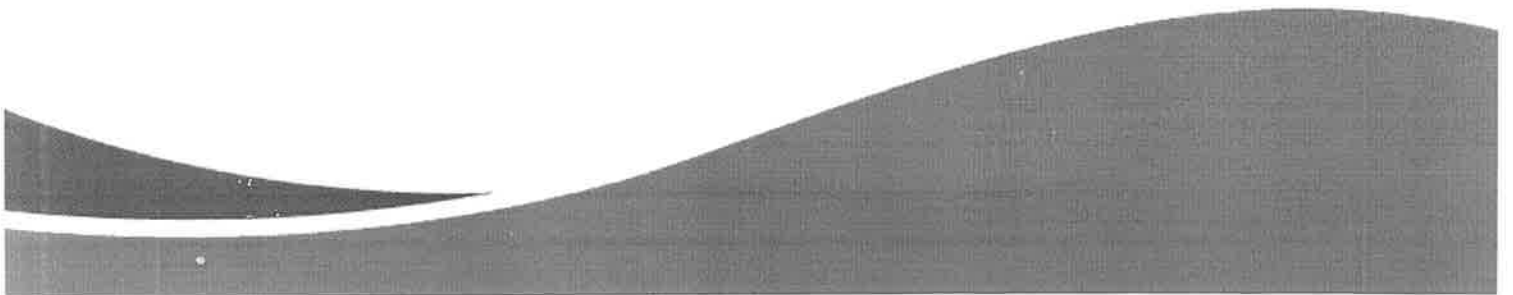


**Southend-on-Sea Borough Council**

**Tenancy Policy**

**2014-19**

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## **Tenancy Policy**

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## **1. INTRODUCTION**

Affordable housing no longer has to be let on a tenancy for life. The Localism Act 2011 allows local authorities to grant secure 'flexible tenancies' for a fixed period. There are a range of options available when issuing such tenancies in addition to the secure 'lifetime tenancies' traditionally issued.

The purpose of this policy is to provide details of the types of tenancies that the Council will grant, the circumstances in which these will be granted and the process for reviewing and renewing flexible tenancies.

For the purpose of this Policy, 'The Council' refers to any functions carried out by, or on behalf of Southend-on-Sea Borough Council by South Essex Homes.

## **2. STRATEGIC TENANCY STRATEGY**

The Council adopted the *Southend-on-Sea Borough Council Strategic Tenancy Strategy 2013-18* in January 2013. This document provides guidance to local social housing landlords in the use of flexible tenancies. The document set out the principles of using flexible tenancies to promote best use of the social housing stock. This Policy is informed by the Strategic Tenancy Strategy and provides greater detail outlining how and when the Council will grant tenancies in accordance with the new powers.

## **3. POLICY AIMS**

In accordance with the ambitions of the Localism Act 2011 this policy is part of the Council's wider housing strategy and will assist the Council to:

- Enable decisions about who lives where and for how long, to be taken on the basis of local need and circumstances
- Deliver a social housing system that is better focused and which protects and supports those who need it most
- Shift the perception of social housing so that it is seen as a springboard into work and self-sufficiency
- Allow the council to make best use of its housing stock

In accordance with the aims of the Strategic Tenancy Strategy, the aims of this Policy are to:

- Target scarce resources at those in greatest need
- Targeting subsidised affordable housing to those most in need in a fair and transparent way
- Ensuring social housing residents live in homes that are appropriate to their current housing needs
- Creating a link with tenancies that will support and incentivise work
- Encouraging Mobility between tenures where appropriate

In accordance with the Localism Act 2011 the Council, will issue tenancies that are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community and the efficient use of our housing stock

This policy will be subject to annual review and will be updated where necessary in accordance with changes to national legislation, the Strategic Tenancy Strategy, the Allocations Policy or major changes to Southend's Housing Strategy or other related policies.

The policy applies to all Council tenancies which commence after the date that this policy is implemented.

#### **4. THE TYPES OF TENANCIES WE OFFER**

In the majority of circumstances local authorities can only grant secure tenancies, although there are some instances whereby other tenancy types can be offered.

