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SOCIAL HOUSING ALLOCATIONS IN SCOTLAND:

A PRACTICE GUIDE
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1 . About this Guide

1.1 Who the Guide is for

This Social Housing Allocations Practice Guide 2019 (the Guide) is aimed primarily at the local authorities and Registered Social Landlords (RSLs) who allocate homes in the social rented sector.

It will also be useful for tenants, governing body members, agencies advising others on their rights and responsibilities in relation to the allocation of social housing and anyone with an interest in housing allocations in Scotland.

It has been designed to offer practical assistance to staff with responsibility for reviewing, monitoring and updating allocation policies and procedures to ensure they comply with current legislation.

1.2 Background

The Guide draws on the Social Housing Allocations Practice Guide 2011 and has been revised to take account of the changes brought in by the Housing (Scotland) Act 2014. It also draws on a set of training materials on the changes made to allocations by the Housing (Scotland) Act 2014, developed for the Scottish Government and available from their website at: <https://beta.gov.scot/publications/housing-scotland-act-2014-training-pack/>

1.3 Contributors

The 2018 Practice Guide has been developed with the support of a Project Advisory Group which included representatives from:

- Association of Local Authority Chief Housing Officers;
- Convention of Scottish Local Authorities;
- Glasgow and West of Scotland Forum of Housing Associations;
- The Scottish Government; and
- Scottish Federation of Housing Associations.

Landlords from across Scotland have provided examples of their own practice to help illustrate some of the topics covered in the Guide.

1.4 Purpose of the Guide



This Guide is designed to help social landlords find their way through the legislation and practice covering social rented sector allocations.

It is important for every social landlord to have an allocation policy that complies with all relevant legislation and statutory guidance, and the policy should also reflect housing needs across the area or areas in which the landlord has homes for rent.

What works well in one area, or for one landlord, will not necessarily work for another and allocation policies should reflect the circumstances and housing needs of the communities covered by the policy.

2 . The Allocations Framework

This section covers the key legislation and guidance which must be taken into account when developing a social housing allocation policy.

By working through this section, readers will:

- be aware of the legislation governing the allocation of social housing in Scotland.
- be familiar with relevant statutory guidance relating to the allocation of social housing in Scotland.
- know the outcomes and standards in the Scottish Social Housing Charter that are relevant to the allocation of social housing.
- have an awareness of other relevant legislation that should be taken into account when reviewing allocation policies and procedures.

2.1 Legislative framework



The legislative and regulatory framework for the allocation of social rented sector homes has evolved over time, including through the Housing (Scotland) Act 1987 (“the 1987 Act”) and the Housing (Scotland) Act 2001 (“the 2001 Act”) and the Housing (Scotland) Act 2014 (“the 2014 Act”).

Allocation policies will also need to comply with the homelessness rules set out in Part II of the 1987 Act (as amended by the 2001 Act and the Homelessness etc. (Scotland) Act 2003 (“the 2003 Act”)).

Landlords also have a duty to make and publish rules covering priority of allocation of houses, transfers and exchanges (section 21 of the 1987 Act, as amended by section 155 of the Leasehold Reform, Housing and Urban Development Act 1993 and the 2001 Act). This means that any allocation policy should set out clearly how the landlord will decide on priority for housing.

Landlords should take any other relevant legislation into account when developing or reviewing their allocation policy.

Although there is a clear legal framework within which allocation policies must operate, within these constraints, landlords have considerable discretion to develop their allocation policy and practice to meet the needs of the communities in which they operate. This Guide sets out the requirements for complying with legislation and statutory guidance and also covers those areas of policy and practice where landlords can develop their own responses.

2.2 Statutory guidance

There is a range of statutory guidance which should be referred to when reviewing and amending allocation policies and procedures. In particular, landlords should be aware of:

- **The Legal Framework for Social Housing Allocations, Statutory Guidance for Social Landlords.** Housing (Scotland) Act 2014. (Scottish Government 2018). **Available from the Scottish Government's website at:** <https://www.gov.scot/policies/social-housing/>
- **Minimum Period for Applications to remain in force - Suspensions Under Section 20B of the Housing (Scotland) Act 1987. Statutory Guidance. Housing Scotland Act 2014** (Scottish Government 2018). **Available from the Scottish Government's website at:** <https://www.gov.scot/policies/social-housing/>



Landlords may also wish to refer to the Scottish Government's Code of Guidance on Homelessness 2005. **The Code is available at:** <https://beta.gov.scot/publications/code-guidance-homelessness/>

The Code of Guidance 2005 remains the primary source for homelessness related policy and practice at the time of publication of this Guide. However, the work of the Homelessness and Rough Sleeping Action Group (HARSAG) 2018 will lead to policy and practice-related change. This could, in turn, have an impact on landlord's allocation-related policy and practice.

Information Point:

In 2017, the Homelessness and Rough Sleeping Action Group (HARSAG) was asked to provide recommendations to Scottish Government Ministers on the actions and solutions needed to eradicate rough sleeping and transform the use of temporary accommodation in Scotland.

In May 2018, HARSAG published an interim report: Transforming the use of Temporary Accommodation in Scotland. Amongst the recommendations in the report were that there should be a clear national direction of travel to

transition to a model of 'rapid rehousing' by default across Scotland. By 'rapid re-housing by default' they mean:

- someone who is rough sleeping or at risk of rough sleeping should be housed in settled mainstream accommodation as quickly as possible.
- someone who has complex needs and is rough sleeping or at risk of rough sleeping should be housed in settled mainstream accommodation with the necessary wraparound support as quickly as possible; and
- someone who is rough sleeping or at risk of rough sleeping for whom rapid rehousing or Housing First would not yet be suitable should be provided with accommodation that deals with their particular needs with the specialist support that is required.

HARSAG also recommended setting targets for rehousing and that 5-year rapid re-housing transition plans would be developed by each local authority area. These should include measures for increasing access to settled accommodation, which may involve upping the proportion of social lets to homeless households, on a transitional basis, to address the 'backlog' of temporary accommodation residents that have built up in some areas. This should form part of a broader 'whole housing system' approach which seeks to maximise the full range of appropriate move-on options available to homeless households.

The Group's final report, *Ending Homelessness: The report on the final recommendations of the Homelessness and Rough Sleeping Action Group* was published in June 2018.

The report states that: Allocations policies for social housing should ensure that homelessness is not the main way to be allocated social housing, while recognising that appropriate levels of reasonable preference should reflect the urgency of need. This is not a recommendation to reintroduce the concept of Priority Need as abolished by legislation in 2012 but is a recognition that housing allocations can be the last line between a household being homeless and not being homeless and this needs to be prioritised.

Further information, including any further reports or recommendations made by HARSAG, are available from the Scottish Government's website at: <https://beta.gov.scot/groups/homelessness-prevention-and-strategy-group/>

This Guide sets out the requirements to comply with legislation and regulation, but also covers those areas of policy and practice for which landlords can develop their own responses.

2.3 Scottish Social Housing Charter

The Scottish Social Housing Charter (the Charter), sets out the outcomes and standards that all social landlords should be delivering for their tenants and other customers.

The following Charter Outcomes are of direct relevance to allocation policy and practice:

Equality

- Outcome 1: Every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.

Communication

- Outcome 2: Tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides.

Participation

- Outcome 3: Social landlords manage their businesses so that tenants and other customers find it easy to participate in and influence their landlord's decisions at a level they feel comfortable with.

Housing options

- Outcome 7: People looking for housing get information that helps them make informed choices and decisions about the range of housing options available to them.
- Outcome 8: Tenants and people on housing lists can review their housing options.
- Outcome 9: People at risk of losing their home get advice on preventing homelessness.





Access to social housing

- Outcome 10: People looking for housing find it easy to apply for the widest choice of social housing available and get the information they need on how the landlord allocates homes and their prospects of being housed.

Tenancy sustainment

- Outcome 11: Social landlords ensure that tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and by other organisations.

Homeless people

- Outcome 12: Homeless people get prompt and easy access to help and advice; are provided with suitable, good-quality temporary or emergency accommodation when this is needed; and are offered continuing support to help them get and keep the home they are entitled to.

The full Scottish Social Housing Charter April 2017 can be found on the Scottish Government's website at: <https://www.gov.scot/publications/scottish-social-housing-charter-april-2017/>

The Scottish Housing Regulator (SHR) monitors, assesses and reports on landlords' performance against the Charter. **All social landlords submit an Annual Return on the Charter (ARC) to the SHR and the SHR publishes performance information for each landlord at: <https://www.scottishhousingregulator.gov.uk/find-and-compare-landlords>**

2.4 Equality and human rights

Landlords may find it helpful to refer to the Equality Act 2010 - Handbook for Advisors produced by the Equality and Human Rights Commission Scotland (EHRC Scotland) when developing or reviewing their allocation policy and practice. **The Handbook can be found on the EHRC's website at: <https://www.equalityhumanrights.com/en/publication-download/equality-act-2010-handbook-advisors>**



Landlords should also refer to the SHR's most recent requirements of landlords, currently available at: <https://www.scottishhousingregulator.gov.uk/publications/equalities-statement-equalities-impact-assessment-regulatory-framework-consultation>

Equality Act 2010 and the Public Sector Equality Duty

The Equality Act 2010 provides the legal framework to protect the rights of individuals from unfair treatment and promotes a fair and more equal society. It places a duty on all businesses and organisations not to discriminate against a person because of one or more of their protected characteristics, which are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

The interconnected nature of discrimination means that it can take place because of several characteristics which operate and interact with each other at the same time. If this happens, someone will be experiencing multiple discrimination.

Whilst age is a protected characteristic under the Equalities Act 2010 this protection does not apply in relation to the disposal and management of premises. This allows landlords to take account of age in allocating properties in very limited circumstances (see section 7.1 below).

Information Point

EHRC Scotland's Equality Act 2010 Handbook for Advisors explains the duty to make reasonable adjustments for disabled people is an anticipatory duty in the context of services and public functions.

This means that a social landlord must anticipate the needs of potentially disabled applicants and tenants.

The 2010 Act places a duty to make reasonable adjustments:

1. Where a provision, criterion or practice puts disabled people at a substantial disadvantage compared to those who are not disabled, to take reasonable steps to avoid the disadvantage.
2. Where a physical feature puts disabled people at a substantial disadvantage, compared with people who are not disabled, to avoid that disadvantage.
3. Where not providing an auxiliary aid puts disabled people at a substantial disadvantage compared with people who are not disabled, to provide that auxiliary aid.

The Equality Act 2010 introduced a public-sector equality duty (PSED) which requires public authorities to have due regard to the need to eliminate discrimination, promote equality of opportunity and foster good relations. Organisations not listed in the Equality Act 2010, such as RSLs, must also comply with the public sector equality duty if they carry out public functions.

The Scottish Government has supplemented that general duty through the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012¹ (as amended). The 2012 Regulations are aimed at supporting the bulk of Scottish public authorities to improve implementation of the PSED by requiring them to: report progress on mainstreaming equalities; propose and publish equality outcomes; assess policies and practices from the perspective of equality; and publish employee information on pay and occupational segregation. They are also required to:

- take reasonable steps to involve people who share a relevant protected characteristic or the representatives of the interests of these people.
- consider relevant evidence relating to people who share a protected characteristic.

There are specific duties which also require some public authorities to publish schemes setting out how they will promote equality, including their method for formal impact assessment of policies and practices. While RSLs are not subject to these specific duties, the

¹ <https://www.legislation.gov.uk/sdsi/2012/9780111016718/contents>

Equality and Human Rights Commission (the enforcement body for these duties) encourages other bodies to take on board the principle of these duties and prepare equality impact assessments where appropriate. **Further information can be found in the Equality and Human Rights Commission's Services, Public functions and Associations: Statutory Code of Practice:** https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf.

Human Rights

The right to housing is a human right enshrined in international law. The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights recognise the right to housing as part of the right to an adequate standard of living. The UK and its public administrations and bodies, including the Scottish Government and local authorities in Scotland, therefore have an obligation to protect and promote people's right to adequate housing. In its General Comment No. 4, the UN Committee on Economic, Social and Cultural Rights provides an authoritative interpretation of the right to adequate housing, which must be accessible, affordable, habitable, and culturally adequate, and provide access to infrastructure, facilities and services.

The Human Rights Act 1998 confers rights and freedoms granted by the European Convention on Human Rights. The rights protected by the Act include the right to:

- life;
- respect for private and family life, home and correspondence;
- freedom of religion or belief;
- freedom of expression; and
- peaceful enjoyment of your possessions.

Landlords need to take into account the law on allocations, equality and human rights, as well as regulatory standards when deciding on their allocation policies, processes and procedures.

Key Points

Any social housing allocation policy should be compliant with a range of key legislation and statutory guidance including:

- Sections 19 and 20 of the Housing (Scotland) Act 1987, as amended by Sections 9 and 10 of the Housing (Scotland) Act 2001 and the Housing (Scotland) Act 2014.
- the Statutory Guidance supporting the 2014 Act.

Landlords should also be aware of any Code of Practice on Homelessness. As at 2018, this remains the Code of Guidance on Homelessness 2005. Landlords should keep up-to-date with any emerging policy in this area.

Allocation policies should also reflect the Scottish Social Housing Charter.

Landlords should ensure that their allocation policy complies with the relevant equality and human rights duties.

3. Allocation Policies

This section covers the development of an allocation policy and includes information on the duty to consult brought in by the 2014 Act.

By working through this section readers will:

- understand when to review an allocation policy and who to involve in the review.
- be aware of the issues to consider when reviewing an allocation policy.
- be familiar with the content of an allocation policy.
- understand the equality and human rights requirements on the policy.
- be aware of monitoring requirements.

3.1 Reviewing or developing a policy

An allocation policy is a core document that sets out all aspects of a social landlord's approach to allocating properties. All existing social landlords will already have a published allocation policy and have a system in place for reviewing it to ensure it is meeting the needs of applicants, tenants and local authority and third sector partners such as Women's Aid.

A standard review cycle is normally between three and five years. Legislative changes (such as the 2014 Act) may also trigger the need for a review as landlords will need to ensure the reasonable preference groups in their policy comply with those in the 2014 Act.

Where landlords feel that the policy is working well, they may decide to check for compliance and not make any further changes to their existing policy. However, if a review triggers the need for any significant changes to their allocation policy, they should consider a full review.

Landlords will need to develop a clear plan for the review which sets out how key stakeholders will be involved, key tasks and timescales. A full review will require adequate resources and landlords should set realistic timescales, including sufficient time for consultation and revision.

Other material, including the application form, housing options information and the tenants' handbook, may also need to be updated. Landlords will also wish to consider any Information and Communication Technology (ICT) implications of changing the policy and ensure the necessary resources are in place (both in staff time and the financial resources required) to make any changes to their housing management software package.

A review may also trigger the need for a full review of the housing list. For example, if any of the housing needs categories in the allocation policy change, landlords will need to carry out a full review if they do not already hold the necessary information to allow for an accurate assessment of an existing applicant's need and priority.



3.2 Who to involve in a review



Involving tenants, applicants and Registered Tenant Organisations

Section 4 of the 2014 Act, through its insertion of section 20A into the 1987 Act, requires landlord to consult the groups listed. These are:

- applicants on the housing list;
- their tenants;
- registered tenant organisations; and
- such other persons as landlords see fit.

The Housing (Scotland) Act 2001 requires all social landlords to have a Tenant Participation Strategy in place. The Strategy should be developed in consultation with tenants and tenant organisations and should set out how to involve them in decisions about their homes and communities. The Strategy should also include how tenants and other customers of social landlords will be involved and consulted in policy reviews. The approach must be inclusive and ensure those who face communication or physical barriers to taking part are able to share the views.

Effective participation gives tenants an opportunity to influence decisions about the housing services they receive. It also gives landlords a better understanding of the needs of their tenants.

A tenant scrutiny exercise could also be used to review the allocation policy. Tenant scrutiny is an important part of meeting the expectation to continuously improve landlord performance. It involves adopting a tenant-centred approach to reviewing landlord activities and delivers benefits to tenants and landlords alike.

Information Point

There is a variety of useful resources landlords can refer to when developing their approach to reviewing and consulting on their allocation policy.

The Scottish Government's Guide to Successful Tenant Participation sets out outcomes and standards for landlords on communicating with tenants and other customers. **The Guide is available from the Scottish Government's website at: <https://beta.gov.scot/publications/successful-tenant-participation/>**

Landlords may also wish to consider how a policy and practice review on allocations could be built into tenant scrutiny activities. **Further information on tenant scrutiny is available from the Chartered Institute of Housing Scotland's website at: <http://www.cih.org/resources/PDF/scotscrutiny/Scrutiny%20Guide%20Complete%20FINAL.pdf>**

The Guide notes that 'Tenant scrutiny involves adopting a tenant-centred approach to landlord activities, which delivers benefits to tenants, landlords and communities alike. It's an approach where a housing provider's frameworks for directing, accounting for, monitoring, assessing and reviewing its own direction and performance are based on the views and priorities of tenants'. **A full Trainer Toolkit from the Stepping up to Scrutiny programme is also available at: <http://www.cih.org/resources/PDF/scotscrutiny/Final%20Toolkit%20with%20front%20cover.pdf>**

Others to involve in a review

In addition to tenants, applicants and RTOs, landlords may want to involve others in the review. This could involve being closely involved in the whole review or contributing on specific issues. The range of stakeholders will vary depending on local circumstances.

The type of organisations or individuals who might be involved could include:

- representatives from local authority services, including the homelessness service. Depending on the profile of stock and the patterns of local housing needs, it could also include representatives from:
 - the Health and Social Care Partnership (with particular reference to the housing needs of older people and people who need accessible or adapted accommodation).
 - Children's Services, particularly those with responsibility for looked after children, fostering, adoption and supporting kinship carers.
 - Community Justice Services.

- representatives from third sector services, including Women's Aid, local advice and information providers and services which are focused on supporting people with particular needs and local ethnic minority community organisations.
- elected members and/or the members of an RSL's Board.
- representatives of other social landlords in the area.



The consultation process

Effective consultation involves having a range of methods and opportunities for tenants and others to get involved.

The approach taken will depend on each landlord's circumstances and the nature and extent of the changes that need to be made. For example, a landlord might involve members of an RTO and/or a small sounding board group of tenants and applicants in initial discussions about whether significant changes are required to a policy.

A landlord could also ask their tenant scrutiny panel to consider reviewing the overall approach to allocations to highlight areas of both policy and practice which need to be reviewed. If no significant changes are required, any further consultation around minor changes might be restricted to those who have already been involved in considering the need for review.

The scale of the consultation exercise should be appropriate and proportionate to the scope and nature of the changes being made. For example, if landlords have had feedback that a policy is not easy to understand, they could involve a small group of tenants and applicants in helping re-write it so that it is clear from a tenant and applicant perspective.

If there are issues with the application process, including the application form, a group of tenants and applicants could be asked to scrutinise the process, pilot a revised form and give their views on any other procedural changes that could improve the process.

If an initial scoping exercise concludes that more significant changes to the policy are required, a more extensive consultation process will be required. This might be appropriate, for example, if changes are being made to the types of housing need being given priority. Landlords will want to involve tenants, and applicants, in the development of the revised policy. This approach will allow tenants' views to feed in at an early stage and help shape the policy that would then go out to full consultation.

Practice Example - Involving tenants in developing policy and practice, East Lothian Council

Since the 1990's, tenant involvement and participation has flourished in East Lothian. Members of East Lothian Tenants & Residents Panel (ELTRP) are routinely involved as equal partners in the co-production and review of housing policy within East Lothian from the allocation of its council houses through to the voids process. From the initial stages, shaping policy direction to final policy position, the Council relies on the skills and experience of ELTRP members in order to deliver continuous improvement of its housing services.

More recently ELTRP has taken the next step in the policy development journey by taking on a scrutiny role, with a Scrutiny Framework forming an integral part of the Council's Tenant Participation Strategy (2016-19).

Service areas that have been subject to several different types of scrutiny approach so far have included a desktop audit of the allocations policy; mystery shopping pilot of customer services; antisocial behaviour survey and an independent grassroots scrutiny of the estate inspection process.



Whichever approach a landlord uses, it is very important to ensure that there are a range of ways for tenants and applicants who wish to participate to give their views.

Landlords should also ensure their approach is as inclusive and supportive as possible. For example, where meetings are being held, any venues should be fully accessible and where a tenant or applicant needs support to take part in the process this should be provided. This could include making translations of any survey and associated paperwork being used available.

