

Policy: report



## Local decisions on tenure reform

Local Tenancy Strategies and the new role of local housing authorities in leading tenure policy

Shelter



# Foreword



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

A stable home makes it much easier to address other things – finding a job, supporting children at school, mending relationships or addressing health issues. This is why Shelter and others campaigned

alongside social tenants in the 1970s, to ensure they had secure homes. The resulting Housing Act 1980 meant that for a few years all tenants were entitled to a permanent home. Times have changed. Short-term contracts are now standard in the private rented sector and the Localism Act 2011 now allows social landlords to let on short-term contracts of five years and, in some cases, as little as two years. The Act also places a new duty on local authorities to publish a Tenancy Strategy, setting out whether and how the new fixed-term tenancies can be offered and brought to an end. Social landlords must also publish their Tenancy Policies on these issues.

Shelter believes it is important for people who rent from a social landlord to have the opportunity of a permanent, secure home. However, we know a shortage of social housing means authorities have to consider whether fixed-term tenancies are necessary to create vacancies for the many thousands of households waiting in temporary accommodation, or unsuitable and insecure private lettings, for the offer of a social home.

We wanted to assist local authorities in developing their new role in leading local tenure policy, drawing up a Tenancy Strategy, and considering the case and evidence for using fixed terms. We know that every area has its own unique demands and challenges to overcome in order to address housing need, and every local authority is likely to take a slightly different approach. We believe that in making these decisions, local authorities should gather and carefully consider evidence of the likely short- and long-term impacts of using fixed-term tenancies. This report is therefore designed to assist local politicians, strategy and policy officers in preparing their Tenancy Strategies and landlord Tenancy Policies. It should also help local people – tenants, councillors and MPs – in their new role as the main regulators of consumer standards and accountability in social housing.



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Cover photograph Sophie Laslett. To protect the privacy of Shelter clients, models have been used in photographs.

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# Contents

|                                                                              |           |                                                                                        |           |
|------------------------------------------------------------------------------|-----------|----------------------------------------------------------------------------------------|-----------|
| <b>Executive summary</b>                                                     | <b>6</b>  | <b>The purpose of the accommodation</b>                                                | <b>33</b> |
| <b>Introduction</b>                                                          | <b>14</b> | Social housing as a springboard to a better life . . .                                 | 33        |
| <b>Chapter 1. The context of tenure reform</b>                               | <b>15</b> | Encouraging unsustainable owner-occupation . . .                                       | 35        |
| What is tenure? . . . . .                                                    | 15        | <b>The sustainability of the community</b>                                             | <b>35</b> |
| What is security of tenure? . . . . .                                        | 15        | Impact on sustainable communities and<br>neighbourhood management. . . . .             | 35        |
| Changes to tenure introduced by the<br>Localism Act 2011 . . . . .           | 15        | Impact on equalities . . . . .                                                         | 36        |
| Fixed-term Flexible Tenancies . . . . .                                      | 15        | Impacts on social capital and<br>community engagement. . . . .                         | 36        |
| Fixed-term Assured Shorthold Tenancies . . . . .                             | 17        | Further residualisation of social housing . . . . .                                    | 36        |
| Affordable Rent. . . . .                                                     | 17        | Imbalance in the landlord and tenant relationship:<br>tenant participation. . . . .    | 37        |
| <b>Chapter 2. Local tenure policy<br/>and developing a Tenancy Strategy</b>  | <b>19</b> | <b>Chapter 4. Recommendations<br/>for contents of Tenancy Strategies</b>               | <b>41</b> |
| Strategic role of local authorities. . . . .                                 | 20        | The type of tenancies to be<br>granted: presumption of security . . . . .              | 41        |
| Evidence base for strategic decisions . . . . .                              | 21        | The circumstances for granting<br>tenancies of a particular kind . . . . .             | 42        |
| Policy role of registered providers . . . . .                                | 22        | Lengths of fixed terms . . . . .                                                       | 43        |
| Making Tenancy Strategies stick. . . . .                                     | 22        | Exceptional circumstances for<br>offering fixed terms of less than five years. . . . . | 43        |
| Consultation and negotiation<br>with registered providers . . . . .          | 23        | The circumstances for renewal of tenancy. . . . .                                      | 44        |
| Local consultation on Tenancy Strategies . . . . .                           | 23        | Presumption in favour of renewal<br>of all fixed-term tenancies . . . . .              | 44        |
| Reviewing and monitoring of Tenancy Strategies . . . . .                     | 24        | Means test criteria . . . . .                                                          | 45        |
| <b>Chapter 3. Considering the case<br/>for fixed-term tenancies</b>          | <b>26</b> | Under-occupancy criteria. . . . .                                                      | 45        |
| The needs of individual households . . . . .                                 | 26        | Non-renewal for rent arrears . . . . .                                                 | 45        |
| Value of security . . . . .                                                  | 26        | Non-renewal for antisocial behaviour . . . . .                                         | 45        |
| Impacts of insecurity on wellbeing. . . . .                                  | 28        | Avoidance of periodic tenancies . . . . .                                              | 46        |
| The efficient use of the housing stock . . . . .                             | 28        | <b>Reviews or complaints against tenancy decisions</b>                                 | <b>46</b> |
| Vacating homes for those most in need . . . . .                              | 28        | <b>Advice and assistance in finding<br/>alternative accommodation</b>                  | <b>46</b> |
| Addressing overcrowding and under-occupation . . . . .                       | 30        | <b>Appendix 1. History of tenure reform</b>                                            | <b>49</b> |
| Costs of tenancy reviews . . . . .                                           | 31        | <b>Appendix 2. Range of social housing tenancies</b>                                   | <b>53</b> |
| Cost of possession proceedings . . . . .                                     | 31        | <b>Appendix 3. Localism Act 2011 requirements<br/>for Tenancy Strategies</b>           | <b>55</b> |
| Impact of increased vacancy (void) periods<br>and re-letting costs . . . . . | 32        |                                                                                        |           |
| Costs of advice and assistance<br>at end of fixed term. . . . .              | 33        |                                                                                        |           |
| Impact on the condition of homes . . . . .                                   | 33        |                                                                                        |           |

Please note: references throughout appear as end notes at the back of each relevant section of this report.

# Executive summary

This report is designed to assist local politicians, strategy officers and policy officers in preparing their Tenancy Strategies and landlord Tenancy Policies in light of the new flexibility available to them as a result of the Localism Act 2011. It should also assist local people, including local tenants, local councillors and local MPs, in their role as the main regulators of consumer standards in social housing.

## The context of tenure reform

1. The Localism Act 2011<sup>1</sup> places a new duty on local housing authorities to prepare and publish a Tenancy Strategy. These strategies must set out the matters to which registered social housing providers are to have regard in formulating their policies on tenancies.
2. Sections 150 to 153 of the Act came into force on 15 January 2012, meaning authorities have until 15 January 2013 to publish their Tenancy Strategies.
3. The Localism Act also introduces a radical reform of social housing tenure – the most radical since the introduction of security of tenure to social housing in 1980. Social landlords will no longer be required to let general needs homes on ‘the most secure form of tenure’ possible.<sup>2</sup> They can now offer tenancies for shorter terms.
4. The Localism Act<sup>3</sup> introduces a new form of local authority Secure Tenancy: the Flexible Tenancy. This form of tenancy can be used from 1 April 2012<sup>4</sup> for new tenants, provided the local housing authority has adopted a Tenancy Strategy or interim policies that allow for it. However, local housing authorities can decide whether to use them or not.
5. Flexible Tenancies are fixed-term tenancies with a statutory minimum fixed term of two years,

although the Tenancy Standard<sup>5</sup> requires providers to grant general needs tenants a tenancy for a minimum fixed term of five years or, exceptionally, a tenancy for a minimum fixed term of no less than two years in addition to any probationary tenancy period.

6. Housing associations do not need a new type of tenancy to grant fixed-term tenancies. They can already grant fixed-term Assured Shorthold Tenancies. However, a change to the Tenancy Standard now allows them to grant such tenancies for general needs housing let at a social rent, with some additional requirements, such as additional notice requirements.
7. The statutory minimum fixed term for both types of tenancy is two years. However, Government Directions<sup>6</sup> require that the minimum fixed term should be five years, apart from in unspecified exceptional circumstances, when two years can be granted.
8. The revised Regulatory Framework for Social Housing<sup>7</sup> requires registered providers to publish clear and accessible policies that outline their approach to tenancy management, including interventions to sustain tenancies, prevent unnecessary evictions, and tackle tenancy fraud.
9. These Tenancy Policies must set out the circumstances in which they may or may not grant another tenancy on the expiry of the fixed term. There is no further national guidance on tenancy renewal, although the Government has indicated that means tests, under-occupancy, employment status and tenants’ behaviour may be used by the landlord to determine whether to renew.

## Local tenure policy and developing a Tenancy Strategy

10. Prior to the Localism Act, private registered providers already had flexibility in the range of tenancies they could offer. The addition of fixed terms and the new funding model of Affordable Rent could result in an even wider range of different social housing tenancies in each local authority area, depending on the range of landlords offering them and whether they have chosen to use the new flexibilities on tenure and/or rent levels.



## Range of social housing tenancies and rents, 2012

|                    | Permanent tenancy                                                              | Fixed-term tenancy                                                                         |
|--------------------|--------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Social rent        | Local authority<br>– Secure Tenancy<br>let at social rent                      | Local authority<br>– Flexible Tenancy<br>let at social rent                                |
|                    | Housing association<br>– periodic Assured<br>Tenancy let at<br>social rent     | Housing association<br>– fixed-term Assured<br>Shorthold Tenancy<br>let at social rent     |
| Affordable<br>rent | Local authority<br>– Secure Tenancy<br>let at affordable rent                  | Local authority<br>– Flexible Tenancy let<br>at affordable rent                            |
|                    | Housing association<br>– periodic Assured<br>Tenancy let at<br>affordable rent | Housing association<br>– fixed-term Assured<br>Shorthold Tenancy let<br>at affordable rent |

Adapted from CIH The Practical Implications of Tenure Reform<sup>8</sup>

11. Shelter welcomes the Act's requirement that local authorities provide a strategic lead on the use of the social tenures. It is important that the way that social housing is let supports authorities' visions for their local areas.
12. It will also be important that authorities base their Tenancy Strategies on robust quantitative and qualitative evidence. For this reason, it would be appropriate for local housing authorities to use Strategic Housing Market Assessments as the basis of Tenancy Strategies as well as local development plans. In particular, evidence should be gathered on the needs and aspirations of households who are most in need of social housing because they are unable to access, afford, or have their needs met by other tenures.
13. Shelter believes it is important that local authorities consult with local people in housing need, local tenants and other statutory and voluntary agencies, such as social services, before adopting a Tenancy Strategy. Consultation will be essential for local transparency and accountability, and to underpin the increased regulatory role of social tenants via Tenant Panels.
14. While the duty to produce a Tenancy Strategy appears to give local housing authorities strategic control over the letting of local social housing, in practice there is little scope for authorities to insist that all private registered providers operating in the area adopt the same approach in their landlord Tenancy Policies, especially where the homes are owned by large, national housing associations.
15. The Localism Act<sup>9</sup> requires authorities to give private registered providers of social housing in their districts a reasonable opportunity to comment on proposals before adopting or making a major modification to a Tenancy Strategy.
16. The result is that local housing authorities will have to negotiate with registered providers to ensure that their Tenancy Strategy is meaningful, rather than relying on a statutory or regulatory requirement on providers to comply. This gives registered providers considerable scope for influencing the content of Tenancy Strategies.
17. The Localism Act<sup>10</sup> has abolished the Tenants Services Authority and transferred its regulatory functions to the Homes and Communities Agency (HCA). However, in terms of consumer standards, such as the granting and ending of tenancies, the HCA's role is limited to intervening only where failure of the standard could lead to risk of serious harm to tenants. Under the new arrangements for regulation, Tenant Panels, MPs and elected councillors will have a more prominent role in scrutinising landlords. In this context, landlords' Tenancy Policies will become an important means of tenants and others holding their landlords to account for the way that fixed-term tenancies are granted and renewed.

## Considering the case for fixed-term tenancies

18. It is important that local authorities consider very carefully the rationale for local tenure reform when preparing their Tenancy Strategies. Along with registered providers of social housing, they will need to consider whether there is strong enough evidence for them to adopt a new policy locally. When preparing Tenancy Strategies, it will be important to properly analyse the potential costs and benefits of fixed-term tenancies.
19. Shelter strongly supports social landlords continuing to let their homes on permanent or longer-term tenancies and advises councils to consider the potential risks and downfalls for social landlords of letting on shorter terms, as outlined below.
20. The new Regulatory Framework<sup>11</sup> requires social landlords to grant tenancies that are compatible with the:
  - needs of individual households
  - efficient use of the housing stock
  - purpose of the accommodation
  - sustainability of the community.

It is important that local authorities consider these in turn.

## The needs of individual households

21. It has been argued that tenants do not value security of tenure, and that consequently there will be little cost to them if it is no longer offered.<sup>12</sup> However, research<sup>13</sup> shows that people associate security of tenure with a settled and stable home and want to achieve stability in their housing. Stability is particularly important to people who want to settle down, lay down roots and plan for the future, such as those with children.
22. For more vulnerable people, whose lives may otherwise be in a state of flux, the security represented by their home can be especially valuable and can provide the basis for rebuilding their lives.<sup>14</sup> In a recent small-scale survey, social tenants overwhelmingly felt that people should be able to stay in their homes for as long as they want and that fixed terms would cause too much stress.<sup>15</sup>
23. Fixed-term tenancies are promoted by the Government as a means of giving tenants 'more control over the decisions they make about their lives'.<sup>16</sup> Local housing authorities will need to consider whether tenants on fixed terms will have more or less control about the decisions they make, given that their landlord will be able to decide whether they can remain in their home or not.

## The efficient use of the housing stock

24. The principal argument for tenure reform is that social housing is a 'scarce public resource that should be focused on those who need it most, for as long as they need it'.<sup>17</sup> This approach treats social housing as a form of temporary welfare support: a short-term 'ambulance service' available until people can find housing in the market. So it will be important for local housing authorities to assess how many fixed-term tenants will actually be able to enter market housing in the future.
25. The Government<sup>18</sup> has assessed that tenure reform will not significantly increase the number of vacant homes available until the late 2030s. This is borne out by research from New South Wales, Australia, where fixed-term tenancies were introduced to the social sector in October 2006. Less than one per cent of tenancies reviewed so far have been terminated.<sup>19</sup> If local assessments in England reach similar conclusions, the use of fixed-term tenancies alone will make little or no immediate impact on the availability of social homes.
26. A separate argument<sup>20</sup> for fixed-term tenancies is that increased churn within the sector could help to alleviate housing need by addressing under-occupancy and overcrowding. Local authorities will need to carefully consider whether it is fair or proportionate to use fixed-term tenancies to make older residents move from their family homes. They will also need to assess how many vacancies of family-sized homes would be created each year and whether they would be in the localities where they are most needed. It will inevitably be some time before significant vacancies are created as a result of ending tenancies for reasons of under-occupation, so this approach is unlikely to do much immediately to address the problem of growing overcrowding. It may be better to improve positive incentives, including the supply of housing for older people.<sup>21</sup>
27. Registered providers, including councils, will need to consider the administration and cost involved in conducting tenancy reviews. Every fixed-term tenancy would require a potentially resource-intensive review process to establish who normally resides in the dwelling and their financial means. The Department for Communities and Local Government's (DCLG) Impact Assessment estimates the cost of a two-hour tenancy review to be £47, with the total cost of reviews falling between £35 million and £74 million over 30 years.<sup>22</sup>
28. **In Shelter's view, the resource needed to conduct the review could be far greater than the Government anticipates. The total review process could include writing to the tenant, gathering and assessing evidence of who normally resides in the dwelling and the household's income. A rigorous review process will be required to conduct a review that is robust in the face of legal challenge. Our view is that only simple cases are likely to take a couple of hours at a cost of £47. We would estimate a more complex case to cost almost double that amount.** The Chartered Institute of Housing (CIH) reports that 'the management cost of introducing fixed term tenancies does not appear to offer value for money – what will be the real gain?'<sup>23</sup>
29. The DCLG Impact Assessment assumes that one in 20 households would refuse to vacate properties at the end of the fixed term, resulting in the need for possession proceedings. It estimates that between 11,000 and 91,000 possession orders would be required over a 30-year period at a cost to landlords of around £175 per case. It claims that the cost to social landlords from possession proceedings following the end of Flexible Tenancies would be between £1 million and £12 million over 30 years.
30. **Shelter believes these figures are a gross under-estimate. Firstly, we believe that far fewer than 19 out of 20 tenants will voluntarily vacate their homes at the end of a fixed term, especially if they have been living in the property for a longer period. Secondly, the average court fees cited in the Impact**



**Assessment are too low. The current court fee for an undefended possession claim is £175.<sup>24</sup> However, this takes no account of the cost to the authority of preparing and conducting possession proceedings. We believe that the minimum total costs on an undefended claim would be three-and-a-quarter hours' work, which – at £150 an hour – would amount to £487. When the standard court fee of £175 is added, we estimate a minimum total cost of possession proceedings of £662 per case.**

31. Furthermore, a number of cases are likely to be defended on human rights or public law grounds. In our experience, a defended case is quite likely to cost the landlord in the region of £4,000 to £5,000. The Impact Assessment also makes no assessment of the cost of applying for and executing a warrant for eviction. However, Shelter research<sup>25</sup> shows that the full administrative cost of eviction (including the cost of the initial possession proceedings) from local authority property is £1,119.
32. The same Shelter research shows that the cost to local authorities of re-letting a property is an average £2,787. This figure includes both the administrative costs (such as advertising the vacancy, processing of applications and matching people to properties) and financial costs (such as lost rental revenue, redecoration, repairs and security costs).
33. The Regulatory Framework<sup>26</sup> requires that, where registered providers choose to let homes on fixed-term tenancies (including under Affordable Rent terms), they must offer reasonable advice and assistance to tenants whose tenancies end. Some local authorities feel that, in practice, advice responsibilities would devolve to them. It will therefore be important for both local housing authorities and registered providers to consider how much it will cost to deliver advice and assistance to people expected to find housing in the market at the end of a fixed term.
34. **Shelter strongly advises local housing authorities, when considering the case for fixed-term tenancies and the efficient use of the stock, to make an accurate and realistic assessment of the likely costs of: tenancy reviews, undefended possession proceedings at the end of a fixed term, defended possession proceedings (such as human rights or equalities challenges), evictions, re-lets, and the provision of advice and assistance.**

## The purpose of the accommodation

35. A further argument for encouraging fixed-term tenancies is that they could be used to meet other social objectives, such as enabling tenants to enter

paid employment or encouraging people to move into other forms of tenure.

36. It has been argued that fixed-term tenancies could provide a tool to help tenants to enter paid employment, and some social landlords are already planning to link fixed-term tenancies to the provision of support around employment and life skills,<sup>27</sup> with renewals linked to a personal development plan.
37. But it is also possible that making tenure dependent on proof of continuing need could disincentivise tenants from seeking or taking up work, as has been suggested in the New South Wales experience of fixed-term tenancies.<sup>28</sup> This was also the conclusion of Professor John Hills in his 2007 review of social housing in England.<sup>29</sup> Research published in 2008 by the Department for Work and Pensions (DWP) shows there is no evidence that social housing creates a disincentive to work and that the security of tenure it provides can actually help people to enter paid employment.<sup>30</sup>

## The sustainability of the community

38. CIH suggests that local authorities will need to consider the potential impact of tenure reform on wider community issues such as health, wellbeing and access to employment.<sup>31</sup> **Shelter agrees that it will be important to involve other local agencies in the preparation of this aspect of the Tenancy Strategy, such as the Local Enterprise Partnership or the public health commissioner. We also agree that local authorities will want to understand and influence outcomes at the neighbourhood level and will therefore need to understand how the use of fixed terms will affect neighbourhood mix and management.**
39. There is a risk that, over the long term, the use of fixed-term tenancies could undermine the sustainability of communities by increasing the transience and social exclusion of neighbourhoods, leading to the need for increased housing management resources, such as dealing with neighbour disputes. The Government's Impact Assessment<sup>32</sup> has not considered these social and financial costs. However, research shows that 'high levels of residential turnover are perceived as destabilising, undermining attachment to place and contributing to neighbourhood decline and social exclusion'.<sup>33</sup>
40. There is evidence that insecure tenancies deter tenants from socially investing in their homes and neighbourhoods, undermining the sustainability of communities. Research has shown that private tenants<sup>34</sup> renting on fixed terms scored lower than those with more secure forms of tenancy on nine indicators of community engagement.<sup>35</sup> The

difference is particularly marked in voting levels, and involvement in local groups or organisations.