The list below provides a description of the tenancy types that the Council will grant in the future. It is important to appreciate that all the tenancies outlined below operate according to statutory criteria.

The Council cannot choose to set up an individual tenancy outside these criteria, regardless of the situation and tenant agreement.

##### **Introductory Tenancies**

The Council has successfully used introductory tenancies for a number of years and will continue to grant Introductory Tenancies, usually for a minimum period of 12 months, to all new tenants.

Unless a new tenant (or one of them in the case of joint tenancies) already has a secure tenancy (or another social housing equivalent to a secure tenancy, for example an assured non short-hold tenancy), the tenancy offered will be an introductory tenancy for a trial period. The trial period normally lasts for one year, but may be extended. During the trial period tenants have less security and fewer rights. For example:

- Their home is at much higher risk of repossession if they do not keep to the tenancy agreement
- They cannot buy their home
- They cannot exchange homes with other tenants

## Secure lifetime and flexible Tenancies

If the trial period of an introductory tenancy is successfully completed, tenants automatically become 'secure' tenants and may be issued a **lifetime** or a **flexible** tenancy. If the tenant had a secure tenancy (or other social housing equivalent) immediately beforehand, they are secure tenants from the beginning of the tenancy.

Secure tenants have certain rights, as set out in their tenancy agreement, such as the Right to Buy, rent out rooms (but not sublet the whole property), to mutually exchange or make certain improvements to their home.

At the end of a flexible tenancy the Council can:

- Offer the tenant another flexible tenancy
- Offer the tenant a lifetime tenancy
- Not renew the tenancy

A flexible tenancy can be ended at the completion of the prescribed fixed term, provided that the correct notices have been served and any appeal has been considered. If the court is satisfied that these conditions have been met then the court will grant an order for possession. A lifetime tenancy can only be brought to an end by the Council via a court order.

The majority of new tenancies offered by the Council will be flexible tenancies following the completion of a satisfactory introductory tenancy. The circumstances in which tenants may be granted lifetime or flexible tenancies, following satisfactory completion of an Introductory Tenancy, are set out in Table 1 below:

**Table 1:** Circumstances where tenants will be granted a lifetime or flexible tenancy

Household type	Tenancy Type	Proposed Length of new tenancy
<b>New tenants (after implementation of policy)</b>		
Those entering sheltered accommodation.	Secure	Lifetime
Households requiring an adapted property	Secure	Flexible- 5 years
Families that include at least 1 child living in the property	Secure	Flexible- 5 years
Single Households or couples without children	Secure	Flexible- 5 years
<b>Existing tenants (pre April 2012)</b>		
Households that move to another social rent/Affordable Rent property	Secure	Lifetime (in accordance with Localism Act 2011)

There may also be other groups of people including those with enduring or lifetime health conditions who could be considered for lifetime tenancies dependent on their individual circumstances, each case will need to be considered on its own merits.

In exceptional circumstances, the Council may grant a flexible tenancy for a shorter period. In accordance with the Localism Act 2011 the Council will not grant flexible tenancies which are shorter than two years in duration. Examples of the circumstances in which tenancies of less than 5 years may be used are provided in Table 2 below:

**Table 2:** Exceptional circumstances in which tenancy terms will be less than 5 years

Exceptional Circumstances	Tenancy length
Household is overcrowded at the time of review, but no alternative accommodation is available	2 years
A Notice has been served due to rent arrears and the review panel or the court has accepted a payment agreement which is being maintained	2 years
Household has previously been issued a flexible tenancy and: <ul style="list-style-type: none"> <li>• Carries out a mutual exchange</li> <li>• Succession issues arise</li> </ul>	2 years - If unexpired portion of tenancy is less than 2 years
If an introductory tenancy has been extended due to anti-social behaviour	2 years

A decision to grant a tenancy shorter than five years will be considered by the Council where it is felt appropriate on the basis of the tenant's previous record and discussions with the tenant at the tenancy review meeting (See section 5).