Reporting on the review

The 2014 Act requires landlords to prepare and publish a report on the consultation and review of the policy. How landlords report on the review and what format that will take should be agreed with their tenants. Landlords will already be reporting to their RSL Board or council committee on the outcome of the review and any changes being made to their allocation policy. This could form the basis of the report or they could include a section on the consultation and review within the allocation policy itself.

The 2014 Act allows social landlords to publish a joint report along with other social landlords, for example if they operate a Common Housing Register.

3.3 What a review will cover

In reviewing their allocation policy, landlords will want to consider:

- does the policy comply with all relevant legislation and statutory guidance including Human Rights and equality obligations?
- is the current aim of the policy, and any associated outcomes, fit-for-purpose, or do they need to be reviewed?
- given the profile of properties available, is the policy meeting the needs of applicants, tenants, the landlord and other key stakeholders?
- if not, what are the key issues to be addressed in a revised policy? For example:
 - does the policy give sufficient priority to each of the reasonable preference groups?
 - are the right range of housing needs reflected in the policy? In particular, does the policy recognise the right range of unsatisfactory housing circumstances?
 - is best use being made of the properties available to allocate? If not, why not and what needs to be done to ensure best use is made?
 - does the policy consider under-represented groups and consider actions to deal with any accessibility issues?
 - is the overall approach currently being used (needs-based or Choice-Based Letting (CBL)) the right way to deliver the overall objectives of the allocation policy?

In considering these issues, and in addition to the legislation and statutory guidance covered at Section 2, landlords will want to refer to a range of published information. This will include:

- the Local Housing Strategy(ies) of the area(s) in which they have stock.
- any local housing needs assessments. These should give information on any likely changes to demand for social housing in the future including the volume and profile of that demand.
- performance information published by the Scottish Government and the Scottish Housing Regulator. This information could be useful if a landlord wishes to compare the outcomes and outputs of its own allocations approach with that of other landlords. Landlords may also have access to benchmarking information through other routes.
- if an RSL, their Business Plan.

Landlords will also wish to consider the profile of their own stock and the properties becoming available for let. An analysis of the housing list may also generate useful information about who is looking to be housed and what type of properties they are looking for.

RSLs whose stock is spread across a number of local authority areas may find it more difficult to take need and demand across their whole stock into account. They may wish to consider joining any area-based common housing register, particularly if the approach used means they do not have to hold a list in that area.

3.4 Allocation policy content

Landlords will need to decide what their allocation policy will include. Most include:

- the aim of the policy and the outcomes it seeks to achieve. The policy should also explain how the landlord will deliver the aim and outcomes set out.
- what will and what will not be considered when allocating properties. This should reflect the legislation governing housing allocations.
- the priority for housing that will be given to applicants depending on their housing needs, including setting out:
 - how the landlord will make sure it gives reasonable preference to the groups set out in legislation.
 - the housing needs they will include within the ‘unsatisfactory housing conditions’ reasonable preference group.
 - the relative priority they will give to the reasonable preference groups and any lettings quotas or targets they will put in place to assist in achieving the intended outcome.
 - any additional categories to be given a preference by the landlord beyond those set out in the 2014 Act.
- information about assessing and verifying applicants’ needs.
- any house size eligibility criteria which set out expectations around matches between household and property sizes, including whether applicants can apply for larger properties.
- exceptional circumstances flexibility to allow the landlord to allocate homes other than in accordance with the standard approach set out in the policy. This might include local lettings initiatives and sensitive lettings and the arrangements for doing so.
- arrangements for suspending applicants from receiving offers.
- the appeals and complaints processes.
- arrangements for monitoring and reviewing the policy.

Landlords should also include any other relevant information, although it is important to keep the focus on policy rather than practice.

3.5 Equality Impact Assessment

Landlords should carry out an Equality Impact Assessment (EIA) to consider how their policy will impact, either positively or negatively, on different people in different ways. An assessment will help make sure that any policy reflects the needs of the communities a landlord serves, and it will help to identify gaps and ways to promote equality.

Information Point

The Equality Act 2010 prohibits discrimination (direct or indirect), harassment or victimisation of anyone who shares one or more of the protected characteristics listed in the Act (that is: on the grounds of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or, sexual orientation).

Section 149 of the Equality Act 2010 places a legal duty (known as the 'General Equality Duty') on public authorities to: eliminate discrimination; advance equality of opportunity; and, foster good community relations in relation to the protected characteristics (with the exception of marriage and civil partnership²) set out in the Act.

Landlords should consider their obligations under the Public Sector Equality Duty when they develop or review their allocation policy. It is best to begin the EIA at the early stages of developing a policy so that any findings can shape it.

They should assess the impact of applying a proposed policy against the needs of the general equality duty. The assessment should consider the following three duties:

- that the policy does not discriminate unlawfully;
- how the policy might better advance equality of opportunity; and
- whether the policy will affect good relations between different groups.

The impact of the policy on equality groups should be assessed under each need of these three duties.

2 The definition is in section 149(7) of the Equality Act 2010 (and is necessary because the second two parts of the public sector equality duty (that is, advancing equality of opportunity and fostering good relations) apply only to the listed relevant protected characteristics (but the first part, to eliminate discrimination, applies to all of them).

Landlords should have staff who are trained in equality issues to make sure these are addressed when developing or reviewing its allocation policy. Discussing draft impact assessments with people from equalities groups and the organisations that represent them will also be beneficial.

EHRC (Scotland) has produced a guide on Assessing impact and the Public Sector Equality Duty: a guide for public authorities (Scotland). **The guide can be found on the Commission's website at: <https://www.equalityhumanrights.com/en/publication-download/assessing-impact-and-public-sector-equality-duty-guide-public-authorities>**

3.6 Monitoring

Landlords need to have a system in place to monitor the operation of their policy, including involving tenants in the process. Developing a monitoring framework at the same time as the policy will help ensure that the right mechanisms are in place from the start. Taking this approach will allow a landlord to:

- tailor the indicators and measures to its policy aim and intended outcomes;
- identify disparities or unintended discrimination in the operation of the policy; and
- measure the impact of any policy changes.

Landlords will already be recording allocation-related data as part of performance management arrangements and for their annual report to their tenants and the Annual Return on the Charter (ARC) for the SHR. The same information should also be used internally to monitor how the allocation system is working. **Further information on the allocation-related data to be reported to the SHR is available from their website at: <https://www.scottishhousingregulator.gov.uk/>**

Landlords can also draw on information about other landlords' performance on allocations from the SHR's annual reports and landlord comparison tool. They may also have access to benchmarking information from other sources.

Landlords should also consider what other housing list and allocations data they will collect. Regular reporting on key outputs from an allocation policy will help with early identification of any issues. In particular, regular review of the proportion of lets going to each reasonable preference group can help identify any issues, such as ensuring a sufficient proportion of available lets are going to statutorily homeless households.

Landlords should also consider whether the policy is working as intended and in particular:

- is priority being given to applicants in housing need?
- is the allocation policy and accompanying practice contributing positively to the prevention and resolution of homelessness?

- does the policy give priority to appropriate housing needs under the Unsatisfactory Housing Conditions reasonable preference group?
- does the policy make best use of the properties that become available, and in particular does it make best use of wheelchair accessible and adapted stock?
- does the policy enable people with changing needs to find accommodation which better suits their current needs?
- does the policy promote choice?

Effective monitoring and use of equality data is also essential and can help a landlord guard against indirect discrimination by reviewing how the policy works in practice and what impact it has on people with different protected characteristics.

Key Points

A three to five-yearly cycle for reviewing an allocation policy is widely recognised as being appropriate unless legislative changes prompt the need for an earlier review or the policy is clearly not working as intended.

A full review or redevelopment of an allocation policy will require adequate resources. Landlords should set realistic timescales which include sufficient time for consultation and revision.

When reviewing their policy, landlords must consult with tenants, applicants and RTOs. How landlords will consult on policy reviews should be set out in their tenant participation strategy. Landlords should ensure that any approach taken is inclusive.

In reviewing their policy, landlords should consider what they are trying to achieve through their allocation policy and how they will ensure that they meet housing need.

Carrying out an EIA will help a landlord consider how its policy will impact, either positively or negatively, on different groups of people.

Landlords should monitor the operation of their policy. Developing a monitoring framework along with the policy will help ensure that the right mechanisms are in place from the start.

4 . Reasonable Preference

This section covers the reasonable preference groups which must be taken into account when allocating social housing.

By working through this section readers will:

- be aware of the changes brought in by the 2014 Act.
- be familiar with the concept of unmet housing need.
- understand the three reasonable preference groups of statutory homelessness, under occupation and living under unsatisfactory housing conditions.

4.1 Reasonable preference groups



Reasonable preference refers to a level of priority given to applicants under certain circumstances. Through their allocation policy, landlords must give a reasonable level of priority to those applicants who fall within one of the reasonable preference groups.

As noted in the final HARSAG report, allocation policies for social housing should ensure that homelessness is not the main way in which people access a social rented home. By giving an appropriate level of priority to those in urgent housing need through their allocation policy, social landlords can play a key role in preventing homelessness.

The 2014 Act amended section 20 of the 1987 Act and sets out three categories of applicants who should be given reasonable preference in an allocation policy. These are:

- homeless persons and persons threatened with homelessness and who have unmet housing needs;
- people who are living under unsatisfactory housing conditions and who have unmet housing needs; and
- tenants of houses which are held by a social landlord, which the social landlord selecting its tenants considers to be under-occupied.

The relative priority given to each of the reasonable preference groups will depend on the profile of housing need in each landlord's area. Each landlord needs to decide how much priority it wishes to give to those in each of the reasonable preference groups. At the very least landlords should not give homeless people lesser preference than the other specified groups. This means that any weighting landlords give to different types of housing need must reflect their obligations to make a reasonable proportion of their lets available to homeless households.

Landlords can take the needs of other groups into account, as well as the reasonable preference groups, and can create other needs groups, such as giving priority to ex-service personnel. However, any other groups being prioritised for allocations must not dominate an allocation policy at the expense of the three reasonable preference groups in the 2014 Act.

4.2 Unmet housing need

The first two of the reasonable preference groups (homelessness and unsatisfactory housing conditions) are subject to the qualification that the applicant should also have unmet housing needs. The 2014 Act says that people have unmet housing needs 'where the social landlord considers them to have housing needs which are not capable of being met by housing options which are available'. Being able to meet their own housing needs could be described as being able to secure suitable accommodation which meets their needs from existing housing options.

Landlords are required to give reasonable preference to those who are homeless or threatened with homelessness or who are living in unsatisfactory housing conditions if their housing needs cannot be met in another way. This does not mean that landlords cannot house somebody whose housing needs can be met in another way, but it does mean they should not give them reasonable preference under their policy.

There are two elements landlords should consider when deciding whether someone has unmet housing needs. These are:

- the applicant's circumstances; and
- the existing housing options which are available and accessible to them.

An example of when it may be possible to meet housing need other than by giving an applicant reasonable preference for a social housing allocation would be where someone's current home can be adapted to meet the household's needs, for example by the installations of a ramp, stairlift or wet floor shower.

However, if an applicant's needs for an accessible or adapted home cannot be met by adapting their current home they would be given reasonable preference. Equally, landlords and/or the local authority will have to weigh up the practicalities and cost of adapting a property. If that cost would be excessive, landlords may consider someone's housing need cannot be met and give them reasonable preference for rehousing.

Most applicants who are homeless or threatened with homelessness, or who are living under unsatisfactory housing conditions, are likely to be entitled to reasonable preference.

Although the new heritable property provisions allow a landlord to consider an applicant's property-based assets (land or buildings), an applicant's income cannot be taken into account. This means that landlords cannot consider someone to be in a position to meet their housing needs because their income would allow them to buy their own home or rent a suitable home in the private rented sector. However, they may wish to discuss their full range of housing options with the applicant. Further information on the heritable property provision is set out in Section 8 of this Guide.

4.3 Homeless persons and persons threatened with homelessness and who have unmet housing needs

An allocation policy should include information about how a landlord will meet its duties to provide secure accommodation for households who are considered to be statutorily homeless by a local authority. The focus should be on providing that accommodation and neither the policy, nor allocations practice, should seek to challenge the local authority's statutory homeless decision.

Part II of the 1987 Act (as amended) defines “homeless persons”. A person is homeless if he or she has no accommodation in the United Kingdom or elsewhere, or if he or she has accommodation, but it would not be reasonable for him or her to occupy it. A person is homeless if he or she has accommodation, but:

- cannot secure entry to it;
- it is probable that occupation of it will lead to abuse;
- it is probable that occupation of it will lead to threats of abuse from someone who previously lived with him or her and who is likely to carry out the threats;
- it is a moveable structure, vehicle or vessel and there is no place where he or she is entitled or permitted to place it and live in it;
- it is overcrowded and may endanger the health of the occupants; or
- it is not permanent accommodation and the local authority has a duty to provide permanent accommodation. Permanent accommodation includes accommodation owned by him or her or in which he or she is a tenant with a secure, assured tenancy or private residential tenancy. It also includes a short Scottish Secure Tenancy where such a tenancy has resulted from previous antisocial behaviour or from any prospective tenant or resident under an antisocial behaviour order.

Part II of the 1987 Act (as amended) also defines “persons threatened with homelessness”. A person is threatened with homelessness if it is likely that he or she will become homeless within two months.

All unintentionally homeless households are entitled to settled accommodation. Local authorities have duties to provide accommodation and/or advice to those who are homeless or are threatened with homelessness. RSLs also have duties under section 5 of the Housing (Scotland) Act 2001 to house statutory homeless people who are referred to them by a local authority. RSLs have to meet section 5 requests from local authorities unless there are good reasons not to.

The Code of Guidance on Homelessness sets out the circumstances where an RSL may have good reason not to comply with a section 5 request and the time period within which local authorities and RSLs should reach agreement. In summary, good reason is where:

- an RSL is unable to make suitable housing available within six weeks of the request; or
- the only housing the RSL has available is of a particular nature (for example sheltered housing for older people) and this is not suitable for the applicant.

There are no other grounds for an RSL to refuse a section 5 referral. RSLs cannot use any other terms of their allocation policy for refusing to deal with a section 5 referral. RSLs should make sure that their allocation policy reflects arrangements for section 5 referrals and nomination agreements, where these exist.

From an allocations perspective, the Code of Guidance on Homelessness states that 'at the very least' landlords should not give homeless people lesser preference than the other specified groups. This means that any weighting landlords give to different types of housing need (for example through the use of letting quotas), must reflect their obligations to make a reasonable proportion of their lets available to homeless households.

4.4 People who are living under unsatisfactory housing conditions and who have unmet housing needs

There is no legal definition of 'unsatisfactory housing conditions' and landlords will need to determine the types of housing need that they will include within this reasonable preference group.

As a starting point, landlords should give reasonable preference to the housing needs which were reasonable preference groups prior to the 2014 Act. These include:

- living in a property which does not meet the tolerable standard.
- overcrowding.

There are also a range of other housing needs that are often recognised in allocation policies. Landlords do not have to include these categories if they do not reflect the housing needs in their area. However, it is likely that the following frequently used categories will be relevant to most social landlords in Scotland.

- domestic abuse.
- other harassment or abuse.
- insecure accommodation.
- needing an adapted or accessible home.
- social, community or family support.

There is also a range of other housing needs which landlords could consider. If they are of particular importance to their local community or the wider group of communities in which they operate, a landlord could consider including them within its unsatisfactory housing conditions group.

Another approach would be to give these housing needs a level of priority under the policy but not include them within the reasonable preference group.

The types of housing need which might fall into this group could include:

- looked after and accommodated young people.
- kinship carers, fostering or adoption.
- leaving the armed forces.
- leaving prison.

Further information on the range of housing need that might fall under 'people who are living under unsatisfactory housing conditions and who have unmet housing needs' is provided in Sections 5 and 6 of this Guide. This section also provides further information on the other categories of need that landlords may wish to consider including in their allocation policy.

4.5 Under-occupation

The 2014 Act introduced 'tenants of houses which are held by a social landlord and which the social landlord selecting its tenants considers to be under-occupied' as a reasonable preference group. Social landlords want to make best use of their housing stock and giving priority to social rented sector tenants who are under-occupying their home is one way of doing this.

There is no legal definition of under-occupation and landlords will have to set their own standard for this. However, most landlords will consider under-occupation to occur when a household lives in a home which has one or more bedrooms than they would be entitled to under their landlord's current allocation policy.

Under-occupation is mostly likely to occur when someone with children has originally been allocated a larger home and their children have grown up and left home. This means that under-occupying tenants are likely to be older.

Landlords should consider taking a housing health check approach and take a proactive approach in supporting tenants to consider whether their current home meets their needs and helping them to consider whether a move might help them live independently for longer.

Social landlords should give some level of priority to their own tenants who are under-occupying their home and who want to downsize. Landlords should also give an equivalent level of priority to the tenants of any other social landlord who has applied to them for housing and is under-occupying according to their allocation policy. The number of applicants involved is not likely to be high and tackling under-occupation supports the best use of the socially rented stock across the country.

People may find it difficult to leave a property that has been their home for some time. There may also be financial and practical disincentives to making a move. Landlords may wish to consider offering financial or other supports to encourage people to free up larger homes and make a move to a smaller home that may better suit their needs.

4.6 Relative weighting to different groups

The law does not specify the relative weighting that should be given to the reasonable preference groups and each landlord or group of landlords will need to decide on the relative priority they give to each. In making those decisions they may wish to consider the profile of the homes becoming available for let and who is applying to them for housing.

RSLs and local authorities should work together to decide on the proportion of allocations they will make available to those who are homeless or threatened with homelessness. As noted above, at the very least landlords should not give homeless people lesser preference than the other specified groups.



4.7 Applicants other than those with reasonable preference

Landlords can take the needs of other groups into account as well as the reasonable preference groups. For example, they may give a level of priority to those leaving the armed services or to those leaving prison.

Any other groups being given priority must not dominate an allocation policy at the expense of the three groups set out in the 2014 Act. Any additional criteria that are used to prioritise allocations must also fully comply with the 1987 Act as amended by the 2014 Act.



Key Points

The Housing (Scotland) Act 2014 sets out three categories of applicants who should be given reasonable preference in an allocation policy. These are homeless persons and persons threatened with homelessness, people living under unsatisfactory housing conditions and under-occupying social housing tenants.

The homeless and unsatisfactory housing reasonable preference groups are qualified by the applicant having unmet housing need. Each landlord needs to decide how much priority it wishes to give to those in each of the reasonable preference groups. At the very least landlords should not give homeless people lesser preference than other groups of applicants.

Allocation policies should include information about how a landlord will meet its duties to provide settled accommodation for households who are considered to be statutorily homeless by a local authority. The focus should be on providing that accommodation and neither the policy, nor lettings practice, should seek to challenge the local authority's statutory homeless decision-making.

The under-occupation provision means that landlords must give priority to their own tenants who are under-occupying and to tenants of other social landlords who are under-occupying. There is no legal definition of under-occupation, so the landlord must decide whether another landlord's tenant is under occupying based on its own allocation policy.

Landlords can take the needs of other groups into account as well as the reasonable preference groups. However, any other groups must not dominate an allocation policy at the expense of the three groups set out in the 2014 Act.

5 • Unsatisfactory Housing Conditions and Other Possible Needs Groups

This section covers some of the more frequently used categories for awarding a level of housing priority through an allocation policy, except for health and disability needs.

By working through this section readers will:

- understand when a property is below tolerable standard and know about the repairing standard.
- know the definition of overcrowding.
- understand the case for giving priority to victims of domestic abuse and other forms of abuse or harassment.
- be aware of when accommodation may be insecure.
- understand the case for giving priority to those who have been looked after by the care system, kinship carers, foster carers and those adopting.
- understand the case for giving priority to those leaving the armed forces.

There is a range of housing needs which landlords include within their allocation policy. Landlords should decide which of these housing needs are appropriate to the context in which they are allocating homes. The housing needs covered here are examples and landlords do not have to include any or all of them. Equally, they can include other types of housing need if appropriate, justifiable and clearly set out in their allocation policy.

Please note that health and disability needs, which would be likely to be given priority within any allocation policy, are covered in Section 6.

5.1 Property condition

The tolerable standard sets out the basic requirements for a healthy safe home. It applies to all tenures and is as defined by section 86 of the 1987 Act and amended by section 102 of the 2001 Act and section 11 of the Housing (Scotland) Act 2006. The tolerable standard is under review and landlords should note any changes to the standard in developing and applying their allocation policy.

