



HOUSING MANAGEMENT
TENANCY POLICY
SEPTEMBER 2019
SEPTEMBER 2022

Policy on :	Tenancy Policy
--------------------	-----------------------

Compliant with the Scottish Social Housing Charter :	<p>Charter Ref no 1: Equalities Social Landlords perform all aspects of their housing service so that:</p> <ul style="list-style-type: none"> • Every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services. <p>Charter Ref no 2: Communication Social Landlords manage their business so that:</p> <ul style="list-style-type: none"> • Tenants & other customers find it easy to communicate with their landlord & get the information they need about their landlord, how & why it makes decisions and the services it provides
Compliant with Tenant Participation Strategy:	N/A
Compliant with Equal Opportunities:	Yes
Compliant with New Regulatory Framework	Yes
Compliant with Business Plan:	<p>Business Objectives 1. Customer Service -Provide excellent customer service which represents best value for money and embraces current technology and communications.</p>

Date Approved: Date for Review :	
---	--

Responsible Officer:	Head of Housing
-----------------------------	------------------------

1. AIMS & OBJECTIVES

The aim of this policy is to outline how the Association deals with applications for the following:

1. Succession
2. Assignment
3. Sub-letting (the whole or part of the tenant's property)
4. Joint tenancies

The Association's objective is to meet both its legal requirements and contractual tenancy responsibilities, whilst making best use of its property which meets people's needs.

2. LEGISLATION

This policy takes into account of the following:

- The Housing (Scotland) Act 2001,
- Housing (Scotland) Act 2014
- Matrimonial Homes(Family Protection) (Scotland) Act 1981
- Civil Partnerships Act 2004
- Equalities Act 2010
- Data Protection Act 1998, General Data Protection Regulation 2016

3. CONSENT

For the purpose of considering applications of succession and assignment where the tenant is married, co habiting or in a civil partnership then the Association will need the consent of the spouse, Civil partner or cohabitee as is set out within the Matrimonial Homes (Family Protection) (Scotland) Act 1981.

If the tenancy is a joint tenancy the consent of the other tenant is needed for the proposed change.

4. SUCCESSION

4.1 Legislation

The Housing (Scotland) Act 2014, Section 13 amends schedule 3 to the Housing (Scotland) Act 2001 which introduces a 12 month qualifying period and notification requirement before certain categories of person become "qualified persons" and have the right to succeed to a Scottish Secure Tenancy on the death of the tenant.

There can be two rounds of succession:

- On the death of the Scottish Secure Tenant the tenancy passes to a qualifying person
- On the death of a qualifying person who succeeded to the tenancy after the first death the tenancy passes to another qualifying person.

If the tenancy has already been succeeded twice then the third death will normally end the tenancy. This will not happen however if there is a surviving joint tenant as their SST will continue. If there is a person in the property who would have qualified

had the succession process not be exhausted the tenancy will continue for up to 6 months after the date of death.

The Association will accept written notification by letter/ email. Notification should be made for the attention of the Housing Manager.

4.2 Level of Priority

The Act defines a qualifying person, in order of priority in which they are entitled to succeed. There are 3 levels of priority:

Level One

- the tenant's spouse, civil partner or co-habitee, if the property was their only or principal home, on the tenant's death.
- A joint tenant, if the property was his or her only or principle home on the tenant's death.

There is no set residency requirement for spouses, civil partners and joint tenants other than they are living in the property at the time of the tenant's death.

For a co-habitees, family members and carers there is a residency requirement to have been living in the house for the previous 12 months ending with the tenant's death. In addition to satisfying the requirement to be living in the property, the Association must have been notified of them moving into the property and the 12 month residency period does not start until the Association has been notified.

Level Two

If no-one qualifies at Level One, or a qualifying person does not want the tenancy, it may be succeeded by a member of the tenant's family as long as:

- he or she at least 16 years of age at the date of death
- the property was his or her only or principal home at the date of death.

In addition to satisfying the requirement to be living in the property, the Association must have been notified of them moving into the property and the 12 month residency period does not start until the Association has been notified.

Level Three

If no-one qualifies at Level One or Level Two, or a qualifying person does not want the tenancy, it may be succeeded by a carer as long as:

- he or she is at least 16 years of age at the date of death
- the property was his or her only or principal home at the date of death
- he or she gave up another only or principal home before the death of the tenant he or she is providing, or has provided care for the tenant or a member of the tenant's family

In addition to satisfying the requirement to be living in the property, the Association must have been notified of them moving into the property and the 12 month residency period does not start until the Association has been notified.

Where there is more than one qualifying person on the same level of priority, they have the right to decide between themselves who should succeed. Alternatively they may apply in writing to succeed as joint tenants.

