



Report to Policy Committee

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Report of: Ajman Ali, Executive Director Neighbourhood Services
Report to: Housing Policy Committee
Date of Decision: 21st March 2024
Subject: Variation of Tenancy Conditions

Type of Equality Impact Assessment (EIA) undertaken	Initial <input checked="" type="checkbox"/>	Full <input type="checkbox"/>
Insert EIA reference number and attach EIA	2574	
Has appropriate consultation/engagement taken place?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Has a Climate Impact Assessment (CIA) been undertaken?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Does the report contain confidential or exempt information?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-		
<p><i>“The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended).”</i></p>		

Purpose of Report:

Work is being undertaken to consider the Council’s Tenancy Conditions, as set out in *You and Your Home*. This is to ensure they are clear, precise, and allow the Council to carry out its statutory duties effectively.

This report presents the proposed changes to the Tenancy Conditions to Committee (Appendix 1) for awareness and comment, outlines the reasons for change, and updates Committee on the steps required to enact this change.

Additionally, the report contains interim analysis of the Section 103 Preliminary Notice of Variation consultation. A verbal update will be given by the Director of Housing summarising further responses (received after the publication of this report, to the closing date (20th March) of the consultation period).

Recommendations:

This report recommends that the Housing Policy Committee:

1. Note the proposed changes to the Tenancy Conditions (Appendix 1).
2. Note the interim analysis of the consultation responses returned to date (13th March) contained within the report, together with the supplementary update to the consultation to be provided at committee following the closing date of 20th March given at Committee by the Director of Housing; and,
3. Note that the Director of Housing is delegated to make the decision to approve the issue of the final notice of variation of conditions, in line with those set out in this report.

Background Papers:

Appendix 1 – S103 Table of Variation

This paper notes the full text of the proposed changes.

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed.	Finance: Helen Damon
		Legal: Rebecca Lambert
		Equalities & Consultation: Louise Nunn
		Climate: N/A
	<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	SLB member who approved submission:	Ajman Ali, Executive Director Neighbourhood Services
3	Committee Chair consulted:	Cllr Douglas Johnson
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Committee by the SLB member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: Janet Sharpe	Job Title: Director of Housing, Housing and Neighbourhood Service
	Date: 07/03/2024	

1. PROPOSAL

1.1 Overview

1.2 Work is being undertaken to consider the Council's Tenancy Conditions, as set out in *You and Your Home*. This is to ensure they are clear, precise, and allow the Council to carry out its statutory duties effectively. SCC's tenancy conditions were last updated circa 2018.

1.3 The primary driver of this work relates to varying conditions to ensure the Council is fully compliant with regulator consumer standards, across all compliance areas, such as gas and fire safety.

1.4 Alterations to the conditions will allow for this, alongside other changes to either respond to policy developments, or to make useful clarifications where the current language used could be improved. This will ensure tenants, and the Council as landlord, are clear on respective responsibilities.

1.5 *Process to vary SCC's Tenancy Conditions: Preliminary Notice + Final Notice*

To vary its Tenancy Conditions, the Council must follow the statutory process as set out in Section 103 of the Housing Act 1985. S103 sets out a two-stage process for varying the tenancy conditions.

1.6 *Stage 1 – Preliminary Notice Stage*

The Council is first required to serve a preliminary notice to all tenants, to inform them that the Council intends to serve them a Notice of Variation.

The preliminary notice must:

- Inform the tenant of the landlord's intention to serve a Notice of Variation.
- Specify the proposed variation and its effect.
- Invite the tenant to comment on the proposed variation within such time as specified in the notice as the landlord considers reasonable.

The landlord must consider any comments made by tenants within the specified time. It should be noted that **no specific statutory time period is given** for either the time for tenants to make comment, **or** the time the Council must take to consider said comments.

1.7 *Stage 2 – Notice of Variation*

The second stage is to serve a Notice of Variation specifying:

- The variation effected by the Notice.
- The date on which it takes place.

The period between the date of service and the date on which it takes effect must be a minimum of four weeks, or the rental period. The Notice

should also be accompanied by such information as the Council considers necessary to enable the tenant to understand the nature and effect of the variation.