A house meets the current tolerable standard if it:

- is structurally stable;
- is substantially free from rising or penetrating damp;
- has satisfactory provision for natural and artificial lighting, for ventilation and for heating;
- has satisfactory thermal insulation;
- has an adequate piped supply of wholesome water available within the house;
- has a sink provided with a satisfactory supply of both hot and cold water within the house;
- has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;
- has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;
- has an effective system for the drainage and disposal of foul and surface water;
- in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply;
- has satisfactory facilities for the cooking of food within the house; and
- has satisfactory access to all external doors and outbuildings.

A property is below tolerable standard if one or more of the criteria set out above are not met. If evidence is not already available, landlords may want to bring in the local authority's Environmental Health Service to assess whether the property meets the tolerable standard. If a property is below tolerable standard the local authority may contact the owner and ask for repairs or work to be carried out on their property. However, while a property remains below tolerable standard any applicant should be given reasonable preference.

In addition to the tolerable standard, a repairing standard applies to private rented sector tenancies. It places a duty on private landlords to repair and maintain their property. On becoming aware of a defect, private landlords must complete necessary work within a reasonable time. If they do not, or there is disagreement about whether or not there is a problem, tenants have the right to refer the matter to the Housing and Property Chamber First Tier Tribunal for Scotland. The Tribunal has power to require a landlord to carry out work necessary to meet the standard. **Further information on the repairing standard is available for the Scottish Government's website at: <https://beta.gov.scot/publications/repairing-standard/>**

Further information on the Tribunal can be found on the Housing and Property Chamber website at: <https://www.housingandpropertychamber.scot/>

Landlords could consider giving priority to private rented sector tenants whose current home does not meet the repairing standard and until such a time as any problems are resolved. An additional approach would be to ensure that the private rented sector tenant receives the necessary advice and support if a case needs to be taken to the Tribunal.

5.2 Overcrowding



Part VII of the 1987 Act defines “overcrowding”. When the number of people sleeping in a home exceeds the room standard or the space standard (both of which are set out below) a house is overcrowded.

Under the room standard, if the number of people sleeping in the house and the number of rooms available as sleeping accommodation (that is rooms normally used in the locality as a bedroom or living room) mean that two people of the opposite sex have to sleep in the same room then the accommodation will be overcrowded unless:

- the two people are living together as husband and wife; or
- one or both of them is under 10-years old.

The space standard determines the number of people who are permitted to sleep in a home based on:

- the number of rooms available as sleeping accommodation. Rooms that are counted are rooms normally used in the locality as a bedroom or living room;
- the size of those rooms. Rooms under 50 square feet (4.645m²) are ignored; and
- the ages of people who live there. Children under one-year old are not counted and children over one and under 10 count as a half.

Landlords can calculate the permitted number of people in a property by looking at both of the tables below. Table 1 sets out how many people can sleep in the house according to the number of rooms. Table 2 set out how many people can sleep in each room according to the size of the room and the total for each room, when added together, tells you how many people can sleep in the house. Landlords need to look at both tables and the smaller of the two numbers produced is the permitted number of people that may live in that house. If the permitted number is exceeded, the house is overcrowded.

Table 1: How many people can sleep in the house according to the number of rooms.

Number of rooms available for sleeping	Number of people who can sleep in the property
1	2
2	3
3	5
4	7 1/2
5 or more	2 for each room

Table 2: How many people can sleep in each room according to the size of the room

Floor area of room	Number of persons who can sleep there
110 sq. ft or more (10.219m ²)	2
90 sq. ft (8.361m ²) or more but less than 110 sq. ft	1 ½
70 sq. ft (6.503m ²) or more but less than 90 sq. ft	1
50 sq. ft (4.645m ²) or more but less than 70 sq. ft	1/2

While the law sets out the minimum standards needed to prevent overcrowding, in practice, landlords can set more generous standards of their own.

In deciding on levels of priority under their policy, landlords may wish to give a higher level of priority to those who are overcrowded by two or more bedrooms than to those overcrowded by one bedroom.

5.3 Domestic abuse

Information Point

The foreword of Equally Safe: Scotland's Strategy to prevent and eradicate violence against women and girls, states that "Violence against women and girls, in any form, has no place in our vision for a safe, strong, successful Scotland. It damages health and wellbeing, limits freedom and potential, and is a violation of most fundamental human rights."

The Strategy's third priority is that: "Interventions are early and effective, preventing violence and maximising the safety and wellbeing of women, children and young people." The nationally agreed definition of domestic abuse is:

Domestic abuse (as gender-based abuse), can be perpetrated by partners or ex partners and can include physical abuse (assault and physical attack involving a range of behaviour), sexual abuse (acts which degrade and humiliate women and are perpetrated against their will, including rape) and mental and emotional abuse (such as threats, verbal abuse, racial abuse, withholding money and other types of controlling behaviour such as isolation from family or friends.

The Equally Safe Delivery Plan states that:

"It is vital that those in housing services coming into contact with those who have experienced gender-based violence can offer an appropriate, safe and consistent response."

The Equally Safe Delivery Plan is available at: <https://beta.gov.scot/publications/equally-safe-delivery-plan-scotlands-strategy-prevent-violence-against-women/>

The full Strategy is available at: <https://beta.gov.scot/policies/violence-against-women-and-girls/equally-safe-strategy/>

Further information on domestic abuse is available from a range of sources including Scottish Women's Aid <http://womensaid.scot/>, Police Scotland <http://www.scotland.police.uk/keep-safe/advice-for-victims-of-crime/domestic-abuse/> and the Housing Rights Information website at: <http://www.housing-rights.info/scotland-ha-domestic-abuse.php>.

Given the clear national focus on tackling domestic abuse, landlords will want to include domestic abuse as a specific housing needs group. In framing their approach, they may find it helpful to refer to The Domestic Abuse (Scotland) Act 2018. **Available at:** <http://www.legislation.gov.uk/asp/2018/5/part/1/enacted>

In terms of the priority given, landlords should consider giving a high level of priority to anyone who is experiencing domestic abuse. This represents a critical housing need, with the victim and any children potentially being at severe risk. Housing need is likely to continue to be significant when someone has left their home because of domestic abuse and has not approached statutory homeless services. The approach and level of priority should enable the victim to avoid approaching statutory homeless services if that is their choice.

In developing the specifics of their approach, landlords should work in partnership with Scottish Women's Aid and/or their local Women's Aid group and others in the local authority and voluntary sector who are working with people experiencing or who have experienced domestic abuse. This will help ensure that policy and practice that is appropriate to the local context and supports an appropriate, safe and consistent response.

Fife Council – Women experiencing domestic abuse

A case management approach is taken if someone who approaches Fife Council discloses that they are experiencing domestic abuse.

Regardless of how someone first gets in contact, they are offered an appointment with one of the Council's Housing Access Officers. This appointment is to provide in-depth housing advice on all the housing options available to the applicant, including options to remain at home or access to temporary accommodation.

A discussion takes place around the requirement for support and a referral can be made to agencies where appropriate. The Housing Access Officer will award urgent housing points to those who wish to join the Fife Housing Register.

The Housing Access Officer will then carry out a 12-week review to ensure circumstances have not changed. The review process will then continue until the applicant is either rehoused or their housing need has otherwise been resolved.

The victim may prefer to stay in their home and there may be circumstances under which the perpetrator could be required to leave or not return to the home. This will depend on occupancy rights.

For example, if they are married to or in a civil partnership with the perpetrator, the victim has an automatic right to stay in the home. If the victim is the sole owner or tenant, the perpetrator has no legal right to stay in the home. If the victim is not the sole or joint owner or tenant, then they do not have automatic occupancy rights, but they do have the right to go to court to get occupancy rights granted for six months at a time. They can then apply for an exclusion order against the perpetrator. **Further information can be found on the Scottish Women's Aid website at: <http://womensaid.scot/information-support/domestic-abuse-and-my-rights-2/>**

However, if the victim would prefer to move home or has already left the home and does not wish to return, landlords should still consider them to be eligible for any domestic abuse-related housing priority.

Landlords will need to make sure that staff who come into contact with applicants and tenants recognise and know how to respond appropriately to cases of domestic abuse. Landlords should consider designating a specific member of staff who is trained, understands the issues around domestic abuse and can act as a referral point for colleagues.

There are key things landlords need to remember when dealing with applicants who are victims of domestic abuse:

- safety: the safety of the applicant should be paramount. The applicant should be signposted to agencies that can assist in providing them with a place of safety where necessary; and
- confidentiality: this is crucial to the safety of the applicant. Landlords should never contact the alleged perpetrator nor ask them to corroborate the applicant's version of events.

These basic principles also apply to applicants who are victims of other forms of abuse and harassment (see below).

It is also important to remember that domestic abuse can be difficult to evidence. Landlords should never discourage people from applying, or risk not awarding priority, because they require evidence.

5.4 Other abuse or harassment, including antisocial behaviour

Harassment and abuse can take many forms, it can be verbal or physical and at its most acute, life threatening. Types of abuse and harassment landlords may want to consider are:

- racial harassment;
- religious or sectarian harassment;
- homophobic harassment;
- transphobic harassment;
- harassment of autistic people and people with a learning or physical disability; and
- sexual harassment.

Antisocial behaviour refers to a wide range of actions and behaviours. It can also be a form of abuse or harassment. Schedule 2 of the 2001 Act defines antisocial behaviour (in relation to grounds for eviction) as an action or course of conduct which causes or is likely to cause alarm, distress, nuisance or annoyance. The focus is on the alarm or distress that is caused to another individual. How landlords deal with antisocial behaviour should be set out in their antisocial behaviour strategy or policy.

Allocation policies should set out clearly what degree of priority landlords will give to different levels of abuse, harassment and antisocial behaviour and when rehousing is being considered. Landlords should consider awarding victims a sufficient priority to allow them to be re-housed quickly. This will be particularly important if the victim is living with, or within in close proximity to, the perpetrator(s).

Landlords need to make sure that staff who deal directly with applicants and tenants recognise and know how to respond appropriately to cases of abuse, harassment and antisocial behaviour.

5.5 Insecure accommodation (other than statutorily homeless)

Landlords may consider giving a level of priority to applicants who have insecure housing circumstances but who have not applied through the statutory homeless route or who would not yet be considered to be statutorily homeless. In many cases this type of priority can help avoid applicants needing to approach statutory homeless services to find housing in future.

The types of situations under which insecure accommodation priority might apply would include:

- having been served a Notice to Leave for a private tenancy.
- living in tied accommodation and being required to leave because of retirement or redundancy.
- being served a repossession notice on an owner-occupied home.

This type of priority would usually only be given if the applicant is not responsible for their accommodation being at risk. For example, where someone is losing their private tenancy because of their antisocial behaviour or rent arrears, landlords may choose not to award priority.

Landlords might also wish to give priority to applicants who will be leaving their current accommodation in a planned move. This might include people who:

- will be moving on from supported accommodation.
- will be released from prison and have no home to which they can return. Landlords may wish to award a level of priority as the time to move on approaches. For example, they might wish to award prisoners priority around 12 weeks before their liberation date. Landlords should refer to the Scottish Quality Standards – Housing advice, information and support for people in and leaving prison, known as the SHORE Standards. **They can be found at: <http://www.sps.gov.uk/Corporate/Publications/Publication-5363.aspx>**
- will be leaving the Armed Forces and required to leave Service accommodation.

If landlords do not choose to award a level of priority for allocations to these groups, they should develop and have in place a housing protocol which sets out how they will assist people leaving supported accommodation, prison or Service leavers into a home of their own.

5.6 Social, community or family support

There is a clear case for giving some level of priority to applicants who are looking for a move to give or receive support. Enabling someone to receive the support they need may allow them to continue living independently and prevent the need for a move into residential or specialist accommodation.



If a landlord chooses to reflect this housing need in its allocation policy, it will need to set its own definition. In developing the definition, a landlord may consider:

- whether it wants to give priority to those needing to move to give, as well as receive, support?
- whether it requires applicants to be looking for a move within a set distance or travel time from the person to whom they will be giving, or from whom they will be receiving, support? If so, what distance or travel time would be appropriate to their context?
- whether it wishes to take the amount of support being given or received into account? For example, does it matter how frequently someone gives or receives support and how many hours of support they give or receive?

In addition to giving or receiving the type of support that might allow someone to remain living independently, someone might be looking for a move that gets them closer to a particular community or services.

Landlords may also wish to consider giving a level of priority to people who would like to live closer to community-based health or support services they use on a very regular basis. For example, someone who makes frequent visits to a community-based health or support service, such as an addictions rehab service, may find it easier to stay in touch if they live close to the services they use.

It is up to each landlord to decide what sort of evidence or validation it will seek in relation to social, community or family support. However, landlords are likely to need to accept written confirmation from those giving and/or receiving support or looking for a move for community or service-related reasons, as sufficient.

5.7 Being/having been looked after by the care system

As part of their wider role in supporting a smooth and supported transition from the care system to a home of their own, landlords will want to consider awarding priority to looked after young people.

Information Point

The Children and Young People (Scotland) Act 2014 introduced corporate parenting duties and responsibilities for the public bodies defined as corporate parents. These include all local authorities. A good corporate parent will want the best outcomes for their looked after children, accept responsibility for them, and make their needs a priority.

At the heart of corporate parenting are the formal and local partnerships between all services responsible for working together to meet the needs of looked after children, young people and care leavers. **Further information on corporate parenting and training is available on the Who Cares? Scotland website at: <http://www.corporateparenting.org.uk/> and Scottish Ministers' first report to Parliament on corporate parenting activity across Scotland can be viewed at: <https://beta.gov.scot/publications/report-corporate-parenting-turning-legislation-practice-together/>**

Where landlords are considering giving a level of priority to this group of young people aged 16 or over, they will want to work closely with key local services, including Local Authority Children's and Young People's services, to develop a joint approach which meets the needs of this potentially very vulnerable group. In particular, landlords will want to ensure that all the necessary support is in place to help each young person sustain their tenancy.

Practice example - Young care leavers, West Dunbartonshire Council

West Dunbartonshire Council gives priority need and a direct route into a tenancy for young people leaving care. Young care leavers are any looked after or accommodated child from the age of 18 right up until their 26th birthday.

The Council uses percentage allocation quotas and young care leavers will be given a 2% quota of lets. This percentage can be altered in line with need and demand after a yearly allocation policy review.

Each care leaver will have a plan which sets out how they will access a secure tenancy and the Council's Throughcare Team will work with them up until their 26th birthday.

The aim of this policy is that no young care leaver in West Dunbartonshire will need to approach statutory homeless services to find housing when leaving care.

Irrespective of whether a landlord gives priority to young care leavers under its main allocation policy, it should be working to a joint protocol on housing young people leaving care. This protocol should set out the joint working arrangements in each area. If landlords are not giving priority under their main allocation policy, the protocol should also set out the basis on which social landlords will make tenancies available for young people leaving care.

5.8 Kinship carers, foster carers and those adopting

Information Point

Kinship care is when a child is looked after by their extended family or close friends if they cannot remain with their birth parents.

Under the Looked After Children (Scotland) Regulations 2009, a kinship carer is defined as “a person who is related to the child (through blood, marriage or civil partnership) or a person with whom the child has a pre-existing relationship”.

Kinship care includes both:

- looked after children who have been placed with kinship carers by the local authority.
- non-looked after children who live in an informal kinship care arrangement (these children may be subject to an order under Section 11 of the Children (Scotland) Act 1995 or may be living in a completely private arrangement with extended family, with no local authority involvement).

Landlords should consider giving a level of priority to those who have been approved for adoption, are approved for fostering or for kinship carers who will be in housing need if a child or children came to live with them. They should work with their local Children’s and Young People’s Services to decide at what stage it is appropriate to decide whether additional bedrooms are required.

Housing need would be assessed based on their current home. So, for example, if someone has been approved to adopt but does not have sufficient bedrooms to accommodate their new family, a landlord could consider them to be overcrowded. Landlords should also give serious consideration to giving an additional priority based on adoption, fostering or being a kinship carer.

Even if a landlord decides not to give additional priority to kinship carers, foster carers and those adopting with a housing need, it should consider the size of home the household will need. For example, the landlord might assume that a fostered or adopted child is already part of the household when deciding on the number of bedrooms required.

5.9 People leaving the armed forces

Information Point

The Armed Forces Covenant, which all Scottish local authorities have pledged to uphold, states that *“Those who serve in the Armed Forces, whether regular or Reserve, those who have served in the past, and their families, should face no disadvantage compared to other citizens in the provision of public and commercial services.”* In practice this means that Service personnel or ex-Service personnel should not be disadvantaged in accessing social housing, because of their Service.

Former Service personnel and their families can face particular housing challenges as they leave the Armed Forces. Having lived in Ministry of Defence housing in a variety of locations during their career they may not have strong links with any particular area.

The Scottish Government is committed to good housing outcomes for ex-Service personnel, and their families, and encourages landlords to consider their needs and respond appropriately. **Further information is provided on the Scottish Government’s website at: <https://www.mygov.scot/veteran-housing/>**

The Housing (Scotland) Act 2010 removed the exemptions around local connection for homelessness so that employment and residence through the Armed Forces is equal to that of civilians for creating a local connection. Where landlords use local connection as part of an allocation policy, they should make sure it does not disadvantage ex-Service personnel. This is to ensure that ex-Service personnel are not at a disadvantage when applying for social housing due to Service time spent outwith an area.

Landlords should not refuse to consider an application simply because an applicant is living in suitable housing at the date of application. People in the Armed Forces should be encouraged to make a housing application well in advance of needing a new home.

In some cases, Service personnel may be leaving the Forces because of injury or disability and will require housing specifically adapted for their needs. Landlords should be ready to give special consideration to housing applications in these circumstances.

Landlords should also give special consideration to applications from those who leave the Armed Forces because of other exceptional circumstances. This could include applications from individuals whose spouse/civil partner is killed in action or dies before the date of discharge.

South Lanarkshire Council – People leaving the Armed Forces

In South Lanarkshire, to reflect the valuable contribution that armed forces personnel make to society, members of HM Forces who meet certain criteria are considered to have the highest priority for housing, along with homeless applicants and those with an urgent medical need. This has been the case since August 2010.

To receive this level of priority, HM Forces must have completed a minimum of three years' service or have been injured in action or have been discharged on medical grounds; and

- lived in South Lanarkshire immediately prior to commencing service; or
- whose partner is permanently resident in South Lanarkshire or previously lived in South Lanarkshire immediately prior to commencement of service marriage/relationship; or
- parents or kinship care are permanently resident within South Lanarkshire; or
- have an offer of full-time employment within South Lanarkshire.

The priority status is awarded up to six months prior to, and up to six weeks following, the date of discharge from the service (proof of discharge date/discharge certificate needs to be provided). The Council is currently consulting on a proposal to extend the period priority that status can be awarded after discharge from six weeks to six months.

To be awarded priority the applicant must make reasonable choices about where they wish to live and the type of property they wish to live in. They cannot be restrictive in their choices.

At the start of each financial year, letting targets are set against each of their four housing lists. The Urgent Housing Need list (where HM Forces are queued) currently received between 50-60% of all lets.

Key Points

Overcrowding and very poor property condition, as described by the tolerable standard, are longstanding elements of social allocation policies and are likely to remain so.

Given the clear national focus on tackling domestic abuse, landlords should consider including domestic abuse as a specific housing needs group. Domestic abuse is a pattern of controlling, coercive, threatening, degrading and/or violent behaviour, including sexual violence, by a partner or ex-partner.

There is also a range of harassment and abuse that landlords should take into account. For example, landlords may want to consider racial harassment, homophobic harassment, transphobic harassment and harassment of autistic people or people with learning disabilities.

There are groups of people who may have a particular housing need that could be recognised. These include young people leaving care, kinship carers, foster carers and those adopting and people leaving the Armed Forces.

Giving a level of priority to those with insecure housing circumstances could help prevent households needing to go down the homeless route. Equally, priority for giving or receiving support could help people to continue to live independently.

6 • Need for an Adapted or Accessible Property

This section looks at how social landlords can meet the needs of people looking for an adapted or accessible property through their allocation policy and associated practice.

By working through this section readers will:

- understand the case for giving priority to people who need an adapted or accessible property.
- know about how a landlord can assess and prioritise applicants' need for an adapted or accessible property.
- be aware of the advantages of taking a collaborative approach when allocating adapted or accessible properties.

6.1 The case for and nature of priority

An allocation policy should recognise that some people will need an adapted or accessible property and ensure that people requiring one of these properties are given priority.

At any age, being able to continue to live independently depends on the suitability of someone's home and may require a move to a home that better suits their needs. Where applicants need for an accessible or adapted property, they may also benefit from being nearer to family and support networks, health services, shopping facilities or transport links.

Information Point

People of any age can need an adapted or accessible property, but most of those applying for social housing are likely to be in the older age group.