41. Housing authorities are subject to the general public sector equality duty in the Equality Act 2010, and have a duty to advance equality of opportunity. Because social housing is generally allocated on the basis of need, there is a strong possibility that fixed-term tenancies will disproportionately affect people who fall into the equalities categories, such as disability. It will therefore be important for local authorities to conduct an Equalities Impact Assessment as part of their preparation of a Tenancy Strategy.
42. Finally, there is a danger that the introduction of fixed terms could seriously undermine the attempts to improve tenant involvement and empowerment in the management of their homes, such as Tenant Panels. At a time when the scope of social landlord regulation is being rolled back, there is a danger<sup>36</sup> that tenants will be reluctant to demand repairs or better customer services because of a fear, real or perceived, that this would influence the outcome of their forthcoming tenancy review.

## Recommendations for Tenancy Strategies

43. **We strongly advise local housing authorities to set out in their Tenancy Strategies that registered providers should continue to offer 'the most secure form of tenure' 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.** While this formulation would put a presumption on landlords to grant the most secure form of tenure, it would still allow them considerable flexibility to let on fixed-term tenancies if this was compatible with the above principles of social tenancies.
44. **We strongly advise local housing authorities to set out in their Tenancy Strategies that certain groups of people who are in need of settled or stable accommodation, and whose situation is unlikely to change, should continue to be granted permanent tenancies.** At the very least, these vulnerable groups should include households containing someone over 60 years of age and people with a long-term medical or welfare need for secure accommodation. It is unnecessary and needlessly bureaucratic for these tenants to be placed on fixed-term tenancies, as their position is unlikely to change by the time of their next tenancy review.
45. **Where local housing authorities choose to support fixed-term tenancies in their Tenancy Strategies, we strongly advise them to set out that registered providers should grant fixed terms of longer than the five-year regulatory minimum, particularly where there are dependent children in the household.** As registered providers will continue to be able to use Introductory and Demoted Tenancies, we see no reason for granting fixed-term tenancies of less than five years.
46. **It is very important that local housing authorities take a clear position on the circumstances for renewing, or not renewing, fixed-term tenancies.** Local policies on tenancy renewal should be clearly based on the authority's Strategic Housing Market Assessment, Housing Strategy, Homelessness Strategy and the Allocation Scheme as well as their wider vision and strategic aims for the local area, such as the Sustainable Communities Strategy.
47. **Local housing authorities should liaise with other authorities in the sub-region when renewal thresholds are set.** Otherwise, a damaging 'postcode lottery' could develop, particularly in metropolitan areas.
48. **We strongly advise local authorities to include a presumption of renewal of tenancy in their Tenancy Strategies, rather than leaving it to the variances of landlords' policies.** Tenancy Strategies should set out that, when carrying out tenancy reviews, registered providers' reviewing officers should proceed on the basis of a presumption that a new fixed-term tenancy for a term at least equivalent to the current or previous fixed term should be granted to the tenant. A local presumption in favour of renewal would help to give tenants greater clarity and protection, especially towards the end of their tenancy.
49. **We strongly recommend that Tenancy Strategies should set out that registered providers should not allow fixed terms to run into insecure periodic tenancies and should, instead, renew the tenancy at the expiry of a fixed term.** Otherwise, tenants could remain in their homes on an insecure, periodic basis<sup>37</sup> for many years, with no scope to require the landlord to grant another fixed term.
50. **Local authorities should set out in their Tenancy Strategies that private registered providers should include the statutory provisions on review of possession proceedings in their Tenancy Policies.** The Localism Act<sup>38</sup> sets out statutory provisions for local authority landlords on the process to be followed when recovering possession (and reviewing decisions to seek possession) of Flexible Tenancies. These provisions will be supported by statutory regulation. However, there is no corresponding statutory right of review for tenants of private registered providers.

Therefore Tenancy Strategies should set out that private registered providers should include the statutory provisions on review in their Tenancy Policies. This would achieve consistency between the expectations on local authority and housing association landlords.

- 51. Tenancy Strategies should set out the matters to which registered providers should have regard in advising and assisting tenants on finding suitable alternative accommodation at the end of a fixed-term tenancy.** The Regulatory Framework<sup>39</sup> requires that, where registered providers choose to let homes on fixed-term tenancies (including under Affordable Rent terms), and where tenants are refused a renewal of the tenancy, landlords must ensure that they offer reasonable advice and assistance in finding alternative accommodation. As the Regulatory Framework does not provide a minimum definition of ‘reasonable advice and assistance’, it is important that Tenancy Strategies do so.

- 1 Sections 150 to 153 of Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/section/150>)
- 2 Tenant Services Authority (March 2010) *The Regulatory Framework for Social Housing in England from April 2010*, page 25 ([http://webarchive.nationalarchives.gov.uk/20100408112044/http://www.tenantservicesauthority.org/upload/pdf/Regulatory\\_framework\\_from\\_2010.pdf](http://webarchive.nationalarchives.gov.uk/20100408112044/http://www.tenantservicesauthority.org/upload/pdf/Regulatory_framework_from_2010.pdf))
- 3 Sections 154 and 155 of Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/section/154>)
- 4 Statutory Instrument 628/2012: The Localism Act 2011 (Commencement No.4 and Transitional, Transitory and Saving Provisions) Order 2012, Article 6(a) (<http://www.legislation.gov.uk/uksi/2012/628/article/6/made>)
- 5 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, page 24 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))
- 6 DCLG (November 2011) *Implementing Social Housing Reform: Directions to the Social Housing Regulator – Consultation: Summary of responses, Annex A: The Directions on Regulatory Standards, Tenure 2.4(a)* (<http://www.communities.gov.uk/documents/housing/pdf/2017529.pdf>)
- 7 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, paragraph 2.1 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))
- 8 Larnier, D. Pipe, D. and Tucker, H. (May 2012) *The practical implications of tenure reform*, Chartered Institute of Housing, page 7 (<http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Practical%20implications%20of%20tenure%20reform%20-%20May%202012.pdf>)
- 9 Section 151 (1) of Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/section/151/enacted>)

- 10 Section 178 of Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/part/7/chapter/5/enacted>)
- 11 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, paragraph 2.1 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))
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- 37 This will be true in the case of Flexible Tenancies provided by local housing authorities, if the landlord has served (i) a notice of intention not to renew six months before the fixed term is due to expire, and (ii) a two-month notice seeking possession by or on the final day of the fixed term, then the tenancy would become periodic until a possession order was granted by the court. It will also be true in the case of Assured Shorthold Tenancies granted by private registered providers (housing associations), where the landlord has served a notice of intention not to renew six months before the expiry of the fixed term. Such a periodic tenancy could continue for years.
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# Introduction

This report is designed to assist local politicians, strategy officers and policy officers in preparing their Tenancy Strategies and landlord Tenancy Policies, in the light of the new flexibility available to them as a result of the Localism Act 2011. It should also assist local people, including local tenants, local councillors and local MPs, in their new role as the main regulators of consumer standards in social housing.

The Localism Act has introduced what the Government describes as ‘the most radical shake up of social housing for 50 years’. The most radical change is the introduction of fixed-term tenancies into ‘general needs’ social housing.

Social landlords will no longer be required to let homes on the most secure form of tenure possible. Instead the legislation allows them to let to new tenants on fixed-term tenancies of as little as two years – although the Government has directed that the minimum fixed term should be five years, apart from in unspecified ‘exceptional circumstances’.

The Act introduces a new form of local authority tenancy, known as a ‘Flexible Tenancy’. These will be available to local authority landlords in addition to, rather than replacing, Secure and Introductory Tenancies. Private registered providers of social housing will be free to let their ‘general needs’ housing on existing Assured Shorthold Tenancies, with some additional requirements (see Appendix 2 for summary of tenancies).

The Act<sup>40</sup> places a new duty on local housing authorities to prepare and publish a Tenancy Strategy. These strategies must set out the matters to which registered social housing providers are to have regard in formulating their policies on tenancies. Sections 150 to 153 of the Act (see Appendix 3) came into force on 15 January 2012, which means that authorities have until 15 January 2013 to publish their Tenancy Strategies.

Simultaneous reform to the regulation of social housing means the regulator will have a ‘backstop’ role in consumer matters, limited to setting the service delivery standards and acting only where it considers there is risk of serious detriment (or harm) to tenants.

The principal role in scrutinising landlord services and intervening where consumer standards are not met will fall to others – those on Tenant Panels, MPs and elected councillors.

Shelter has strongly opposed the removal of security of tenure in general needs social housing. The conversion of existing social rented homes, let on a permanent, secure basis, to homes let on fixed-term tenancies must not be undertaken lightly. To be justified, such a policy must deliver substantial benefits, particularly to people most in need of a home, and minimise the risk of unintended consequences.

This report explores the context and arguments surrounding fixed-term tenancies in the social sector and suggests what should be considered when preparing Tenancy Strategies and landlord Tenancy Policies.

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40 Sections 150 to 153 of Localism Act 2011

# Chapter 1. The context of tenure reform

## What is tenure?

Housing tenure<sup>41</sup> describes the legal status under which people have the right to occupy their accommodation. The most common forms of tenure are:

- home ownership: this includes homes owned outright and mortgaged
- renting: this includes social rented housing and private rented housing.

## What is security of tenure?

Security of tenure is the recognised term for the legal conditions that offer tenants indefinite tenure of their housing, subject to proven breaches of their lease agreement that provide grounds for termination by the landlord.

Under international human rights law,<sup>42</sup> secure tenure is one of the seven components of the right to adequate housing, which is linked to the right to land. The other six components are:

- availability of services, materials, facilities and infrastructure
- affordability
- habitability
- accessibility
- location
- cultural adequacy.

Security of tenure has generally been considered an essential element of social housing in England since its introduction in 1981, as one of the recommendations of the 1977 review of housing policy that attracted bi-partisan support.<sup>43</sup> Prior to this date, social tenants had very little statutory protection, mainly because it was considered that their landlords, as publicly accountable bodies, were unlikely to treat them unreasonably.

In its 1979 election manifesto, the Conservative party stated: 'Those tenants who do not wish to buy their homes will be given new rights and responsibilities under their own Tenants' Charter'. In December 1979, the new Government published a Housing Bill, which became the Housing Act 1980. The Bill retained a large amount of the Tenants' Charter, while adding two measures that were the centrepiece of the Conservatives' election campaign: the Right to Buy and shorthold tenure in the private sector.

In introducing the Bill's sections on security of tenure and the Tenants' Charter, Minister Michael Heseltine said: 'My aim in framing the charter has been to bring to council tenants the recognition that they have de facto security and the incentives for those who wish to take a greater interest in the condition of their home and its environment'.<sup>44</sup> The Housing Act 1980 gave security of tenure to tenants of local authorities, new towns and housing associations (except fully mutual housing co-operatives).

A recent paper on tenure commissioned for the Joseph Rowntree Foundation Housing Market Taskforce concludes: 'the Secure Tenancy granted by the local authority landlord was created simultaneously with the Right to Buy. It is a consequence of the effort to extend home-ownership and reduce the power of the local authority landlord. It is an important extension of citizenship offering stability and security for those who would otherwise be vulnerable in the housing market'.<sup>45</sup>

Since the Housing Act 1980, there have been further legislative changes to housing tenure, which have generally resulted in a reduction in security of tenure for social tenants (see Appendix 1). Prior to the Localism Act 2011, there were three main statutory regimes giving residential occupiers security of tenure: the Rent Act 1977, the Housing Act 1985 and the Housing Act 1988.<sup>46</sup> As a result there are a number of forms of tenure in social housing (see Appendix 2 and Figure 1 on next page).

## Changes to tenure introduced by the Localism Act

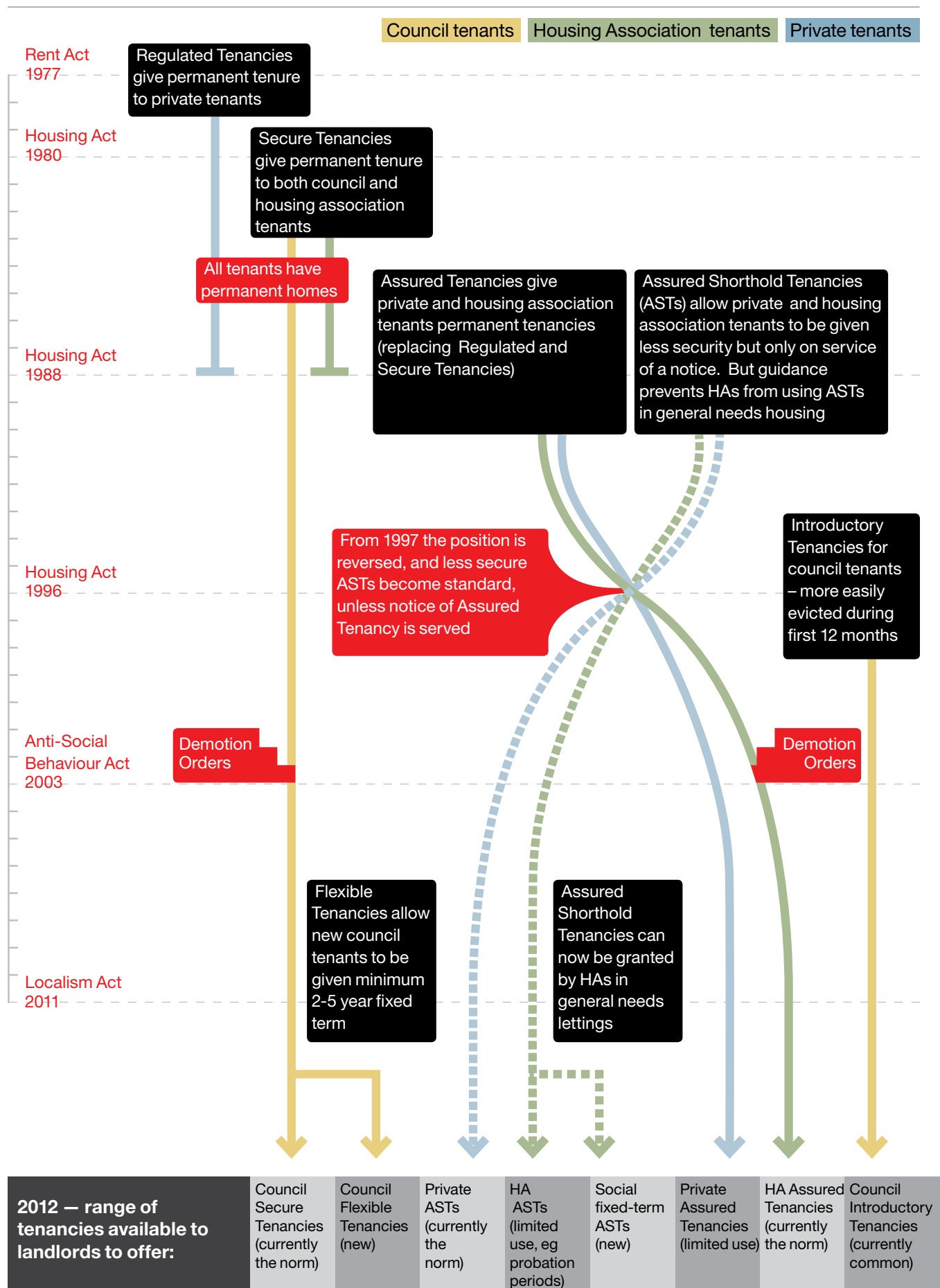
The new forms of tenure introduced by the Act only apply to new tenants: existing social tenants retain their tenure rights.<sup>47</sup>

### Fixed-term Flexible Tenancies

The Localism Act 2011<sup>48</sup> introduces a new form of local authority Secure Tenancy: the Flexible Tenancy. This form of tenure can be used from 1 April 2012<sup>49</sup> for new tenants, provided the local housing authority has adopted a Tenancy Strategy or interim policies that allow for it. However, local housing authorities can decide whether to use them or not.

Flexible Tenancies are fixed-term tenancies with a statutory minimum fixed term of two years, although the Tenancy Standard<sup>50</sup> requires providers to grant general needs tenants a tenancy for a minimum fixed term of five years, or exceptionally, a tenancy for a

Figure 1: Changes to housing tenure



minimum fixed term of no less than two years, in addition to any probationary tenancy period. The tenant has the right to request a review of the decision as to the length of the fixed term, but only on the basis that it does not accord with the landlord's own policy. It is currently unclear whether, and to what extent, Article 6 of the European Commission on Human Rights (ECHR) will apply to decisions to grant Flexible Tenancies of a particular duration as opposed to periodic Secure Tenancies.

Generally, tenants with a Flexible Tenancy will have the same rights as other Secure Tenants,<sup>51</sup> including the Right to Buy and the Right to Repair. The statutory Right to Improve will not apply (although the tenancy agreement can determine whether the tenant has the right to improve their home) and there is no statutory right for tenants to be compensated for improvements.

During the fixed term, possession will be available on normal Secure Tenancy grounds as long as there is a valid forfeiture clause in the tenancy permitting this. A tenant may give four weeks' notice in writing to end a Flexible Tenancy during the fixed term.

Whether the tenant will be able to remain in social housing at the end of the fixed term will depend on the landlord's Tenancy Policy. The procedure for local authorities who decide not to grant another tenancy at the end of the fixed term is set out in the Localism Act. If the landlord does not intend to renew the tenancy it must give at least six months' notice of this fact and two months' notice seeking possession. The tenant has a right to request a review of a decision not to renew.<sup>52</sup>

A court can only refuse possession if the correct procedure has not been followed by the landlord or if the court is satisfied that the decision not to grant another tenancy was otherwise 'wrong in law'. This is likely to attract defences under Article 8 of the ECHR and the Equality Act 2010.

If no further fixed term is granted but no notice of non-renewal is given, the tenancy becomes a periodic Secure Tenancy.

## Fixed-term Assured Shorthold Tenancies

Housing associations do not need a new type of tenancy to grant fixed-term tenancies. They can already grant fixed-term Assured Shorthold Tenancies. However, a change to the Tenancy Standard now allows them to grant such tenancies for general needs housing let at a social rent.

The previous Tenancy Standard required that social landlords 'offer and issue **the most secure form of**

tenancy compatible with the purpose of the housing and the sustainability of the community'.<sup>53</sup> However, the new Tenancy Standard requires providers to 'grant 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 the housing stock'.<sup>54</sup>

As with Flexible Tenancies, the Tenancy Standard requires providers to grant general needs tenants a tenancy for a minimum fixed term of five years, or exceptionally, a tenancy for a minimum fixed term of no less than two years, in addition to any probationary tenancy period.

Also as with Flexible Tenancies, whether the tenant will be able to remain in social housing at the end of the fixed term will depend on the landlord's tenancy policy. The procedure for housing associations who decide not to grant another tenancy at the end of the fixed term is set out in the Localism Act. If the landlord does not intend to renew the tenancy it must give at least six months' notice of this fact as well as a valid section 21 notice.

The tenant has no statutory right to request a review of a decision not to renew. However, the Tenancy Standard<sup>55</sup> requires registered providers set out 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.