1.8 *Gas Safety*

The Council made a self-referral to the regulator in November 2022 as it had identified a failure to meet statutory health and safety requirements in relation to gas safety. At the time of the referral, the Council had more than 800 gas safety checks overdue.

1.9 As a registered provider, the Council is required to comply with the consumer standards, including the Home Standard. The Home Standard requires registered providers to meet all applicable statutory requirements that provide for the health and safety of tenants in their homes.

1.10 In respect of gas safety, the Council has a statutory duty to complete gas safety inspections annually for all relevant properties with inspections carried out by a registered engineer. The Council had not complied with this statutory obligation as a significant number of the gas safety inspections were overdue by more than 12 months, with some dating back several years.

1.11 The regulator concluded that the Council did not have effective controls in place to enable it to meet its statutory health and safety responsibilities in relation to gas safety. The regulator has worked with the Council as it seeks to remedy this breach and as a consequence a variation to the tenancy condition is proposed as one of the additional tools to ensure regulatory compliance and reduce the outstanding gas safety inspections.

1.12 *Summary of Changes*

The full proposed changes can be viewed in table in Background Paper 1. A summary, and the reasons for each of the proposed changes are as follows, as written in the Preliminary Notice of Variation sent to all tenants:

1.13 Repairing your home (conditions 7-12)

Section 11 of the Landlord and Tenant Act 1985 is the primary source of the Council's repairing obligations. It is a matter of good practice to reflect the wording of s.11 in the tenancy agreement as the current version does not clearly reflect this. It is also the responsibility of tenants to maintain their homes and to notify the Council of certain matters. This proposed section expands on the version in the current Tenancy Conditions to make clearer the rights, responsibilities, and obligations for the Council and the tenants. There is also reference to the Council's new Repairs Policy which provides further detailed information regarding the specific types of repairs which the Council are responsible for and those which will be the responsibility of the tenant.

1.14 Pets and animals (conditions 18-21)

The proposed variation provides greater clarity in respect of dangerous dogs.

1.15 Using your home (conditions 26–28)

The proposed variation gives more information about what tenants should do if they are away from their home for an extended period of time. It also informs tenants of the consequences should they not notify the Council that they are going to be away from their home. It is important that tenants let the Council know if they are going away from their home for more than a month in order to protect against tenancy fraud and deterioration of the property as well as unlawful occupation by trespassers i.e. squatters. In addition, we have included further provisions in respect of tenant verification to ensure that the right tenant is occupying the property to prevent against tenancy fraud and to protect our tenants.

1.16 Using your home (Access) (condition 29)

Gaining access to a tenant's property to allow the Council to carry out Statutory checks and repairs is very important. The Council is under a legal obligation to service gas appliances on an annual basis and failure to allow access will pose a serious health and safety risk both to the tenant's property and the neighbouring properties. Refusal of or failure to give access for such purposes as repairs or gas inspections has also caused the Council to incur significant costs in previous years. The proposed amendment is designed to make it clear to tenants what is expected of them. It will always be preferable to obtain a tenant's permission before forcing access to the premises.

1.17 Gardens & Communal Areas (conditions 32-35)

The proposed variation provides further clarity about tenants' responsibilities on maintaining gardens.

1.18 Ending your Tenancy (conditions 44-46)

The proposed variation has been amended to include how tenants can serve a statutory notice on the Council to end their tenancy. It also details how the Council can serve statutory notices on tenants. It also provides further clarity on the practical steps when a tenant ends their tenancy.

1.19 Introductory Tenancies

The Council formally adopted the Introductory Tenancy regime in November 2022 following a full consultation. This regime took effect from October 2023, which means that any new tenancies granted after this date will be Introductory Tenancies. These tenancies have fewer rights

than secure tenants but after the introductory period the tenancy will automatically convert to a secure tenancy. This regime was implemented to take swift action against tenancy breaches at an early stage. It necessary to update the existing tenancy conditions to include reference Introductory Tenancies so that 'You and your home' applies to both secure and introductory tenancies.

