



BRIEFING PAPER

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Social housing: the end of 'lifetime' tenancies in England?

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Summary

Long-term security of tenure was introduced for most social housing tenants by the *Housing Act 1980*. The *Housing Act 1988* subsequently introduced the assured tenancy regime for housing associations, this regime has applied to most new housing association tenancies created since 15 January 1989. The level of security of tenure offered by these tenancies has led to them being described as 'lifetime tenancies.' Essentially, with some limited exceptions, if a secure or assured tenant does not breach the conditions of their tenancy agreement they cannot be evicted.

The Coalition Government legislated to give local authorities and housing associations discretion to offer fixed-term tenancies to social housing tenants in England. The *Localism Act 2011* introduced a power for local authorities to offer "flexible tenancies" to new social tenants after 1 April 2012. Flexible tenancies are secure fixed-term tenancies with a minimum term of two years.

The 2011 Act also allowed housing associations to offer fixed-term tenancies to all new tenants after 1 April 2012. Previously, housing associations were required to offer tenants the "most secure" form of tenancy, meaning the majority of tenants were offered 'lifetime' assured tenancies. However, changes to the *Regulatory framework for social housing* removed this requirement, giving housing associations the power to offer fixed-term tenancies to all new tenants.

The Government said the changes were intended to give local authorities and housing associations greater freedom to manage their housing stock, ensure that social housing is allocated to those who need it most, and to ensure that lifetime tenancies are not given to tenants irrespective of how their circumstances might change in the future.

There has been very limited take-up of fixed-term and flexible tenancies by councils and housing associations. The [Equality Impact Assessment on Lifetime tenancies](#) (May 2016) states that in 2014/15 "only 15% of social housing tenancies were let on a fixed-term basis." In the Summer Budget 2015 the Government announced that it would "review the use of lifetime tenancies in social housing to limit their use...and ensure the best use is made of the social housing stock."

In December 2015, during the [sixteenth](#) sitting of the Public Bill Committee on the *Housing and Planning Bill 2015-16*, the Minister, Marcus Jones, introduced new clauses aimed at phasing out lifetime tenancies. These provisions are now contained in sections 118, 119 and Schedule 7 to the *Housing and Planning Act 2016*. The Minister explained that the new provisions would prevent local authorities in England from offering secure tenancies for life in most circumstances. He noted that social landlords had not taken advantage of the discretionary powers introduced by the *Localism Act 2011* and said that continuing to offer social tenancies on a lifetime basis did not represent an efficient use of scarce social housing. Housing associations will still have discretion over whether or not to offer a flexible tenancy.

Detailed provisions will be set out in regulations which are expected to be laid in winter 2016/17. The maximum term of a fixed-term tenancy will be 10 years, potentially longer for families with children. Existing tenants will be unaffected unless they choose to move to alternative accommodation. There will be protection for existing tenants who are forced to move, e.g. decanted due to a regeneration scheme. Authorities will have discretion to offer lifetime tenancies for certain categories of applicant; statutory guidance

will set out these categories and the factors to be taken into account when reviewing tenancies at the end of the fixed-term.

1. Discretion to offer flexible tenancies April 2012

Secure, assured and flexible tenancies: an overview

Changes which came into force in April 2012 gave local authorities and housing associations the power to offer fixed-term tenancies to social housing tenants in England.

The *Localism Act 2011* introduced a power for local authorities to offer "flexible tenancies" to new social tenants. Flexible tenancies are secure fixed-term tenancies with a statutory minimum term of two years. This provision came into force in April 2012.

Changes were also made to allow housing associations to offer fixed-term tenancies to all new tenants. Previously, housing associations were required to offer tenants the "most secure" form of tenancy, meaning the majority of tenants were offered assured tenancies. However, changes to the *Regulatory framework for social housing* removed this requirement, giving housing associations the power to offer fixed-term tenancies to all new tenants. This also took effect in April 2012.

Security of tenure has been generally considered an important and attractive aspect of social housing in England since its introduction in 1981.¹ Prior to the 2012 changes, local authority tenants were offered secure tenancies under the *Housing Act 1985*.² Secure tenancies offer what is often referred to as a 'tenancy for life' provided that the tenant does not breach the conditions of their tenancy (e.g. fail to pay the rent).

Housing associations offered secure tenancies to tenants who entered into their agreements on or before 15 January 1989.³ After this date, with a few exceptions including starter tenancies, housing associations offered permanent "assured tenancies" under the *Housing Act 1988*, in line with their requirement to offer "the most secure form of tenancy". This meant most tenants were given a tenancy for life (again subject to the requirement not to breach their tenancy obligations).

Existing tenancies of secure and assured tenants of social landlords were not affected by the introduction in 2012 of the ability to offer flexible and fixed-term tenancies.⁴

Background to tenure reform

In November 2010, the Coalition Government stated its intention to legislate to increase social landlords' freedom in relation to security of tenure:

To deliver this new freedom for local authority landlords, we will legislate to create a new type of tenancy for them to offer to some or all new tenants rather than a secure tenancy. That tenancy (referred to hereafter as a 'flexible tenancy') will be

¹ *The Housing Act 1980* introduced the secure tenancy regime.

² This Act consolidated existing legislation including the 1980 Act.

