

Tenure Policy

This is a new group-wide policy and must be read in full by all colleagues

Policy statement

Home Group offers a range of tenure types to ensure that we are using the most appropriate form of tenure for our customers and clients. Home needs to respond effectively to supply and demand, making the best use of our homes so that the housing needs of the communities we work in are met.

Under the Localism Act 2011 local authorities in England are required to publish tenancy strategies to guide registered social housing providers in developing tenure policies for their own stock. We take account of local authority tenancy strategies to help us meet the needs of local communities whilst delivering the right outcomes for Home Group's customers and clients.

Supporting vulnerable customers and clients

We work right across Home group to actively support vulnerable customers and clients. We will support customers to remain in their homes and offer appropriate advice and support to fulfil the conditions of their tenure agreements.

We refer vulnerable customers in general needs housing to floating support services or other support services where applicable and available. We take into account the needs of households who are vulnerable by reason of age, disability or illness and households with children. We offer specialist older persons' housing and a range of adapted and specially designed properties for people with disabilities where available and where appropriate.

We have specialist supported housing offering different types of tenure both licences and tenancies, and provide support dependent on the individual needs of the client.

Eviction

We will normally evict only as a last resort, unless there is a risk of serious harm to person(s), property or community or in cases of proven tenancy fraud.

Lodgers and sub-letting

Customers may take in lodgers or sublet part of the property (or the whole property in Scotland) subject to certain conditions and with our written permission. We publish details on how customers can do this.

Policy scope

This document sets out Home Group's standards for practice with regard to offering and managing tenure agreements across the Group and meeting relevant legal and regulatory requirements.

This document is an interim policy. Changes in relation to welfare reform and the introduction of fixed term tenancies (under the Localism Act 2011) in England mean that this policy may be subject to review. We will consult with our customers, clients and other stakeholders where we make major changes to the policy.

The Homes and Communities Agency, which regulates registered providers of social housing (i.e. Housing Associations) in England and the Scottish Housing Regulator in Scotland, require us to have a policy on tenure. In accordance with this requirement, this policy sets out the different tenancy, licence and occupancy agreement types that we offer to customers and clients in rented properties across Home Group.

This policy applies to the following Home Group business areas and subsidiaries:

- Customer Service, including:
- Customer Service in England and Scotland;
- Home Scotland, including Mid-Market Rent;
- Livesmart;
- Customers renting Home Group garages;
- Care & Support, including:
- Home Prime;
- Stonham;
- Stonham agency managed schemes;
- Bail Accommodation Support Service (BASS);
- Home Support Scotland.

This policy does **not include** Homeownership (including leasehold, leasehold retirement and shared ownership).

For the purposes of this policy, customers, Home Prime tenants, and garage renters will all be referred to as 'customers'. People living in non-sheltered supported accommodation (for example with Stonham or BASS), whether supported or independent, will be referred to as 'clients'.

Legal and regulatory context

The following laws and regulatory frameworks are relevant to this policy.

England

The **Protection from Eviction Act 1977** made it mandatory for landlords to obtain a court order before evicting a tenant or licensee. This does not apply to licences given to occupants in shared or hostel accommodation. Standard 8 of this policy sets out the definition of a tenancy, as opposed to a licence. We will only offer a licence when the conditions for a tenancy are not met and that licences that are not excluded from the Protection from Eviction Act can only be ended by a court order. Further detail, including grounds for possession are included in individual tenancy and licence agreements.

The **Housing Act 1980** introduced secure tenancies for tenants of housing association and local authority housing. However, the **Housing Act 1988** abolished secure tenancies for new housing association tenants from January 1989 and replaced them with assured tenancies. It also introduced assured short hold tenancies. The section in this policy on secure, assured and assured short hold tenancies outlines when we will offer assured tenancies in line with legislation. The **Housing Act 1985** outlines succession rights for secure tenants, which are contained in the succession guidance in this policy. The **Housing Act 1996** made it a requirement for landlords to serve a notice on a new assured tenant stating that the tenancy is not an assured short hold tenancy. This is stated in the section of this policy on assured short hold tenancies.

