



# Tenancy Policy

## 1.0 Purpose & Scope

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This policy sets out Notting Hill Genesis' (NHG's) commitment to offer and issue tenancies which are compatible with the purpose of the accommodation type, the needs of individual households, the sustainability of the community and the efficient use of our housing stock.

The policy sets out the type of tenancies we grant in which circumstance and the grounds for possession we will use.

This policy applies to all residents renting homes we own and manage. It does not apply to leaseholders or shared owners.

We will expect managing agents, managing properties that we own, to use our occupancy agreements and follow our practices as outlined in this policy.

## 2.0 Principles

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The principles which underpin our approach are:

- Making the best use of our housing assets
- Helping local authorities to meet their strategic housing goals
- Granting tenancies in a simple, fair and transparent way
- Providing clear information for customers about the tenancies we issue and the grounds for possession which we may rely on, and our approach to using the mandatory grounds
- Aiming to prevent homelessness and protect families and vulnerable households
- To ensure we meet our statutory and regulatory requirements.

## 3.0 Types of Tenancy offered by NHG

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We currently issue the following tenancy types for new build lettings and relets by NHG. A tenancy type matrix for the most common tenancies and where they are offered is included as appendix 1.

### **Assured tenancies (periodic)**

These are also known as an assured non-shorthold tenancy. They are usually issued as weekly tenancies but can also be monthly in some business areas. These tenancies don't have an end date, this is why they are called 'periodic' and are sometimes referred to as 'lifetime' tenancies, as providing the tenant does not breach the tenancy conditions, they will usually be able to stay in their home for the rest of their life.

### **Assured shorthold tenancies (including probationary tenancies)**

Like assured tenancies, they are usually issued as weekly tenancies, but can also be monthly in some business areas. They have less statutory rights than assured tenancies and can be ended more easily. Assured shorthold tenancies can be periodic, where they have no end date or fixed term that clearly state the intended length of the tenancy.

### **Secure tenancies**

Secure tenancies are regulated by the Housing Act 1985 and are sometimes referred to as 'lifetime' tenancies. We do not issue secure tenancies for new tenants; however, anyone who has a tenancy that was granted before 1 April 1989 is likely to be a secure tenant. The tenancy will not usually be terminated unless there are serious tenancy breaches.

### **Licences**

A licence is issued when residents do not have exclusive possession of any part of the premises and only in circumstances where a tenancy cannot be offered. Licences are usually short term (between 6 and 12 months) and can usually be terminated relatively easily and on short notice.

### **Agreement for Tenancy or Equitable Tenancy**

A person under 18 years old cannot hold a legal interest in land, and therefore cannot hold a tenancy, so an 'Agreement for Tenancy' or 'Equitable Tenancy' is provided until they turn 18 years old. An 'Agreement for Tenancy' assumes that minors have the capacity to contract for 'necessaries'. Items such as accommodation, food and clothing are classed as necessities.

## **4.0 Tenancies by business stream**

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The following section organises tenancies by business stream to help highlight the potential differences for similar tenancies where used across several business areas.

### **4.1 General Needs**

#### **Fixed term assured shorthold - Probationary**

In most circumstances new tenants will be granted a one-year fixed term assured shorthold (probationary) tenancy. On satisfactory completion of this probationary period tenants will generally be granted a periodic assured tenancy.

Where there are significant or ongoing breaches of tenancy such as antisocial behaviour or rent arrears, we will take action to recover possession and a new tenancy will not be issued at the end of the tenancy period.

In exceptional circumstance we may extend the probationary period by a further six months where there is low level rent arrears, anti-social behaviour or access issues which do not warrant possession proceedings but indicate concerns with how the tenancy is being managed.

#### **Fixed Term Assured Shorthold**

In exceptional circumstances we may grant a two-year fixed term tenancy following the completion of a probationary period.