### **Mutual exchange**

Mutual exchanges shall be dealt with in accordance to the Council's Mutual Exchange Policy. Those with flexible tenancies and those with lifetime tenancies will retain their respective tenancy types upon completing a mutual exchange.

Clause 132 of the Localism Act 2011 provides for transfers between tenants with different levels of security and ensures that secure tenants keep their security of tenure if they swap with a flexible tenant or an affordable rent tenant. A landlord can only refuse such a transfer request on certain grounds specified in Schedule 14 of the Act.

## **Demoted Tenancies**

A secure tenancy may be ended by a court order for some kinds of anti-social behaviour and replaced with a demoted tenancy for a year. A demoted tenancy has less security and fewer rights than secure tenancies. It is broadly like an introductory tenancy and is a useful alternative to a suspended possession order in some instances. If a flexible tenancy is demoted and the demotion period has been completed successfully, the tenancy will automatically revert to a flexible tenancy. In such cases a notice must be served, prior to the end of the demotion period, advising the tenant that a flexible tenancy is to be issued outlining the length and other express terms of the tenancy.

## **Non-secure Tenancies**

There are a few exceptional situations that operate outside the normal framework (Introductory, Secure and Demoted tenancies). These tenancies have less security and protection and normally apply to short-term accommodation. The most common of these exceptions is tenancies granted by the Council under its homelessness functions.

## **Family Intervention Tenancies**

Family Intervention Tenancies are non-secure tenancies that are sometimes offered for the purpose of providing support services to tenants against whom a possession order for antisocial behavior has, or could have, been made in relation to their tenancy on the grounds of antisocial behavior. If the tenant does not comply with the conditions of the agreement, they can be evicted, provided that the Council has served a valid notice of intent, notice to quit and has carried out appropriate procedure for any review or oral hearing.

The term of a Family Intervention Tenancy will be dependent on the family's unique circumstances. Provided that the terms of the Family Intervention Tenancies have been adhered to, the tenant(s) shall be offered an Introductory Tenancy.

## **Joint Tenancies**

Any of the tenancies granted by the Council can be issued as a joint tenancy based on the following circumstances:

- The proposed joint tenants are both eligible for housing as defined by legislation **and**
- Where the proposed joint tenants are married or civil partners **or**
- Where the proposed joint tenants live together and the relationship is an 'established' one i.e. evidence they have lived together for at least 12 months prior to the joint tenancy application **or**

- Where the proposed joint tenants are in a 'mutually supportive' and 'established' relationship.

In the context of deciding whether or not to grant joint tenancies the Council has some discretion, but it must act consistently and in accordance with this policy and the Allocations Policy.

## 5. FLEXIBLE TENANCY REVIEW

### Flexible tenancy renewal

The Council will inform tenants of the processes for reviewing flexible tenancies when they first sign up for their tenancy and again 12 months before the tenancy is due to come to an end.

### Flexible Tenancy Review

Where a flexible tenancy is coming to an end, a review will be undertaken in accordance with the renewal criteria (page 9).

The steps involved in the tenancy review shall be carried out as early as possible in accordance with the timescales as set out in Table 3 below.

**Table 3:** Tenancy Review processes and timescales

Action	Latest date
Tenancy review meeting arranged and tenancy review started	At least 12 months prior to tenancy expiry
If decision not to renew tenancy reached, Notice of intention to end Flexible Tenancy issued ( <i>Including reasons for decision and right to appeal within 21 days</i> )	6 months prior to tenancy expiry
2 month Notice Requiring Possession issued	Not less than 2 months prior to tenancy expiry (but after the outcome of any appeal has been issued)

The purpose of the review is to determine whether the tenancy should be renewed in accordance with the renewal criteria or whether other housing options can be pursued and the tenancy brought to an end.

The tenancy review shall assess the extent to which a household's circumstances have changed, whether the current property remains suitable and if it makes best use of local housing stock. It is expected that in the majority of cases that an



additional flexible tenancy will be granted at the same or alternative address. However, in some circumstances where the renewal criteria have not been met an additional flexible tenancy will not be offered.

