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## 1. Purpose and scope

- 1.1 This policy sets out the rights, restrictions and responsibilities for tenants who wish to take in a lodger, or sub-let part of their home. It aims to help tenants understand the implications and make informed decisions if they choose to do so.
- 1.2 In managing its housing stock, Lewisham Council has a duty to ensure that good use is made of its resources and assets, which includes ensuring that properties are not illegally sublet.
- 1.3 This policy applies to Lewisham Council's secure tenants. It does not apply to leaseholders or their tenants, or to Shared owners.
- 1.5 This policy does not apply to anyone with an Assured Shorthold tenancy, a licence, or an Introductory tenancy. We do not permit taking in a lodger or a subtenant for these tenures.
- 1.6 This policy does not cover situations where someone is looking after the home while the tenant is temporarily absent.

## 2. Definitions

- 2.1 A **lodger** is someone living with you, the tenant, who occupies part of your property in exchange for rent but doesn't have exclusive right to any one part of it. This means that they do not have the right to exclude you, the tenant, from entering any part of the house they are using. They will usually get some sort of service from you such as cooking and cleaning.
- 2.2 A **subtenant** is also someone living with you, the tenant, who occupies part of the property in exchange for rent. The difference with a subtenant is that they



would have exclusive access to part of your home, for example a bedroom. You, the tenant, would not be permitted to enter that space without the sub-tenants permission. They might, for example, put a lock on the door.

You do not have the right to sub-let all of your home. Your home must remain your only or main home. If you sub-let all of your home your tenancy ceases to be secure

- 2.4 **Family members and partners** who live in the property as part of the tenant's household are not normally considered lodgers or subtenants.
- 2.5 **Statutory overcrowding** is when there are more than the permitted number of people living in a property as defined by the Housing Act 1985.

### 3. Legislation and regulation

Legislation and regulations particularly relevant to the scope and implementation of this policy include, but are not limited to, the following:

#### The Housing Act 1985

According to provisions under this Act:

- The property must be the tenant's 'only or principal home'.
- Section 93 of the Act states that secure tenants can take in lodgers and subtenants. However, they must receive permission in writing before taking in a subtenant. Subletting or parting with possession of the whole of the property will result in the permanent loss of security of tenure.
- The tenant needs to be mindful of the maximum number of people permitted to live in a property: taking in a lodger or sub-tenant cannot be agreed if this will make the property overcrowded. This is an offence on both the tenant's and landlord's part - to cause, and to permit it. (See also Lewisham Council's Housing Allocation policy).

#### The Prevention of Social Housing Fraud Act 2013

This Act provides that:

- Unauthorised subletting is a criminal offence. It can result in a fine and/or imprisonment, as well as loss of the tenancy.

#### The Immigration Act 2014

Under this Act:

- If a tenant rents to someone who isn't allowed to rent a property (England) the tenant can be fined up to £3,000. The tenant can get a fine (a civil penalty) if they fail to carry out follow-up checks, and their lodger or subtenant's right to remain in the UK has expired.



See also the Home Office publication [‘Landlord’s guide to right to rent checks’](#).

### HMRC/Taxation rules

- Rent a room relief is an optional scheme that lets you receive up to £7,500 in rent each year from a lodger, tax-free. This only applies if you rent out furnished accommodation in your own home. You need to live in the property to get the allowance. The income limit covers everything charged as part of the rental service, for example charges for meals or laundry need to be counted too. Amounts under the threshold will be exempt from tax, but you will still need to keep a record.

Where legislation is updated, the most recent version will take precedence over any version referenced in this policy.