³ The date on which Part 1 of the *Housing Act 1988* came into force.

⁴ [HC Deb 9 December 2010 c31](#)

flexible, allowing landlords to provide tenancies with a range of fixed periods.

And in the case of housing association landlords we want them to have the option to offer a fixed term tenancy at either an affordable rent or at a social rent, depending on local needs and circumstances.⁵

The Government's rationale for giving social landlords more flexibility over the length of tenancy offered was that a "one size fits all" model was no longer appropriate and was seen to contribute to under- and over-occupation:

Inflexible, lifetime tenancies also contribute to significant imbalances between the size of households and the properties they live in. While there are around a quarter of a million overcrowded households in social housing (measured against the bedroom standard) there are also over 400,000 households under-occupying their social homes by two bedrooms or more (measured against the bedroom standard). In every region apart from London the number of overcrowded social rented households is exceeded by the number of under-occupiers.

A one-size-fits-all model on rents and tenancies is not the best answer to the wide range of needs and circumstances of those accessing the social rented sector. The current system limits the extent to which subsidy is able to help all of those in real need – many of these people are currently unable to access social housing.⁶

In December 2010, the Housing Minister explained the intended benefit of flexible tenancies:

The Government believes that it is no longer right to require that every social tenancy should be for life – regardless of the household's particular circumstances. The aim is to create a more flexible system so that scarce public resource can be focused on those who need it most.⁷

The Government published an Impact Assessment in January 2011 for the *Localism Bill*, which set out its evidence base for changes to tenure policy:

- The current statutory and regulatory framework requires social landlords to grant 'life-time' tenancies in most cases – irrespective of how households' circumstances might change in the future.
- Some social tenancies can be inherited by family members (other than partner/spouse), who may be in no housing need. Landlords have little control over this process.
- Current provisions fail to ensure that the support social housing provides to vulnerable households is sufficiently focused on those people who need it most.
- It is unfair – both on the most vulnerable households and taxpayers who subsidise its provision – that the current tenancy and succession arrangements prevent landlords

⁵ DCLG, [Local decisions: a fairer future for social housing](#), November 2010, para 2.11 - 12

⁶ Ibid, para 1.11-12

⁷ [HC Deb 9 December 2010 c32WS](#)

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from addressing as many people's housing needs as they could.

- The preferred option would increase the freedom social landlords have to determine the sort of tenancy they grant to *new* tenants, allowing them to vary conditions such as tenancy length (subject to a statutory minimum). Existing social tenants would be unaffected.⁸

The Localism Act 2011 – flexible tenancies for local authorities

The *Localism Act* received Royal Assent on 15 November 2011. The purpose of the Act was to devolve greater powers to councils and neighbourhoods and give local communities more control over housing and planning decisions.

Section 154 of the *Localism Act* gave local authorities in England the power to offer flexible tenancies to new social tenants.

The Act provided for the circumstances in which a new tenancy could be a flexible tenancy:

- It is granted by a landlord in England for a fixed-term of not less than two years; and
- Before it was granted, the landlord served a written notice to inform the tenant that it would be a flexible tenancy

The Department for Communities and Local Government (DCLG) stated that flexible tenancies would be offered for two years in exceptional circumstances, with five years or more being the norm. There is no upper limit on the length of tenancy. Local authorities are still able to offer secure tenancies if they wish.⁹ Providers must publish a tenancy policy setting out whether and how they intend to use the new flexibilities.

At the end of the fixed tenancy period, the tenant's circumstances are reviewed, and a decision made to offer either: another fixed-term flexible tenancy; a secure tenancy; or not renew the tenancy. The Act sets out that if the local authority decides not to renew tenancy, it must give at least six months' notice of this fact and two months' notice of intention to seek possession. The reason for not renewing the tenancy must also be given. The tenant has a right to request a review of a decision not to renew.

The Act provided that introductory tenancies may become flexible tenancies once the introductory period has ended, provided that the landlord has served notice of this and the period and terms of the flexible tenancy, before the introductory tenancy started.¹⁰

⁸ DCLG, [Localism Bill: a fairer future for social housing. Impact assessment](#), January 2011

⁹ DCLG, [A plain English guide to the Localism Act](#), November 2011

¹⁰ Introductory tenancies are part of a local authorities powers aimed at tackling anti-social behaviour.

The Act also prescribed that when a flexible tenancy is demoted¹¹, the tenancy reverts to being a flexible tenancy on successful completion of the period of demotion.

Local authority tenants who have a flexible tenancy enjoy similar rights as secure tenants, including the Right to Buy their home after a qualifying period¹² and the Right to Repair.¹³ However, under section 155 of the *Localism Act*, flexible tenants do not have a statutory right to improve their properties or be compensated for those improvements. These rights are enjoyed by secure tenants of local authorities.

The Act also provides that all new secure and flexible tenancies only have a statutory right of succession to a spouse/partner.¹⁴ Existing tenancies were not affected by these changes.

For further information on succession rights, see the Library Briefing Paper 01998 [Succession rights and social housing](#).

