

**Agenda Item No:** 11  
**Report To:** Cabinet  
**Date of Meeting:** 24 November 2022  
**Report Title:** Right to Buy Lease Extensions  
**Report Author:** Sharon Williams, Assistant Director Housing  
**Job Title:** Hazel Tillman, Leasehold Services and Right to Buy Manager  
**Portfolio Holder:** Cllr. Buchanan, Portfolio Holder for Housing  
**Portfolio Holder for:**



**Summary:** The number of years remaining on a Council Right to Buy lease can negatively affect the value of the property, the ability to sell and for purchasers to obtain a mortgage.

The Leasehold Reform Housing and Urban Development Act 1993, allows leaseholders to claim a new lease upon payment of a premium to their landlord. A leaseholder can pursue to seek an extension to their lease through the statutory route or the non-statutory route (also known as the informal route).

This report sets out the basis for introducing a non-statutory route to simplify the lease extension process. In the absence of an agreed non-statutory route, leaseholders only have the option of the formal route which can be a cumbersome and time consuming process for all parties.

In addition, where a flat in a block has already been sold through the Right to Buy, all future qualifying Right to Buy applicants in that block will only be offered the remaining term of the original 125 year lease that was issued. This negatively impacts tenants in those blocks wishing to buy through the Right to Buy, as they will not receive a 125 year lease, but any term which can be as low as 84 years.

This report sets out the proposal to provide each Right to Buy applicant a Right to Buy lease of 125 years.

**Key Decision:** No  
**Significantly Affected Wards:** None  
**Recommendations:** **The Cabinet is recommended to:-**

- I. Agree the introduction of a non-statutory or

**informal Right to Buy Lease extension process.**

- II. Agree the proposal to grant all new Right to Buy leases the minimum term of 125 years.**

**Policy Overview:**

Introduction of a non-statutory lease extension process whereby a leaseholder can agree with their landlord the amount to pay for the extension of a lease without entering into the statutory procedure. This is known as an ‘informal’, ‘open market’, ‘private’, ‘voluntary’ or ‘by agreement’ lease extension.

The non-statutory procedure, which is outside of the Leasehold Reform Housing and Urban Development Act 1993, means the leaseholder simply agrees terms with their landlord ‘up-front’, typically subject to the landlord obtaining valuation advice at the leaseholder’s cost and meeting the landlord’s reasonable costs.

To start offering Right to Buy applicants Right to Buy leases with a term of 125 years.

**Financial Implications:**

Under the statutory route to lease extensions the landlord is responsible for paying the following:

1. Negotiation costs
2. Any Court Costs
3. Any Tribunal costs

With the introduction of a non-statutory procedure which is outside of the Act, the leaseholder simply agrees terms with their landlord ‘up-front’, typically subject to the landlord obtaining valuation advice at the leaseholder’s cost and meeting the landlord’s reasonable costs. Therefore, the three statutory costs listed above will fall away.

**Legal Implications:**

*Text agreed by Principal Solicitor (Property and Projects) on 24 October 2022*

The Leasehold Reform Housing & Urban Development Act 1993 (as amended), provides a leaseholder who has owned a flat for two years or more the right to add 90 years to what is left on their lease at a “peppercorn” rent, i.e. no ground rent. This is known as the statutory or formal route to lease extensions. The informal route however allows the leaseholder to achieve the same extension by simply agreeing terms with the freeholder without the complication, delay and expense afforded by the formal route.

The RTB process is governed by Part 5 of the HA 1985. This gives secure tenants the right to buy, at a discount, the freehold or long leasehold interest in their homes subject to certain conditions being met. Tenants of flats have the right to a long lease of a property with minimum term of 125 years (at peppercorn rent since the introduction of the Leasehold Reform (Ground Rent) Act 2022).

