**THE HOUSING (SCOTLAND) ACT 2014**

1. **THE SHORT SCOTTISH SECURE TENANCY FOR HOMEOWNERS**

Section 5 of the 2014 Act changes section 20 of the Housing (Scotland) Act 1987 to remove the requirement to disregard taking ownership of property into account when allocating social housing.

Section 8 of the 2014 Act now introduces flexibility for landlords to give a short SST to a homeowner to meet a temporary housing need rather than give a full SST. It does this by inserting a new ground for the granting of such a tenancy into schedule 6 of the Housing (Scotland) Act 2001.

This is to allow homeowners to make arrangements in respect of the property that they own within a foreseeable timescale.

The guidance provides:

* circumstances when a Short SST is, and is not appropriate for a landlord to take heritable property into account
* The new grounds for granting a short SST
* Outlines the rights of a Short SST for a homeowners
* Gives advice on possible extensions to the term of the SST
* Action required at the end of the Short SST – as it does not automatically convert to a SST
* Procedures for recovery of possession of a Short SST
* The Appeals Process

The Guidance does not provide:

* The date it will come into force
* Revised secondary legislation and the date it will come into force
* Prescribed forms to be used

**We will need to:**

* **think about and set out clearly how we will take property ownership into account as there is scope within the act to consider flexibility**
* **Set out when we would offer a SSST to a homeowner**
* **Clarify how we will inform applicants an**
* **Decide via our allocation policy the level of priority they will attract**
* **Seek clarification on extensions and the circumstances they could be provided with a SST (i.e. their current property**
* **Develop a procedure to manage the process of issuing a SSST & terminating a SSST including the recovery of possession process**

1. **ASSIGNATION, SUBLETTING, JOINT TENANCIES AND SUCCESSION TO A SCOTTISH SECURE TENANCY**

This legislation introduces changes that will support landlords make best use of their available stock, whilst recognising the right to succeed to a SST.

We will be required to notify all tenants with a SST of changes to assignation, subletting, joint tenancies and successions in advance of the provisions coming into force, of which there is no date as yet.

**Assignation**

Section 12 (2) of the 2014 Act introduces

* Qualifying period for assignation – where the house must have been the tenants only or principal home during the 12 months immediately before the tenant applies for written permission to pass on their tenancy to someone else
* The person the tenant wishes to pass their tenancy on to must have lived at the property as their only or principal home for 12 months before they apply
* The tenant, joint tenant or person they wish to assign their tenancy to must have notified the landlord that the person they wish to assign the tenancy to has been living in the house and the 12 month period doesn’t start unless the landlord has been formally told of this.

Landlords can therefore refuse permission to assign a tenancy if it is reasonable to do so, and two new reasons have been introduced by the 2014 Act:

* Where the landlord would not give the person (the tenant wishes to pass their tenancy on to) a reasonable preference under our allocation policy
* Where, in our opinion, the assignation would result in the home being under occupied

**Sub-Letting**

Section 12 (2) of the 2014 Act introduces

* A tenant must have been the tenant of the house throughout the 12 months immediately before they apply for written permission to sub-let their home (previously there was no qualifying period)

Or

* If they were not the tenant throughout that period, the house must have been their only or principal home during those 12 months; and the person who was the tenant at that time must have notified the landlord that the person was living there. The 12 month qualifying period doesn’t start until the landlord has been notified.

**Joint Tenancies**

Section 12 (1) of the 2014 Act introduces

* Qualifying period for joint tenancies – proposed joint tenants must have lived at the property as their only or principal home for the 12 months before the tenant applies for them to become a joint tenant
* Notification Requirement – the tenant and proposed joint tenant must notify the landlord that they wish to become a joint tenant where the 12 month qualifying period won’t start until the notice is given

**Succession to Tenancy**

Section 13 of the 2014 amends schedule 3 of the Housing (Scotland) Act 2001 and introduces a new 12 month qualifying period and notification requirements before a person can become qualified to succeed to a SST on the death of the tenant. The qualifying period was previously 6 months.

The Act introduces

* 12 month qualifying period for succession for ‘qualifying persons’.
* Notification Requirement – the ‘qualifying’ person needs to have notified the landlord that they are living in that house as their only or principal home. The 12 month qualifying period won’t start until the notice is given

There is no ‘qualifying’ period under the new provision for the tenant’s spouse, civil partner or joint tenant provided that the persons only or principal home at the time of the tenants death.

It is hoped that these new qualifying criteria will assist landlords to minimise disputes over succession rights and allow them to make best use of their available stock.

Landlords will no longer have discretion to grant a succession of tenancy in exceptional circumstances but can consider granting a new tenancy.