Where another tenancy is not being offered, there is also a requirement that the provider offers reasonable advice and assistance.<sup>56</sup>

## Affordable Rent

Affordable Rent is the new model for financing new social homes in the Homes and Communities Agency's Affordable Homes Programme 2011–2015.<sup>57</sup> Homes let on Affordable Rent are a form of social housing. Registered providers are only able to let properties at an Affordable Rent as part of an agreement with the HCA or the Greater London Authority. Some contracts may be based on the conversion of a proportion of existing re-lets to Affordable Rent. Affordable Rents can be set at up to 80 per cent of market rates.

Providers can let Affordable Rent homes on a range of different tenures, from a Secure or fully Assured Tenancy, to a regulatory minimum five-year fixed-term (Flexible or Assured Shorthold) tenancy. In unspecified exceptional circumstances, the statutory minimum two-year fixed term can be used.

## Result of tenure reform

These reforms mean that each local authority area could now include a range of different social housing tenancies, depending on the type of landlord offering them and whether they have chosen to use the new flexibilities on tenure and/or rent:

**Table 1: Current range of social housing tenancies and rents**

|                    | Permanent tenancy                                                              | Fixed-term tenancy                                                                         |
|--------------------|--------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Social rent        | Local authority<br>– Secure Tenancy<br>let at social rent                      | Local authority<br>– Flexible Tenancy<br>let at social rent                                |
|                    | Housing association<br>– periodic Assured<br>Tenancy let at<br>social rent     | Housing association<br>– fixed-term Assured<br>Shorthold Tenancy<br>let at social rent     |
| Affordable<br>rent | Local authority<br>– Secure Tenancy<br>let at affordable rent                  | Local authority<br>– Flexible Tenancy let<br>at affordable rent                            |
|                    | Housing association<br>– periodic Assured<br>Tenancy let at<br>affordable rent | Housing association<br>– fixed-term Assured<br>Shorthold Tenancy let<br>at affordable rent |

Adapted from CIH The Practical Implications of Tenure Reform<sup>58</sup>

41 Diaz, R. (2009) *Shelter Factsheet: Housing Tenure*

42 Augustinus, C. and Benschop, M. *Security of Tenure – Best practices*, UN Habitat

43 Bradshaw, J., Chzhen, Y. and Stephens, M. (2008) *Housing: the saving grace in the British welfare state*, in S. Fitzpatrick and M. Stephens (eds.) *The Future of Social Housing*, Shelter

44 *Hansard* 15 January 1980

45 Carr, H., Cowan, D., Hunter, C and Wallace, A. (December 2010) *JRF programme paper: Housing Market Taskforce, Tenure rights and responsibilities*, University of Bristol, page 25 (<http://www.jrf.org.uk/sites/files/jrf/tenure-rights-responsibilities-full.pdf>)

46 Madge, N. and Sephton, C. (2008) *Housing Law Casebook: Fourth Edition*, Legal Action Group

47 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, paragraph 2.8. Those who were social housing tenants on 1 April 2012 should be granted a tenancy with no less security where they move to another social rented home. However, this requirement does not apply where tenants choose to move to accommodation let on Affordable Rent terms. ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))

48 Sections 154 and 155 of Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/section/154>)

49 Statutory Instrument 628/2012: The Localism Act 2011 (Commencement No.4 and Transitional, Transitory and Saving Provisions) Order 2012, Article 6(a) (<http://www.legislation.gov.uk/uksi/2012/628/article/6/made>)

50 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, page 24 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))

51 As set out in the Housing Act 1985, Part IV (<http://www.legislation.gov.uk/ukpga/1985/68/part/IV>)

52 Statutory Instrument 695/2012: The Flexible Tenancies (Review Procedures) Regulations 2012 (<http://www.legislation.gov.uk/uksi/2012/695/contents/made>)

53 Tenant Services Authority (March 2010) *The Regulatory Framework for Social Housing in England from April 2010*, page 25 ([http://www.tenantservicesauthority.org/upload/pdf/Regulatory\\_framework\\_from\\_2010.pdf](http://www.tenantservicesauthority.org/upload/pdf/Regulatory_framework_from_2010.pdf))

54 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, paragraph 2.1 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))

55 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, paragraph 2.1.6 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))

56 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, paragraph 2.5 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))

57 (<http://www.homesandcommunities.co.uk/affordable-homes>)

58 Larnier, D. Pipe, D. and Tucker, H. (May 2012) *The practical implications of tenure reform*, Chartered Institute of Housing, page 7 (<http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Practical%20implications%20of%20tenure%20reform%20-%20May%202012.pdf>)



# Chapter 2. Local tenure policy and developing a Tenancy Strategy

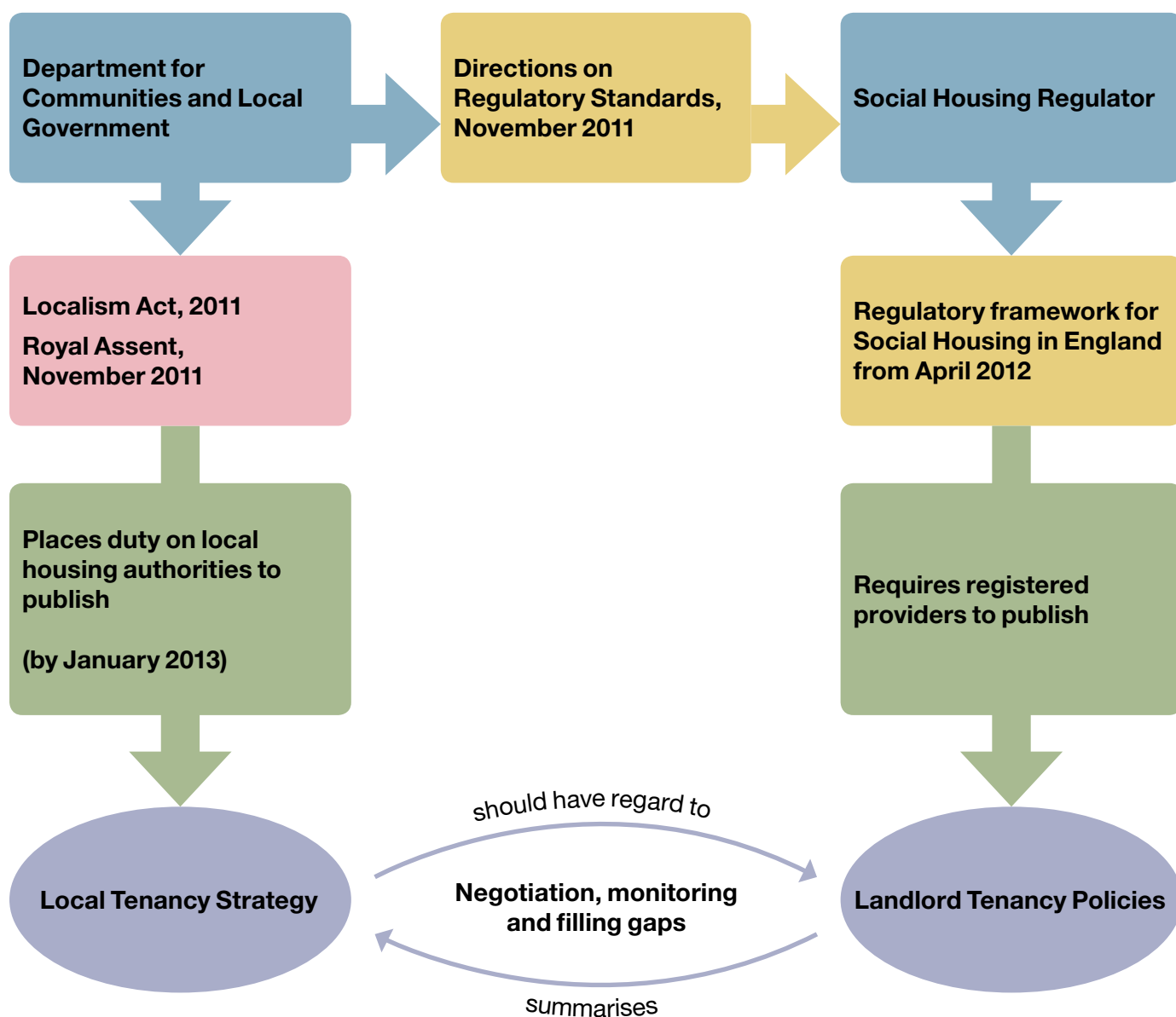
The Localism Act 2011<sup>59</sup> places a new duty on local housing authorities to prepare and publish a Tenancy Strategy (see Appendix 3). These strategies must set out the matters to which registered providers of social housing are to have regard in formulating their policies on tenancies in terms of:

- 'the kinds of tenancies they grant
- 'the circumstances in which they will grant a tenancy of a particular kind

- 'where they grant tenancies for a term certain, the lengths of the terms, and
- 'the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy'.

The Tenancy Strategy must summarise those policies or explain where they may be found. These sections of the Act came into force on 15 January 2012, which means that authorities have until 15 January 2013 to publish their Tenancy Strategies.

Figure 2: Tenure reform requirements on local housing authorities and registered providers



## Strategic role of local authorities

The Act requires<sup>60</sup> that authorities must have regard to their other strategic housing functions when preparing or modifying their Tenancy Strategies, namely:

- the Allocation Scheme<sup>61</sup>
- the Homelessness Strategy,<sup>62</sup> and
- in the case of an authority that is a London borough council, the London Housing Strategy.

Shelter welcomes the Act's requirement that local authorities provide a strategic lead on the use of the new social tenure. We believe that it is important that both Tenancy Strategies and the way social housing is let should be based on the authority's overall vision for its local area.

Authorities will need to consider how use of fixed-term tenure will contribute to meeting housing need, demand and wider objectives. The Chartered Institute of Housing (CIH) states that: 'the local tenancy strategy expected by government should be a framework for action which will support the achievement of strategic objectives described in the Sustainable Communities Strategy and/or housing strategy'.<sup>63</sup> The Local Government Association (LGA) states that, while 'the purpose of a Tenancy Strategy is to help shape the policies of social landlords in the council's area, especially on the extent to which they make use of fixed term tenancies', a Tenancy Strategy is also 'one mechanism by which you can help shape social housing provision in your area, not an end in itself'.<sup>64</sup> The LGA also instructs authorities to 'make sure the position you take on tenancies is based on the bigger picture – on housing and more widely'.

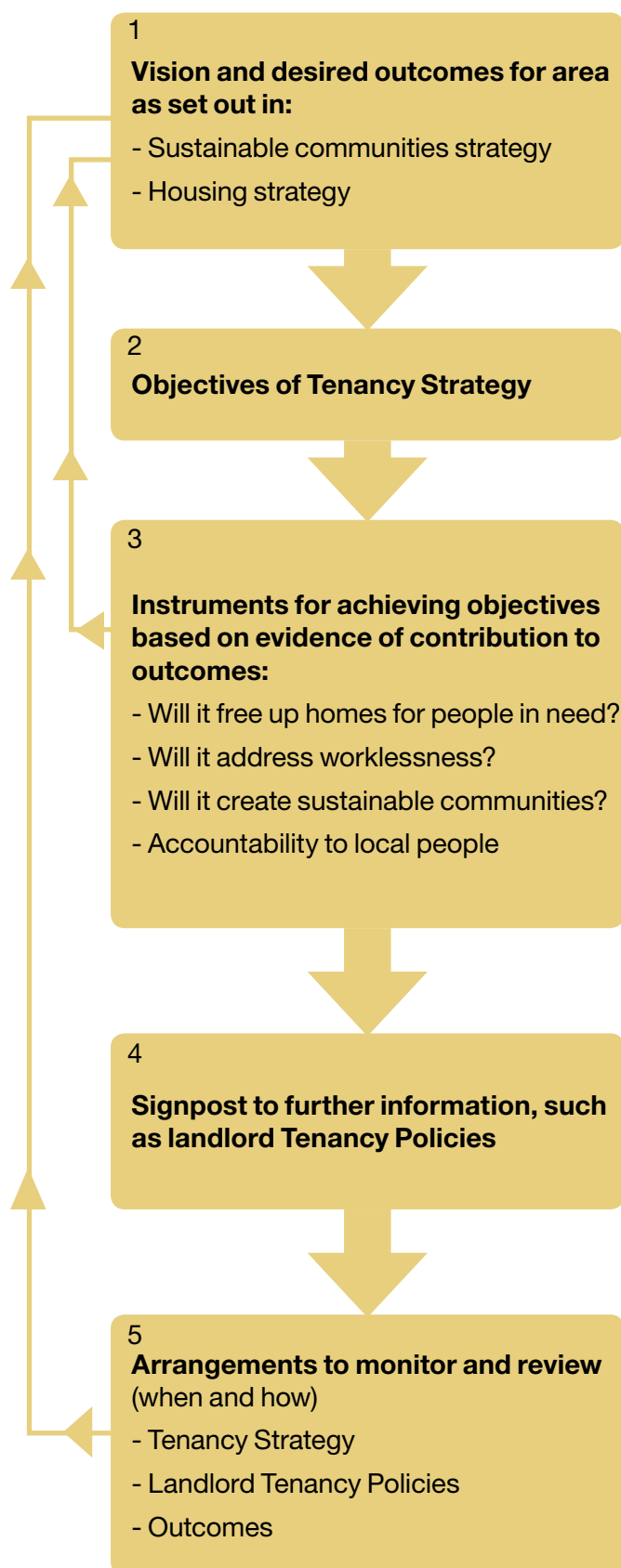
The new Regulatory Framework for social housing<sup>65</sup> requires social landlords to grant tenancies that are compatible with:

- the purpose of the accommodation
- the needs of individual households
- the sustainability of the community, and
- the efficient use of the housing stock.

It is therefore important that local housing authorities consider their vision for the area and strategic objectives for social housing in the overall district and in particular neighbourhoods in the light of these four points. For example:

- What are the tenure needs of individual households waiting for social housing?
- What is the likelihood that households being offered social housing today will be able to access or afford other tenures in the future?

Figure 3: Structure of a Tenancy Strategy



Developed from CIH *Working towards a local tenure strategy* June 2011

- What impact will a predominance of fixed-term tenancies have in particular neighbourhoods and particular communities?
- What are the main priorities for the local area (education, employment, health, diversity of population) and how might the Tenancy Strategy support or undermine these?

## Evidence base for strategic decisions

It is very important that authorities base their strategies on clear quantitative and qualitative evidence of their likely impact. If the strategy is not based on evidence, or projections of impact, it may not stand up to scrutiny and challenge from local people.

For this reason, it would be appropriate for local housing authorities to use Strategic Housing Market Assessments (SHMAs) as the basis of Tenancy Strategies as well as local development plans. Shelter is currently working with other housing and planning sector organisations to provide practical tools for undertaking SHMAs.

For example, if the SHMA indicates that owner-occupation and private renting are beyond the reach

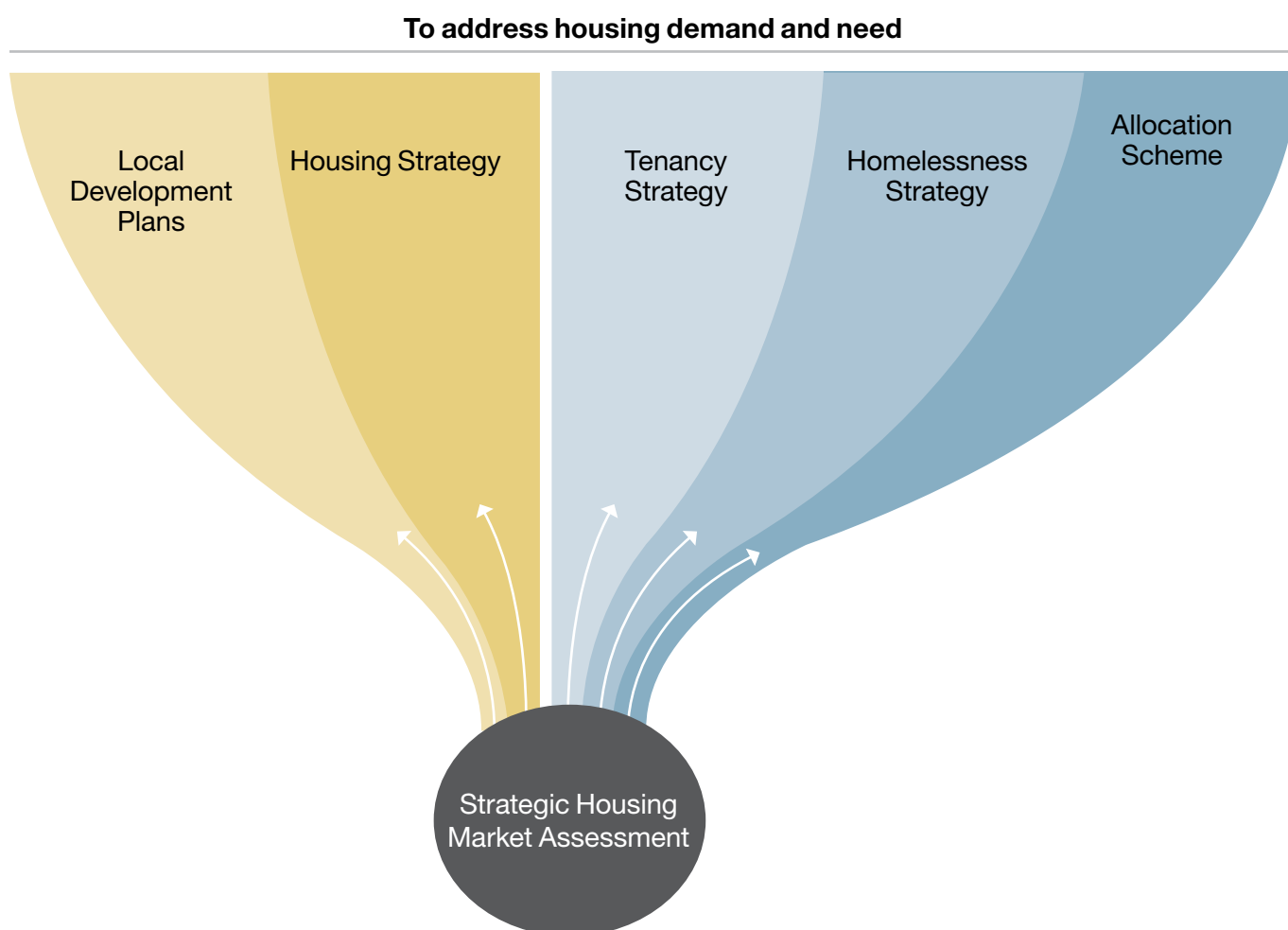
of young families on average local incomes, then the Tenancy Strategy may seek to address this by ensuring that social housing provides permanent and affordable family homes to allow families to settle in the area long-term.

Evidence and insights should also be gathered on the needs and aspirations of households who are most in need of social housing because they are unable to access, afford or have their needs met by other tenures, for example:

- Are households in need of affordable rented housing in the long term or as a temporary solution prior to taking out a mortgage?
- What are local people's perceptions of social housing?
- What groups are most in need of social housing?
- Do they see it as a tenure of choice or an 'ambulance service' if things go wrong?<sup>66</sup>

The LGA states that: 'councils are making sure they base their positions on knowledge about social housing and residents in their area now, and intelligence on what might happen in the future', suggesting that the

Figure 4: How Tenancy Strategies should grow from Strategic Housing Market Assessments



contents of strategies should be ‘based on evidence from your other housing strategies, and the council’s wider strategic vision’. It also suggests that authorities should make sure they know key facts, such as the make-up of existing social housing residents, as well as those on the waiting list.<sup>67</sup>

Chapter 3 contains detailed information about the likely impact of fixed-term tenancies.

## Policy role of registered providers

The new Regulatory Framework<sup>68</sup> requires registered providers to publish clear and accessible policies that outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackle tenancy fraud. Landlord Tenancy Policies must set out:

- the type of tenancies they will grant
- where they grant tenancies for a fixed term, the length of those terms
- the circumstances in which they will grant tenancies of a particular type
- any exceptional circumstances in which they will grant fixed-term tenancies for a term of less than five years in general needs housing following any probationary period
- the circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property
- 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
- 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
- the advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy
- their policy on granting discretionary succession rights.