Appeals against decisions relating to flexible tenancies shall be dealt with in line with the Appeals procedure (Section 6)

### **Tenancy Review Meeting**

The review will include a tenancy review meeting between a representative from the Council and the tenant to discuss the tenant's current situation and housing needs.

The tenancy review meeting will offer the opportunity for the Council to communicate with residents about any tenancy issues and provide advice to tenants on a range of housing related issues. The meeting also provides the opportunity for the tenant to discuss their current and future housing needs, aspirations and alternative housing options where appropriate including: sheltered housing, supported housing, home ownership, shared ownership, mutual exchange or private renting.

In the cases of joint tenancies, both named tenants must be present at the meeting. A support worker, friend, or other representative may accompany the tenant(s) to the meeting but must provide their name, address and relationship to the tenant at least 24 hours prior to the meeting taking place.

### **Failure to attend a review meeting.**

The tenant shall be sent a letter inviting them to attend a review meeting. If a response is not received within 28 days, the Council shall make 1 more attempt to contact them either by telephone call or home visit. The telephone call and/or home visit will allow the Council to identify any potential vulnerabilities or support issues, in which case appropriate and reasonable support will be put in place to facilitate the meeting. If the tenant(s) still fail to engage, or refuse to attend the meeting, the Council will issue the tenant not less than 6 months notice of its intention to end the tenancy.

If the tenant believes they will have difficulty accessing the review meeting, they must inform the council who will make appropriate arrangements to ensure tenant participation. In exceptional circumstances, a meeting can be held without the tenant(s) present, so long as a representative attends and the tenant has consented to this.

### **Tenancy Renewal Criteria**

The following criteria will be used when conducting a tenancy review in determining whether a new flexible tenancy will be offered:

➤ **Is the property a suitable size for the household?**

An assessment using the bedroom eligibility calculations from the Council's Allocations Policy will be undertaken to determine whether the property is suitable for the size of tenant's household.

In cases where it is demonstrated that the household are under-occupying their accommodation the Council will not generally renew the flexible tenancy at their current property and the household will be assisted to source alternative, smaller accommodation which matches their needs in line with the Council's Allocations Policy. Tenants that are required to move to a smaller property will be given priority on the Council's Homeseekers register and will be eligible to apply for an under-occupation grant (subject to funds being available).

If notice is issued, the tenant will be directly offered alternative Council accommodation in a property of a more suitable size for their household, as determined by the bedroom eligibility criteria as outlined in the Council's Allocations Policy. If no alternative accommodation can be found during the notice period an additional 2 year flexible tenancy may be issued whilst the tenant awaits an offer of a suitable sized property.

The Council will offer support to under-occupying households to relocate to more appropriately sized housing and the property that the household moves to should, in most cases, be more affordable than their existing home.

In some cases the Council will use its discretion in granting an additional flexible tenancy to an under-occupying household, such circumstance may include:

- Where the property is adapted to meet the needs of the household
- Where the household will shortly (i.e. in the next 12 months) not be under-occupying e.g. where a dependent child reaches an age which triggers a requirement for an extra bedroom
- Where it can be demonstrated that an under-occupying household would suffer serious harm moving into alternative accommodation

Where a household is assessed as over-occupying their accommodation the Council will offer advice to make a transfer application, discuss possibility of mutual exchange and other housing options. If no alternative accommodation can be found an additional 2 year flexible tenancy will be offered, unless the household are statutorily overcrowded.

➤ **Has the tenancy been conducted in a satisfactory manner i.e. has there been anti-social behaviour or rent arrears?**

In cases where there have been provable breaches of tenancy or where agreements to remedy those breaches have not been maintained these will be discussed at the tenancy review meeting.

Where a tenant or household member has been guilty of serious and persistent breaches of tenancy the Council will not offer a further flexible tenancy. A serious breach of tenancy is defined as one where there would be sufficient grounds to issue possession proceedings on a secure tenancy.