Following the end of a fixed term tenancy we will issue a new assured shorthold fixed term tenancy of no more than the same length subject to:

- There being no significant or ongoing breaches of tenancy that could lead to action to recover possession
- The property still being appropriate for the household needs
- The tenant remaining eligible for social housing.

### **Assured**

A periodic assured tenancy is granted to tenants in general needs at the end of their probationary period unless there is a restriction on tenancy type imposed by existing nomination agreements, planning consents, title deed or loan covenant.

When one or more of the following circumstances apply there will be no probationary period and a periodic assured tenancy will be issued:

- An existing NHG periodic assured tenant, whose tenancy was granted before 1 April 2012, transfers to another NHG property
- An applicant who has a periodic assured (granted before 1 April 2012) from a Local Authority or Registered Provider moves to an NHG property.

Where an existing tenant has a five-year assured shorthold tenancy they will be granted a periodic assured tenancy at the end of the current tenancy subject to:

- There being no significant or ongoing breaches of tenancy that could lead to action to recover possession
- The property still being appropriate for the household needs
- The tenant remaining eligible for social housing
- Any restriction on tenancy type imposed by existing nomination agreements, planning consents, title deed or loan covenant.

### **Licence**

A licence is issued when we require a tenant to move to a temporary decant property in order to carry out repair or improvement works to the property where they hold their tenancy.

### **Secure**

A secure tenancy is only granted to tenants in general needs if they were already a secure tenant with us immediately before they enter into the new contract. This is in accordance with section 35(4) (d) of the Housing Act 1988 and we do not have the discretion to grant another form of tenancy.

## **4.2 Supported Housing (including sheltered housing and Extra Care)**

All tenancy agreements in supported housing are issued to reflect any support and care provisions that form part of the accommodation.

### **Assured**

A periodic assured tenancy is granted to tenants in supported housing that is intended to be permanent housing, unless there is a restriction on tenancy type imposed by existing nomination agreements, planning consents, title deed, loan covenant or service provision contracts.

Where an existing tenant has a five-year assured shorthold tenancy they will be granted a periodic assured tenancy at the end of the current tenancy subject to:

- There being no significant or ongoing breaches of tenancy that could lead to action to recover possession

- The property still being appropriate for the household needs
- The tenant remaining eligible for social housing
- Any restriction on tenancy type imposed by existing nomination agreements, planning consents, title deed, loan covenant or service provision contracts.

### **Assured Shorthold**

An assured shorthold tenancy is granted in circumstances where a tenancy exists, but the accommodation offer is intended only for a relatively short length of time. These are usually for two years but may be periodic, or for a longer period in some schemes. This includes self-contained accommodation, except where there is a clear demonstrable need for staff to have unrestricted access to the customer's property in order to provide care and support services to the customer.

### **Licence**

A licence is issued in care and support when:

- We require customers to move between rooms in the premises to enable us to manage the premises efficiently, for example in a hostel; or
- We require unrestricted access to the accommodation so that we can provide care and support services or check on customers' wellbeing and there is a genuine management requirement for this; or
- We require a tenant to move to a temporary decant property in order to carry out repair or improvement works.

### **Secure**

A secure tenancy is only granted to tenants in supported housing if they were already a secure tenant with us immediately before they enter into the new contract. This is in accordance with section 35(4) (d) of the Housing Act 1988 and we do not have the discretion to grant another form of tenancy.

## **4.3 Temporary Housing**

### **Assured Shorthold**

A periodic assured shorthold tenancy is granted to most of our temporary housing tenants, excluding those in hostel accommodation or where the local authority has specifically asked us to use a licence.

### **Licence**

A licence is issued in temporary housing where we require customers to move between rooms in the premises to enable us to manage the premises efficiently, for example in a hostel.

### **Local Authority Non-Secure Agreement**

Within Temporary Housing we have a small number of schemes which require us to use an agreement prescribed by the Local Authority. These are generally schemes where we are acting as managing agents and the local authority retain responsibility for income collection.

