

**THE MORAY COUNCIL
COMMUNITY SERVICES DEPARTMENT**

Short Scottish Secure Tenancy Policy

1. Scope of the policy

- 1.1 This policy details the circumstances when the Moray Council will utilise a short Scottish secure tenancy in order to make the most efficient and effective use of its housing stock.
- 1.2 The Council seeks to ensure that the Short Scottish Secure Tenancy Policy does not discriminate between residents on any grounds and in particular, race, gender, sexual orientation, ethnic origin, religious belief, disability/illness or age. The Council will ensure the promotion of equal opportunities by publishing information and documentation in different languages and other formats such as large print, tape and Braille as required.

2. Short Scottish secure tenancy

- 2.1 The short Scottish secure tenancy is based on the Scottish secure tenancy, introduced by the Housing (Scotland) Act 2001. The majority of the tenancies that the Council will offer applicants will be Scottish secure tenancies. However, in specifically defined circumstances, it will not be appropriate for a Scottish secure tenancy to be offered and the Council will be able, but not obliged, to offer a short Scottish secure tenancy (the Housing (Scotland) Act 2001, Schedule 6).
- 2.2 A short Scottish secure tenancy is a short term or probationary tenancy agreement that can be given to tenants by the Council. It can only be applied in limited circumstances, as defined by legislation (the Housing (Scotland) Act 2001, Schedule 6, paragraphs 1 – 7).

2.3 The short Scottish secure tenancy (short SST) has many of the features of the Scottish secure tenancy (SST) but also some differences (Housing (Scotland) Act 2001, Section 34 (6)). These are:

- there is no right to buy;
- there is no right of succession;
- there is no express statutory right for a landlord or tenant to terminate the agreement before the end of the agreed term;
- security of tenure is limited to 6 months (Housing (Scotland) Act 2001, Section 36 (5)). The Council is not required to provide a reason for seeking repossession or prove that it is reasonable that decree for repossession be granted unless recovery is sought in accordance with the Housing (Scotland) Act 2001 (Section 14);
- the Council must provide housing support services where a short SST has been granted on an ASBO ground or previous eviction ground (Housing (Scotland) Act 2001, Section 34 (7)). The services must be appropriate to enable the conversion of the short Scottish secure tenancy to a Scottish secure tenancy;
- members of the tenant's household have no right to have a notice of proceedings served on them if the Council seeks recovery of possession in accordance with the (Housing (Scotland) Act 2001, Section 36 and have no right to be sisted as parties to the action.

Rights to take in a lodger, sublet, etc under a short SST are limited to the period of the short SST.

2.4 A short Scottish secure tenancy must be granted for a minimum period of 6 months.

2.5 Short Scottish secure tenants are liable for the payment of rent. Tenants may apply for Housing Benefit if they consider that they may be entitled to assistance with their rent. Tenants are responsible for making an application for Housing Benefit.

3. Local Housing Strategy/Corporate Development Plan/ Service Improvement Plan

3.1 The Short Scottish Secure Tenancy Policy will assist the Council to meet its Local Housing Strategy, Antisocial Behaviour Strategy, Homelessness Strategy, Corporate Plan and Service Plan aims and priorities. In particular it will assist the Council to achieve its strategic objective to make the best use of the housing stock.

4. Objectives and principles of the policy

4.1 The overall aim of the Short Scottish Secure Tenancy Policy is to maximise the effective use of the Council's housing stock in order to meet identified need and ensure sustainability in the provision, management and maintenance of housing stock.

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

- to set out a clear framework for the use of short Scottish secure tenancies and specify the circumstances when the Council will consider using a short Scottish secure tenancy;
- to assist tenants to sustain their tenancies with a view to conversion to a Scottish secure tenancy;
- to prevent homelessness occurring and assist with the Council's wider strategic role;
- to assist in the creation of safe and sustainable communities by alleviating and tackling antisocial behaviour and reducing repeat homelessness and abandoned tenancies; and
- to ensure that short Scottish secure tenancies are used uniformly and consistently and in accordance with legislation and good practice.

4.3 The above objectives will be achieved by implementing the following principles:

- detailed procedures and agreed practices are applied uniformly across the service;
- staff training is provided to ensure that staff are equipped to carry out the roles expected of them; and
- communication with tenants and service user is in 'plain language' and will make clear who the appropriate officer is to contact in the case of queries.

5. Legal framework

5.1 The Moray Council will ensure that the Short Scottish Secure Tenancy Policy complies with current legislation and promotes good practice, including the Housing (Scotland) Act 2001, the Homelessness etc (Scotland) Act 2003 and the Antisocial Behaviour etc (Scotland) Act 2004.

