TSA), is now consulting on a revised [regulatory framework for social housing in England](#), which will take effect from April 2012. This consultation, which includes the revised regulatory standards that providers are expected to meet, will not be concluded until 10 February 2012. Therefore, the specific requirements set out in the tenancy standard in relation to tenancy policies are still subject to change. Up-to-the-minute updates will be available via [practice online](#) – CIH's online good practice resource.

If implemented in its current form, the new tenure standard would set the following required outcome for all housing providers:

Registered providers shall issue tenancies which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.

In addition, it would also set the following specific expectation:

Registered providers shall publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions and tackling tenancy fraud, and set out:

- a) the kinds of tenancies they will grant*
- b) where they grant tenancies for a fixed term, the length of those terms*
- c) the circumstances in which they will grant tenancies of a particular type*
- d) the exceptional circumstances in which they will grant tenancies for a term of less than five years in general needs housing following any probationary period. (This does not apply where registered providers grant only periodic secure or assured tenancies)*
- e) the circumstances in which tenancies may or may not be reissued at the end of the fixed term, in the same property or in a different property*
- f) the way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term*
- g) their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability*
- h) the advice and assistance they will give to tenants on finding alternative accommodation they will give in the event that they decide not to reissue a tenancy*
- i) their policy on granting discretionary succession rights.*

These represent the minimum requirements for your tenancy policy.

Timescales for developing your tenancy policy

Housing associations that were successful bidders under the Affordable Homes Programme are able to start issuing fixed term tenancies immediately but, until April 2012, only for properties that are let at an affordable rent.

All other providers, both housing associations and local authorities, will also be able to offer fixed term tenancies (subject to them first having publishing a tenancy policy) from the date that the relevant provisions in the Localism Act are commenced and the new tenure standard comes into effect. This is expected to be April 2012.

How to develop your tenancy policy

Developing your tenancy policy is essentially a three stage process, comprised of strategic decisions; operational decisions; and consultation and communication.

Strategic decisions

Before you can consider the specifics of your tenancy policy, it is necessary to be clear about what you are hoping to achieve at a strategic level. The key questions that need to be considered at this stage are:

- what are the broad aims and objectives your tenancy policy needs to support you to achieve?
- what are the specific outcomes you are hoping to see as a result of your approach?

There are many possible approaches but, for example, you may decide that the overall goal which your policy will help you to achieve is one of the following:

- to target your resources more effectively at those in greatest need
- to meet more residents' long-term housing aspirations by improving access to home ownership
- to make better use of your existing stock
- to support more tenants into work
- to maintaining sustainable communities.

The decisions you make will need to be consistent with your overall corporate objectives and your business plan, therefore these issues need to be discussed at the most senior levels of your organisation. They will inform the detail of your tenancy policy - for example, if your corporate objective is to make more efficient use of your stock then your tenancy policy will look very different than it would if your objective were to improve access to homeownership.

In making these decisions you should consider:

- the local circumstances in which you are operating and how your business decisions will impact on the local community
- the local authority's vision for the area. Ultimately this will be set out in their tenancy strategy, but if this has not been produced yet, a good dialogue with the authority will help you to understand what they are trying to achieve, even if their strategy has not yet been formalised
- the profile of new tenants and applicants on the waiting list. What data do you have to help you understand the needs and aspirations of the households entering your stock?

Operational decisions

Having determined the broad objectives of your tenancy policy, you now need to consider the specifics of that policy.

Bearing your overall objectives in mind, you need to:

- set out the kinds of tenancies you are going to offer, and at what rent (where applicable). There are a whole range of potential options – these are set out in more detail in [The Practical Implications of Tenure Reform](#)
- set some specific criteria for the length of tenancy that you will offer to new tenants. Remember that 5 years is the minimum term for a fixed term tenancy, it does not necessarily need to be your default position and you do not need to make a straight choice between 5 years and a ‘lifetime’ tenancy. Decisions could also be made on the basis of place rather than the individual – for example, you could decide to use fixed term tenancies in urban areas, but not rural ones due to their potential impact on sustainable rural communities
- set some specific criteria for what you consider to be any ‘exceptional circumstances’ where it may be appropriate to offer a tenancy of less than 5 years
- consider ‘households who are vulnerable’ and establish your offer to them and to households with dependent children. Will they be offered a different type or length of tenancy than other applicants?
- define any groups that will always be given a ‘lifetime’ tenancy. For example, this could include older people or those with a long-term disability
- if your organisation is going to be offering some properties for let at affordable rent, this will also need some consideration. Will properties let at different rent levels also be let on different tenancy types?
- set some specific criteria to be used by officers when reviewing tenancies. In what circumstances would you not offer another tenancy (see page 5 for more detailed guidance on this issue) and where you do offer one, will the criteria to determine its type and length be the same or different to those used for new tenants?
- establish a process for reviews of tenancies. How frequently will you carry them out and who will conduct them? As a minimum tenants must have a review at least 6 months before the end of their fixed term (as you will need to give at least 6 months notice in the event that you decide not to renew the tenancy), but if your intention is to support tenants’ longer term aspirations you may want to carry out more frequent visits. Are there existing processes, such as tenancy audits that could be amended to incorporate reviews?
- set some standards for the level of advice and support that tenants can expect on their housing options, both where their tenancy is not being renewed and in general. Will your officers provide this or will you deliver it through a partnership with another organisation?
- establish a process for internal review where a tenant wishes to challenge a decision. The Localism Act establishes a process for local authorities, while housing associations could develop a procedure based on their existing complaints process or the process tenants currently use to challenge the decision to end a starter, or another non-secure, tenancy
- determine who you will grant discretionary succession rights to
- agree how frequently your policy will be reviewed.

