

# **Tenancy policy**

**2023-2027**

**Charnwood Borough Council**

# **PART A: INTRODUCTION, OBJECTIVES AND SCOPE**

## **1. Introduction and executive summary**

- 1.1 The council owns approximately 5,500 homes. The basis of the contractual relationship between the council and the tenant is a tenancy agreement. The tenancy agreement creates a legal relationship between the two parties – a tenancy. The tenancy created has its legal foundation in statute.
- 1.2 There are a number of different types of tenancy that the council has the power to create.
- 1.3 This policy sets out the council's position with respect to the following elements:
  - (i) The type of tenancy offered to a new Charnwood Borough Council tenant and the criteria taken into account when deciding which type of tenancy to offer;
  - (ii) Changes to the type of tenancy made to an existing tenant and the criteria taken into account when deciding to change the tenancy type for an existing tenant;
  - (iii) Circumstances where an introductory tenancy will be extended by an additional six months;
  - (iv) The granting of succession rights;
  - (v) The granting of joint tenancies to existing sole tenants and the circumstances in which joint tenancies will be granted;
  - (vi) The changing of a joint tenancy into a sole tenancy;
  - (vii) The process by which mutual exchanges are carried out.

## **2. Objectives of this policy**

The objectives of this policy are:

- to grant the correct tenancy in compliance with the law;
- to grant tenancies in accordance with the Home Standard, our tenancy strategy and allocations policy and in order to make best use of the council's stock of homes;
- to grant the most appropriate tenancy where discretion exists;
- to grant tenancies and successions, where discretion exists, without discrimination as to anyone's protected characteristics;
- to enable tenants to carry out mutual exchanges in accordance with statutory requirements and powers;
- to enable rigorous operational procedures to be created, where required, in order to implement this policy.

### 3. Scope of this policy

This policy applies to everyone who is eligible to be housed by us, including those already holding council tenancies.

## PART B: POLICY STATEMENTS

### 4. New tenants

- 4.1 We will provide all tenants and licensees with a written statement of the terms and conditions of their tenancy or licence.
- 4.2 Other than for variations in rent and service charge, we will consult existing introductory and secure tenants in accordance with S.103 of the Housing Act 1985 if we wish to change the terms and conditions of their tenancy.
- 4.3 Subject to the exceptions set out below we will offer a **periodic secure tenancy** as defined by the Housing Act 1985 (as amended) to prospective tenants. This tenancy is not time-limited and may only be terminated on the grounds set out in the relevant legislation and if judged reasonable by the court.
- 4.4 The exceptions to 4.3 above are as follows:
  - (i) With the exception of tenants transferring within the council or from another registered provider, who are already secure or assured tenants and where there is no break in the tenancy, all new tenants, other than those covered by subsequent exceptions below, will be offered a **periodic introductory tenancy**. An introductory tenant does not enjoy certain rights<sup>1</sup> that a secure tenant has, such as the right to buy, the right to exchange or the right to take in lodgers. An introductory tenancy will last for twelve months unless extended for an additional six months. An introductory tenant will have the right to a review of the decision to extend their introductory tenancy. At the end of the twelve or eighteen-month period it will automatically convert to a full secure tenancy unless possession proceedings have begun. Because the court has no discretion in determining whether or not to grant a possession order if one is applied for, an introductory tenant has the right to a review of a decision to terminate their tenancy<sup>2</sup>. Operational procedures will provide for a suitable appeals/review process that will enable the tenant to challenge a decision to terminate or extend their introductory tenancy.
  - (ii) Because minors have a limited capacity to enter into a legally-binding contract we will grant suitably-amended agreements to people between the ages of sixteen and eighteen that provide the most appropriate mechanism, including requiring a guarantor, to safeguard the council's position to enforce its licence conditions and for the minor to exercise their statutory rights;
  - (iii) We will grant **licences** for lettings where there is not exclusive possession of a dwelling or part of a dwelling;

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<sup>1</sup> Housing Act 1996 as amended

<sup>2</sup> By service of a notice of possession proceedings

- (iv) We will grant **non-secure tenancies or licences** when letting property in respect of our discharging our homelessness or homelessness prevention duties;
- (v) We will grant **licences** or other appropriate forms of occupation agreements of dwellings into which an existing tenant moves temporarily because they cannot remain in their permanent home for reasons including:
  - (a) planned major repairs or improvements; or
  - (b) fire, flood, storm or similar events.