In accordance with Table 2, under exceptional circumstances, the Council may issue a further 2 year tenancy where the tenant is in rent arrears but has entered into, and adhered to a repayment plan

➤ **Does the property still meet the housing needs of the tenant e.g. does it have suitable adaptations?**

A flexible tenancy may be granted to a person with disabilities in a property that has been built or adapted to meet their needs. If the disabled tenant is no longer a resident, or no longer requires the adaptations at the end of the flexible tenancy the Council will discuss alternative housing options with the tenant including transferring to more appropriate accommodation.

This will ensure that the adapted property can continue to be used to meet the needs of disabled persons in Southend.

➤ **Have there been any other significant changes regarding income/assets?**

The income and assets of the tenant and their spouse/partner will be assessed as part of the tenancy review to determine whether they would still qualify for social housing using the thresholds (which are updated annually) included in the Council's Allocations Policy.

## **6. APPEALS ABOUT FLEXIBLE TENANCIES**

### **Appeals**

Tenants/prospective tenants can appeal against:

- The type of tenancy offered at the end of the introductory tenancy
- The decision not to grant another tenancy at the end of the fixed term
- The length of the flexible tenancy offered

### **Appealing the length or type of tenancy offered**

Under the Localism Act 2011, an appeal of the length of a flexible tenancy may only be successful if the term granted does not accord with this policy.

A request for a review of the length or type of tenancy offered must be made within 21 days of being informed of the decision. A review of the Council's decision will be undertaken by a senior officer who was not involved in the original decision. A written notification of the outcome will be sent to the applicant along with reasons as to how the decision has been reached.

### **Terminating a flexible tenancy process and appeals**

If it is decided, as a result of the tenancy review, that a tenancy will not be renewed, written notice advising the tenant of such will be served by the Council.

Should the Council decide not to renew a flexible tenancy, the tenant shall be informed in writing a minimum of 6 months prior to the tenancy expiring. The notice shall contain the reasons for the tenancy not being renewed and also advise of the tenant's right to appeal within 21 days (as set out in Government Regulations).

Appeals against decision to renew a flexible tenancy will be reviewed by a panel of at least two Council officers who were not involved in the original decision. The chair of the review panel must be senior to the original decision maker. The review panel will work within specific guidelines as set out in legislation and which will be published prior to implementation of this policy.

Upon informing the tenant of the decision not to renew the tenancy, advice will be offered to support the tenant into finding alternative accommodation. The Council will work proactively with any tenant who has been served notice to assist them to explore their options for alternative accommodation. The Council's Housing Options team will continue to be a source of advice for those seeking alternative housing in Southend.

Should the Council's decision to end a flexible tenancy be upheld following review the Council will seek possession of the property. In these circumstances the tenant shall be given a notice requiring possession at least 2 months before their tenancy ends.

The Council will work proactively with tenants who find themselves in this situation, and help them explore their options for alternative housing, which could include home ownership, a privately rented home or more suitable affordable rented accommodation. If the tenant refuses to move when the notice period expires the normal possession procedure will take effect.

## **Supporting Vulnerable Tenants and preventing unnecessary evictions**

The Council will work to target resources to support tenants with vulnerabilities to ensure that they are able to maintain their tenancies.

The support available to tenants includes:

- Notification of landlord and tenant obligations
- Floating support (where appropriate)
- Tenancy sustainment support (where required)
- Access to free finance courses
- Close partnership working with statutory and voluntary support agencies.
- The use of Family Intervention tenancies

The Council will seek to support tenants and help them maintain their tenancies but may take action to end tenancies (before the end of any fixed term) where:

- There are breaches of tenancy conditions
- The tenancy is for a property which the Council need possession of so that a redevelopment or regeneration scheme can proceed
- The tenancy has been obtained by fraud
- The occupier has no succession or assignment rights to the property

## **7. TENANCY FRAUD**

If it is identified that a tenant has committed social housing fraud, enforcement action or criminal proceedings may be taken. Tenancy fraud includes obtaining a property by deception, subletting the whole of the property or subletting part of the property without written consent.