Age, home and community: a strategy for housing for Scotland's older people 2012-2021 notes the Scottish Government's longstanding policy of 'shifting the balance of care', supporting people to remain at home independently for as long as possible.

The Scottish Government's Age, Home and Community: next phase, was published in August 2018. It sets out a vision for older people in Scotland to enjoy full and positive lives in homes that meet their needs. It sets out three principles: Right Advice, Right Home and Right Support and notes that it is important that older people's housing strategy connects with other policies that affect older people, with clear outcomes and measurable actions. **The strategy is available at:** <https://beta.gov.scot/publications/age-home-community-next-phase/>

The Equality and Human Rights Commission Scotland (EHRC Scotland) also highlighted the housing challenges disabled people face in its 2018 report, Housing and disabled people: Scotland's hidden crisis. **The report is available from the EHRC's website at:** <https://www.equalityhumanrights.com/en/publication-download/housing-and-disabled-people-scotlands-hidden-crisis>

Landlords play a key role in helping people find a home that meets their health and disability-related needs. The Integration of Health and Social Care has placed a greater emphasis on joining up services and focussing on anticipating people's needs. Housing has a key role to play in helping people find a new home before their current one becomes completely unsuitable.

It is important to remember that priority based on needing an adapted or accessible property is designed to address housing need and should only be given if a move would address that need. Where, for example, someone lives in a property with stairs which they cannot manage due to their health or disability, a landlord would not give them priority if they wished to move to a similar property. However, where suitable properties are in very short supply, the landlord could award priority for a move which would not entirely meet someone's housing needs, but which would improve their situation.

Where the health need or disability is expected to be short term, or where someone's current property can be adapted to make it suitable for them, landlords do not usually give priority for rehousing to an adapted or accessible property.

6.2 Assessing need for an adapted or accessible property

Landlords use a range of ways to assess and prioritise applicants' need for an adapted or accessible property. An effective assessment procedure should be person-centred and have the following features:

- good communication and close links between housing staff, social workers, occupational therapists and other relevant professionals. A protocol setting out roles and timescales may be useful.
- medical advice sought only when necessary.
- recommendations which are based on a comprehensive assessment of the applicant's needs.
- a fair and consistent process.
- clearly set out timescales for assessment and decision making.
- accountability for decision making.

Many landlords use housing management staff to make assessments and the information contained in the self-assessment form and a home visit, where necessary, should be enough for them to decide on whether priority should be awarded.

Some landlords use a Local Authority Occupational Health service or other professionals to assess applicants' needs for an adapted or accessible property. If taking this approach, it will be important that any time taken to carry out the assessment does not lead to delays in processing applications.



Practice example - Assessing health and housing needs, Wheatley Group

The Wheatley Group has recently reviewed how it collects information from its customers in relation to their medical conditions and their housing needs. The emphasis has shifted from looking solely at the applicant's medical condition to looking at their home and whether or not it can be made suitable for the customer's needs. The Wheatley Group has reviewed its method of assessing the more difficult medical conditions: where previously it would have used an external medical company, it is now trialling an in-house method utilising the knowledge of the occupational therapist seconded to the Wheatley Group.

The key principle is that the process of awarding priority on health or disability grounds is transparent and consistent and avoids the applicant having to go through repeated assessment processes wherever possible.



In assessing priority for an adapted or accessible home, landlords should consider two factors:

- the severity of the person's condition or the degree of incapacity; and
- the extent to which re-housing will benefit the person concerned.

Most landlords adopt a priority ranking system, usually high, medium, and low (often then associated with the award of points). Within the constraints of the properties available, the priority given should allow people whose current home is most unsuitable for their needs to be rehoused as quickly as possible.

It is also important that any property offered meets the applicant's particular requirements. As part of the assessment process, the property features an applicant needs will have been identified. For example, they might need a ground floor, accessible property or they may require an adapted bathroom or a bathroom which can be adapted to suit their needs.

Applicants may also have developing needs and, if possible, landlords should aim to offer them a property which will meet those future needs and reduce the likelihood of another move being required.

6.3 Collaborative approaches to meeting needs for an adapted or accessible property

The Integration of Health and Social Care has placed a greater emphasis on joining up services and focussing on anticipating future needs, with housing having a key role to play.

Information Point

The housing contribution to the Integration of Health and Social Care

The Scottish Government's Statutory Guidance to Integration Authorities, Health Boards and Local Authorities sets out their responsibilities to involve housing services in the Integration of Health and Social Care, to support the achievement of the National Health and Wellbeing Outcomes. **The Guidance can be found on the Scottish Government's website at: <https://beta.gov.scot/publications/housing-advice-note/>**

The Statutory Guidance provides examples of housing services which contribute to the achievement of the Health and Wellbeing outcomes. These include:

- providing and maintaining modern homes which meet the diverse needs of tenants, including those with needs.
- giving advice to those facing difficulties with their housing, including those facing increasing frailty and those at risk of homelessness; this can include advice on housing choices, welfare advice, advocacy support, befriending services, and assistance in finding alternative housing.
- for those who do become homeless, providing emergency accommodation, temporary accommodation and settled accommodation, in each case with the appropriate level of housing support.

Further information about the vital role housing needs to play can be found at the Place, Home and Housing section of the ihub website at: <https://ihub.scot/place-home-and-housing/>

There should be a clear focus on supporting people who want to continue to live independently in their current home where this is possible. This could be achieved by adapting their current home to meet their needs and providing support services such as assisted living technology and social care services.

There will, however, be occasions when a move of home is required to allow someone to carry on living independently with or without support. In the best circumstances moving to a new home will happen in a planned and managed way under the landlord's allocation policy. As with under-occupation driven moves, people may need help to make that move and landlords may wish to work with others, such as social services, to offer that support.

There will also be occasions when re-housing is required urgently, for example when following hospital admission someone is unable to return home because it no longer meets their needs. In these cases, landlords should award the very highest level of priority under their policy to ensure that a move can be made as quickly as possible. Managing these cases will require co-ordination of a range of services to ensure that appropriate support is in place to allow the person to live independently. This is likely to include housing, social care services and telecare services.

Practice example - Housing Options for Older People (HOOP) approach, Wheatley Group

The Housing Options for Older People (HOOP) approach builds on the wider housing options work carried out in the city. It is funded by Glasgow Health and Social Care Partnership (GHSCP) to help prevent delayed hospital discharge and facilitate move on from Intermediate Care. The aim is to help older people live independently at home or in a homely setting for as long as possible.

HOOP considers the individual circumstances of older people, their housing and personal needs and helps them make informed choices, in discussion with their families and carers, often at a time of very significant change in their lives.

For the first time in Glasgow, housing staff from HOOP are co-working alongside Health and Social Work colleagues in hospitals, Social Work offices and Intermediate Care Units to help them navigate housing pathways.

They deliver high quality advice and support to generate creative solutions to meet older people's changing health and social care needs enabling access to the widest range of housing options possible, irrespective of tenure type.

HOOP also works with more than half of the city's RSLs to maximise and target the usage of appropriate housing stock minimising void rents.

The Wheatley Group has reviewed and changed its allocation policy to prioritise its Wheatley customers delayed in hospital because of unsuitable housing. A number of the other RSLs partners are reviewing their allocation policies to similarly support customers delayed in hospital because of unsuitable housing.

By early 2018, HOOP had worked with Glasgow Health and Social Care Partnership (GHSCP) and RSL colleagues to help over 950 older people in Glasgow to return home or find a new home. They have also shared customer need and demand information with Regeneration colleagues to help inform the Wheatley Group's New Build programme.

Key Points

Any allocation policy is highly likely to recognise health and disability-related housing needs, with many applicants wanting to be re-housed because they have a health condition or a disability which makes their current home unsuitable.

It is important to remember that priority based on health or disability grounds is designed to address housing need and should only be given if a move would address that need. Priority on health or disability grounds is an area where it is extremely important that landlords manage applicants' expectations.

There will be many occasions when a move of home is required to allow someone to carry on living independently for the long term with or without support.

In the best circumstance, moving to a new home should happen in a planned and managed way with sufficient priority awarded under the landlord's allocation policy.

Landlords will want to work with others to ensure they make best use of any accessible or adapted stock. They will also want to work collaboratively with partners in the health and social care sectors to help those who need an urgent move, for example to be able to leave hospital.



7 • Other Requirements to be Considered in Allocations

This section covers the other rules and regulations that landlords should consider when reviewing or developing an allocation policy.

By working through this section readers will:

- be aware of the range of factors, including residency, outstanding debts, age and income, that cannot be taken into account when allocating.
- understand the role of Councillors and Management Committees in relation to allocations.

7.1 Factors which should not be taken into account

The factors which landlords must not take into account when allocating properties are set out in section 20(2) of the 1987 Act (as amended by section 10(3) of the 2001 Act).

Residency

The first provision under section 20(2) of the 1987 Act (as amended) states that a landlord cannot consider the length of time for which an applicant has lived in its area. This makes sure that the time an applicant has lived in the area does not influence decisions on priority for housing.

It prevents, for example, the award of points purely for the time lived in a landlord's area. For local authorities, "area" means their administrative area. For RSLs, "area" means the local authority area(s) or parts of such areas in which they have housing.

The law does not prevent landlords from giving points for the length of time an applicant has been on the housing list. However, time on the housing list must not dominate an allocation policy and where such points are given they should be given to anyone on the list irrespective of where they currently live.

The provisions at section 20(2)(aa) of the 1987 Act (as amended) prevents a landlord from taking into account whether an applicant lives in its area if the applicant:

- i) is employed, or has been offered employment, in the area; or
- ii) wishes to move into the area to seek employment and the landlord is satisfied that this is the applicant's intention; or
- iii) wishes to move into the area to be near a relative or carer; or
- iv) has special social or medical reasons for requiring to be housed within the area; or
- v) wishes to move into the area because of harassment; or
- vi) wishes to move into the area because he or she runs the risk of domestic abuse.

The law does not however prevent landlords from considering the fact that someone lives in their area and giving priority to local people. This is known as having a local connection to an area and landlords can take into account the fact that the applicant is resident in their area. This is usually best done through a Local Letting Initiative. They cannot take living in their area into account for applicants in the circumstances listed above under residency.

Local connection criteria could include giving priority to people in specific neighbourhoods or communities, in line with what is set above. Criteria cannot, however, include any of the factors landlords cannot take into account under section 20(2) of the 1987 Act (as amended).

Please note that local connection is also covered under homelessness legislation and is defined differently in relation to homelessness. Landlords should refer to the Scottish Government's Code of Guidance on Homelessness 2005. **The Code is available at: <https://beta.gov.scot/publications/code-guidance-homelessness/>**

Outstanding liabilities

Section 20(2)(a) of the 1987 Act (as amended) also does not allow landlords to take account of:

- (ii) any outstanding liability (such as rent arrears) attributable to the tenancy of a house of which the applicant was not the tenant;
- (iii) any rent or other liabilities accrued by the applicant on a previous tenancy which are no longer outstanding;
- (iv) any such liability which is outstanding but where:
 - (a) the amount outstanding is not more than 1/12th of the annual amount payable (or which was payable) by the applicant to the landlord in respect of the tenancy; or
 - (b) the applicant:
 - has agreed arrangements with the landlord for paying the outstanding liability;
 - has made payments in line with that arrangement for at least three months;
 - and is continuing to make such payments.
- (v) any outstanding liability (including council tax arrears) of the applicant or anyone who will live with the applicant which do not relate to the tenancy of a house. This means that any outstanding debts which do relate to the tenancy of a house, such as rent or service charges, can be taken into account if they do not fall within the exceptions already set out above.

The criteria at (ii) to (v) above are aimed at limiting the circumstances in which a landlord refuses to make an offer of housing to an applicant because of their previous debts.

It may be reasonable for landlords to not make offers of housing to applicants with significant unpaid rent arrears, service charges or cost of rechargeable repairs and these criteria do not prevent landlords from doing this.

However, landlords cannot withhold an offer of housing:

- because of non-housing debts; or
- if they have had arrears of rent or service charges which have since been paid; or
- where the rent or service charges arrears amount to no more than a month's charges, (to avoid penalising applicants for purely technical arrears); or
- where the applicant has come to an arrangement for paying arrears, has kept to the arrangement for at least three months and is continuing to make the payments. This helps applicants who are making a genuine effort to pay off arrears.

Age

Landlords cannot take into account:

(vi) the age of the applicant provided that the applicant is 16 years of age or over except in the allocation of:

(a) houses which have been designed or substantially adapted for occupation by persons of a particular age group;

(b) houses to persons who are, or are to be, in receipt of housing support services (within the meaning of section 91 of the 2001 Act) for persons of a particular age group.

“Housing support services” includes any service which provides support, help, advice or counselling to an individual with particular needs so that individuals occupy, or continue to occupy, a house as their home (see section 91 of the 2001 Act). The provisions relating to the disposal and management of premises in the Equality Act 2010 are excluded from the scope of the ban on age discrimination in that Act and therefore do not affect the provisions in the 1987 Act (as amended).

These exceptions reflect the fact that age should not be a barrier to being eligible for and receiving an offer of housing.

In some cases, certain types of housing will be particularly or only suitable for certain age groups. The law does not define these age groups, and this can include, but is not restricted to, sheltered housing for older people and supported housing, such as foyers, for young people.

The law doesn't define the term “substantially adapted” in subsection (a), but this is likely to involve major adaptations to houses. Substantial adaptations are generally determined as work that involves structural or other permanent changes to a house. **Further information on adaptations is available from the Scottish Government's website at: <https://beta.gov.scot/policies/housing-and-independent-living/housing-adaptations/>**

While it is important for landlords to match a property to an applicant and take into account the potential impact of a new tenant on existing tenants, this can be achieved by sensitive allocations, sometimes known as sensitive lettings, rather than by a blanket approach based on age.

Legislation does not prevent landlords from taking into account the composition of a household when allocating a specific property and landlords will need to determine their approach on this. For example, landlords may decide not to allocate a multi-storey flat to a family with young children because of the lack of play space.

Income

Landlords cannot take into account the income of the applicant or their family.

Income in this context refers to income of all sources including benefits. The law prevents landlords from taking the income of housing applicants into account when allocating homes. This restriction also applies to applicants for housing who are non-UK nationals, whether or not they can receive benefits, and who may as a result, have problems in paying their rent.

Other factors

The 2001 Act extends Section 20(2)(b) of the 1987 Act so that it now applies to allocations by both local authorities and RSLs. This prevents landlords from imposing certain requirements before they allocate housing to an applicant. Landlords cannot specify that:

- an application must have stayed in force for a minimum period. This means that landlords cannot require someone to have been on their housing list for a set period of time before they are eligible for an offer of housing;
- the applicant gets a divorce or judicial separation; or
- the applicant no longer lives with, or in the same house as, some other person.

7.2 Role of Councillors and RSL Management Committees



The role of Councillors and governing body members is to set and review the policy and monitor progress against policy aims. Councillors and RSL Management Committee members generally approve the allocation policy and have overall responsibility for ensuring the policy is delivered.

Section 20(3) of the 1987 Act (as inserted by section 154 of the Leasehold Reform, Housing and Urban Development Act 1993) excludes Councillors from decisions under certain circumstances.

It excludes local Councillors from being involved in a decision on allocating a council house (or a house where the local authority has nomination rights), where the house in question is situated, or the applicant for the house in question lives, in their electoral division or ward.

This does not prevent Councillors from making factual information known to the local authority or from making representations to the local authority on behalf of a constituent.

Management Committees must have no involvement in discussions or decisions about individual allocations, which must stay the responsibility of officers of the RSL.

7.3 Allocations to staff or family members

Care must be taken when members of staff or their families apply for housing. Any member of staff or a member of their family is entitled to join a landlord's housing list and be made an offer of housing under the same rules as any other applicant.



The application form should ask applicants if they are a member of staff or are related to a member of staff. Where this is the case, the member of staff concerned should play no role in assessing the level of priority to be awarded or in making any offers of housing.

There should be clear processes for awarding of priority or making an offer of housing to a member of staff or family members. This should be checked and approved by a senior member of staff who is not involved in the day-to-day allocations work. A full record of why the applicant was awarded any priority and why any specific offer of housing was made should be kept.

Key Points

A landlord cannot consider the length of time for which an applicant has lived in its area. However, the law does not prevent landlords from taking the fact that someone lives in their area into account except under certain circumstances.

Landlords are not allowed to take a range of financial liabilities into account.

Landlords cannot take age into account except in the allocation of houses which have been designed or substantially adapted or where people will be in receipt of housing support services for people of a particular age.

Landlords cannot take into account the income of the applicant and his or her family.

Councillors and RSL Management Committees should not be involved in individual allocations decisions. Only staff should run the day-to-day operation of the allocation process.

8 . Heritable Property

Section 5 of the 2014 Act removes the previous prohibition on taking ownership of property into account in allocating social housing. This section covers what landlords can and cannot take into account.

By working through this section readers will:

- understand the changes around heritable property brought in by the 2014 Act.
- be aware of issues to consider when deciding whether to include the heritable property provisions in an allocation policy.

8.1 Legislation relating to heritable property

Section 5 of the 2014 Act removes the previous prohibition on taking ownership of property into account in allocating social housing. Social landlords can now consider property ownership as part of assessing an applicant's housing needs and their circumstances. This applies to the ownership of, or value of, heritable property owned by the applicant, a person who normally resides with the applicant, or a person who it is proposed will reside with the applicant. Landlords can decide to take property ownership into account, but they do not have to do so.



Heritable property includes land, as well as anything built on land, and can be property currently owned in Scotland, the rest of the UK or abroad. This means that if the applicant, or a current or future member of the household, currently owns land or property or previously owned land or property, this can be considered when deciding on an applicant's priority for the allocation of social housing. This applies to existing tenants looking for a transfer as well as new applicants.

There are circumstances under which heritable property cannot be taken into account. These are:

- in cases where the property has not been let, but 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.

This would mean, for example, that a landlord could not take into account someone owning a home with an abusive partner if that partner continues to live in the property. It would also mean that if someone owned a property that was in very poor repair and dangerous to occupy, a landlord could not take that ownership into account if the applicant does not have the resources to rectify the problems.

However, if an owner occupier does have the resources to rectify the problems, or in time will be able to retake possession of their home, Section 8 of the 2014 Act gives landlords the ability to grant a short Scottish secure tenancy (short SST) to homeowners, to allow their housing needs to be met by a temporary let. Further information on the circumstances in which landlords can grant short SSTs to homeowners, and the processes for doing so, is available in the guidance on The Short Scottish Secure Tenancy for Homeowners. **The Guidance on the Scottish secure and short Scottish secure tenancy provisions of the Housing (Scotland) Act 2001 is available from the Scottish Government's website at: <https://www2.gov.scot/Publications/2002/08/sst/0>**

8.2 Deciding to take heritable property into account

Deciding to take heritable property into account may be relatively resource intensive and each landlord will want to think carefully about whether it will bring sufficient benefits to justify that potential use of resources.

If considering using the heritable property provision, a landlord will want to consider:

- whether they know or think there could be a problem?
- what, if anything, do they know about those owning heritable property applying for and/or being offered tenancies?

If a landlord is not aware of there being any issues, or it thinks there may be an issue, but are not clear about the nature of the problem and/or any impact it is having, it may decide not to take property ownership into account.

Where a landlord thinks there might be an issue, it might decide to start gathering information about property ownership from applicants and those being offered a tenancy to inform a future review of whether it will take property ownership into account in its allocation policy.

If a landlord knows or thinks that it has a problem with those owning heritable property applying for and/or being offered tenancies, it may wish to consider:

- which type(s) of applicants are affected?
- what type of heritable property do they own/have they owned? Where is/was that property?
- what types of housing need do they have? Do they tend to receive a level of priority under the current allocation policy? If so, why?
- are they receiving offers of housing and if so under what types of circumstances? Are they only receiving offers where demand is relatively low?

At this stage a landlord may consider whether the problem is sufficient to introduce a heritable property provision into its allocation policy. If it decides to do so, it will be important to be clear about the issues the provision is seeking to address. For example:

- is the landlord interested in any type of heritable property, past or present, in any location?
- is it interested in the heritable property of any member of the household or only the applicant(s)?

A landlord might, for example, decide that it is only interested if the applicant(s) currently own a residential property or currently owns a residential property that meets their needs. The landlord might also decide that the location of that property will be considered. For example, if an applicant owns a property in a remote rural location or outwith the UK but has applied for housing in the landlord's city, it might or might not take that property into account.

Equally, there may be circumstances under which letting properties to those who own/owned a property may still be in the best interests of a landlord. For example, if people who own a property elsewhere are willing to take a property that is otherwise hard to let, would a landlord want to prevent them from doing so?