## 5. Existing tenancies

- 5.1 We will provide all new tenants with a written tenancy agreement. This sets out the rights and obligations of both the council as landlord and the tenant.
- 5.2 We will, where requested or the need identified, provide alternative formats of the tenancy agreement. Examples of this include but are not restricted to, audio versions, translations into foreign languages, pictorially-based agreements or large-print versions.
- 5.2 Other than in the circumstances listed below and an introductory tenancy automatically becoming a secure tenancy after the expiry of its initial or extended term, all tenancies or licences will remain as granted unless terminated by the tenant or licensee or by us through an appropriate legal process. Exceptions to this will be:
  - (i) We may **extend an introductory tenancy** in the following circumstances:
    - Where there are or have been persistent rent arrears on the account for a significant period during the introductory tenancy and where agreements to clear have either not been made or have failed on one or more occasions;
    - Where there have accumulated significant rent arrears even if an agreement to clear has been made and is being adhered to;
    - Where a notice of possession proceedings has been served but no possession proceedings have actually been started;
    - Where there have been any other significant or persistent breaches of tenancy, including (but not restricted to) anti-social behaviour, harassment, and failure to grant access

In such cases the introductory tenancy will be extended by six months. Unless terminated earlier or where possession proceedings have begun once this six-month term expires the tenancy will automatically become a secure tenancy.

- (ii) As an alternative to eviction we may apply for a secure tenant to be given a **demoted tenancy** through a demotion order granted by the court on the grounds of anti-social behaviour or using the premises for unlawful purposes. A demoted tenancy is effectively an introductory tenancy, with similarly-restricted rights and mandatory possession powers and which will revert automatically to a secure tenancy after twelve months unless terminated or rescinded by an order of the court;

- (iii) We may grant a **family intervention tenancy** under S.297 of the Housing and Regeneration Act 2008 (as amended) if a secure or introductory tenant agrees to it. This will follow breaches of tenancy through anti-social behaviour where the tenant is likely to be evicted. Family intervention tenancies will only be offered if the tenant is to be transferred to alternative dispersed or purpose-built accommodation and will last normally for two years or less. We may terminate a family intervention tenancy through offering an introductory tenancy back into 'mainstream' housing or by serving notice to quit after having served notice of intent and having fulfilled our obligations to offer a review process of that notice of intent to terminate the tenancy;
- (iv) We will grant an **introductory tenancy** to someone who has been housed temporarily by us under homelessness legislation and who has been offered a permanent home as a result of their status as having been determined as unintentionally homeless.

## 6. Succession

- 6.1 Succession rights exist for secure, introductory and demoted tenants only but the legal framework surrounding succession differs dependent upon whether the tenancy was granted before 1 April 2012 or after. References below to 'statutory succession' mean succession rights that are enshrined in the Housing Acts 1985 and 1996 as amended.
- 6.2 Anyone succeeding to a tenancy will take on that same tenancy, for example, someone succeeding to a deceased person who held an introductory tenancy will succeed as an introductory tenant.

### 6.3 Tenancies granted before 1 April 2012:

- 6.3.1 A person has the legal (statutory) right to succeed to a tenancy if, upon the tenant's death:
- (a) the deceased tenant was not a successor himself/herself; and
  - (b) he/she was living in the property as his/her sole or main home at the time of the tenant's death and was the tenant's spouse or civil partner; or
  - (c) he/she had been living in the property for twelve months or more immediately prior to the tenant's death and was:
    - a person living with the deceased tenant as if they were spouses or civil partners;
    - children;
    - a parent or grandparent;
    - a grandchild;
    - a niece or nephew;
    - an aunt or uncle;
    - a brother or sister;
    - step-relations and half-relations of the above;
    - illegitimate children and adopted children
- 6.3.2 If a succession is granted and the qualifying person is not a spouse or civil partner and is under-occupying the property we will offer suitable alternative property and seek re-

possession of the deceased tenant's property on ground 15A of schedule 2 of the Housing Act 1985.