<b>Equalities Impact Assessment:</b>	See attached.
<b>Data Protection Impact Assessment:</b>	The impact on Data Protection will be assessed at the appropriate time.
<b>Risk Assessment (Risk Appetite Statement):</b>	If the Council were only to offer the statutory lease extension route, it could incur non-rechargeable legal costs. Legal could also become involved in time consuming negotiations, thereby protracting the time to reach a conclusion. The Council could also face reputational risk if it does not offer a quicker and cheaper option for lease extensions, especially if other local authorities do.  In order to provide a fair and transparent Right to Buy service and to ensure the Council supports its tenants to take their first steps to home ownership, each Right to Buy applicant should have the right to buy their flat on the same equal lease term of 125 years.
<b>Sustainability Implications:</b>	None
<b>Other Material Implications:</b>	None
<b>Exempt from Publication:</b>	<b>No</b>
<b>Background Papers:</b>	Equality impact assessment for introduction of non-statutory lease extension process and granting of a minimum term of 125 years Right to Buy leases.
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**Introduction and Background:**

1. With the introduction of Right to Buy in 1980, a number of flats occupied by Council tenants have been purchased. For the first flat sold in a block, the Council grants a lease of 125 years. Thereafter, any further flats sold within that block will have a lease term calculated from the date the first lease was issued, and as such will be for less than 125 years.
2. The number of years remaining on a lease can negatively affect the value of the property, the ability to sell and for purchasers to obtain a mortgage. A property with a lease of 90 years or less is deemed unattractive.
3. The first flat sold under the Right to Buy was in November 1981, leaving less than 85 years on that lease. In blocks where tenants are wishing to purchase their flats, but leases have been issued in the preceding years, the number of years remaining on those leases may now be unattractive.
4. The Leasehold Reform Housing and Urban Development Act 1993, allows leaseholders to claim a new lease upon payment of a premium to their landlord. There are two routes that a leaseholder can pursue to seek an extension to their lease:  
  
The statutory route or the non-statutory route (also known as the informal route)

5. The advantages and disadvantages, including timeframes and time limitations, process and responsibility for costs, for following one or the other of the above routes are set out below.

**Statutory and Non-statutory Procedures for Lease Extensions**

6. One of the drawbacks of owning a flat on a long lease is that it reduces in value over time. The fewer years left on the lease, the less valuable the property becomes. Typically, a lease with less than 90 years left steadily becomes less valuable for a number of reasons, potentially leaving the leaseholder with a diminishing asset they may be unable to dispose of.
7. The leaseholder will need to be mindful of the 80 Year Rule (see below) as this will add considerable expense to a leaseholder looking to extend their lease. Also, if a lease has under 70 years left, mortgage rates may at best increase. It would also become virtually impossible to obtain a mortgage with less than 60 years left and it would be a struggle to re-mortgage. If looking to sell with this level of lease remaining, leaseholders may need to accept cash offers or sell at auction.
8. Most leaseholders of residential property are entitled to 'claim' a new lease under the terms of the Leasehold Reform Housing and Urban Development Act 1993 (the "Act"). Chapter II of the Act sets out the right, exercisable subject to and in accordance with the Chapter, to acquire a new lease of the

flat on payment of a premium. This process is known as the statutory procedure.

9. In accordance with the Act, the law gives a qualifying leaseholder the right to extend their lease. To be a qualifying leaseholder you must have owned a long lease for the past 2 years. A long lease is typically a lease which had an original term of over 21 years when it was originally granted.
10. The right is to add 90 years to what is left on the existing lease at a 'peppercorn rent'. A peppercorn rent means that no ground rent is paid. Therefore, if the present lease had 80 years left to run, the new extended lease would be for 170 years.
11. In addition to the above, a leaseholder can also 'claim' a new lease without having to comply with the Act. This is known as the non-statutory procedure.

## **The Statutory Procedure**

12. The statutory procedure pursuant to the Act follows a prescribed route with each party (leaseholder and landlord) observing different roles:

### *Leaseholder Legal Representation*

13. The leaseholder will start the process by securing the services of a conveyancing solicitor experienced in lease extensions. The solicitor will typically advise the leaseholder of the statutory process and of the costs involved and will act on the leaseholder's behalf.