The Council aims to prevent and detect tenancy fraud through:

- Requesting photographic I.D. when applying for the Housing Register
- Publicity/Fraud awareness
- Unannounced tenancy checks
- Cross checking internal/Experian systems including data matching
- Liaising with internal departments/external agencies

## **8. SUCCESSION RIGHTS**

If a tenant dies during their tenancy, in certain circumstances, the tenancy can be passed on to specific members of their household, providing they meet certain conditions. A tenant's succession rights are contained in the Council's tenancy agreement.

### **Pre April 2012 tenancies**

If a tenancy was granted prior to April 2012, the law entitles **one** statutory succession to either a spouse/ partner that was residing with the tenant **or** a family member who has been residing in the property for 12 months prior to the tenant's death. The following people are defined as family members:

- |                                  |                                     |                                   |
|----------------------------------|-------------------------------------|-----------------------------------|
| <input type="radio"/> Spouse     | <input type="radio"/> Civil Partner | <input type="radio"/> Co-habitee  |
| <input type="radio"/> Parent     | <input type="radio"/> Grandparent   | <input type="radio"/> Child       |
| <input type="radio"/> Grandchild | <input type="radio"/> Brother       | <input type="radio"/> Sister      |
| <input type="radio"/> Uncle      | <input type="radio"/> Aunt          | <input type="radio"/> Nephew      |
| <input type="radio"/> Niece      | <input type="radio"/> Half-Brother  | <input type="radio"/> Half-Sister |

Spouses and Civil Partners shall succeed the property of the deceased tenant. However, other qualifying family members shall succeed the tenancy and not the property. Therefore if they are under-occupying their home, or do not require it's adaptations they shall be required to move to a property that is more appropriate for their needs.

### **Post April 2012 tenancies**

Under the Localism Act 2011 there is no statutory right of succession to family members from April 2012. Therefore, the Council now has a statutory duty to grant succession only to a deceased resident's spouse or civil partner.

Where there is a statutory succession to a flexible tenancy, the tenancy will last until the flexible tenancy ends. The offer of a new flexible tenancy will then be considered in line with this policy.

### **Discretionary Succession**

Where an established member of the deceased tenant's household does not have a statutory right to succession the Council may in exceptional circumstances grant discretionary succession dependent upon the circumstances of the case.

In exceptional circumstances, the Council may grant another introductory tenancy to somebody who does not have the right to succeed if the current Council Allocations Policy makes provision for such an allocation. At present this means where the person has enjoyed an established occupancy of the property, has a reasonable expectation of a property of that type and would be a suitable tenant. Further information on succession can be found in the Conditions of Tenancy and Information for Tenants documents produced by South Essex Homes.

## **9. RENTS**

Properties owned by the Council are presently charged at social rent levels. As well as charging rent there may be charges for services such as cleaning, caretaking, emergency alarm systems etc. These will be shown as a separate weekly charge for those homes which benefit from these services.

The Council has aspirations to develop new affordable homes itself and may decide to charge an Affordable Rent for these homes. An affordable rent must be no higher than 80% of local market rent inclusive of service charges.

Affordable Rent conversions by Registered Provider partners is dealt with in line with the Southend-on-Sea Strategic Tenancy Strategy 2013–2018 and in the interests of affordability, should not exceed local housing allowance rates.

## **10. EXCEPTIONAL CIRCUMSTANCES**

On occasion, the Corporate Director for People, or a delegated person acting on their behalf, may in exceptional circumstances and in compliance with legislation, use discretion in making decisions according to the Tenancy Policy. In these circumstances discretion will be exercised taking into account the context of the case in relation to the prevailing housing market situation in Southend, overall levels of housing needs and the balance between housing supply and demand.

## **11. EQUALITY & DIVERSITY**

The Council will ensure that the Tenancy Policy meets the requirements set out in the Equalities Act 2010, upholding the nine protected characteristics which cannot be used as a reason to discriminate against people unfairly. The nine characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation. The Council will ensure that this Tenancy Policy meets the 2010 Act requirements and will publish an Equalities Impact Assessment to set out how it has achieved this objective.