The **Housing and Regeneration Act 2008** changed registered social landlords into Registered Providers, with a more stringent regulatory regime than previously. This policy meets the Tenancy Standard under the Homes and Communities Agency regulatory framework by outlining the types of tenancy we offer, our approach to tenancy management and how we deal with tenancy fraud (via a link to our Unlawful Subletting policy).

Under the **Localism Act 2011**, Registered Providers can choose to offer fixed term tenancies for a minimum of five years, or two years in exceptional circumstances. Standards 14 to 18 set out the circumstances in which we will offer fixed term tenancies, when we will not renew a fixed term tenancy on its expiry and the legal requirements for ending such a tenancy.

Scotland

The **Housing (Scotland) Act 1987** details the rights of housing association tenants. Home's Tenure policy sets out the rights of Scottish secure tenants, as amended by the **Housing (Scotland) Act 2001** in the 'Key Definitions' section and in Standard 22 on succession.

The **Housing (Scotland) Act 1988** introduced assured and Scottish short assured tenancies for private sector housing. The Key Definitions section of this policy confirms that we will use Scottish short assured tenancies for mid-market rented properties.

The **Housing (Scotland Act) 2010** introduced the pre-action protocol which must be followed before taking possession action for rent arrears. This policy makes it clear that eviction of Home Group customers and clients is a last resort. However, more detail on the protocol for customers is contained in the Income Management policy and guidance.

The **Rent (Scotland) Act 1984** makes it a criminal offence for a landlord to evict a tenant without a court order. The Scottish secure tenancy section of this policy states that we will issue Scottish secure tenancy agreements (the most secure form of tenancy available in Scotland) as the standard tenancy for permanent accommodation. Further detail, including grounds for possession are included in individual tenancy agreements. Guidance for colleagues on gaining possession is included in other Home Group policies such as Income Management and Anti-Social Behaviour. Further detail on how legal and regulatory requirements are addressed in this policy and supporting guidance can be found in the guidance folder accompanying this policy.

Relevant regulatory frameworks

- Scottish Social Housing Charter (Scotland)
- Homes and Communities Agency Tenancy Standard(England)
- Supporting People Quality Assessment Framework (QAF)(England)

This policy should also be used in conjunction with Home Group's allocations and lettings policy with particular reference to local lettings plans/initiatives to ensure that neighbourhoods are supported.

Standards

Standard 1 Appropriate tenure

We offer types of tenure which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community and which make the best use of our housing stock.

Standard 2 Security of tenure

In England, we grant customers who were social housing tenants on 1 April 2012 and have remained social housing tenants since that date, a tenancy with no less security when they choose to move to another social rented home. This does not apply where tenants choose to move to accommodation let on Affordable Rent terms or where they move to Family Intervention Tenancies. It also does not apply in Scotland.

Standard 3 Accessibility

We make every effort to ensure that customers and clients understand the agreements they sign. We provide copies of agreements in a variety of languages and formats to meet the needs of our customers and clients. Where there is a reasonable belief that a client or customer may lack the mental capacity to understand their tenure agreement, we act in line with the provisions of the Mental Capacity Act 2005 in England and the Adults with Incapacity (Scotland) Act 2000. Further information on the 2005 Act is available in the Mental Capacity Act guidance.

Standard 4 Appeals

We support clients' and customers' right of appeal wherever eligible, according to type of tenure. Some tenancies have a right of appeal, whereby customers can appeal against the length of tenancy offered or against a decision by Home Group to end the tenancy. These include starter tenancies (see starter tenancies appeals guidance); Scottish short assured tenancies and fixed term tenancies. Legal notices can be served whilst an appeal is on-going if necessary. Further information on appeals by Stonham clients can be found in the Stonham appeals guidance.

Standard 5 Decants

Where customers or clients move to alternative accommodation during any redevelopment or other works in agreement with us, we will give them a tenancy with no less security of tenure on their return to settled accommodation. This is in line with our Decants policies and resources.