6. Use of a short Scottish secure tenancy

6.1 Schedule 6 to the Housing (Scotland) Act 2001 prescribes the circumstances when a short Scottish secure tenancy may be used. In summary these are:

- if a tenant has had an order for repossession made against him/her in the UK on the grounds of antisocial or similar behaviour in previous 3 years;
- if a tenant or member of his/her household is subject to an antisocial behaviour order (ASBO);
- if a temporary let is given to a person moving into the area to seek accommodation (that is the house is to be let on a temporary basis to a person moving into the area to take up employment);
- if a temporary accommodation is given to a person pending redevelopment of their house;
- if temporary accommodation is given to a homeless person for six months or more;
- if temporary accommodation is given to a person requiring housing support services; or

- if the Council has leased the house from another body and the terms of the lease preclude subletting under a Scottish secure tenancy.

Unless the let falls into one of these categories, a short Scottish secure tenancy cannot be granted.

6.2 Section 34 of the Housing (Scotland) Act 2001 prescribes other conditions for the creation of a short Scottish secure tenancy. These are:

- the tenancy would have been a Scottish secure tenancy were it not for Section 34. That is, the requirements for the creation of a Scottish secure tenancy (Section 11 of the Housing (Scotland) Act 2001) must be met;
- the tenancy is for a fixed term of at least 6 months. There is no maximum period; and
- the Council has served a statutory notice on the prospective tenant before the creation of the tenancy (i.e. when the tenancy agreement is signed). The notice must state that the tenancy will be a short Scottish secure tenancy and must detail the provisions of the tenancy.

7. Creation of short Scottish secure tenancy

7.1 In order to create a short Scottish secure tenancy, 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 short SST and why a short Scottish secure tenancy and not the Scottish secure tenancy is being offered. The notice must state the period for which the tenancy is being offered.

7.2 At the end of the tenancy (the date of termination or expiry of the tenancy agreement) it may continue by:

- (a) tacit relocation*, or
- (b) express agreement,

and the continued tenancy is a short Scottish secure tenancy (Housing (Scotland) Act 2001, Section 34 (5)).

* Tacit relocation is a principle of Scots Law whereby leases of land or buildings are renewed on the same conditions as previously existed if no notice of termination is given within the requisite period, subject to a maximum period of one year, applying in perpetuity until such notice is given.

7.3 The Council will ensure that when a short Scottish secure tenancy is granted it will be tailored to meet the individual needs of the tenant and where appropriate, support will be offered. In certain instances, the acceptance of support may be a condition of the tenancy. For example, where a short Scottish secure tenancy 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 months.

7.4 Short Scottish secure tenancies and previous antisocial behaviour

7.4.1 The Housing (Scotland) Act 2001 (Schedule 6; paragraphs 1) specifies that tenancies offered to prospective tenants or prospective joint tenants evicted for antisocial behaviour from a tenancy in Scotland, England, Wales or Northern Ireland within the previous 3 years may be short Scottish secure tenancies. The applicable 3 year period is calculated from the date that the pre-tenancy notice is served.

7.5 Short Scottish secure tenancies and antisocial behaviour orders

7.5.1 The Council may offer a short Scottish secure tenancy to persons where they or other proposed members of their household are subject to an Antisocial Behaviour Order (ASBO) granted on or after 2002 under Section 19 of the Crime and Disorder Act 1998.

7.6 Short Scottish secure tenancies and temporary lets to persons taking up employment

7.6.1 In accordance with the Allocations Policy (Section 3(g)), where an applicant wishes to move to the Moray area to take up an offer of employment and has been assessed as satisfying the 'key worker' criteria, the applicant may be offered a short Scottish secure tenancy (Allocations Policy: Community Services Committee; June 2004).

7.7 Short Scottish secure tenancies and temporary lets pending house development

7.7.1 If development work is being carried out to a tenant's home which necessitates temporary accommodation being offered for a period of 6 months or longer, a short Scottish secure tenancy will be offered.

7.8 Short Scottish secure tenancies and homelessness

7.8.1 In most circumstances, temporary accommodation that is allocated to homeless applicants will not be subject to a short Scottish secure tenancy. Temporary accommodation lets provided by the Moray Council are for a period of less than 6 months and are normally non-secure tenancies. However, where accommodation is to be let to a homeless person expressly on a temporary basis for a period of not less than 6 months, a short Scottish secure tenancy may be offered.

