



MORAY COUNCIL

Housing and Property Services

Short Scottish Secure Tenancy (SSST) Policy

1. Scope of the policy

- 1.1 This policy sets out the legal framework used by Moray Council for the offer, provision and management of short Scottish secure tenancies (SSSTs) to facilitate temporary, short term or probationary tenancies, and assist in tenancy sustainment wherever possible. A SSST agreement can be given to prospective or existing tenants in specific circumstances as prescribed by legislation, see section 4.1 below.

2. Strategic context

- 2.1 The Short Scottish Secure Tenancy Policy contributes to the Moray Local Housing Strategy 2019-24, Moray 2027 and the Council's Corporate Plan.
- 2.2 The Short Scottish Secure Tenancy Policy will assist the Council in fulfilling many of the Local Housing Strategy's priorities for Moray by:
- improving access to housing in all tenures and alleviate housing need;
 - prevent and alleviate homelessness; and
 - assist people requiring specialist housing.

3. Principles and objectives of the policy

- 3.1 The Council's Short Scottish Secure Tenancy Policy is underpinned by the following principles when considering the use of a SSST:
- that the policy reflects a clear legal framework, in line with all relevant guidance and associated good practice, for the use of SSSTs and specifies the circumstances the Council will consider using them;
 - that consistency is applied where possible to ensure any measure taken under the Policy is proportionate;

- each case is assessed appropriately based on the individual circumstances of that case; and
- open and honest communication with tenants on the use of the Policy.

3.2 The specific objectives of the Short Scottish Secure Tenancy Policy are:

- to assist tenants to sustain their tenancies, with support where required, with a view to conversion to a Scottish secure tenancy (SST);
- to prevent homelessness occurring and assist with the Council's wider strategic role;
- to assist in the creation of safe and sustainable communities by tackling antisocial behaviour.

4. Legal framework

4.1 The SSST was introduced by the Housing (Scotland) Act 2001, as amended by the Housing (Scotland) Act 2014. A SSST has similar terms and conditions to a SST but, unlike a SST which is not time limited, a SSST is time limited. Schedule 6 of the 2001 Act, as amended by Section 7 of the 2014 Act, sets out the grounds that justify the use of a SSST. These grounds apply to any new prospective or existing tenants or other specified person¹ and are as follows:

- where an eviction order for eviction/repossession has been made against them in the UK on the grounds of antisocial or similar behaviour in the previous 3 years;
- where the tenant or specified person is the subject of an antisocial behaviour order (ASBO) under Part 2, Para 4 of the Antisocial Behaviour etc. (Scotland) Act 2004;
- where a course of antisocial behaviour has been carried out within the previous three years as set out in Section 7 of the Housing (Scotland) Act 2014;

¹ Any other specified person includes any one of the prospective joint tenants, any person proposed to reside with the prospective tenant, any person visiting, subletting or lodging at the tenancy.

- a temporary let is required to a person moving into the area to take up an offer of employment and seeks accommodation to do so. This is in line with the Council's Allocations Policy;
- if a temporary accommodation is required pending development work on a current property;
- if temporary accommodation is required to be given to a homeless person for six months or more;
- if temporary accommodation is given to a person in receipt of housing support services; or
- if the Council has leased the house from another body and the terms of the lease prohibit subletting under a Scottish secure tenancy.

A SSST cannot be granted unless the let falls into one of these categories.

4.2 Other associated legislation includes the Homelessness etc. (Scotland) Act 2003 and the Antisocial Behaviour etc. (Scotland) Act 2004.

5. Equality and Diversity

5.1 The Council is committed to preventing discrimination while promoting equality under the Equality Act 2010. The Council seeks to ensure that the Policy does not discriminate between individuals on the grounds of age, disability, gender, marital status/civil partnership, pregnancy, maternity, race, religion or belief and sexual orientation.

5.2 The Council will develop information and advice in a variety of formats upon request, such as large print, tape and Braille. The Council will provide interpreting services free of charge, where these are required to assist applicants.

6. Confidentiality and data protection

- 6.1 The Council will ensure that any information given to it as part of the tenancy process will be used in accordance with the General Data Protection Regulations (GDPR) and the Data Protection Act 2018.

7. Short Scottish secure tenancy (SSST)

- 7.1 The rights under a SSST are the same as the full SST but for the following exceptions:
- no right of succession to the tenancy; and
 - security of tenure is limited; and
 - where section 36 of the 2001 Act, recovery for possession is raised, household members have no right to have a notice of proceedings served and no right to be sisted as parties to the action.

While the rights to assign, take in a lodger, sublet, etc. are available under a SSST, they are limited to the period of the SSST. Assignations will only be considered in exceptional circumstances provided they meet all the requirements under the Assignations Policy.