### *Leaseholder Valuation*

14. Professional valuation advice is important and accordingly, the leaseholder will need to secure a surveyor. Valuation is not an exact science, and it will be virtually impossible for the surveyor to provide an accurate estimate of the final settlement figure. The surveyor should be able to provide a 'best and worst figure', valuing the lease from both the leaseholder's and the landlord's perspective. The surveyor will then determine the figure to be submitted to the landlord which will form the basis of the offer to be made.
15. The leaseholder's surveyor will also be able to use their experience of properties in the local area to anticipate claims the landlord might make, including in response to the leaseholder's claim.
16. Lease extension premiums can be costly and this will be the first opportunity the leaseholder has to gain this information. They will need to determine if they can afford the premium, together with the other associated costs (see below) and decide whether to proceed with a formal claim. NB: extending a lease will ultimately add value to a property and most lenders will extend a mortgage to pay for a lease extension, assuming there is enough room on the mortgage in terms of spare equity and the leaseholder is able to meet the repayments.

### *Premium*

17. The landlord is entitled to a premium (the price) for extending the lease, and this is based on a formula set out in the Act.
18. The following factors must to be taken into account when calculating the premium:
  - The reduction in the value of the landlord's interest – i.e. how much the landlord's interest in the property is now, compared with the value after the lease extension.
  - The Marriage value (see below) which only applies when the lease term is under 80 years. This can make quite a difference to the price, usually thousands of pounds. That is why it is very important for a leaseholder to get the lease extension before the remaining term of their lease drops even one day below the critical 80 year period.
  - The amount of ground rent payable under the lease.

### Section 42 Notice

19. The solicitor will then draft and serve a Section 42 Notice on the landlord. It is important that a served Section 42 Notice is complete and contains no inaccuracies. If the landlord finds faults in the notice it may result in the notice being deemed invalid.
20. If a notice is invalid, unless the landlord is prepared to waive the invalidity, the notice will be considered defective. As a result, not only will the notice not be considered sufficient for the purpose of instigating the procedure to extend a lease, but the leaseholder may be time-barred from serving a further notice for a period of 12 months as a result.
21. Therefore, not only will the cost of preparing the initial notice be wasted, but the value of the lease will continue to diminish over the 12-month period which will in turn result in a higher premium being payable to the landlord. In certain circumstances it is possible for a leaseholder to save a defective notice by an application to the County Court.
22. Serving the Section 42 Notice is a clear milestone in the lease extension process and is referred to as the valuation date. This is when any figures which affect the price and which can change are set: i.e. the number of years left on the lease and the present value of the flat. Therefore, however long it takes to negotiate or decide the price (and this can take up to a year), the price will be based on the figures that apply on the date of the Section 42 Notice. This also freezes the length of the lease for assessing the premium.
23. The fixed date is also very important for leaseholders who want to avoid being on the wrong side of the 80 Year Rule (see below). As long as they have submitted their application to extend the lease before the 80 year deadline, they are safe.
24. The Section 42 Notice will also stipulate the date by which the landlord must respond to the notice. This date must be at least two months from the date the notice was served.

25. Upon receipt of a Section 42 Notice that is deemed acceptable in content, regardless of whether or not the application is successful or withdrawn, the leaseholder is liable for the landlord's 'reasonable' professional fees, including the landlord's valuation. Accordingly, at any point after the notice has been served, the landlord can request from the leaseholder a deposit of either 10% of the full premium proposed within the notice or £250.00, whichever is the greater.