Standard 6 Approving changes to tenure

Changes to tenure in existing Care & Support services are consistent with the Tenure policy, and will be formally approved using the approval and exceptions process.

Standard 7 Charges

Our tenure agreements state the rent or occupancy charge payable, plus any associated payments due, such as service charges. Charges are set out either in the agreement or in an attachment to the agreement.

Standard 8 Establishing conditions of tenancy

In order to determine whether a tenancy exists, we will first establish whether the following conditions of tenancy exist

- there are identifiable parties (i.e. a landlord and an occupier);
- there is a defined area of occupation (e.g. a room or a flat/house);
- the agreement must relate to particular period or cycle of time, for example, for 6months/12 months or for an indefinite periodic tenancy, e.g. from week to week or month to month;
- the occupier must have exclusive possession of at least part of the premises and will usually pay a charge for occupation of the accommodation (the rent).

Further information on identifying and issuing the correct form of tenure is available in the guidance folder accompanying the policy.

Standard 9 Licences

Where conditions of tenancy are not met, a licence may be used instead. We apply the same standards to the management of licences, starter tenancies and fixed term tenancies as we do to assured and Scottish secure tenancies.

Standard 10 Types of tenure offered

We use only the following types of tenancy, licence and occupancy agreements (see key definitions below)

- Scottish Secure tenancies
- Short Scottish Secure tenancies
- Short Assured tenancies
- Assured tenancies
- Assured Short hold tenancies including
- Starter tenancies
- Demoted tenancies
- Secure tenancies
- Fixed Term tenancies
- Licences (various types)
- Equitable tenancies
- Occupancy agreements (various)
- Supported lodgings agreements
- Garage licences
- Garage lease agreements

Starter tenancies (England only)

Standard 11 Offering starter tenancies

We offer starter tenancies in general needs housing in England only, in predetermined geographical areas and in agreement with local authorities. We manage starter tenancies in line with our starter tenancies guidance. The guidance includes information on how we choose which areas to offer starter tenancies.

Where a new customer moves from a secure or assured tenancy with another social landlord, we offer them a periodic assured tenancy, not a starter tenancy. We do not offer starter tenancies to existing Home Group customers.

Standard 12 Length of term of starter tenancies

Starter tenancies usually last for a maximum of 12 months and automatically convert to assured tenancies provided that there is no breach of the tenancy conditions. Starter tenancies may be extended to a maximum of 18 months from commencement of tenancy only where the reasons for extending the probationary period have been given in writing to the customer and the customer has had the opportunity to request a review.

Fixed term tenancies (England only)

Standard 13 Offering fixed term tenancies

We offer fixed term tenancies in England only, in line with our fixed term tenancies guidance, which is consistent with the Localism Act 2011. We offer 5-year fixed term tenancies only in agreement with our local authority partners. We do not offer fixed term tenancies for periods of more or less than 5 years and do not normally vary the terms of the tenancy 'offer' for different local authorities

Standard 14 Length of term for fixed term tenancies

Our primary option for general needs properties is to continue to offer lifetime tenancies, with built in starter tenancy periods in many areas. Where we offer fixed term tenancies in starter tenancy areas (see standard 11), we offer 12-month starter tenancies, followed by 5-year fixed term tenancies. We do not offer fixed term tenancies in Scotland or in sheltered accommodation

Standard 15 Where fixed term tenancies are not offered

Applicants and customers wishing to be re-housed in our properties, who were social housing tenants on 1 April 2012 and have remained social housing tenants since that date, will be granted assured tenancies, even if we re-house them in areas where we use fixed term tenancies.

Standard 16 Renewing fixed term tenancies

We aim to renew fixed term tenancies in the majority of cases. On expiry of the fixed term, we will not grant another tenancy in the same property if one or both of the following applies:

- The customer is under-occupying the property by one bedroom or more;
- There has been a breach of tenancy that would normally lead to Home taking eviction proceedings if the customer had an assured or secure tenancy.