Once a landlord has defined the problem they are seeking to address, they will need to decide what their policy will be. For example:

- will the landlord have a blanket policy, or will it take the circumstances of each case into account? If it is going to take each set of circumstances into account, who will decide when to take property ownership into account and how will the landlord ensure its decision-making is transparent?
- will the policy be based on reduced priority but still allow for a possible offer of housing? An example of this could be giving a lower level of priority to applicants who own their own home. This might take the form of lower points levels or a reduced priority under a CBL system.
- will conditions be placed on property owners, such as requiring them to sell or to try to sell? What will the landlord do if the applicant cannot or will not sell?

Whichever approach a landlord chooses, it must ensure that its policy and processes ensure that property ownership is not taken into account under the circumstances set out in Section 7.

Landlords will also need to decide when they will ask applicants for information on ownership of heritable property and whether and to what extent they will carry out any checks to verify the information provided.

Landlords will need to consider the staff time required to undertake checks. Being clear about the type of property that will be taken into account should help minimise administrative time spent.

Key Points

Section 5 of the 2014 Act removes the previous prohibition on taking ownership of property into account in allocating social housing. Social landlords can consider property ownership as part of assessing an applicant's housing needs and their circumstances, but they do not have to do so.

There are a series of circumstances under which property ownership cannot be taken into account. These include where the owner cannot secure entry to the property or where it is probable that occupying the property will lead to abuse from someone currently living in the property.

Deciding to take heritable property into account will require resources to verify ownership, and landlords will want to think carefully about whether it will bring sufficient benefits appropriate to the resources required.

9. Access and Eligibility

This section looks at who is eligible to join a housing list and who is eligible for a social rented sector tenancy in Scotland.

By working through this section readers will:

- understand the rules governing housing lists.
- know who is eligible for social housing.

9.1 Housing lists



A housing list is defined as a list of applicants for housing which is either kept by social landlords individually, jointly, or by a third party so that they can allocate their housing (Section 19(2) of the 1987 Act, (as amended)).

The law does not require landlords to manage or maintain their own housing list, although most social landlords in Scotland do so either themselves or in partnership with others. A partnership approach might take the form of a Common Housing Register (CHR) or a shared list.

If a landlord or landlords don't wish to manage a list themselves, alternatives could include an RSL giving 100% nomination rights to local authorities.

Right to join the list

Anyone aged 16 or over has a right to be admitted to a housing list. Section 19(1) of the 1987 Act (as substituted by section 9 of the 2001 Act) sets out this right.

Anyone aged 16 or over should have fair and open access to a landlord's housing list. Landlords should never discourage applicants from applying for housing and having their housing needs assessed.

There may be certain circumstances where it would be helpful to accept an application from someone before their 16th birthday, for example to help the transition of a young person from care to independent living.

Landlords must admit applicants irrespective of their level of housing need according to their allocation policy. They cannot run any form of points or need thresholds (sometimes referred to as 'cut-off points') for gaining access to their list.

This means that landlords can make allocations from a fully inclusive list that includes both housing needs and aspirations. Equally important, a fully inclusive list means that landlords will have accurate information about housing demand in their area.

9.2 Eligibility for housing

Anyone aged 16 and over and from the UK is eligible for housing. The position becomes more complex for those from outwith the UK, with legislation setting out who is and is not eligible. Eligibility depends on many factors including:

- nationality (including that of family members).
- economic activity of the applicant and that of their family members.
- compliance with the workers registration scheme for A8 nationals and the workers authorisation scheme for A2 nationals;
- immigration status and rules around asylum and immigration; and
- entitlement to public funds.

For example, European Economic Area (EEA) nationals who have a right to reside are eligible for housing and homelessness assistance from the local authority. However, some people may also need to be habitually resident to qualify for housing benefit.

As RSLs are not subject to the exclusion on granting tenancies to persons subject to immigration control (see section 118 of the Immigration and Asylum Act 1999, which applies in Scotland only to local authorities) they do not need to consider nationality or immigration status and can allocate homes to any person.

Asylum seekers are entitled to be admitted to a social landlord's housing list, but they have no right to be given a full or short Scottish secure tenancy.

Given this complexity, it may be helpful to access further information or specific legal advice in some cases. Sources of further information include:

- The Housing Rights Information for Housing Advisors webpages from the Chartered Institute of Housing Scotland (CIH Scotland). **Available at:** <http://www.housing-rights.info/scotland-housing-advisers.php>
- A Housing Practitioners' Guide to Integrating Asylum Seekers & Refugees. Scottish Refugee Council 2014. **The Guide can be found at:** http://www.scottishrefugeecouncil.org.uk/assets/0001/1240/Housing_Practitioners__Guide_to_Integrating_Asylum_Seekers___Refugees.pdf

Key Points

Anyone aged 16 or over has the right to be admitted to a housing list.

Being admitted to the list does not equate to being eligible to be housed.

Anyone aged 16 and over and from the UK is eligible for housing. Otherwise, this is a complex area, with legislation setting out who is and is not eligible. These rules are different for local authorities and RSLs.

10 . Approaches to Allocating Properties

This section looks at the routes into housing and the approaches landlords use when allocating.

By working through this section readers will:

- be aware of the various routes through which people can access social housing.
- have an overview of the two allocations approaches, needs-based and Choice-Based Letting.
- know about Common Housing Registers.
- know about giving reasonable preference to statutorily homeless applicants, quotas and targets and the use of housing protocols.
- understand how to make best use of stock and when to exercise discretion.
- understand how and when local connection can be taken into account, including through the use of Local Lettings Initiatives.
- have ideas about how to tackle low demand.

10.1 Routes into housing

There are many ways in which people can access social housing or make a move to a different social tenancy. These may include any or all of the routes listed below.

Direct applicants: direct applicants are those who are on the housing list of a landlord and not already a tenant of that landlord. Landlords will often refer to this group of applicants as being waiting list applicants.

Transfer: a transfer occurs when a landlord makes another of its properties available to one of their own tenants who wishes to move and has joined the housing list.

Nominations: a nomination takes place when one landlord (usually a local authority) nominates an applicant for housing to another (usually an RSL) under formal agreements. This can include, but is not restricted to, homeless households. It may also happen, for example, with a proportion of RSL new build vacancies or where an RSL has given a local authority nomination rights for a percentage of any of its vacancies.

Section 5 referrals: a Section 5 referral occurs when the local authority refers a statutorily homeless household to an RSL for housing. Section 5 of the 2001 Act sets out the rules on Section 5 referrals.

Mutual exchange: this is where two social housing tenants, whether or not from the same landlord, exchange homes and tenancies. There are a number of privately-run national mobility scheme providers who offer a mutual exchange service to tenants looking to exchange their property with another tenant. **These include House Exchange <https://www.houseexchange.org.uk/> HomeSwapper <https://www.homeswapper.co.uk> and Ukhomeswap <http://www.ukhomeswap.co.uk/>.** Some landlords or groups of landlords also run their own home swap schemes.

Referral schemes: schemes where voluntary organisations or other agencies refer applicants for housing so that the agency can give support.

Exceptional circumstances: many landlords also provide housing in exceptional cases when the standard approach set out within their allocation policy will not result in a critical housing need being met.

Management transfer: There may be occasions when a landlord needs to move one or some of its current tenants. This might, for example, be if a property or properties are being demolished or where repairs will take a long time to complete. Where landlords need to move a tenant because of a serious housing management problem, this might also be done as a management transfer.

10.2 Allocations approaches

There are two primary approaches landlords use to allocate their properties, needs-based or Choice-Based Lettings (CBL). There are many variations on both and landlords will always want to consider what will suit their local context and work best for applicants.

Whatever approach is used, it is important that a landlord considers the reasonable preference groups set out in law when awarding priority and decides what provision to make for different types and levels of need within each category. It should also ensure that it considers how they will meet their legal duties on homelessness.

Needs-based approach

The needs-based approach remains the most frequently used in Scotland, with applicants for housing having their housing needs assessed based on the priority given under the allocation policy.

Priority is usually based on varying numbers of points being awarded for each housing need. The level of points will also depend on the severity of the housing need. So, for example, a landlord might award five points for being overcrowded by one bedroom but 10 points for being overcrowded by two bedrooms.

The overall number of points an applicant will receive will be the total of all their housing needs points added together. For example, an applicant might receive both overcrowding and medical priority. The points awarded would be added together to produce a total level of priority under the policy.

Banding is less frequently used but when it is, a landlord will have a number of bands of priority. Applicants will be placed into a band based on the most serious housing need they have. For example, a landlord operates bands A to D, with band A representing the most serious housing needs. If an applicant has Band B medical award and Band C overcrowding award, they would be placed into Band B.

When a property becomes available, each landlord will have a system in place for deciding whether the allocation is made to the general housing list (sometimes called the waiting list), the transfer list or to statutorily homeless applicants. This will usually be based on lettings targets or quotas the landlord has set out. Further information on targets and quotas, along with making lets to homeless households, is set out below.

If a landlord has decided to offer the property to a general list or transfer list applicant, it will generally offer the property to the applicant on that list who has the highest number of points, or the highest banding, and who needs a property of that size or type.

If there is more than one applicant with equivalent priority, landlords will usually take waiting time into account. This means that waiting time is not being used as a primary factor to decide who is to be made an offer but is being used to distinguish between applicants with an equivalent level of priority under the allocation policy.

In a needs-based system the landlord will contact the applicant and offer them the property. Landlords will generally only make an offer of housing of the type and in the areas the applicant has said they are interested in.

Once the offer has been made, the applicant will decide whether to accept the offer or not. Some landlords limit the number of offers that are given and refusing a number of reasonable offers could result in suspension from the housing list.

Choice-Based Letting

Landlords who use a Choice-Based Letting (CBL) approach tend to do so because they believe it offers greater choice for applicants and can help support tenancy sustainability.

Meeting housing need and allocating properties in a fair and equal way should remain the underpinning principles of a CBL system just as for a needs-based approach.

The fundamental premise behind CBLs is that it is the applicant themselves who takes the initiative in securing a property. No CBL system is exactly alike but key features of those operating in Scotland are:

- applicants fill in a registration form to join the housing list or register;
- the landlord will assess the applicant's housing need. If the applicant has a housing need according to the landlord's allocation policy, they will be given a priority pass to use when bidding for a property. Priority awards or passes are often gold, silver or bronze, with a gold pass being given to those in the most serious housing need;
- landlords advertise vacant properties and applicants make a bid for those that they consider meet their preferences and needs;
- a list of all bids received for each advertised property is drawn up;
- an offer is made to the applicant with the highest level of priority pass. If more than one applicant has the same priority, the applicant with the earliest date of registration on the housing list would be offered the property; and
- landlords give feedback on the outcome of allocations to help unsuccessful applicants understand their likelihood of success when bidding for other properties.

Support for applicants

CBL schemes require applicants to be proactive and place bids for housing themselves. Some applicants will find this difficult and landlords will need to have arrangements in place to ensure that no-one is disadvantaged because they find it difficult to place bids.

This will include providing support to applicants to make bids. This might include supporting people with learning difficulties, people with mental health problems, older people, people with chaotic lifestyles and those with no access to the internet.

Landlords could provide direct help to applicants by providing specialised customer support staff to guide them through the process. They may also need a system for bidding on behalf of some applicants.

Practice example - Supporting vulnerable applicants, Wheatley Group

The Wheatley Group has introduced an 'Assisted Bidding Service' for all homeless applicants that are not actively bidding within the first 12 weeks of receiving priority to support homeless households secure a positive housing outcome.

For all vulnerable applicants who have asked for the service, staff check available properties on a weekly basis to identify any that match to the customer and then place a note of interest for them.

If the property is not exactly in the applicant's area of choice but is close by, staff try to contact the applicant to see if they would be interested in the property.

If they can't contact the applicant, they still place the note of interest to ensure that they do not miss out on a potential offer.

Applicants still have the option to refuse any offer that is made to them.

When Wheatley customers are due to be re-registered on the housing list, staff are notified of all customers who have requested support to apply for housing.

Staff then contact them directly to find out the details of where they would like to live, including which streets, type of property, size, and maximum floor level.

The University of Stirling has produced a Policy Briefing on CBL which landlords may find useful. **The Briefing is available from the University of Stirling's website at: <https://dspace.stir.ac.uk/bitstream/1893/25970/1/Choice%20Based%20Letting%20%28CBL%29.pdf>**

Waiting time and time limits

In many CBL systems, 'date of registration' (how long applicants have been on the list) is a key factor in determining which applicant is successful when bidding for a property.

As with a needs-based system, landlords can take waiting time into account when allocating but it must not be at the expense of giving reasonable preference to applicants within the priority groups.

Many landlords impose time limits on priority awards which mean that applicants only have priority over other applicants on the housing list for a restricted time.

Where these are applied, they should be reasonable and appropriate. Time limits are generally most appropriate for applicants with an urgent need to move. They are less appropriate for applicants who have specific, long term housing needs and who may have to wait a long time before housing to meet their needs becomes available, for example applicants who need specially adapted housing.

If time limits are used, care must be taken not to put applicants in a position where they have no choice. For example, trying to minimise the time people spend in temporary accommodation should not put homeless applicants in a position where they have no real choice but to bid for properties that are in low demand that may be unsuitable for their needs.

Time limits should reflect the time that it is likely to take for housing to become available that actually meets the applicant's needs. Landlords should not use time-limited priority as a means of pressuring applicants into moving to properties which do not meet their needs.

Where an applicant with a priority award does not make a bid within the set timescale, this should not result in an automatic withdrawal of priority. Rather, a landlord should use it as a trigger for a housing options discussion with the applicant, followed by extending the time limit where necessary.

Categories of applicant

When advertising properties, landlords often suggest what type of applicant can bid or who will be given preference for a property. This is done to match applicants most appropriately to the properties that are available, for example to match applicants with mobility issues to accessible housing.

Some landlords specify in the advert that only certain categories of applicant can bid for that property. For example, it might be that only statutory homeless applicants can place a bid. Landlords who choose to do this need to have clear rationale about why they have made the decision to impose any restrictions and make sure that such properties are a cross section of those available to let.



Practice example - Helping to give choice to nominated applicants, Orkney Housing Association

When Orkney Housing Association moved to a CBL system, Orkney Islands Council wanted to retain control of Section 5 referrals and nominations.

Previously, when the Association had a vacancy that was to be made available to the Council, the Council would make either a nomination or a Section 5 referral. The Association felt applicants who were being nominated did not have the same choice as those placing bids.

Under their new approach, the Association asks the Council if it has any suitable homeless applicants and if it does that applicant receives an offer.

If there is no suitable homeless applicant, the property is advertised. The list of people who have expressed an interest is forwarded to Orkney Islands Council which then nominates the person with the highest priority according to its allocation policy.

This has allowed Orkney Islands Council nominees the same type of choice as afforded to the Association's own applicants. It has also reduced the number of refusals on properties.



Feedback for applicants on allocations made

One of the key features of CBL schemes is that landlords publish the outcomes of the bidding process. This helps applicants to understand how likely they are to be successful when they bid in future. The type of information landlords provide includes:

- the number of bids made for individual properties;
- which groups were successful; and
- the frequency of properties becoming available by area and type.

When publishing information on successful bids, landlords need to make sure that they do not reveal any personal details about the successful applicant. This information will also be useful for staff providing housing options information and advice.

Monitoring Choice Based Lettings

Landlords will need to monitor how their CBL system is working and ensure that they are giving priority to applicants in the reasonable preference categories. Landlords should consider monitoring patterns of bidding including:

- the proportion of applicants bidding at any one time compared with the whole list.
- the proportion of applicants in various categories (for example homeless, other needs groups, 'assisted' applicants and applicants in the diversity groups) who are not bidding and reasons for not bidding.

They should also monitor:

- equality - whether those with protected characteristics are joining the list, are placing bids, and are having success in finding a home;
- support - the effectiveness of the support that is available for those who need it;
- overall outcomes - the proportion of properties going to applicants who are homeless and in the other reasonable legal preference;
- tenancy sustainment - whether tenancies are lasting longer through CBL than they did under a previous system; and
- applicant satisfaction - satisfaction levels of those who are successful through a CBL system and those who have been unsuccessful so far.

10.3 Common Housing Registers

The 2001 Act enabled landlords to consider the options for setting up a Common Housing Register (CHR) in their area and there are now many CHRs operating in Scotland.

CHR makes it easier for people to apply for social housing as they only need to fill in one application form and join one common housing list that a number of social landlords use to allocate their housing.

The size and scope of CHR varies throughout Scotland but typically they share three main components:

- a single application form for all applicants;
- a single database for all applicants seeking housing; and
- a joined-up approach to providing housing information and advice.

Some social landlords also have a single shared allocation policy while in some areas, landlords have a single allocation policy but do not operate a CHR.

A CHR Guide: Building a Common Housing Register: **A Practitioner's Guide is available from the Scottish Government's website at: <https://beta.gov.scot/publications/chr-guide-building-common-housing-register-practitioners-guide/>**. The Guide contains information on the benefits of CHRs for both landlords and applicants and provides a toolkit for developing CHRs.

10.4 Approach to giving reasonable preference to statutorily homeless applicants

Irrespective of whether a needs-based or CBL approach is being used, a landlord's allocation policy should be structured around giving reasonable preference to those considered to be in greatest housing need.

Local authorities

Councils should secure settled accommodation for statutorily homeless applicants as soon as possible and should minimise any unavoidable period in temporary accommodation. Local authorities should make sure that:

- homeless applicants are given enough priority to make sure that they secure settled housing quickly;
- they do not apply suspensions of offers of housing to homeless applicants; and
- they publish their policy on allocating to homeless people.

Local authority landlords should make sure that they are making an appropriate level of allocations to homeless people. All local authorities can increase the supply of settled housing through nomination and/or section 5 arrangements with RSLs.

Local authorities must always consider people's personal circumstances and wishes. In considering what is a reasonable offer, they should take into account the particular circumstances of the applicant. This may include, for example, the need to consider:

- any physical/learning disabilities or mental health problems;
- the family, making sure that they are not split up;
- the need to be near friends or relatives and other formal or informal support networks; and
- the location of applicants' employment, education or training establishments, or health services.

Scottish Government Guidance on Meeting the Best Interests of Children Facing Homelessness covers co-ordinating and carry out their duties under Part II of the 1987 Act in relation to children facing homelessness or threatened with homeless. The aim is to make sure that landlords meet the best interests of such children fully and equitably across the country. **The Guidance is available from the Scottish Government's website at: <https://beta.gov.scot/publications/best-interests-of-children-facing-homelessness/>**



Landlords should not concentrate offers to homeless people in particular areas or types of properties. In general, the profile of offers/allocations to homeless people should mirror those of offers/allocations to other types of applicants. The Code of Guidance identifies the placement of homeless people in low demand housing as poor practice.

Local authorities who are considering not making an offer of housing to an applicant because of significant unpaid rent arrears or service charges should consider their responsibilities to statutory homeless households. The Code of Guidance on Homelessness includes approaches to households who have become homeless due to financial problems.

Registered Social Landlords

When a person who appears to be homeless or threatened with homelessness applies directly to an RSL, staff should, as part of discussions on their housing options, advise them to contact their local authority to apply for homeless assistance.

RSLs should also get the person to make a direct housing application to them. In some cases, the RSL may be able to house the applicant directly from its housing list in time to prevent a worsening of their housing situation. For example, an applicant who also has a statutory homeless decision from the local authority because of domestic abuse may also receive a very high level of priority through the unsatisfactory housing conditions reason preference group in the allocation policy.

Under section 5 of the 2001 Act RSLs have a duty to house statutory homeless people. As set out in Section 4, RSLs have to meet section 5 requests from local authorities unless there are good reasons not to. However, if after contacting the applicant an RSL discovers changes of circumstances which could affect the statutory homeless decision, it should inform the local authority.

RSLs and local authorities should work in partnership to make sure there is a common understanding of each party's duties and responsibilities. They should also put in place effective agreements/protocols for their operation.

10.5 Quotas and targets



Many social landlords set quotas or targets to achieve a spread of allocations over the various needs factors. These tend to be structured around the proportion of lets being made to homeless households, those on the general needs list or waiting list and those on the transfer list.

As noted above, in setting any quotas or targets landlords must ensure that they do not give homeless people lesser preference than other groups of applicants. This means that any weighting landlords give to different types of housing need, must reflect their obligations to make a reasonable proportion of their lets available to homeless households.