The CIH advises registered providers that a tenancy policy ‘is intended to be an overarching document that sets out how you will use the new range of options that are available to you. Overall, they should help provide clarity to tenants, ensure consistency and transparency of approach and also protect you from legal challenge’.<sup>69</sup>

The abolition of the Tenants Services Authority and the removal of consumer regulation of social housing, except in cases of ‘serious detriment’, mean that landlord policies on tenancies will be the main way of achieving accountability in the way that fixed-term tenancies are granted and renewed.

The CIH suggests that before considering the specifics of a Tenancy Policy, registered providers must be clear about their broad aims and objectives at a strategic level and ensure that the policy is consistent with their overall corporate objectives and business plan. It suggests that registered providers consider:

- the local authority’s vision for the area, initially via good dialogue and, ultimately, their Tenancy Strategy
- the local circumstances in which they operate and how business decisions will affect the local community
- the profile of new tenants and applicants on the waiting list, and other data to help understand the needs and aspirations of households.

The CIH then suggests that providers consider the specific outcomes they hope to achieve as a result of their policy, such as to:

- target resources more effectively at those in greatest need
- meet residents’ long-term housing aspirations by improving access to home ownership
- support more tenants into work
- maintain sustainable communities.

We set out further suggestions for the contents of Tenancy Strategies and landlord Tenancy Policies in Chapter 4.

## Making Tenancy Strategies stick

While the duty to produce a Tenancy Strategy appears to give local housing authorities strategic control over the letting of local social housing, there is little scope for authorities to insist that all social landlords operating in the area adopt the same approach in their landlord Tenancy Policies, especially where the homes are owned by large, national housing associations.

This is clearly a concern for local authorities. The summary of responses to the Government consultation on Tenancy Strategies states that: ‘many responses from local authorities stated that there should be explicit reference to their tenancy strategy’ in the requirements for registered providers’ (RP) Tenancy Policies. It went on: ‘some local authorities wanted increased control over the content of private registered providers’

tenancy policies to ensure greater uniformity and better strategic outcomes'.<sup>70</sup>

However, the Government's response was that: 'in the interests of brevity, we should not repeat statutory requirements in the tenure direction and that the current statutory requirement for registered providers to 'have regard' to local tenancy strategies provides the right balance between landlord flexibility and recognition of local authorities' strategic role'.

The CIH identifies that: 'the role local authorities can play has been weakened by changes in the Homes and Communities Agency's investment processes' (following the introduction of the Affordable Housing Programme and the new Affordable Rent funding vehicle).<sup>71</sup> It states that: 'engagement between RPs and local authorities as bids were being developed has not always been seen as satisfactory by both parties'.

On the other hand, in their responses to the original Government consultation, housing associations 'were keen to establish the role that the new tenancy strategy would play and expressed concern that local authorities would look to assert more control over their policies'.<sup>72</sup> The CIH argues that: 'RPs value their independence. They operate as businesses, answerable to a Board, tenants and lenders and the regulator, and they want flexibility in order to sustain their businesses, neighbourhoods and communities. The latter point has led to some RPs choosing not to... introduce fixed terms tenancies'.<sup>73</sup>

As the CIH points out, these differing views mean 'there could be potential conflict between the political aspirations/priorities of a local authority and the 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 at the earliest opportunity'.<sup>74</sup>

The LGA reports that: 'where disagreements have arisen, they are often being resolved through both landlords and providers showing flexibility and creativity'. It stresses the need to 'identify flexibilities and compromises which will work for both sides, and making sure positive relationships are maintained'. It encourages local authorities to ask the following:

- Are there other levers (eg land for development)?
- Can you be creative about finding a niche for a landlord who wants to stick to their particular business model?
- Can you take a 'something for something' approach by providing support for providers in return?

- Can you negotiate to limit the use of fixed-term tenancies?

## Consultation and negotiation with registered providers

The result is that local housing authorities will have to negotiate with registered providers to ensure that their Tenancy Strategy is meaningful, rather than relying on a statutory or regulatory requirement on providers to comply. This gives registered providers considerable scope for influencing the content of Tenancy Strategies.

In addition, the Localism Act<sup>75</sup> requires that before adopting a Tenancy Strategy, or making a modification to it reflecting a major change of policy, the authority must:

- send a copy of the draft strategy, or proposed modification, to every private registered provider of social housing for its district, and
- give the private registered provider a reasonable opportunity to comment on those proposals.

The CIH points out that: 'in the current climate of economic uncertainty, with major reforms to housing and welfare, there will be mutual benefit in local authorities and registered providers coming together to understand and manage change'.<sup>76</sup> However, it acknowledges that: 'relationships between local authorities and registered providers vary greatly. Closer relationships are typically found where the RP has a considerable stake in terms of stock and investment. Less close relationships have presented some challenges for authorities seeking to discharge their housing duties'.<sup>77</sup>

The LGA points out that: 'although the strategy is legally your council's, it will work best in practice if it embodies the shared ambitions and needs of social landlords in your area as well.'... 'Launching a consultation without involving landlords earlier on, or sticking rigidly to every detailed point in your draft in the face of evidence from providers, may well result in the council having less influence over providers than a more involving and accommodating approach'.<sup>78</sup>

## Local consultation on Tenancy Strategies

**The Localism Act requires that:**

'Before adopting a tenancy strategy, or making a modification to it reflecting a major change of policy, the authority must also—



- (a) consult such other persons as the Secretary of State may by regulations prescribe'.<sup>79</sup>

Until such regulations are published, Shelter believes it is important that local housing authorities consult with local people in housing need, local tenants and other statutory and voluntary agencies, such as social services, before adopting a Tenancy Strategy. This is essential for local transparency and accountability, and to underpin the increased regulatory role of social tenants, via Tenant Panels.

Authorities should not limit their consultation to existing social tenants or tenants associations. Existing tenants have a statutory right to retain their security of tenure, even when transferring to a new home, and will therefore be largely unaffected by tenure changes. It will be far more important to consult with potential future social housing tenants, such as households on the social housing waiting list, households in temporary accommodation, and private tenants. The LGA suggests that authorities should find ways of reaching beyond established mechanisms to groups less likely to make themselves heard, such as young people or ethnic minority communities.<sup>80</sup>

The LGA advises that the Tenancy Strategy process should be focused on people. It points out that: 'changes to welfare and social housing will affect real people, those living in social housing now, those seeking social housing, and the wider community. Some residents are very worried about them. Social landlords are required to involve residents very closely in shaping their approach'.

Shelter has previously issued guidance<sup>81</sup> on how authorities should consult with local people when developing Homelessness Strategies. This suggested that consultation should be linked in to the authority's established methods for conducting consultation, such as:

- residents' panels
- listening events
- service-user forums
- focus groups
- canvassing.

We pointed out that consultation often falls short when it does not address 'hard to reach' groups. Homeless people may fall into this category, and specifically designed exercises such as interviews in the Housing Options office, surveys of residents in hostels, or carefully-targeted focus groups might be necessary to overcome this barrier. We also suggested that staff will have a positive contribution to make and are often well-placed to identify practical weakness in approach and barriers to effective implementation of the strategy.

## Review and monitoring of Tenancy Strategies

### The Localism Act requires that:

'A local housing authority must keep its tenancy strategy under review, and may modify or replace it from time to time'.<sup>82</sup>

Therefore, there is no statutory time period for the reviewing and modifying of strategies. However, the Government's Impact Assessment assumes that Tenancy Strategies will be reviewed 'every five years on average'.<sup>83</sup>

The CIH suggests that: 'it must be very clear that the strategy will be reviewed, and when and how it will be reviewed – particularly bearing in mind the importance of transparency and accountability in the use of social housing'.<sup>84</sup> The LGA suggests that: 'it is important to make sure your council is monitoring the impact of the Strategy against the policy objectives it is seeking to achieve'<sup>85</sup> to inform future revisions to the Tenancy Strategy.

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- 60 Section 151 (3) of Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/section/151>)
- 61 Under section 166A of the Housing Act 1996 (<http://www.legislation.gov.uk/ukpga/1996/52/section/166>)
- 62 Under section 1 of Homelessness Act 2002 (<http://www.legislation.gov.uk/ukpga/2002/7/section/1>)
- 63 Leng, G. (June 2011) *Working towards a local tenure strategy*, CIH, page 6 (<http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Developing%20the%20local%20tenancy%20strategy%2019%20June%202011.pdf>)
- 64 Local Government Association (May 2012) *Writing an effective tenancy strategy*, pages 2 and 4 ([http://www.local.gov.uk/c/document\\_library/get\\_file?uuid=f71cd5e1-6b8c-4d3f-9576-b9231af71af8&groupId=10171](http://www.local.gov.uk/c/document_library/get_file?uuid=f71cd5e1-6b8c-4d3f-9576-b9231af71af8&groupId=10171))
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- 70 DCLG (November 2011) *Implementing Social Housing Reform: Directions to the Social Housing Regulator – Consultation: Summary of responses*, page 11 (<http://www.communities.gov.uk/documents/housing/pdf/2017529.pdf>)
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- 72 DCLG (February 2011) *Local Decisions: next steps towards a fairer future for social housing: Summary of responses to the consultation* (paragraph 3.18) (<http://www.communities.gov.uk/publications/housing/localdecisionsresponse>)
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- 74 Chartered Institute of Housing, *How to develop your tenancy policy* (2012), page 6 ([http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/How\\_to\\_develop\\_your\\_tenancy\\_policy.pdf](http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/How_to_develop_your_tenancy_policy.pdf))
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# Chapter 3. Considering the case for fixed-term tenancies

Since 1981, successive Government policy has intended social housing to be let on a permanent basis – one of the main reasons that housing associations have continued to let on Assured Tenancies rather than using available Assured Shortholds.

However, the current Government argues that ‘times have changed, and it is no longer right that a Government should require every social tenancy to be for life, regardless of the particular circumstances’.<sup>86</sup> It is important for local housing authorities to very carefully consider the rationale for such a radical policy shift when preparing their Tenancy Strategies. Along with registered providers of social housing, they will need to consider if these reasons are strong enough for them to adopt the policy locally. When preparing Tenancy Strategies, it is important to properly analyse the likely impact of fixed terms.

Authorities may be asked for this analysis by local people and prospective tenants in the interests of transparency and accountability. Registered providers of social housing will also need to consider and analyse carefully the impact on their finances, resources and tenants when preparing their individual policies on fixed terms. Again, tenant groups and local Tenant Panels may ask to scrutinise this analysis as part of their strengthened role in regulating social housing. Lenders may also take an interest.

The new Regulatory Framework<sup>87</sup> requires social landlords to grant tenancies which are compatible with:

- the needs of individual households
- the efficient use of the housing stock
- the purpose of the accommodation
- the sustainability of the community.

It is important that local authorities consider these in turn.

## The needs of individual households

Local authorities have a long-standing strategic role in assessing the need and demand for social housing in their areas. But, beyond the use of Probationary Tenancies to promote sustainable neighbourhoods,

there has been no real reason to consider what form of tenure best meets the needs of local people, as this has previously been set by Government. However, the duty to produce Tenancy Strategies means that, for the first time, local authorities will have to consider the tenure needs of local people as part of their strategic housing role.

## Value of security

One of the Government’s arguments for introducing fixed-term tenancies for social housing is that tenants do not value security of tenure, and so there will be little cost to them if it is no longer offered.

## Government’s view

The Government’s 2010 case for reform acknowledged that: ‘stable social housing, with subsidised rents, is the tenure of choice for many, particularly those who experience insecurity in other aspects of their lives, such as health, employment or relationships’.<sup>88</sup> This was supported by the Department for Work and Pensions (DWP), which assessed that: ‘most tenants attach considerable value to their social sector tenancy’.<sup>89</sup>

However, the Localism Bill Impact Assessment states that: ‘the question of security for social housing tenants is a widely debated area and it is often argued that households place a value on greater tenure security’.<sup>90</sup> It goes on to say:

‘There is little evidence on how much tenants would be willing to pay to avoid losing security. It is common for private tenancies to be provided with minimum terms of 6–12 months though, which suggests that many existing private renters are not willing to pay a rental premium in order to secure the benefits of longer contracts. This implies that security of tenure might have only a slight adverse impact on households, although it could be the case that social rented households place a higher premium on security than the average household – either as a result of being more vulnerable or older than private renters.’

## Evidence to consider

Local authorities need to consider the validity of this assessment when considering people’s need for a secure home. Private tenancies are generally let on fixed terms of 6–12 months because private landlords are unwilling to let on longer fixed terms. This is the main reason that the Government’s

changes to homeless legislation require private rented accommodation offered as a final discharge of homeless duty to be for a minimum fixed term of 12 months. In its summary of responses to the consultation on these changes, DCLG reported that: 'of the local authorities who felt 12 months was not the right period, 72 per cent felt that the period should be longer (normally 24 months)' but some authorities 'recognised that negotiating one with a landlord could be difficult'.<sup>91</sup>

It is important that local housing authorities and registered providers consider the needs and preferences of local people when deciding the basis on which social housing will be offered. Potential customers should be involved in the determination and design of the future offer. A 2011 survey by the Building Societies Association (BSA)<sup>92</sup> found that people put a high value on security of tenure:

'A large number of respondents (41%) thought that people should aspire to own their own home because 'it is more stable and secure' and this goes to the heart of why we have such a love of property ownership in the UK. Feeling secure in your home is an important psychological motivator for buying and this reflects the instability of renting.'

'On the continent, the housing market is characterised by a greater proportion of people living in rented accommodation, staying in the same rented property for longer and experiencing greater security of tenure than in the UK. Unlimited contracts are standard and tenants rent for the long term.'

Research conducted in 2008 showed that, particularly for more vulnerable people, whose lives may otherwise be in a state of flux, the security represented by their home can be an especially valuable good that can give those who have experienced uncertainly the secure basis from which to get on with their lives:

'The issue of security emerged as particularly important. The security and stability offered by the social rented sector, which was frequently contrasted with the perceived insecurity of the private rented sector, provided an anchor point in lives that had often been in a state of flux and were characterised by uncertainty and turbulence. Confident about their residential security, social tenants often talked about being able to turn their attention to addressing other challenges in their life. For people more distant from the labour market, these challenges included health problems, disabilities and caring responsibilities'.<sup>93</sup>

A smaller-scale survey conducted in response to social tenure reform by Family Mosaic housing association<sup>94</sup> found overwhelming support for security of tenure:

'When it came to the issue of whether social housing tenancies should be flexible or fixed, they were clear: over 80% felt they should be able to live in social housing as long as they want. When asked how many more years they hope to live there, the majority who felt able to comment said 20 years or more.'

'This perception about homes being for life was reflected in their response towards fixed tenancies: just 2% thought a five year fixed tenancy was reasonable, while most felt fixed tenancies would cause too much stress.'

It is important that local housing authorities conduct similar studies in their area. The starting point for assessing the local case for fixed-term tenancies should be to ask local people, especially potential social tenants, how much they value security of tenure to determine whether this should be an integral part of a social housing tenancy.

After decades of expanding home ownership, the proportion of people who own their own home has been decreasing since 2003. Families usually want a secure home to put down roots in their community, but in an overheated market their choices are severely limited. Meanwhile, more and more people are renting from private landlords. Recent Shelter analysis<sup>95</sup> has shown that more than 40 per cent of the growth in private renting in the past two years comes from families with children. There are now more than one million families renting privately in England – double the number there were five years ago. Most private renting is based on Assured Shorthold Tenancies with the result that people who rent privately, including those with children, are 10 times more likely to have moved house in the previous year than people who pay a mortgage on their home. Almost a third of private renting households have children and are as likely as those without children to have moved in the last year.

Participants in a longitudinal study of private tenants being conducted by Shelter and Crisis<sup>96</sup> have spoken of the value they attach to a stable home. The research has so far shown that people want to achieve stability in their housing, and recognise the benefits of a stable home. Benefits of stability included being able to plan for the future and having the means to live a life of their choosing. They viewed their choices and actions to be constrained by factors external to the home, including their relationship with the landlord or the cost of the tenancy. This caused anxiety about the future. Stability is particularly important to people who want to settle down, lay down roots and plan for the future, such as those with children:



'It's her home, and I think that is the most, one of the most important things for a child, is to have stability.'

'Just being stable. It's important that I'm not uprooting myself or the children again.'

Parents worry about moving their children, conscious of the potential disruption to their education and wellbeing. This is supported by research, including a longitudinal survey of public housing tenants in Brisbane,<sup>97</sup> which provided evidence that the security of tenure such homes provided had a positive impact on children's educational outcomes.

It is unsurprising that more than a third of families worry about their landlord ending their contract before they are ready to move out.<sup>98</sup> The Shelter and Crisis research<sup>99</sup> showed that, predominantly, the possibility that someone else could tell them they could no longer live in the home was of central concern:

'Regardless of what you do to your house to make it your home, you know, there's always going to be that time when you have to go, you know if the landlord wants you to, and so you're never 100 per cent secure really.'

Security of tenure goes to the heart of whether people consider themselves to have a real home. When people feel secure in their home they often feel they can justify the cost and effort of making improvements and decorations to make it feel more like their home. A Shelter study<sup>100</sup> shows that participants had a need to make a rented property feel like a home but this was difficult when they were renting on a fixed term:

'I mean I've laid wooden floors and I've decorated and kind of made it my own. But no, it's not my own.'

Longer-term private tenant

'Every time I put something up I begrudge it if I know I can't take it with me.'

Longer-term private tenant

In drafting their Tenancy Strategies, local authorities should consider how best to ensure that social housing can provide local people with real homes, where they feel they can put down roots. The evidence suggests that this is best achieved through home ownership – which may be beyond the reach of many people – or secure social housing.

## Impacts of insecurity on wellbeing

### Government's view

The Government argues that fixed-term tenancies will give tenants 'more control over the decisions they make about their lives'.<sup>101</sup> Local housing authorities will need to analyse whether this will be the case.

### Evidence to consider

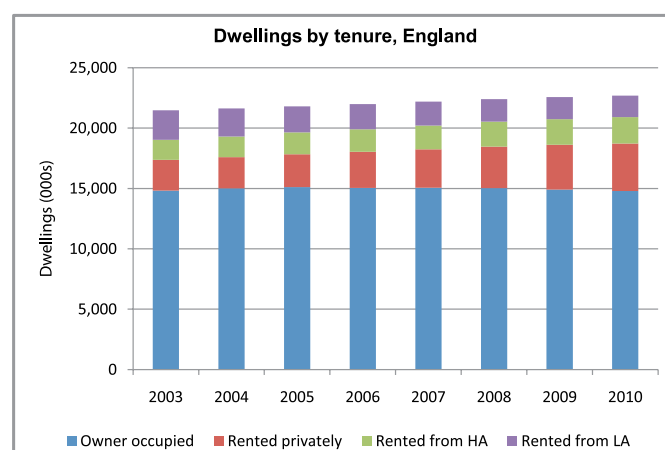
Shelter believes that it is more likely that tenants will have much less control about the decisions they make in their lives, because the provider will be able to decide whether they can remain in their current home, or whether they should move elsewhere, with very little scope for challenge or appeal.

The Family Mosaic study found that 63 per cent of respondents felt that time-limited tenancies would put too much stress on the tenant.<sup>102</sup> Fixed terms are likely to cause particular anxiety to vulnerable tenants, such as people with learning difficulties, mental health problems and physical disabilities, who may struggle with the practical process, such as providing evidence of need, and may worry about the potential outcome of tenancy reviews. Although the Government Impact Assessment does not attempt to quantify the potential costs of these impacts, research into the reporting of changes in circumstances for in-work Housing Benefit has demonstrated that such processes can present serious difficulties for some customers.<sup>103</sup>

## The efficient use of the housing stock

### Vacating homes for those most in need

One of the reasons given for encouraging fixed-term tenancies is the desperate shortage in the supply of social rented homes. The total number of dwellings in the social sector in England has declined by 30 per cent since its peak in 1979.<sup>104</sup>



### Government's view

The Government's main argument for tenure reform is that social housing is a 'scarce public resource that should be focused on those who need it most, for as long as they need it'.<sup>105</sup>

The implication of this argument is that social housing should be a form of welfare provision: a temporary and short-term 'ambulance service', aimed at requiring tenants to move back into the housing market at the



earliest opportunity, thereby creating vacancies for those in greater need. This represents a fundamental transformation of the role of social housing, which has traditionally been to provide permanent, genuinely affordable and decent homes.