### 80 Year Rule

26. A leaseholder only acquires the statutory right to extend their lease once they have been the registered owner with the land registry for 2 years. Accordingly, a leaseholder trying to sell a property with a lease that has only 82 years left, could struggle finding a buyer. This is because the new leaseholder may not qualify to exercise the statutory right until after the lease drops below this important threshold.
27. This is a concern for the leaseholder because the price to extend a lease with less than 80 years remaining is considerably more expensive as this threshold triggers an additional cost known as the Marriage Value (see below). The Marriage Value has to be paid by the leaseholder to the landlord and can be quite expensive, depending on the value of the property once the lease has been extended.
28. However, it is possible for the leaseholder, if they have owned the lease for at least 2 years, to serve a Section 42 Notice to start the lease extension process and assign the benefit of the notice to the buyer. This means that the buyer will not have to wait 2 years to extend the lease. Whilst there is no prescribed form for the assignment of the notice, it needs to be clear that the purpose of the notice is to assign the benefit of the Section 42 Notice to the buyer. This has to be done before, or at the same time as the lease is legally assigned. Once the purchase has completed, the new leaseholder can then continue with the process without having to wait 2 years.

### Marriage Value

29. When a leaseholder extends a lease that has less than 80 years left, there is an additional fee to be paid to the landlord called a Marriage Value. Taking action before the lease falls below 80 years will avoid the Marriage Value for the leaseholder.
30. When a lease is extended it adds value to the property. Sometimes this can be a substantial amount. Under the Act, the landlord is entitled to half of the increase in the value of the property following completion of the lease extension. This is effectively reflecting the additional market value of there being a longer lease. For example, if a property increased in value by £20,000 following the lease extension, the leaseholder would have to pay a Marriage Value amount of £10,000 to the landlord.
31. In that this potential 'profit' only arises from the landlord's obligation to grant the new lease, the legislation requires that it be shared equally between both parties.

### Landlord Valuation

32. The landlord will also instruct its own surveyor for a professional valuation for extending the lease.
33. The landlord may also request further information, which they must do within 21 days of receipt of the Section 42 Notice and the leaseholder has 21 days to provide any information the landlord has requested.
34. The landlord has at least 2 months to respond to the Section 42 Notice with their own offer, by serving a Section 45 Counter Notice.
35. If the landlord does not serve the Section 45 Counter Notice by the date stated in the Section 42 Notice, the leaseholder can apply to the County Court for a Vesting Order. This action must be undertaken within 6 months. This order effectively takes the matter out of the landlord's control and the Court will likely grant the new lease to the leaseholder and the terms will be as set out in the leaseholder's original Section 42 Notice.
36. If the landlord does serve the Section 45 Counter Notice it will either accept or reject the claim and if relevant, state why the landlord is not willing to accept the offer for the suggested premium. If the landlord is not willing to accept the proposed offer, then the Section 45 Counter Notice will state the lease premium the landlord requires.
37. There is then a further period of 2 months during which the solicitor and the landlord can negotiate. The solicitor will continue to be the conduit for any negotiations between the landlord and the leaseholder, referring counter offers from the landlord back to the leaseholder's surveyor for comment.
38. If negotiations fail, the landlord or the leaseholder can apply to the First-Tier Tribunal (Property Chamber – Residential Property) (FTT), the arbiter of leasehold disputes, for a determination of the premium and the terms of the new lease. Either party can take this action, no sooner than 2 months but within 6 months of the date the Section 45 Counter Notice was served. If the leaseholder does not apply to the FTT within 6 months from the date of the landlord's Section 45 Counter Notice, they will have in effect withdrawn their Section 42 Notice.
39. Once the FTT undertake a determination, they will write to the leaseholder's solicitor to advise how much it's been decided the leaseholder will pay for the extension. The FTT's decision becomes final after 28 days. Therefore, if a leaseholder wishes to appeal to the Upper Tribunal, they have to do so within the 28 days. Typically this would be if the FTT has acted unfairly or did not follow the correct procedures. They cannot appeal simply because they do not agree with the FTT's decision.
40. After the 28 day appeal window is closed and the tribunal's decision becomes final, the parties have two months to enter into the new lease. If the landlord has not fulfilled his duties in this regard, the leaseholder has to apply to the Courts within two months to enforce this.
41. The premium is then paid and legal completion takes place.