2 HOW DOES THIS DECISION CONTRIBUTE?

- 2.1 This decision will allow for the timely progress of work to update the Tenancy Conditions. The primary driver of this work relates to varying conditions to ensure the Council is fully compliant with regulator consumer standards, across all compliance areas, such as gas and fire safety. Likewise, changes will ensure clarity and precision where current wording can be improved.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 It is a legal requirement under section 103 of the Housing Act 1985 that the Council consult tenants on any proposed changes to the Tenancy Conditions. An electronic copy of the Section 103 Notice of the intention to vary the terms of the Tenancy Conditions along with the Tenancy Condition survey was published online, with tenants informed via the Tenant Bulletin and a mail out to TARA's on the 29th of February 2024. This was followed up with the formal hard copy of the S103 Notice of the intention to vary the Tenancy Conditions which was sent out to all secure and introductory Council tenants by post on 6th March 2024.

- 3.2 Interim results of the consultation show a large majority of tenants either strongly agree, or agree, with each of the proposed changes. Significantly fewer tenants as a proportion of total responses are in disagreement. The interim results (as of 13th March) can be found in the table below. The consultation will be open until the 20th of March, meaning an interim analysis of the final consultation will be shared at Committee on the 21st March. A consultation report will then be produced before the final decision is made.

The interim figures are:

Variation of Tenancy Conditions	
Question	Response
Total responses (as of 13 th March): 314	
Q2 – Repairing your home	Agree/Strongly Agree 69.4% (211) Neutral 20.7% (63) Disagree/Strongly Disagree 9.9% (30)
Q4 – Pets and Animals	Agree/Strongly Agree 76.2% (227) Neutral 18.8% (56)

	Disagree/Strongly Disagree 5% (15)
Q6 – Using your home - abandonment	Agree/Strongly Agree 77% (231) Neutral 18.3% (55) Disagree/Strongly Disagree 4.7% (14)
Q8 – Using your home – access	Agree/Strongly Agree 77.2% (230) Neutral 17.4% (52) Disagree/Strongly Disagree 5.4% (16)
Q10 – Gardens	Agree/Strongly Agree 71.5% (216) Neutral 18.9% (57) Disagree/Strongly Disagree 9.6% (29)
Q12 – Ending your Tenancy	Agree/Strongly Agree 70.9% (215) Neutral 23.4% (70) Disagree/Strongly Disagree 4.7% (14)
Q14 – Introductory Tenancies	Agree/Strongly Agree 68.9% (204) Neutral 25.3% (75) Disagree/Strongly Disagree 5.7% (17)

3.3 Additionally, a consultation was launched on the new Repairs Policy, running concurrently with the Section 103 consultation on the Tenancy Conditions. This was due to the fact that the proposed changes to the Tenancy Conditions makes reference to the proposed new Repairs Policy, thus requiring concurrent consultation to allow tenants to give an informed response.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality Implications

Equality implications are captured within the EIA, number 2574.

4.2 Financial and Commercial Implications

There are no direct financial and commercial implications arising from this report.

4.3 Legal Implications

4.3.1 The general power of management of its housing is vested in the Council by virtue of section 21 of the Housing Act 1985. In order to vary the Tenancy Conditions the Council must comply with the requirements specified under sections 102 and 103 of the Housing Act 1985 for all secure and introductory tenancies.

4.3.2 Section 102 (1) of the Housing Act 1985 Act prescribes the three ways in which the Council may vary the terms of a secure and introductory tenancy only two of these are applicable to the type of variation the Council is seeking to make here, as the other relates to variations of rent and payments only, these are set out at sections 102 (1) (a) and (c) of this Act:

'S102 (1) The terms of a secure tenancy may be varied in the following ways, and not otherwise –

(a) by agreement between the landlord and the tenant.

(c) in accordance with section 103 (notice of variation of periodic tenancy).'

Due to the size of the Council's Housing Stock it is not practical to vary by individual agreement between landlord and tenant therefore the only applicable method of varying the tenancy conditions is through the notice of variation process prescribed under section 103 of the Housing Act 1985.

4.3.3 **Section 103 sets out a two stage process**

Section 103 of the Housing Act 1985 sets out the two stage process that must be followed in order to vary the Tenancy Conditions by way a notice of variation.