When floating the introduction of fixed terms in August 2010, the Prime Minister said the Government was investing in social housing, but that the bigger question was how to make sure people were able to move through the housing chain. Fixed-term deals for tenants would allow people to move on if their circumstances changed: 'maybe in five or 10 years you will be doing a different job and be better paid and you won't need that home, you will be able to go into the private sector'.<sup>106</sup> The Government's subsequent consultation concluded that, where the landlord decides not to renew a fixed-term tenancy, 'the tenant may need advice and support to find suitable alternative accommodation in the private rented sector, or to access low cost home ownership'.<sup>107</sup>

### Evidence to consider

It is important for local housing authorities to assess how many fixed-term tenants will actually be able to enter home ownership in order to move on from a fixed-term social tenancy. The Government's Impact Assessment states that most households have low incomes at the time they enter the social sector. It cites letting statistics that show that, in 2008/09, 59 per cent of new entrants had net household incomes of under £10,000 and another 33 per cent had incomes between £10,000 and £20,000. This is borne out by income statistics, which show that 43 per cent of social tenants were living in poverty after housing costs in 2010/11, compared to 21 per cent of households in all tenures.<sup>108</sup>

The Impact Assessment also cites longitudinal analysis by the DWP, which finds that only 16 per cent of individuals that experienced persistently low incomes<sup>109</sup> between 1991 and 2008 went on to have incomes of more than 60 per cent of median incomes for at least two years running. The Impact Assessment concludes that:

'This suggests that relatively few low income social tenants might see improvements in income that are sufficient to, for example, access low cost home ownership'.<sup>110</sup>

The Family Mosaic research<sup>111</sup> bears out this conclusion. Only seven respondents (equivalent of eight per cent) had an income equal to or more than the median single-income earnings for someone living in London (£27,000 per annum). The research concluded that: 'this indicates that most of our tenants in work are in low paid jobs, and might find it difficult to afford a mortgage'.

On a national basis, it is extremely difficult to calculate how many vacancies would be created by moving to fixed-term tenancies without knowing how many landlords would let on this tenure and what policies they would adopt to determine the circumstances in which tenancies would be re-issued at the end of the fixed term. The DCLG Impact Assessment bases its calculations on there being between 1.6 million and 3.5 million Flexible Tenancies after 30 years, with an average of between 69,000 and 142,000 tenancy reviews a year.<sup>112</sup>

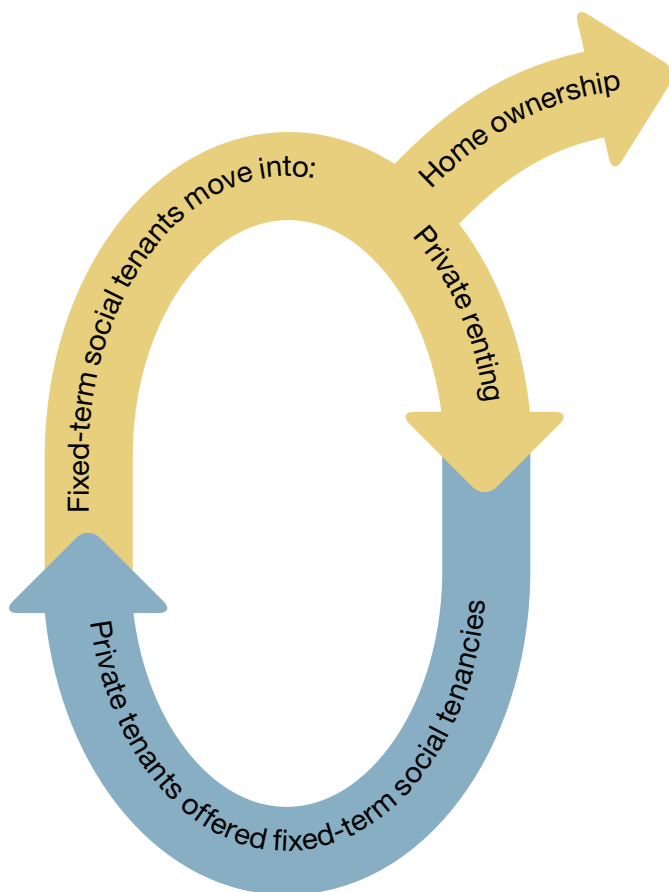
The DCLG Impact Assessment calculates that: 'there will be no impact on the number of households moving out of the social sector until 2016 at the earliest'.<sup>113</sup> This is borne out by research from New South Wales, Australia, where fixed-term tenancies were introduced to the social sector in October 2006. Less than one per cent of fixed-term tenancies reviewed thus far have been terminated.<sup>114</sup>

The Impact Assessment assumes that between 70 and 90 per cent of Flexible Tenancies will be renewed at the end of the fixed term (either in the same dwelling or another social home). It concludes that: 'even over the next 10 years (to 2020), there would be an average of 200 extra social lettings per year in the low scenario. In the central and high scenarios this would be 2,000 and 7,000 more lettings per annum respectively'.

Over the next 30 years, it is estimated that there would be a total of between 200,000 to 1.4 million extra moves by social tenants as a result of Flexible Tenancies. But the impact would not be felt until the late 2030s, when the number of moves out of the social sector would reach its peak, with between 18,000 and 120,000 moving out of the sector in one year. This is a generation away and so will make no impact on the immediate housing crisis. If local assessments reach similar conclusions, then local housing authorities will need to think carefully about their rationale for supporting the use of fixed-term tenancies.

Tenants who are told that their fixed-term tenancy will not be renewed, and who cannot afford to buy their own home, or are reluctant to take on a risky mortgage, will have to move into the private rented sector. This indicates that Flexible Tenancies have the potential to create churn between two insecure rental tenures, whereby social tenants refused a renewal of tenancy will be assisted into the private rented sector to make way for private rented sector tenants qualifying for an allocation of social housing. Local housing authorities will need to consider if this is desirable.

Figure 5: Potential churn between two rental sectors



## Addressing overcrowding and under-occupation

A further argument for fixed-term tenancies in social housing is that increased churn within the sector could help to alleviate housing need.

### Government's view

The Government argues that: 'inflexible, lifetime tenancies also contribute to significant imbalances between the size of households and the properties they live in'. It states:

'While there are around a quarter of a million overcrowded households in social housing (measured against the bedroom standard) there are also over 400,000 households under-occupying their social homes by two bedrooms or more (measured against the bedroom standard).<sup>115</sup> In every region apart from London the number of overcrowded social rented households is exceeded by the number of under-occupiers'.<sup>116</sup>

It points out that this imbalance is a result of a fall in mobility within the social housing sector:

'Fewer than five per cent of social sector households move within the social sector each year compared to almost a quarter of private renters. The percentage of local authority lettings to existing tenants fell from 33 per cent in 2000 to 30 per cent in 2009. Many households within the sector remain trapped in unsuitable housing.'

### Evidence to consider

It is important for local housing authorities to see this in perspective. While the debate about under-occupation is focused on social housing, it should be noted that this tenure already makes the most efficient use of its stock. Latest figures show there are 8 million households under-occupying in England,<sup>117</sup> only 390,000 (4.9 per cent) of which were social renters.

This was highlighted by Professor John Hills in his 2007 review of social housing:

'Unless parallel pressures were put on owner-occupiers who "under-occupy" property (such as through more steeply graduated council tax between bands or other charges that made occupying larger property more expensive), it would seem strange in equity terms to be concentrating on the relatively small number of social tenants with larger amounts of space, particularly as it is the owners who have benefited from the increases in value that housing market pressures have created'.<sup>118</sup>

The widespread perception that any policy that uses 'sticks' rather than incentives to get under-occupiers to downsize is unfair was highlighted in October 2011. The Intergenerational Foundation's report<sup>119</sup> on 'hoarding housing', which suggested that owner-occupiers should be taxed to encourage them to downsize, was met with outrage by older people's organisations and dismissed by Ministers as an unreasonable approach. Housing Minister, Grant Shapps said that it would be better to 'work with families to ensure that housing becomes more affordable over time' rather than tax or bully people out of their homes'. The charity Age UK said: 'No one of any age should feel they have to move out of their family home unless it is what they want to do', and Saga said: 'The idea that older people are hoarding housing has come across as quite offensive. The family home is about more than just bricks and mortar. It's unhelpful to point to older people who live in a three-bedroom house and say they don't deserve to be in it'.<sup>120</sup> Authorities need to consider whether such objections will also apply to older social tenants who may have lived in a family home for decades.

Local authorities should certainly be considering what more could be done to encourage under-occupying social tenants to relocate or downsize. Government

research<sup>121</sup> into under-occupation in social housing examined the varying approaches to under-occupancy and concluded that schemes which rely on incentives, such as payments per room given up and help with removals, are most successful, especially if coupled with using specialist staff to work closely with under-occupiers during the process.

But local housing authorities will need to carefully consider whether fixed-term tenancies should be used as a means to force older residents to downsize. It is also important to consider the impact on other family members, and the knock-on effects to the local population of using fixed terms to reduce under-occupancy. Potential issues to consider include:

- whether adult children would move to take up university places, training or employment in another area if this would result in their parents losing the family home on under-occupancy grounds
- the impact on households who need extra bedrooms, because siblings or couples are unable to share a bedroom for medical reasons
- the impact on working parents' childcare arrangements if grandparents who have been required to downsize no longer have adequate space to care for young children, particularly overnight
- the impact on children in local authority care if parents, or potential foster carers and adopters, have had to downsize on under-occupancy grounds.

## Costs of tenancy reviews

Registered providers will need to consider the administration and cost involved in conducting tenancy reviews. Every fixed-term tenancy would require a potentially resource-intensive review process to establish who normally resides in the dwelling and their financial means. Establishing these facts is much more complicated than it may seem, as welfare benefits staff will testify.

### Government's view

The DCLG Impact Assessment estimates the cost of a two-hour tenancy review to be £47, with the total cost of reviews falling between £35 million and £74 million over 30 years.<sup>122</sup> These costs would increase if the tenant challenged the review (which is very likely if their home was at stake) and possession proceedings and eviction ensued. The CIH reported in June 2011 that: 'the management cost of introducing fixed term tenancies does not appear to offer value for money – what will be the real gain?'<sup>123</sup>

## Evidence to consider

In Shelter's view, the resources needed to conduct reviews could be far greater than the Government anticipates. The total review process could include writing to the tenant and gathering and assessing evidence, such as evidence of who normally resides in the dwelling and of the household's income. A rigorous process will be required to conduct a review that is robust in the face of legal challenge. Our view is that only simple cases are likely to take a couple of hours at a cost of £47. We would estimate a more complex case to cost almost double that amount.

## Cost of possession proceedings

### Government's view

The DCLG Impact Assessment acknowledges that there is little evidence on how many tenants might decline to leave social housing if requested to do so by their landlord at the end of the fixed-term tenancy. It assumes that one in 20 households would refuse to vacate, resulting in the need for possession proceedings. It estimates that between 11,000 and 91,000 possession orders would be required over a 30-year period. It estimates a cost to landlords of an average £100 per case for court fees and £75 for 30 minutes of legal advice and representation. This assumes a total cost to landlords of around £175 per case. The Impact Assessment lists the total cost to social landlords from possession proceedings following the end of Flexible Tenancies at between £1 million and £12 million over 30 years.

## Evidence to consider

Shelter believes these figures are a gross under-estimate:

- Firstly, we believe that far fewer than 19 out of 20 tenants will voluntarily vacate the property at the end of a fixed term of five years or more. It is our experience that many Assured Shorthold Tenants remain after the notice has expired, simply because they have nowhere else to go.
- Secondly, the average court fees cited in the Impact Assessment are too low. The latest fees Order<sup>124</sup> sets the court fee for an undefended possession claim in the county court at £175.
- Thirdly, they take no account of the cost of preparing and conducting the possession proceedings.

We believe that the minimum total costs on a standard, undefended possession claim would be three-and-a-quarter hours' work, which at £150 an hour amounts to £487. Our estimates only represent work conducted by the authority's legal officers, and do not include any work conducted by the housing officer up to the stage of the legal proceedings. They assume an outright

order for possession is made at the first hearing and there is no procedural reason for the hearing being adjourned. When the standard court fee of £175 is added, we estimate a minimum total cost of possession proceedings of £662 per case.

**Table 2: Estimates of costs of possession proceedings (per standard undefended case)**

|                                                                                                                                                                                                                                                                                                     |                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| Initial instructions to bring proceedings                                                                                                                                                                                                                                                           | 60 minutes                                                                                                          |
| This work would include checking the file to ensure the reasons for non-renewal have been properly articulated to the tenant, the review has been properly conducted, and the decision to bring proceedings has been lawfully made (including consideration of human rights and equalities issues). | This would be the minimum in a straightforward case and would be considerably more if further evidence were needed. |
| Preparing the claim form and particulars of claim                                                                                                                                                                                                                                                   | 30 minutes                                                                                                          |
| Dealing with incidental correspondence and consultation with the housing officer, court and tenant                                                                                                                                                                                                  | 60 minutes                                                                                                          |
| Attending court on the day of the hearing                                                                                                                                                                                                                                                           | 45 minutes                                                                                                          |
| <b>Minimum legal costs</b>                                                                                                                                                                                                                                                                          | <b>195 minutes (3 hours and 15 minutes)</b>                                                                         |
| Charged at £150 per hour                                                                                                                                                                                                                                                                            | £487                                                                                                                |
| Plus standard court fee                                                                                                                                                                                                                                                                             | £175                                                                                                                |
| <b>Total minimum cost of possession proceedings</b>                                                                                                                                                                                                                                                 | <b>£662</b>                                                                                                         |

Even based on the Impact Assessment's assumption that only one in 20 tenants fail to vacate their homes at the end of the fixed term, this would push the total costs of possession proceedings to between £7.3 million and £60.2 million over 30 years.

**Table 3: Costs to social landlords over 30 years of possession claims at end of fixed-term tenancies**

| Scenario | Assumed number of cases requiring possession proceedings | Government Impact Assessment estimate of costs | Shelter estimate of costs |
|----------|----------------------------------------------------------|------------------------------------------------|---------------------------|
| Low      | 11,000                                                   | £1 million                                     | £7.3 million              |
| Central  | 39,000                                                   | £5 million                                     | £25.8 million             |
| High     | 91,000                                                   | £12 million                                    | £60.2 million             |

These are the costs of an undefended case. We expect that a number of cases will be defended on human rights or public law grounds. In Shelter's experience, a defended case is quite likely to cost the landlord in the region of £4,000 to £5,000. Furthermore, the Impact Assessment makes no assessment of the cost of applying for and executing a warrant for eviction. However, Shelter research<sup>125</sup> shows that the full administrative cost of eviction (including the cost of the initial possession proceedings) from local authority property is £1,119.

## Impact of increased vacancy (void) periods and re-letting costs

Fixed-term tenancies are intended to generate higher rates of tenancy turnover, increasing the number of vacancies.

### Government's view

The DCLG Impact Assessment estimates that costs to social landlords from longer void periods would be between £7 million and £61 million over 30 years, although it suggests that there would be greater void costs if there is a greater turnover of the stock. It assumes that vacated homes will be empty for a week on average leading to total costs of between £7 million and £61 million over 30 years.

### Evidence to consider

Shelter argues that basing the estimates on an assumed vacancy rate of only one week is conservative, and void costs could well be higher than this. Our research<sup>126</sup> shows that the cost to local authorities of re-letting a property is, on average, £2,787. This figure includes

both the administrative costs (such as advertising the vacancy, processing of applications and matching people to properties) and financial costs (such as lost rental revenue, redecoration, repairs and security costs).

There are other costs that registered providers and local authorities will need to consider as a result of fixed-term tenancies. These include the cost of advice and assistance, and the cost of repairs and improvements.

### **Costs of advice and assistance at end of fixed term**

The new Regulatory Framework<sup>127</sup> requires that, where registered providers choose to let homes on fixed-term tenancies (including under Affordable Rent terms), they must offer reasonable advice and assistance to tenants whose tenancy ends.

Some local authority respondents to the Government's consultation felt that: 'in practice responsibilities would devolve to them: other respondents felt that landlords should be required to pay for the provision of independent advice. Some landlords indicated that they favoured buying in good quality advice and assistance and some local authority respondents expressed interest in providing this as an extension of existing housing options services'.<sup>128</sup>

It will therefore be important for both local housing authorities and registered providers to consider how much it will cost to deliver advice and assistance. A number of respondents to the Government's consultation were 'concerned with staff resource and cost implications; others about the quality and level of advice and assistance that would be provided'.<sup>129</sup>

The Impact Assessment<sup>130</sup> estimates that, on average, the amount of staff time spent supporting households that move out of the social sector following tenancy reviews might range from one to three hours, costing landlords between £24 and £71 per case. The total cost of such advice and support is estimated to be between £4 million and £96 million over 30 years.

### **Impact on the condition of homes**

Secure social tenants often invest in maintaining and improving their homes, such as fitting new kitchens, heating systems, or decorative and garden improvements. Section 155(3) of the Localism Act 2011 allows landlords greater discretion in refusing consent to Flexible Tenants wishing to carry out improvements. Fixed-term tenancies will create a further disincentive to do so and would likely increase landlords' maintenance and management costs.

## **The purpose of the accommodation**

A further argument for encouraging fixed-term tenancies is that they could be used to meet other social objectives, such as enabling tenants to enter paid employment or encouraging people to move into other forms of tenure.

Some social landlords are planning to link fixed-term tenancies to the provision of support around employment and life skills, similar to those used in supported housing.<sup>131</sup> For example, Family Mosaic<sup>132</sup> plan to include within the tenancy agreement a time-limited personal development plan, to which the tenant would be required to commit. They would then use the fixed-term tenancy as a way of conducting a periodic review of the development plan. This approach implies that a continued offer of social housing would be conditional on the tenant's engagement with the development plan.

### **Social housing as a springboard to a better life**

For many years there has been debate about the role that social housing may play in encouraging worklessness and trapping people in welfare dependency and a lack of aspiration.

#### **Government's view**

Behind much of this debate is an implication that social housing is, and should be, a stigmatised form of housing equivalent to welfare benefits. When this view is taken, it is seen as undesirable for people to live long-term in the sector, as to do so is an indication of failure to aspire and become self-sufficient. The Conservative Party Housing Green Paper of 2009 stated:

'The chronic lack of turnover in the social sector means that whole generations are growing up, living and dying in the estates where they were born. This is despite the fact that 46 per cent of current council tenants and 45 per cent of Housing Association tenants want to become owner occupiers'.<sup>133</sup>

It also says: 'Our vision of social housing is that it should lift those in greatest need out of dependency and provide the opportunity to allow social tenants to continue on their journey towards other forms of tenure'.<sup>134</sup>

The argument is that the reluctance to give up a permanent social tenancy prevents people from moving to areas where work is more readily available, because they will only be able to obtain expensive and insecure private rented housing. Permanent social tenancies are



therefore seen as a barrier to labour mobility. The Green Paper went on to say:

'Tenants are essentially unable to leave the property they live in and move to another area to pursue employment due to lack of social housing and the consequent fear that they would not get housed in the new area (because they would have to reapply through the waiting list)' <sup>135</sup>

The subsequent Government consultation on the policy argued that: 'social housing – affordable and stable – should act as a springboard to help individuals make a better life for themselves. But all too often it can be a block on mobility and aspiration' <sup>136</sup>. It went on to conclude: 'But far too often, the security and subsidised rent that social housing provides do not appear to help tenants to independence and self-sufficiency' <sup>137</sup>.

