

The Housing (Scotland) Act 2014

Changes to your tenancy rights as a
Scottish secure tenant

**This leaflet contains important information.
Please keep it along with your tenancy agreement.**



We try to review our leaflets regularly to make sure you have the most up-to-date information, however the contents of this leaflet is only correct at the time the leaflet is published.

For more information or advice contact us on 0300 123 4566 or visit our website at www.moray.gov.uk.

Alternative formats

If you need information from Moray Council in a different language or format, such as Braille, audio tape or **large print**, please contact:

إذا كنتم في حاجة إلى معلومات من قبل مجلس موراي وتكون بلغة مختلفة أو على شكل مختلف مثل البراي، أسطوانة أوديو أو أن تكون مطبوعة باستعمال حروف غليظة فالرجاء الإتصال ب

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Your tenancy agreement is a contract between you and us. It sets out the rights and responsibilities that both you and we have. The Housing (Scotland) Act 2014 (the 2014 Act) introduces a number of significant changes to the rights tenants have under the terms of their tenancy agreement. This leaflet explains what these changes are and when they will come into effect.

Frequently asked questions

Do I need to sign a new tenancy agreement?

No. There is no requirement for any existing Scottish secure or short Scottish secure tenant to sign a new tenancy agreement. From 1 May 2019 all **new** tenants will sign a revised tenancy agreement which will include all changes made by the 2014 Act.

Which parts of my tenancy agreement have changed?

There are changes to the following parts of your tenancy agreement:

- if you want to sublet all or part of your house to someone else (see page 5);
- if you want to assign your tenancy (pass the tenancy on to someone else) (see page 6);
- if you want another person to become a joint tenant with you (see page 7);
- to some of the rules around when certain people can succeed to (take over) a Scottish secure tenancy on the death of the tenant (see page 7); and
- to the way in which a Scottish secure tenancy can be ended following a conviction for serious antisocial or criminal behaviour (see page 9).

What do these changes mean for me?

The most significant change is the importance of letting us know who is living in your household. This includes letting us know about anyone who has previously moved in with you who you have not already told us about. You should also tell us when anyone moves into, or out of your home in the future. See below for more information.

You must always keep your household details up to date. This is important because our decision may be based on whether you have been a tenant at the property for a minimum of 12 months. For assignment, joint tenancy or succession requests, our decision will be based on if the person taking on the tenancy is recorded by us as living in the property for a minimum of 12 months. The 12 month period starts at the point when we have been told that the person is living in the property as their only or main home.

It is also important to note that a tenancy can now be ended due to a conviction, not only for the tenant or joint tenant, but for any person living in the property due to immoral or illegal purposes, or any offence punishable by imprisonment which was committed either in the house or neighbouring area.

How can I update who is in my household?

There are a number of ways you can make sure that your tenancy records are kept up to date. You can:

- update your details on our website;
- contact your Area Housing Officer by phone, email or in writing to tell us that there has been a change in who is living at your home; or
- you can also visit any of our access points to tell us of a change.

You will find contact details on page 12 of this leaflet.

The changes to your tenancy agreement

There are lots of reasons why you may want to make a change to your tenancy. These include subletting your home, assigning (passing on) your tenancy, creating a joint tenancy or ending your tenancy. The 2014 Act introduces changes if you want:

- to sublet all or part of your house to someone else;
- to assign your tenancy (pass on the tenancy to someone else); or
- another person to be included with you as a joint tenant.

These changes will come into effect from **1 November 2019** and are explained below.

What is a sublet and what are the changes?

A sublet is when you want to let all or part of your house to someone else on a temporary basis. You can only sublet your home if you have obtained our written consent. The 2014 Act (Section 12(2)) makes the following changes:

- you must have been the tenant of the house for 12 months immediately before you apply for written permission to sublet your home (before there was no qualifying period), **or**
- if you were not the tenant throughout the whole of that period, the house must have been your only or main home during those 12 months and we must have been told of this.

This change will come into effect from **1 November 2019**.

There are no residency requirements for the person that wants to live in the property as a subtenant. This means that they do not have to be living in your home before you ask for our permission.

You can find more information on subletting your home and how you can apply to sublet your home on our website. Or you can contact us using the details on page 12 of this leaflet.