Housing associations and fixed-term tenancies

Housing associations previously had the power to offer short-term “assured shorthold tenancies”, which granted a tenancy for a fixed period. Such tenancies were predominantly offered for introductory/probationary tenancies. However, “lifetime” assured tenancies were granted to the vast majority of new tenants in line with the requirement that housing associations “offer and issue the most secure form of tenancy compatible with the purpose of the housing and the sustainability of the community.”¹⁵

A revised regulatory framework for social housing came into force from April 2012, which removed the requirement to offer the most secure form of tenancy. Housing associations are now able to offer fixed-term tenancies to any new tenants if they choose to do so. The new framework states:

Registered providers shall offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.¹⁶

As with flexible tenancies, providers must grant tenants a tenancy for a minimum of five years, or exceptionally a tenancy for no less than two years.

The *Localism Act 2011* provides that tenants of private registered providers, i.e. housing associations, with assured shorthold tenancies

¹¹ Local authorities may seek to “demote” a tenancy for a period of time where the tenant is exhibiting anti-social behaviour.

¹² [HC Deb 20 March 2015 HCWS441](#)

¹³ Chartered Institute of Housing, [The practical implications of tenure reform](#), August 2011, page 5

¹⁴ Previously, other close family members could succeed to a secure tenancy in certain prescribed circumstances. For more information see Library Briefing Paper 01998, [Succession rights and social housing](#).

¹⁵ [Tenant Services Authority \(March 2010\) The Regulatory Framework for Social Housing in England from April 2010](#), page 25

¹⁶ Home and Communities Agency, [The Regulatory Framework for Social Housing in England from April 2012](#), March 2012, para 2.1

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will have the right to acquire their property subject to the same conditions applicable to assured tenants.¹⁷

Tenancy strategies

The *Localism Act 2011* introduced a requirement for local authorities to produce a tenancy strategy setting out the matters to which all private registered providers of social housing should have regard in framing their own tenancy policies. Local authorities have an obligation to consult private registered providers, i.e. housing associations, on a draft of the strategy.

The Homes and Communities Agency requires that each provider's strategy must set out the following information:

- The type of tenancies they will grant.
- Where they grant tenancies for a fixed term, the length of those terms.
- The circumstances in which they will grant tenancies of a particular type.
- Any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period.
- The circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property.
- The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term.
- Their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.
- The advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy.
- Their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.¹⁸

Housing associations and local authorities are not able to grant fixed-term tenancies if they have not published a tenancy policy.

Tenants who are offered a flexible tenancy may only be given a review of the length of the term of the tenancy on the basis that it is not in line with the landlord's policy on the length of the flexible tenancies it grants, as set out in the *Localism Act*.

¹⁷ See [Localism Act 2011, Explanatory Notes](#), Section 165

¹⁸ Home and Communities Agency, [The Regulatory Framework for Social Housing in England from April 2012](#), March 2012, page 24

1.1 Uptake of flexible and fixed-term tenancies

Prior to the introduction of flexible tenancies, *Inside Housing* magazine predicted that few local authorities would choose to grant this type of tenancy:

Town halls across England will resist the government's controversial social housing reforms by refusing to scrap tenancy for life.

Four of the 12 Lib Dem housing portfolio holder or council leaders polled by *Inside Housing* said they were against the introduction of short-term tenancies, seven said they were undecided and just one supported the reforms.¹⁹

An *Inside Housing* survey published in January 2013 found that 29 out of 50 English councils did not support the use of flexible tenancies:

Inside Housing's survey shows a party political split over support for fixed-term tenancies. Of the 29 councils rejecting fixed-term tenancies, 25 are Labour led, while 12 of the 16 authorities supporting fixed-term tenancies are led by Conservatives.²⁰

In February 2014, the Chartered Institute of Housing (CIH) found that the relatively few fixed-term tenancies had been offered by housing associations since the change in regulatory framework:

The use of fixed-term tenancies has been gradual and still remains relatively low. According to the latest DCLG statistics, just nine per cent of all homes let by housing associations in England during 2012/13 were let using fixed term tenancies.²¹

The CIH commented that housing associations are taking a cautious approach to expanding the use of fixed-term tenancies:

It is apparent that not all organisations have chosen to use their new freedoms and many are still considering their approach. For those that are using them, some have adopted very cautious strategies to implement the change.²²

The CIH report on [New approaches to fixed term tenancies](#) (2014) provided examples of organisations letting homes with fixed-term tenancies and set out local tenancy policies on the criteria for assessing whether a tenancy should be reviewed. For example, Dartford Council will not usually renew a fixed-term tenancy where a tenant has an income of above £24,000 if they require a studio flat, or £62,649 for a household in a four bedroom house.²³

¹⁹ *Inside Housing*, "Councils split over fixed-term tenancies", 10 December 2010

²⁰ *Inside Housing*, "Minister urges councils to set fixed-term tenancies", 11 January 2013

²¹ Chartered Institute of Housing, [New approaches to fixed term tenancies](#), February 2014, page 4

²² Chartered Institute of Housing, [New approaches to fixed term tenancies](#), February 2014, page 4

²³ Chartered Institute of Housing, [New approaches to fixed term tenancies](#), February 2014, page 9

1.2 Comment on the discretionary tenancy regime

There is wide agreement among providers of social housing and organisations representing tenants that lifetime tenancies, which offer security and stability for residents, are a core underpinning principle. Shelter said:

The best starting point for people needing to rebuild their lives, or for those wanting to settle down and start a family, is a secure and stable home. The stability provided by a permanent tenancy means that people can make their accommodation a real home – decorate, get to know neighbours, and feel part of the local community.²⁴

Shelter went on to say that it “strongly supports social landlords continuing to let their home on permanent or longer-term tenancies” and went on to highlight a number of negative consequences it believes could arise from the use of fixed-term tenancies:

The needs of individual households: For vulnerable people, the security given by their home can be especially valuable, and can provide the basis for rebuilding their lives.

