



# MORAY COUNCIL

## Housing and Property Services

### No Access Policy

#### 1. Scope of the Policy

- 1.1 This policy sets out the framework used by Moray Council to ensure access to all of its social housing stock when required. Moray Council have many legal, regulatory and contractual duties as a social landlord. These include ensuring its social housing stock meets national legal standards in terms of conditions, as well as ensuring the safety of all their tenants. To enable the Council to meet these duties, it is vital that there are no barriers to accessing any of its tenant's houses when necessary. Where barriers do exist the Council will work with the tenant to ensure the access is mutually agreeable, providing support to the tenant where required.

#### 2. Strategic context

- 2.1 The No Access Policy will assist the Council to meet the aims and priority four of its Local Housing Strategy 2019 – 2024 'To improve the stock condition and energy efficiency of housing in the social sector' as well as the Moray 2027 - Corporate Plan.

#### 3. Objectives and Principles of the Policy

- 3.1 The overall aim of Moray Council's No Access Policy is to ensure that its social housing stock is safe and meets all minimum required standards as set out in legislation, regulation and any contractual obligations.

- 3.2 The specific objectives of the Policy are:

- to ensure a robust escalation process is in place to provide the tenant with the opportunity to give access at a mutually convenient time while advising that it may lead to forced entry where no access is provided;
- to allow the Council to exercise its legal right as a landlord to enter the

property, having given the tenant the legally required notice of 24 hours, to inspect the property's condition or carry out works required to meet any legal, regulatory and/or contractual obligations;

- to provide a fair and transparent process to gain access to the property where the tenant has either:
  - not agreed to give access; or
  - ignores any contact requesting access;
- to ensure that any forced entries are carried out with minimum disruption, complying with relevant legislation and good practice;
- to ensure that any tenant(s) who do not allow access to a Council property are re-charged for any associated costs the Council incurs by having to force entry.

### 3.3 The principles underpinning the Policy are:

- the Council will implement supporting procedures to ensure compliance. These will incorporate agreed good practice to ensure consistency;
- staff training will be provided to ensure that staff are equipped to carry out the roles expected of them;
- communication with tenants and service users will be in 'plain language'; and
- performance will be monitored to ensure the policy is being adhered to.

## 4. Legal Provisions, Regulations and Standards

4.1 The primary housing legislation governing the rights of a landlord in relation to property condition and repairs, including access to carry out necessary repairs, is contained within the Housing (Scotland) Act 1987 as amended by the Housing (Scotland) Acts 2001, 2006 and the Housing (Scotland) Act 1987 (Tolerable Standard) Extension of Criterion) Order 2019.

4.2 [Section 86 of the Housing \(Scotland\) Act 1987](#) sets out a 'Tolerable Standard' which is the minimum standard required for all housing. Any property below this standard is unfit for human habitation. The [Housing \(Scotland\) Act 1987 \(Tolerable Standard\) \(Extension of Criterion\) Order 2019](#) revises the tolerable

standard to include:

- satisfactory equipment for detecting and warning in the event of fire or suspected fires; and
- satisfactory equipment for early detection and warning of carbon monoxide (CO) at hazardous levels.

4.3 [Schedule 4 of the 2001 Act](#) states that landlords have a duty to ensure that a house is wind and watertight and reasonably fit for human habitation, both at the beginning of the tenancy and throughout its term:

- 1) The landlord in a Scottish secure tenancy must—
  - (a) ensure that the house is, at the commencement of the tenancy, wind and watertight and in all other respects reasonably fit for human habitation, and
  - (b) keep the house in such condition throughout the tenancy.
- 2) The landlord must, before the commencement of the tenancy—
  - (a) inspect the house and identify any work necessary to comply with the duty in paragraph 1(a), and
  - (b) notify the tenant of any such work.
- 3) The landlord must—
  - (a) ensure that any work necessary to comply with the duty in paragraph 1(b) is carried out within a reasonable time of the tenant notifying the landlord, or the landlord otherwise becoming aware, that it is required, and
  - (b) make good any damage caused by the carrying out of the work.
- 4) The landlord, or any person authorised by it in writing, may at any reasonable time, on giving 24 hours' notice in writing to the tenant or occupier, enter the house for the purpose of—
  - (a) viewing its state and condition,
  - (b) carrying out any work necessary to comply with the duty in paragraph 1(b) or 3.