8. Conversion from a Scottish secure tenancy to a short Scottish secure tenancy

8.1 Section 35 of the Housing (Scotland) Act 2001 provides that a Scottish secure tenancy may convert into a short Scottish secure tenancy only where the tenant or a member of the household is subject to an Antisocial Behaviour Order (ASBO). In such circumstances, the short Scottish secure tenancy may convert back to a Scottish secure tenancy at a later stage if certain conditions are met (Housing (Scotland) Act 2001, Section 37).

8.2 The granting of an ASBO provides confirmation that a situation exists where the Council must do all in its power to protect the well being of an individual or community. To assist in achieving this and to enable those responsible for antisocial behaviour to participate in a rehabilitative process the Council will consider the converting the tenancy to a short Scottish secure tenancy.

8.3 The Council will take the following into account when considering whether to convert the tenancy to a short Scottish secure tenancy:

- the nature, frequency and duration of the antisocial behaviour;
- the effect that the antisocial behaviour exhibited is having or is likely to have on any other person;
- action taken before the raising of the ASBO proceedings, with the view to securing the cessation of that conduct;
- whether the ASBO has been breached and whether there are any convictions in that respect;
- the expected support needs of individuals within the household based upon evidence held;
- the rehabilitative processes undertaken since the last known complaint; and
- any other relevant factors in the individual circumstances of each case.

- 8.4 In order to convert from a full Scottish secure tenancy to a short Scottish secure tenancy, the Council must serve a notice in accordance with Section 35 (2) of the Housing (Scotland) Act 2001. The tenancy will automatically convert from a Scottish secure tenancy to a short Scottish secure tenancy by service of the 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 short Scottish secure tenancy and specify what category of short Scottish secure tenancy it is, by reference to the paragraph of Schedule 6 that applies. For example, where a short Scottish secure tenancy is given because an Antisocial Behaviour Order (ASBO) has been taken out against the tenant or a member of the tenant's household.
- 8.5 Where a tenancy has been converted to a short Scottish secure tenancy as a result of an ASBO against the tenant or a member of their household, legislation provides for the automatic conversion from a short Scottish secure tenancy to a Scottish secure tenancy after a period of 12 months, unless the Council has served a notice for recover of possession on the tenant.
- 8.6 Where a notice of proceedings for recovery of possession has ceased to be in force or has been withdrawn, the tenancy will convert to a Scottish secure tenancy.
- 8.7 In the event that proceedings for recovery of possession have been raised and have been determined in the favour of the tenant, the tenancy will become a Scottish secure tenancy.
- 8.8 There is a right of appeal by way of summary application to the sheriff by a tenant who has been served with a notice converting the Scottish secure tenancy to a short Scottish secure tenancy (Housing (Scotland) Act 2001, Section 35(5)). The tenant must appeal within 21 days after the date of intimation of the notice,

or a longer period if "special cause" is shown. The sheriff may grant the appeal if he/she is satisfied that there are 'good grounds' for doing so.

9. Short Scottish secure tenancies and support provision

9.1 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.”

9.2 There are a number of factors that may indicate whether a person requires housing support services. These include:

- no history of a tenancy;
- an unsustainable tenancy in the past;
- a history of homelessness;
- the person is currently intentionally homeless;
- the possibility of tenancy failure due to rent arrears or antisocial behaviour;
- mental health problems; and
- alcohol/substance misuse problems.

Each case will be assessed on its own merits.

9.3 The Housing (Scotland) Act 2001, section 34 (7) requires the Council (where the tenant is subject to a short Scottish secure tenancy 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.

9.4 Where a member of the Housing Service believes that a person may require a form of housing support, an assessment of housing support requirements will be

completed. If the assessment confirms that housing support services are required, a short Scottish secure tenancy will be considered. Housing support services will be offered in order to assist the tenant sustain the tenancy.

- 9.5 Where the assessment determines that a short Scottish secure tenancy is to be offered, it must be explained to the tenant that he/she has been assessed as requiring support services.
- 9.6 Examples of the support that the Council may offer include counselling for debt, alcohol or family problems or support from social work.
- 9.7 Where the applicant refuses support, the Council may use its discretion when deciding whether to offer a short Scottish secure tenancy without support. The Council will consider whether the reason for the short Scottish secure tenancy, for example, antisocial behaviour, will improve with support, or whether it wishes to make acceptance of support a condition of the offer of a short Scottish secure tenancy.
- 9.8 Where a short Scottish secure tenancy is provided without support, the situation will be reviewed before the tenancy reaches 4 months. The Council will decide to whether to:
- terminate the tenancy. If the Council decides to end 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 if the individual is assessed as requiring continuing support.