## **4.4 Intermediate Market Rent (including London Living Rent)**

### **Assured Shorthold**

A one, or three, year fixed term assured shorthold tenancy is granted in new IMR lettings and all relets in properties owned by NHG. Where we act as managing agents

for another landlord, we sometimes offer two year assured shorthold tenancies, depending on the management agreement.

For properties developed under the London Living Rent scheme we grant three-year assured shorthold tenancies.

#### **4.5 Market Rent (Folio)**

##### **Assured Shorthold**

One to five-year fixed term assured shorthold tenancies are granted in Market Rent property lettings and all relets and renewals in properties we own.

#### **4.6 SimpliCity**

##### **Assured Shorthold**

One, or three, year fixed term assured shorthold tenancies are granted for new SimpliCity property lettings and relets.

#### **4.7 Key Places / Keyworkers**

##### **Assured Shorthold**

Periodic assured shorthold tenancies with a minimum 6-month term are granted in all our keyworker schemes.

#### **4.8 Student Accommodation**

##### **Licences**

41, 44 or 51 week licences are issued to University of West London students and other students from various universities living in our student accommodation.

## **5.0 Housing Minors**

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We only house minors aged under 18 in general needs and supported housing.

Where possible, we will seek a Trustee and ask them to sign a Form of Trustee. The Trustee may be an individual or an agency such as a local authority or Social Services department. NHG or members of our staff cannot act as the Trustee.

##### **Agreement for tenancy**

We usually issue an Agreement for Tenancy as a contractual relationship, which the minor holds until they are 18 years of age. This agreement reflects the underlying intention of the Tenancy Agreement, whilst acknowledging the legal status of the minor. The minor will sign and date both the Agreement for Tenancy and Tenancy agreement at the same time and we will consider this to be the tenancy commencement date.

##### **Equitable tenancies**

If the minor is within 6 months of their 18<sup>th</sup> birthday, and there is no available Trustee, we may grant an equitable tenancy.

##### **Licences**

If appropriate where we are unable to offer an Agreement for Tenancy or Equitable Tenancy, we may issue a licence agreement.

## 6.0 Ending a tenancy

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A tenancy can only be brought to an end in specific ways and we have clear procedures for terminating a tenancy.

### 6.1 Grounds for Possession

We see eviction as the last resort and only seek possession where it is proportionate to the case, and when we have exhausted non-enforcement measures as set out in the relevant policies and procedures.

We rely on the grounds for possession available through legislation:

- For secure tenancies - Housing Act 1985 (schedule 2)<sup>1</sup>
- For both assured and assured shorthold tenancies - Housing Act 1988<sup>1</sup>

Some of our tenancy agreements state which ground we will use for possession and thereby prohibit us seeking possession on some grounds. A list of grounds for possession for secure, assured and assured shorthold tenants is attached at Appendix 1.

### 6.2 Accelerated possession

Where we decide to end an assured shorthold tenancy at the end of the tenancy we use the accelerated possession process and serve a Notice Requiring Possession complying with s.21 of Housing Act 1988.

If there are rent arrears on the account we will always consider recovering these by serving a separate Notice Requiring Possession complying with s.8 of the Housing Act 1988.

Where we manage properties that we don't own, for instance in temporary housing, we may use the accelerated possession process to seek possession at the request of the property owner.

### 6.3 Ending a Fixed Term Tenancy in General Needs

Where we propose that a fixed term tenancy is not renewed we will provide advice and assistance to the tenant on finding alternative accommodation. This may include alternative options such as market rent, shared ownership or available homelessness services.

## 7.0 Starting and ending tenancies for people who lack capacity

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The Mental Capacity Act 2005 outlines how we should work with people who lack capacity.

Where we identify that a person may not have capacity to understand actions relating to the signing or ending of a tenancy we carry out a capacity assessment. If this identifies a lack of capacity we will convene a best interest meeting.