If they are unable to decide who should succeed to the tenancy within 28 days of the tenant's death the Association will make the decision on who is to be granted the succession taking into account the needs and circumstances of those involved.

4.3 Specific Rule – Property designed or substantially adapted

Where the property has been designed or substantially adapted for occupation by a person with particular needs who require such accommodation i.e. a house designed for wheelchair users a person will only qualify to succeed as follows:

1st Succession

The right to succeed without such needs only applies where the qualifying person is the tenant's spouse, civil partner or joint tenant, or

Where members of the family or carer has special needs requiring accommodation provided by the property.

For co-habitees, family members and carers there is a residency requirement to have been living in the house for the previous 12 months ending with the tenant's death. In addition to satisfying the requirement to be living in the property, the Association must have been notified of them moving into the property and the 12 month residency period does not start until the Association has been notified.

2nd Succession

All qualifying persons have to have special needs requiring the type of accommodation provided by the property. Where the person does not require this accommodation, but would otherwise have qualified to succeed; the Association will make other suitable accommodation available to the person. Suitable accommodation is defined by the Housing (Scotland) Act 2001, Schedule 2, Part 2.

Where the Association has recovered possession of the property as a result of court action and tenants have been required to move to other suitable accommodation, (Housing (Scotland) Act 2001, Schedule 2, Part 1, grounds 8-14), both tenancies are to be treated as a single tenancy for the purposes of succession. This prevents succession rights beginning afresh from the new tenancy.

4.4 Declining a Succession

Where a qualified person does not wish to succeed to the tenancy they must advise the Association in writing within 28 days of the tenant's death. They have a legal right to remain for up to 3 months from the death of the tenant and are responsible for paying the rent from the tenant's death until they leave the property.

4.5 Termination of Tenancy

The tenancy ends on the date of death of a Scottish Secure Tenant either:

- when there is no qualifying person, or
- each qualifying person declines the tenancy

The tenancy is also ended on the death of a qualified person who succeeded to the tenancy on the second occasion. However, in the case of joint tenancies, these are not terminated if the remaining tenant or tenants continue to live in the house.

4.6 Right to Remain in the Tenancy after Termination

Where the tenancy is terminated as a result of the death of the second successor, any other qualifying person is legally entitled to remain as tenant in the property for 6 months. This tenancy is neither a Scottish Secure Tenancy nor a Short Scottish Secure Tenancy. This provision enables the person concerned to find other suitable accommodation.

4.7 Exceptional Circumstances

Where a person does not have a right to succeed the Association has no discretion to grant a succession of tenancy. The Association will however, depending on the individual circumstances, consider whether offering a tenancy either for the existing property or an alternative property is appropriate under its Allocations Policy. Any tenancy offered would be a new tenancy and not a succession. Where a tenancy is not granted the person will be asked to vacate the property within 28 days.

4.8 Complaints and Appeals

The Housing (Scotland) Act 2001 does not allow a right of appeal against succession decisions. However where a person has applied for a succession and has been refused and they are dissatisfied with this decision or feel the Association has not applied the policy they have redress to the Association's Complaints Policy.

5. ASSIGNATION

5.1 Legislation

An assignation of tenancy is when a tenant intends to leave their property and transfer their rights and obligations to another person. A Scottish Secure tenant is not allowed to assign their tenancy without the written permission of the Association.

The Association will ensure that applications to assign a tenancy are processed in accordance with legal provisions set out in the Housing (Scotland) Act 2001, Section 32 and Part 2 of Schedule 5, and the contractual terms contained within the Scottish Secure tenancy Agreement. The Housing (Scotland) Act 2014 Section 12(2) introduced a 12 month qualifying and notification requirement to allow an assignation to be considered.

The Association will accept written notification by letter/ email. Notification should be made for the attention of the Housing Manager.

Where through notification the Association becomes aware of overcrowding it will write to advise the tenant that it does not give permission for the person to remain in the property.

5.2 Eligibility Criteria

- For a tenant to assign a tenancy the property must have been their only and principle home during the 12 months immediately before the date of their written request to assign their tenancy to someone else.
- The person the tenant wishes to assign the tenancy to must have been living in the house as their only or principle home for at least 12 months before the date of the tenant's written request.
- The tenant, joint tenant or person they wish to assign their tenancy to must have notified the Association of them moving into the property and the 12 month residency period does not start until the Association has been notified.
- The rent account of the principle tenant must be up to date and there should be no outstanding housing related debt such as former tenant arrears, recharges or court expenses.
- The person the tenant wishes to pass their tenancy to must be at least 16 years old.