42. Typically, the whole process can take on average 3 to 4 months; less smoothly it can take up to a year.

### Costs

#### *43. Leaseholder's costs:*

The leaseholder will be responsible for paying the following:

- The Premium for the lease extension
- Their own Legal fees. NB: Court costs and Tribunal costs will be extra to standard solicitor fees
- Their own valuation fees. NB: Costs for opining on counter offers may be extra to the standard valuation fee
- Their landlord's reasonable conveyancing fees. NB: this will not include the landlord's legal costs for negotiating the price of the extension or for dealing with Court or Tribunal applications
- Their landlord's reasonable valuation fees
- Marriage Value (if applicable)

#### *44. Landlord's costs:*

The landlord will be responsible for paying the following:

- Negotiation costs
- Any Court Costs
- Any Tribunal costs

## **The Non-statutory Procedure**

45. A leaseholder can agree with their landlord the amount to pay for the extension of a lease without entering into the statutory procedure. This is known as an 'informal', 'open market', 'private', 'voluntary' or 'by agreement' lease extension.
46. The non-statutory procedure, which is outside of the Act, means the leaseholder simply agrees terms with their landlord 'up-front', typically subject to the landlord obtaining valuation advice at the leaseholder's cost and meeting the landlord's reasonable costs.

### Advantages

47. As the confines and stipulations of the Act do not apply to this informal process, there are a number of advantages for the leaseholder and the landlord.
48. Unlike the statutory route, a leaseholder can extend their lease without having to wait the statutory 2 years requirement of being the registered owner.
49. The statutory notice (Section 42 Notice) is no longer a requirement and does not need to be served. Instead, an informal letter or email communication from the leaseholder to the landlord will suffice. This also means that time will

not be spent on Section 45 Counter Notices being issued or appeals to the FTT.

50. The terms of the lease extension agreement are not fixed at an additional 90 years; it can be for any length of term up to 999 years. This allows a leaseholder to be able to negotiate a short lease extension, enabling a sale or re-mortgage to proceed at the same time, and therefore not caught by the confines of the 80 Year Rule above, if a leaseholder is trying to sell a property with a lease that has only 82 years left.
51. As many steps and requirements of the statutory procedure have been removed, the overall costs and timescale for the non-statutory procedure should be reduced for both parties. The leaseholder will not have to pay their solicitor any extra Court costs or Tribunal costs, and should they not procure their own valuation, the leaseholder will save the cost of employing their own surveyor and valuation fees.

#### Disadvantages

52. Unlike the statutory route, all terms are subject to negotiation and this can lead to disadvantages for the leaseholder.
53. The landlord can increase the ground rent which can include increases every 10 to 25 years.
54. The landlord may not offer a favourable lease term and premiums can be for any value.
55. The landlord can also renegotiate existing terms or introduce new clauses and covenants, and increase existing notice fees and interest rates payable under the existing lease.
56. Unlike the statutory route, the landlord is not legally obliged to complete the lease extension, so the leaseholder would be relying on the landlord's good-will. There are no guarantees the leaseholder will eventually get the lease extension and could stand to lose any money they invest in this process.
57. There is also no assistance from the First-Tier Tribunal (Property Chamber).

#### Current Approach:

58. The Council will respond to requests from leaseholders to extend their lease in a fair, transparent and open manner.
59. The Council will consider and grant extensions to a lease for all eligible leaseholders irrespective of the application route the leaseholder chooses to follow, provided the processes set out above have been followed.
60. The lease extension criteria for an eligible leaseholder are set out below.
61. At the point a Right to Buy applicant accepts an Offer to lease a flat, the Council provides the tenant and their legal counsel a draft of the Right to Buy lease. This lease only offers the applicant a lease term calculated from the

date the first lease in their block was issued, and as such will be for less than 125 years.

## **Statutory Procedure**

### Qualification

62. Under the Leasehold Reform Housing and Urban Development Act 1933, a leaseholder must be a qualifying tenant of a flat in order to extend their lease. A qualifying tenant must have owned the flat for at least 2 years and that lease must have been originally for a period of 21 years or more.