Any agreed action from this meeting will be authorised by the Court of Protection (unless the customer already has in place a legal, authorised deputy) before we take

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<sup>1</sup> as amended by the Housing Act 1996 and the Anti-social Behaviour, Crime and Policing Act 2014).

any action to start, or end, the tenancy. We will keep records of Best Interest Meetings and proof of Court of Protection authorisations and deputy appointments to evidence and support our decision making.

The tenancy cannot be signed by anyone on behalf of the resident without this legal authority. Where deputies or those with legal power of attorney are identified we will confirm their authority to sign online with the Office of Public Guardian to ensure it remains valid.

## **8.0 Complaints and Appeals**

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Tenants or prospective tenants in general needs and supported housing who are unhappy with any decision made under this policy shall have a right of appeal.

The Lettings Panel will consider appeals in relation to:

- The type of tenancy offered
- The terms of tenancy offered
- The length of tenancy offered.

The Permission to Evict Panel will consider appeals in relation to the decision not to offer a new tenancy at the end of a fixed term.

All other complaints will be dealt with under our Complaints Policy.

## **9.0 Our approach**

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In writing this policy we have carried out assessments to ensure that we are considering equality, diversity and inclusion and privacy and data protection. No adverse impacts were identified.

## **10.0 Reference**

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The most important Acts that currently govern registered provider tenancies are:

- Rent Act 1977 - refers to private sector tenancies before 15 January 1989
- Housing Act 1985 - refers to housing association tenancies before 15 January 1989 and public sector tenancies
- Housing Act 1988 (private sector tenancies and housing association tenancies on or after 15 January 1989)
- Protection from Eviction Act 1977 (giving protection against eviction without court proceedings to most tenants and licensees)
- Housing Act 1996 (introductory tenancies)
- Anti-social Behaviour Act 2003 (possession grounds - amended Housing Acts 1985, 1988, 1996)
- Localism Act 2011 (flexible tenures).



- Anti-Social Behaviour, Crime and Policing Act 2014 (further amended Housing Acts 1985, 1988, added absolute grounds for possession for ASB)
- Welfare Reform and Work Act 2016.



## Appendix 1 – Grounds for Possession

### 1) Mandatory Grounds for Possession

The court must grant us possession on these grounds.

#### Secure tenancies

Grounds 9, 10 and 11 are mandatory; however, the court must be satisfied that suitable alternative accommodation will be available for the tenant.

Ground 9	Overcrowding
Ground 10	Demolition
Ground 10A	Redevelopment
Ground 11	Charity
Ground 84A	Anti-social behaviour (Absolute ground)

#### Assured tenancies and assured shorthold tenancies

Where the tenancy is fixed term only grounds 2, 7, 7A and 8 are available to use during the period of the fixed term.

Ground 1 (owner occupiers)	Landlord previously occupied the property and wants to use the property as his or her only and principal home.
Ground 2 (mortgagees)	Dwelling is required for sale in accordance with a mortgage granted before the tenancy began.
Ground 3 (holiday let)	Tenancy is an out of season fixed term letting which was used as a holiday let.
Ground 4 (educational institution)	Tenancy is a fixed term letting which was used for students.
Ground 5 (ministers of religion)	Dwelling is required for occupation by a minister of religion.
Ground 6 (demolition or reconstruction)	Landlord intends to demolish or reconstruct which cannot be done with the tenant in residence.
Ground 7 (death of a tenant)	Tenancy has passed to the tenant through the will or intestacy of his/her predecessor and the landlord has begun possession no later than 12 months after the death.
Ground 7A (serious offences)	<p>Tenant /person residing or visiting:</p> <ul style="list-style-type: none"> <li>• has been convicted of a serious offence that relates to the property or the landlord</li> <li>• has breached an injunction under the ASB, Crime and Policing Act 2014 that relates to the property or the landlord</li> <li>• has breached a criminal behaviour order that relates to the property or the landlord</li> <li>• has been convicted of an offence relating to noise nuisance under the Environmental Protection Act 1990</li> </ul> <p>Also if the property has been subject to a closure order under the ASB, Policing and Crime Act 2014</p>
Ground 8 (rent arrears)	<p>Tenant owed rent arrears on the date the Notice Seeking Possession was served and at the date of the hearing. The arrears amount to:</p> <ol style="list-style-type: none"> <li>1. 8 weeks (rent payable weekly/fortnightly)</li> <li>2. 2 months (rent payable monthly)</li> <li>3. 1 quarter rent which is 3 months in arrears (rent payable quarterly)</li> <li>4. 3 months' rent which is more than 3 months in arrears (rent payable yearly)</li> </ol>