There is no doubt that the social sector contains a disproportionate number of people without paid work:

'In 2008/9, only 49 per cent of social rented tenants of working age were in work, down from 71 per cent in 1981. By comparison, in 2008/9, 89 per cent of owners of working age were in work and 75 per cent of private renters. Around 60 per cent of social rented households report that they are in receipt of housing benefit, compared to around 20 per cent in the PRS' <sup>138</sup>

### Evidence to consider

It is important for local authorities to examine whether levels of worklessness in social housing is a result of permanent social housing putting a block on aspiration and self-sufficiency. One alternative explanation is the gradual residualisation of the sector <sup>139</sup>. The declining amounts of social housing available, as a result of the Right to Buy and the lack of new development, has meant that new allocations tend to be focused on the most needy. Prioritising need in allocations is appropriate but, in the context of declining stock, increases the residualisation of social housing.

Research suggests that worklessness in social housing is particularly high due to the multiple disadvantages faced by tenants <sup>140</sup>. These disadvantages are often hidden from view, such as undiagnosed physical or mental health problems. This is a crucial part of the explanation of why, even after controlling for labour market disadvantages, tenants in the social sector are more likely to be workless than those living in other tenures. In addition, individuals may face further

obstacles, such as insufficient access to the internet to look for jobs, or not having a network of contacts that can help and advise them in their job search.

Given the disproportionate levels of worklessness in social rented housing, the key question for authorities to consider is whether the use of fixed-term tenancies will help to get tenants into paid work. The Government's Impact Assessment states that: 'whilst it is uncertain what impact Flexible Tenancies will have on worklessness, it is evident that even if relatively small improvements in employment outcomes were to follow from these reforms then benefits could be considerable' <sup>141</sup>. It points to analysis of the tax and benefits system, showing that the total benefits to arise from an individual moving off benefits and into work can amount to between £15,000 and £22,000 per annum in the case of recipients of Income Support or Jobseeker's Allowance. It goes on:

'...it is conceivable that the benefits of reducing worklessness could exceed the monetised costs associated with tenure reform. For example, the net present value [of] introducing tenancy reforms might become positive in the central scenario if as few as 6,000-8,000 workless individuals entered employment for a single year'.

This is clearly a powerful financial argument where sufficient employment opportunities are available locally. However, the Impact Assessment highlights the DCLG CORE <sup>142</sup> data for 2008/09, which shows that 42 per cent of new general needs lettings currently go to households that are unemployed, inactive or in government training. This situation may begin to change as a result of reforms to legislation and guidance on the allocation of social housing, which allow local housing authorities to set criteria for qualification. The draft guidance <sup>143</sup> urges local authorities to consider how they can use their allocations policies to support households who want to work, such as by giving preference to households who are in low-paid work or employment-related training even where they are not in the reasonable preference categories. Overall worklessness rates among social tenants may start to fall for these reasons, rather than through the use of fixed-term tenancies.

In fact, there is evidence to show that fixed-term tenancies create a powerful disincentive to financial improvement for all members of the household, including adult children, particularly in the months approaching a tenancy review and in places where employment prospects are likely to be within low-paid occupations.

Fixed-term tenancies were introduced to the social sector in New South Wales, Australia in 2005. The Tenants Union of New South Wales contends that the disincentive impacts of fixed-term tenancies may have had a counter-productive impact, outweighing any gains resulting from freeing up public housing stock through the ejection of tenants having improved financial circumstances:

‘...had the loss of eligibility policy not been implemented... a greater number of tenants might have found work, increased their incomes, become sufficiently secure in their employment and moved out of public housing on their own volition’.<sup>144</sup>

This was the conclusion of Professor John Hills in his 2007 review of social housing:

‘The threat that a tenancy might end, or rent increase, if someone’s circumstances improved would be an unhelpful disincentive to moves towards economic independence (or at least to what was reported at the time of each review)’.<sup>145</sup>

The policy may also nullify any improvements in incentives provided by the introduction of Universal Credit. Where households are expected to move into more costly private rented housing, this will undermine the effect of the reduced tapering of benefits that households are likely to receive under the Universal Credit and the improved work incentive that would result.

Research published in 2008 by the DWP<sup>146</sup> shows that there is no evidence that social housing creates a disincentive to work and that the security of tenure it provides can actually help people to enter paid employment:

‘The vast majority of respondents reported that living in the social rented sector did not present a barrier or disincentive to work. In addition, there was no evidence that levels of labour market attachment shifted when respondents moved between tenures. Some respondents explicitly referred to social housing bringing them closer to the labour market or making work a more viable option. For example, the security of tenure available within the sector was referred to as providing a position of stability and confidence from which people could think about entering work. Comments were also forthcoming about the relatively low (sub-market) rents within the social rented sector, making work a more financially viable

option and less of a threat to residential security. Social landlords were also perceived as more sympathetic and flexible than private landlords, for example with regard to late payment of rent.’

There is no doubt that advice and support can be very helpful to people in all tenures who are benefit dependent (either in or out of low-paid work). Local authorities may therefore want to consider the use of carrots rather than sticks to encourage social tenants into paid employment.

## Encouraging unsustainable owner-occupation

The removal of security in the social sector could push more households in need of a secure home into unsustainable home ownership. Shelter research<sup>147</sup> shows that 46 per cent of mortgagors find it a constant struggle, or struggle from time to time, to keep up with their mortgage payments. The Financial Inclusion Centre estimates<sup>148</sup> that, of the 11.3 million outstanding mortgages, 1.2 million (11 per cent) are in some form of distress – whether in arrears, already repossessed or subject to forbearance by lenders.

There is evidence to show that the offer of a secure tenancy can prevent people from over-extending themselves financially in order to obtain a stable home. The 2011 Building Societies Association survey concluded that: ‘if UK consumers were to have the option of longer tenancies, we might see fewer people over-extending themselves to get into home ownership... there should be a more secure alternative to owner-occupation’.<sup>149</sup>

## The sustainability of the community

The Government has made no assessment of the impact of fixed-term social tenancies on the sustainability of the community. However, as registered providers are required to offer tenancies that are compatible with the sustainability of the community, it is important that local authorities consider what likely consequences fixed terms might have:

## Impact on sustainable communities and neighbourhood management

The CIH points out that: ‘despite the government’s localism, economic, health and criminal justice agendas it is notable that proposals for social housing reform do not recognise the contributions that this form of tenure and its management make to wider community outcomes such as improved health and wellbeing,

economic resilience and growth or neighbourhood sustainability'.<sup>150</sup> The CIH therefore recommends that Tenancy Strategies include the objective of ensuring local sustainable communities outcomes. It also suggests authorities will need to consider the potential impact of tenure reform (as well as welfare reform) on wider community issues such as health, wellbeing and employment. It suggests that it will be important to involve other local agencies, such as the Local Enterprise Partnership or the public health commissioner, in the preparation of this aspect of the Tenancy Strategy.

Local authorities will want to understand and influence outcomes at the neighbourhood level and will therefore need to understand how the use of fixed terms will affect neighbourhood mix and management. The CIH<sup>151</sup> points out that registered providers already take a neighbourhood approach, such as through local lettings plans and the development of other local offers, and suggests that local authorities should understand and influence the collective impact of neighbourhood approaches to stock management with registered providers.

There is a risk that, over the long term, the use of fixed-term tenancies could undermine the sustainability of communities by increasing the transience of neighbourhoods, and increase social exclusion, leading to the need for increased housing management resources. The Government's Impact Assessment<sup>152</sup> has not considered these social and financial costs. However, research shows that 'high levels of residential turnover are perceived as destabilising, undermining attachment to place and contributing to neighbourhood decline and social exclusion'.<sup>153</sup>

## Impact on equalities

Housing authorities are subject to the general public sector equality duty in the Equality Act 2010. As well as a duty to eliminate unlawful discrimination, housing authorities are subject to a duty to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic and those who do not. There is a possibility that fixed-term tenancies will disproportionately affect people who fall into the equalities categories. Therefore it will be important for local authorities to conduct an Equalities Impact Assessment as part of their preparation of a Tenancy Strategy.

## Impacts on social capital and community engagement

There is evidence that insecure tenancies deter tenants from socially investing in their homes and communities.

Shelter research<sup>154</sup> published in 2005 showed that a quarter of private renters (who tend to have fixed-term tenancies) say they do not know anyone in their neighbourhood. This study cited local research undertaken in Camden, which found that private tenants with Assured Shorthold Tenancies scored lower than those with more secure forms of tenancy on nine indicators of community engagement. The difference was particularly marked in voting, and involvement in local groups or organisations. They were also less likely to register with local services, such as doctors and dentists. While private fixed-term tenancies tend to be for a shorter duration, the average stay in a private rented home is now 19.3 months, suggesting that even fixed terms of more than a year could undermine community engagement.<sup>155</sup>

The majority of respondents also agreed that the length of the tenancy affects the 'sense of community'. Reduced social capital among fixed-term social tenants could threaten the aims of the Government's Big Society agenda, particularly in deprived areas.

## Further residualisation of social housing

If social housing is used as an 'ambulance service', with the emphasis on a transitional, short-term safety net for the most needy, there is a significant risk that it could become further residualised, as means testing progressively excludes economically active households. In countries where social housing has this 'ambulance service' role, it is highly stigmatised and residualised, with poor levels of social mix and very weak incentives for tenants to improve their financial circumstances through work or other means.<sup>156</sup>

In the USA, social rented housing equates to only three to four per cent of total housing. In Canada, social housing makes up about five per cent of the stock, which is in long-term decline. In both countries, individuals' ability to access social housing and the rents they must pay are dependent on income. This means that better-off tenants are incentivised to leave of their own volition. As a result, the social rented sectors are highly residualised and stigmatised. In the USA, the public sector caters for a population characterised by low incomes, unemployment, reliance on public assistance and a high concentration of the very old, very young, minorities and one-parent households, often occupying a deteriorating physical environment.<sup>157</sup>

In countries where social tenants have permanent tenancies and social housing plays a much wider 'affordability' role, accommodating a relatively broad spectrum of the population, there is little or no stigma associated with living in the sector. In Germany,

where all tenants have permanent, 'lifetime' tenancies, supplementary rents have been discontinued in social housing in most parts of the country because of concerns about undermining social mix, despite the fact that residualisation is in fact very mild by UK standards.<sup>158</sup>

In his review of social housing, Hills identified that: 'At one end – in some ways the direction policy has followed in England in the last quarter century – is a "residual model", where social housing is concentrated on those in greatest need. This has lowest immediate public cost, but creates problems for supporting mixed communities, for incentives and for social mobility. At the other lies a more continental European ideal with social housing as a "tenure of choice" for a broad spectrum of the population (as in, say, Denmark or the Netherlands)'.<sup>159</sup>

## Imbalance in the landlord and tenant relationship: tenant participation

Insecure tenure inevitably gives tenants a weaker contractual position in the landlord-tenant relationship, which can make them more reluctant to complain or hold their landlord to account. Research shows that the effects of insecurity in the private rented sector clearly have an impact on tenants' willingness to challenge bad practice: seven per cent of tenants with a problem did nothing at all because they were scared of the consequences.<sup>160</sup> Lower socio-economic groups were particularly concerned about the consequences of challenging the landlord. Since the social housing reforms have been announced, tenants associations have expressed concern that this will make new tenants reluctant to join, or to support demands for improved services, for fear of being perceived as 'trouble makers'. This may undermine the Government's vision of tenants holding their landlords to account, via local Tenant Panels.

It is proposed that landlords should decide the circumstances in which tenancies will be re-issued at the end of the fixed term. At a time when the scope of social landlord regulation is being rolled back, there is a danger that tenants will be reluctant to demand repairs that are needed or better customer services because of a fear, real or perceived, that this would influence the outcome of their forthcoming tenancy review, particularly in expensive locations where they would struggle to secure another suitable home.

The Government's Impact Assessment does not attempt to quantify these social costs but this is a common concern of private tenants renting on fixed-term contracts, who seek advice from Shelter.

Shelter agrees with the analysis of the Hills review of social housing that, while there are strong arguments against a system of review based on coercion or

removing advantages, they are not arguments against incentives and options that might be open to tenants as their circumstances improved. It is important that tenants have real choice in their housing tenure.

- 86 DCLG (November 2010) *Locals decisions: a fairer future for social housing: consultation*, page 5 (<http://www.communities.gov.uk/documents/housing/pdf/1775577.pdf>)
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# Chapter 4. Recommendations for contents of Tenancy Strategies

There is no prescription on the detailed content or format of a Tenancy Strategy. However, the Localism Act<sup>161</sup> requires Tenancy Strategies to set out the matters to which registered providers of social housing are to have regard in formulating their policies on tenancies in terms of:

- 'the kinds of tenancies they grant
- 'the circumstances in which they will grant a tenancy of a particular kind
- 'where they grant tenancies for a term certain, the lengths of the terms, and
- 'the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.'

The new Regulatory Framework<sup>162</sup> requires registered providers to publish clear and accessible policies that outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackle tenancy fraud.

As set out in Chapter 2, the Regulatory Standards on tenure require that landlord Tenancy Policies must set out:

- the type of tenancies they will grant
- where they grant tenancies for a fixed term, the length of those terms
- the circumstances in which they will grant tenancies of a particular type
- any exceptional circumstances in which they will grant fixed-term tenancies for a term of less than five years in general needs housing following any probationary period
- the circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property
- 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
- 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

- the advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy
- their policy on granting discretionary succession rights.

In its summary of responses<sup>163</sup> to its draft Directions to the Regulator, the Government reported that almost three-quarters of respondents agreed that these were the right minimum requirements for a landlord's Tenancy Policy. However, the Government also reported that respondents requested further guidance:

- Some responses from private registered providers requested further guidance on review and complaints procedures.
- Some local authorities wanted a minimum definition of what help and advice should look like.
- Some respondents expressed concerns that landlords would interpret vulnerability differently and asked for guidance about who should be classed as vulnerable.

The absence of detailed guidance and policy on these matters could increase the potential for legal challenges, since decisions could be made in a vacuum and are more likely to be inconsistent or to involve flawed processes of decision-making. Therefore, local authorities should provide sufficient guidance to registered providers on these matters. We suggest how this can be addressed below.

## The type of tenancies to be granted: presumption of security

Following the Government's Final Directions on Regulatory Standards on Tenure,<sup>164</sup> the new Regulatory Framework<sup>165</sup> requires that registered providers must grant general needs tenants:

- a periodic Secure or Assured (excluding periodic Assured Shorthold) Tenancy, or
- a tenancy for a minimum fixed term of five years, or exceptionally, a tenancy for a minimum fixed term of no less than two years, in addition to any probationary tenancy period.

Shelter's view is that local housing authorities should continue to adopt the former regulatory position and set out in their Tenancy Strategies that registered providers should continue to offer 'the most secure form of tenure' 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. This would ensure that Secure and Assured Tenancies remain the default. This approach is likely to better meet the needs and aspirations of the majority of tenants and avoid many of the negative consequences set out in Chapter 3.

Although this formulation would put a presumption on landlords to grant the most secure form of tenure, it would still allow them considerable flexibility to let on fixed-term tenancies if this was compatible with the purpose of the housing, the sustainability of the community, the needs of households and the efficient use of stock.

The continued use of Secure and Assured Tenancies need not prevent registered providers from seeking possession in cases where (with reference to under-occupancy or means tests criteria) they consider that suitable alternative accommodation is available. Many social landlords already have scope to gain possession against tenants where there is suitable, alternative accommodation available to them.

Possession Ground 9 for Assured Tenancies (the general suitable alternative accommodation ground) has the potential to be used to gain possession against a tenant who is:

- under-occupying their home, who has been offered a transfer to a smaller property, or
- who, after failing a means test for the renewal of the tenancy, has been offered alternative accommodation, such as shared-ownership, shared equity or intermediate rent.

Possession Ground 15a of the Secure Tenancy grounds (under-occupation by a member of the family following a succession) can be used to gain possession to deal with some instances of under-occupation.

## The circumstances for granting tenancies of a particular kind

Landlords' Tenancy Policies will be required to set out:

'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.'

The Government's consultation on its draft Directions to the Regulator spelled this out:

'We would expect, and responses to the 'Local Decisions' consultation suggest, that the vast

majority of tenancies will be provided on longer terms – particularly for vulnerable households or those with children. Paragraph 2(3)(f) of the draft direction reflects that expectation'.<sup>166</sup>

In its summary of responses to its draft Directions to the Regulator, the Government reported<sup>167</sup> that some respondents expressed concerns that landlords would interpret vulnerability differently and asked for guidance about who should be classed as vulnerable. As this guidance has not been forthcoming, Shelter suggests that Tenancy Strategies should provide guidelines for registered providers in assessing long-term illness or disability, and medical or welfare needs.

We strongly advise local housing authorities to set out in their Tenancy Strategies that certain groups of people who are in need of settled or stable accommodation, and whose situation is unlikely to change, should continue to be granted permanent tenancies. At the very least, these vulnerable groups should include:

- households containing someone over 60 years of age
- people with a long-term medical or welfare need for secure accommodation.

There is plenty of evidence that this is the intention of Government policy:

- In its Local Decisions consultation, the Government acknowledged that:

'We recognise that the needs of some are likely to remain broadly constant over the long term and social housing (although not necessarily the same social home) to remain permanently the most appropriate form of tenure for them because of the stability and security which it provides. This is likely to be the case particularly for older people and those with a long term illness or disability'.<sup>168</sup>

- In its summary of consultation responses, the DCLG recognised that:

'There was a general agreement amongst respondents about the importance of ensuring that the elderly and those with a long term illness or disability were properly protected'.<sup>169</sup>

It quoted a housing association respondent: 'Older people will be unlikely to change their circumstances enough to no longer require rented housing. As a general principle, it would seem right to give those with long term illness or disability a social home for life especially where adaptations are needed'.<sup>170</sup>

- The Impact Assessment of the Localism Bill stated that:



'It is unlikely that Flexible Tenancies would be granted to households with ongoing or high support needs, such as elderly tenants (who account for 6 per cent of general needs lettings). Other types of households that might not be granted Flexible Tenancies might include those that are unable to work [due] as a result of sickness, disability or being retired. In total these groups accounted for one quarter of all general lettings in 2008-09. Independent research into the characteristics of social tenants has previously found that around a quarter of new general needs lettings go to social tenants whose need for a secure home is likely to be long-term or for the foreseeable future'.<sup>171</sup>

- At the Localism Bill's Commons Report stage, the Minister Andrew Stunnell MP said:

'It will often be appropriate to provide longer—in some instances, lifetime—tenancies. If an elderly lady is offered sheltered accommodation or a bungalow, any sensible landlord will doubtless provide a lifetime tenancy'.<sup>172</sup>

As the Government believes that Flexible Tenancies are inappropriate for older people and those with long-term illnesses and disabilities, Shelter suggests that local housing authorities recognise this and set out in their Tenancy Strategies that these groups should continue to be granted permanent tenancies.

Shelter suggests that Tenancy Strategies should also set out that registered providers must ensure that vulnerable tenants are made aware of their right to get independent advice and support in seeking a review of the landlord's tenancy decision, particularly the decision not to renew a fixed-term tenancy. Tenancy Strategies could set out that registered providers should include within the six months' notice of the decision not to grant another tenancy (in the section informing the tenant of their right to request a review of the landlord's proposal) a recommendation that the tenant should seek independent advice on requesting a review of the landlord's proposal. This could have a similar form of words to that of a notice to quit or notice seeking possession.

## Lengths of fixed terms

Where local housing authorities choose to support fixed-term tenancies in their Tenancy Strategies, they must still set out the matters to which registered providers of social housing are to have regard in selecting the length of fixed terms.

There was a welcome revision to the draft Direction, published on 28 July 2011, requiring the Regulator to

set the Tenancy Standard with a view of achieving, so far as possible, that:

'2.(4)(a) Where registered providers grant general needs tenancies, these are for a minimum fixed term of five years, or exceptionally for a minimum term of no less than two years, in addition to any probationary tenancy period.'

Shelter strongly advises local housing authorities to go beyond the regulatory minimum and set out that registered providers grant fixed terms of longer than five years, particularly where there are dependent children in the household.