Standard 17 Providing notice before the end of the fixed term

Before a fixed term tenancy ends, we provide a minimum of 6 months' notice in writing to the tenant stating either that we propose to grant another tenancy on the expiry of the existing fixed term or that we propose to end the tenancy. We will always offer reasonable information and assistance to the affected customer around their housing options wherever we end a fixed term tenancy. This will include advice on how to find alternative housing, including within Home Group where appropriate.

Family Intervention Tenancies**Standard 18** Offering family intervention tenancies

We offer Family Intervention Tenancies (FITs) in dispersed accommodation or purpose-built units where intensive behavioural support is provided for the customer or client. The support provided is outlined in a written behaviour support agreement.

Standard 19 Conditions for offering family intervention tenancies

We offer Family Intervention Tenancies only where the following three conditions are met:

- A possession order has been made against the tenant or would have been made in relation to an assured or secure tenancy;
- And the purpose of the FIT is to provide behavioural support services; and
- We have served a Notice containing prescribed information to the customer/client. This includes but is not limited to why the FIT is being offered, the main terms of the tenancy and any loss of security of tenure the customer/client will suffer if they take up the offer.

Other agreements**Standard 20** Other agreements

We may develop occupancy agreements that differ from those above, as we continue to develop new services and work in partnership with other organisations to meet housing and support needs. We make existing customers, clients and prospective applicants who may be eligible, aware of new agreements as these become available.

Succession**Standard 21** Supporting succession rights

We follow clear processes in our succession guidance which support the right of spouses, civil partners or family members to succeed to tenancies in specified circumstances. These rights vary according to the tenancy agreement. However, there can be only one statutory succession in England or two statutory successions in Scotland. Many Customer Service tenancies include the right for a spouse or civil partner (or in some cases a family member) to take on the tenancy in the event of the death of the tenant.

Standard 22 Factors affecting succession rights

In exceptional circumstances, where an application for succession is made and the individual does not meet the qualifying criteria, we may exercise our discretion to offer them the same or alternative accommodation. This will depend on a number of factors, including (but not limited to):

- The relationship of the individual to the deceased tenant;
- How long they have lived in the property;
- Any vulnerability issues relating to the individual;
- Any breaches of tenancy that the individual may have contributed to;
- Any immigration issues and the individual's right to remain in the UK;
- The size and nature of the property and any adaptations that have been carried out.
- Demand for the property

Occupiers may appeal against our decision to refuse a request for non-statutory succession to a tenancy. Further information on succession can be found in the Succession guidance and in tenancy agreements.

Mutual exchange

Standard 23 Supporting mutual exchange

We offer customers in England and Scotland the opportunity to move home via mutual exchange wherever eligible, in line with our mutual exchange guidance. A mutual exchange enables customers to move by swapping their tenancy with another customer, either a Home customer or a tenant of another social landlord. We subscribe to HomeSwapper, an internet-based mutual exchange service which enables eligible customers to gain access to opportunities to exchange their properties. There may be some circumstances where we will refuse to allow a mutual exchange. Further details can be found in our mutual exchange guidance.

Standard 24 Security of tenure following mutual exchange

Where a customer undertakes a mutual exchange, we will grant them a tenancy with no less security, provided that they were a social housing tenant on or before 1 April 2012 and have remained a tenant of a Registered Provider or local authority since that date. This does not apply where customers choose to move to accommodation let on Affordable Rent terms.

Assignment/assignation of tenancy

Standard 25 Supporting the assignment / assignation of tenancy

Assignment (England) and assignation (Scotland) are the transfer of the tenancy during the life of the tenant. An assignment of tenancy does not create a new tenancy and in some cases may count as a succession. Customers' rights to assign their tenancies vary according to the type of tenancy agreement. We require customers to apply to Home for permission to assign the tenancy and the application will be processed in accordance with our Assignment/Assignation and Tenancy Changes guidance which follows legal and regulatory requirements.

