



HILLINGDON

LONDON

Procedure for Reviewing Flexible Tenancies

The Localism Act 2011 introduced new flexibilities for housing providers to offer social housing tenancies for a fixed term. In April 2013 Cabinet formally approved a Tenancy Policy that introduced flexible¹ (fixed term) tenancies and the policy was operational from 3rd June.2013.

The Tenancy Policy sets out the circumstances in which the Council will offer flexible (fixed term) tenancies and this document explains what happens at the end of the fixed term. Each fixed term tenancy will be formally reviewed before its end date. This procedure sets out:

- The circumstances in which LB Hillingdon may or may not grant another tenancy on the expiry of the fixed term, in the same or in another property
- The way in which a tenant may appeal against a decision not to grant another tenancy on the expiry of the fixed term or about the length of fixed term tenancy offered.
- The advice and assistance that will be given to tenants on finding alternative accommodation in the event that a decision is taken not to grant another tenancy

A decision will be made no less than six months before the end of the tenancy whether to reissue the tenancy or not. It should be noted that if the Council does nothing at the end of a fixed term tenancy, or fails to notify the tenant what will happen on expiry of their fixed term tenancy at least six months before it ends, the tenancy will automatically default to a lifetime secure tenancy.

Aims

The review procedure has the same stated aims as the Tenancy Policy; which are to:

- Provide a high quality housing management service to prospective and current tenants, in accordance with legislation, regulation, and best practice
- Respond effectively to the demands placed on our limited social housing resource
- Make best use of our stock and ensure it meets existing and future customers' needs
- Ensure customers have the right home for as long as they need it
- Support our customers to enable them to achieve their housing aspirations

¹ A flexible tenancy is a form of secure tenancy and generally, tenants with a flexible tenancy have the same rights as other secure tenants, including the Right to Buy, the Right to Repair, and a right of succession. The only difference is that the tenancy is time limited. The same grounds for possession are available and can be used during the fixed term, for example if there are rent arrears or a breach of tenancy.

Tenancy Types

The Tenancy Policy provides detailed information regarding the types of tenancy offered by LB Hillingdon. These are summarised below:

Probationary tenancies

Any new tenant that has not previously held a secure or assured tenancy will be given a probationary tenancy for the first year. Probationary tenancies can be extended for a further six months. Tenants who are not in breach of their tenancy at the end of that term will automatically move to the tenancy type which was granted to them at the time of sign-up.

Flexible (fixed term) tenancies

Tenants of general needs properties are usually offered a tenancy with a fixed term of five years, following any probationary period. There are some instances where a shorter tenancy may be offered, such as, where an in principle decision has been made to dispose of or refurbish a property and vacant possession will be required. Shorter tenancies may be offered in some supported housing where the scheme is intended to provide short term housing.

Fixed term tenancies will be exclusive of the first year probationary tenancy. This means that a five year tenancy will run for a further five years if the probationary tenancy conditions have not been broken.

Probationary tenancies will not be used when a tenancy is reissued. Reissued tenancies will be for either five or less years, depending on the term decided as part of the review process set out below.

Lifetime tenancies

Those over 60 in Sheltered Housing and Extra Care Schemes, and residents of other some other Supported Housing Schemes are offered life time tenancies.

Implementation

Tenancy Start

Prior to the start of a flexible tenancy, the Council will make it clear to the applicant in the offer that they receive, that on expiry of the probationary period, the tenancy will become a flexible tenancy rather than a secure tenancy. The offer letter will inform the applicant of the length of tenancy that they are being offered. At commencement of a flexible tenancy, the following information will be made available to the applicant:

- The date of tenancy commencement and length of tenancy
- The potential end date of the tenancy
- The date from which the council will review the tenancy and make a decision as to whether a further tenancy should be awarded
- The criteria which will be used to decide whether or not a further tenancy should be awarded
- Details of the advice and assistance which will be offered at the end of the flexible tenancy
- The appeals process (in respect of the type of tenancy offered, the length of tenancy, the criteria for review and the decision made following a review at the end of a fixed term tenancy).

