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THE SHORT SCOTTISH SECURE TENANCY FOR HOMEOWNERS

GUIDANCE FOR SOCIAL LANDLORDS

HOUSING (SCOTLAND) ACT 2014



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1. INTRODUCTION AND BACKGROUND

1.1 The Housing (Scotland) Act 2014 introduced new provisions covering the allocation of social housing and the granting of short Scottish secure tenancies (short SSTs). This guidance has been developed with the help of tenants, landlords and other stakeholders and will help landlords to use the new provisions that relate to the allocation of tenancies to homeowners, should they choose to do so.

1.2 This guidance and the new provisions will take effect from 1st May 2019¹. In addition landlords should use the following secondary legislation in relation to short SSTs which also come into force on 1st May 2019:

- [The Short Scottish Secure Tenancies \(Notice\) Regulations 2018](#);
- [The Short Scottish Secure Tenancies \(Proceedings for Possession\) Regulations 2018](#).

1.3 Section 5 of the 2014 Act amends section 20 of the Housing (Scotland) Act 1987 to remove the prohibition on taking ownership of property into account in allocating social housing. Landlords may now take into account the ownership and/or value of heritable property owned by the person applying for housing, a person who normally lives with the applicant or a person who it is proposed would live with the applicant. (There are some exceptions, see below.)

1.4 Landlords can decide whether or not to use this flexibility and may decide to allocate social housing in circumstances where an applicant owns property. Landlords should however clearly set out their rules for taking property ownership into account in their allocations policy.

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

2. SHORT SCOTTISH SECURE TENANCY (SHORT SST) FOR HOMEOWNERS

2.1 The Act² creates a ground³ for granting a short SST to homeowners. The new ground⁴ is as follows:

'Temporary letting where other property owned

- (1) The house is to be let expressly on a temporary basis to a person pending the making of arrangements in relation to a property mentioned in sub-paragraph (2) which will allow the person's housing needs to be met.
- (2) The property is heritable property owned by the person or a person who it is proposed will reside with that person.'

1 Housing (Scotland) Act 2014 Commencement No.8, Savings, Transitional and Supplemental Provisions Order 2018 <http://www.legislation.gov.uk/ssi/2018/153/contents/made>

2 Section 8 of the 2014 Act.

3 Amends schedule 6 of the 2001 Act.

4 Section 7A of schedule 6 of the 2001 Act.

3. ALLOCATING SOCIAL HOUSING TO A HOMEOWNER

3.1 When considering allocating a tenancy to a homeowner, landlords have the option of giving a Scottish secure tenancy (SST) or, where they consider that the homeowner could meet their own housing needs within a foreseeable timescale, they can use this new provision to allocate a property using a short SST.

3.2 A short SST can be given where an applicant, or a person who is intending to live with the applicant, owns heritable property that:

- they cannot access; or
- which is not suitable for their immediate needs.

3.3 However, the person should have a level of housing need that means they are eligible to be allocated a property.

4. PURPOSE OF THE SHORT SST FOR HOMEOWNERS

4.1 The purpose of the short SST for homeowners is to give landlords the flexibility to give a homeowner with short-term housing needs a temporary tenancy rather than a full SST. This is to allow homeowners to make arrangements in respect of the heritable property they own that will allow, within a foreseeable timescale, the person's housing needs to be met.

4.2 Heritable property will include land, as well as anything built on land, and can be property owned in Scotland, the rest of the UK or abroad.

4.3 This could cover a wide range of circumstances such as allowing the homeowner to:

- access their own home once the period for which it has been rented out has come to an end;
- sell their property and secure alternative accommodation that meets their needs;
- make the necessary arrangements for building on, extending or installing adaptations to the property; or
- carry out repairs needed to make the property habitable.

4.4 In deciding whether to allocate a property using a short SST for homeowners landlords should consider all the circumstances of the individual case and aim to ensure the most effective use of the social housing available.

5. CIRCUMSTANCES WHEN A SHORT SST FOR HOMEOWNERS IS NOT APPROPRIATE

5.1 Where a landlord chooses to take property ownership into account in the allocation of social housing, allocation of a property using a short SST for homeowners would not be appropriate where the need for social housing is permanent or long-term and where social housing is the most suitable housing option given the circumstances of the household.

