

DEMOTED TENANCIES

1. INTRODUCTION

- 1.1 This report seeks approval from the Cabinet to introduce demoted tenancies, together with a review process if a tenant seeks to challenge the Council's decision to apply for possession of a property.
- 1.2 The Housing, Health & Social Inclusion Review Panel considered a detailed report on this matter on 21 September 2005 and supports the recommendations below.

2. BACKGROUND

- 2.1 Part 2 of the Anti-Social Behaviour Act 2003 (ASB Act) came into force on 30 June 2004. It introduced a new form of tenancy, a Demoted Tenancy, which deprives a tenant of their security of tenure and certain other rights.
- 2.2 In December 2004 all tenants were issued with a Summary of Policy and Procedures for Dealing with Anti-Social Behaviour. The Anti-Social Behaviour Act 2003 (the ASB Act) required all local authorities to produce and circulate such a document. Within this document are listed a number of remedies and actions that a landlord could take to deal with anti-social behaviour. One such action is the use of a demoted tenancy. The Cabinet approved the Council's policies and procedures for dealing with anti-social behaviour in December 2004.
- 2.3 The ASB Act 2003 gives a power to local authorities to apply for demotion of a tenancy (in addition to or instead of a possession order) where a resident of, or a visitor to, a dwelling is guilty of anti-social behaviour (ASB), or unlawful use of property.
- 2.4 If the Council wishes to demote a tenancy they must apply to the County Court for a Demotion Order and produce all the necessary evidence that identifies the ASB or unlawful use referred to. If the court accepts the evidence presented and agrees that ASB has taken place it will issue a Demotion Order. From the date specified by the Court the secure tenancy will end and a demoted tenancy begins for a period of one year, after which time (if the Council is satisfied with the conduct of the tenant and has not served a Notice of Proceedings for Possession) the demoted tenancy becomes secure again.

- 2.5 If the Council is not satisfied that the tenant has maintained good behaviour it can end the demoted tenancy by serving a Notice of Proceedings for Possession and applying to the court for a Possession Order. This will result in the tenant losing their home. Tenants, the subject of a Demoted Tenancy, also lose certain other rights, such as the right to do a mutual exchange and the Right to Buy and assignment.
- 2.6 If the Council considers that a tenant subject to a demoted tenancy has continued with the behaviour, proceedings to recover possession of the demoted tenancy are commenced by the service of a Notice of Proceedings for Possession. A tenant served with such a Notice has a statutory right to a review by the Council of the decision to serve the Notice. Delegation arrangements will need to be put in place for officers to take these decisions.
- 2.7 Statute and guidance prescribes the conduct of the review and timescales. A procedure setting out the recommended process is attached at Appendix 1.

Insofar as the review process is concerned, the Panel recommends that each Review Panel consist of: -

- (a) Two officers to include any of the Senior Service Managers from the housing service, as determined by the Assistant Director (Housing Services) or the Director of Community Services, together with the Assistant Director (Housing Services) but would exclude any of those officers who may have been involved in the original decision to serve the Notice of Proceedings for Possession, and;
- (b) Any one member of the Appeals Committee, as determined by the Assistant Director (Housing Services).
- 2.8 The elected Member will not be selected for hearings relating to premises in their own Council Ward or for hearings of the Review Panel in which they have a personal interest within the meaning of the Code of Conduct (even if the interest may be regarded as not prejudicial).
- 2.9 All Reviews will be subject to statute and guidance as set out in the Housing Act 1996 and the Demoted Tenancies (Review of Decisions)(England) Regulations 2004.
- 2.10 The recommended Terms of Reference for each of the Review Panels are as follows: -

To conduct hearings relating to the review mechanisms contained in the Housing Act 1996 and the Demoted Tenancies (Review of Decisions)(England) Regulations 2004 and to make determinations accordingly.

3. FINANCIAL IMPLICATIONS

- 3.1 There are no direct financial implications arising from this report. Any actions necessary as a result of creating or dealing with demoted tenancies can be financed from existing budget provision.

4. CRIME AND DISORDER IMPLICATIONS

- 4.1 The use of Demoted Tenancies is another tool for dealing with anti-social behaviour and will hopefully allow effective action to be taken against any tenants who cause such problems in their neighbourhood.

5. ENVIRONMENTAL IMPLICATIONS

- 5.1 The environment on Council estates and roads can be improved if effective action against those tenants who create anti-social behaviour can be taken. The use of Demoted Tenancies will assist in dealing with these issues.