#### **6.4 Tenancies created on or after 1 April 2012:**

6.4.1 A person has the legal (statutory) right to succeed to a tenancy if, upon the tenant's death:

- (a) the deceased tenant was not a successor himself/herself; and
- (b) he/she was living in the property as his/her sole or main home at the time of the tenant's death and was the tenant's spouse or civil partner or was living with the deceased tenant as if they were spouses or civil partners;

6.4.2 We will also confer succession rights also to someone who had been living in the property for twelve months or more immediately prior to the tenant's death and was:

- a parent or grandparent;
- children;
- a grandchild;
- a niece or nephew;
- an aunt or uncle;
- a brother or sister;
- step-relations and half-relations of the above;
- illegitimate children and adopted children

6.4.3 If a succession is granted and the qualifying person is not a spouse or civil partner or not living together as spouses or civil partners and are under-occupying the property we will offer suitable alternative property and seek re-possession of the deceased tenant's property on ground 15A of schedule 2 of the Housing Act 1985.

#### **6.5 For all tenancies**

6.5.1 A successor will succeed to the same type of tenancy that the deceased tenant held.

6.5.2 If the successor is under eighteen years of age, the successor tenancy will be in accordance with section 4.2 (ii) above.

6.5.3 Where there is more than one qualifying person to succeed, statutory succession rights under 8.3 and 8.4 above will take precedence; but, otherwise, qualifying persons must agree among themselves who is to succeed: there will be no joint succession. If the qualifying persons are unable to agree, we will choose the successor.

6.5.4 Where succession does not exist or where non-statutory succession exists but the successor and his or her household would be under occupying the property, if the household member is deemed eligible and qualifies for an allocation of accommodation under the council's housing allocations policy he or she would be able to join the housing register. While there is no automatic right of an allocation to the property in question or any other property implied, the council will consider the individual circumstances of each case, including the needs of household members who are vulnerable by reason of age, disability or illness, and households with children and will seek to make the best use of its available social housing stock.

## 7. Joint tenancies

- 7.1 We will grant joint tenancies if the person wishing to become the joint tenant is the sole tenant's spouse or civil partner or is living with the tenant as if they were spouses or civil partners **and** provided that they are living in the property as their sole or main residence at the time of applying **and** that they would qualify for housing under our allocations policy were they to apply in their sole name.
- 7.2 We will refuse to grant joint tenancies to existing sole tenants if:
- the would-be joint tenant has not been living with the sole tenant in the property as their sole or main residence for a period of less than twelve months immediately prior to the request;
  - the existing tenant has an undischarged possession order;
  - the existing tenant is an introductory, demoted non-secure or family intervention tenant;
  - the existing tenant has a live notice of seeking possession in force or a notice to quit in force or expired;
  - the applicant holds a tenancy of another property;
  - the existing or applying tenant has been convicted of an offence that constitutes a breach of their tenancy.
- 7.3 We may refuse to grant joint tenancies to existing sole tenants if :
- there is sufficient doubt about the relationship being genuine;
  - the applicant is an owner occupier;
  - there are outstanding rent arrears;
  - there are other existing breaches of tenancy, such as anti-social behaviour, but where no legal action has been undertaken;
  - there is a limiting covenant on the tenancy, for example, where the sole tenant has signed a declaration to give up an adapted property when it was no longer needed;
  - if the applicant is someone from whom the sole tenant had previously suffered or fled domestic abuse or with whom the sole tenant had a previous joint tenancy dissolved by a 'McGrady'<sup>3</sup> notice.
- 7.4 In all cases, the granting of a joint tenancy will be by way of granting an entirely new tenancy.