5.3 Grounds for Refusal

The Association will grant the assignation unless there are reasonable grounds not to do so. The following are reasonable grounds for refusal:

- A Notice of Proceedings has been served on the tenant that specifies any of the Housing (Scotland) Act 2001 , Schedule 2 Grounds 1-7
- An order of recovery of possession has been made against the tenant
- It appears that a payment or an unreasonable rent or deposit is to be received by the tenant in consideration of the assignation
- Consent to the assignation would lead to overcrowding as per the Association's Allocations Policy
- The Association intends to carry out major repair work to the property which affects its accommodation
- The property is specifically designated to meet specific needs and the person the tenant wishes the tenancy passed to does not have these needs i.e. wheelchair and significantly adapted property
- Where either the tenant or the person the tenant wishes to give their tenancy to has given false or misleading information about their circumstances
- Where the proposed person the tenant wishes to give their tenancy to has pursued a course of Anti-Social Behaviour , or has been convicted of using a previous tenancy for illegal or immoral purposes or has had an Anti-Social Behaviour Order granted against then or a member of their household within the last 3 years
- The person the tenant wishes to give their tenancy to has previously been evicted by the Association

- The Association has defined the property for future sale in its Buying and Selling Strategy
- The person the tenant wishes to pass the tenancy to would not get reasonable preference under the Association's Allocation's Policy
- Consent to the assignation would lead to under occupation
- Where the proposed assignee wishing to reside has had a previous tenancy with the Association and has monies due and no arrangement in place or an arrangement has not been maintained for a period of 3 months
- where the property is subject to a letting initiative and the person the tenant wants to assign the tenancy to does not meet its requirements e.g. Oliphant Court
- where the proposed assignee has not been living in the tenancy for the preceding 12 months
- where the tenant has not held the tenancy for the preceding 12 months prior to the assignation request

This list is not exhaustive and each case will be considered individually on its circumstances.

The Association will advise the tenant of its consent or refusal and in the case of refusal, the reasons for the refusal, to the tenant in writing within one month of receipt of the application. Where the Association fails to inform the tenant within the 28 day timescale permission will be deemed to have been granted.

5.4 Complaints and Appeals

Tenants have a right of appeal. They can raise proceedings to the court by way of summary application.

Alternatively a tenant can ask the Housing Manager to review the decision. Where the Housing Manager upholds the original decision the tenant has redress through the Association's Complaints Policy.

6. SUB-LETTING

6.1 Criteria

A sublet is when a tenant intends to let to a third party all or part of their property for a specific period of time. During this time the legal contract between the tenant and the Association still exists.

The Association will ensure that applications to sublet a tenancy are processed in accordance with legal provisions set out in the Housing (Scotland) Act 2001, Section 32 and Part 2 of Schedule 5, and the contractual terms contained within the Scottish Secure Tenancy Agreement. The Housing (Scotland) Act 2014 Section 12(2) introduced a 12 month qualifying and notification requirement to allow an sublet to be considered.

A Scottish Secure tenant can only sublet with the consent in writing from the Association.

The Association will accept written requests by letter/ email. Requests should be made for the attention of the Housing Manager.

6.2 Eligibility Criteria

- For a tenant to sublet the property it must have been their only and principle home during the 12 months immediately before the date of their written request to sublet the property/part of the property to someone else .
- If the tenant was not the tenant throughout that period, the property must have been their only or principle home during those 12 months: and that the person who was the tenant at that time had notified the Association that the person who is now the tenant was living there.
- Where seeking to sublet the whole property the tenant intends to be absent from the property for a minimum period of 3 months and a maximum of up to 12 months.
- Where seeking to sublet a part of the property the tenant intends to continue living in the property for the duration of the sublet.
- The rent account of the principle tenant must be up to date and there should be no outstanding housing related debt such as former tenant arrears, recharges or court expenses.
- The person the tenant wishes to pass their tenancy to must be at least 16 years old.

6.3 Grounds for Refusal

The Association will grant the sublet unless there are reasonable grounds not to do so. The following are reasonable grounds for refusal:

- A Notice of Proceedings has been served on the tenant that specifies any of the Housing (Scotland) Act 2001 , Schedule 2 Grounds 1-7
- An order of recovery of possession has been made against the tenant
- It appears that a payment or an unreasonable rent or deposit is to be received by the tenant in consideration of the sublet
- Consent to the sublet would lead to overcrowding as per the Association's Allocations Policy.
- The Association intends to carry out major repair work to the property which affects its accommodation
- The property is specifically designated to meet specific needs and the person the tenant wishes to sublet the whole or part of the house to does not have these needs i.e. wheelchair and significantly adapted property
- Where either the tenant or the person the tenant wishes to sublet to has given false or misleading information about their circumstances
- Where the proposed person the tenant wishes to sublet to has pursued a course of Anti-Social Behaviour , or has been convicted of using a previous tenancy for illegal or immoral purposes or has had an Anti-Social Behaviour Order granted against then or a member of their household within the last 3 years
- The tenant has outstanding arrears or any other housing related debt due to the Association

- The proposed sub tenant would not be given reasonable preference in terms of the Associations Allocation's Policy
- Consent to the sublet would lead to under occupation
- Where the proposed sub tenant wishing to reside has had a previous tenancy with the Association and has monies due and no arrangement in place or an arrangement has not been maintained for a period of 3 months
- where the tenant has not held the tenancy for the preceding 12 months prior to the sublet request

This list is not exhaustive and each case will be considered individually on its circumstances.