6. PORTFOLIO HOLDER COMMENTS

- 6.1 This proposal strengthens our commitment to deal with the very small number of our tenants who cause problems. Primarily to our other tenants. I regard such disruption as unacceptable. Any allegations would still go to a court to determine but the reality of acquiring Demoted Tenancy status for problem tenants is to put that tenant on probation for 12 months, so in that respect it is hoped that it would have a deterrent effect rather than that tenant losing their home. If however there are continuing problems then, provided we have served the appropriate notices the Court have to give the Council a Possession Order. In effect this proposal is a fair way of strengthening our options in dealing with Anti – social behaviour. Therefore I support this proposal.

7. CONCLUSION

- 7.1 The service of a Demotion Order and the creation of a Demoted Tenancy will give a serious warning to tenants who create anti-social behaviour. It will provide a clear linkage between the enjoyment of the benefits and rights of security of tenure and the need for responsible behaviour from tenants.

8. RECOMMENDATION

8.1 That the Cabinet approves the implementation of the mechanisms for the Review Panel procedures as outlined in the report.

8.2 That the Review Panels referred to in paragraph 2 above be set up with the following terms of reference: -

To conduct hearings relating to the review mechanisms contained in the Housing Act 1996 and the Demoted Tenancies (Review of Decisions)(England) Regulations 2004 and to make determinations accordingly.

8.3 That the following delegation arrangements be approved: -

Authority to apply to the Country Court for the Demotion Order	Housing Estate Manager
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Authority to issue a Notice of Proceedings	Housing Estate Manager
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To appoint the pool of officers to comprise the Review Panel, and to select any two to sit to determine a review	Assistant Director (Housing Services); or Director of Community Services
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To appoint a Member of the Appeals Committee to the Review Panel, to sit with officers to determine a review	Assistant Director (Housing Services)
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In cases of urgency, to conduct the review hearing	Assistant Director (Housing Services); or Director of Community Services
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Background Papers