Tenancy fraud

Standard 26 Tackling tenancy fraud and unlawful subletting

We take steps to ensure that our homes continue to be occupied by the customers and clients they are let to in accordance with the requirements of the relevant tenure agreements. This takes into account customers undertaking a mutual exchange. We follow Home's Customer Service Unlawful Subletting policy.

House rules in care and support services (including rules relating to visitors)

Standard 27 Underpinning principles for house rules

All house rules must be written in plain language. They must be fair, reasonable and appropriate to the specific needs of the service.

Standard 28 Client involvement

Clients are involved in reviewing existing rules and developing new house rules.

Standard 29 Links to tenure agreement

House rules are attached as schedule 4 to the tenure agreement, signed and dated by a member of staff and the client.

Standard 30 House rule reviews

House rules are reviewed at least every 12 months. Those that are time limited will be reviewed more frequently.

Key Definitions

Assured shorthold tenancy (AST)	Assured shorthold tenancies (ASTs) were introduced in England, along with Assured tenancies, by the Housing Act 1988. Under the Housing Act 1996 there is a presumption that all new tenancies created after 8 February 1997 are assured shorthold unless notice is given to the contrary. ASTs are a form of Assured tenancy, but in Home Group are mainly issued for temporary housing or as starter tenancies (see below). We will use ASTs for Livesmart (market rented properties in England) and in short term accommodation, such as some Stonham services.
Assured tenancy	Assured tenancies were introduced in England by the Housing Act 1988. By law, new tenancies granted in England after January 15, 1989 which do not satisfy any other criteria in this policy are assured. We issue assured tenancies as the standard occupancy agreement to new customers if their accommodation is intended to be permanent. However, in some geographical areas, the standard tenancy type for new customers in general needs properties will be starter or fixed term tenancies.
Demoted tenancy	Demoted Tenancies are assured or Scottish secure tenancies which have been demoted to assured shorthold or short Scottish secure tenancies for a set length of time by court order. We will use demoted tenancies as part of our actions to tackle anti-social behaviour.
Equitable tenancy	We will offer Equitable Tenancies to persons aged of 16 and 17 in England. This is because under 18s in England are unable to hold a legal interest in land and cannot therefore be given an Assured tenancy. There is no requirement for Equitable tenancies in Scotland and 16 & 17 year olds will be offered the same tenancy types as those aged 18 or over in Scotland.
Family Intervention Tenancy (FIT)	Family Intervention Tenancies (FITs), introduced in England by the Housing and Regeneration Act 2008 are tenancies without security of tenure. They may be offered to anyone with an assured or secure tenancy who is subject to a possession order on the grounds of anti-social behaviour or domestic violence, or who could be if they had an assured or secure tenancy. We use FITs to help deliver intensive support for a set period. The support must be outlined in a written behaviour support agreement. The accommodation can be dispersed or purpose-built units, but cannot be the customer's or client's original home.
Fixed term tenancy / Flexible tenancy	Fixed Term Tenancies (also known as flexible tenancies) were introduced in England by the Localism Act 2011. They are a form of assured shorthold tenancy and last for a set period. However, they may be renewed at the end of each fixed period.
Garage licence / lease	We offer garage licences/leases to customers renting garages from Home Group in England/Home Scotland. Garage licences/leases do not cover residential accommodation.
Licence	Licences are different from tenancies and offer fewer rights to occupiers. We will offer licences only in circumstances where conditions for the creation of a tenancy are not met (see 'Conditions of Tenancy', above). We will use licences in a variety of different settings including residential care homes, respite care, very short-stay hostels, drug and alcohol services, lodging schemes and refuges. Non-excluded licences are covered by the Protection from Eviction Act 1997 and can only be ended by Home Group via a court order. Excluded licences are excluded from the Protection from Eviction Act 1977. They are used in shared accommodation and do not require a court order to be ended. We offer excluded and non-excluded licence agreements in Care and Support.