The efficient use of housing stock: One of the main arguments for tenure reform is to focus scarce social housing resources on those who need it most. However, the Government has an assessment that tenure reform will not significantly increase the number of vacant homes available until the late 2030s. It also highlights the administration and costs involved in conducting tenancy reviews, which the DCLG estimates at between £35 million and £74 million over 30 years.

The purpose of the accommodation: It is possible that making tenure dependent on proof of continuing need for social housing could disincentivise tenants from seeking or taking up work.

The sustainability of the community: There is a risk that the use of fixed-term tenancies could undermine the sustainability of communities by increasing the transience and social exclusion of neighbourhoods leading to the need for increased housing management resources, such as dealing with neighbour disputes.²⁵

The Chartered Institute of Housing said that it “supports in principle a more flexible approach to tenure”, but wishes to see this used to offer tenants positive and supported choices to improving their housing options and to support the development of sustainable communities:

We are clear that social housing should not be exclusively used as part of the welfare system and we are very resistant to any proposals which could see tenancies ended after a fixed term on the basis of an income-based means test. We are concerned that this would lead to social housing becoming more residualised, and further stigmatise those living in the sector.

²⁴ Shelter, [Local decisions on tenure reform: Local Tenancy Strategies and the new role of local housing authorities in leading tenure policy](#), July 2012

²⁵ Shelter, [Local decisions on tenure reform: Local Tenancy Strategies and the new role of local housing authorities in leading tenure policy](#), July 2012, page 8-10

Further, the decision to introduce fixed term tenancies does not address the underlying structural problem of the shortage of housing options offered at a price that households can afford.²⁶

²⁶ The Chartered Institute of Housing, [Tenure reform – England](#), 17 April 2013

2. No new 'lifetime' tenancies: Housing and Planning Act 2016

Summary

- Existing local authority tenants will be unaffected if they do not move.
- Housing associations will have discretion over whether to offer fixed-term tenancies.
- The minimum fixed-term will be 2 years.
- The maximum fixed-term will be 10 years, potentially longer for families with children.
- Tenants who are forced to move will retain their existing tenancy rights.
- Authorities will have discretion to offer secure tenants moving as a result of a mutual exchange or a transfer a new lifetime tenancy.
- It is expected that a single set of regulations will be laid in winter 2016/17.

2.1 Provisions to phase out security of tenure for new council tenants: an overview

In the Summer Budget 2015 the Government announced that it would “review the use of lifetime tenancies in social housing to limit their use...and ensure the best use is made of the social housing stock.”²⁷

In December 2015, during the [sixteenth](#) sitting of the Public Bill Committee on the *Housing and Planning Bill 2015-16*, the Minister, Marcus Jones, moved what was then new clause 32, Secure tenancies etc: phasing out of tenancies for life. This new Government clause was considered with new clause 33, Succession to secure tenancies and related tenancies and Schedules 4 (Secure tenancies etc: phasing out of tenancies for life) and 5 (Succession to secure tenancies and related tenancies).²⁸

The Minister explained that these new provisions would prevent local authorities in England from offering secure tenancies for life in most circumstances. He noted that social landlords had not taken advantage of the discretionary powers introduced by the *Localism Act 2011* to offer flexible tenancies with a minimum fixed-term of at least two years and went on:

...we believe that continuing to offer social tenancies on a lifetime basis is not an efficient use of scarce social housing. The new clauses will significantly improve landlords' ability to get the best use out of social housing by focusing it on those who need it most for as long as they need it. That will ensure that people who need long-term support are provided with more appropriate tenancies as their needs change over time and will support households to make the transition into home ownership where they can. In future, with limited exceptions, local authority landlords will only be able to grant tenancies with a fixed term of between two and five years, and will be required to use tenancy

²⁷ Summer Budget 2015, para 1.155

²⁸ The relevant provisions are now in Chapter 6 of the *Housing and Planning Act 2016*, sections 118 and 119 and also Schedule 7 to the Act.

review points to support tenants' move towards home ownership where appropriate.²⁹

At the end of a fixed-term period landlords will be required to consider whether to renew the tenancy, offer a tenancy of an alternative property or terminate the tenancy. Landlords will be required to serve a notice of the intention not to renew at least six months before the end of the tenancy. Tenants will be able to seek an internal review of a decision and challenge the landlord's right of possession in the county court.