**We will need to:**

* **Notify tenants with a SST in advance of the provisions coming into force – but need to clarify how long in advance**
* **Publicise the relevant criteria for assignation, sub-letting, joint tenancies and succession widely via website/update tenants handbook, newsletters. Discussed a joint leaflet to be developed by FLAIR managers (if not circulated by GWSF)**
* **Consider all requests to be appropriate to their circumstances, i.e. if it results in overcrowding**
* **Be clear about how we will accept methods of communication and establish contact management classifications with standard letters**
* **Include in our allocation policy a criteria for ‘exceptional circumstances’ to provide flexibility to allocate a tenancy where an individual doesn’t have the right to succeed**
* **Understand what we can do if we do not receive 12 months notification and a landlords use of distrectionary powers**
* **Amend future tenancy agreements**
* **Amend relevant policy/procedures**

1. **STREAMLINED EVICTION PROCESS – CRIMINAL OR ANTISOCIAL BEHAVIOUR**

The Antisocial Behaviour etc. (Scotland) Act 2004 and the Housing (Scotland) Act 2001 set out the range of measures that landlords and partner agencies can take to help deal with ASB.

The new provisions within the Housing (Scotland) Act 2014 include:

* A new short SST for antisocial behaviour (the guidance has still to be developed for this)
* A power for landlords to extend the term of some short SSTs but 6 months (again the guidance not yet out will specify this criteria)
* Section 14 (2) of the 2014 Act which gives landlords the flexibility to use a streamlined process for eviction where a tenant (or joint tenant), a person living in or lodging in the house, a sub-tenant or a person visiting the house has been convicted of an offence punishable by imprisonment.
* Secondary legislation which landlords must follow when using the streamlined eviction process which includes prescribed forms/notices which have still to be developed.

The guidance provides:

* The legislation which details the changes to the grounds for recovery of possession
* The removal of reasonableness and the necessary grounds this relates to
* The steps to be taken before using the streamlined eviction process which include  
  \* verifying information   
  \* Other factors landlords should consider  
  \* the nature and seriousness of the criminal offence  
  \* who has been convicted, and their connection to the property  
  \* where the offence was committed  
  \* have neighbours/the community being affected and impacted by the   
   behaviour  
  \* if, after a conviction, they persons behaviour changed  
  \* the relevant impact of such eviction action on household members
* Serving the Notice
* The process of court action and repossession

Ultimately, landlord will need to decide if eviction action is necessary and proportionate, as this is what a Sheriff will consider if a Streamlined Eviction is applied for.

Therefore, where a court has convicted a tenant (or relevant persons) of using the house for immoral or illegal purposes or a criminal offence punishable by imprisonment, but committed in, or in the locality of the house – and the landlord has served a notice of proceedings within 12 months of the conviction, then the court must make an order for recovery of possession without considering whether the court thinks it is reasonable to do so.

In a case where the landlord is considering taking eviction action following information about a criminal conviction, then the landlord should always obtain an extract conviction from the courts. The extract conviction should be lodged as part of the sheriff court application if the case is taken to court.

**We will need to:**

* **Consider the circumstances we will use for the streamlined eviction process**
* **Develop clear procedures/amend our policy to reflect this**
* **Ensure all eviction actions are approved by Director of Customer Services**
* **Ensure both mandatory and reasonableness grounds are used in a NOP, which provides greater flexibility for a landlord in seeking possession and a sheriff to consider**
* **Ensure adequate staff training for the procedures**
* **Amend our Tenancy Agreement**
* **Define the circumstances when we will consider the use of SSST**
* **Understand proportionality and how this fits into the streamlined process**
* **Look at our Protocol with the Police for information sharing**
* **Understand the exact criteria of locality & vicinity in the context of antisocial behavior in a community**

1. **RECOVERY OF POSSESSION OF PROPERTIES DESIGNED OR ADAPTED FOR SPECIAL NEEDS**

Section 15 of the Housing (Scotland) Act 2014 amended schedule 2 of the Housing (Scotland) Act 2001 which previously only allowed recovery of possession of an adapted property where there was no longer an occupier who required the adaptation.

Now, when a landlord lets an adapted property under a SST to a tenant who doesn’t need the adaptation in the house, they must at the outset clearly advise the tenant that they would be expected to move to alternative suitable accommodation if someone later required the adapted property.

At the point of allocating the property, if a landlord considers that there could be an issue in providing alternative accommodation for the tenant if the adapted property is required, it is worth considering if a different type of tenancy agreement would be more appropriate, such as a SSST.

Where the existing tenant refuses to move voluntarily, then landlords can seek repossession of the property in the Sheriff Court. Alternative accommodation must be offered to the tenant.

