

**DECENT & AFFORDABLE HOMES PDG
26 JANUARY 2016**

PROPOSED CHANGES TO THE TENANCY AGREEMENT

Cabinet Member Cllr Ray Stanley
Responsible Officer Housing Services Manager

Reason for Report: To agree the proposed changes to the draft Tenancy Agreement prior to consultation with tenants.

RECOMMENDATION(S): To seek Cabinet approval for the Council to consult with its respective tenants in accordance with sections 102 and 103 of the Housing Act 1985 on the proposed changes to the draft tenancy agreement.

Relationship to Corporate Plan: The provision of good quality housing in the public sector is a priority for the Council and there is a commitment to achieve this by managing our Council homes efficiently. A robust tenancy agreement which sets out the rights and responsibilities of tenants and the Council will enable efficient and effective management of our homes.

Financial Implications: Reviewing the tenancy agreement involves detailed consultation with tenants, staff and stakeholders. This will lead to some additional expenditure which will be contained within existing budgets in the Housing Revenue Account.

Legal Implications: As a registered provider (RP) of social housing, the Council is obliged to take account of the standards contained within the revised regulatory framework which is administered by the Homes and Communities Agency (HCA). This states that RPs should meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements or terms of occupation.

Section 102 and 103 of the Housing Act 1985 provides that in England and Wales the terms of a secure tenancy (other than those implied by statute) may be varied, therefore correct compliance with legislation is a requirement to prevent any legal challenges.

The Consumer Rights Act 2015 now replaces the Unfair Terms in Consumer Contracts Regulations 1999. Landlords are required to avoid unfair terms in their tenancy agreements. Using unfair terms in the tenancy agreement could have a number of consequences on the landlord.

Risk Assessment: It is good practice to review tenancy agreements on a regular basis to take account of changes to legislation and to ensure that housing management staff have the tools available to manage the housing stock efficiently and effectively.

1.0 Introduction

1.1 This report seeks Cabinet approval of the proposed changes to the tenancy agreement and to agree that the Council consults with its secure tenants in accordance with sections 102 and 103 of the Housing Act 1985. This report

sets out the reasons for undertaking the review and varying the existing tenancy conditions. **Appendix 1** contains a copy of the draft tenancy agreement.

- 1.2 The Council currently operates nine different tenancy agreements. The revised tenancy agreement amalgamates these documents into one.
- 1.3 Prior to implementation of the tenancy agreement, as part of the statutory consultation process, all current secure tenants need to be consulted on the proposed changes to the draft tenancy agreement. Under Section 105 of the Housing Act 1985, the Council has a legal obligation to consult its secure tenants on “matters of housing management” which in the opinion of the Council represent a change in the practice or policy of the authority.
- 1.4 The Council consults secure tenants by serving a Preliminary Notice. This will explain that the Council intends to vary the tenancy agreement, why the Council wishes to do so, together with a summary of the proposed changes and a copy of the draft tenancy agreement. Tenants will be encouraged to comment through the completion of a feedback form, email, telephone, by social media such as Facebook or Twitter or attending one of a number of drop in sessions.
- 1.5 Under Section 105 of the Housing Act 1985, flexible tenants should also be consulted as those tenancies that are renewed at the end of the fixed term, will be signed up to the new tenancy agreement, therefore we need to be making tenants aware of the proposed changes
- 1.6 Members are asked to agree to the proposed changes to the tenancy agreement. They are also asked to give approval for the Council to commence consultation with secure tenants in accordance with the provisions of sections 102 and 103 of the Housing Act 1985.

2.0 Background

- 2.1 A tenancy agreement is a legally binding document, which sets out the responsibilities of the Council as landlord and the tenant as the occupier of a property. The Council operates nine different types of tenancy agreements relating to introductory, secure and flexible tenancies. The clauses of the tenancy agreement are important to both the tenant and the Council as they set out rights and responsibilities. The Council can take enforcement action based on the agreement made by a tenant when they sign their tenancy in cases where there is anti-social behaviour (ASB) or neighbourhood nuisance caused by people living in our properties.
- 2.2 The Housing Act 1985 is one of the main sources of legislation for the regulation of the relationship between the Council and its tenants. The procedure for varying existing secure tenancies is contained in sections 102 and 103. Section 102 provides that a secure tenancy agreement may be varied by agreement or by way of the procedure in section 103.
- 2.3 The procedure in section 103 is that the terms of an existing secure tenancy may be varied by the Council by the service of a Notice of Variation on the

tenant. However, before the Council can serve this Notice, the Council must firstly serve a Preliminary Notice which informs the tenant of the Council's intention to serve a Notice of Variation. It must specify the proposed variation/s and its effect/s and invites the tenant to comment on the proposed variation/s within a period considered reasonable by the Council. The Council must consider any comments made by tenants within the consultation period before deciding to serve the Notice of Variation.

2.4 The current version of the introductory and secure tenancy agreements were introduced in 2010. Since then, flexible tenancies (2 and 5 year terms) have been introduced and this created an opportunity to revisit the conditions of tenancy and amend them where appropriate to be in line with statutory requirements and good practice.