What is an assignation and what are the changes?

An assignation is a formal request from a tenant to assign, or pass the tenancy from themselves to another person. If you want to assign your tenancy, you must get our written consent. The 2014 Act (Section 12(2)) makes the following changes:

- the house must have been your only or main home for 12 months immediately before you apply for written permission to pass your tenancy to someone else (before there was no qualifying period); and
- the person you want to pass your tenancy to must have lived at the property as their only or main home for the 12 months before you apply (before the qualifying period was 6 months); and
- the 12 month period cannot begin unless we have been told that the person is living in the property as their only or main home. If we have already been told that the person is living in the property, you do not have to tell us again.

We can refuse permission to assign a tenancy if it is reasonable for us to do that. Two new reasons when we can refuse an application for assignation have been added to the existing list of reasons at section 32 of the Housing (Scotland) Act 2001. These new reasons are:

1. where we would not give the person you want to pass the tenancy to priority under our allocations policy; or
2. where, in our opinion, the assignation would result in your home being under occupied.

This change will come into effect from **1 November 2019**.

You can find more information on assigning your tenancy and how you can apply to assign your tenancy on our website. Or you can contact us using the details on page 12 of this leaflet.

What is a joint tenancy and what are the changes?

A joint tenancy is when two or more people sign a tenancy agreement and jointly agree to keep to its conditions. This is a legal agreement between you, any other joint tenants, and us. If you want to add a joint tenant to your tenancy agreement, you must get our written consent. The person you want to add as joint tenant, along with any existing joint tenants, must apply along with you. The 2014 Act Section 12(1) makes the following changes:

- the proposed joint tenant must have lived at the property as their only or main home for the 12 months before you apply for them to become a joint tenant (before there was no qualifying period); and
- the 12 month period cannot begin unless we have been told that the person is living in the property as their only or main home. If we have already been told that the person is living in the property you do not have to tell us again.

These new requirements apply to all applications for joint tenancies including those involving spouses, civil partners or co-habiting partners.

This change will come into effect from **1 November 2019**.

You can find more information on joint tenancies and how you can apply for a joint tenancy on our website. Or you can contact us using the details on page 12 of this leaflet.

What is a succession and what are the changes?

Succession is the transfer of a tenancy from the tenant to someone else when the tenant dies. Unfortunately, there are occasions where applicants try to take advantage of the succession rules. In these cases it can often be difficult to tell the difference between genuine qualifying people and those who have just moved into the house in order to take advantage of succession rights. These changes aim to reduce these situations.

The 2014 Act changes some of the rules around when certain people can succeed to (take over) a Scottish secure tenancy on the death of the tenant. These changes do not apply to a spouse, civil partner or joint tenant.

To make sure rights to succession are protected, you must have told us that the person wanting to succeed to a tenancy has moved in with you and at the time they do so.

Unmarried partners

Section 13(a) and 13(d) of the 2014 Act make changes to the rules on succession for unmarried partners:

- the house must have been the unmarried partner's only or main home for 12 months before they qualify to succeed to the tenancy (before this was 6 months); and
- the 12 month period cannot begin unless we have been told that the person is living in the property as their only or main home.

Family members

Section 13(b) and 13(d) of the 2014 Act make changes to the rules on succession for family members:

- the house must have been the family member's only or main home for 12 months before they qualify to succeed to the tenancy (before there was no qualifying period, the person simply had to be living there at the time of the tenant's death); and
- the 12 month period cannot begin unless we have been told that the family member is living in the property as their only or main home.

Carers

Section 13(c) and 13(d) of the 2014 Act make changes to the rules on succession for carers:

- the house must have been the carer's only or main home for 12 months before they qualify to succeed to the tenancy (before there was no qualifying period, the person simply had to be living there at the time of the tenant's death and have given up a previous home to provide the care); and

- the 12 month period cannot begin unless we have been told that the carer is living in the property as their only or main home.

These changes will come into effect from **1 November 2019**.

If we have already been told that the above people are living in your home, then you do not have to tell us again.

You can find more information on succession to a Scottish secure tenancy on our website. Or you can contact us using the details on page 12 of this leaflet.

What are the changes to ending a Scottish secure tenancy agreement?