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<sup>3</sup> A 'McGrady notice is a notice to quit/tenancy termination notice' that has been served by one party to a joint tenancy but which has the effect of binding both joint tenants to terminate the tenancy. *Greenwich LBC v McGrady* 1982

## 8. Sole tenancies from joint tenancies

- 8.1 If one party to a joint tenancy dies, that tenancy will be subject to succession rules as laid out in section 6. If the surviving joint tenant has statutory or discretionary succession rights, the joint tenancy will become a sole tenancy through succession.
- 8.2 If one party to a joint tenancy wishes to renounce their interest in the tenancy, they may do so provided that the other party to the joint tenancy is in agreement. Our agreement as landlord will also be required.
- 8.3 All joint to sole tenancies will be by way of an assignment of the existing tenancy from joint names to the remaining tenant's sole name. This can be done either through a deed of assignment or a deed of release. Both parties must sign the deed.
- 8.4 We will refuse to agree to an assignment under this section if:
- we believe that it is not in the remaining tenant's interest to become a sole tenant;
  - there is an undischarged possession order in both joint tenants' names;
  - we believe that the remaining tenant is being coerced into agreeing to become a sole tenant against their will;
  - if the departing tenant is being coerced against their will into renouncing their interest in the joint tenancy by the remaining tenant or some other person.

## 9. Mutual exchanges

- 9.1 A mutual exchange takes place when two or more tenants swap their homes.
- 9.2 When a mutual exchange takes place between two or more secure or assured tenants no new tenancies are created. The parties involved take an assignment of the existing tenancies.
- 9.3 When a mutual exchange takes place between a secure tenant of this council whose tenancy was granted before 1 April 2012 and a tenant from another provider holding a fixed-term or flexible tenancy or an assured shorthold tenancy the mutual exchange has to be carried out by surrender and granting of new tenancies so that our secure tenant retains a 'lifetime' tenancy. If the incoming tenant is an existing flexible tenant, then we will grant a secure tenancy.
- 9.4 When a mutual exchange takes place between a secure tenant of this council whose tenancy was granted on or after 1 April 2012 and a tenant from another provider holding a fixed-term or flexible tenancy the mutual exchange will be carried out by assignment and our secure tenant will inherit a flexible, fixed-term tenancy.
- 9.5 Eligibility to carry out a mutual exchange is determined and governed by section 92 and schedule 3 of the Housing Act 1985.
- 9.6 If one of our tenants is eligible to do a mutual exchange they may exchange with any other secure tenant, an assured tenant or a flexible tenant of a registered social landlord (for example a housing association, a housing trust which is a charity or a private registered provider of social housing)



9.7 If we receive an application from one of our tenants to carry out a mutual exchange, we will let them know whether or not they are eligible to exchange no later than 42 days after the date of the tenant's application. This may be a conditional decision . During that time we will have:

- undertaken an inspection of the condition of our property and carried out gas and electrical safety checks;
- provided a reference of our tenant to their would-be new landlord;
- received a reference for the incoming tenant.

9.8 The following tenants do not have the right to do a mutual exchange:

- Introductory tenants;
- Non-secure tenants;
- Demoted tenants;
- Family intervention tenants;
- Licensees.

9.9 For mutual exchanges carried out by assignment (i.e. exchanges not involving a secure tenancy granted by us before 1 April 2012 and a flexible tenancy granted by another provider), we may refuse to allow a mutual exchange<sup>4</sup> to take place if any of the exchanging tenants:

- have an undischarged possession order;
- are subject to possession or demotion or injunction proceedings, including having served on them a notice of seeking possession on both absolute or discretionary grounds;
- our property/properties is/are subject to a closure order;
- have an injunction against anti-social behaviour in place

9.10 We may also refuse to allow a mutual exchange<sup>3</sup> to take place if:

- the size of our property is larger by more than one bedroom than the needs are of the incoming tenant;
- the size of our property is such that the incoming tenants will be overcrowding it and would not be offered the property were they to have applied for housing through our allocations policy;
- the property has been adapted significantly to make it suitable for occupation by a physically disabled person and if the exchange were to take place those adaptations would no longer be required;

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<sup>4</sup> Sch 3 Housing Act 1985