The applicant will sign a tenancy agreement at the start of the tenancy. The agreement will include the terms of the probationary tenancy and the terms of the flexible tenancy. There will be no requirement to sign a new agreement when the probationary period expires.

Where the flexible tenancy is a renewal or is granted to a tenant transferring from another council or housing association tenancy, the fixed period will start immediately, because an introductory period will not apply.

Tenancy Review

There are four options at the end of the flexible tenancy. To:

- Offer a further flexible tenancy at the current property
- Offer a further flexible tenancy at another property
- Offer a lifetime tenancy of another property e.g. sheltered accommodation
- Not offer a further tenancy on expiry of the current flexible tenancy

The formal tenancy review will start nine months prior to the tenancy end date by writing to the tenant(s) to give notice of the review. Evidence and information for the review will be obtained and collated by Tenancy Management staff and will include a home visit that will seek to establish whether the household circumstances have changed and if the tenant(s) and their household still fulfil the criteria we have agreed for occupancy of their home. Tenants are expected to actively engage in reviews. The tenant will need to give consent to the Council obtaining evidence and information relevant to the assessment and provide relevant information to the Council themselves as part of the assessment that takes place to establish if a tenancy should be reissued. This must include information regarding household members, income, savings, assets and investments.

Where a tenant fails to cooperate fully with the review, for example by not agreeing to or keeping appointments for a home visit, or failing to provide evidence requested about the composition or income of their household, the Council will deem that the tenant does not wish to continue occupying the home. Officers will need to demonstrate that they have made reasonable and practical attempts to ensure the tenant(s) engagement and cooperation. If following, reasonable efforts, the tenant(s) continue to fail to cooperate, the tenancy will not be reissued and the tenant(s) will not be entitled to the additional advice and assistance offered within this Procedure and our Allocations Policy. Review decisions will be made by the Homeless Prevention Team. Tenancies will only be reissued where:

- The tenant(s) cooperate with the review by agreeing and keeping an appointment for a home visit
- The tenant(s) and their household still fulfil the criteria agreed for occupancy of their home
- The Council is satisfied that the tenant(s) neither withhold information nor provide false information in order to influence the outcome of the review.
- There are no substantial breaches of tenancy conditions

The review is designed to identify if one of the following applies;

- The property is under-occupied according to the bedroom standard applied in the current LBH Social Housing Allocation Policy
- The property is adapted and the person requiring the adaptations no longer lives at the property or no longer needs the adaptation
- The household has a combined income above that deemed sufficient to enable them to secure a home in another tenure. If the household has a current Right-to-Buy application in process, it will be assumed that they have sufficient resource and the tenancy will not be reissued.
- The property is required for disposal or refurbishment to manage the Council's assets
- There have been substantial breaches of tenancy conditions including, but not limited to; non-payment of rent, anti-social behaviour, failure to maintain the property to a reasonable standard.

Action following the Tenancy Review

Housing need criteria as defined in the Council's Social Housing Allocation Policy will continue to be used when assessing whether to re-issue a tenancy at the end of a fixed term period. Where the review identifies that the tenant(s) with their household no longer fulfils the criteria for occupancy of their current home, at least six months notice in writing will be given of our intention not to reissue the tenancy. An advisor will offer advice and assistance with housing options. This will be tailored to the needs of each client.

'Household' in this regard means the persons that usually occupy the home with the tenant(s). Where these are adults that are not in full time education, they should have been residing in that home as their usual and sole residence since a date that is at least 18 months prior to the end of the tenancy term.

If a home is too large for the household's needs, leaving a spare bedroom, because there has been a change in the household composition, but the household is still in need of social housing, they will be helped to find a transfer to a smaller property.

Exceptions

- Grown-up children who have left home to go to university and return home during the holidays will still be counted as part of the household.
- Households that include foster parents who are currently awaiting a placement. Verification will be sought from a Social Care Service Manager
- Households that have a medical need for which an additional room is a necessary requirement. Where appropriate medical assessments will be carried out to establish any medical requirements the household has. This will be done in accordance with the current Social Housing Allocation Policy.