The 2014 Act introduces changes to the ways that a Scottish secure tenancy can be ended. These are:

- by Court Order following a conviction of serious antisocial or criminal behaviour;
- by converting the tenancy to a short Scottish secure tenancy; and
- in cases where the property has been adapted but there is no-one living at the property who needs the adaptation.

These are explained in more detail below.

By Court Order

The 2014 Act changes the way a Scottish secure tenancy can be ended following a conviction for serious antisocial or criminal behaviour.

A Court does not have to consider whether it is reasonable to make an eviction if the landlord has a ground for recovery of possession in the following circumstances. The tenant, joint tenant, person living in the property, subtenant or visitor to the house:

- use the house or allow it to be used for immoral or illegal purposes, or

- commit an offence punishable by imprisonment and this was committed in the house or neighbouring area.

An 'offence punishable by imprisonment' means that the offence carries imprisonment as a possible penalty. It does not mean that offender was imprisoned.

This means that we can end a Scottish secure tenancy if someone living in or visiting the home is convicted of a serious offence in the area of the house. It allows us to end the tenancy where behaviour has had a serious impact on neighbours or others in the community.

If we intend to end a Scottish secure tenancy in this way, we will serve a notice of proceedings on you. The notice will tell you that we intend to seek recovery of possession of the property. This will be done within 12 months of the date of the conviction (or, if the appeal was not successful, of when the appeal ended).

You have a right to challenge our decision to take court action to end your tenancy on these grounds.

This change will come into effect from **1 May 2019**.

This change does not apply if we served a notice of proceedings on you before this date and the notice is still in force on the date the court proceedings are raised.

Adapted properties

The 2014 Act allows any social landlord to ask a sheriff to grant an order to end the tenancy of an adapted property that is not being occupied by anyone who needs the adaptations. This only applies where the landlord needs the property for someone who does need the adaptations. If this situation happens we would give you notice before applying to the sheriff. We would offer you suitable alternative accommodation. You would be able to ask the sheriff to consider whether our actions were reasonable and to challenge the suitability of the alternative accommodation.

This change will come into effect from **1 May 2019**.

Conversion to a short Scottish secure tenancy (SSST) for antisocial behaviour

The 2014 Act extends the circumstances when we could serve you with a notice converting your Scottish secure tenancy to a short Scottish secure tenancy. This means that in certain circumstances we can change your tenancy agreement to a different type of tenancy agreement called a short Scottish secure tenancy (SSST). A short Scottish secure tenancy gives you fewer rights and less protection from eviction than a Scottish secure tenancy. A short Scottish secure tenancy has a fixed duration, unless we agree to extend it or convert it back to a Scottish secure tenancy.

The circumstances now include any situation where you or someone living with you has acted in an antisocial manner, or pursued a course of conduct amounting to harassment of another person. This conduct must have been in or around your home and it must also have happened in the 3 years before the notice is served.

Section 7(2) of the 2014 Act also places new requirements on us when we issue a notice telling you that your tenancy will be converted to a short Scottish secure tenancy as a result of antisocial behaviour. In cases where no antisocial behaviour order has been granted by the court, we must include the following in the notice:

- the actions of the person who has behaved in an antisocial manner;
- our reasons for converting the tenancy; and
- details of your right of appeal to the sheriff.

This new ground to convert a tenancy will come into effect from **1 May 2019**.

Right to Buy

Right to buy ended for all tenants of social housing in Scotland on 1 August 2016.

More information

If you would like more information or have any questions about the above changes, please contact your Area Housing Officer.

Contacts

Housing and Property
Moray Council
PO Box 6760
Elgin
IV30 1BX
0300 123 4566
housing@moray.gov.uk
www.moray.gov.uk

We are continually trying to improve the services that we offer and welcome any comments or suggestions. Please send them to:

Housing & Property (Housing Policy)
Moray Council
PO Box 6760
Elgin
IV30 1BX
housingpolicy@moray.gov.uk

Or visit any of our access points:

Buckie Access Point
13 Cluny Square
Buckie
AB56 1AJ

Forres Access Point
Auchernack
High Street
Forres
IV36 1DX

Elgin Access Point
Council Office
High Street
Elgin
IV30 1BY

Keith Access Point
The Resource Centre
26 Mid Street
Keith
AB55 5AH

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