



## Tenancy Policy

1. **Date of policy:** April 2012, reviewed November 2017
2. **Next Policy Review date:** December 2019
3. **Responsibility:** Executive Director of Housing & Community Services
4. **Scope of Policy**

This Policy sets out which tenancy types Welwyn Hatfield council will offer to new tenants of its own stock from 1 July 2013 onwards and has been updated to reflect the start of the first flexible tenancy reviews.

This Policy sets out how flexible tenancies will be used, as provided for by the Localism Act 2011. The Policy includes information on when a flexible tenancy will be granted and when it will be brought to an end.

This Policy also sets out how other tenancy-related changes will be dealt with, as provided for in the Localism Act 2011. These include changes to the rules about tenancy successions and demotions.

5. **References to other Policies**

Welwyn Hatfield Council has published an Allocations Policy and an Overcrowding and under occupation Strategy. These should be read in conjunction with the Tenancy Policy. A copy of each of these policies can be obtained from Welwyn Hatfield Council's website [www.welhat.gov.uk](http://www.welhat.gov.uk). Printed versions of these policies can also be requested by contacting a housing office at the Council Offices, Campus East, Welwyn Garden City or Hatfield Housing Office, white Lion House, Town Centre, Hatfield.

6. **Introduction**

All social landlords (including local authorities and housing associations) are required to comply with the provisions set out in the Localism Act 2011. The Act makes provision for social landlords to offer 'fixed term' tenancies (housing associations) or 'flexible' tenancies (local authority landlords). Unlike the previous secure tenancies granted by local authorities, the new flexible tenancies will not offer a home for life and will be granted for a fixed period of time, after which the tenant's circumstances will be reviewed.

Welwyn Hatfield Borough Council's Tenancy Strategy sets out guidance for all social landlords in the borough about the use of flexible tenancies (council owned homes) and fixed term tenancies (housing associations). This Policy complies with the guidance set out in the Tenancy Strategy.

This policy meets the requirements of the Tenancy Standard.

This Policy sets out:

- ◇ Our approach to using flexible tenancies.

- ◇ The type of information which we will provide to new tenants and housing applicants, to inform them of the new flexible tenancies and the circumstances in which they will be granted.
- ◇ When we will end a flexible tenancy & the process that will be followed.
- ◇ The arrangements for tenants who are transferring to another tenancy (either with the same or another social landlord) and what will happen when a mutual exchange takes place.
- ◇ Information about tenants' rights to request a review of our decision to grant or end a flexible tenancy.
- ◇ Details of changes to the way in which we manage successions of tenancy and tenancy demotions, following changes to the law.

The Tenancy Agreement sets out in detail the council obligations to tenants in relation to all aspects of the tenancy, including arrangements for granting and ending a flexible tenancy.

### 7. **Who this Policy applies to**

Flexible tenancies apply only to new tenants. However the Policy should also be read by existing tenants so that they are aware of what will happen if they move to another home that is owned by the council.

### 8. **What tenancies will we offer new tenants?**

From 1 July 2013 most new council tenants are granted a five-year flexible tenancy however some tenants continue to be granted a secure council tenancy.

We will inform all new tenants of the type of tenancy they will be offered before they sign a Tenancy Agreement. This will be in the form of a letter. The Tenancy Agreement will clearly state the duration of the tenancy, together with details of the process for reviewing and ending tenancies, as set out in this policy.

### 9 **The exceptions: when we will still grant secure tenancies after 1 July 2013**

Some new tenants will still be offered a secure (lifetime) tenancy. These include:

- ◇ People who are moving into sheltered housing (this includes new tenants and tenants moving from a 'general needs' home or from other sheltered housing).
- ◇ People moving into a home specially adapted for their needs.
- ◇ People moving into a home specially designed/designated for a special needs group, for example, for people with mental health or learning disabilities.
- ◇ Existing tenants (whether they have a secure or flexible tenancy) who are 'down-sizing' from three bedroom or larger properties into a two or one bedroom property or tenants who are downsizing from a two bedroom to a one bedroom/bedsit property.
- ◇ Existing tenants who already had a secure tenancy granted before 1 April 2012 and who transfer to another home owned by Welwyn Hatfield.

**Important note:** This does not apply to tenants granted a secure tenancy after 1 April 2012.

- ◇ Existing tenants who already had a secure tenancy granted before 1 April 2012 and who arrange to move through the mutual exchange scheme.

**Important note on transfers and mutual exchanges:** The secure tenancy will not be protected where the property which the secure tenant is moving into is let at affordable rent, intermediate rent, market rent, is a mortgage rescue property or a shared ownership lease.

### 10. **How can a tenant end their tenancy with the Council?**

Where a tenant wants to end their tenancy, whether secure or flexible, they must give four weeks' notice in writing to the council. The council expects to be able to visit the tenant during the notice period to carry out a property inspection and advise the outgoing tenant of their responsibilities.

Where less than four weeks' notice is given, the council will charge four weeks' rent in lieu of notice. This charge may be waived on a case by case basis.

### 11. **How and when can the council end a tenancy during the fixed term of a flexible tenancy?**

Where a tenant breaks their tenancy conditions we will use the same legal measures as for secure tenants.