Landlords may also set other targets based on housing needs. For example, a landlord could set a target for the under-occupation reasonable preference group. However, as some types of housing need will be very demand driven, and if there are not applicants with that type of housing need, it may not always be possible to meet any target that has been set.

Landlords should base any targets or quotas on the information they have gathered on housing need and demand in their area based on the profile of applicants on the housing list. They will need to consider:

- the size and composition of their housing list, including the housing needs applicants have; and
- the profile of their stock and the vacancies which are likely to become available.

Landlords should avoid setting rigid quotas which cannot be amended quickly to reflect changing circumstances and they should ensure they have flexibility to continue meeting significant housing need when a quota or target has been reached.

Landlords should monitor who is being allocated properties and publish information on performance against the targets they have set. Given the potential need for change, targets may be better set out in a published annual letting plan rather than within the allocation policy itself. An annual letting plan sets out the profile of properties which a landlord might expect to become available over the following year and how the landlord intends to distribute those properties between different groups of applicants. This is usually expressed as a 'percentage of all allocations' target.

10.6 Nomination agreements

Historically local authorities and RSLs have a nomination agreement in place where local authorities nominate applicants from their own lists for an agreed percentage of an RSL's annual vacancies. Nomination agreements acknowledge that more people are likely to join the local authority's housing list than that of an RSL.

Nomination agreements should have clear aims and be based on a robust analysis of need and demand. There should also be clear guidelines for accepting or rejecting nominees and for resolving disputes.

RSLs should make sure that their allocation policy reflects arrangements for section 5 referrals. Councils and RSLs can agree to offset section 5 referrals against nomination quotas, but they do not have to. The achievement of a quota is not a 'good reason' for refusing a section 5 referral.

Nomination agreements should be regularly reviewed to ensure they reflect changing needs and demand.

10.7 Protocols

Many landlords have protocols or formal working arrangements with partners, such as Social Work services or Women's Aid, setting out how they will work together in a co-ordinated way to make sure that groups of applicants with particular needs or vulnerabilities have their needs assessed and addressed.



Groups for which landlords may want to consider having protocols with partners include:

- young people leaving care;
- people leaving long term hospital care;
- people leaving the Armed Forces;
- people leaving prison;
- people who have experienced domestic abuse;
- people with disabilities; and
- refugees.

Information Point – Sustainable Housing on Release for Everyone (SHORE)

The Scottish Quality Standards – Housing advice, information and support for people in and leaving prison (SHORE) covers practice on imprisonment, during sentence and prior to release.

The standards are aimed at ensuring the housing needs of individuals in prison are addressed at an early stage and in a consistent way across Scotland. This should be regardless of where a prisoner lives, their housing status and how long they have been in prison or young offenders' institution.

They are designed to ensure that people leaving prison can access services and accommodation in the same way as people living in the community. They are aimed at maximising opportunities to provide stable settled housing from the start (tenure neutral) – specifically aiming to avoid emergency accommodation on the day of liberation.

They recommend that housing, community justice partners and the third sector should develop multi-agency protocols with local housing providers and third sector organisations. These protocols will describe the local processes between community justice partners and prisons and will complement the national standards.

The SHORE Standards can be found on the Scottish Prison Service website at: <http://www.sps.gov.uk/Corporate/Publications/Publication-5363.aspx>



The focus of protocols should be on planning ahead and preventing a housing crisis. Key elements should include:

- developing a shared understanding of the needs of the particular group;
- developing good information and support for applicants;
- ensuring that staff have a good understanding of the particular needs of these applicants; and
- planning ahead to obtain a housing solution and prevent a housing crisis occurring. As with any other housing allocation, if a landlord makes an allocation based on anything other than the rules set out within its allocation policy it should keep a record of the reasons behind that allocation.

Practice example – Glasgow’s Leaving Care Services Protocol

Glasgow’s Leaving Care Services Protocol was developed in 2007. Since then, 257 care leavers have moved into their own tenancies.

For the vast majority of the young people involved, this has been life changing and instrumental in securing permanency and stability in adult life.

The Protocol is managed by Continuing Care Services (Social Work) who look to ensure that the Protocol is only used when young care leavers are tenancy ready. The Protocol is now established fully as the agreed and successful route of obtaining tenancies for care leavers who are ready for their own tenancy.

Twenty-two Glasgow RSLs are now working to the Protocol and the signs are positive that young people are getting social rented homes which meet their needs and are receiving greater support in their transition to permanent accommodation in Glasgow than ever before.

Further information on working together and protocols within an early intervention approach to preventing homelessness are included in the Code of Guidance on Homelessness. **The Guidance is available from the Scottish Government’s website at: <https://beta.gov.scot/publications/prevention-homelessness-guidance/>**

Multi-Agency Public Protection Arrangements

The National Accommodation Strategy for Sex Offenders (NASSO), forms part of the Multi Agency Public Protection Arrangements (MAPPA) and explains how housing contributes to those arrangements. The Strategy sets out the arrangements for housing offenders subject to the sex offender notification requirements, also known as registered sex offenders. The Strategy focuses on assessing and managing the risks that sex offenders under MAPPA may pose by living in a particular community, location and property.

MAPPA minimises the potential risk each sex offender may pose by requiring the police, the Scottish Prison Service and local authorities to work together to assess and manage such risks. Social housing providers have a duty to co-operate with them. MAPPA arrangements in each local authority will cover the arrangements for accessing housing.

MAPPA guidance is available on the Scottish Government’s website: <https://beta.gov.scot/publications/multi-agency-public-protection-arrangements-mappa-national-guidance-2016/>

The NASSO is available on the Scottish Government’s website: <https://www.gov.scot/publications/national-accommodation-strategy-sex-offenders-scotland/>

10.8 Making the best use of housing stock



Scotland's social housing stock is a vital public resource and landlords will want to make sure they make best use of their stock when allocating properties.

When making allocation decisions landlords need to consider the match between the needs of the applicant and the features of the property. This should include considering whether the potential tenant would make best use of the property available.

Which applicant will be offered an available property will depend on:

- the reasonable preference groups and the priority categories set out in the allocation policy;
- any quotas or letting targets in place;
- the applicant's individual circumstances requirements and preferences; and
- the property, its size and location and suitability.

Most landlords using a needs-based approach will have a housing management ICT system which generates a general or transfer list for any allocation based on property size, the choices of area an applicant has made, and priority under the policy.

The list will include anyone needing a property of that size and will then show applicants in descending order of priority.

There will sometimes be good reasons why the applicant at the top of the list is not offered the property and is by-passed on that occasion. Common reasons for this include:

- the property is ground floor and accessible and the applicant does not need those features and there is another applicant who does.
- the applicant has already refused a very similar property and has said they are not interested in receiving a similar offer.

Where an applicant is by-passed to make best use of available housing stock, landlords should keep a record of the reasons behind their decision. This information will help in monitoring the operation of the allocation policy and ensuring that there is no systematically disadvantaging of particular individuals or groups.

Best use of properties which have been designed or adapted for people with particular needs should be made by allocating them to someone who needs a property of that type.

Practice example - Making best use of stock, Horizon Housing Association

Horizon Housing Association has a new development of 12 cottage flats in a small West Lothian village. It was built in response to a strong need, and desire, from older people in the village to remain in their home community and not to have to move elsewhere to find suitable housing for their older age.

Horizon wanted to make sure that allocations reflected this local need but as there had previously been no suitable properties available for older people in the village, there was no existing housing list. It undertook an awareness raising campaign with posters in local shops, community centre, and the health centre.

The Housing Officer visited the lunch club and dementia cafe and worked with the local community council to raise awareness that the new homes would be coming available. Horizon then developed a local lettings plan in conjunction with the Council and the community council, to prioritise allocation to older people from the area who needed to move to a more suitable home as a result of a long-term health condition, including dementia, or who wanted to downsize in order to maintain their independence and remain in and continue contributing to their village community.

All properties were pre-allocated six months prior to the completion date to allow tenants to have input on design features and to ensure that the properties met individuals' needs.

Before moving in, all new tenants were given opportunities to meet Horizon staff and their new neighbours. A good sense of community has developed, and the new homes have also strengthened links with young people in the village. There are plans for tenants and pupils of the adjacent primary school to work together in developing plans to enhance the surrounding landscaping.

10.9 Limiting the number of offers made



Landlords want to relet properties as quickly as possible to minimise void rent loss and ensure that empty properties become a new home for someone in housing need as soon as possible.

One approach used by landlords is to limit the number of reasonable offers they make to any applicant. This approach is designed to minimise the time lost in making offers that are not accepted.

If landlords are going to limit the number of offers made, their approach must be set out clearly in their allocation policy and should be covered as part of any housing options interview. Applicants should also be reminded of the policy when an offer of housing is made to them.

Practice varies in terms of number of reasonable offers made but generally tends to be in the range of one to three offers. The Code of Guidance on Homelessness contains more detail on offers to homeless applicants. It recommends that homeless people should be treated in the same way as other housing applicants in terms of number of offers received.

Landlords should make sure that they have detailed, accurate and up-to-date information about applicants' needs and preferences so that, as far as possible, any offers made match their needs and preferences. Where an applicant refuses one or more reasonable offers of housing, a first step would be to encourage the applicant to review and discuss the choices they have made in terms of area and type of property. Where they decline to do this or does so but then continues to turn down offers, suspension may be a reasonable response.

Landlords may choose to make initial contact with an applicant to see if they are interested in a particular property. If they are not, for example because they are currently unwell, or the property is too far from their children's school, a landlord might choose to bypass that applicant. This approach will not only help avoid suspending applicants unnecessarily because of reasonable offers refused but should also help with re-letting as quickly as possible.

10.10 Exceptional circumstances and using discretion

Irrespective of how well an allocation policy reflects local housing need, there will always be occasions when a landlord will need to use its discretion and make an allocation outwith the core policy.

An example of this would be if Police Scotland recommends someone moves home because they are being harassed and asks a landlord to help rehouse the person immediately.

Landlords may also have a general list applicant or a tenant who urgently needs temporary rehousing, but their circumstances are not covered by their allocation policy. For example, if someone has lost their home to fire or their home has developed a serious structural defect and it is not safe to stay there.

When using discretion, applicants should have exceptional level of need, greater than others on the list or the circumstances are so extreme or unusual that the allocation policy cannot adequately assess and prioritise them.

If an allocation policy is working effectively landlords should not need to exercise discretion on a regular basis. If the same extreme or unusual housing needs arise frequently, landlords should consider reviewing the needs groups set out in their policy.

Landlords should keep clear audit trails when discretion has been used and record the reasons for the allocation. They should have a clear authorisation process in place, for example with authorisation by a team leader or housing manager.



10.11 Sensitive allocations



Sensitive allocations, sometimes known as sensitive lettings, are aimed at ensuring that individual allocations do not lead to housing management problems and results in a sustainable tenancy. Instead of automatically allocating a property to the applicant at the top of the list, careful consideration is given to the suitability of the applicant for the vacancy, based on the information they have about the applicant and the knowledge they have about the property, its location or neighbours.

A suitable and sustainable allocation is one where there is a good probability of it providing a long term and stable solution for the applicant and surrounding neighbours.

In allocating housing, landlords will need to balance a range of factors including:

- the individual's housing need;
- the suitability of the house for that applicant; and
- the needs of their prospective neighbours.

The Code of Guidance on Homelessness states that “Examples of poor practice might include placing people in hard to let housing which may exacerbate the problems which led to homelessness in the first place; or placing families with social or other problems in the same area, which can cause problems for both those from the area itself and for housing management.” Landlords should keep these principles in mind when letting to all applicants, not just to those who are homeless.

Landlords should only use a sensitive allocations approach where there are good reasons for doing so and have clear processes for staff to follow, including keeping a record of why decisions were made.

Landlords should monitor their use of sensitive lets. Landlords can use discretion in lettings but in doing so they should develop a framework which makes sure these decisions are accountable, transparent and their use carefully monitored.

10.12 Taking local need into account

Although legislation requires landlords to give reasonable preference to certain groups when allocating their houses, they can also take other factors into account.

Landlords can choose to give some priority on the basis of local connection. However, they must be clear about their reasons for using local connection as a needs factor. They must not give extra priority for the length of time someone has lived in the area.



Local Lettings Initiatives

A Local Letting Initiative (LLI) can be a useful way of taking specific local factors into account. Allocation policies should set out why and when they may be used. The circumstances under which an LLI might be appropriate could include:

- high demand - to prioritise access for types of applicant, for example in rural communities where local people have problems accessing housing to stay in their community;
- low demand - to stimulate demand;
- increasing incidence of antisocial behaviour - to try to reverse the trend; and
- a local initiative or new build programme.

The LLI:

- must comply with all relevant legislation;
- should be operated alongside the main policy, and act as an additional set of circumstances which will be considered or rules which will be applied;
- should apply to a specific geographical area and be supported by evidence on why it is required;
- should have clear outcomes and be time limited; and
- must be published.

Landlords should consult with tenants, applicants and other key stakeholders when developing an LLI and have an effective monitoring framework in place to make sure the aims of the LLI are being met.

Practice example - Local Letting Initiative, Govanhill Housing Association

Govanhill Housing Association is undertaking a Property Acquisition and Repair Programme in tenement blocks in the South West of Govanhill. They are using funds provided by Glasgow City Council and the Scottish Government to purchase properties from the private rented sector.

An LLI is in place to cover lettings in the area and is focused on an area which has previously experienced high turnover and low demand. The objectives of the LLI include:

- increasing demand for social housing in the area and for one and two-bedroom properties;
- actively encouraging interest from people who want to make Govanhill their home for the longer-term and providing them with housing in Govanhill; and
- working towards creating a mix of households within each of the tenement blocks and a stable community in the area overall.

As part of their work, security and flexibility offered by a social rented tenancy is being highlighted along with the quality of the housing management and repairs service they provide. The Association is encouraging people who are interested in living in Govanhill to make a housing application and are offering an enhanced housing options interview to those living in or who wish to live in the South West Govanhill area.

The approach to allocating properties in the Programme area is based on the main allocation policy but:

- allows greater flexibility in terms of to which of the general, transfer or homelessness groups they make allocations;
- enables offers to be made to applicants who already have ties to the South West Govanhill area. In particular, additional priority based on moving to the area for work or to give or receive support may be given; and
- enables them to make offers to applicants who are clear they want to make South West Govanhill their home. This includes working closely with Glasgow City Council to ensure that any homeless households being referred for housing in the area genuinely wish to live in South West Govanhill.

The Association monitors the operation of the LLI, including from an equality perspective. It has recently been reviewed and will remain in place for another year.

10.13 Letting low demand properties

Low demand stock is characterised by high levels of empty houses, small or non-existent housing lists, high refusal rates and low levels of tenancy sustainment.

Landlords use a variety of initiatives to stimulate demand for and improve lettings outcomes in low demand properties and increase the number of allocations in the area. These generally involve a change in approach - from rationing a scarce resource to marketing a product.

Before deciding to adopt a different approach to allocating houses, landlords should consider the issues that need to be addressed and be able to show that there is no demand for the stock from the applicants on their housing lists.

Where this is the case landlords might consider:

- marketing the properties by advertising them in the press, in newsletters, on the internet and at a landlord's offices;
- adopting an estate agency approach - promoting the advantages of the area (transport, amenities) and the property (low rent, no deposit, security of tenure);
- setting up show flats and holding open days for prospective tenants;
- setting up initiatives to expand the customer base, such as briefing employers seeking to bring staff into the area and contacting universities and colleges during freshers' week; and
- offering incentives, such as decoration allowances rent free periods and/or white goods.

Where landlords are marketing properties they should still make the allocation to the applicant who has most priority and who will make the best use of the property.

More information on low demand properties is available in CIH Scotland's publication, Low Demand Housing in Scotland.

It is available for the CIH Scotland website at: http://www.cih.org/publication-free/display/vpathDCR//templatedata/cih/publication-free/data/Scotland/Low_Demand_Housing_in_Scotland



10.14 Appeals and complaints



Appeals process

Landlords should have in place a clearly set out appeals process as part of their allocation policy. This might also be known as a review process.

Appeals might be made under the following types of circumstances:

- the applicant thinks the priority awarded is not a fair reflection of their housing needs.
- they think the landlord has applied an unfair suspension or unreasonably cancelled their application.
- the applicant thinks they have not been made a reasonable offer.

Landlords should ensure applicants are aware they can appeal against decisions and how they can do this. Information on this should be included in tenancy and allocation guides as well as the allocation policy.

The 2001 Act introduced a statutory right to review for all decisions made under the homelessness legislation including whether or not an offer is reasonable. The Code of Guidance on Homelessness also sets clear guidelines for appeals against homelessness decisions. Landlords may want to consider using this framework for appeals against allocations decisions.

Complaints process

All social landlords should have a formal complaints process in place which allows tenants and applicants to make a complaint easily. It should set clear service standards and timeframes for the process so that complainants know what to expect.

Information on this should be included in tenancy and allocation guides as well as the allocation policy itself.

The Scottish Public Service Ombudsman (SPSO) handles complaints as the 'last resort'. **Their Guidance on a Model Complaints Handling Procedure is available from their website at: <http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/Guidance-on-a-Model-Complaints-Handling-Procedure.pdf>**

It sets out the key level components of an effective complaints handling procedure, focuses on simplifying and streamlining those procedures and on 'getting it right first time'.

Complaints give a good indication of where landlords need to make improvements. Landlords should consider monitoring:

- the nature and number of complaints and whether this is changing;
- the outcome of complaints;
- customer satisfaction - not just about the outcome of the complaint but how it was handled; and
- how they have changed ways of doing things in response to feedback.

Landlords should consider publishing this information so that tenants and applicants know that they are taking their complaints seriously and that they are using them to improve the service they provide.

Information Point

Complaints Handling by Social Landlords in Scotland – A thematic inquiry by SHR

The SHR's 2017 study recommended that social landlords should embed a culture, led by the top of the organisation, which welcomes and values complaints as a way of improving services. Tenants and other service users should find it easy to complain. As part of this, they recommended that landlords:

- ensure that information on making a complaint is visible, transparent and easy to understand;
- ensure that frontline staff are empowered and well trained to understand both the complaints procedure and their role in it;
- ensure systems for effective recording, management and performance monitoring of complaints are in place;
- have appropriate reporting methods in place to inform senior management team and/or governing body/elected members on complaints handling performance including reviewing trends in complaints to help identify service failures;
- report regularly to the senior management team and/or governing body/elected members on service improvements to ensure a strategic, joined up approach;
- publish good quality, up-to date information for tenants and other service users on complaints handling performance including how complaints have been used to improve services; and
- consider using the SPSO self-assessment indicators to monitor complaints handling performance.

Key Points

There are many ways in which people can access social housing or make a move to a different social tenancy. They include direct application, transfer or Section 5 referral.

There are two main ways of allocating tenancies - a needs-based or choice-based approach. Under both approaches, landlords must ensure they give reasonable preference to the groups set out in legislation.

Many landlords set quotas or targets system to achieve a spread of lets over the various needs factors. They tend to be structured around the proportion of lets being made to homeless households, those on the general needs list and those on the transfer list.

Protocols or formal working arrangements with partners can help ensure services work together to make sure that groups of applicants with particular needs or vulnerabilities have their needs assessed and addressed.

There will always be occasions on which a landlord will need to make allocations in exceptional circumstances and exercise a degree of discretion. However, the number of lets made using discretion should be minimal.

A sensitive allocation or letting approach can help in suitable and sustainable lets.

Although legislation requires landlords to give reasonable preference to certain groups when allocating their houses, they can take other factors into account. A Local Letting Initiative can be a useful way of taking specific local factors into account.

Landlords need to consider the match between the needs of the applicant and the features of the property to make sure they make best use of that property. They should take particular care to make best use of adapted or accessible properties.

Landlords will need both an appeals and a complaints process. Landlords need to make sure their approach is straightforward and accessible.

1 1 . Providing Information and Advice

This section covers the provision of information and advice for applicants
By working through this section readers will:

- understand the basic information that applicants will require to complete their application.
- know about the housing options approach and the role it can play.
- be aware of the need to provide accessible information in a range of formats.
- know about keeping applicants informed.

11.1 Key information requirements

Allocations systems are complex and detailed and can be difficult for people to understand. It is therefore important that landlords provide easily understandable high-quality information and advice to applicants or those considering applying.

Information Point

Scottish Social Housing Charter Outcome 2: Equalities. Tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides.

Involving tenants/applicants in developing and 'road testing' information will give a service user's point of view on whether it is clear and easy to understand. Landlords should provide:

- the full allocation policy;
- a summarised version of their allocation policy;
- the application form and a guide on how to fill in the form;
- details of their stock and turnover to help applicants make realistic choices about their options; and
- details of where to get help, including from the landlord themselves and from independent information and advice providers.