Where the tenancy will not be reissued because the household has a combined income above that deemed necessary to enable them to secure an alternative home in a different tenure, they will be given advice and assistance to assist them to relocate. This will be assessed in line with qualifying criteria stipulated in the current allocation policy in relation to the income required to access low cost home ownership (which is reviewed annually and is currently £66,000 for smaller properties and £80,000 for those with 3 or more bedrooms) and savings (currently £30,000).

Where a serious breach of the tenancy has occurred during the term, the tenancy will not generally be reissued. This includes:

- Where there are eight weeks net rent or more of arrears and there is no payment plan in place or the payment plan is not being kept to
- Where court proceedings have been issued or a notice seeking possession served for breach of tenancy or antisocial behaviour or criminal conduct has occurred which in the Council's view is sufficiently serious to justify the issue of proceedings or service of such a notice, and there has not been a period of at least 12 months without any further significant breach of the tenancy antisocial behaviour or criminal conduct.
- Where a suspended or outright possession order has been obtained, other than in exceptional circumstances, the Council will not be minded to reissue a tenancy. Cases will be determined on their merits taking account of issues such as: compliance with the court order; household composition, intentionality and the costs likely to accrue to the Council as a whole; If a tenant or a household member has breached an injunction under the ASB, Crime and Policing Act 2014 that relates to the property or the Council; or breached a criminal behaviour order that relates to the property or the Council; or has been convicted of a serious offence that relates to the property of the Council; and there has not been a period of at least 12 months without any further significant breach of the tenancy, anti-social behaviour or criminal conduct.

- Where the property has been used for illegal purposes, benefit fraud or unlawful subletting, or the tenancy was induced by a false statement made by or on behalf of the tenant (or any one of them)

Tenancies will be reissued where the property remains suitable for the household's needs as defined by the Social Housing Allocation Policy in force at the time of their reassessment. In addition tenancies will be reissued to:

- Overcrowded households by one bedroom if no alternative is available
- Overcrowded households by two or more bedrooms if no alternative is available, however they must join the Housing Register to help them to move during the term of their new tenancy
- Households living in an inaccessible property or a property unsuitable for other medical reasons, if there are no suitable properties available for them to move into.

The term of any new tenancy offered will comply with LB Hillingdon policy which may be different to the term of the previous tenancy. In exceptional circumstances LBH may issue a further tenancy with a shorter term of between two and four years. For instance, a shorter term may be offered where the tenant has clearly breached one or more terms of their tenancy agreement and further monitoring and support is required for the tenant to demonstrate that they are able to fully comply with all aspects of their tenancy.

Where the tenancy is reissued (either for the same or a different term), LB Hillingdon will sign up the tenant(s), ensuing full verification of details as set out in the Social Housing Allocation Policy.

The Council will reserve the right to consider increasing the rent in some circumstances in line with the Rents Policy.

Where we do not intend to reissue a tenancy, or we intend to reissue but on a shorter fixed term tenancy, we will include in our decision letter:

- Information on how to appeal against our decision and the procedure that any appeal will follow
- Information on the advice and assistance we can offer to the household to find another suitable home.

LB Hillingdon will consider whether a household is vulnerable by reason of age, disability, illness and households with children when considering which type of tenancy is appropriate. It may be appropriate to offer a tenancy type outside of the terms the Tenancy Policy in some circumstances where a household member is vulnerable and a tenancy under this policy may not be appropriate for their needs.

Where a tenancy is not reissued, the Council will issue a notice of this decision at least six months prior to the end of the term. The tenant will also receive another two months' notice advising that the Council will require possession at or after the end of the term. LB Hillingdon will provide advice to help the tenant find alternative accommodation. This may include shared ownership or private sector renting, including in locations in other parts of London or further afield. Where appropriate, referrals will be made to relevant advice agencies, such as Citizens Advice Bureau.

Appeals against Six Month Tenancy Review Decision Notices

If a fixed term tenancy is not reissued, or is reissued for a term less than five years, or requires a move to suitable alternative accommodation, an appeal can be made by the tenant on the basis that this is not in line with the Procedure for Reviewing Flexible Tenancies.

An appeal must be made within 21 days of the tenant receiving the notice that the tenancy will not be reissued.