### Assigning the right to extend

63. There is a mechanism available to leaseholders allowing them to circumvent the 2 year ownership rule, but it must be done before a lease is sold to a new owner.
64. Any leaseholder who has the right to extend their lease may assign the benefit of this right to a new owner. Therefore, anyone who is interested in purchasing a leasehold property, who intends to extend their lease within 2 years of their ownership, must ensure that the seller assigns their right to extend the lease by a formal deed of assignment.

### Procedure to assign the benefit

65. The outgoing leaseholder must have the right to extend the lease (owned the property for at least 2 years).
66. The outgoing leaseholder must serve a valid Section 42 Notice on the landlord.
67. The outgoing leaseholder must execute a deed of assignment and hand this to the incoming leaseholder on completion of the sale.
68. The new leaseholder now has the right to extend the lease, as though they had owned the flat for at least 2 years.
69. This method allows the buyer of a flat to pursue a lease extension immediately after completion of the purchase without having to wait the statutory minimum period of 2 years.

## **Non-statutory Procedure**

70. There is no criteria or qualification required in order to extend a lease when following the non-statutory route. Unlike the statutory route, a leaseholder can extend their lease without having to wait the statutory 2 year requirement of being the registered owner.

## **Proposal:**

71. All lease extension applications will be assessed by the Leasehold Services and Right to Buy Manager. If the required process has been followed the Leasehold Services and Right to Buy Manager will make a recommendation to approve the requested extension to their line manager.
72. The applicant for the lease extension will be notified of the outcome in writing.
73. All Right to Buy leases are to be offered with a term of 125 years.

### **Complaints:**

74. If a leaseholder is unhappy with the service received during their claim to extend their lease, they should follow the Housing Complaints Procedure in order to achieve a local resolution. If this does not prove satisfactory, they can progress their complaint on to the Housing Ombudsman Service.
75. In addition, any leasehold dispute can be taken to the First-Tier Tribunal (Property Chamber – Residential Property).

### **Monitoring and Review:**

76. This approach will be reviewed every three years or sooner if there is a change in legislation.
77. The number of applications for lease extensions, number granted and any other relevant matters will be reported annually to Management Team.

### **Implications and Risk Assessment:**

78. If the proposed changes were not reflected and potential purchasers were merely advised of the statutory process, this would be at odds with our intention to put the customer at the centre of what we do. It could lead to delays, impact on residents and effectively penalise them for wanting to buy their property to get on the housing ladder.
79. If the Council continued to issue Right to Buy leases calculated using the remaining term of the first lease issued in each block, the Right To Buy scheme could no longer be attractive to some tenants, effectively disadvantaging and penalising them, alienating them from the scheme and stopping them from buying their property and getting on to the housing ladder.
80. It is not thought that there are any risks or implications of the course of action proposed. There are no wider impacts on the environment, human rights, staffing, community safety or other areas.

### **Equalities Impact Assessment:**

81. Please see attached Equalities Impact Assessment. There are no arising key issues.

### **Consultation Planned or Undertaken:**

82. No consultation has been, or is intended to be undertaken.

### **Other Options Considered:**

83. Officers have considered not having a non-statutory lease extension approach and simply referring leaseholders to the statutory process. However, the absence of a non-statutory lease extension option makes the process of extending a lease more onerous for the leaseholder and the Council without providing any benefits over a non-statutory lease extension process. Additionally, the non-statutory process provides a faster route to resolution and reduces the direct costs associated with the statutory process.

### **Reasons for Supporting Option Recommended:**

84. Agreeing the proposed change will provide an improved service option for the customer and Council that simplifies and speeds up the lease extension process.
85. The Council reduces its exposure to the cost associated with the statutory route.
86. Agreeing to offer all Right to Buy leases with a term of 125 years will ensure that all of our tenants, current and future, are being treated fairly and equally and are being given the same rights to purchase their homes.