During the fixed-term, tenants will have the same rights as most secure tenants save for the right to improve and to be compensated for improvements.³⁰

Detailed provisions; for example, setting out the circumstances in which a landlord may grant an 'old style' secure tenancy, will be set out in regulations which will be subject to the affirmative resolution procedure.³¹ In terms of timing, the Government has said: "Currently, we expect to make a single set of regulations which are subject to the affirmative procedure. We expect to lay the regulations in winter 2016/17."³²

Maximum length of the fixed-term

When the new clauses were initially introduced it was proposed that the maximum fixed-term would be 5 years. Subsequently, Baroness Evans of Bowes Park said that the Government had recognised "the strength of feeling on this issue" and announced that amendments would be brought forward to extend the maximum tenancy period to 10 years in certain circumstances "and to enable local authorities to give longer tenancies to cover the time that children are in school." She also said she would meet concerns raised in relation to domestic violence cases through regulations.³³

These commitments were fulfilled by Government amendments to the Bill at Third Reading in the House of Lords. The Baroness explained the effect of the amendments:

These amendments will give local authorities discretion to offer tenancies of up to 10 years in length, and potentially longer for families with children, to which I shall return. The amendments include a power for the Government to issue statutory guidance to which local authorities must have regard. This means there will be clear expectations on what the local authority should consider when making these decisions, and they can be held to account if they fail to follow the guidance. We will use the guidance to set out the circumstances in which we expect local authorities to issue shorter-term tenancies and the circumstances in which they may exercise their discretion to offer longer-term tenancies. This will enable councils to consider appropriate provision for households where there is someone with a disability or a long-term illness,

²⁹ PBC Deb 10 December 2015 (morning) [c650](#)

³⁰ PBC Deb 10 December 2015 (morning) [c651](#)

³¹ This means that before they can come into force they will have to be approved by both Houses of Parliament.

³² [Lords DEP2016-0340](#), 8 April 2016

³³ [HL Deb 18 April 2016 c509](#)

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older people, and those who provide long-term care for a person in this situation. This will help local authorities to get the best use out of accommodation which has been adapted and give those with longer-term needs a sense of stability. We will work with local authorities in developing the guidance and we will ensure that noble Lords have an opportunity to consider it before it is finalised.

As I have said, the amendments also enable local authorities to grant tenancies to cover the period that a child is in school. We have listened carefully to the debate on this issue. We absolutely agree that it is important that children are brought up in a stable environment and recognise that frequent moves can be disruptive to a child's education. To keep this relatively simple for local authorities, the amendment provides that where a local authority is notified that a child lives in the household, they may provide a tenancy with a fixed term that lasts until the child turns 19. This will allow local authorities to ensure that the relevant child has completed secondary education.

The amendments also make consequential changes to allow landlords to continue to operate an introductory tenancy regime in relation to longer fixed-term tenancies and make necessary changes to the legislation governing demoted tenancies and family intervention tenancies to deliver the policy.³⁴

Exemptions

In Public Bill Committee the Minister was asked about potential exemptions from the requirement to offer a fixed-term tenancy, such as households with young children in school and people with a long-term disability in an adapted property. He responded by saying that the new provisions do not mean that a tenant will automatically be expected to move – their circumstances will be reviewed and one outcome can be the renewal of the tenancy.³⁵

There were further calls for certain categories of tenant to be exempted from the potential offer of a shorter-term tenancy during consideration of the *Housing and Planning Bill* in the House of Lords, including:

- people who have had fled domestic violence. There are concerns that those experiencing domestic violence might be less likely to leave an abusive relationship for fear of losing their security of tenure;
- those downsizing due to a deduction from Housing Benefit;
- disabled people and their carers; and
- people above pension age.

Baroness Evans responded:

I agree it is important that suitable accommodation is available for older people and those who need adapted accommodation, and that the system should be flexible enough to allow people to move as their needs change over time. Ensuring that tenancies are reviewed every five years will help make this happen. However, we do not wish to restrict mobility in the social rented sector, which is why, as I said, the Bill includes provisions to ensure that local authorities have the discretion to grant existing lifetime tenants a further lifetime tenancy when they move home. We will

³⁴ [HL Deb 27 April 2016 c1175](#)

³⁵ PBC Deb 10 December 2015 (morning) [cc654-5](#)

work with local authorities in considering the circumstances in which lifetime tenancies should continue to be granted and will certainly give serious consideration to the needs of the elderly and those who require adapted accommodation as part of the process.

Amendment 82G would ensure that where existing lifetime tenants move as a result of domestic violence they will be guaranteed a further lifetime tenancy in their new home. I fully appreciate the intention behind this amendment. In developing the regulations that determine when a local authority may grant existing lifetime tenants a further lifetime tenancy when they move home, we will give very careful consideration to whether this should include those who are moving home to escape violence or intimidation of any kind.

The intention of Amendment 82GA is to guarantee that existing lifetime tenants who are severely disabled or have mobility or care needs—as well as those who are full-time carers—will always get a further lifetime tenancy if they choose to move. Again, I certainly appreciate the motivation behind this amendment. It is clearly important that disabled people and those who have other mobility or care needs can move to more suitable accommodation as their needs change over time. As I said, this is one of the drivers of the tenancies. Once again, I can confirm that in considering the circumstances in which lifetime tenants may retain their security when moving to a new council house, we will give consideration to whether the circumstances should include tenants with severe disabilities, mobility issues or significant care needs, as well as those who need to give or receive care.³⁶

Tenancy reviews: factors taken into account

During the Committee stage of the Bill in the House of Lords, Peers probed the sort of factors that will influence whether or not an authority will grant a new fixed-tenancy, a tenancy of an alternative property, or seek to terminate the tenancy.