This would not be inconsistent with the Government's assumptions. When the Prime Minister first announced the policy, he suggested five to 10 years would be the norm:

'But there is a question mark about whether, in future, should we be asking, actually, when you are given a council home, is it for a fixed period, because maybe in five or 10 years you will be doing a different job and be better paid and you won't need that home, you will be able to go into the private sector'.<sup>173</sup>

The DCLG Impact Assessment assumes that 'the average length of Flexible Tenancies will be four, five or six years'.<sup>174</sup> This suggests that some fixed terms will be of a much longer duration than five years.

We also suggest that, where the prospective tenant has requested a review of the decision to grant a fixed term of a particular length, Tenancy Strategies should require registered providers to keep the offer open while the review takes place.

## Exceptional circumstances for offering fixed terms of less than five years

As set out in the section above, landlords' Tenancy Policies will be required to set out:

'Any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period'.<sup>175</sup>

The Localism Act requires these 'exceptional' fixed-term tenancies to be let for a minimum of two years despite the widely held view that two years is not a sufficient length of time in general needs housing, as reported in the responses to the Government's consultation:

'A large majority of respondents expressed the view that two years would rarely or never be enough for a general needs social tenancy. There was a strong and widely shared sense that two years would represent an inadequate period of stability both for individuals or the community and would create unacceptable administration and void costs for landlords'.<sup>176</sup>

A tenant respondent to the consultation pointed out that:

'New tenants have usually moved into a council property following years of instability with regard to their housing situation or as a result of a traumatic financial experience. A two year fixed term would be scarcely better than the situation they are leaving behind'.<sup>177</sup>

As registered providers will continue to be able to use probationary tenancies, we see no reason for granting fixed-term tenancies of less than five years. Shelter therefore suggests that local housing authorities set out in their Tenancy Strategies that five years should be the absolute minimum length of a fixed term.

If fixed-term tenancies of less than five years are to be used, neither the Act nor the Regulatory Framework seeks to define which 'exceptional circumstances' would be considered appropriate for a two-year tenancy, or set out criteria against which such circumstances should be considered. Some landlords may consider too broad a set of cases to be 'exceptional'. Prior to the revised draft Directions on tenure there were indications that some social landlords were planning to use the two-year minimum for the vast majority of tenancies, despite ministerial statements that they should only be used exceptionally.

This absence of statutory or regulatory guidance on exceptional circumstances may also hamper the ability of a potential tenant or Tenant Panel to challenge the 'exceptional circumstances' set out in their landlord's Tenancy Policy, or decisions based on these. This is particularly worrying in the absence of consumer regulation, except for in cases of serious detriment. This means there will be no proactive regulation to ensure that the two years will be used as the exception rather than the rule. It could allow a situation whereby many tenants were offered fixed terms of less than five years on the basis that they were people in housing need.

Therefore, in cases where registered providers have made it clear that they intend to use tenancies of less than five years, it will be important for local housing authorities to set out in their Tenancy Strategies the 'exceptional circumstances' in which they may be issued. This would ensure councils

(rather than individual social landlords) can make a strategic decision about the meaning of 'exceptional circumstances' and would have a role in ensuring compliance. This would ensure much more local transparency and accountability.

## The circumstances for renewal of tenancy

It is very important that local housing authorities take a very clear position on the circumstances for renewing, or not renewing, fixed-term tenancies. Such matters should be based on the authority's Strategic Housing Market Assessment, Housing Strategy, Homelessness Strategy and Allocations Scheme as well the authority's wider vision and strategic aims for the local area, such as the Sustainable Communities Strategy.

Local housing authorities should also liaise with other authorities in the sub-region when renewal thresholds are set. Otherwise, a damaging 'postcode lottery' could develop, particularly in metropolitan areas. This could result in areas with more generous thresholds seeing an increase in applications for social housing and could therefore kick-start a 'race to the bottom' among social landlords.

As there is no regulatory guidance on how frequently registered providers can update their Tenancy Policies on tenancy renewal, their renewal criteria (for example means tests or under-occupancy criteria) could be amended at any time. This would leave tenants in constant uncertainty over when the rules might change, and whether they might be caught by a revised threshold. Therefore, Tenancy Strategies should set out the time period within which registered providers should update their policies.

## Presumption in favour of renewal of all fixed-term tenancies

Shelter strongly advises local housing authorities to consider the importance of including a presumption of renewal of tenancy within Tenancy Strategies, rather than leaving this to the variances of landlord policy. Tenancy Strategies should set out that, when carrying out tenancy reviews, registered providers should proceed on the basis of a presumption that a new fixed-term tenancy for a term at least equivalent to the current or previous fixed term should be granted to the tenant.

The changes to social housing proposed in the Localism Act and the Regulatory Framework place a great deal of power in the hands of landlords and leave tenants with limited access to the process which governs the decision over whether they are to lose their

home. While a local presumption of renewal would not significantly change this rebalancing, it would at least provide some improved safeguards for tenants.

As things stand, the process tenants will have to undergo when their tenancies come to the end of the fixed term is weighted in favour of the landlord. Many tenants will be unaware of what factors are relevant to the landlord's decision and may find it difficult to successfully advocate for renewal of a tenancy or to provide proof of need. A local presumption in favour of renewal would help to ensure that, when this process is being undertaken, there is greater protection and clarity for tenants (many of whom will be particularly vulnerable) towards the end of their tenancy.

This can be achieved by placing the onus on the landlord to justify refusing to renew the tenancy, rather than expecting the tenant to undergo a potentially complicated re-application process. Most landlords will behave in a responsible manner, but it is also important to guard against any behaviour by landlords that has a disproportionate impact on certain types of tenants. For example, there is a risk that landlords would be able to refuse to renew tenancies of residents who are viewed as risky, troublesome or overly demanding.

Tenancy Strategies can guard against this by ensuring that landlords must show 'good reason' not to renew a tenancy. In order to justify a decision not to renew the tenancy, the landlord would have to show that it was in accordance with its own policies, and in the interests of good housing management. The decision would also need to comply with Article 8 of the European Convention on Human Rights, in that it should be proportionate, bearing in mind the personal circumstances of the tenant.

Ensuring that landlords provide good reason for taking possession of a property, and that these reasons are clearly outlined, would help to improve the accountability of local landlords and ensure they can be scrutinised and held to account by tenants and other local people.

This issue has been recognised by Ministers. At the Commons Committee stage of the Localism Act, Minister Andrew Stunnell MP said: 'We expect landlords to discuss housing options with tenants well before the fixed term of their tenancy comes to an end. What needs to be underlined is the fact that, in many cases, we would expect the tenancy to be renewed'.

## Means test criteria

If registered providers are to apply a means test threshold to determine whether to grant a renewal,

it will be particularly important that local housing authorities take a strategic view on this and ensure that it is consistent with their Homelessness Strategy, Allocations Scheme and other local factors, such as local rent levels. Means test thresholds should be based on local average or median incomes.

Registered providers should not be able to set an arbitrary figure for means test thresholds. Otherwise, tenants evicted from fixed-term social tenancies for failing a means test may not be able to afford suitable alternative accommodation in the area, perhaps because they require a larger and therefore unaffordable family-sized home, and subsequently become homeless.

## Under-occupancy criteria

It is important for local housing authorities to set out matters to which registered providers should have regard in terms of setting under-occupancy criteria in the landlord Tenancy Policies. Otherwise, they could again undermine other local authority strategic objectives, such as a need to tackle youth homelessness, address overcrowding or foster sustainable communities.

Local housing authorities should use previous regulatory guidance<sup>178</sup> for social housing, endorsed by the DCLG, which defines under-occupation as:

'...two or more bedrooms above the Bedroom Standard. Eg – a household living in a three bedroom property who would only require one bedroom if assessed against the Bedroom Standard.'

## Non-renewal for rent arrears

We suggest that Tenancy Strategies set out that registered providers should not generally adopt a policy of non-renewal for reasons of rent arrears. Any consideration of rent arrears should be in the spirit of the Pre-Action Protocol for possession claims based on rent arrears,<sup>179</sup> to see if the rent arrears can be resolved.

## Non-renewal for antisocial behaviour

We suggest that Tenancy Strategies should set out that registered providers should not generally use non-renewal to deal with complaints of nuisance or antisocial behaviour. Instead, such breaches of tenancy should be dealt with under the normal possession grounds, so that a court can consider the case. Tenancy Strategies should also set out that, where registered providers do consider non-renewal as a result of antisocial behaviour, they should consider community care needs in any assessment of non-renewal. Providers would need to

show they had regard to such needs in the event of an Equalities Act or Human Rights Act defence.

## Avoidance of periodic tenancies

We strongly recommend that Tenancy Strategies should set out that registered providers should not allow fixed terms to run into insecure periodic tenancies and should, instead, renew the tenancy at the expiry of a fixed term. Otherwise, tenants could remain in their homes on an insecure, periodic basis<sup>180</sup> for many years, with no scope to require the landlord to grant another fixed term.

The Government has acknowledged there is a danger that this will happen:

‘Some respondents were concerned that the wording of the draft direction would allow landlords to take no action and, after the end of the fixed term tenancy, leave tenants indefinitely on a periodic tenancy with effectively a six month rolling notice period. Our policy intention has always been that landlords should, in all circumstances, be required to make a proactive decision whether or not to reissue a tenant with another tenancy at the end of the fixed term.’<sup>181</sup>

The Government has therefore amended the Directions on Regulatory Standards, and the revised Directions now require that:

‘Before a fixed term tenancy ends, registered providers provide notice in writing to the tenant stating either that they propose to grant another tenancy on the expiry of the fixed term or do not propose to do so.’<sup>182</sup>

However, this has not entirely addressed the problem. It does at least require the registered provider to address the question and provide notice that they do or do not propose to grant a fresh tenancy. But even if they do so, there is nothing to stop a notice of non-renewal being served as a matter of course and then the tenancy being left to continue as a periodic tenancy. While this may allow tenants who have been informed of non-renewal to remain in their homes on a further periodic basis, it could also result in tenants who have been informed that they will be granted a renewal losing the protection of a fixed term. It is better that Tenancy Strategies address this directly by requiring landlords to grant another fixed term.

## Reviews or complaints against tenancy decisions

The Localism Act<sup>183</sup> sets out statutory provisions for local authority landlords on the process to be followed when carrying out reviews of, recovering possession of,

and reviewing decisions to seek possession of Flexible Tenancies. These provisions will be supported by statutory regulation. However, there is no statutory right of review for tenants of private registered providers. Instead, the Regulatory Framework<sup>184</sup> requires that landlord Tenancy Policies set out the way in which a tenant or prospective tenant may appeal against or complain about the type of tenancy offered or the length of the fixed term, and against a decision not to grant another tenancy on the expiry of the fixed term.

There could be risks in using the landlord’s existing complaints procedure to challenge tenancy decisions. Landlord complaints procedures are often bureaucratic and paper-based, and often do not provide for comprehensive investigation. Where such procedures are used as the main source of appeal in cases where the household is at risk of losing their home, there could be human rights implications, specifically in relation to Article 6 of the European Convention on Human Rights, which requires an independent and impartial hearing for the determination of civil rights and obligations, and to Article 8 (right to respect for private and family life and the home).

In its summary of responses to its draft Directions to the Regulator, the Government reported<sup>185</sup> that some responses from private registered providers requested further guidance on review and complaints procedures. Therefore, Shelter suggests that Tenancy Strategies set out that private registered providers should include the statutory provisions on review in their Tenancy Policies. This would achieve consistency between the expectations on local authority and housing association landlords.

There is nothing to stop a private registered provider from creating its own right to review the decision not to renew, and/or the decision to serve a section 21 notice seeking possession. Many existing starter tenancy schemes contain a right to review the decision to serve notice, even though this is not a statutory requirement.

## Advice and assistance in finding alternative accommodation

The Regulatory Framework<sup>186</sup> requires that, where registered providers choose to let homes on fixed-term tenancies (including under Affordable Rent terms), and where tenants are refused a renewal of the tenancy resulting in eviction, landlords will need to ensure that they offer reasonable advice and assistance in finding alternative accommodation.

However, this is an unspecified and unenforceable expectation. For example, landlords may simply provide the tenant with details of low-cost home ownership schemes or a list of private landlords. Adequate advice



and assistance is important because there is a strong possibility that some tenants who are evicted on expiry of the fixed term will find themselves homeless. The CIH points out that: ‘there is a danger that the tenant will return to the local authority to seek assistance if the approach is not the right one’.<sup>187</sup>

In its summary of responses to its draft Directions to the Regulator, the Government reported<sup>188</sup> that some local authorities wanted a minimum definition of what help and advice should look like. As the Regulatory Guidance does not provide a minimum definition, it is important that Tenancy Strategies set out the matters to which registered providers should have regard in advising and assisting tenants on finding suitable alternative accommodation at the end of a fixed-term tenancy. It will be particularly important that tenants are assisted in finding accommodation that is suitable to the needs of their household. Shelter therefore suggests that Tenancy Strategies should set out that registered providers should have regard to the test of suitability contained in the Statutory Code of Guidance on Homelessness.<sup>189</sup>

The CIH points out that: ‘as this advice and information will have to be relevant to the local context, and it will be important for the tenant that it is independent and impartial, it would be worth exploring with registered providers whether this type of service can be provided more effectively and efficiently by working together. This is perhaps something that the local authority could enable: using the tenancy review process to help the tenant to consider wider housing options, for example home ownership’.<sup>190</sup>

There is no prescribed form required for the six months’ notice of the decision not to grant another tenancy. However, registered providers should consider including within it (in the section informing the tenant of their right to request a review of the landlord’s proposal) a recommendation that the tenant should seek independent advice on requesting a review of the landlord’s proposal. This could have a similar form of words to that of a notice to quit or notice seeking possession.

161 Section 150 (1) of Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/part/7/chapter/2/enacted>)

162 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, paragraph 2.1 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))

163 DCLG (November 2011) *Implementing Social Housing Reform: Directions to the Social Housing Regulator – Consultation: Summary of responses*, page 11 (<http://www.communities.gov.uk/documents/housing/pdf/2017529.pdf>)

164 DCLG (November 2011) *Implementing Social Housing Reform: Directions to the Social Housing Regulator – Consultation: Summary of responses*, Annex A: The Directions on Regulatory Standards, Tenure 2(4)(a) (<http://www.communities.gov.uk/documents/housing/pdf/2017529.pdf>)

165 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, paragraph 2.2 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))

166 DCLG (July 2011) *Implementing social housing reform: directions to the Social Housing Regulator: Consultation*, paragraph 50 (<http://www.communities.gov.uk/documents/housing/pdf/1936126.pdf>)

167 DCLG (November 2011) *Implementing Social Housing Reform: Directions to the Social Housing Regulator – Consultation: Summary of responses*, page 11 (<http://www.communities.gov.uk/documents/housing/pdf/2017529.pdf>)

168 DCLG (November 2010) *Local decisions: A fairer future for social housing: consultation*, paragraph 2.50 (<http://www.communities.gov.uk/documents/housing/pdf/1775577.pdf>)

169 DCLG (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 3.33 (<http://www.communities.gov.uk/documents/housing/pdf/1853054.pdf>)

170 DCLG (February 2011) *Local decisions: next steps towards a fairer future for social housing: summary of responses to consultation*, page 20 (<http://www.communities.gov.uk/documents/housing/pdf/1853054.pdf>)

171 DCLG (January 2011) *Localism Bill: a fairer future for social housing: impact assessment*, page 35 (<http://www.communities.gov.uk/documents/localgovernment/pdf/1829768.pdf>)

172 Hansard 18 May 2011: Column 403 (<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110518/debtext/110518-0002.htm#11051871000002>)

173 BBC News Politics (3 August 2010) ‘Council homes for life could go, says Cameron’ (<http://www.bbc.co.uk/news/uk-politics-10855996>)

174 DCLG (January 2011) *Localism Bill: a fairer future for social housing: impact assessment*, page 36 (<http://www.communities.gov.uk/documents/localgovernment/pdf/1829768.pdf>)

175 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, paragraph 2.2, page 23 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))

176 DCLG (February 2011) *Local decisions; next steps towards a fairer future for social housing: summary of responses to consultation*, paragraph 3.24 (<http://www.communities.gov.uk/documents/housing/pdf/2017529.pdf>)

177 DCLG (February 2011) *Local decisions; next steps towards a fairer future for social housing: summary of responses to*

- consultation, page 18 (<http://www.communities.gov.uk/documents/housing/pdf/2017529.pdf>)
- 178 Tenant Services Authority (October 2009) *Overcrowding and under-occupation: self-assessment for social landlords*, Annex A: Bedroom Standard Definition ([http://www.tenantservicesauthority.org/upload/pdf/Overcrowding\\_and\\_under-occupation\\_20100107122120.pdf](http://www.tenantservicesauthority.org/upload/pdf/Overcrowding_and_under-occupation_20100107122120.pdf))
- 179 Ministry of Justice, *Pre-Action Protocol for Possession Claims Based on Rent Arrears* ([http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_rent](http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rent))
- 180 This will be true in the case of Flexible Tenancies provided by local housing authorities, if the landlord has served (i) a notice of intention not to renew six months before the fixed term is due to expire, and (ii) a two-month notice seeking possession by or on the final day of the fixed term, then the tenancy would become periodic until a possession order was granted by the court. It will also be true in the case of Assured Shorthold Tenancies granted by private registered providers (housing associations), where the landlord has served a notice of intention not to renew six months before the expiry of the fixed term. Such a periodic tenancy could continue for years.
- 181 DCLG (November 2011) *Implementing Social Housing Reform: Directions to the Social Housing Regulator – Consultation: Summary of responses*, page 12 (<http://www.communities.gov.uk/documents/housing/pdf/2017529.pdf>)
- 182 DCLG (November 2011) *Implementing Social Housing Reform: Directions to the Social Housing Regulator – Consultation: Summary of responses*, Annex A: The Directions on Regulatory Standards 2(4)(b), page 22 (<http://www.communities.gov.uk/documents/housing/pdf/2017529.pdf>)
- 183 Section 154 (Flexible Tenancies) of Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/section/154/enacted>)
- 184 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, paragraph 2.1.6 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))
- 185 DCLG (November 2011) *Implementing Social Housing Reform: Directions to the Social Housing Regulator – Consultation: Summary of responses*, page 11 (<http://www.communities.gov.uk/documents/housing/pdf/1936126.pdf>)
- 186 Homes and Communities Agency (March 2012) *The regulatory framework for social housing in England from April 2012*, paragraph 2.5 ([http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory\\_framework\\_2012.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_2012.pdf))
- 187 Leng, G. (June 2011) *Working towards a local tenure strategy*, CIH, page 15 (<http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Developing%20the%20local%20tenancy%20strategy%2019%20June%202011.pdf>)
- 188 DCLG (November 2011) *Implementing Social Housing Reform: Directions to the Social Housing Regulator – Consultation: Summary of responses*, page 11 (<http://www.communities.gov.uk/documents/housing/pdf/2017529.pdf>)
- 189 DCLG (July 2006) *Homelessness Code of Guidance for Local Authorities*, page 133 (<http://www.communities.gov.uk/documents/housing/pdf/152056.pdf>)
- 190 Leng, G. (June 2011) *Working towards a local tenure strategy*, CIH, page 15 (<http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Developing%20the%20local%20tenancy%20strategy%2019%20June%202011.pdf>)

# Appendix 1. History of tenure reform

## Introduction of security of tenure to social rented housing: Secure Tenancies

Security of tenure has generally been considered an essential element of social housing in England since its introduction by the Conservative Government of 1981, as one of the recommendations of the 1977 review of housing policy that attracted bi-partisan support.<sup>191</sup> Prior to this date social tenants had very little statutory protection, mainly because it was considered that their landlords, as publicly accountable bodies, were unlikely to treat them unreasonably.

Social tenants therefore had much less stability in their homes than private tenants, most of whom had gained security of tenure in the Rent Acts of 1965, 1968 and 1974 – the latter following a concerted Shelter campaign. Shelter had argued that one of the major causes of homelessness was the insecurity of rented accommodation, and that all tenants, whether renting from private, local authority or housing association landlords, should have comparable security of tenure.