Report to Housing, Health & Social
Inclusion Review Panel – 21
September 2005

HOUSING GROUP

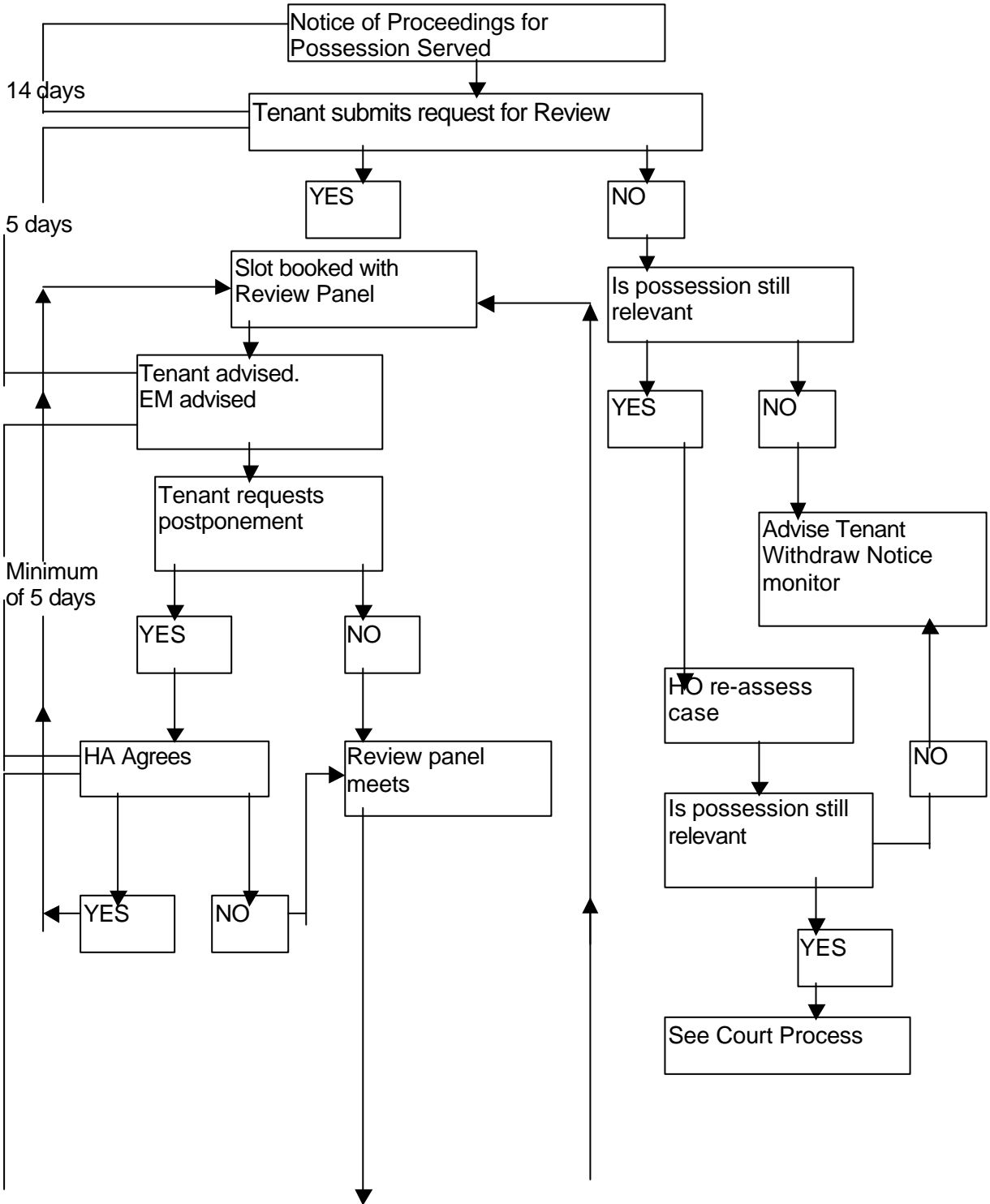
Review Process

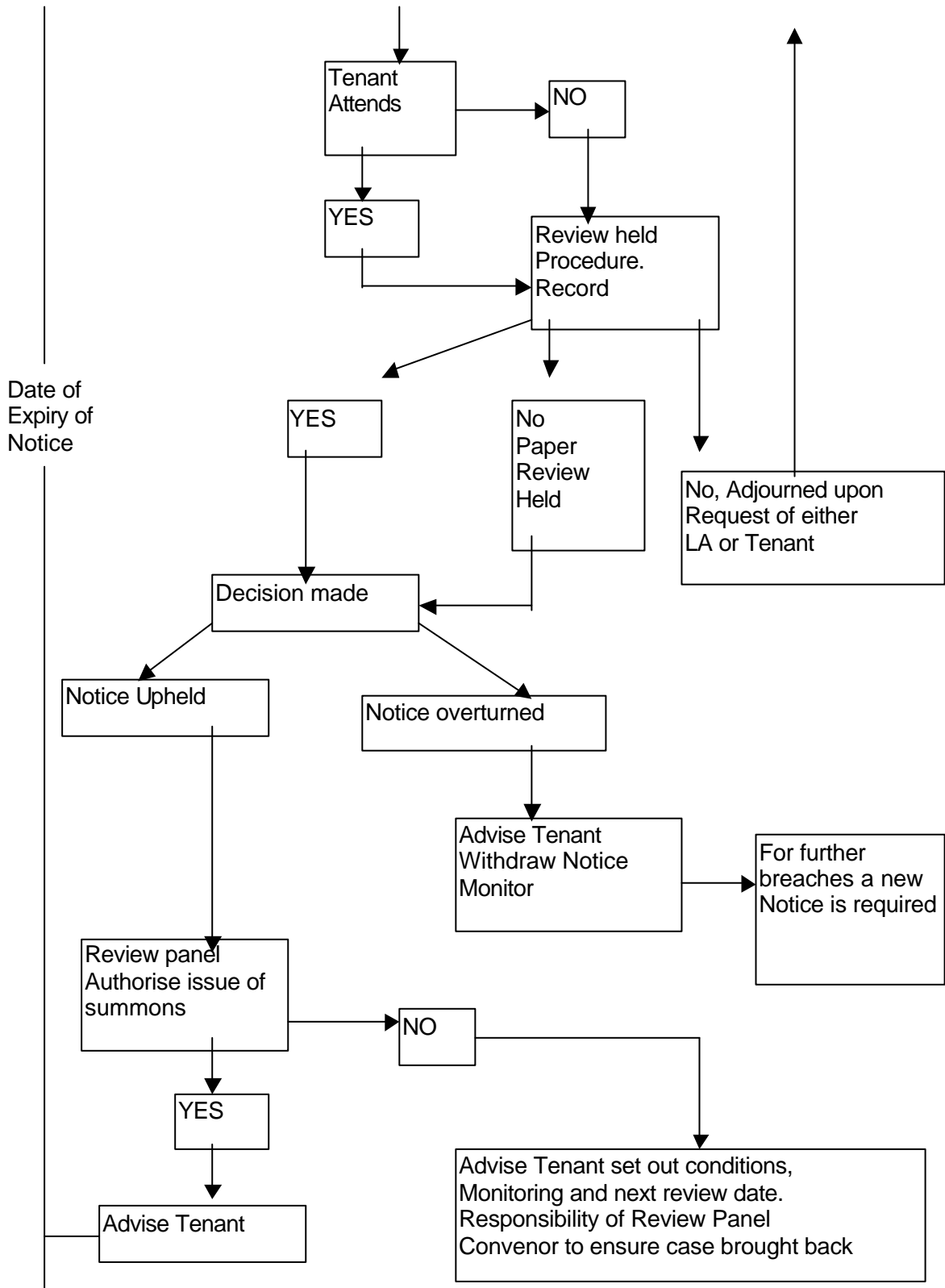
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1. Review Process
 1. BACKGROUND
 - 1.1 Proceedings to recover possession of a Demoted Tenancy are commenced by the service of a Notice of Proceedings for Possession.
 - 1.2 A Demoted Tenancy served with a Notice of Proceedings for Possession has the statutory right to a review of the decision to serve the Notice.
 - 1.3 Statute and guidance prescribes the conduct of the review and timescales.
 - 1.4 The notice of Proceedings for Possession informs the tenant of their right to a review and encloses a form to enable them to apply.
 - 1.5 Provisions relating to the review mechanisms are contained in the Housing Act 1996, Demoted Tenancies (Review of Decisions)(England) Regulations 2004 (SI2004/1679)
 - 1.6 Determination of “out of time” requests for review will be made by the area manager.
 - 1.7 All correspondence will be delivered by hand.