Occupancy agreements	We offer occupancy agreements for short term, temporary accommodation such as decant accommodation. There are different agreements depending on the nature of the accommodation and the requirements of any referring agencies.
Scottish secure tenancy (Scotland only)	Scottish secure tenancies were introduced by the Housing (Scotland) Act 2001. By law, from 30 September 2002, any tenancies in Scotland which do not satisfy any other criteria in this policy are Scottish secure. Home Scotland will issue Scottish secure tenancies as the standard agreement to new customers if their accommodation is intended to be permanent.
Secure tenancy (England only)	Secure tenancies were introduced in England by the Housing Act 1980 (subsequently, consolidated in the Housing Act 1985). Secure tenancies were offered to customers whose tenancies started before 15 January 1989. Home Group will only use secure tenancy agreements in the following circumstances: <ul style="list-style-type: none"> • When an existing secure tenant of Home Group transfers to another property with Home Group • When a secure tenancy is assigned by mutual exchange. The new, incoming tenant is then secure. This will not apply where a secure tenant exchanges with a tenant on an affordable rent.
Short assured tenancy (Scotland only)	Mid market rented properties in Scotland are let on short assured tenancies within the meaning of section 32 of the Housing (Scotland) Act 1988. Home Group Limited is the landlord with Home Scotland as the managing agent. A short assured tenancy is for a 12 month period. If it does not terminate at the end of the 12 months it will continue until the tenant gives us 2 months notice or we take legal action to recover possession of the property. These tenancies are also offered when Home Scotland does not own but manages the property on behalf of others.
Short Scottish secure tenancy	Short Scottish secure tenancies were introduced by the Housing (Scotland) Act 2001. They are short term or probationary tenancy agreements which are given to tenants for lets for a trial period, after which the tenancy may be upgraded to a Scottish secure tenancy, or for temporary lets. A support package must also be in place alongside the tenancy. Under certain circumstances, for example, if an Anti-Social Behaviour Order has been granted, a tenancy may be demoted from an SST to a SSST.
Starter tenancy	Starter tenancies are assured shorthold tenancies in England, used for a 'probationary period' at the start of a new tenancy. They normally convert to assured tenancies after 12 months, provided that there has been no breach of the tenancy conditions. They are used only in predetermined geographical areas and in agreement with our local authority partners and customers. We offer a variation on the Home Group standard starter tenancy, depending on the rent charged: for properties let on a 'social' rent versus properties let on an affordable rent. Both agreements are the same apart from the section on how we set the rent.
Supported lodgings agreements	Supported Lodgings is a unique care and support service for young people. Stonham matches the young person with a private householder, known as a 'host', who provides a safe and homely environment that enables the young person to develop their life skills until they are ready to live independently. The supported lodgings agreement is an agreement between the young person and the host and may include an agreement with Stonham.

Information about this policy

Policy owner	Margarita Morrison	Date effective from	1st April 2013
Job Title	Director of Customer Service (North)	Version No.	1.3
Policy Author (name and department)	Sharon Whitehurst Quality Improvement Consultant	Policy reference number	HG_GRP_HSG_135
Approved By	National policy panel Jan 2013	Next Review of Policy Due	January 2016

Date initial Equality Analysis carried out

August 2012

Date(s) equality analysis reviewed

Version history

Version No.

1

Description of Changes

This is a new group wide policy. In Customer Service, this policy replaces the following policies:

- Starter tenancies
- Succession
- Home Scotland Short Scottish Secure Tenancies

In Stonham this policy replaces the following policies:

- Tenure
- House rules and visitors

The principles and standards contained in the pre-existing policies listed above remain unchanged, except for the following:

- The Care & Support Tenure Policy. The standard on offering the most secure form of tenure appropriate to the accommodation has been amended in line with the new HCA regulatory standards.
- The 7 grounds for creation of a short Scottish secure tenancy (SSST) have been summarised, but are shown in full in the SSST guidance

Additional policy standards reflecting new legal and regulatory requirements in relation to working with local authority partners, fixed term tenancies and mutual exchange have been introduced. Any further changes to pre-existing policies will be reflected in the separate processes and additional guidance.