- 4.4 [Part 3 of the Housing \(Scotland\) Act 2010](#) governs the performance of social landlords through the introduction of the [Scottish Social Housing Charter](#) outcomes. This set out the standards and outcomes tenants can expect from social landlords regarding the quality and standard of their home, as well as the value for money regarding the services they receive.
- 4.5 Outcome 4 - Quality of Housing - All council properties should meet the Scottish Housing Quality Standards (SHQS) at the time of allocation, meaning they are clean, tidy and in a good state of repair. These standards describe what all social landlords should be achieving in all their properties unless there are exemptions. This outcome also incorporates the Energy Efficiency Standard for Social Housing (ESSH) which plays a vital part in meeting national energy efficiency standards set by the Scottish Government's aim of warm, high quality, affordable, low carbon homes across Scotland. [SHQS Technical Guidance for Social Landlords](#) sets out the minimum housing standards required.
- 4.6 The Scottish Secure Tenancy Agreement (SST) is a legally binding contract based on the above legislation and must be signed by all tenants. It protects both the tenants' and the Council's interests as well as setting out the responsibilities of both parties.
- 4.7 Section 5 of the SST states Moray Council's right and responsibilities as a landlord to carry out any work (repairs) necessary to put the house into a state which is wind and watertight and, in all respects, reasonably fit for human habitation. This duty includes:
- taking into account the extent to which the house falls short of any current building regulations and or safety standards; and
  - keeping in repair the structure and exterior of the house;
  - keep in repair and in proper working order, any installations in the house provided by us for:
    - the supply of water, gas and electricity;

- sanitation (for example basins, sinks, baths, showers, toilets);
- hot water heating;
- space heating (for example central heating) including fireplaces, flues and chimneys.
- the right of access in order to lay wires, cables and pipes for the purposes of telecommunications, water, gas, electricity.

4.8 It explains the Council's right to enter the property, having given 24 hours' notice in writing. Where entry is refused, forcible entry can be made provided the tenant has been given every reasonable opportunity to give access voluntarily. The tenant will be liable for the costs of any damage reasonably caused by the Council due to forcing entry to the property.

4.9 Other relevant provisions include, but are not restricted to, the following:

- The Gas Safety (Installation and Use) Regulations 1998 as amended by the [Gas Safety \(installation and Use\) \(Amendment\) Regulations 2018](#). These are supported by the Health and Safety Executive's (HSE's) Approved Code of Practice (ACOP).
- [General Data Protection Regulations \(GDPR\)](#) and the [Data Protection Act 2018](#) - The Council will ensure that any information obtained will be processed and used accordingly.
- [Equality Act 2010](#)
- [Human Rights Act 1998](#) – right to property (article 1 of protocol 1) and right to privacy (article 8) apply however the safety of tenant's would provide an objective justification with these rights due to it being a proportionate means to a legitimate aim.

## 5. Reasons for access

5.1 The main reasons the Council would require access are listed as follows:

### Servicing

5.2 Any legally required safety checks or services to all heating system types, gas appliances, flues, chimneys, smoke alarms, carbon monoxide alarms or any

other landlord duty covered by Section 4 above. This would include any tenant installed systems the Council have taken over responsibility for.

### Improvement Works

- 5.3 Any improvement work or upgrade needed to meet new safety or energy efficiency legislation, regulations or standards will be prioritised. The Council must fulfil its duties as a landlord in terms of safety of tenants, neighbours and communities. This may include electrical re-wiring, upgrades to smoke alarms and carbon monoxide alarms, energy efficiency measures such as insulation, heating system upgrades, carrying out EPC surveys, asbestos surveys etc.

### New Build Council Housing

- 5.4 Each new Council house has a one year defects period to identify and/or address any issues with the property. The terms of construction contracts requires each contractor to fulfil their obligations in terms of addressing any defects within a set timescale. These include value for money and a set specification for standards.

### Property Inspections

- 5.5 The Council has the right to access any of its properties to view the condition of the property so long as they have given the tenant 24 hours' notice in writing.
- 5.6 This list is not exhaustive and will apply to any situation where the Council need access to a property to inspect or carry out work required to meet any legal and regulatory standard or contractual obligation.
- 5.7 Each scenario will be assessed in accordance with the relevant legislation in relation to it at the time.

## **6. Notice**

- 6.1 The Council will always attempt to make contact with the tenant(s) to give prior warning of any work/inspection required, giving as much notice as possible to arrange a mutually convenient time for the work/inspection to be carried out. Various methods of contact will be used, such as phone, email and letter at each stage of the process to ensure that those away from home for any period of time will receive the relevant communication regarding their property.

