

COUNCIL HOUSING SERVICE TENANCY POLICY



Glossary of Terms

Anti-Social Behaviour (ASB): Any conduct that causes nuisance, distress, harassment, or alarm to others, including noise complaints, vandalism, and criminal activity.

Assignment: The legal process of transferring a tenancy from one tenant to another with the landlord's consent.

Civil Partner: A person in a legally recognised partnership with another person under the Civil Partnership Act 2004.

Closure Order: A legal order that prevents access to a property due to criminal activity or anti-social behaviour.

Demoted Tenancy: A type of tenancy where a secure tenancy is downgraded due to serious anti-social behaviour. This reduces the tenant's rights, similar to an introductory tenancy.

Exclusive Possession: A tenant's right to control who enters their home, distinguishing a tenancy from a licence.

Flexible Tenancy: A fixed-term secure tenancy granted by some local authorities under the Localism Act 2011.

Former Tenant Arrears (FTAs): Outstanding rent owed by a tenant after they have vacated the property.

Illegal Occupier: A person residing in a property without a valid tenancy or legal right to do so.

Implied Surrender: When a tenancy ends without a formal agreement but through the actions of both the tenant and landlord, such as the tenant vacating and returning the keys.

Introductory Tenancy: A probationary tenancy lasting 12 months (extendable to 18 months) that gives fewer rights than a secure tenancy.

Joint Tenancy: A tenancy held by two or more individuals, where each tenant has equal responsibility for rent and adherence to tenancy terms.

Licence: A form of housing arrangement where the occupant does not have exclusive possession of a property.

Minor (16-18 years old): A person under 18 who may be granted an adapted tenancy agreement with safeguards, such as a guarantor.

Mutual Exchange: A process where tenants swap homes, with the landlord's approval, without creating a new tenancy (except in specific cases).

Non-Secure Tenancy: A temporary tenancy often used for emergency housing, with fewer rights than a secure tenancy.

Notice of Seeking Possession (NOSP): A formal legal notice served by the landlord as the first step in evicting a tenant.

Notice to Quit (NTQ): A formal notice from a tenant to end their tenancy, usually requiring 28 days' notice.

Periodic Secure Tenancy: A long-term, non-time-limited tenancy under the Housing Act 1985 that can only be ended by legal proceedings.

Possession Proceedings: Legal action taken by a landlord to regain possession of a property from a tenant.

Rent Arrears: Unpaid rent that a tenant owes to the landlord.

Secure Tenancy: A long-term tenancy that provides tenants with legal rights, including the right to remain in their home unless evicted through legal proceedings.

Service Charge: An additional charge for services provided in a property, such as communal cleaning, maintenance, or security.

Sole Tenancy: A tenancy held by one individual who has full responsibility for the tenancy agreement.

Succession: The legal process where a tenancy is transferred to a qualifying relative or household member after the tenant's death.

Surrender: The voluntary agreement between a tenant and landlord to end a tenancy, either formally (in writing) or implied (through actions).

Temporary Occupation Agreement: A short-term agreement allowing a tenant to stay in alternative accommodation while major repairs are carried out on their usual home.

Tenancy Agreement: The legal contract between a tenant and landlord that sets out the terms and conditions of the tenancy.

Under-Occupancy: When a tenant lives in a property that has more bedrooms than they need based on council policy.

INTRODUCTION, OBJECTIVES AND SCOPE

1. Introduction

- 1.1 Hinckley and Bosworth Borough Council owns approximately 3,200 homes. A tenancy agreement forms the contractual basis of the relationship between the council and its tenants. This legal agreement establishes a tenancy, governed by statutory law.
- 1.2 The council has the authority to create various types of tenancy.
- 1.3 This policy outlines the council's approach to the following:
 - Determining the tenancy type for new council tenants and the factors considered in this decision.
 - Modifying the tenancy type for existing tenants and the criteria influencing such changes.
 - Circumstances permitting an extension of introductory tenancies by an additional six months.
 - Granting succession rights.
 - Establishing joint tenancies for existing sole tenants and the conditions for granting them.
 - Converting joint tenancies to sole tenancies.
 - Managing the mutual exchange process.
 - Ending a tenancy.