### **Next Steps in Process:**

87. Should the proposal be agreed, all future requests for lease extensions would be offered the non-statutory lease extension option. Right to Buy Leaseholder guidance would be updated to include the Council's non-statutory lease extension option.
88. Should the proposal to issue all Right to Buy leases with a term of 125 years be agreed, Legal will be advised and with immediate effect, all current and future Right to Buy applications will be completed with a 125 year lease.

### **Conclusion:**

89. The proposed non-statutory lease extension option is in keeping with the Council's objective to put the customer at the centre of what we do. It provides an improved service for all parties and reduced associated costs. The recommendation is contained on the summary page.
90. The proposed Right to Buy lease term of 125 years for each and every Right to Buy applicant is in keeping with the Council's objective to ensure that it supports its tenants to take their first steps to home ownership. The recommendation is contained on the summary page.

### **Portfolio Holder's Views:**

Cllr Andrew Buchanan, Portfolio Holder for Housing:

91. The proposals as set out in the report are considered, sensible and will provide more certainty for all parties. I wholly endorse the approach as we seek to put the customer at the centre of what we do. As a responsible landlord we would obviously approach any conversations with residents in this situation with tact and proper attention. No one should be penalised for wanting to make their homes in Ashford and for trying to improve themselves by buying their own home. Therefore I fully support the change in approach and the 125 year Right to Buy lease term.

**Contact and Email:**

92. Hazel Tillman, [hazel.tillman@ashford.gov.uk](mailto:hazel.tillman@ashford.gov.uk), 01233 330823

# Equality Impact Assessment

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1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:
  - (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
  - (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
  - (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
  - (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

## **Public sector equality duty**

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
  - (a) Eliminate discrimination, harassment and victimisation;
  - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (i.e. tackling prejudice and promoting understanding between people from different groups).
3. These are known as the three aims of the general equality duty.

## **Protected characteristics**

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:
  - Age
  - Disability
  - Gender reassignment
  - Marriage and civil partnership\*
  - Pregnancy and maternity
  - Race
  - Religion or belief
  - Sex
  - Sexual orientation

\*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

## **Due regard**

5. Having ‘due regard’ is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To ‘have due regard’ means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
  - removing or minimising disadvantages suffered by people due to their protected characteristics.
  - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
  - encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is ‘due’ will depend on the circumstances. The greater the potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.
8. In terms of timing:
  - Having ‘due regard’ should be considered at the inception of any decision or proposed policy or service development or change.
  - Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
  - The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

## **Armed Forces Community**

9. As part of the council’s commitment to the Armed Forces Community made through the signing of the Armed Forces Covenant the council’s Cabinet agreed in November 2017 that potential impacts on the Armed Forces Community should be considered as part of the Equality Impact Assessment process.
10. Accordingly, due regard should also be had throughout the decision making process to potential impacts on the groups covered by the Armed Forces Covenant:
  - Current serving members of the Armed Forces (both Regular and Reserve)
  - Former serving members of the Armed Forces (both Regular and Reserve)
  - The families of current and former Armed Forces personnel.

## **Case law principles**

11. A number of principles have been established by the courts in relation to the equality duty and due regard:
  - Decision-makers in public authorities must be aware of their duty to have ‘due regard’ to the equality duty and so EIA’s must be attached to any relevant committee reports.

- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a policy, for example, is being developed and agreed but also when it is implemented.
- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on “Meeting the Equality Duty in Policy and Decision-Making” (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