### Contact

- 6.2 Following any initial, unsuccessful attempts to make contact, the Council will send an appointment letter to the tenant. If the tenant does not provide access to the property, the Council will leave a No Access Letter explaining the need for access and giving the tenant five working days to respond to make an alternative appointment.
- 6.3 Where the tenant does not respond to the No Access Letter a second appointment letter will be sent out. If the tenant does not provide access for a second time, the Council will leave a No Access Letter 2, again explaining the need for access and giving the tenant five working days to respond to make a suitable appointment.
- 6.4 Where the tenant does not respond to any contact or fails to give access to the property, a third warning letter will be hand delivered to the tenant giving a final opportunity to make contact and arrange an appointment that suits them or the Council will force entry to their home to carry out the necessary work/inspection.

## **7. Special Circumstances**

- 7.1 The Council will always take into account any special circumstances that tenants may have which may affect access to carry out any work. Where it is identified that the tenant has any physical or mental impairment, medical issues, disabilities and/or vulnerabilities that will prevent the work or

inspection from going ahead, the Council will work with the tenant to try and find a mutually convenient solution to allow the work to be carried out with minimal disruption or where possible delay the work to a more convenient time.

- 7.2 The Council will provide assistance to the tenant. The level of assistance provided will depend on whether the tenant has household and/or family members who could be reasonably expected to support and assist them. The Council will use its discretion to establish the level of assistance that will need to be provided in line with the circumstances of each case.

## **8. Forced Entry**

- 8.1 Where the tenant has failed to engage or give access, the Council will follow their supporting escalation procedures, up to and including forced entry to the property where necessary. Each case will be assessed and authorised by the relevant Housing or Service Manager.
- 8.2 A Notice of Intention to Enter (NOITE) will be hand delivered to the property giving a minimum of 24 hours' notice from the date and time of the appointment specified in the notice.
- 8.3 The Area Housing Officer and any relevant tradesperson will be present at each forced entry. If there is any concern in relation to safety the Council will liaise with Police Scotland regarding their attendance at the forced entry appointment.
- 8.4 The Council will ensure the property is secure following a forced entry and will change locks where necessary. The Council will leave information at the property advising the tenant where they can collect new keys and of the re-charges they will incur for not allowing access to the property. The Council will request the tenant shows suitable identification before allowing the new keys to be collected.

## **9. Re-chargeable Costs**

- 9.1 The Council will re-charge the tenant(s) for any costs associated with the enforcement of a NOITE. The re-charges will be based on the Schedule of Rates held by the DLO for the relevant financial year. This will include the costs of trades' time and any materials required to repair the damage caused by forcing entry such as locks.
- 9.2 In cases where the tenant initially agrees to give access for the work but then refuses at a later stage, the Council will also seek to recover any abortive costs that have been incurred at the date of the subsequent refusal. This may include design costs, materials, bespoke materials and so on.
- 9.3 In line with the Council's Rechargeable Repairs Policy, where re-charges cause financial pressure, affordable repayment agreements will be offered to the tenant. Any re-charges not paid will be escalated to the Council's debt recovery process which can lead to any future offers of housing being suspended.

## **10. Complaints**

- 10.1 Any tenant who is not satisfied with the manner in which the Council has dealt with any aspect of the no access process should contact the Housing Services Manager in the first instance who will investigate and respond within 14 days.
- 10.2 If the tenant is still not satisfied, the Council also has a corporate Complaints Policy. The Complaints Policy and explanatory information are available on the Council website and from any Council Office or Access Point.

## **11. Performance Monitoring**

- 11.1 The Scottish Social Housing Charter sets out the outcomes and standards that all social landlords should aim to achieve when performing their landlord functions. The outcomes are as follows:

- the customer/landlord relationship;
- housing quality and maintenance;
- access to housing and support; and
- getting good value from rents and service charges.

11.2 The Charter places a statutory duty on Moray Council to complete the Annual Return on the Charter (ARC) to the Scottish Housing Regulator (SHR). The ARC provides key information on the Council's performance throughout the financial year in relation to the quality and maintenance of its housing stock using national indicator 6 - percentage of stock meeting the Scottish Housing Quality Standards (SHQS).

11.3 The Council internally monitor the number of forced entries to Council properties throughout the year

## **12. Review of Policy**

12.1 This policy will be reviewed in 2023, unless an earlier review is required due to organisational or legislative changes.