9.9 A key objective for the Council in providing housing support services is to successfully convert the short Scottish secure tenancy to a full Scottish secure tenancy.

9.10 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.

9.11 In situations where a short Scottish secure tenancy has been granted due to an ASBO, the tenancy will automatically convert to a Scottish secure tenancy after 12 months, unless the landlord has served a notice to quit on the tenancy (please refer to Section 13 of the policy).

10. Continuation of a short Scottish secure tenancy

10.1 A short Scottish secure tenancy will continue for the fixed period agreed by the parties. At the end of that fixed period, unless the parties have taken steps to prevent tacit relocation, the tenancy will renew for the same period (or for one year if the initial period was longer than one year) and under the same terms. That process of tacit relocation may continue indefinitely.

11. Termination of a short Scottish secure tenancy

11.1 A short Scottish secure tenancy can be terminated by any of the following methods:

- by termination by the tenant;
- by notice from the Council;
- by written agreement;
- on the death of the tenant;
- by Court Order once the fixed period of tenancy has ended; or
- by Court Order in accordance with Section 14 or Schedule 2 of the Housing (Scotland) Act 2001.

11.2 The Council can terminate the tenancy of a short Scottish secure tenancy agreement without the need to demonstrate any specific or management grounds. In accordance with the Housing (Scotland) Act 2001, Section 36 the Council will issue the tenant with a notice to recover possession by first class recorded delivery. The notice must specify a date for recovery of possession that is no earlier than 2 months, or such longer period as the tenancy agreement may provide, from the date of service of the notice.

12. Recovery of a short Scottish secure tenancy

12.1 The Council can seek recovery of possession of a short Scottish secure tenancy on the same grounds applicable to Scottish secure tenants (Housing (Scotland) Act 2001 Section 34(6) and (Housing (Scotland) Act 2001 Section 36(7)).

12.2 In these circumstances, 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.

12.3 Any order granted as above must appoint a date for recovery, and has the effect of terminating the tenancy and giving the landlord the right to repossess the house on that date.

12.4 Where the Council seeks to recover a short Scottish secure tenancy 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.

13. Automatic conversion of a short Scottish secure tenancy to a Scottish secure tenancy

13.1 In situations where a short Scottish secure tenancy has been granted due to an ASBO, or previous antisocial behaviour, Section 37 of the Housing (Scotland) Act 2001 provides for the automatic conversion to a Scottish secure tenancy after a period of 12 months unless the Council has served a notice to quit on the tenancy. This happens when:

- the short Scottish secure tenancy has been granted as a 'probationary' tenancy; or
- the short Scottish secure tenancy had been created by the service of a notice;
- and no notice of proceedings under the Housing (Scotland) Act 2001 section 14(2) or 36(2) has been served in the 12 months following the creation of the tenancy;
- or if such a notice has been served, the notice has expired or been withdrawn or court proceedings were finally resolved in favour of the tenant.

There is no automatic conversion to a Scottish secure tenancy for tenants who have been granted a short Scottish secure tenancy on other grounds.

13.2 The tenancy becomes a Scottish secure tenancy with effect from expiry of the short Scottish secure tenancy (Housing (Scotland) Act 2001, Section (37 (2)). Where the Council has served a notice to recover possession of the property on the tenant and this has either ceased to be in force, or has been withdrawn, 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.

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

14. Review of decision and complaints

14.1 Where a tenant is not satisfied with the offer of, or conversion to a short Scottish secure tenancy or any management issues in relation to a short Scottish secure tenancy, they may submit an appeal to the Housing Appeals Sub-Committee.

14.2 Tenants who are not satisfied with the type of tenancy offered by the Council, for example they have been offered a short Scottish secure tenancy instead of a Scottish secure tenancy have a right of appeal to the Sheriff Court (Housing (Scotland) Act 2001, Section 38).

14.3 A tenant who has been served with a notice converting the Scottish secure tenancy to a short Scottish secure tenancy has a right of appeal by way of summary application to the sheriff (Housing (Scotland) Act 2001, Section 35). 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.

15. Performance monitoring

15.1 The Council will set performance standards in relation to its Policy and will monitor its achievement of these standards.

15.2 In order to comply with its service commitments, the Council will monitor the following:

- the number of current short Scottish secure tenancies in place;
- the number of short Scottish secure tenancies created in the period;
- the reason for the short Scottish secure tenancy;

15.3 The performance indicators detailed in paragraphs 15.2 will be reported to the Housing Service Sub Committee on a quarterly basis.

15.4 This policy will be reviewed in June 2011.