6. EXCLUSIONS FROM TAKING PROPERTY OWNERSHIP INTO ACCOUNT

6.1 There are a number of specific circumstances where landlords are prevented from taking account of the ownership or value of heritable property owned by the applicant or by a person who lives with or who it is proposed will live with the applicant. These circumstances are:

- where the property has not been let, and the owner cannot secure entry to the property. This could, for example, be where it is not safe to enter the property due to severe structural faults or where there are squatters living in the property;
- where it is probable that occupying the property will lead to abuse from someone currently living in the property;
- where it is probable that occupying the property will lead to abuse from someone who previously resided with the applicant whether in that property or elsewhere; and
- where occupation of the property may endanger the health of the occupants and there are no reasonable steps that can be taken by the applicant to prevent that danger.

6.2 Where any of these circumstances apply, landlords cannot have regard to property that the applicant owns in deciding whether to allocate a tenancy. However, in deciding what sort of tenancy to allocate, a landlord may consider granting a short SST for homeowners. Such a tenancy might be considered appropriate in the circumstances listed at paragraph 6.1, if they are short-term in nature and the landlord's assessment of the homeowner's housing need is that it is a temporary need.

6.3 Where an applicant has a level of housing need that is permanent, long-term and where social housing is the most suitable housing option given the circumstances of the household, landlords should instead consider allocating the property using an SST. In some limited circumstances a landlord might alternatively consider granting a short SST under one of the other grounds available⁵ or granting an alternative type of tenancy agreement, in the same way that these can occasionally be available for other applicants.

7. CREATING A SHORT SST FOR HOMEOWNERS

7.1 To create a short SST for a homeowner the landlord must serve a notice on the prospective tenant under section 34(4) of the 2001 Act, which must:

- be in the notice form prescribed in regulations by Scottish Ministers⁶;
- state that the tenancy is a short SST for a homeowner created under paragraph 7A of schedule 6 of the 2001 Act; and
- specify the term of the tenancy, which must be for at least six months in the first instance.

7.2 If an existing Scottish secure tenant, or someone who lives with them, becomes a property owner during the term of the tenancy, the tenancy cannot then be converted to a short SST for homeowners. This is because the ownership of, or value of, heritable property

⁵ Schedule 6 of the Housing (Scotland) Act 2001.

⁶ Short Scottish Secure Tenancies (Notice) Regulations 2018 <http://www.legislation.gov.uk/ssi/2018/154/made>

can only be considered when allocating a social housing property at the time the original allocation is made, and there is no basis to revisit the allocation of a secure tenancy.

7.3 The ownership of, or value of, heritable property could however be considered in subsequent social housing allocation decisions, depending on the landlord's rules on taking property ownership into account in allocations.

8. RIGHTS OF A TENANT WITH A SHORT SST FOR HOMEOWNERS

8.1 The rights of a tenant with a short SST for homeowners are the same as those for tenants with a full SST except that:

- there is no provision for succession; and
- security of tenure is limited.

8.2 Rights to assign, sublet etc. under a short SST are limited to the period of the short SST.

9. EXTENDING THE TERM OF THE SHORT SST FOR HOMEOWNERS

9.1 At the start of the tenancy landlords should set a date when the tenancy should be reviewed. The review should take place before the tenancy is due to end, at a point that allows sufficient time for the homeowner to make alternative arrangements if the tenancy is not continued at the end of the term. When the tenancy is reviewed, landlords will wish to consider whether an extension of the short SST is appropriate, or whether the tenant is now in a position to meet their own housing needs. If neither the tenant nor the landlord have taken steps to end the tenancy before the end of the term the tenancy may continue by:

- tacit relocation⁷ (automatic renewal) for the same period and on the same terms (or for a year if that period is greater than a year) unless either the landlord or the tenant have taken steps to prevent tacit relocation from operating; or
- express agreement⁸ where the landlord and tenant agree to the tenancy being continued for a period on the same or different terms. In such cases the tenancy continues to be a short SST and it can be for a period of less than six months.

9.2 Circumstances where it may be appropriate for the short SST to continue in agreement with the tenant could include:

- where the purchase of a property that the tenant intends to move to will not be finalised before the end of the tenancy but is imminent; or
- where repairs to the property the tenant owns have taken longer than expected but will be completed in the near future.