2. Objectives of this Policy

- 2.1 This policy aims to:
 - Ensure compliance with legal requirements when granting tenancies.
 - Allocate tenancies to optimise the council's housing stock.
 - Grant the most suitable tenancy type where discretionary powers apply.
 - Award tenancies and successions fairly
 - Consideration of protected characteristics
 - Facilitate tenant-led mutual exchanges in accordance with statutory provisions and powers.
 - Establish robust operational procedures to support policy implementation where necessary.

3. Scope of this Policy

- 3.1 This policy applies to all individuals eligible for council housing, including existing council tenants.

4. New Tenants

- 4.1 All tenants and licensees will receive a written document outlining the terms and conditions of their tenancy or license.
- 4.2 Unless changes relate to rent or service charges, we will consult existing introductory and secure tenants in line with Section 103 of the Housing Act 1985 before modifying tenancy terms and conditions.
- 4.3 Subject to the exceptions 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 can only be ended under the grounds specified in relevant legislation and with court approval.
- 4.4 Exceptions to 4.3 above:
- **Introductory Tenancy:** Except for tenants transferring within the council or from another registered provider with no break in tenancy, new tenants (excluding those in subsequent exceptions) will be offered a periodic introductory tenancy. Introductory tenants have fewer rights than secure tenants, such as the right to buy, exchange, or take in lodgers. This tenancy lasts twelve months, extendable by six months. Tenants have the right to challenge extension decisions. After twelve or eighteen months, it automatically becomes a secure tenancy unless possession proceedings start. As the court has no discretion in granting possession orders, introductory tenants have a right to challenge termination decisions. Operational procedures will outline appeals processes for tenants.
 - **Minors:** We will create adapted agreements for 16-18-year-olds due to their limited contract capacity. These agreements will include safeguards like guarantors to protect the council's interests while ensuring the minor's rights.
 - **Licences:** We will grant licences where there is no exclusive possession of a dwelling or part of a dwelling.
 - **Non-Secure Tenancies/Licences:** These will be granted when fulfilling homelessness or homelessness prevention duties.
 - **Temporary Occupation Agreements:** We will offer licences or other suitable agreements when tenants must temporarily move due to major repairs, fire, flood, storm, or similar events.

5. Existing tenancies

- 5.1 We will provide all tenants with a written copy of the tenancy agreement. The document sets out both the responsibility of the tenant and the landlord.
- 5.2 We will ensure the tenancy agreement is provided in an accessible format and we will further provide alternative formats to meet the individual needs of our tenants, for example in alternative languages.
- 5.3 Introductory tenants will automatically become secure tenants after 12 months. The following exceptions may apply, in which circumstances we may extend the tenancy for a further 6 months or seek to end it:
- There are persistent rent arrears and/or the tenant is not engaging with the housing service
 - There are other breaches of the tenancy agreement, for example anti-social behaviour.
 - A notice of seeking possession has been served.

6. Demoted tenancies

- 6.1 The council may seek a demoted tenancy if a tenant(s) has engaged in anti-social behaviour or threatened to, or if a tenant(s) have been found guilty of a criminal offence.
- 6.2 Demoted tenants have similar rights to introductory tenants.
- 6.3 The length of the term of a demoted tenancy is 12 months initially but can be extended by 6 months.
- 6.4 If no breaches of tenancy occur during the demotion period, the tenancy automatically reverts to a secure tenancy. Full tenancy rights are then restored.
- 6.5 If breaches do occur within the 12-month period, the demotion period may be extended by a further 6 months or action taken to end the tenancy.
- 6.6 In the event that a Notice of proceedings for possession (NOSP) is served, a tenant has the right to appeal.

