

CHANGES TO YOUR SCOTTISH SECURE TENANT RIGHTS INTRODUCED BY THE HOUSING (SCOTLAND) ACT 2014

This Frequently Asked Questions (FAQ) sheet explains the changes to Scottish secure tenancy rights made by the Housing (Scotland) Act 2014.

Introduction

What is a Tenancy Agreement?

A tenancy agreement is a contract between a tenant (yourself) and a landlord (North Lanarkshire Council). It sets out the terms and conditions of your tenancy.

What is a Scottish Secure Tenancy?

The Scottish Secure Tenancy (SST) was introduced in September 2002 as part of the Housing (Scotland) Act 2001.

A Scottish Secure Tenancy gives you the right to pass your tenancy to someone else, to add someone as a joint tenant, to sublet or to have someone in the household succeed to the tenancy in the event of your death.

Changes to Scottish Secure Tenancy Rights are being made by the Housing (Scotland) Act 2014.

What do the changes mean?

The changes mean you will keep your rights to pass on your tenancy, sublet, add a joint tenant or have someone succeed. But the new residency requirements will help stop abuse of the system, make the system fairer and help North Lanarkshire Council to make the best use of their housing stock.

Changes to your household

Why is it important to ensure household details are up to date?

To ensure that your rights are protected, you must tell the housing service about any changes to your household, if you haven't done so already.

This includes anyone who has moved in or out of your home and the date this happened. You should do this immediately by contacting your local housing office.

Local housing office contact details can be found on our website:

<https://www.northlanarkshire.gov.uk/index.aspx?articleid=7982>

Information relating to your council tenancy can be found on our website:

<https://www.northlanarkshire.gov.uk/index.aspx?articleid=27658>

Subletting

What is this?

Subletting is where a tenant, who is renting from a landlord, rents their home to someone else - the subtenant.

What are the changes?

Section 12(2) of the 2014 Act makes the following changes:

- You must have been the tenant of the house throughout the 12 months immediately before you apply for written submission to sublet your home (previously there was no qualifying period); or
- If you were not the tenant during this time, the house must have been your only or principal home during those 12 months; and the tenant must have told us that they were living there prior to the start of those 12 months.

When do the changes come into effect?

1 November 2019.

What to do next?

As is already the case, before you can sublet your home you must ensure that you apply to us for permission by contacting your local housing office. If you have already informed us of any changes, you do not have to notify us again.

Assignment (passing your tenancy to someone else)

What is this?

Assignment is where a tenant formally hands over their tenancy to another person.

What are the changes?

Section 12(2) of the 2014 Act makes the following changes:

- The house must have been your only or principal home during the 12 months immediately before you apply for written permission to pass your tenancy to someone else (previously there was no qualifying period); and
- The person you wish to pass your tenancy to must have lived at the property as their only or principal home for the 12 months before you apply (previously the qualifying period was 6 months); and
- You must tell us the person is living in the property as their only or principal home for the 12 month period to begin.

There are also new reasons when a landlord can refuse an application for assignment. The new reasons are:

- Where we would not give the person you wish to pass the tenancy to priority under our allocations policy; or

- The passing of the tenancy would result in the home being under-occupied.

These two reasons have been added to the existing list of reasons at section 32 of the Housing (Scotland) Act 2001.

When do the changes come into effect?

1 November 2019.

What to do next?

As is already the case, before you can assign (pass) your home you must ensure that you apply to us for permission by contacting your local housing office.

Joint Tenancy

What is this?

A tenant is entitled to a joint tenancy with one or more individuals, so long as the house is the only or principal home of all the tenants and permission from the landlord has been given. A joint tenancy means that all tenants have exactly the same rights and obligations as each other.

What are the changes?

Section 12(1) of the 2014 Act makes the following changes:

- The proposed joint tenant must have lived at the property as their only or principal home for the 12 months before you apply for them to become a joint tenant; and
- You must tell us the person is living in the property as their only or principal home for the 12 month period to begin.

When do the changes come into effect?

1 November 2019.

What to do next?

Before you can add a joint tenant to your tenancy agreement, as is already the case you must ensure that you apply to us for permission. If you have already informed us of any changes, you do not have to notify us again. The person you wish to add as joint tenant, and any existing joint tenants, must apply along with you.

Ending a Scottish Secure Tenancy Agreement (by Court Order)

What is this?

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

What are the changes?

Section 14(2) of the 2014 Act means that a court does not have to consider whether it is reasonable to make an order for eviction where the landlord has grounds for recovery of possession under Schedule 2 paragraph 2 of the Housing (Scotland) Act 2001.

These grounds are:

That the tenant (or any one of joint tenants), a person residing or lodging in the house with, or subtenant of, the tenant, or a person visiting the house has been convicted of:

- (a) Using the house or allowing it to be used for immoral or illegal purposes, or
- (b) An offence punishable by imprisonment which was committed in, or in the locality of, the house.

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.

A serious offence is one that the offender could have been imprisoned for, whether or not they actually were sentenced to imprisonment.

If we are intending to end a Scottish secure tenancy in this way, we would serve a notice on you advising that we intend to seek recovery of possession of the property. That would be done within 12 months of the conviction (or, if it was appealed unsuccessfully, of when the appeal ended).

A tenant has a right to challenge a landlord's decision to take court action to end the tenancy on these grounds.

When do the changes come into effect?

1 May 2019. This change does not apply if we served the notice on you before that date and the notice is still in force at the date when court proceedings are raised.

Adapted Properties

What is this?

A property adaptation involves a permanent structural change to your home to make it more suitable for your needs e.g. widening doors, fitting a ramp for wheelchair access or replacing the bath with a shower.

What are the changes?

Section 15 of 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 we would require 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.

When do the changes come into effect?

1 May 2019.

Conversion to a Short Scottish Secure Tenancy for Antisocial Behaviour

What are the changes?

Section 7(2) of 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 which 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 a tenant or someone living with the tenant 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 the house occupied by the tenant 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 social landlords when issuing a notice to a tenant converting a tenancy 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, the landlord must include in the notice the actions of the person who has behaved in an antisocial manner, the landlord's reasons for converting the tenancy and details of the tenant's right of appeal to the sheriff.

When do the changes come into effect?

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

Succession (taking over a tenancy after the tenant's death)

What is this?

Succession is the transfer of a tenancy from the tenant to someone else when the tenant dies.

What are the changes?

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.

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 principal for 12 months before they qualify to succeed to the tenancy (previously this was 6 months); and
- You must tell us that the unmarried partner is living in the property as their only or principal home for the 12 month period to begin.

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 principal home for 12 months before they qualify to succeed to the tenancy (previously there was no qualifying period, the person simply had to be living there at the time of the tenant's death); and
- You must tell us that the family member is living in the property as their only or principal home for the 12 month period to begin.

Carers or other people who live with you and help look after you

If someone, such as a family member, has moved in with you to help to care for you, then you need to let the housing service know.

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 principal home for 12 months before they qualify to succeed to the tenancy (previously 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
- You must tell us the carer is living in the property as their only or principal home for the 12 month period to begin.

When do the changes come into effect?

1 November 2019.

What to do next?

To ensure rights to succession are protected, you must have told us that the person wishing to succeed to a tenancy has moved in with you at the time they do so. If you have already informed us of any changes, you do not have to notify us again.

In the future if anyone is planning to give up their own home and move in with you, to help look after you, it is best for them to get some advice about their rights as a carer and how this may affect their future rights to a tenancy.