2. PROCEDURE





3. **REVIEW PANEL**

- 3.1 The Panel will comprise of one member of the Appeals Committee and two officers, selected by the Assistant Director (Housing Services).
- 3.2 The Panel must comprise Officers who were not involved in the decision to serve the Notice of Proceedings for Possession and must be senior to those who make the original decision. The member of the Appeals Committee will not be selected for hearings relating to premises in their own Council Ward or for hearings of the Review Panel in which they have a personal interest within the meaning of the Code of Conduct (even if the interest may be regarded as not prejudicial).
- 3.3 In cases of urgency the Review hearing may be conducted by a Senior Officer not involved in the original decision, sitting alone.

4. **TENANTS RIGHTS UPON REVIEW**

Rights to

- 4.1 An oral Hearing.
- 4.2 Be accompanied and/or represented by another person, including legal representation.
- 4.3 Call persons to give evidence. (Although there is no right to require on anyone's attendance).
- 4.4 Put questions to anyone who gives evidence.
- 4.5 Make representations in writing.
- 4.6 Apply for an adjournment.
- 4.7 Authorise people to attend /conduct the hearing on their behalf.
- 4.8 Apply for postponement but New Forest District Council does not have to agree to this.

5. **CONSIDERATIONS FOR THE REVIEW PANEL**

- 5.1 The process needs to be seen to be fair and follow the rules of natural justice.
 - 5.2 The procedure should be sufficient to stand judicial scrutiny.
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- 5.3 The hearing should be 'inquisitorial' in nature rather than adversarial.
- 5.4 Rules for conduct of the hearing should be clear and made available to applicants. (The procedure will be sent out with the Notice of Proceedings for Possession).
- 5.5 The panel can rely on hearsay evidence of Housing Officers.
- 5.6 Complainants **do not** have to be identified.
- 5.7 The Tenant **cannot** call the Local Authority's witnesses.
- 5.8 Copies of written evidence to be provided to Tenant before the hearing.
- 5.9 Be aware of potential for intimidation.
- 5.10 The Panel can disregard information as it sees fit.
- 5.11 Seek clarity in the establishment of the facts.
- 5.12 Ensure the Local Authority has
- Followed the correct procedures
 - Allowed the tenant opportunity to remedy the breach
 - Established that the tenant has breached the agreement to remedy
 - Correctly served the Notice of Proceedings for Possession
 - Made at least 3 attempts to contact tenant have been made
- 5.13 Burden of proof = Balance of Probabilities.
- 5.14 Consider any outstanding housing benefit and repair issues.
- 5.15 The Panel can postpone, adjourn and/or re-convene as it sees fit or at the tenant's request, subject to the tenant showing good reason.
6. **POST REVIEW PANEL**
- 6.1 Papers returned immediately to the relevant officers
- 6.2 Result entered by relevant sections on the log.
- 6.3 Relevant sections notify Tenant of Review Panel Decision-**within 5** working days of hearing.
- 6.4 Proceed to next stage
7. **EXAMPLE OF TIMESCALES**

Worst-case scenario

Notice of Proceedings of Possession served (35 days Minimum)	1.6.2004
Period to request review Maximum 14 days – ends	15.6.2004
Tenants request received on	
Notice of Review Hearing within 5 days AND giving at least 5 days notice	
Advice to Tenant	21.6.2004
Review panel Date	30.6.2004
Notified of Decision no later Than date in Notice of Proceedings for Possession	4.7.2004