7. Succession

- 7.1 Succession rights exist for secure, introductory and demoted tenants only. Succession to a tenancy may be granted in accordance with the Housing Act 1985 (as amended) depending on whether the tenancy was granted before 1 April 2012 or after.
- 7.2 The Council will consider applications for succession on a case-by-case basis.
- 7.3 Factors to be considered when determining whether to grant succession include:
- The relationship between the applicant and the deceased tenant
 - The applicant's dependency on the deceased tenant
 - The applicant's connection to the property
- 7.4 Tenancies granted before 1 April 2012
A person has a legal right to succeed to a tenancy if, on the tenant's death:
- The deceased tenant was not a successor themselves.
 - They lived in the property as their sole or main home at the tenant's death and were the tenant's spouse or civil partner.
 - They lived in the property for at least twelve months before the tenant's death and were:
 - o Living with the deceased tenant as if they were spouses or civil partners.
 - o A child, parent, grandparent, grandchild, niece, nephew, aunt, uncle, brother, sister, step or half-relation of these, or an illegitimate or adopted child.
- 7.5 If a successful successor is not a spouse or civil partner and under-occupies the property, we will offer suitable alternative accommodation and seek repossession of the deceased tenant's property under Ground 15A of Schedule 2 of the Housing Act 1985.
- 7.6 Tenancies created on or after 1 April 2012

- 7.7 A person has a legal right to succeed to a tenancy if, on the tenant's death:
- The deceased tenant was not a successor themselves.
 - They lived in the property as their sole or main home at the tenant's death and were the tenant's spouse, civil partner, or living with the deceased tenant as if they were spouses or civil partners.
- 7.8 We will also grant succession rights to someone who lived in the property for at least twelve months before the tenant's death and was a parent, grandparent, child, grandchild, niece, nephew, aunt, uncle, brother, sister, step or half-relation of these, or an illegitimate or adopted child.
- 7.9 If a successful successor is not a spouse or civil partner or not living together as spouses or civil partners and under-occupies the property, we will offer suitable alternative accommodation and seek repossession of the deceased tenant's property under Ground 15A3. of Schedule 2 of the Housing Act 1985.
- 7.10 For all tenancies**
- A successor inherits the same tenancy type as the deceased tenant.
 - If multiple people qualify for succession, statutory succession rights take precedence. Otherwise, qualifying individuals must agree on the successor; there will be no joint succession. If they cannot agree, we will choose the successor.
 - Where succession is not applicable or if the successor and household under-occupy the property, eligible household members can join the housing register. There's no automatic right to the property in question or any other property. We will consider individual circumstances, including vulnerability due to age, disability, or illness, and households with children, to make the best use of our social housing stock.

8. Joint Tenancies

- 8.1 We will consider granting joint tenancies if the proposed joint tenant is the sole tenant's spouse, civil partner, or is living with the tenant as if they were. Both individuals must reside in the property as their primary home and treat the property as their sole or principal home at the time of application as well as meet our allocations policy criteria if applying independently.
- 8.2 We may refuse joint tenancy requests if:
- The proposed joint tenant has not lived with the sole tenant in the property as their main home for at least twelve months prior to the request.
 - The existing tenant has an outstanding possession order.
 - The existing tenancy is introductory, demoted non-secure.
 - A live notice of seeking possession or notice to quit is in place or has expired.
 - The applicant holds a tenancy for another property.
 - Either the existing or applying tenant has a tenancy-breaching criminal conviction.

- 8.3 We may refuse joint tenancy requests if:
- The applicant is a homeowner.
 - Rent arrears exist.
 - Other tenancy breaches, such as anti-social behaviour, have occurred without legal action.
 - The tenancy has a limiting covenant, such as a declaration to vacate an adapted property when no longer needed.
 - The applicant is a previous abuser of the sole tenant or a party to a dissolved joint tenancy.
- 8.4 Granting a joint tenancy always involves creating a new tenancy.
- 8.5 If one joint tenant dies, the tenancy is subject to succession rules outlined in section 6. If the surviving tenant has statutory or discretionary succession rights, the joint tenancy becomes a sole tenancy through succession.
- 8.6 Either joint tenant can renounce their tenancy interest with the other's agreement and the council's consent.
- 8.7 Converting a joint tenancy to a sole tenancy involves assigning the existing tenancy from joint names to the remaining tenant's sole name. This is done through a deed of assignment or release signed by both parties. Alternatively, the joint tenancy could be surrendered, or if necessary, a possession order obtained, and then a new tenancy created in the name of the sole remaining tenant.
- 8.8 We may refuse to agree to an assignment if:
- We believe it's not in the remaining tenant's best interest.
 - An undischarged possession order exists for both joint tenants.
 - Rent arrears exist.
 - We suspect the remaining tenant is being coerced into becoming a sole tenant.
 - We believe the departing tenant is being coerced into renouncing their tenancy interest.