<b>Lead officer:</b>	Hazel Tillman
<b>Decision maker:</b>	Sharon Williams
<b>Decision:</b> <ul style="list-style-type: none"><li>• Policy, project, service, contract</li><li>• Review, change, new, stop</li></ul>	Service
<b>Date of decision:</b> The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	24/11/2022
<b>Summary of the proposed decision:</b> <ul style="list-style-type: none"><li>• Aims and objectives</li><li>• Key actions</li><li>• Expected outcomes</li><li>• Who will be affected and how?</li><li>• How many people will be affected?</li></ul>	<p>To introduce a non-statutory lease extension process to simplify and improve the options available to the Council's Right to Buy Leaseholders when seeking to extend the term of their lease. To provide each Right to Buy applicant a Right to Buy lease of 125 years.</p> <p>Secure Cabinet approval for the non-statutory lease extension process and secure Cabinet approval for providing each Right to Buy applicant a Right to Buy lease of 125 years.</p> <p>Leaseholders seeking to extend their lease will choose the non-statutory route. Reduced administrative burden for the leaseholder and Council. Reduced costs for the Council compared to the statutory route. All Right to Buy applicants will be afforded the same Right to Buy lease term.</p> <p>All existing leaseholders will have the additional option of the non-statutory route when seeking to extend their leases. All new Right to Buy applicants will be offered a Right to Buy lease of 125 years.</p> <p>Currently we have approximately 240 leaseholders who would have access to the proposed new non-statutory lease extension process. In addition, each future Right to Buy applicant purchasing their flat will be able to buy their home on an equal footing.</p>
<b>Information and research:</b> <ul style="list-style-type: none"><li>• Outline the information and research that has informed the decision.</li><li>• Include sources and key findings.</li></ul>	The Leasehold Reform Housing and Urban Development Act 1933, allows leaseholders to claim a new lease upon payment of a premium to their landlord. There are two routes that a leaseholder can pursue to seek an extension to their lease, the statutory route or, the non-statutory route (also known as the informal route).
<b>Consultation:</b> <ul style="list-style-type: none"><li>• What specific consultation has occurred on this decision?</li></ul>	None

<ul style="list-style-type: none"> <li>• What were the results of the consultation?</li> <li>• Did the consultation analysis reveal any difference in views across the protected characteristics?</li> <li>• What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics?</li> </ul>	
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**Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.**

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision <b>Positive (Major/Minor)</b> <b>Negative (Major/Minor)</b> <b>Neutral</b>
<u>AGE</u> Elderly	None	Neutral
Middle age	None	Neutral
Young adult	None	Neutral
Children	None	Neutral
<u>DISABILITY</u> Physical	None	Neutral
Mental	None	Neutral
Sensory	None	Neutral
<u>GENDER RE-ASSIGNMENT</u>	None	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	None	Neutral
<u>PREGNANCY/MATERNITY</u>	None	Neutral
<u>RACE</u>	None	Neutral
<u>RELIGION OR BELIEF</u>	None	Neutral
<u>SEX</u> Men	None	Neutral

Women	None	Neutral
<u>SEXUAL ORIENTATION</u>	None	Neutral
<u>ARMED FORCES COMMUNITY</u> Regular/Reserve personnel	None	Neutral
Former service personnel	None	Neutral
Service families	None	Neutral

<b>Mitigating negative impact:</b>  Where any negative impact has been identified, outline the measures taken to mitigate against it.	Not applicable
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### Is the decision relevant to the aims of the equality duty?

Guidance on the aims can be found in the EHRC's [Essential Guide](#), alongside fuller [PSED Technical Guidance](#).

Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	N/A
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	N/A
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	N/A

<b>Conclusion:</b> <ul style="list-style-type: none"> <li>Consider how due regard has been had to the equality duty, from start to finish.</li> <li>There should be no unlawful discrimination arising from the decision (see guidance above ).</li> <li>Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be</li> </ul>	<p>The non-statutory lease extension process has a neutral impact upon equality for those opting to choose the non-statutory route over the statutory route for lease extensions.</p> <p>To provide each Right to Buy applicant a 125 year Right to Buy lease eliminates discrimination, promotes equality of opportunity and fosters good relations between the Council and its customers.</p> <p>The proposed process and proposed new Right to Buy lease term meet the aims of the equality duty as they do not discriminate or have any impact upon people with protected characteristics.</p>
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made or whether any residual impacts are justified. <ul style="list-style-type: none"><li>• How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?</li></ul>	
<b>EIA completion date:</b>	07/10/2022