An appeal must be made in writing and contain all the information required by Regulation 2 of the Flexible Tenancies (Review Procedures) Regulations 2012 and should give the Council as much information as possible. The Council will aim to decide the appeal within 20 working days unless a longer period is required because it is necessary to obtain further information to determine the appeal. Regulation 2 requires an application to include:

- (a) The applicant's name and address
- (b) A description of the original decision in respect of which the review is sought including the date on which the decision was made
- (c) If the review is requested pursuant to s107B of the Act, a statement of the reasons why, in the applicant's opinion, the length of the tenancy does not accord with a policy of the landlord as to the length of the terms of the flexible tenancies it grants
- (d) In any other case, a statement of the grounds on which the review is sought
- (e) A statement to the effect that the applicant does, or does not, require the review to be conducted by way of an oral hearing
- (f) A statement to the effect that the applicant does, or does not, agree to receive communications relating to the review by email, and if the former, the email address to which such communications should be sent.

An appeal will be investigated by a Housing Manager who was not involved in the assessment of the case. They may contact the tenant to request further information or to meet with them to discuss the appeal. The Housing Manager will decide if the decision not to reissue the tenancy is in line with LB Hillingdon Procedure for Reviewing Flexible Tenancies.

Where an applicant has requested an oral hearing, the appeal will be determined in accordance with Regulations 6 to 10 of the procedures and in all other instances will be determined in accordance with Regulation 5. (See Appendix A)

The outcome of an appeal will be set out in a letter giving summary reasons. The Housing Manager can confirm the original refusal or overturn it.

The detailed provisions governing the procedure on appeals are contained in the Flexible Tenancies (Review Procedures) Regulations 2012.

If the original decision is maintained, the tenant will be informed of how they can complain to the Housing Ombudsman, or obtain independent housing advice.

STATUTORY INSTRUMENTS

2012 No. 695

HOUSING, ENGLAND

The Flexible Tenancies (Review Procedures) Regulations 2012

<i>Made</i> - - - -	<i>5th March 2012</i>
<i>Laid before Parliament</i>	<i>8th March 2012</i>
<i>Coming into force</i> - -	<i>1st April 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 107B(6) and 107E(4) of the Housing Act 1985(a):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Flexible Tenancies (Review Procedures) Regulations 2012 and come into force on 1st April 2012.

(2) In these Regulations—

- (a) “the Act” means the Housing Act 1985;
- (b) “applicant” means a person who has requested a review;
- (c) “landlord” means a person to whom a request for review is made;
- (d) “original decision” means a decision of the kind referred to in section 107B(2) or 107E(1) of the Act;
- (e) “review” means a review of the kind referred to in section 107B(2) (Review of decisions relating to flexible tenancies) or 107E(1) (Review of decision to seek possession) of the Act.

Application

2. An application for a review must be made in writing and must include—

- (a) the applicant’s name and address;
- (b) a description of the original decision in respect of which the review is sought including the date on which the decision was made;
- (c) if the review is requested pursuant to s107B of the Act, a statement of the reasons why, in the applicant’s opinion, the length of the tenancy does not accord with a policy of the landlord as to the length of the terms of the flexible tenancies it grants;
- (d) in any other case, a statement of the grounds on which the review is sought;
- (e) a statement to the effect that the applicant does, or does not, require the review to be conducted by way of an oral hearing;

(a) 1985 c. 68.

- (f) a statement to the effect that the applicant does, or does not, agree to receive communications relating to the review by email, and if the former, the email address to which such communications should be sent.

Right to a hearing

3.—(1) Where an application includes a statement to the effect that the applicant requires the review to be conducted by way of an oral hearing, the review must be conducted in accordance with regulations 6 to 10.

- (2) In any other case, the review must be conducted in accordance with regulation 5.

Communications

4.—(1) Where an application includes a statement to the effect that the applicant agrees to receive communications relating to the review by email any notice, document or other communication sent in connection with the review by the landlord by email to the email address referred to in regulation 2(f) is to be taken as having been received by the applicant at the time the email is sent to that address.