Baroness Evans said the Government intended to provide guidance to local authorities on the sort of factors they will be expected to consider when carrying out reviews and that “it is therefore not necessary to provide for this on the face of the Bill.”³⁷ She also said that “local authorities have strong incentives not to allow the end-of-tenancy review to create future homelessness acceptances” she went on:

Where a landlord decides not to renew a tenancy, the provisions in the Bill already ensure that the tenant has the opportunity to challenge the decision, as I explained previously, as well as sufficient time to find alternative accommodation following advice from their landlord on buying a home or other housing options.

[...]

We want local authorities to use the tenancy review points to support tenants to move towards home ownership where it is appropriate, but of course we recognise that this will not be a viable option in every case. Where families continue to need social housing, of course the local authority will be able to offer a further tenancy at the end of the fixed period. Where tenants’ financial circumstances improve significantly, councils may decide

³⁶ [HL Deb 14 March 2016 cc1714-5](#)

³⁷ [HL Deb 14 March 2016 c1717](#)

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that they are able to move out of the social rented sector into private rented accommodation, or they may decide to offer a further tenancy but on a higher rent.³⁸

Impact on existing council tenants

The Minister said that existing tenants would not lose their security of tenure. If these tenants are *forced* to move, e.g. due to a regeneration scheme, they will retain their existing tenancy rights. However, where they *choose* to move their landlords will have "limited discretion" to offer "further lifetime tenancies." Regulations will set out the circumstances in which this will be possible.³⁹ The provisions will apply to all lifetime tenants irrespective of when their tenancies were granted.⁴⁰ This marks a change from the Localism Act approach where those whose tenancy began before 1 April 2012 were given protection.

Mutual exchange

A Government amendment was added to the Bill in relation to mutual exchanges. The *Localism Act 2011* has been amended to remove the right of existing lifetime tenants of local authorities to be given a new lifetime tenancy when they agree to a mutual exchange. Instead, social landlords will have discretion over whether to offer a new lifetime tenancy. Schedule 7 was amended to allow local authorities to continue grant lifetime tenancies where lifetime tenants mutually exchange.⁴¹ Baroness Evans explained the Government's thinking during consideration Report stage in the House of Lords:

Amendment 81ZA introduces a new clause to deal with mutual exchange, whereby one social tenant swaps with another. It responds to a point raised by the noble Lord, Lord Best, in Committee about the position of social tenants who exchange. We want to ensure that social tenants continue to be able to move within the social rented sector, including when they move through mutual exchange. To ensure that the introduction of flexible tenancies did not act as a barrier to mobility, the Localism Act introduced a provision which enabled lifetime tenants of local authorities and private registered providers to maintain their security of tenure when swapping homes with tenants with fixed-term tenancies. It did this by giving tenants a power to insist that the prospective landlord must grant them a further lifetime tenancy where they consent to the swap.

Amendment 81ZA amends the provision in the Localism Act so that it applies to new local authority fixed-term tenants as well. However, with 1.2 million households on the waiting list, we do not think that it is sensible to guarantee that lifetime tenants should always be given another lifetime tenancy when they swap. Accordingly, the new clause provides that in future local authority and private registered provider landlords will have discretion to grant lifetime tenants a further lifetime tenancy where they swap. We will specify the circumstances in which local authorities may exercise this discretion.⁴²

³⁸ [HL Deb 14 March 2016 cc1717-8](#)

³⁹ PBC Deb 10 December 2015 (morning) [c650](#)

⁴⁰ [HL Deb 18 April 2016 c511](#)

⁴¹ [HL Deb 18 April 2016 c511](#)

⁴² [HL Deb 18 April 2016 cc510-11](#)

Transfers

Local authorities will have discretion over whether or not to grant a transferring tenant another lifetime tenancy:

This will be similar to the position for lifetime local authority tenants who seek to transfer to another local authority home in future, where local authorities will have a limited discretion to offer another lifetime tenancy. We have already taken a power to regulate to specify the circumstances in which local authorities may continue to offer lifetime tenancies. We will ensure that these regulations cover the situation in which tenants swap as well as where they transfer.⁴³

Succession rights

Alongside the new provisions on fixed-term tenancies, Marcus Jones also introduced new clauses in Public Bill Committee to amend the rules on succession to secure tenancies.

The *Localism Act 2011* had already amended the rules on succession for new secure tenancies granted after April 2012. Marcus Jones said the the Government saw no justification for retaining an inconsistent approach to pre and post 2012 tenancies in terms of succession rights:

We therefore propose that the succession rights for secure tenancies granted before April 2012 be aligned with those granted after that date. The amendments will deliver a consistent approach across all secure tenancies and ensure that common-law partners are put on an equal footing with married couples and civil partners.

Other family members who may have had an expectation of succeeding to a secure tenancy granted before April 2012, having lived with the tenant for at least 12 months, will lose their statutory right to succeed. We do not think that it is right that those who may not need social housing, because, for example, they can rent or buy privately, should have the automatic right to succeed to a social home when nearly 1.4 million households are on council waiting lists.⁴⁴

The Minister said that spouses, civil partners and those who live together will “continue to have an automatic right to succeed to a lifetime tenancy.”⁴⁵

More information on succession rights in relation to social housing can be found in Library Briefing paper 01998, [Succession rights and social housing](#).