The Association will advise the tenant of either its consent or refusal and, in the case of refusal, the reasons for the refusal, to the tenant in writing within 28 days of receipt of the application.

Where the Association fails to inform the tenant within the timescales permission is deemed to have been granted.

6.4 Complaints and Appeals

Tenants have a right of appeal. They can raise proceedings to the court by way of summary application.

Alternatively a tenant can ask the Housing Manager to review the decision. Where the Housing Manager upholds the original decision the tenant has redress through the Association's Complaints Policy

7. JOINT TENANCIES

7.1 Criteria

A tenant can apply to ask for a joint tenant to be added to their tenancy.

Where the tenant wants another person to be a joint tenant the property must have been the only or principle home of both parties for at least 12 months immediately before the date of the tenant's written request and the tenant, a joint tenant or the person who wishes to become a- joint tenant- must have notified the Association of them moving into the property.

The 12 month qualifying period applies to anyone wanting to be a joint tenant including the tenant's spouse, civil partner or co habiting partner.

In addition to the above the tenant and person to be added as a joint tenant and any existing joint tenants must apply to us in writing to the Association for permission

Any request should include the following:

- the name and current address (if different to the tenant's address) of the person(s) they wish to have a joint tenancy with
- when they would the person(s) to become joint tenants

The Association will grant the joint tenancy unless there are reasonable grounds not to do so. The following are reasonable grounds for refusal:

- A notice has been served on the tenant warning that the Association may seek eviction on certain grounds because of your conduct
- An order of recovery of possession has been made against the tenant
- Consent to having a joint tenancy would lead to overcrowding as per the Association's Allocations Policy
- Where either the tenant or the person the tenant wishes as a joint tenant has given false or misleading information about their circumstances
- Where the proposed joint tenant has pursued a course of Anti-Social Behaviour, or has been convicted of using a previous tenancy for illegal or immoral purposes or has had an Anti-Social Behaviour Order granted against them or a member of their household within the last 3 years
- where the proposed joint tenant wishing to reside has had a previous tenancy with the Association and has monies due and no arrangement in place or an arrangement has not been maintained for a period of 3 months
- Where either party have not been resident at the tenancy for the preceding 12 months from the date of the request

The Association will advise the tenant of either its consent or refusal and, in the case of refusal, the reasons for the refusal, to the tenant in writing within 28 days of receipt of the application.

Where the Association fails to inform the tenant within the timescales permission is deemed to have been granted.

7.2 Complaints and Appeals

Tenants have a right of appeal. They can raise proceedings to the court by way of summary application.

Alternatively a tenant can ask the Housing Manager to review the decision. Where the Housing Manager upholds the original decision the tenant has redress through the Association's Complaints Policy

8.0 RESPONSIBILITIES

To ensure the Tenancy Policy is applied consistently and to ensure we provide a quality service for our customers the Association's staff and Board members have clearly defined areas of responsibility.

The Board is responsible for approving the Policy

The Head of Housing will be responsible for:

- Reviewing the Policy
- Monitor the performance of the policy

The Housing Manager will be responsible for:

- Considering appeals
- Authorisation of tenancy changes
- Discretionary decisions
- Audit cases

Monitor performance within timescales

The Housing Officers are responsible for:

- Processing applications for tenancy changes.
- Recording notifications received on the Association's housing system

The Housing Assistants are responsible for:

- Sign up of any new tenancy agreements
- Amending tenancy details on Association's housing system

15. DATA PROTECTION AND GDPR

When implementing the policies and procedures of Paisley Housing Association all staff and board members and contractors must adhere to and be aware of the requirements of the Data Protection Act 1998 and the General Data Protection Regulation (EU) 2016/679 (the GDPR).

16. EQUAL OPPORTUNITIES STATEMENT

This Policy complies with PHA's Equal Opportunities Policy and takes account of the Equality Act (2010). PHA recognises its pro-active role in valuing and promoting diversity, fairness, social justice and equality of opportunity by adopting and promoting fair policies and procedures.

The Association promotes equal opportunities and will not discriminate between persons on grounds of gender or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. See our Equalities and Diversity Policy.

18. REVIEW

The policy will be reviewed every 3 years or earlier if new legislation deems it necessary.