9. Mutual Exchange

- 9.1 A mutual exchange occurs when two or more tenants swap homes.
- 9.2 When secure or assured tenants exchange homes, no new tenancies are created. The parties involved assign their existing tenancies.
- 9.3 For exchanges between a pre-1 April 2012 council secure tenant and a tenant from another provider with a fixed-term, flexible, or assured shorthold tenancy, new tenancies are created. The council secure tenant retains a lifetime tenancy. If the incoming tenant is an existing flexible tenant, they will be granted a secure tenancy.
- 9.4 For exchanges between a post-1 April 2012 council secure tenant and a tenant from another provider with a fixed-term or flexible tenancy, the exchange is done by assignment, and the council secure tenant inherits a flexible or fixed-term tenancy.
- 9.5 Eligibility for mutual exchange is determined by Section 92 and Schedule 3 of the Housing Act 1985.

- 9.6 Our tenants can exchange with other secure tenants, assured tenants, or flexible tenants of registered social landlords.
- 9.7 We will notify tenants of their exchange eligibility within 42 days of application. This may be conditional. During this time, we will:
- Inspect the council property
 - Conduct gas and electrical safety checks.
 - Provide a reference for our tenant to the potential new landlord.
 - Obtain a reference for the incoming tenant.
- 9.8 Introductory, non-secure, demoted, family intervention tenants, and licensees cannot participate in mutual exchanges.
- 9.9 For exchanges done by assignment (excluding pre-1 April 2012 secure and other provider flexible tenancies), we may refuse consent if:
- Either tenant has an undischarged possession order.
 - Either tenant is involved in possession, demotion, or injunction proceedings.
 - The council property is subject to a closure order.
 - An anti-social behaviour injunction is in place.
- 9.10 We may also refuse consent if:
- The council property is one bedroom larger than the incoming tenant's needs.
 - The incoming tenants would overcrowd the council property based on our allocations policy.
 - The property has significant adaptations for a physically disabled person that would no longer be needed.
 - The property is designated sheltered or supported accommodation and the incoming tenants do not meet the criteria.
- 9.11 If a tenant eligible for a mutual exchange is in breach of their tenancy (e.g., rent arrears without legal action), we may delay the assignment until the breach is resolved.
- 9.12 For exchanges involving a pre-1 April 2012 secure tenancy and a flexible tenancy, we will only refuse consent based on grounds in Schedule 14 of the Localism Act 2011 (including those in Schedule 3 of the Housing Act 1985), rent arrears, or other tenancy breaches.
- 9.13 We will subscribe to an internet-based mutual exchange service allowing tenants to:
- Register interest in a mutual exchange without fees.
 - Input property details and exchange requirements.
 - Receive details of properties matching their requirements.

10. Ending a tenancy

10.1 Notice to Quit

10.2 A tenant(s) can end their tenancy by serving a notice to quit. The notice to quit is a notice, in no specific format but containing the necessary information, which indicates a tenant's intention to give up possession to the landlord. The notice must be for a minimum of 28 days, although in certain circumstances a shorter notice period will be acceptable. This is called surrender- the ending of the tenancy agreement by mutual agreement between the tenant and landlord.

10.3 A tenant's notice to quit unilaterally ends the tenancy. The landlord need not agree: a valid notice to quit brings the tenancy to an end regardless.

10.4 Notice to quit and joint tenancies

10.5 Where there is a joint tenancy, one tenant can end the tenancy by serving notice to quit. This is the case even if the other tenant is unaware of the notice/and or the termination of the tenancy is against his or her wishes. The notice to quit must be served on HBBC, not the other tenant. Failure of one tenant to consult the other does not make any difference and the tenancy is still terminated.

10.6 After expiry of the notice, any person left residing in the property is technically a trespasser. In these cases, the Housing Service will consider the rights and circumstances of the remaining occupier, giving due regard to individual circumstances including any dependants.

10.7 If a tenant serves notice that is deficient, eg does not conform with legislative requirements, HBBC may still act on the notice and gain possession. However, in the cases of joint tenancies, where one tenant has served notice incorrectly, HBBC will not gain possession and therefore will not treat the joint tenancy as terminated.