Statutory guidance

The Government has said that guidance will be produced to assist local authorities with the introduction of new fixed-term tenancies. This guidance will be statutory, meaning that authorities will be obliged to have regard to it:

This means that there will be clear expectations on what the local authority should consider when making these decisions, and they can be held to account if they fail to follow the guidance. We will

⁴³ [HL Deb 18 April 2016 c511](#)

⁴⁴ PBC Deb 10 December 2015 (morning) [c653](#)

⁴⁵ PBC Deb 10 December 2015 (morning) [c654](#)

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use the guidance to set out the circumstances in which we expect local authorities to issue shorter-term tenancies and the circumstances in which they may exercise their discretion to offer longer-term tenancies.⁴⁶

A commitment was given to ensure the House of Lords have an opportunity to consider the guidance before it is finalised.⁴⁷

2.2 Housing associations retain discretion

The new provisions will only apply to tenancies let by local authorities. The Minister set out the Government's thinking in relation to housing association tenancies:

We want housing association landlords and tenants to reap the benefits from shorter-term tenancies as well. However, we clearly need to consider any changes to housing associations in the light of the recent decision of the Office for National Statistics on classification. We are working through the ONS reclassification decision and considering the options but, given the complexity of the matter, careful consideration is needed. We will continue to work closely with the housing association sector, the social housing regulator and other stakeholders to finalise the deregulatory package, and we will consider any changes to lifetime tenancies in the context of that work.⁴⁸

2.3 Equality Impact Assessment

The [Equality Impact Assessment on Lifetime tenancies](#) (EIA) was published in May 2016. The EIA states that the policy is not aimed at any protected groups but notes "there may be potential for the policy to impact indirectly on certain individuals or groups with a particular protected characteristic." The policy's aim of achieving more efficient use of social housing stock is viewed as having potential "to enable more individuals across all the protected groups to access social housing."⁴⁹ The assessment found that the policy "will not have a substantial impact on discrimination overall."⁵⁰

The sections below summarise the EIA's findings on each of the protected groups and also the outcome of the application of the Family Test. The policy was deemed to have no differential impact on the basis of pregnancy and maternity, gender reassignment, sexual orientation or religion or belief.⁵¹

Older people

The EIA states:

We expect that many older people will benefit from longer fixed term tenancies (of up to 10 years). Fixed term tenancies will make it easier for social landlords to support older tenants move to more manageable sized accommodation, freeing up larger homes for families. Where older tenants with lifetime tenancies choose to downsize, they will not be adversely affected by the proposed

⁴⁶ [HL Deb 27 April 2016 c1175](#)

⁴⁷ Ibid.

⁴⁸ PBC Deb 10 December 2015 (morning) [c652](#)

⁴⁹ DCLG, [Equality Impact Assessment on Lifetime tenancies](#), May 2016, p4

⁵⁰ Ibid., p8

⁵¹ Ibid., p6

reforms, as they will retain their lifetime tenancy if they move to a smaller social property once children have left home.⁵²

Family Test

The EIA notes that a high proportion of lettings in the sector are to households with children. There is also a higher proportion of single parent households in the sector compared to the general population.⁵³

We expect that families with children of school age will benefit from the additional flexibility to offer tenancies that cover the time a child is in secondary school education.

Over time, the changes should increase headroom in the social sector stock as tenants who no longer need social housing move out at the end of the fixed term and those who are under-occupying their homes are assisted to move into more appropriately sized accommodation. This increased headroom should benefit overcrowded families with children, who represent 85% of all overcrowded households in social housing.⁵⁴

Younger people

The EIA states that younger people are overrepresented in social housing lettings compared to other age groups and goes on:

There is a potential for them to benefit from the increased freedom for landlords to offer shorter term tenancies (ie between 2 and 5 years), where for example landlords use them to support young people into work.⁵⁵

Disability

The EIA states that in 2013/14 50% of existing households in the social rented sector had at least one person with a disability:

We expect that those with longer term needs because of a disability or long term illness would be offered longer fixed term tenancies of up to 10 years, and would be offered a further social tenancy at the end of the fixed term, if their circumstances had not changed significantly. The end of tenancy review will ensure that landlords consider carefully tenants' continuing housing needs and can move them to more suitable accommodation where this is appropriate. This is likely to be particularly beneficial for those with access needs who may need to move to adapted accommodation.⁵⁶

Race

Creating more headroom in the social rented stock generally, and better matching property and household size, should benefit people from ethnic minority communities who are overrepresented in social housing and letting compared to the population generally.

Households with a Black or Pakistani/Bangladeshi household reference person represent 14% and 9% of all overcrowded households in social housing, compared to 7% and 2% of households in social housing overall. In 2014/15 ethnic minority

⁵² Ibid., p5

⁵³ Ibid., p5

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

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households represented 33% of homelessness acceptances: Black/Black British represented 16% and Asian/Asian British 9%.⁵⁷

Sex

The social rented sector has a higher percentage of households with a woman as the household reference person:

The increased headroom in the social rented stock is likely to benefit women who are over-represented in social housing and lettings compared to the population as a whole. 54% of lettings to tenants new to social housing and 59% of lettings to existing social housing tenants were to females (person 1).⁵⁸

2.4 Comment

Dr Blackman-Woods, for Labour, was critical of the decision to bring new clauses with wide ramifications before Public Bill Committee on its last day of deliberations:

The point I was making is that the Government new clauses, which are wide ranging and controversial and have an impact on lots of people's lives, should not have been brought to this Committee on the last day of its deliberations without any consultation, without an impact assessment and without any background information. It really is extraordinary. It is extremely bad practice and not good policy making.⁵⁹

Points raised in Committee included: the impact of the measure on eligibility for the Right to Buy; the impact on family stability of increased insecurity; and the removal of local control over tenancy policy (introduced by the *Localism Act 2011*).