### 12. **What happens when the term of the flexible tenancy has elapsed?**

#### 12.1 **There are three possible outcomes at the end of the tenancy term:**

The tenant will be allowed to stay in their home – where this is the case they will be granted a new flexible tenancy

*Or*

The tenant will be asked to move to a smaller home – where this is the case, they will be offered a flexible tenancy at a new property

*Or*

The tenant will be asked to move out of their home and find alternative accommodation via low cost home ownership, intermediate/market rent properties from a social landlord, or private rented properties.

#### 12.2 **During the last year of a flexible tenancy, the sequence of events is:**

##### **Nine months before the end of the term**

We will advise tenants in writing that we are going to review the tenant's household circumstances to identify whether or not their home still meets their needs, we will work with the tenant to identify the best possible housing solution for the tenant and their household.

##### **No later than six months before the end of the term**

We will advise tenants in writing of our decision in ALL cases no matter what the decision we will serve a Notice. This is the six-month notice.

##### **No later than 10 weeks before the end of the term for those tenants who are required to move to smaller accommodation OR where the decision is to end the tenancy.**

We will write to the tenant, giving formal notice that the tenancy will end and the date that the fixed term will end. This is the two-month notice.

##### **At the end of the tenancy term, where the decision is to end the tenancy**

We will begin court proceedings to regain possession of the property. We will have to apply to the court to end the tenancy. We can only start this process when the five year term ends. The court can only refuse to give possession back to us where we have not followed the correct procedure regarding the service of the six-month notice and the two-month notice as set out above, or where the court is of the view that our decision is not lawful.

#### 12.3 **Two year flexible tenancies**

Where the tenant is required to move to smaller accommodation but has been unable to find a suitable new home, the council may offer a further flexible tenancy for a term of two years at the same property during which time the tenant would be expected to move. This tenancy will be subject to a review in the last year of the term following this policy. At the

end of the two year term, if the tenant has not moved to suitable alternative accommodation, the tenancy will be ended.

### **13. How will we make our decision on ending a flexible tenancy at the end of the term?**

#### **13.1 Under-occupation of the property**

The property is under occupied by two or more bedrooms.

OR

The property is adapted and the family member who required that adaptation no longer lives there.

We will take the opportunity to remind all tenants that if they are under occupied, they may be subject to the spare room subsidy (bedroom tax).

#### **13.2 Breach of tenancy conditions**

A breach of the tenancy where formal legal action is underway or being considered.

OR

Cases where a court order has already been obtained and either suspended or adjourned on terms whether or not that order has been breached.

OR

Where a full possession order has been obtained but not yet enforced.

#### **13.3 Financial circumstances**

Where the tenant is considered to have sufficient resources to provide their own accommodation, taking into account current market conditions. We will use the information in the Housing Allocations Guidelines when assessing the tenants' income and savings.

### **14. The process for requesting a review of our decision to grant or end a flexible tenancy**

As required by the Localism Act 2011 we have a review process where there has been a challenge to our decisions about flexible tenancies. The law says that decisions which can be challenged are:

1. The length of flexible tenancy granted. This may only be requested where the length of the term does not reflect the provisions of this Tenancy Policy.
2. Our decision to end a flexible tenancy at the end of the five-year term.

Tenants have a right to request a review in these cases.

### **15. Other changes to tenancies arising from the Localism Act 2011**

#### **15.1 Succession**

The Localism Act 2011 has changed the criteria for successions of tenancy. From 1 July 2013 all new council tenants may only have one succession and this can only be to a spouse or partner. There will be no rights of succession to other family members.

Secure tenancies which began before 1 July 2013 will keep their existing rights to succession.

#### **15.2 Demoted tenancies**

##### **What is a demoted tenancy?**

Where a secure tenant does not keep to the terms of their Tenancy Agreement because they are engaging in anti-social behaviour, we may apply to the court for the tenancy to be demoted. If the court makes a Demotion Order the tenant is allowed to remain in their home, but they lose security of tenure, for a period specified by the courts. The Demotion Order will set out how the tenant will be expected to behave during the term of the demoted

tenancy. Applying for a Demotion Order is only one of many types of court action we can take when a tenant does not keep to the terms of their Tenancy Agreement.

### **What happens at the end of a demoted tenancy?**

If the tenant keeps to the terms of the Demotion Order, at the end of the demotion period the tenancy will either be:

- ◇ Restored to a secure tenancy - where the tenant was a secure tenant before the tenancy was demoted *or*
- ◇ Restored to a flexible tenancy - where the tenant had a flexible tenancy before the tenancy was demoted

### **How the demotion period counts towards the five-year term of a flexible tenancy:**

When a flexible tenancy is re-instated following the successful completion of the demotion period we will include the demotion period in the overall length of the flexible tenancy. An example of how this works is shown below:

Length of flexible tenancy	= 5 years
Age of flexible tenancy when tenancy is demoted	= 2 years
Length of demoted tenancy (successfully completed)	= 1 year
Time remaining of flexible tenancy after demotion	= 2 years

We will explain this process before, during and at the end of the demotion period and provide written confirmation of this at the beginning and the end of the demotion period.

### **What happens if the tenant does not keep to the terms of the Demotion Order?**

Where the tenant does not keep to the terms of the Demotion Order we will apply to the courts to end the tenancy and evict the tenant.

## **16. Stakeholder consultation and equality review**

This updated Policy has been approved by Welwyn Hatfield Council Tenants Panel. The 2012 version was also approved by residents who took part in a special consultation sessions which gave residents the opportunity to review the policy, taking into account equality and diversity issues.