- the property is designated sheltered or supported accommodation or is let to people with special needs or and if the exchange were to take place there would be no-one living in the property who fulfilled the criteria to live there.
- 9.11 If someone is eligible to do a mutual exchange but is in breach of his or her tenancy, including being in rent arrears but without there having been any legal action begun, we may delay the date of assignment until that breach has been remedied.
- 9.12 For mutual exchanges involving a secure tenancy granted before 1 April 2012 and a flexible tenancy (held by a tenant of a provider that grants such tenancies) we will only refuse consent on one or more of the grounds set out in schedule 14 of the Localism Act 2011, which includes all grounds set out in schedule 3 of the Housing Act 1985, plus if:
- the tenant is in rent arrears; or
  - the tenant is otherwise in breach of any term of the tenancy.
- 9.13 We will subscribe to an internet-based mutual exchange service allowing a tenant to:
- register an interest in arranging a mutual exchange through the service without paying a fee;
  - enter their current property details and their requirements for the exchange they wish to have;
  - to be provided with the details of those properties matched to their requirements.

## **PART C: OTHER PROVISIONS**

### **10. Advice and support**

We recognise that many of our tenants are vulnerable and could be disadvantaged in exercising their rights under this policy.

We will offer advice and support to tenants if requested and/or if support needs are identified by us or we will direct them to other organisations for more specialised advice if we are not in a position to offer it. The council has a distinct tenancy support policy.

### **11. Tenancy fraud**

- 11.1 Charnwood Borough Council has a limited number of homes that are available to let and all lettings are prioritised according to housing need and the council's duty to house certain vulnerable members of society (for example, children).
- 11.2 The council has an active involvement in the National Fraud Initiative and is committed to preventing, detecting, and investigating all types of fraud. Tenancy fraud deprives families of homes and we will take action where fraud is found.

11.3 Tenancy fraud includes:

- Subletting a property without the landlord's permission for personal gain;
- Providing false information on your application for housing, for example:
- Claiming to have children when you don't;
- Claiming to be homeless when you already own a property.

11.4 The council responds swiftly to all reports of unoccupied/abandoned and sublet properties. We encourage staff and tenants to report any suspected incidents of tenancy fraud and we work jointly with housing benefit and DWP fraud investigators as necessary. We take copies of photographic identification (for example, a passport or driving licence) of all home seekers. Where photographic identification is not available, we may take a photograph of each new tenant(s) as part of our lettings process.

11.5 If tenants are found to be committing housing fraud, they could:

- lose their tenancy;
- lose their right to council housing in the future;
- be fined or sent to prison depending on how serious the fraud is.

11.6 The council will seek to prevent the loss of its stock from fraudulent right to buy applications through a series of rigorous checks.

## **12. Training**

12.1 Suitable training on this policy will be given to members of staff whose job either directly or indirectly is affected by this policy.

12.2 Refresher training on this policy at appropriate intervals will also be given or if the policy is changed materially.

## **13. Equality and diversity**

We aim to ensure that all our policies are fair and transparent and have been impact-assessed according to our procedures and in accordance with legal requirements.

## **14. Responsibility**

The relevant strategic director is responsible for the effective implementation of this policy and may delegate amendments to it arising out of changes in legislation or regulation to other officers.

## 15. Monitoring and review

This policy will be reviewed every four years or sooner if required through legislative or regulatory changes.

## 16. Other external and internal influences on this policy

16.1 This policy has been written and should be implemented in conjunction with the following documents:

- Conditions of tenancy;
- Tenancy strategy;
- Allocations policy;
- Tenancy support policy
- Adaptations policy;
- Housing income and financial inclusion policy;
- Anti-social behaviour policy;
- Equality and diversity policy;

16.2 This policy has been written and should be implemented in conjunction with the following Acts including, but not limited to:

- Housing Act 1985;
- Housing Act 1996;
- Localism Act 2011;
- Anti-Social Behaviour Act 2003;
- Anti-Social Behaviour, Crime and Policing Act 2014
- Civil Partnership Act 2004
- Housing and Regeneration Act 2004;
- Housing and Planning Act 2016;
- Equality Act 2010;
- Homelessness Act 2002;
- Homelessness Reduction Act 2017.

## 17. Policy summary

In addition to this policy being publicly available we will also produce a summary of it in an easy-to-read format.