11.2 Housing options and prospects advice



Effective housing options advice gives people a full picture of what housing options are available to them and helps them identify the best solution to meet their housing needs. **The Scottish Government's Housing Options Guidance is available from their website at: <https://beta.gov.scot/publications/housing-options-guidance/>**

Information Point - Housing Options Hubs

There are five regional Housing Options Hubs: Ayrshire & South; Edinburgh, Lothians & Borders; North & Islands; Tayside, Fife & Central; and West.

The Housing Options Hubs bring together neighbouring councils in Scotland to promote, develop and share information and best practice on the prevention of homelessness.

They are council-led but membership includes other organisations (for example housing associations and third sector agencies) who work in partnership to deliver services.

In 2018, the regional Housing Options Hubs were developing a range of support materials in the form of a 'Housing Options Training Toolkit'. This toolkit will provide a range of bespoke materials to support internal training delivery by Hub partners, e-learning materials or facilitated training courses as part of a tailored approach to staff development.

Information Point

Scottish Social Housing Charter Outcomes 7, 8 and 9: Housing Options.

Social landlords work together to ensure that people looking for housing get information that helps them make informed choices and decisions about the range of housing options available to them.

Tenants and people on housing lists can review their housing options.

Social landlords ensure that people at risk of losing their homes get advice on preventing homelessness.

All landlords should be able to offer basic housing options advice. Smaller RSLs, or RSLs with stock across many local authority areas, may need to refer on to other services, such as the local authority housing options team, for information on the likelihood of being housed by other social landlords in the area.

Many landlords are now giving person centred advice on the full range of housing options available in their area. When providing advice on someone's housing options, it should reflect their individual circumstances and the options that are realistic for them to pursue at that time. Housing in the social rented sector is only one option and other housing options such as private or mid-market renting or home ownership may be more appropriate for some people, depending on their individual circumstances. Housing options staff should have training to give advice on the range of options such as:

- private sector letting;
- mid-market rent;
- shared equity;
- home ownership and help to buy schemes; and
- adaptations – where this would make the current home more suitable for the household.

When providing housing options advice, it is important that the potential short-, medium- and long-term financial implications of the different options are covered.

A key part of providing housing options advice is to explain how the choices an applicant for social housing makes about the type of property and/or areas they are interested, can affect their likelihood of being made an offer. Applicants should be able to review and amend those choices at any time.

11.3 Housing health checks

Many landlords, as part of their routine housing management and allocations processes, now offer housing health checks or housing reviews at certain stages of a housing application or tenancy. These support applicants and tenants to consider all the housing options available to them and help them to make decisions on what type of housing best suits their needs.



Offering housing health checks can help landlords make best use of the available stock, for example by encouraging tenants to move to accommodation that will meet their long-term housing needs and freeing up larger houses for families who need them.

There are a number of naturally occurring situations during a tenancy which could prompt some type of housing health check on an informal basis and many landlords do this as part of their routine housing management activities

A common example of this is where a tenant requests an adaptation such as handrails to their home which may trigger a discussion on the suitability of their current home as they grow older or frailer. Another example is where a landlord is advised that grown up children have moved out of the home, which could trigger a discussion about whether a move to a smaller home would be beneficial.

Housing health checks can also be offered at the time applicants apply for social housing to ensure that they are aware of all options open to them including access to other tenures and home ownership. For example, where landlords carry out application checks at the time an application is submitted information may become available which would indicate that an applicant would like to purchase a home. By providing such applicants with advice on shared equity and low-cost homeownership schemes this could support them to do so

11.4 An inclusive approach to providing information and advice



Involving tenants and applicants in developing and testing information provided for applicants is a good way of ensuring the application form and other allocations information is easy to understand.

Landlords will also need to ensure their information and support services are inclusive. They could consider:

- the information, advice and support requirements at different stages of the application and allocation process;
- whether there are specific locations where landlords could provide housing-related information; and
- whether particular groups of people might require information in alternative formats or might need support at particular stages of the process.

There may also be occasions when a referral to a specialist service is appropriate, and landlords will want to have processes in place to access the range of referral options available.

Information Point – Difficulties accessing housing advice and guidance

The Scottish Council for Learning Disability (SCLD) commissioned a report, 'Improving outcomes for people with learning disabilities: Opportunities and challenges for housing'.

The report found that navigating the housing system can be a particular challenge for people with learning disabilities. Specifically, it highlighted the findings from a People First and Capability Scotland's involvement event with people with learning disabilities.

This found that social housing bidding systems and allocations policies were often difficult for people with learning disabilities to understand, and that they wanted a right to advice and guidance on housing issues.

Among professional stakeholders interviewed for the study, there was a perception that although excellent advice and guidance is available, people with learning disabilities are not always referred to appropriate independent housing advice. There was also a concern that people with learning disabilities, particularly those with complex needs, are missing out on independent advice and the opportunity to apply for housing in their own right. Interviews with people with learning disabilities confirmed that access to advice is inconsistent.

The full report can be found on the SCLD's website at: <https://www.sclid.org.uk/wp-content/uploads/2017/10/Improving-Outcomes-84pp.pdf>

The information point above highlights the types of challenges people with learning disabilities may experience. Some examples of groups whose needs landlords should consider are set out below.

People for whom English is not a first language: Not all applicants will have English as a first language and landlords will need to have arrangements in place to have written information translated and translators available when required. Where there are a significant number of speakers of a particular language, landlords might want to routinely publish all their information in that language.

People who need information in other formats: People with learning disabilities, people with literacy issues and people with a visual or hearing impairment will need tailored information in a format which is accessible to them. This might include in large print, British Sign Language (BSL), Braille or audio.

The Scottish Accessible Information Forum provides tips on its website:

<http://www.saifscotland.org.uk/#sthash.Ud827dLP.dpbs>

Landlords should also think about how they will make interpreting services available and advertise this service widely (in community languages).

As part of ensuring that particular groups of people have their information needs met, landlords should consider whether there are particular settings, such as prisons, in which information should be made available. Landlords should refer to the Scottish Quality Standards – Housing advice, information and support for people in and leaving prison.

The SHORE Standards can be found on the Scottish Prison Service website at:

<http://www.sps.gov.uk/Corporate/Publications/Publication-5363.aspx>

11.5 Keeping applicants informed

After an application is submitted it is important to keep people informed about what happens next. This might include:

- sending confirmation that the application has been received, when it will be assessed and what checks will be made;
- asking for any information that has not been supplied by the applicant;
- advising applicants that they must inform the landlord about any changes in circumstances that could affect their application and level of priority;
- explaining when the landlord will next be in contact with them and the contact they can expect throughout the allocation process; and
- advising of their right to appeal against any decision.

Once the application has been assessed, landlords should inform applicants about the outcome. This would include either the level of priority or number of points an applicant has been awarded. It might also include information about other housing options, particularly if the applicant has a relatively low chance of being made an offer in the near future.

Where a choice-based system is being used, landlords will also need to make sure that applicants know how the system works, how they bid for properties, how to register on the online system and where they can get support if they need help to do this.

Whichever system is being used, landlords will also need to make applicants aware that they should notify the landlord(s) they have applied to about any changes in circumstances which could affect their application and their level of priority in particular.

When an applicant is being made an offer, the offer letter and any supporting information should be clear and concise and should highlight how long an applicant has to make a decision on whether to accept the offer.

If the applicant accepts the offer they will need to be provided with all the appropriate tenancy start information. This should include information about signing their tenancy agreement and when and how rent should be paid.

Key Points

Information, advice and support needs will vary depending on the profile of people on a landlord's general and transfer list.

Effective housing options advice gives people a full picture of what is available to them and helps them to make informed choices on their housing options.

Some applicants will require information in a particular format, such as an easy read version or a version translated into another language.

It is important to inform applicants about what will happen after they have made their application.

12. Managing a Housing List

This section looks at how people access a landlord's housing list and how landlords should manage that list.

By working through this section readers will:

- be aware of the General Data Protection Regulation.
- understand the stages of gathering and verifying information and seeking references.
- be aware of the need to review a housing list.

Landlords must make sure that all people have fair and open access to their housing list and assessment process.

Information Point

Scottish Social Housing Charter Outcome 1: Equalities. Every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.

12.1 Holding information on applicants

Landlords should make sure that how they gather and hold information about applicants is fully compliant with the General Data Protection Regulation (GDPR). The Information Commissioner's Office has provided a Guide to the General Data Protection Regulation (GDPR). **It is available from their website at: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>**



12.2 Application stage



Applications should be processed as quickly as possible and timescales for doing so should be set out in the allocation policy and on the application form.

Landlords should make it as easy as possible to apply to join their housing list and application forms should be clear, concise and written in plain English. Although online application systems are now generally used, landlords should also have paper-based forms for those who prefer to use them.

Some applicants may have difficulty with completing an application form and landlords should have a system in place to help them do so. This will help ensure that the applicant has provided all the information requested on the application form and enable any priority for housing to be assessed. Having the form filled in correctly will also help to minimise delays in processing the application.

The application form should also include a declaration signed by the applicant that the information they have provided is correct to their knowledge. Under the 2001 Act landlords can raise action in the courts for recovery of possession includes where a tenancy has been given on the basis of false information supplied by the applicant.

Where information is missing landlords should have a clear process and timescale for asking the applicant to provide it as well as making them aware of how it may affect their application if they fail to provide it.

12.3 Verification

Every landlord, or group of landlords should have clear process in place for checking and verifying applications. Checks may be done when the application is received, and the initial assessment of priority is carried out. Alternatively, landlords may choose to carry out any checks, or carry out additional checks, when an offer of housing is likely in the near future.

Landlords should ensure that all the information they need to verify the applicants' circumstances and assess priority for housing is asked for on the application form.

Although landlords need to have a robust verification process in place, they should make sure that they do not make unreasonable or onerous requests for information and should only request information needed to assess any priority for housing. In cases involving harassment or risk of domestic, sexual or other abuse, landlords should never ask the alleged victim for evidence and it is good practice to take the applicant's stated fears as sufficient.

Practice example - Quick access to the housing list, Loreburn Housing Association

Working with its housing management software supplier, Loreburn Housing Association has designed an easy-to-use housing application system which allows applicants to bid for properties as soon as they have submitted an online application.

Using an online registration form, the customer completes their application for housing. Loreburn uses a Choice-Based Lettings approach and the application is instantly awarded a Platinum, Gold, Silver or Bronze priority depending on their needs and whether they have supplied proof of ID and any relevant medical information where priority may be awarded on health or disability grounds.

The approach is based on trust and no back-office verification is done at this stage. This means people are able to bid as soon as they complete their application form. Applicants with support requirements can ask for staff to place bids on their behalf.

When a vacant property has been advertised, the successful bidder is contacted on the bid closing day and the details provided on the original application are checked and verified. Tenancy references are also sought.

Once all checks are complete the offer is then made to the applicant.

This approach means that Loreburn Housing Association can usually re-let a property within two weeks.

12.4 References



Most landlords will seek references from the applicant's current and former landlords. Some landlords have data sharing protocols with neighbouring landlords for exchanging tenancy references. Landlords should however only seek references with the applicant's consent and in line with the General Data Protection Regulation (GDPR).

Landlords will want to consider whether they should take up references from private landlords bearing in mind that they may not keep detailed tenancy records and may or may not reply to requests.

References that go back more than three years may not provide a useful indicator of how a prospective tenant would manage a new tenancy.

12.5 Reviews

Landlords should review their housing list regularly to make sure that they have up-to-date information about their applicants. An effective review system helps landlords manage their allocations processes efficiently and minimises offers to people who have moved away or who no longer need or want to be housed. It also ensures that landlords have an accurate picture of housing need and demand.

Landlords should have clear timescales for reviewing their list. An annual rolling review, contacting applicants on the anniversary of their application, provides an opportunity to confirm that the applicant's housing needs have not changed and that they are happy with any choices of property type or area they have made.

12.6 Cancellations and reinstating applications

There are a limited number of circumstances when landlords can remove an applicant from their housing list. These are:

- the applicant asks them to cancel their application;
- the death of an applicant; or
- the applicant repeatedly fails to respond to a review of the list or to other correspondence, such as requests for information or an offer of housing.



Landlords should have a clear process when applicants don't respond at a review. They should not cancel an application simply because an applicant doesn't respond to a first letter or email and a follow-up should be sent.

Landlords should reinstate an application if someone gets back in touch within a set period, usually of up to six months. This should be a simple process with no need for applicants to have to fill in a new form. If they do reinstate an application, landlords should keep the date of application as for the original application.

Key Points

Landlords should have processes and procedures which result in applications being handled fairly, consistently and within suitable timescales.

References from the applicant's current and former landlords should only be sought with the applicant's consent.

Landlords should review their housing list on a regular basis to make sure that they have up-to-date information about their applicants needs and preferences.

There are a very limited number of circumstances in which landlords can remove an applicant from their housing list.

13 . Suspending, Bypassing and Deferring

This section covers the circumstances under which a landlord might not make an offer of housing to an applicant on their list, who might otherwise receive an offer.

By working through this section readers will:

- understand the difference between by-passing, deferral and suspension.
- know about the statutory suspension option.
- be familiar with the range of reasons why landlords might suspend an applicant and how long they might suspend for.
- know the circumstances when a landlord cannot suspend an applicant.
- be aware of the outline approach when suspending an applicant.

13.1 Definitions

There are various circumstances where landlords might choose not to make an offer of housing to an applicant on their list. When this happens landlords must have clear reasons for doing so.

Bypass: This is when a landlord doesn't not make an offer of housing to someone who might otherwise have received an offer. This might be done when the landlord knows that the property would not meet the applicant's needs or knows that the applicant will refuse the offer. An example of this would be where the applicant has recently refused an offer of a similar property in the same location and has said they would not be interested in receiving a similar offer.

If a landlord bypasses an applicant for an offer of housing, it should always keep a record of why it has done so. If the landlord is bypassing the same applicant frequently, it may wish to ask the applicant to review the choices of area and housing type they have made.

Deferral: This is when an applicant advises the landlord that they wish to remain on the housing list but do not want to receive an offer at this time. Common reasons for this include health, family or employment circumstances. Many landlords allow applicants to ask for their application to be deferred for a set period of time or until further notice.

Landlords should keep all deferrals under regular review to ensure that applications are not deferred indefinitely. Once the applicant asks for the deferral to be lifted, this should be done as soon as possible, and landlords may also use this as an opportunity to carry out a housing health check with the applicant.

Suspension: This is when a landlord decides that it will not make an applicant an offer of housing until certain circumstances have changed, conditions are met or a set period of time has passed. The applicant remains on the landlord's housing list while suspended unless they ask to be removed from the list.

Although suspensions can be a useful housing management approach they should be kept to a minimum.



When suspending any applicant, landlords should ensure that a suspension is being imposed for sound reasons. Suspensions should not be used as a punitive measure but rather as a way of sending a clear signal about what is expected of someone before they will be considered for an offer of housing.

A landlord's suspension policy should set out clearly the reasons for which an applicant could be suspended, how long they will be suspended for and what, if anything the applicant should do to have a suspension lifted. It should also set out how an applicant can appeal against their suspension.

In developing their approach, landlords should refer to the Minimum Period for Applications to remain in force – Suspensions Under Section 20B of the Housing (Scotland) Act 1987. Statutory Guidance, Housing (Scotland) Act 2014 (Scottish Government 2018). The Guidance is useful in relation to both statutory and non-statutory suspensions (see below).

The Guidance is available from the Scottish Government's website at: <https://www.gov.scot/policies/social-housing/>

13.2 Non-statutory or statutory suspensions



Suspensions have been used for many years and most landlords already have a suspensions policy in place. This may be a separate policy or, more usually, will be included in their allocation policy. This long-used type of suspension, which is not based on legislation and is therefore non-statutory, will continue to be the way that applicants who are already on the housing list can be suspended.

Section 6 of the 2014 Act introduced a new statutory suspension provision and provides an additional power to social landlords to suspend an application at the point at which that application is placed on the list. Landlords do not need to use the statutory suspension provision, but they can choose to do so.

Where landlords decide to use statutory suspensions for applicants who are new to the list, applicants who are suspended on this basis (under section 20B) have a right to appeal to the Sheriff Court. As with all suspensions and deferrals, landlords will need to ensure that they have robust evidence to support the suspension being made.

13.3 Statutory homelessness and suspensions

A local authority may not impose a statutory suspension where it has a duty to secure accommodation for an applicant who has been assessed as being statutorily homeless. This restriction applies when the applicant is being made offers of housing because of their statutorily homeless status.

If the statutorily homeless applicant turns down these offers, and any future offers are being made as a general list applicant, landlords could impose a non-statutory suspension. However, landlords should make every reasonable effort to avoid suspending an applicant under these circumstances.

RSLs also have duties under section 5 of the 2001 Act to house statutory homeless people. RSLs have to meet section 5 requests from local authorities unless there are good reasons not to.

Although RSLs are not governed by the same rules as local authorities, RSLs will want to consider whether it is appropriate to suspend an applicant who has been assessed as homeless.

13.4 Circumstances where a landlord may not impose a statutory suspension

If imposing a statutory suspension under the 2014 Act, a landlord cannot use the same evidence more than once to impose a suspension when it relates to the same application for housing. Landlords may want to consider taking an equivalent approach to non-statutory suspensions.

As an example, if a landlord imposes a suspension because an applicant has abandoned a previous tenancy, it cannot suspend again using this reason once the initial suspension has come to an end. This applies to evidence relating to an applicant or someone it is proposed will live with the applicant.

A landlord could however choose to impose a further suspension for a different reason. For example, it could impose a suspension for a previous conviction and once that suspension has expired, they could immediately impose a suspension for a separate occurrence of antisocial behaviour.

Landlords will want to think very carefully, however, about imposing consecutive suspensions which result in an applicant not being considered for housing for a prolonged period. Any approach should be proportionate to the circumstances of each case, and reasons for suspending should be recorded.

13.5 Possible reasons for suspension

A suspension policy should set out clearly the reasons that might be used to suspend an applicant from receiving an offer of housing.

If a landlord is developing a statutory suspension policy, the grounds set out in the 2014 Act and as covered in turn below are the only suspension reasons it can use. However, for other non-statutory suspensions, landlords can develop their own grounds as long as they are reasonable and are set out in their policy. An example could be suspending a transfer applicant who has neglected their current home until the condition of their home is improved. However, landlords may find the categories set out in the 2014 Act a useful starting point for reviewing their non-statutory suspensions policy.

Antisocial behaviour

Antisocial behaviour is already a frequently-used reason for suspending applicants.

Section 20B(6)(a) states that landlords may impose a suspension where:

- (a) the person has-
 - (i) acted in an antisocial manner in relation to another person residing in, visiting, or otherwise engaged in lawful activity in the locality of a house occupied by the person,
 - (ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person, or
 - (iii) acted in an antisocial manner, or pursued a course of conduct which is antisocial conduct, in relation to an employee of the social landlord in the course of making the application.

Antisocial behaviour is defined as an action or course of conduct causing or likely to cause alarm, distress, nuisance or annoyance with 'conduct' including things which a person has said as well as physical actions. A course of conduct must involve antisocial behaviour on at least two occasions.

The Housing (Scotland) Act 2001 gives criteria for landlords to use when considering court action for eviction based on antisocial behaviour and provides a useful framework for landlords to use when deciding whether to suspend based on antisocial behaviour. Landlords should consider:

- the nature, frequency and length of the conduct;
- the extent to which the conduct arises because of acts or omissions of people other than the tenant;
- the effect the conduct is having on other people; and
- any other action taken, or capable of being taken, by the landlord to address the conduct.

Whenever a landlord suspends an application it must ensure that it has robust evidence to support its decision.

Previous convictions

Landlords might choose to impose a suspension if the applicant, or someone the applicant lives with or has lived with, has been convicted of certain offences and where those offences are associated with a residential property or the surrounding area.

Landlords that have included previous convictions for antisocial behaviour as a reason for suspension within their policy could suspend a waiting list or transfer applicant from receiving an offer of housing where they, or someone they live or have lived with, have been convicted of a crime that has been committed in or near the property where they were a tenant or joint tenant.

Landlords will want to consider carefully the nature of the offence and whether the behaviour that led to a conviction has had an impact on the people living in, or in the locality of, the house before suspending on this basis. In particular, they will want to consider what they are trying to achieve through the suspension.

If a landlord chooses to include previous convictions within its suspensions policy, it can only use the reasons specified under section 20B of the 1987 Act. These are that the applicant, or someone who has lived with the applicant has been convicted of:

- (i) using a house or allowing it to be used for immoral or illegal purposes, or
- (ii) an offence punishable by imprisonment which was committed in, or in the locality of, a house occupied by the person.

