

<b>APPENDIX 1.</b>	<b>Classification:</b> Open	<b>Committee:</b> TENANTS COUNCIL	<b>Date:</b> 11 <sup>TH</sup> NOVEMBER 2002
<b>From:</b> STRATEGIC DIRECTOR OF HOUSING		<b>Title of Report:</b> INTRODUCTORY TENANCIES	

## 1. PURPOSE

1.1. To provide a background report to Tenants Council on the proposal to consult with tenants on the use of **INTRODUCTORY TENANCIES**.

## 2. RECOMMENDATIONS

2.1. That the Tenants Council supports the proposal in principle and agrees that the paper is circulated to Neighbourhood Forums to obtain a wider view on the the use of **INTRODUCTORY TENANCIES**.

## 3. BACKGROUND

3.1. The Housing Act 1996 provided increasing powers to social landlords to deal with perpetrators of anti-social behaviour and the unwillingness of tenants to comply with reasonable conditions of tenancy. One of the key features contained with Part V headed Conduct of Tenants was the new option of allowing local authorities to operate an introductory tenancy regime (Chapter1).

3.2. The key features of the introductory tenancy may be summarised as;

- Powers available to local authorities to establish introductory tenancy schemes are discretionary, ie there is no compulsory duty to implement an introductory tenancy regime.
- Authorities cannot have an introductory tenancy regime only in certain areas or circumstances or for particular new tenants.
- Authorities may revoke schemes at any time or indeed start them again. If the scheme is revoked all existing introductory tenants would become secure tenants
- All new tenancies that would otherwise be secure tenancies would be introductory
- The introductory tenancy period known as the “trial period” lasts for 12 months.
- Introductory tenancies automatically become secure at the end of the 12-month period.

- Authorities must still serve a notice seeking possession
- Where the local authority has commenced court proceedings then the “trial period” is extended until the outcome of the proceedings are known.
- The introductory tenancy is ended by the service of a notice. The notice must contain prescribed information including the reason for the decision to apply for possession and the right to a review. However the authority does not have to prove any of the normal grounds and the court must grant possession provided the proceedings for possession are complied with.
- Transfers and mutual exchanges are excluded
- There is a duty to consult tenants under section 105 of the 1985 Housing Act powers prior to introducing the scheme.

**3.3.** Southwark Housing at that time undertook a consultation process with its tenants via Neighbourhood Forums and Tenants Council. The consensus view from resident representatives, elected representatives and officers was to reject the use of introductory tenancies.

**3.4.** Since then a wide range of other legislation has been passed as a response to anti-social behaviour. This has strengthened the ability of local authorities and the police to positively respond and manage such behaviour. Case law under the Human Rights Act 1998 has also limited the effectiveness of the Introductory Tenancy regime.

**3.5.** The Law Commission has published a consultation paper this year – Renting Homes; Status and Security. This paper covers a wide range of tenancy issues including proposals for probationary (introductory) agreements. The main thrust of the proposals may be summarised as:

- Local authorities and registered social landlords should be able to let to a new occupier on a probationary agreement for 12 (or perhaps 18) months.
- There would be discretion to use such probationary agreements as local conditions require, adopting a general policy of always using them, or using them for only certain categories of occupiers or even making a decision on a case by case basis.
- In instances where it is appropriate the probationary (introductory) agreement could be upgraded to the standard proposed form of the secure tenancy (the Law Commission are using the term type 1 agreement) available for other existing tenants.
- There may be limited scope of extending the probationary (introductory) agreement for a further 6 months if the landlord was of the opinion that the behaviour of the occupier was such to warrant such an extension.
- In the event that the occupier behaves in an anti-social manner a new summary eviction procedure is proposed.

- For existing secure tenants ( the proposed type 1 agreement) accelerated notice seeking possessions for anti-social behaviour would be allowed together with other improved powers including new remedies for breach of injunctions, the power of arrest would be available and enhancements to anti-social behaviour orders.

It is understood that the outcome of the proposals and related consultations will influence a Bill to be included in the legislative programme of Government for 2003/4.

**3.6.** There can be no certainty about the above Law Commission proposals and at the time of preparing this report no feedback is available on the response to the comments that have been submitted by interested parties to the Law Commission paper.

**3.7.** If the Council decides to use introductory tenancies consideration will be given to the level of support that individual households will require. It is anticipated that in the majority of cases minimal support would be needed. However is provided in those instances where the individual has clear support needs. This support is provided both by the Council and other specialist support agencies. Such support is provided in the lead up and settling in period of the tenancy. Close working arrangements must be in place between the support services and the local Neighbourhood offices.

**3.8.** There are also proposals in place to provide support to minimise the risk of the loss of such tenancies because of non-payment of rent or anti-social behaviour. Such support will be provided via a Tenancy Support Officer within Special Needs. This is a post that has been established following a successful bid for Neighbourhood Renewal renewal funding. This post would almost certainly be utilised in part to support those on introductory tenancies where support needs are identified.