Term

- 7.2 The Council will ensure that the term of individual SSSTs meet the legislative requirements. This will vary depending on the ground used for the creation of the SSST:
- Part 2, Section 9 of the 2014 Act sets a minimum period of 12 months for SSSTs that are created on any of the ASB grounds. This can be extended by 6 months to 18 months where the tenant is in receipt of housing support services;
 - Section 34 of the 2001 Act sets 6 months as the standard minimum period for SSSTs on all the other remaining grounds in Schedule 6 of the 2001 Act. There is no maximum period for these.

This term will start from the date the SSST is granted or the date the tenant is served with a notice to convert the tenancy from a SST to a SSST.

Rent

- 7.3 Tenants on a SSST will be liable for the payment of rent as with SSTs. Tenants may apply for the housing element of Universal Credit if they consider that they may be entitled to assistance with their rent. Tenants will be responsible for making an application to the Department for Work and Pensions (DWP).

8. Creation of SSST

- 8.1 Section 34 of the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014 prescribes the conditions required for the creation of a SSST. These ensure that the Council serves the correct statutory notice as prescribed by regulations on the prospective tenant before the creation of the tenancy (i.e. at the time the tenancy agreement is signed).
- 8.2 In order to create a new SSST, the Council must serve a notice in accordance with Section 34 (2) of the Housing (Scotland) Act 2001 on the prospective tenant. This notice must state that the tenancy to which it relates is to be a SSST, the ground the SSST is based on and the term of the tenancy.
- 8.3 The Council will ensure that when a SSST is granted it will be tailored to meet the individual needs of the tenant and where appropriate, support will offered. In certain instances, the acceptance of support may be a condition of the tenancy. For example, where a SSST has been granted as a result of antisocial behaviour, the Council may offer and provide housing support services with a view to helping the tenant convert the tenancy to a Scottish secure tenancy at the end of 12 month term (or 18 months where an extension has been granted).

9. Conversion from an existing Scottish secure tenancy to a SSST

9.1 Section 35 (2) of the Housing (Scotland) Act 2001, as amended by Section 7(2) of the Housing (Scotland) Act 2014 allows a Scottish secure tenancy to convert into a SSST where an existing tenant or specified person:

- is subject to an Antisocial Behaviour Order (ASBO); or
- has acted in an antisocial manner in relation to another person in the locality of the house or pursued a course of conduct amounting to harassment or antisocial conduct in relation to the other person.

In such circumstances, the SSST may convert back to a Scottish secure tenancy at a later stage if certain conditions are met (Housing (Scotland) Act 2001, Section 37).

9.2 The granting of an ASBO or eviction order is sufficient evidence to convert a tenancy due to the fact that the behaviour has already been proven and a court order is already in place. In attempts to protect the wellbeing of individuals and/or communities, the Council will assist in trying to enable a rehabilitative process by converting the tenancy to a SSST. This will always be done on one of these two grounds first, where possible.

9.3 Where a course of antisocial behaviour over a three year period has taken place, appropriate and robust evidence of the behaviour and its impact on the household, neighbours and or the immediate community will be required prior to converting the tenancy to a SSST. The Council will only consider this ground where none of the grounds mentioned in 4.1 above have been met.

9.4 The Council will take the following into account when considering whether to convert the tenancy to a SSST:

- who has behaved antisocially and their connection to the property;
- the nature, frequency and duration of the antisocial behaviour;
- the effect and impact that the antisocial behaviour is having on any other person (including their connection to the property), neighbours and the community over the period of time;

- what action has been taken to date by the parties involved, the Council or any partner agencies. This should include any rehabilitative processes undertaken, with the view to securing a positive change or the cessation of that conduct;
- whether a court order has been breached and whether there are any convictions in that respect;
- any individual or household vulnerabilities and the expected support needs of those persons based upon any evidence held; and
- any other relevant factors in the individual circumstances of each case.

9.5 The tenancy will automatically convert from a Scottish secure tenancy to a SSST by service of the correct statutory notice on the tenant. The Council will serve the notice by first class recorded delivery. This notice must state:

- that the tenancy to which it relates is to be a SSST;
- specify what ground the SSST is in relation to, by reference to Schedule 6 of the 2001 Act, as amended;
- the name of the tenant or person who is the subject of the Antisocial Behaviour Order (ASBO);
- where there is no ASBO, the name of the tenant or person who has behaved antisocially, their behaviour and the reasons for the notice; and
- details of the tenant's right of appeal to the court if they are not satisfied with the conversion of the tenancy.

10. SSSTs and support services

10.1 The Housing (Scotland) Act 2001 (Section 91 (8)) defines housing support services as including:

“... any service which provides support, assistance, advice or counselling to any individual with particular needs with a view to enabling the individual to occupy, or continue to occupy, as the person's sole or main residence, residential accommodation other than that excepted accommodation.”