(2) In any other case, a notice, document or other communication sent in connection with the review by the landlord is to be taken as having been received by the applicant when it is—

- (a) given to the applicant in person;
- (b) sent by the landlord by first class post to the address referred to in regulation 2(a); or
- (c) delivered by hand to the address referred to in regulation 2(a).

Review without a hearing

5.—(1) Where regulation 3(2) applies, the landlord must send a written notice to the applicant stating that the applicant may make written representations in support of the application before a time specified in the notice.

(2) The time specified pursuant to paragraph (1) must not be earlier than five days after the day on which the notice referred to in that paragraph is received by the applicant.

(3) In making a decision on the review the person conducting the review must take into account any representations received in accordance with this regulation.

(4) The review must be conducted by a person appointed for that purpose by the landlord, who may be an officer or employee of the landlord.

(5) A person appointed under paragraph (4) who is an officer or employee of the landlord must be a person of greater seniority than the person who made the original decision.

(6) The person referred to in paragraph (4) must not be a person who was involved in the making of the original decision.

Review by way of a hearing

6.—(1) Where regulation 3(1) applies the landlord must send a written notice to the applicant stating the day on which, and the time and place at which it is proposed that the oral hearing is to take place.

(2) The day referred to in paragraph (1) must not be earlier than five days after the day on which the notice referred to in that paragraph is received by the applicant.

(3) If at any time before the day on which the hearing is due to take place the applicant so requests, the landlord may postpone the hearing to a later date.

(4) The date referred to in paragraph (3) must be no earlier than five days after the day on which the applicant receives notice in writing from the landlord of the new hearing date.

Procedure at hearing

7.—(1) The hearing must be conducted by a person appointed for that purpose by the landlord, who may be an officer or employee of the landlord.

(2) A person appointed under paragraph (1) who is an officer or employee of the landlord must be a person of greater seniority than the person who made the original decision.

(3) The person referred to in paragraph (1) must not be a person who was involved in the making of the original decision.

(4) The hearing must be conducted with the minimum amount of formality and in accordance with any directions given by the person conducting it.

(5) At the hearing the applicant may—

- (a) make oral or written representations relevant to the decision to be made on the review;
- (b) be accompanied or represented by another person appointed by the applicant for that purpose (whether that person is professionally qualified or not);
- (c) call persons to give evidence on any matter relevant to the decision to be made on the review; and
- (d) put questions to any person who gives evidence at the hearing.

(6) The person who made the original decision may attend the hearing and may do any of the things the applicant may do pursuant to paragraph (5).

(7) A person appointed as a representative pursuant to paragraph (5)(b) has the same rights and obligations as the applicant (or, as the case may be, the person who made the original decision) for the purposes of the conduct of the hearing.

Absence of applicant at hearing

8. If the applicant fails to attend the hearing, the person conducting it may, having regard to all the circumstances (including any explanation offered for the absence) proceed with the hearing or give such directions with a view to the further conduct of the review as that person may think appropriate.

Adjournment of hearing

9.—(1) The hearing may be adjourned by the person conducting it (on the application of the applicant or otherwise).

(2) Where the hearing is adjourned for more than one day, the person conducting it must specify a date on which the hearing is to be resumed by sending a notice in writing to that effect to the applicant and any other person whose attendance is required at the resumed hearing.

Decision on review

10. Where regulation 3(1) applies the decision on the review must be made by the person who conducted the hearing.

Signed by the authority of the Secretary of State for Communities and Local Government

Grant Shapps
Minister of State

5th March 2012

Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part IV of the Housing Act 1985 provides for a regime of flexible tenancies. If the landlord offers to grant a flexible tenancy and the length of the term does not, in the opinion of the prospective tenant, accord with the policy of the landlord as to the length of terms of the flexible tenancies it grants, the prospective tenant may request a review. These Regulations make provision about the procedure to be followed in conducting such reviews.

Where the landlord decides not to grant another tenancy on the coming to an end of a flexible tenancy, the landlord must provide the tenant with a written notice of the decision to seek an order for possession, setting out the reasons for this decision and informing the tenant of his right to request a review of the decision. These Regulations also make provision about the procedure to be followed in conducting such reviews.

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