One of the most challenging decisions you need to consider is the reasons why you may choose not to grant another tenancy at the end of a fixed term. The table below sets out some possible reasons, any decisions that you make regarding these should be aligned to your overall aims and objectives:

Situation	Reason
Property is under-occupied	To make best use of existing stock
Property is over-occupied	To prevent problems with housing conditions
Property doesn't match tenants' need	The property would better suit another occupant with higher needs. This might occur, for example, in an adapted property where the adaptations are no longer required
Tenant requires rehousing to a more suitable home/area	To prevent problems with housing conditions
Need to balance tenant mix on an estate/development	To be consistent with a local lettings policy or neighbourhood/estate plan
Tenant's circumstances have changed	To target resources at those in greatest need, for example, if there has been a substantial increase in income and the tenant could afford to rent privately or purchase a property
Disposal or refurbishment of property	To manage the organisation's assets

It is also possible to include anti-social behaviour and rent arrears as reasons why a further tenancy may not be granted. However, you should bear in mind that landlords already have powers to regain possession of a property in these circumstances and that the use of starter or introductory tenancies is likely to be a more effective mechanism for managing tenants' behaviour than fixed term tenancies. If anti-social behaviour and rent arrears are included, you will also need to make sure that your approach is reasonable and proportionate.

Consultation and communication

As with any policy, it will be vital to develop your approach in consultation with stakeholders and residents. You should consider who you will consult and at what stage of the process:

Strategic decisions: Consult with the local authority, other landlords, other stakeholders, residents and potential residents on the overarching aims and objectives for your policy.

Operational decisions: Consult again with residents and potential residents to agree the detail of your policy and to agree specific criteria for key decisions, like what lengths of tenancy will be offered and when a tenancy will not be renewed.

Remember that while many landlords already have effective mechanisms for engaging with their current tenants, not all regularly engage with wider communities and the applicants that are likely to become their future tenants. While actively involved tenants may be interested in helping shape your tenancy policy, they will not be directly affected by it. This does not mean that their views are not valuable but bear in mind that it is vital to also engage with residents from the wider community and on waiting lists.

It will be important to communicate the outcomes from your consultations widely and clearly. Your tenancy policy may result in a fundamental change to your housing 'offer', so it is vital that this is widely known and understood. Think about existing communication methods and whether these are suitable. Remember, you will need to communicate your tenancy policy wider than your existing tenants.

Likely challenges

There are a number of likely challenges to be aware of when developing and implementing your tenancy policy. It may help to consider how you are going to address these from the outset:

Tenancy policies are likely to be most easily developed by providers operating in a single geographical area: Larger providers, providers with highly dispersed stock or those operating as part of a group structure face an additional challenge to operate a 'local' approach across a number of different authority areas, having regard to a number of different tenancy strategies

There could be potential conflict between the political aspirations/priorities of a local authority and aims of the housing provider: For example, some local authorities have expressed that they do not support the introduction of fixed term tenancies, whereas providers may see this as an opportunity. This will need to be worked through openly at the earliest opportunity

There is likely to be an additional challenge for providers that operate joint Choice Based Lettings schemes: There may shortly be a number of providers each offering different tenancy types and lengths and at different rent levels through a single scheme, this will create a challenge to maintain transparency, ease of use and to ensure that all applicants understand their options clearly.

Learning from others

Festival Housing are expecting to publish their affordable rent and flexible tenancy policy shortly, to take effect from April. They are expecting to offer fixed term tenancies, usually for 5 years, to new general needs tenants in both social and affordable rent properties. Criteria for reviews will focus on **ensuring that properties continue to meet tenants' needs** and will address under occupation, over crowding, changes in health needs (such as adaptations needed or no longer needed) and significant changes in financial circumstances.

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Midland Heart have published a tenancy policy aimed at **improving mobility and helping them to meet more of their tenants' long term housing aspirations**. They intend to develop a 'future housing plan' with every new tenant, setting out their long term housing ambitions. To support them to achieve them, they will provide advice and assistance during the fixed term and will review the tenant's circumstances and aspirations at the end of each fixed term.

Contact: David Taylor david.taylor@midlandheart.org.uk

The **London Borough of Wandsworth** are currently consulting on their draft tenancy strategy which, as a stock holding authority, will be closely supported by their own tenancy policy. They have identified **reducing worklessness** in the borough as a strategic priority and will include measures in their policy to support this goal.

They are currently intending to use 5 year fixed term tenancies in most cases but are also planning to pilot the use of 2 year tenancies with a small number of tenants who could benefit from some support to help them move in to work. These tenants will sign up to an agreement at the start of their fixed term in which the organisation will commit, with their partners, to provide advice and assistance aimed at helping the tenant into employment and the tenant will commit to engage with that support.

Contact: Chris Jones chrisjones@wandsworth.gov.uk

Useful resources and information

The Practical Implications of Tenure Reform

http://www.cih.org/publication-free/display/vpathDCR//templatedata/cih/publication-free/data/Practical_implications_of_tenure_reform

Managing the Impact of Housing Reforms in your Area: Working Towards the Tenancy Strategy

http://www.cih.org/publication-free/display/vpathDCR//templatedata/cih/publication-free/data/Managing_the_impact_of_housing_reforms_in_your_area

Practice online

<http://www.cih.org/practiceonline>

Local Decisions: A Fairer Future for Social Housing (DCLG)

<http://www.communities.gov.uk/publications/housing/socialhousingreform>

A Revised Regulatory Framework for Social Housing in England (TSA)

<http://www.tenantservicesauthority.org/server/show/ConWebDoc.21636>



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