10.2 Many factors can indicate whether a person requires housing support services. These may include:

- no history of a tenancy;
- failed tenancy in the past;
- a history of homelessness;
- the person is currently intentionally homeless as defined by Section 26 of the Housing (Scotland) Act 1987;
- the possibility of tenancy failure due to rent arrears or antisocial behaviour;
- mental health issues; and
- alcohol/substance misuse.

Each case will be assessed on its own merits.

10.3 The Housing (Scotland) Act 2001, Section 34 (7), as amended by Section 7 (1a) of the Housing (Scotland) Act 2014, requires the Council (where the tenant is subject to a SSST because of previous antisocial behaviour or an ASBO) to provide or ensure the provision of housing support services as it considers appropriate to enable the tenancy to convert to a Scottish secure tenancy. These should be services aimed at helping the tenant sustain their tenancy or change their behaviour to an acceptable level for conversion back to a full Scottish secure tenancy at the end of the agreed term.

10.4 Where housing support is required the Council will ensure that all appropriate referrals are made and support assessments carried out. Housing support services will be provided where necessary to assist in sustaining the tenancy. This will be explained fully to the tenant and the support offered.

10.5 Where the applicant refuses support, the Council may use its discretion when deciding whether to offer a SSST without support. The Council will consider whether the reason for the SSST, for example, antisocial behaviour, will improve with support, or whether it wishes to make acceptance of support a condition of the offer of a SSST.

- 10.6 Where a SSST is provided without support, the Council will record any unwillingness to accept support and the situation will be reviewed before the two months prior to the end of the term. The Council will decide whether to:
- terminate the tenancy (the review period will allow the Council sufficient time to provide the tenant with 2 months' notice of the Council's intention to end the tenancy, as required by law);
 - convert the tenancy to a Scottish secure tenancy; or
 - continue the tenancy for a further 6 months, but on the condition that support is taken.
- 10.7 The tenancy may convert to a Scottish secure tenancy when it can be established that housing support is no longer required in order to sustain a tenancy.
- 10.8 In situations where a SSST has been granted due to any antisocial behaviour grounds, the tenancy will automatically convert to a Scottish secure tenancy after 12 months, unless the landlord has served a notice to extend the SSST by an additional 6 months or has served a notice to terminate the tenancy at the end of its period or a notice of proceedings under s14 (please refer to Section 13 below).

11. Continuation of a SSST

- 11.1 A SSST will continue for the fixed period agreed at the outset of the tenancy. SSSTs (with the exception of those granted on any of the ASB grounds) will, at the date of termination or expiry of the tenancy agreement (known as the ish date of the tenancy), continue either by:
- (a) tacit relocation², or
 - (b) express agreement.

² Tacit relocation is a principle of Scots Law where leases of land or buildings renew for the same period, on the same terms and conditions as previously existed where no notice of termination is given within the requisite period. This is subject to a maximum period of one year. This will continue indefinitely until either of the parties apply the correct steps/notice to end the tenancy and prevent tacit relocation operating.

12. Termination of a SSST

12.1 A SSST can be terminated by any of the following methods:

- termination by the tenant;
- by written agreement;
- on the death of the tenant;
- by Court Order once the fixed period of tenancy has ended with Section 36 of the Housing (Scotland) Act 2001 as amended by Section 11 of the Housing (Scotland) Act 2014. There is no need to demonstrate any specific or management grounds in this instance; or
- by Court Order in accordance with Section 14 or Schedule 2 of the Housing (Scotland) Act 2001.

12.2 Where necessary the Council will issue the tenant with a notice to recover possession by either first class recorded delivery or personal delivery by a member of housing staff. The notice must specify a date for recovery of possession that is no earlier than 2 months from the date of service of the notice. This notice period may be longer if the tenancy agreement expressly states so.

13. Recovery of a SSST

13.1 The Council can seek recovery of possession of a SSST on the same grounds applicable to Scottish secure tenants within the Housing (Scotland) Act 2001. What action is taken depends on whether the repossession action is being taken at the end of the term of the tenancy (Section 36 of the 2001 Act, as amended by Section 11 of the 2014 Act) or during the term of the tenancy (Section 14 of the 2001 Act).

Recovery at the end of the term of SSST

13.2 Section 36 of the 2001 Act, as amended by Section 11 of the 2014 Act can be used by the Council for recovery of possession. The court **must** grant an order for recovery of possession, provided:

- the tenancy has reached its term;

- tacit relocation is not operating (i.e. it will not automatically be renewed for a further period);
- no further contractual tenancy has been entered into.