3.0 Consultation undertaken

3.1 During the period 16 March 2015 to 11 May 2015 we consulted with tenants using Facebook and Twitter to seek their views and ideas on what should be included or removed from the tenancy agreement. Only one reply was received; this was in connection with tenants being asked if they would like the new tenancy agreement to have pictures that made reference to the clauses. For example, the clause relating to Rent and Charges should be identified by a pound symbol, and that relating to ASB identified by a dog barking symbol. The reply was in favour of introducing pictures.

3.2 Staff were consulted via a discussion thread on the proposed clauses to the tenancy agreement during the period 10 March 2015 to 10 April 2015. One reply was received this was in connection with the following:-

- To encourage tenants to have a spare key somewhere safe so that it can be used to gain entry if the keys are lost;
- To highlight that it is a tenant's responsibility to reduce damp, mould and condensation through ventilation and control moisture;
- To advise tenants that they must request permission including any relevant asbestos information before carrying out any refurbishment work;
- To prevent tenants from using the loft space for storage space;
- When a tenant requests a repair, if they intentionally give incorrect information to the call centre to increase the priority, to add a clause that we reserve the right to charge them for any costs incurred, for example an administration fee;
- To advise tenants that any work we carry out for them such as securing and re-glazing, we will recharge for any costs incurred.

3.3 The April 2015 edition of Housing News 4 U newsletter invited tenants to share their ideas on what they would like to be included in their tenancy agreement. They were given the opportunity to get involved in reviewing the tenancy agreement through focus groups, email, and telephone or questionnaire consultation. No replies of interest were received.

3.4 During the year, staff have, on an ad hoc basis, made recommendations. These have been incorporated into the draft tenancy agreement, where appropriate.

- 3.5 Tenants Together approved the draft tenancy agreement at their meeting on 12 November 2015.
- 3.6 Section 105 of the Housing Act 1985 compels the Council to undertake consultation with tenants in relation to the review of the tenancy agreement. This advises the tenant that the Council is considering making changes to the terms and conditions of the tenancy agreement. This consultation is proposed to commence January 2016.

4.0 Consultation proposed

- 4.1 The Council is required to serve Notice on tenants in accordance with sections 102 and 103 of the Housing Act 1985. It is proposed that this consultation will commence late February/early March 2016.
- 4.2 At the end of the consultation period, a formal Notice of Variation will be sent to all secure tenants giving them notice of the date that the new terms and conditions of the tenancy agreement will come into effect. It is proposed that this will be sent in May 2016.
- 4.3 Once the new tenancy agreement is issued with the Notice of Variation, it will come into effect twenty-eight days later. It is proposed that the new tenancy agreement will be implemented with effect from June 2016.

5.0 Proposed changes

- 5.1 The current tenancy agreements have been reviewed to take into account changes in legislation and good practice. There are new sections and sub-sections that do not feature in the current tenancy agreements. Some clauses have been re-worded and the numbering, titles and layout of the agreement has been adapted to make the agreement more user friendly.
- 5.2 The revised tenancy agreement has also taken into account the following:
- The amalgamation of existing tenancy agreements into one to enable the Council to use one tenancy agreement for all types of tenancies offered;
 - The current introductory and secure tenancy agreement has been in use since 2010 and needs updating;
 - Changes in the law such as the Anti-social Behaviour (ASB), Crime and Policing Act 2014. The law has introduced simpler, more effective powers to tackle ASB and provides better protection for victims and communities;
 - Changes to the way some people receive benefits. Universal Credit was introduced to Devon in November 2015. If a tenant is eligible to receive benefit for housing costs, this benefit is now paid directly to them or to a member of their household, it is still the tenant's responsibility to make payments to cover the rent charge.
 - Proposed changes to legislation such as Pay to Stay which will require higher earning households to pay either nearly market rent or full market rent for the property they live in.

- The move away from charging rent over 48 weeks each year to charging rent over 52/53 weeks with effect from April 2017.
- The layout of the agreement so that a tenant will find it easier to read and understand.

5.3 There are a number of new sub-sections that have been introduced to the draft tenancy agreement to make it easier to identify clauses and also to introduce new clauses and to strengthen existing clauses. These include the following:-

- Introduction and welcome to Mid Devon District Council
- Former arrears
- Household bills
- Financial assistance
- Advice and support services
- Threats to employees and contractors
- Misrepresentation
- Gang membership
- Living in your home
- Overcrowding
- Lodgers
- Subletting
- Changed circumstances
- Using your property
- Running a business
- Refuse
- Being away from home
- Our responsibilities as a landlord
- Your responsibilities as a tenant
- Gas safety
- Assignment by way of exchange
- Ending the tenancy during the fixed term of a flexible tenancy
- Retraction of notice
- Transfers
- Moving out
- Personal information
- Making contact
- Minors
- Household changes
- Court orders
- Tenancy fraud
- Changes in the law

5.4 A table has been included at the end of the draft tenancy agreement which sets out the rights of tenants. This allows tenants to see at a glance some of their rights such as who has the right to mutual exchange or the right to be consulted on housing matters.

5.5 The definitions have been included at the end of the draft tenancy agreement. These have been updated to reflect the amalgamation of the tenancy agreements into one and reflect all types of tenancies offered by the Council.

5.6 The draft tenancy agreement is subject to change. Before making a decision on whether to take some or all of these changes forward we will consider all representations made in response to the consultation exercises carried out.

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Circulation of the Report: Councillor Ray Stanley, Management Team

List of Background Papers: A copy of such papers to be made available for public inspection and included on Website