## 4. Requirements and responsibilities

- 4.1 Secure tenants have the right take in lodgers but must not sublet or give up any part of the property without our written permission, as stated in the Tenancy Agreement, and in line with the Housing Act 1985.
- 4.2 Introductory tenants do not have the legal right to take in lodgers or subtenants. Under exceptional circumstances, we may consider a request for a lodger. This must be put in writing and will not be granted retrospectively. If an introductory tenant takes in a lodger without asking permission, they risk losing their tenancy. Introductory tenants will not be given permission to sublet.
- 4.3 Under no circumstances may any council tenant sublet or part with possession of the whole of their property. This is a breach of the tenancy agreement and law and would result in losing the tenancy. Subletting the whole of a council property is a criminal offence, for which we will take legal action. If found guilty a tenant could face imprisonment, be fined, and ordered to pay back any profit.
- 4.4 The tenant must ensure that their home does not become statutorily overcrowded. We will not grant permission for a lodger or subtenant if their presence would result in overcrowding. If a new person is added to the tenant’s household and this leads to statutory overcrowding, any existing permission for a lodger or subtenant will be revoked to reduce the number of occupants and bring the household back within permitted limits.
- 4.6 Where we agree permission for a lodger or subtenant, they will be added to the household occupancy but will not be a party to the tenancy. They do not have any rights to the property or to take over the tenancy if the tenant leaves the property or dies. The tenant is responsible for ensuring that any lodger or subtenant leaves if asked to do so, including if their own tenancy ends and vacant possession is required.



- 4.7 The tenant is responsible for the behaviour of any lodgers / subtenants living in their home, and their visitors, as stated in the Tenancy Agreement.
- 4.8 By law, the tenant must ensure that a lodger or subtenant can legally rent their property and continues to be legally eligible to do so. (See Immigration Act 2014).
- 4.9 The tenant must inform relevant authorities if they claim benefits and discounts (for example, the DWP if the tenant is receiving Universal Credit), as it may affect their claim. They must also ensure that income received is declared in line with taxation requirements.
- 4.10 Tenants are not permitted under this policy to take in short term lets (for example, letting their property in whole or part on Airbnb).
- 4.11 The tenant is responsible for notifying their home insurer, as having a lodger or subtenant may affect their insurance cover and payments.
- 4.12 The tenant remains responsible for paying the rent for the whole property at all times. A lodger or sub-tenant should pay any rent to the tenant, rather than directly to us.
- 4.13 We will refuse permission for a new lodger or subtenant where we are currently taking action for a breach of tenancy.
- 4.14 We may ask for proof that the tenant has met their legal responsibilities as a landlord – for example, assuring themselves that their subtenant has the Right to Rent.
- 4.15 Before taking in a lodger or subtenant, a tenant may wish to seek further advice from a trusted source. This may include information on the tenant's rights and responsibilities; the rights of lodgers and subtenants; and any financial implications.

## 5. Monitoring and controls

- 5.1 Before advertising a subtenancy, tenants must request permission to sublet their property.
- 5.2 A tenant should submit the Change of Occupancy form (online) with details of the lodger or subtenant who is to be added or removed. We will acknowledge receipt of the form and accept or refuse permission for the individual tenant. A new change of occupancy form should be submitted if and when the lodger or subtenant ceases occupancy.
- 5.3 We will record all requests for a subtenant, including whether we have agreed or refused permission.



5.4 Information will be retained in line with data protection requirements.

## 6. Equality, diversity, and inclusion

6.1 An Equality Analysis Assessment (EAA) was conducted for this policy while it was being developed. There was no impact on any protected characteristic as this is not a change of policy position, but a verification of existing law and contract, and contributes to tenancy sustainment by clearly setting out what tenants must do to keep within these requirements.

## 7. Communication

7.1 This policy will be communicated to residents via our website. It will also be published on our intranet for staff along with information to help our staff to implement it.

7.2 We will aim to respond to all requests for permission for a subtenant or lodger, in line with our usual timescale of ten working days. Where we need more information to process a request, we will ask for this to be sent promptly, however this may increase the timescale for giving our permission.

7.3 Complaints about this policy will be managed in line with our housing services complaints policy and processes.

## 8. Reviewing this policy

8.1 Amendments to this policy not reflecting a major change of policy may be made by the Executive Director for Housing in consultation with the Director of Law and Corporate Governance. Such changes will be reported to Members annually.

<b>New:</b> Lodgers and Subtenants Policy 2025 (v 1.0)	
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<b>Policy owner:</b> Director of Housing Resident Engagement and Services	