Marcus Jones, responding, said the policy would make better use of social housing:

The legislation is all about making better use of social housing, and it will certainly save on temporary accommodation costs and the need to manage waiting lists. Our assessment of the policy's impact will be revised, but we need to consider the family who have been in high-rent temporary accommodation for years. The Government have already shown a commitment to such people by allowing those in temporary accommodation to move into the private rented sector, which means that people who have to use such accommodation now do so for, on average, seven months less than was the case in 2010. That shows that the Conservative party is interested in getting the most vulnerable people housed, not in a policy built on ideology, as the Labour party seems to be.⁶⁰

The Communities and Local Government Select Committee considered the position on lifetime tenancies during its 2015-16 inquiry into housing associations and the Right to Buy. Evidence was taken from Stephen Hills, Director of Housing for South Cambridgeshire District Council:

We are 350 square miles, 103 villages. We have not got any towns at the moment. Those village communities are really

⁵⁷ Ibid., p6

⁵⁸ Ibid.

⁵⁹ PBC Deb 10 December 2015 (morning) [c656](#)

⁶⁰ PBC Deb 10 December 2015 (morning) [c668](#)

important to people, and, if people have got caring commitments, local work or childcare commitments, they need to be able to live and to form part of that community. As to the thought that we would somehow have to move people on every few years, I cannot see how that would work. There are so few houses that come available in most of those villages, and if you move to the other side of the district, you might as well be moving to Mars for some people ... I think it would have quite a negative effect on the ability to sustain rural life in those areas.⁶¹

Cllr Lib Peck, Leader of the London Borough of Lambeth's evidence emphasised the need to build communities with an element of stability. Others raised the potential impact on community cohesion and the need for residents to be able to plan in terms of school places. There was also recognition of the benefits that might accrue from regular reviews and conversations with tenants in terms of achieving a more efficient use of housing stock.⁶² The Committee resolved to monitor the impacts of ending lifetime tenancies.⁶³

In the House of Lords, reference was made to research carried out by Professor Suzanne Fitzpatrick and Dr Beth Watts from Heriot Watt University. [Welfare Conditionality Initial findings: fixed term tenancies in social housing](#) (February 2016) outlines interim findings from the initial stages of a five-year longitudinal study assessing the effectiveness and ethicality of welfare conditionality in the social housing sphere in England and Scotland.⁶⁴ The key findings on existing use of fixed-term tenancies (FTTs) include:

- A small number of highly 'interventionist' housing associations in England view FTTs as an important mechanism in their broader attempts to recalibrate their relationship with tenants and 'nudge' them towards more socially and economically engaged lifestyles.
- Other 'early adopters' of FTTs now appear disillusioned about their merits, particularly with regard to the scope for using them to generate additional social lettings in high demand areas. There is likewise scepticism about the efficacy of FTTs as a tool to promote social mobility or to encourage positive tenant conduct, as well as concerns about administrative cost and complexity and the potential for community destabilisation.
- Some social tenants with FTTs or probationary tenancies were unaware or unconcerned about their tenancy status, but it was a cause of considerable anxiety for some tenants, especially those with a disability or health problems and for families with children.⁶⁵

Shelter has described the introduction of mandatory fixed-term tenancies as "toxic":

So is the government's amendment really so toxic if it looks like the majority of tenancies will be renewed? We'd argue yes. The

⁶¹ HC 370, [Housing associations and the Right to Buy](#), 2015-16, February 2016, p41

⁶² Ibid.

⁶³ Ibid.

⁶⁴ There are no plans to introduced FTTs in Scotland.

⁶⁵ Heriot Watt, [Welfare Conditionality - Initial findings: fixed term tenancies in social housing](#), February 2016

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government's insistence on reviewing everyone, even households with long-term health needs and disabilities, to see if their circumstances have changed seems unnecessary onerous and will cause bureaucratic cost for landlords and unnecessary stress for tenants.

[...]

Many people on low incomes are realistic about their prospects of purchasing property, despite the aspiration to own one. Only a quarter of current social tenants say they expect to [ever be able to buy](#). Losing a social home would not propel them into social mobility but relegate them to a [lifetime of insecurity](#) in the private rented sector.

Landlords will be able to give scant reassurance to households, as they will have to go through the bureaucratic, costly and intrusive process of reviews before they can say with certainty that a household will be allowed to remain in their home. The ban on security of tenure is an example of policy being damned if it works and damned if it doesn't. Whatever happens to the roof above their heads, households will have lost the essential security of knowing they can call a place home.⁶⁶

⁶⁶ Shelter, [Fixed term tenancies failing on everyone's terms](#), 8 March 2016 [accessed on 27 May 2016]

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