Social tenants were also excluded from the Rent Act 1977 in terms of both rent control<sup>192</sup> and protection from eviction. This meant that social landlords could end the (usually) periodic tenancy at any time with a simple notice to quit. No reason had to be given and, providing the usual procedures were followed, the tenant had no defence against it. There was no right to challenge a landlord's decision on terms and conditions, or concerning who could live in a property or the rent levels.

Social tenants had already begun to campaign for improved terms and conditions, triggered by the 1968 gas explosion at Ronan Point tower block in Newham, which killed four residents. The Association of London Housing Estates drafted the first Tenants' Charter in 1970 and three years later the MP Dick Leonard introduced the (unsuccessful) Council Housing (Tenants' Representation) Bill.

In the mid-1970s, Shelter and the newly-formed National Consumer Council took up the interests of tenants as consumers. They criticised councils for adopting a punitive and paternalistic approach to their tenants in the form of a plethora of minor restrictions on what tenants could do in, and with, their homes, such

as tenants being unable to choose the colour of their own front doors.

In 1977, the National Tenants' Organisation organised national conferences and campaigns around the idea of tenants' charters, which included security of tenure. This sustained campaigning led, in June 1977, to the Government including security of tenure in its Housing Policy Green Paper. This was followed by the publication of a Department of Environment consultation on security of tenure for council tenants in November 1978.<sup>193</sup>

In March 1979, Housing Minister Reg Freeson introduced a Housing Bill. The Bill covered six key areas, including the Tenants' Charter and security of tenure. However, the Bill failed to gain passage through Parliament before the general election of May 1979, which led to a change of Government.

In its 1979 election manifesto, the Conservative party had stated: 'Those tenants who do not wish to buy their homes will be given new rights and responsibilities under their own Tenants' Charter'. In December 1979, the new Government published its own Housing Bill, which became the Housing Act 1980. The Bill retained a large amount of the Tenants' Charter, while adding two measures that were the centrepiece of the Conservatives' election campaign: the Right to Buy and shorthold tenure in the private sector.

In introducing the Bill's sections on security of tenure and the Tenants' Charter, Minister Michael Heseltine said: 'My aim in framing the charter has been to bring to council tenants the recognition that they have de facto security and the incentives for those who wish to take a greater interest in the condition of their home and its environment'.<sup>194</sup> The Housing Act 1980 gave security of tenure to tenants of local authorities, new towns and housing associations (except fully mutual housing co-operatives).

A recent paper on tenure commissioned for the Joseph Rowntree Foundation Housing Market Taskforce concludes: 'the Secure Tenancy granted by the local authority landlord was created simultaneously with the Right to Buy. It is a consequence of the effort to extend home-ownership and reduce the power of the local authority landlord. It is an important extension of citizenship offering stability and security for those who would otherwise be vulnerable in the housing market'.<sup>195</sup>

## Removal of security of tenure in private rented housing: Assured and Assured Shorthold Tenancies

At the time the Housing Act 1980 introduced statutory security of tenure to social tenants, private tenants already had security of tenure under the Rent Act 1977. However, by the mid-1980s, the Government's desire to revive the declining private rented sector led to deregulation and the removal of Rent Act protection. This led to a major structural change in tenure. Most private (including housing association) tenancies entered into after 15 January 1989 had to be either Assured or Assured Shorthold Tenancies. The latter can be ended without grounds following the service of a two-month notice.

However, despite this change, the fully Assured Tenancy remained the default tenancy until 28 February 1997. If landlords wished to grant an Assured Shorthold Tenancy, they had to serve a notice (commonly known as a section 20 notice) stating that the tenancy would be an Assured Shorthold and it had to be for a minimum term of six months. Landlords who failed to serve this notice created a fully Assured Tenancy whether they intended to or not.

The Housing Act 1988 effectively ended security of tenure in the private rented sector: from 1989 private landlords tended to serve notice of Assured Shorthold Tenancies and they became the norm in the private rented sector from this date.

While housing associations (now known as private registered providers) could let on Assured Shorthold Tenancies, regulatory standards required them to provide the most secure form of tenure available, so they were generally unable to use Assured Shorthold Tenancies in general needs lettings and instead issued fully Assured Tenancies.

The Housing Act 1996 reversed the default position. From 28 February 1997, there was no requirement on landlords to serve a statutory notice when creating an Assured Shorthold Tenancy. Instead, they had to serve a notice stating that the tenancy was fully Assured. Without this notice, tenancies were Assured Shorthold by default. All private tenancies, even if granted orally, are now Assured Shorthold Tenancies, unless the landlord specifies otherwise. The regulatory standards continued to require that housing associations had to provide the most secure form of tenure available, so they continued to issue fully Assured Tenancies for general needs housing.

## Introductory and Demoted Tenancies in social housing

The Housing Act 1996 reduced social tenants' security of tenure by establishing the local authority Introductory Tenancy. This is a form of probationary tenancy, which provides limited security for the first year. During the probationary period, an Introductory Tenant can be evicted following the service of a notice of possession proceedings and a formal review of that decision by the landlord (if requested by the tenant). At the end of the probationary period, the tenant automatically becomes a Secure Tenant, provided that proceedings for possession have not already started.

Housing associations and other private registered providers of housing are able to use the Assured Shorthold Tenancy as a form of probationary tenancy for new tenants. This takes the form of a fixed term of usually 12 months (often referred to as a 'starter tenancy'). Such tenancies do not automatically become fully Assured Tenancies at the start of the fixed term, but can be converted into such tenancies by service of an appropriate notice.

By the turn of the twenty-first century, a growing concern about antisocial behaviour among social tenants gave rise to the Demoted Tenancy. The Anti-Social Behaviour Act 2003 amended the 1985 and 1988 Housing Acts, allowing local housing authorities, registered social landlords and housing action trusts to apply to the county courts for a Demotion Order.

The effect of a Demotion Order is to remove security of tenure for a period of one year, so that the tenancy reverts to a probationary status. The tenancy becomes Secure or Assured again one year after the Demotion Order took effect.

## Recent calls for ending security of tenure in social housing

In June 2006, a report by The Smith Institute<sup>196</sup> called for an end to Secure Tenancies. It argued that when secure social tenancies were created in 1980 mass unemployment was hitting large parts of Britain and that, 'with job prospects shattered, many clung to their tenancies as a shelter from the storm of economic change'. It called for 'phasing out assured and secure tenancies to create a wider single rented tenancy which does not necessarily assume a tenancy for life'.

In February 2007, The Hills review of social housing stopped short of recommending an end to security of tenure. Hills concluded there were: 'strong arguments against a system of review based on coercion or removing advantages' but went on to say that they



were not arguments against ‘incentives and options that might be open to tenants as their circumstances improved’. At the launch of his report he prefaced his main remarks by underlining his commitment to the principles of ‘decent’, ‘affordable’ and ‘secure’ housing. He said: ‘if you came with the impression that I was going to be recommending the ending of security of tenure, or that tenants if they’re lucky enough to improve their circumstances will be thrown out of their homes, then you’re going to be disappointed.’... ‘security and stability are a fundamental part of their lives’.<sup>197</sup>

In February 2008, Housing Minister Caroline Flint suggested that security of tenure should be conditional on employment: ‘Working with other departments, such as the Department for Work and Pensions, [I know] one of the things people seeking benefits are expected to do is seek work. Social housing should be built around the principle of something for something’.<sup>198</sup>

In October 2008, a report by the New Local Government Network argued that: ‘in areas of insufficient supply, the use of tenancy agreements that allow tenants to remain in a (larger) property even though their family has reduced in size or for their children to ‘inherit’ their agreement irrespective of their family circumstances is a major blockage to tenants with larger families, who have to put up with cramped conditions as a consequence’.<sup>199</sup> It suggested that rolling Assured Shorthold Tenancies could be used to achieve the desired outcome of ‘the smooth passage of an individual or family through each stage of their life to match their present needs and circumstances’.

In April 2009, a report by the think-tank Localis argued that: ‘the current system creates social housing for life with the subsidy and the property inextricably linked and, once obtained, a valuable asset is out of the landlord’s control, irrespective of a tenant’s changed circumstances. We see a clear need to end this and separate rights as an occupier from the eligibility for subsidy and this can only be achieved by moving to near market rents and personal income subsidies’. It concluded: ‘the problems inherent in trying to move households from one property to another when they cease to fulfill a “need” condition would be solved by having just one form of tenancy, modeled on an Assured Shorthold Tenancy, which any landlord could offer’.<sup>200</sup>

In August 2010, a report by the Chartered Institute of Housing and London and Quadrant Housing Association said: ‘there is an argument that social landlords, despite now being more likely to consider rationalisation options, are still not developing the sort of flexible approaches to managing their portfolios that private managers of long-term assets would have’.<sup>201</sup> It called for social housing providers to be given greater

freedom in how they manage their assets to meet the needs of ‘in-between’ households and stated that this would inevitably involve fixed tenancies of around five years, ‘to give some control over vacancy (and therefore sales) rates’.

On 3 August 2010, only two-and-a-half months after the publication of the Coalition Agreement, Prime Minister David Cameron suggested<sup>202</sup> that social homes should be let on fixed-term deals rather than being granted automatically for ‘life’. During a visit to the West Midlands he said: ‘At the moment we have a system very much where, if you get a council house or an affordable house, it is yours forever and in some cases people actually hand them down to their children. And actually it ought to be about need’. He went on:

‘There is a question mark about whether, in future, should we be asking, actually, when you are given a council home, is it for a fixed period, because maybe in five or 10 years you will be doing a different job and be better paid and you won’t need that home, you will be able to go into the private sector. So I think a more flexible system - that not everyone will support and will lead to quite a big argument... looking at a more flexible system, I think makes sense.’

Following this announcement, and despite the Prime Minister anticipating a ‘big argument’, the Government proceeded at pace to bring about reform. After further discussion during the autumn party conferences, the Government swiftly moved to consult on the proposal as part of a major consultation on a radical shake up of social housing and homelessness legislation.

The publication of the consultation – with only an eight-week period for responses – was rapidly followed by the introduction to Parliament of the Localism Bill in December 2010, which included clauses to allow the use of fixed-term tenancies by registered providers of social housing.

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191 Bradshaw, J., Chzhen, Y. and Stephens, M. (2008) *Housing: the saving grace in the British welfare state*, in S. Fitzpatrick and M. Stephens (eds.) *The Future of Social Housing*, Shelter

192 Except for housing association tenants, who had the right to register a fair rent under Part VI of the Rent Act 1977 and still do if their tenancy began between 1977 and January 1989.

193 *ROOF* November 1978 (page 175)

194 *Hansard* 15 January 1980

195 Carr, H., Cowan, D., Hunter, C and Wallace, A. (December 2010) *JRF programme paper: Housing Market Taskforce, Tenure rights and responsibilities*, University of Bristol, page 25 (<http://www.jrf.org.uk/sites/files/jrf/tenure-rights-responsibilities-full.pdf>)

- 196 Dwelly, T. and Cowans, J. (eds.) (2006) *Rethinking social housing*, The Smith Institute (<http://www.smith-institute.org.uk/file/RethinkingSocialHousing.pdf>)
- 197 ([http://www.defendcouncilhousing.org.uk/dch/dch\\_RoleofSocialHousing.cfm](http://www.defendcouncilhousing.org.uk/dch/dch_RoleofSocialHousing.cfm))
- 198 (<http://www.insidehousing.co.uk/report-blows-flint%E2%80%99s-work-to-live-ideas-out-of-the-water/6500863.article>)
- 199 Keys, I. (2008) *Tenant Empowerment: What the new regulatory regime must deliver*, New Local Government Network, page 17 (<http://www.nlgn.org.uk/public/wp-content/uploads/tenant-empowerment1.pdf>)
- 200 Greenhalgh, S. and Moss, J. (2009) *Principles for Social Housing Reform*, pages 37 and 50 (<http://www.localis.org.uk/images/articles/Localis%20Principles%20for%20Social%20Housing%20Reform%20WEB.pdf>)
- 201 Davies, A. and Lupton, M. (2010) *Widening the rental housing market*, pages 14 and 17 (<http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Widening%20the%20rental%20housing%20market.pdf>)
- 202 BBC News (3 August 2010) 'Council homes for life could go, says Cameron' (<http://www.bbc.co.uk/news/uk-politics-10855996>)

# Appendix 2. Range of social housing tenancies

Prior to the Localism Act 2011, social landlords, and particularly housing associations, already had considerable flexibility to let on fixed-term or periodic tenancies, in the form of Assured Shorthold Tenancies, Introductory Tenancies and Demoted Tenancies, and on non-Secure or non-Assured lettings of temporary accommodation or supported housing.

## Local housing authority tenancies

### Secure Tenancies

Secure Tenancies were introduced by the Housing Act 1985. Section 79 of the Act provides that, where the landlord is a local authority and a tenant is occupying the property as their only or principal home, and subject to the exclusions in Schedule 1 to the Act, any tenancy granted by a local authority landlord will be a Secure Tenancy. Secure Tenancies under the Housing Act 1985 are mainly granted by local housing authorities, although housing association tenants whose tenancies were granted before 15 January 1989 may remain Secure Tenants.

### Introductory Tenancies

Introductory Tenancies are a form of Probationary Tenancy introduced by the Housing Act 1996<sup>203</sup> and granted by some local authorities. An Introductory Tenancy is a one-year trial council tenancy. It provides most of the same rights as a secure council tenancy but the tenant can be evicted much more easily. To gain possession, the landlord does not have to prove grounds in court but must follow the correct procedure. The tenant must be given at least four weeks' written notice of seeking possession and the reasons. Tenants can request a review of the decision to seek possession within 14 days of receipt of the notice. As long as there is no breach of the tenancy terms giving rise to a claim for possession, an Introductory Tenancy automatically becomes a Secure Tenancy, usually after 12 months. However, the probationary period can be extended by a further six months if the landlord serves a notice to that effect within the 12-month period.

### Demoted Tenancies

A Demoted Tenancy is a one-year probationary council tenancy. Councils may apply to the court to 'demote' a Secure Tenancy on the basis that the tenant has been involved in antisocial behaviour. The landlord has to follow the correct procedure and obtain a court order if they want to downgrade a Secure Tenancy in this way.

They normally have to serve a written demotion notice, giving the reasons they are applying for a Demotion Order, and give at least four weeks' notice of court proceedings. Demoted Tenants can be evicted very easily. The landlord doesn't have to prove a ground for possession in court but they have to follow the correct procedure. This requires at least four weeks' written notice of seeking possession, explaining the reasons. Tenants can request a review of the decision within 14 days of receipt of the notice. A Demoted Tenancy usually lasts one year: if there is no breach of tenancy giving rise to a notice of possession proceedings, it automatically becomes a Secure Tenancy again, usually after 12 months. The probationary period can effectively be extended by up to six months if the landlord serves a notice of possession proceedings on the tenant within the 12-month period.

## Private registered provider tenancies

Private registered providers of social housing (typically housing associations) have much more flexibility in statute, but have been constrained by regulation in the types of tenancy they can offer. Until recently, the Regulator's Tenancy Standard required that they provide the 'most secure form of tenancy compatible with the purpose of the housing and the sustainability of the community'.<sup>204</sup>

### Secure Tenancies

Prior to 15 January 1989, which introduced the Assured Tenancy regime, housing associations let their homes on Secure Tenancies. Therefore, some tenants of private registered providers whose tenancies began before that date remain on Secure Tenancies if all the other requirements of the Secure Tenancy exist.

### Assured Tenancies

Assured Tenancies were introduced by the Housing Act 1988 and replaced tenancies protected by the Rent Acts. Most housing association tenants, whose tenancies began after 15 January 1989, currently have Assured Tenancies. An Assured Tenancy grants a degree of security of tenure to the tenant. A tenant under an Assured Tenancy may not be evicted without a reason and the rent under the Assured Tenancy will often fall under the supervision of a Rent Assessment Committee.

## Assured Shorthold Tenancies

Housing associations have been able to let on Assured Shorthold Tenancies since 15 January 1989. The tenancy might be set for a fixed term, such as six months, or it might roll on a week-to-week or month-to-month basis (a periodic tenancy). Assured Shorthold Tenancies lack security of tenure. Except where the tenancy is within a fixed term, landlords seeking possession do not have to satisfy the court that any ground for possession exists.

### Assured Shorthold Tenancies as Starter or Probationary Tenancies

Assured Shorthold Tenancies may be used by private registered providers as 'Starter Tenancies' and as 'Demoted Assured Shorthold Tenancies' in a similar way to local authority landlords. There is no statutory regulation or tenancy standard requiring housing

associations to convert a Probationary Assured Shorthold Tenancy into a fully assured or non-probationary, fixed-term Assured Shorthold Tenancy when the tenant successfully completes the probationary period. However, they can be converted into fully Assured Tenancies by service of an appropriate notice. As with local authority Demoted Tenancies, the probationary period can be extended by a further six months.

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203 Section 124 of Housing Act 1996 (<http://www.legislation.gov.uk/ukpga/1996/52>)

204 Tenant Services Authority (March 2010) *The Regulatory Framework for Social Housing in England from April 2010: Tenancy Standard*, page 25 ([http://webarchive.nationalarchives.gov.uk/20100408112044/http://www.tenantservicesauthority.org/upload/pdf/Regulatory\\_framework\\_from\\_2010.pdf](http://webarchive.nationalarchives.gov.uk/20100408112044/http://www.tenantservicesauthority.org/upload/pdf/Regulatory_framework_from_2010.pdf))



# Appendix 3. Localism Act 2011 requirements for Tenancy Strategies

## **‘s.150 Tenancy strategies**

(1) A local housing authority in England must prepare and publish a strategy (a “tenancy strategy”) setting out the matters to which the registered providers of social housing for its district are to have regard in formulating policies relating to—

- (a) the kinds of tenancies they grant,
  - (b) the circumstances in which they will grant a tenancy of a particular kind,
  - (c) where they grant tenancies for a term certain, the lengths of the terms, and
  - (d) the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.
- (2) The tenancy strategy must summarise those policies or explain where they may be found.
- (3) A local housing authority must have regard to its tenancy strategy in exercising its housing management functions.
- (4) A local housing authority must publish its tenancy strategy before the end of the period of 12 months beginning with the day on which this section comes into force.
- (5) A local housing authority must keep its tenancy strategy under review, and may modify or replace it from time to time.
- (6) If a local housing authority modifies its tenancy strategy, it must publish the modifications or the strategy as modified (as it considers appropriate).
- (7) A local housing authority must—
- (a) make a copy of everything published under this section available at its principal office for inspection at all reasonable hours, without charge, by members of the public, and
  - (b) provide (on payment if required by the authority of a reasonable charge) a copy of anything so published to any member of the public who asks for one.

(8) In this section and section 151 (preparation of tenancy strategy)—

- (a) references to a registered provider of social housing for a district are to a registered provider who grants tenancies of dwelling-houses in that district, and
- (b) “district”, “dwelling-house” and “local housing authority” have the same meaning as in the Housing Act 1985.’

## **‘s.151 Preparation of tenancy strategy**

- (1) Before adopting a tenancy strategy, or making a modification to it reflecting a major change of policy, the authority must—
- (a) send a copy of the draft strategy, or proposed modification, to every private registered provider of social housing for its district, and
  - (b) give the private registered provider a reasonable opportunity to comment on those proposals.
- (2) Before adopting a tenancy strategy, or making a modification to it reflecting a major change of policy, the authority must also—
- (a) consult such other persons as the Secretary of State may by regulations prescribe, and
  - (b) in the case of an authority that is a London borough council, consult the Mayor of London.
- (3) The authority must, in preparing or modifying a tenancy strategy, have regard to—
- (a) its current allocation scheme under section 166A of the Housing Act 1996,
  - (b) its current homelessness strategy under section 1 of the Homelessness Act 2002, and
  - (c) in the case of an authority that is a London borough council, the London housing strategy.’

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