Recovery of SSST on any of the antisocial behaviour grounds

13.3 In cases where the SSST has been granted under Section 35 paragraph 1, 2 or 2A of Schedule 6 of the 2001 Act on any of the antisocial behaviour grounds the Council cannot raise proceedings for eviction unless:

- the correct statutory notice of recovery of possession, which includes the correct prescribed information, has been served;
- a tenancy obligation under the SSST has been broken;
- the proceedings are raised on or after the date specified in the notice; and
- the notice is in force at the time the proceedings are raised.

13.4 Any order granted as above must specify a date for recovery, which will effectively terminate the tenancy and give the landlord the right to repossess the house on that date.

13.5 Where the Council seeks to recover a SSST in accordance with Section 36 of the Housing (Scotland) Act 2001, members of the tenant's household have no right to have a notice of proceedings served on them and have no right to be sisted as parties to the action.

14. Automatic conversion of a SSST to a Scottish secure tenancy

14.1 In situations where a SSST has been granted due to an ASBO, or previous antisocial behaviour, Section 37 of the 2001 Act, as amended by Section 10(2) of the 2014 Act (to allow a six month extension), provides for the automatic conversion to a Scottish secure tenancy after a the 12 or 18 month period. This would happen where:

- the SSST has been granted as a 'probationary' tenancy; or
- the SSST had been created by the service of a notice;

- and no notice of proceedings under sections 14 or 36 of the Housing (Scotland) Act 2001, as amended by the 2014 Act, has been served in the 12 or 18 months following the creation of the tenancy;
- or if such a notice has been served, the notice has expired or been withdrawn.

14.2 The tenancy becomes a Scottish secure tenancy on the date that the notice ceased to be in force or was withdrawn or at the end of the 12 month period, whichever is later. Where proceedings for recovery of possession find in favour of the tenant, the tenancy becomes a Scottish secure tenancy from the date when the court found in favour of the tenant or the end of the 12 month period.

14.3 Where the Council has served a notice to quit on the tenancy no conversion can take place. There is no automatic conversion to a Scottish secure tenancy for tenants who have been granted a SSST on other grounds.

14.4 The Council must notify the tenant of the conversion and the date on which the tenancy became Scottish secure tenancy (Section 37(4) of the Housing (Scotland) Act 2001. The Council will advise the tenant of their rights and responsibilities under a Scottish secure tenancy.

15. Right of review

15.1 Where an applicant/tenant is not satisfied with any of the following they may request a review of the decision:

- the decision to offer a SSST;
- the decision to convert a SST to a SSST; or
- the decision to recover possession of the property. Section 11 (c) of the Housing (Scotland) Act 2014 amends Section 36 of the 2001 Act. This gives every tenant a right to request a review of the decision to take action to recover the property before the case goes to court.

- 15.2 Any request to review these decisions should be made in writing to the Housing Services Manager and should include the grounds on which it is made. Where the review is in relation to the recovery of possession, the tenant will have 14 days from the date on which they are served the notice of proceedings to apply for a review of the repossession action.
- 15.3 The review will be considered by a senior manager not previously involved with the original decision with a target of reviewing and responding within 28 days. However where the review is in relation to the recovery of possession the response will be issued within 14 days and no later than 2 days prior to the date of any intended eviction process. The latter response will contain confirmation of whether the recovery of possession action will continue along with the reasons why or if it will be withdrawn.
- 15.4 Where the applicant/tenant remains dissatisfied regarding an offer or conversion of a SSST they may ask the Housing Needs Review Group to consider their case. Where the Housing Needs Review Group uphold the decision to offer or convert to a SSST instead of a Scottish secure tenancy and the tenant is still not satisfied, the applicant/tenant will have a right of appeal to the Sheriff Court (Housing (Scotland) Act 2001, Section 38 for an offer or by summary application under Section 35 for a conversion.
- 15.5 The tenant's appeal must be within 21 days after the date of intimation of the notice, or a longer period if 'special cause' is shown (Rule 2.6 of the Summary Applications, Statutory Applications and Appeals etc. Rules 1999 (SI 1999/929). The Sheriff may grant the appeal if they are satisfied that there are 'good grounds' for doing so.

16. Complaints

- 16.1 The Council has a Complaints Policy which details the corporate complaints process. This is available to any applicant or tenant who is not satisfied with the way in which a case has been dealt with. The [Complaints Policy](#) and explanatory

information are available on the Council website and from any Council Office or Access Point.

17. Performance monitoring

17.1 The Council has a statutory duty to complete the Annual Return on the Charter (ARC) to the Scottish Housing Regulator (SHR). This includes the types of tenancies granted for lets during the reporting year.

17.2 The Council internally monitors the use of SSST's as follows:

- the number of current SSSTs in place;
- the number of SSSTs created in the period;
- the reason for the SSST.

17.3 This policy will be reviewed in 2022 or earlier if required by changes to legislation and/or guidance.