4.3.4 **Stage 1 – Preliminary Notice Stage**

The Council is first required to serve a preliminary notice under section 103(2) of the Housing Act 1985 on the tenant to inform them that the Council intends to serve them a notice of variation.

The preliminary notice must:

- inform the tenant of the landlord's intention to serve a notice of variation
- Specify the proposed variation and its effect
- Invite the tenant to comment on the proposed variation within such time as specified in the notice as the landlord considers reasonable

The landlord must consider any comments made by tenants within the specified time.

It is Important to note that the preliminary notice must ask tenants for comments and specify the date comments must be received back. There is no specific statutory time period given for this, but it must be what the Council as landlord considers is reasonable.

After the deadline for receiving comments time must then be allowed for consideration of the responses by tenants. There is no statutory deadline prescribed for this process, but it should be reasonable and allow sufficient time for comments and feedback to be properly considered by the Council.

4.3.5 **Second Stage – Notice of Variation**

The second stage is to serve a notice of variation under section 103(1) specifying in accordance with section 103(4):

- The variation effected by it
- The date on which it takes effect.
- The period between the date of service and the date on which it takes effect for a notice of variation must be at least a minimum of 4 weeks or the rental period (whichever is longer).

In accordance with section 103(5) the notice should be accompanied by such information as the Council considers necessary to enable the tenant to understand the nature and effect of the variation.

Section 103 (6) specifies that if a tenant gives a valid notice to quit after the service of a notice of variation but before the date on which the variation is to take effect then their tenancy shall not be varied unless the notice to quit is withdrawn, with the Council's written agreement, before the effective date.

4.3.6 Section 102 (1), (2) and (3)(a) and Section 103 of the Housing Act 1985 apply to Introductory tenancies as well as Secure tenancies by virtue of section 111A of the Housing Act 1985 which was inserted by the Housing Act 1996 (Consequential Amendments) Order 1997/74.

4.3.9 The Council has a duty under section 104 of the Housing Act 1985 to publish and supply to its secure tenants information to explain in simple terms the effect of the tenancy conditions, Part IV of the Act (governing secure tenancies and the rights of secure tenants) and the repair obligations of the Landlord and Tenant Act 1985 (incorporated into the Council's conditions of tenancy).

4.4 Climate Implications
N/A

4.5 Other Implications
N/A

5. **ALTERNATIVE OPTIONS CONSIDERED**

5.1 *Do not alter the Tenancy Conditions:*
Urgent changes are required to ensure the Council is fully compliant with regulator consumer standards, across all compliance areas, such as gas

and fire safety. For this reason, it was not considered viable to leave the tenancy conditions un-altered.

6. REASONS FOR RECOMMENDATIONS

- 6.1 As noted above, it is vital that the Council complies with gas and fire safety requirements. The proposed changes to the existing tenancy agreement will assist with this. Primarily, this relates to Condition 29 (access). While we will always work with tenants to arrange for access with them, in cases where the tenant does not respond to our attempts to contact them, we must take steps to gain entry to the property. This is for the safety of tenants, neighbours, and officers.
- 6.2 Alongside this, the other changes either respond to policy developments, or to make useful clarifications where the current language used could be improved. This will ensure tenants, and the Council as landlord, are clear on respective responsibilities.
- 6.3 Finally, the consultation so far demonstrates a clear tenant voice in favour of implementing these changes, with a large majority of survey respondents in agreement. It is, however, important to note that this point will be updated following the publication of this paper, when the consultation has finished. Members will be given an overview of the final consultation at Committee, before a final consultation report is produced.
- 6.4 This report recommends, therefore, that Housing Policy Committee:
1. Note and acknowledge the proposed changes to the Tenancy Conditions (Appendix 1).
 2. Note the interim analysis of the consultation responses returned to date (13th March) contained within the report, and the verbal update on the consultation following the closing date of 20th March given at Committee by the Director of Housing.
- 6.5 Following the completion, analysis and consideration of the consultation, the necessary steps to reach a formal decision will be taken in order to issue a Final Notice of Variation and bring the changes to the Tenancy Conditions into effect.

Janet Sharpe
Director of Housing
Sheffield City Council