⁷ Section 34(5)(a) of the 2001 Act.

⁸ Section 34(5)(b) of the 2001 Act.

10. CONVERSION TO A SCOTTISH SECURE TENANCY AGREEMENT

10.1 A short SST for homeowners cannot be automatically converted to an SST when the original tenancy end date has passed and landlords will wish to consider what action they are going to take in relation to the short SST. This could include:

- giving the homeowner with the short SST an SST for the property they are currently occupying;
- allocating a new SST for another property; or
- taking action to recover the property let by short SST.

10.2 There will also be some situations where a tenant with a short SST for homeowners is subsequently unable to meet their own housing needs and landlords will need to decide whether to allocate the tenant a property using an SST. These could include:

- the proceeds from the sale of the property the tenant owned are insufficient to secure suitable alternative accommodation;
- there is a change in the tenant's needs, or those of a member of their household, for example for health reasons; or
- repairs required to make the tenant's property habitable are extensive and will take much longer than originally anticipated or become beyond the owner's means.

11. PROCEDURES FOR RECOVERY OF POSSESSION OF A SHORT SST FOR HOMEOWNERS

11.1 Landlords can, at any time, use the procedures available under the full SST⁹ to recover possession of any property let under a short SST, for example in cases of non-payment of rent or antisocial behaviour. Further information about using these procedures can be found in the guidance on '[Short Scottish Secure Tenancies for Antisocial Behaviour and Other Miscellaneous Changes to Short Scottish Secure Tenancies](#)'.

11.2 To recover possession of the property after the specified term of the short SST has ended, all that is required is that the tenancy has come to an end and that the following procedures have been followed:¹⁰

- the landlord has served a notice of proceedings for recovery of possession on the tenant which must be in the Notice of Proceedings form prescribed by Scottish Ministers in regulations.¹¹

11.3 The notice must:

- state that the landlord requires possession of the house;
- state the reason why the landlord is seeking recovery of possession;
- specify a date, not earlier than two months from the date of service of the notice on or after which the landlord may raise proceedings for recovery of possession.

⁹ Section 14 of the 2001 Act.

¹⁰ Section 36 of the 2001 Act

¹¹ Short Scottish Secure Tenancies (Proceedings for Possession) Regulations 2018
<http://www.legislation.gov.uk/ssi/2018/155/made>

11.4 The notice of proceedings ceases to be in force six months after the date specified in it or when it is withdrawn by the landlord, whichever is earlier.

11.5 Section 11 of the 2014 Act amends section 36 of the 2001 Act to introduce a right for the tenant to request a review of the landlord's decision to seek repossession of the property. The tenant has 14 days from the date that the notice of proceedings for recovery of possession was served to apply to the landlord for the decision to be reviewed. In such cases, the landlord must, by the date specified in the notice, do the following:

- confirm its decision to seek recovery of possession or withdraw its notice;
- notify the tenant of the outcome of the review; and
- where the decision is to continue to seek recovery of possession, the landlord should give the tenant its reasons for doing so.

11.6 Landlords should set out clearly in their tenancy information:

- which methods of application for a review they will accept, for example, telephone, email or writing;
- who the application should be made to;
- what information should be provided, for example the reason why the tenant thinks the decision to take action to recover possession of the property is wrong, and any evidence for the landlord to consider;
- their timescale for carrying out the review;
- how the review will be carried out;
- who will carry out the review (this should be carried out by a member of staff who was not involved in the original decision to take repossession action);
- how the landlord will advise the tenant of their decision; and
- whether or not they will consider a request for a review received out-with the 14 day timescale and if so, how it will be dealt with.

12. APPEALS

12.1 Applicants/tenants have a right of appeal to the courts¹² if they are not satisfied with the type of tenancy or occupancy offered by the landlord, for example, where a homeowner has been offered a short SST and believes they are entitled to an SST. Landlords should make applicants/tenants aware of this right when offering a short SST for homeowners.

12.2 In addition to the right of appeal to the courts, landlords should have clear and well-publicised internal review procedures in place (see paragraphs 11.5 and 11.6 above).

¹² Section 38 of the 2001 Act.



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