**We will need to:**

* **Ensure the tenants handbook is updated to inform tenants of this**
* **Look at offer letters to ensure this is specified at point of offer**
* **Be clear about the Associations definition of what we class as adapted properties**
* **Look at the system, and put warnings on the system, if a property falls under this criteria**
* **Include this in our allocation policy**
* **Understand the implications of sustainability which is reported to the regulator, if SSSTs are utilized in this circumstance (FLAIR will contact the Regulator to clarify this)**

**THE LEGAL FRAMEWORK FOR SOCIAL HOUSING ALLOCATIONS**

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| The 2014 Act adds a qualification to ‘reasonable preference’ in that the applicant should have ‘unmet housing need’ - housing needs which are not capable of being met by housing options which are available.  It also introduces a new ‘reasonable preference’ category – those who are ‘under-occupying where landlords need to set out clearly what they consider to be ‘under-occupancy   |  |  | | --- | --- | | **Existing Reasonable Preference Groups** | **New Reasonable Preference Groups** | | Living below tolerable standard | Homeless persons and persons threatened with homelessness with unmet housing needs | | Overcrowding | Unsatisfactory housing conditions with unmet need | | Large families | Tenants who are under-occupying | | Unsatisfactory housing conditions |  | | Homeless persons |  | |
| The definition of homelessness is the same as that set out in Part II of the 1987 Act. |
| ‘Unsatisfactory housing conditions’ covers a wide range of issues, from physical condition of house, to the medical needs of the applicant. |
| Landlords will need to decide how much weight to give to each reasonable preference category. |
| Landlords will be able to take property ownership into account when allocating housing. |
| **We will need to:**   * **We have a duty to consult on and set out how we will prioritise the allocation of houses to applicants; tenants; RTOs; and anyone else we see fit** * **Publish these rules in our allocation policy** * **Prepare and publish a report on the consultation process, as outlined above** * **Completely review our allocation policy and procedures in light of legislative changes and the move to Choice Based Lettings by ERC** * **update the ‘reasonable preference’ section of our policy** * **set out what we consider to be unsatisfactory housing conditions** * **consider what we mean by ‘under-occupancy’** * **update our weighting system to reflect the new categories** * **Review and update our application form, to make sure we are capturing the relevant information.** |
| **We will need to:**  **Set out what we consider as living in ‘unsatisfactory housing conditions.**  **Factors to consider include:**   * **Overcrowding** * **Living in a house that is below tolerable standard** * **Health and disability** * **Harassment and abuse**   **Social, community or family support**  Suspensions   |  |  | | --- | --- | |  | Section 6 of the 2014 Act introduces a new section – ‘20B’ which gives a legal basis for suspending applicants from receiving an offer of housing for a period of time from the date they apply for housing. | |  | This is described in terms of imposing a minimum period of time for an application to be in place before an offer of housing can be made – commonly referred to as a ‘suspension’. | |  | To be suspended under section 20B an applicant must have been accepted onto a housing list and a decision taken at the point of application that they will not be eligible for an offer of housing until a specified period of time has elapsed. | |  | Suspensions can be imposed as a response to   * Antisocial Behaviour * Certain previous convictions * Order for recovery of possession * Abandoning or neglecting a property * Rent arrears and other tenancy related debt * Making a false statement in an application for housing * Applicants who have refused an offer of housing | |  | Evidence to suspend for ASB might include:   * The nature, frequency and length of the ASB * The extent to which the ASB is because of acts or omission of people other than the tenant * The effect the ASB is having on other people * Any other action taken, or capable of being taken, by the landlord to address the conduct. | |  | Applicants who have been suspended under section 20B have the right to appeal to the Sherriff. | |  | When imposing suspension landlords should consider:   * Are there other options to suspensions such as taking a proactive approach to managing the problem rather than excluding the applicant? * Is there robust evidence for making the decision to impose a suspension * Is the decision proportionate * Is the length of suspension reasonable? * What are the consequences for the applicant or members of their household? | |  | **We will need to:**   * **Set out our approach in our policy when we may resort to suspensions** * **Ensure an effective system is in place to monitor suspensions regularly.**   + **The number of applications suspended and reason;**   + **The number of reviews of suspensions taken immediately by applicants and their outcomes**   + **The number of appeals against section 20B suspensions and their outcomes**   + **The number of subsequent requests for reviews of suspensions, or reviews initiated by the landlord and their outcomes** * **Prepare procedures and approaches to communication to tenants about suspension, and their right to appeal** * **Understand who will be responsible for taking the decisions on suspensions and who will be responsible for reviewing and changing suspensions** | |