Punishable by imprisonment means that the offence carries imprisonment as a possible penalty. A prison sentence does not need to have been imposed for the conviction to be used as a valid ground for suspension. For example, a community payback order may be given by the criminal court as an alternative to a prison sentence.

Order for recovery of possession

Landlords could consider suspending an applicant if an order for recovery of possession has been made against them in proceedings under:

- (i) the Housing (Northern Ireland) Order 1983
- (ii) the Housing Act 1985
- (iii) the Housing (Scotland) Act 1987
- (iv) the Housing (Scotland) Act 1988
- (v) the Housing (Scotland) Act 2001.

This means that where a court in Scotland, England, Wales or Northern Ireland has previously granted an order to evict a tenant, a social landlord may suspend that person from receiving an offer of housing. It is not a requirement to do so in every case and landlords should consider each case on its merits so that individual circumstances can be taken into account, and this flexibility should be included in suspensions policies.

Abandoning or neglecting a property

Landlords could consider suspending applicants when, as either a tenant or joint tenant, they have abandoned or neglected a previous tenancy.

For example, landlords could impose a suspension where:

- an applicant's previous tenancy has been repossessed when abandoned under section 18(2) of the 2001 Act. If a joint tenant, the tenancy would have been terminated by the landlord under section 20(3) of the 2001 Act.

This means that an applicant could be suspended if they had previously had a property repossessed by a social landlord because they had abandoned that property. It would apply whether they were the sole or a joint tenant.

Landlords could also consider including neglecting a property as a possible reason for suspension. This could be phrased as:

- Where the applicant was a tenant or joint tenant of a property for which a court has ordered recovery of possession on the ground of deterioration of the property due to neglect, or deterioration of furniture due to ill-treatment (paragraph 3 or 4 of schedule 2 to the 2001 Act).

As set out above, these reasons for suspension apply only to repossessions or orders for repossession of any social rented sector tenancy made in Scotland under the provisions of the 2001 Act. This means that landlords could choose to suspend an applicant who has abandoned or neglected another social landlord's property as well as their own.

Landlords will have to have access to historic information on the grounds for any eviction and also any abandonment procedures so it will be important for all social landlords to retain records on such actions including the specific grounds for an eviction.

Rent arrears and other tenancy-related debt

Rent arrears and other tenancy-related debt have long been included as reason for suspending applications by many landlords. Tenancy-related debts can include such things as service charges, the cost of rechargeable repairs, the costs of clearing an abandoned house and storing furniture, and property management charges.

Any suspension should be compliant with the outstanding liabilities set out in section 20(2) (a) of the 1987 Act (as amended). The provisions for a statutory suspension set out in the 2014 Act mirror those requirements, meaning that landlords can impose a suspension where there is or was any outstanding liability (for payment of rent or otherwise) in relation to a house which:

- (i) is attributable to the person's tenancy of the house, and
- (ii) either:
 - (A) section 20(2A) would not be satisfied in respect of that debt, or
 - (B) in the case of a debt which is no longer outstanding, section 20(2A) would not have been satisfied at any time while that debt remained outstanding”
 (section 20B(6)(g) of the 1987 Act as amended by section 6(2) of the 2014 Act)

This means that a landlord can impose a suspension for rent arrears or other outstanding charges relating to a house. However, there are circumstances when a landlord cannot suspend because of rent arrears. These are:

- they do not relate to the tenancy of a house; or
- when the arrears or other liabilities are no longer outstanding.

In occasional circumstances, it may be reasonable for a landlord to impose a suspension on an applicant if they have previously had significant unpaid rent arrears or service charges which are no longer outstanding because the landlord has written off the debt.

Landlords also cannot suspend an applicant when the applicant is in rent arrears or owes a landlord money for a reason relating to the property, where the applicant has agreed to and is keeping up with a repayment agreement. Specifically, a landlord cannot suspend when either or both of the following apply:

- the rent arrears are not more than one twelfth of the annual rent (i.e. one month's rent).
- the applicant has agreed with the landlord an arrangement for paying the outstanding liability; and has made payments in accordance with that arrangement for at least three months; and is continuing to make such payments.

Where an existing tenant who has applied for a transfer has accrued significant rent arrears, landlords should be working with them to achieve a satisfactory outcome. This could include providing or signposting them to financial advice, considering a move to a smaller, more affordable property or putting in place a realistic repayment agreement that will allow the debt to be repaid. Landlords should base any agreement on its affordability for the applicant rather than the level of debt. This approach should form part of their wider work around tenancy sustainment.

Making a false statement in an application for housing

Landlords may consider knowingly making a false statement on a housing application form as a possible reason for suspension. However, a statutory suspension can only apply to a false statement made by the applicant and does not extend to a false statement by others on the application form and who will live in any property let to the applicant.

Landlords will want to look at the circumstances of each case rather than applying a blanket approach. For example, landlords might choose not to suspend if the false information does not affect the outcome of the assessment of housing need.

Applicants who have refused an offer of housing

Some landlords do not impose any limits on the number of offers made while others limit the number of reasonable offers that an applicant can refuse before they are suspended. The Code of Guidance on Homelessness states that “in considering what is a reasonable offer, local authorities should take into account the particular circumstances and needs of the applicant and their household. Local authorities should also take into account the sustainability of the accommodation for that particular applicant.”

As with other suspension’s reasons, suspensions based on refusing reasonable offers should not be used punitively but rather as a way of encouraging applicants to give careful consideration to the choices they have made about area and property type.

When a landlord decides to include suspension after a set number of offers have been refused, it should apply that policy equally irrespective of the type of applicant involved. For example, homeless, housing list and transfer applicants should all be entitled to the same number of reasonable offers before possible suspension.

13.6 Length of suspensions

A landlord’s allocation or suspension policy should set out clearly:

- how long the suspension will be in place; or
- the conditions or terms an applicant needs to meet in order to have the suspension removed.

Rather than setting a specific time for the suspension, a landlord could remove a suspension under certain circumstances. For example, where the applicant has existing rent arrears, a landlord could remove the suspension once an applicant has made payments in accordance with an arrangement for at least three months and is continuing to make their repayments as agreed. Where a suspension is based on the condition of a transfer applicant’s property, it could be removed as soon as the condition of the property has been improved to the landlord’s satisfaction.

A set timescale might be applied to suspensions for antisocial behaviour, previous convictions, abandoning or neglecting a property, giving false information or refusing a number of reasonable offers. Standard practice is usually to impose a suspension of between three-12 months.

In particularly serious cases or circumstances, landlords could consider a longer suspension period. For example, a landlord might decide to impose a suspension for up to two years where there are previous convictions for an offence committed in or near to a previous tenancy. Landlords can adjust the length of the suspension to reflect the seriousness of the offence, its impact on those who lived nearby and whether the suspended applicant has changed their behaviour.

Landlords can shorten or withdraw a suspension at any time where they feel that it is appropriate to do so. However, they should not vary a suspension in a way that lengthens it.

There is no maximum length for a suspension set out in legislation. However, the Scottish Government's Statutory Guidance makes it clear that statutory suspensions should not exceed three years.

13.7 Reasonable period to look back

Just as landlords should give careful consideration to how long they will suspend applicants in different circumstances, they will also need to consider how far back they will look for reasons to suspend.

Landlords should only look back for up to three years unless there are exceptional circumstances.

Landlords should exercise their discretion when deciding whether it is appropriate to impose a suspension. For example, if an applicant behaved antisocially two or three years ago, but has changed their behaviour, it may not be appropriate to suspend them.

13.8 Approach to suspending

Where a landlord chooses to suspend an applicant, it should inform the applicant at the time it suspends them and provide them the following information:

- if they have been suspended under section 20B, that it is a statutory suspension;
- the reasons why they have been suspended according to the landlord's allocation/suspensions policy;
- the implications of the suspension - they will not be made an offer of housing while it remains in place;
- if there is a timescale for the suspension, the dates on which the suspension begins and ends;
- if certain conditions need to be met, what those conditions are, and what they need to do to satisfy them;
- where to find independent housing and/or legal advice; and
- their right to appeal, including their right to appeal to the Sheriff Court if they are suspended under section 20B.



Any suspension should be lifted as soon as the set time period has elapsed, or any conditions set by the landlord have been met.

There may be situations when suspending an applicant is unlikely to achieve a positive outcome and landlords should make case-by-case decisions rather than applying a blanket policy. For example, if an applicant has a long history of antisocial behaviour, they may find it easier to make positive changes if given a short Scottish secure tenancy with support rather than being suspended for a period of time and then offered a Scottish secure tenancy with no support in place.

Equally, even if a landlord's policy allows for suspension after a number of reasonable offers, discussing their choices of area or house type with the applicant may be a more constructive approach.

Information Point - Short Scottish Secure Tenancies for Antisocial Behaviour

The 2014 Act amends the 2001 Act to extend the circumstances when a short Scottish secure tenancy (short SST) can be given because of antisocial behaviour. The changes come into force on 1 May 2019.

Landlords will now be able to convert an existing Scottish secure tenancy (SST) to a short SST or can give a short SST to new tenants, where the tenant, a household member or a visitor, has behaved antisocially towards another person in or near the house within the last three years.

The legislation also gives social landlords the flexibility to extend a short SST which was created due to antisocial behaviour by an additional six months in certain circumstances. This means that short SSTs created due to antisocial behaviour could last up to 18 months.

Landlords can still take eviction action against the tenant during the 12-month period (18 months where an extension applies) if it becomes necessary. The tenancy will convert automatically to a full SST after 12 months (18 months where an extension applies), unless the landlord has served a notice of proceedings for recovery of possession on the tenant before the end of the 12-month period (18 months in the case of an extension) and the notice is still in force.

The use of short SSTs can benefit tenants by giving them a further chance to change their behaviour and sustain their tenancy. It can also help landlords who are concerned about offering a permanent tenancy to tenants who behave antisocially where there is a risk that offending behaviour might recur.

The statutory guidance on Short Scottish Secure Tenancies for Antisocial Behaviour and Other Miscellaneous Changes to Short Scottish Secure Tenancies is available on the Scottish Government website <https://www.gov.scot/policies/social-housing/>.

13.9 Monitoring suspensions

It is important that landlords have an effective monitoring system in place to manage suspensions, to make sure that suspensions are regularly reviewed and are lifted when any time period set has elapsed. Landlords also need to monitor their suspensions and manage them in an accountable and transparent way and make sure that suspensions are operating satisfactorily and in line with legislation. Landlords will therefore want to monitor:

- the number of applications suspended, and for what reason;
- the number of reviews of suspensions requested by applicants and their outcomes;
- the number of appeals against section 20B suspensions and their outcomes; and
- the number of subsequent requests for reviews of suspensions, or reviews initiated by the landlord, and their outcomes.

There is no legal requirement to monitor the gender, age, ethnicity and disability of suspended applicants but landlords might find it helpful to do this in order to gather information on how the suspensions policy impacts on different groups of people and to ensure it is operating fairly.

Key Points

A suspension occurs when a landlord makes a decision that it will not make an applicant an offer of housing until certain circumstances have changed or a set period of time has passed.

Although a useful housing management approach in some cases, suspensions should be kept to a minimum.

The 2014 Act introduced a new statutory suspension provision and sets out the reasons according to which an applicant can be given a statutory suspension. Landlords have an option to, but do not need to, use the statutory suspension provision to allow for suspension at the point of application.

Antisocial behaviour, previous convictions, abandoning or neglecting a property, rent arrears, deliberately providing false information in an application for housing and refusing a number of reasonable offers could all serve as both statutory or non-statutory reasons for suspension.

A local authority may not impose a statutory suspension where it has a duty to secure accommodation for an applicant who is homeless. RSLs also have duties under section 5 of the 2001 Act to house statutory homeless people.

There are no rules governing the length of time an applicant can be suspended for any single reason. However, any timescales should be reasonable and justifiable and if a landlord is relying on the new s20B for suspension at the point of application they must have regard to the Scottish Government on this section which states three years should be a maximum for any suspension under s20B.

14. Setting up and Creating Sustainable Tenancies

Matching the applicant to the property is only the first part of creating a successful tenancy.

By working through this section readers will:

- find out about tenancy start processes and how they can be streamlined.
- be aware of ways to work with a new tenant to help them sustain their tenancy.

14.1 Tenancy start

Once an applicant has accepted an offer of housing, landlords will want to complete the tenancy sign-up process as quickly as possible to avoid rent loss. Landlords also need to be sensitive to individual applicants' circumstances, particularly where someone is moving because of health or disability-related issues and requires support to organise that move or where any welfare benefit related issues need to be addressed.

Some new tenants will also require specialist support at sign up stage such as translation services, literacy support or independent advocacy.

Having effective tenancy start processes in place will ensure that new tenants have a clear understanding of their tenancy responsibilities, such as paying their rent, from the outset, and help prevent housing management issues from arising in the future.

Practice example - Streamlined tenancy start processes, Link Housing Association

Link has carried out a review of its tenancy sign up process from the customer's point of view with the aim of streamlining the process and cutting out duplication.

From this they have committed to upgrade systems to allow the collecting of customer data only once, ensuring that this travels with the customer from application to full tenancy. They are in the process of developing a customer app and a customer online portal.

Link collects most data at application stage and when an applicant has been shortlisted for a property this information will be exported to an online pre-tenancy form. Housing Officers will use the pre-tenancy form on a tablet device and during an allocation visit, they will be able to check the form and updates or collect any further information required. An online income and expenditure assessment will also be available, and a referral instantly created to their advice team.

All relevant tenancy information will be held electronically on a tablet device, including the tenancy agreement which can be digitally signed. A copy of this and other tenancy documents can then be emailed to the tenant or a hard copy provided if they prefer.

Rent payments will be taken at sign up and direct debit mandates or other future payment methods agreed.

An online account will be created at the point of sign up and the tenant will be shown how to report repairs and pay rent through the online portal. Tenants who don't wish to use this online service can still use more traditional approaches to report repairs or pay their rent.

All landlords should routinely be providing clear information on the services they provide to their tenants including information for new tenants. This is usually done with a tenancy handbook which sets out the key information that tenants will need throughout their tenancy. Many landlords involve their tenants in developing or reviewing tenancy information to ensure it is clear and understandable from a tenant perspective.



Generally, tenancy information or handbooks include:

- the tenancy agreement, including the rights and responsibilities of signing either a Scottish Secure Tenancy Agreement or a Short Scottish Secure Tenancy Agreement. It could also cover the rights and responsibilities of the landlord;
- the Scottish Social Housing Charter and what standards and services tenants can expect from their landlord;
- how to access services including online portals;
- how to make enquiries and complaints and get advice;
- being a good neighbour, including how to get on with neighbours and respecting the local environment;
- what antisocial behaviour is and how to report this;
- rent payments and money advice, including when rent is due, how rent can be paid and where to seek advice and support about money issues;
- tenant and customer participation, including how to get involved with tenant scrutiny and other ways to influence how their landlord delivers services;
- what to do if moving on, including how to give notice and what must be done before leaving a property;
- reporting repairs, including what type of repairs the landlord is responsible for, how to report repairs, how long it will take to do different types of repairs and what to do in an emergency;
- heating and energy efficiency, including how to get the best from the heating system and how to use it the most efficient and economical way; and
- contact information, including for the landlord and for other key services.

14.2 Supporting tenants to sustain their tenancy

Information Point

Scottish Social Housing Charter Outcome 11: Tenancy sustainment. Social landlords ensure that tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and by other organisations.



How well a landlord supports people to handle the transition from applicant to tenant can have a real impact on the likelihood of their tenancy succeeding. Some applicants will need support to help them get settled in and maintain their tenancy and this needs to be identified at an early stage. There are a wide variety of people who are particularly likely to struggle to sustain a tenancy and who may need extra support. Some of the factors that indicate someone may need support include:

- being in debt, including welfare-benefit related debt associated with the introduction of Universal Credit;
- having a history of behaving antisocially;
- being dissatisfied with the property offered and/or its condition;
- lacking the necessary possessions or resources to make the tenancy into a home; and
- younger tenants, including those for whom it is a first tenancy.

Setting up and maintaining an effective relationship with new tenants at the outset through accompanied viewing, tenancy sign-up and settling-in visits, will help landlords identify those who might benefit from extra support. The initial support offered could include making sure that the new tenant understands their responsibility to pay rent and keep to their tenancy conditions, along with the implications of not doing so. The type of support required is wide ranging and could include:

- helping with welfare-benefit applications in order to prevent a delay in the payment of the housing element of Universal Credit;
- providing or signposting to money advice and welfare benefit checks; and
- ongoing housing management support.

Assessing support needs and working with others to put support packages in place for specific needs will also be key to creating a sustainable tenancy. Under the 2001 Act, “housing support services” includes any service which provides support, assistance advice or counselling to an individual with particular needs with a view to enabling that individual to occupy, or continue to occupy, as the person’s sole or main residence, residential accommodation other than excepted accommodation”.

Local authorities have a housing support duty to those found to be homeless or threatened with homelessness (amendment to Housing (Scotland) Act 1987 (inserted by Housing (Scotland) Act 2010)).

Further information on housing support can be found on the Housing Support Enabling Unit’s website at: <http://www.ccpscotland.org/hseu/>

The social housing sector plays a key role in housing people with health or disability-related housing needs and landlords will want to work with other key services to ensure that new or existing tenants with particular needs are able to access the support they require. This might include access to Assistive Technology or Technology Enabled Care.

Some tenants will require support from their landlord throughout the duration of their tenancy and this can be achieved by having effective housing management processes in place. Tenancy sustainment and the prevention of homelessness are also strongly interlinked and early action to support tenancy sustainment is vital. **The Prevention of Homelessness Guidance offers advice on tenancy sustainment and is available for the Scottish Government’s website at: <https://beta.gov.scot/publications/prevention-homelessness-guidance/pages/11/>**

Lacking the necessary possessions or resources to make the tenancy into a home could be one of the reasons why a new tenant might struggle to sustain their tenancy. Landlords could consider offering practical support at the point a new tenant is moving into their new home. This could include supporting a new tenant to access the furniture and white goods they will need, including through an application to the Scottish Welfare Fund.

Practice example - Furnishing Service, Wheatley Group

The Wheatley Group was aware that some of its tenants had difficulty getting even the basic furniture needed to turn a property into a home.

A Furnishing Service pilot was successfully launched in 2016/17 and a new service model was developed in response to customer feedback based on a 'mix and match' points concept.

This allowed customers to build their own package of furniture in a few simple steps with the support of their Housing Officer. A unique feature of this new model was that, for the first time, customers could choose between recycled Home Comforts furniture and new furniture from Royal Strathclyde Blindcraft Industries.

The successful opening of the Wedge showroom has ensured customers have a pleasant environment to shop in, giving them a sense of pride and ownership of their items. It has increased the attractiveness of the Home Comforts reused items and has highlighted that customers are just as likely to choose these items over new furniture in the future.

For its most vulnerable customers, the Wheatley Group believe this service is pivotal in maintaining tenancy sustainment and prevention of homelessness.



The main reason for the eviction of tenants in the social rented sector is rent arrears. The Housing (Scotland) Act 2010 strengthened protection for tenants in the social rented sector facing eviction for rent arrears. Pre-action requirements set out what a landlord must do as a minimum before taking eviction action for rent arrears. The legislation was introduced to improve consistency of practice by landlords to ensure eviction for rent arrears is a last resort. Landlords must give tenants in arrears every opportunity to take up help to manage their debts and agree an affordable repayment plan before taking action to evict.

The Housing (Scotland) Act 2001 and 2010 Guidance for Social Landlords on Pre-Action Requirements and Seeking Repossession of Social Housing is available from the Scottish Government's website at: <https://beta.gov.scot/publications/housing-scotland-act-2001-2010-guidance-social-landlords-pre-action/>

Key Points

Although landlords will want a new tenancy to start as soon as possible, they should also be sensitive to each applicant's circumstances.

New tenants need to know what their rights are and the services they can expect from their landlord as well as their responsibilities as a tenant in terms of paying their rent and keeping to their tenancy conditions.

Many landlords provide new tenants with a tenancy handbook which sets out the key information that tenants will need throughout their tenancy.

Some applicants will need support to help them get settled in and maintain their tenancy - this needs to be identified at an early stage.

Following the transition from applicant to tenant, landlords should continue to provide support to tenants who need it throughout the duration of their tenancy.

Effective housing management processes can help to sustain tenancies by identifying issues at an early stage.

Tenancy sustainment and the prevention of homelessness are strongly interlinked.





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