#### **4. FACTORS FOR CONSIDERATION**

**4.1.** The Tenancy Conditions Working Party has considered the proposal to use the Introductory Tenancy. In principle support has been given to this proposal subject to referral to Tenants Council and Neighbourhood Forums for consultation.

**4.2.** The current administration supports the principle of establishing introductory tenancies in 2003/4 subject to consultation with residents.

#### **5. RESOURCE IMPLICATIONS**

**5.1.** There are no financial implications that arise directly from this report.

#### **6. EQUAL OPPORTUNITIES IMPLICATIONS**

**6.1.** The use of INTRODUCTORY TENANCIES does create a two-tier system of tenancies. It is difficult to gauge if this would be perceived as unfair by new tenants. However there has been close examination of this form of tenure using the Human Rights Act 1998. The absence of the

need to prove any ground for possession of an introductory tenancy and the limited scope for review of a decision to seek possession has left the scheme open to challenge under this Act. This is on the basis that it is potentially violating Article 6 (right to a fair trial) and Article 8 (right to respect for the home) of the European Convention of Human Rights.

**6.2.** Whilst the above is an issue to take into account if incorrectly applied there is now case law (R v Bracknell Forest BC, Reigate & Banstead BC v Benfield) which has established that the overall scheme is compatible with the Convention.

## **7. LEGAL IMPLICATIONS**

**7.1** This report seeks to provide background information to tenants' councils on the proposal to consult with tenants on the use of introductory tenancies. Section 124 of the Housing Act 1996 states that a Local Authority or Housing Action Trust may elect to operate introductory tenancy regime. When such an election is enforced, every periodic tenancy of a dwelling house entered into or adopted by the Authority or Trust shall, if it would otherwise be a secure tenancy be an introductory tenancy unless immediately before the tenancy was entered into or adopted the tenant or in the case of joint tenants one or more of them was

- (a) a secure tenant of the same or another dwelling house or
- (b) an assured tenant registered social landlord (otherwise than under an assured shorthold tenancy).

**7.2** In respect of same or another dwelling house under Section 124 an election under this section may be revoked at any time without prejudice to the making of a further election.

**7.3.** Although the Housing Act 1996 is silent on whether the Landlord should consult with their tenants when considering whether or not to introduce introductory tenancies and does not contain any requirements as to how the landlord should publicise or announce their decision. It is settled good practice that landlords should consult their tenants under the consultation procedures in Section 105 of the Housing Act 1985 which provides that

- i) A Landlord or Authority shall maintain such arrangements as it considers appropriate to enable those of its secure tenants who are likely to be substantially affected by a matter of housing management to which this section applies - (a) to be informed of the Authority's proposals in respect of the matter, and (b) to make their views known to the Authority within a specified period and the Authority shall before making any decision on the matter consider any representations made to it in accordance with those arrangements.
- ii) This section applies to matters of housing management which, in the opinion of the Landlord Authority represent (a) a new programme of maintenance improvement or demolition or (b) a change in the practice or policy of the Authority, and are likely substantially to affect either its secure tenants as a whole or a group of them who form a distinct social group or occupied dwelling houses which constitute a direct class. Whilst this does not affect existing tenants good practice would require the Local Authority to carry out consultations as set out above.

**7.4** Paragraph 3.2 of this report sets out the key features of the introductory tenancy. At bullet point 9 it states that the introductory tenancies ends by the service of a notice. The notice must contain prescribed information; including the reason for the decision to apply for possession and the right to a review. However the Authority does not have to prove any of the normal grounds and the Court must grant possession providing the proceedings for possession are complied with.

**7.5** It is clear from the DOE Circular 2/9.7 paragraph 19 that it is envisaged that the majority of possession cases will relate to persistent anti-social behaviour or rent arrears. It is suggested that the Landlord considering whether to seek possession should bear in mind the type of breach used as grounds for the eviction of secure tenancies. This suggests that non-fault grounds for possession were not contemplated by the DOE. The tenant has the safeguard of a right of review of the council's decision to bring the tenancy to an end. This review is governed by Section 129 of the Housing Act 1996.

**7.6** The request for a review would need to be made before the elapse of 14 days and the Landlord would have to make arrangements for the decision on review to be made by a person at appropriate seniority who was not involved in the original decision and provide information as to the circumstances in which the person concerned may be entitled to an oral hearing and whether he may be represented.

**7.7** The prescribed provisions for a review are set out in the Introductory Tenancy Review Regulations 1997. If the review upholds the decision to evict then the tenant may have a right to judicial review which may be more protracted than ordinary possession proceedings.

**7.8** As stated in the body of the report above there is a consultation paper which proposes to widened the powers of a Local Authority to introduce the introductory/probationary agreements. Any changes in the existing law in the Introductory tenancies may mean that further consultation is necessary once the proposed changes become known.

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**Background Papers**

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