11. Surrender

11.1 A surrender is an agreement between the landlord and tenant that a tenancy will come to an end. It can either be expressed, or implied. Surrender needs joint agreement by both the landlord and tenant to bring a tenancy to an end.

11.2 Express surrender must be in writing and signed by all relevant parties.

11.3 In certain circumstances, an implied surrender may take effect by operation of law. For implied surrender to take effect there must be evidence of conduct by both parties that clearly amounts to an acceptance that the tenancy has ended.

This may include:

Relinquishment of possession and its acceptance by the landlord;

Or

Other conduct by both parties consistent with the ending of the tenancy; such as returning the keys and acceptance by the landlord that the tenancy has ended.

12 Liability for rent

- 12.1 If a tenant serves notice to quit, the tenant's rent liability ends when the notice expires. If the tenant leaves the property without serving a notice to quit, their rent liability continues.
- 12.2 HBBC will then treat all rent liabilities as Former Tenant Arrears (FTAs).

13. Tenancy Sustainment

- 13.1 We will support tenant directly to help them maintain their tenancy or licence, and signpost or refer to appropriate organisations to provide this support. This may include a referral to our Tenancy Support officer or Welfare Support team.
- 13.2 We will consider the individual needs of a tenant or household, throughout the tenancy and before commencing legal action.
- 13.3 In the event that a Notice of Seeking Possession is served or a licence ends we will provide advice to the tenant(s) regarding their housing options.
- 13.4 We will provide tenants required to move with timely advice and assistance about housing options before the tenancy or licence ends, at the earliest opportunity.

14. Displaced tenants

- 14.1 We will provide tenants who are displaced through redevelopment or other works including a decant, a tenancy with no less security of tenure on their return to settled accommodation.
- 14.2 We will provide advice and assistance in line with our Decant Policy.

15. General Provisions

- 15.1 This policy will be reviewed regularly to ensure it remains current and effective.
- 15.2 A consultation will take place with tenants, any time a significant change is identified as having an impact on tenants.
- 15.3 The Council will consult with tenants who have registered as interested in our involvement activities at the time of consultation. Any council tenant can get involved in decision making processes by signing up with our Service Development Team.
- 15.4 Additional support for vulnerable tenants is available, such as providing this policy in different formats or languages. Staff will reference appropriate policies and re-issue communication where necessary, when dealing with a service request or tenancy case.
- 15.5 The Council will provide training to staff on the implementation of this policy.
- 15.6 The Council will maintain accurate records of all tenancy decisions and actions taken under this policy.

- 15.7 The Council will comply with all relevant legislation and guidance in the administration of this policy.
- 15.8 This policy is subject to the Council's overall policies and procedures.
- 15.9 We are committed to providing high-quality housing services and welcome feedback to help us improve. If you would like to provide feedback about this policy, any policy, or the service you have received from us, please contact us online at: hinckley-bosworth.gov.uk/housing or telephone 01455 238 141 and ask for the Service Development Team, or the department you want to speak to.

16. Accessibility

- 16.1 Hinckley and Bosworth Borough Council is committed to ensuring that all tenants can access and understand this policy, regardless of disability, language, or communication needs.
- 16.2 We will provide the tenancy policy and related documents in alternative formats upon request, including but not limited to:
- Large print
 - Braille
 - Audio format
 - Easy-read versions
 - Translations into other languages
- 16.3 Staff will be trained to identify and respond to accessibility needs and will offer support or signposting to appropriate services where necessary.

17. Equality and Diversity

- 17.1 Hinckley and Bosworth Borough Council is committed to promoting equality, diversity, and inclusion in the delivering of all housing services, including the allocation and management of tenancies.
- 17.2 We will ensure that all tenants and applicants are treated fairly, with dignity and respect, and without discrimination on the grounds of:
- Age
 - Disability
 - Gender reassignment
 - Marriage or civil partnership
 - Pregnancy and Maternity
 - Race
 - Religion or belief
 - Sex
 - Sexual orientation
- 17.3 We will also make reasonable adjustments to support tenants with disabilities in understanding and engaging with tenancy-related processes, in line with the Equality Act 2010.