## 2) Discretionary grounds for possession

The court may order possession on these grounds if it is reasonable.

### Secure tenancies

Grounds 1-8 - the court must be satisfied that it is reasonable to make the possession order.

Grounds 12-16 - the court must be satisfied that it is reasonable to make the possession order *and* that suitable alternative accommodation will be available.

Ground 1	Rent arrears or breach of obligation
Ground 2	Nuisance and behaviour
Ground 2A	Domestic violence
Ground 2ZA	Riot offences
Ground 3	Condition of premises
Ground 4	Condition of furniture
Ground 5	Misrepresentation by tenant
Ground 6	Improper assignment
Ground 7	Conduct in employment related tenancy
Ground 8	Temporary accommodation due to works
Ground 12	Employment
Ground 13	Property adapted for disabled
Ground 14	Accommodation for special groups
Ground 15	Accommodation for special needs
Ground 16	Succession (size of premises)

### Assured tenancies and assured shorthold tenancies

Grounds 9-17 - the court may order possession if it is reasonable.

Grounds 9 and 16 are not available to end fixed term assured shorthold tenancies

Ground 9 (suitable alternative)	Suitable alternative accommodation is available for the tenant, or will be when possession order takes effect.
Ground 10 (some rent arrears)	Tenant was in rent arrears on the date possession proceedings began and (unless the requirement for a notice is waived by the court) on the date the Notice Seeking Possession was served.
Ground 11 (persistent delay in paying rent)	Tenant has persistently delayed paying rent, whether or not there are any arrears owing on the date on which proceedings for possession are begun.
Ground 12 (breach of tenancy)	Any tenancy obligation (other than rent matters) has been broken or not performed.
Ground 13 (damage to property)	Condition of the dwelling or common parts has deteriorated owing to acts of waste, neglect or default by the tenant or anyone living with him/her and where a lodger or sub-tenant is responsible for the deterioration the tenant has not taken reasonable steps to remove that person.
Ground 14 (anti-social behaviour/criminal conduct)	Tenant/person residing or visiting: <ol style="list-style-type: none"> <li>1. guilty of conduct causing/likely to cause a nuisance, annoyance or otherwise act unlawfully in vicinity</li> <li>2. guilty of conduct causing or likely to cause a nuisance or annoyance to the landlord, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions</li> </ol> <b>Error! Bookmark not defined.</b>

	3. convicted of using the dwelling or allowing it to be used for immoral or illegal purposes, or of an indictable offence committed in or in the locality of the dwelling house
Ground 14A (domestic violence)	Dwelling was occupied by couple and 1. one or both is a tenant of the dwelling 2. one partner has left because of violence or threats of violence towards a partner or family member 3. court is satisfied the partner who has left is unlikely to return
Ground 14A (domestic violence) (cont.)	
Ground 14ZA (Riot offences)	Tenant/adult residing has been convicted of an indictable offence during a riot in the UK.
Ground 15 (deterioration of furniture)	Condition of furniture provided by the landlord has deteriorated owing to ill treatment.
Ground 16 (premises let to employees)	Dwelling was let as a service tenancy and the tenant is no longer in that employment.
Ground 17 (fraud)	Landlord granted a tenancy as a result of a false statement made knowingly by the tenant.

### Document control

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