

Tenancy Management Policy

2025

Approved On	April 2023
Reviewed	May 2025
Next Review Date	April 2026

CONTENTS	PAGE
<u>Policy statement</u>	3
<u>Roles and responsibilities</u>	3
<u>References and sources</u>	3
<u>Equalities</u>	4
<u>Consultation</u>	4
<u>Monitoring and compliance</u>	4
<u>Approval</u>	5
<u>Tenancy changes</u>	5
<u>Succession</u>	6
<u>Tenancies with no successor</u>	9
<u>Assignment</u>	10
<u>Lodgers & sub-letting</u>	12
<u>Sole to joint tenancy changes</u>	16
<u>Joint to sole tenancy changes</u>	17
<u>Mutual Exchange</u>	18
<u>Tenancy visits</u>	19
<u>Tenants serving a prison sentence</u>	19
<u>Absences for less than 26 weeks</u>	20
<u>Absences for more than 26 weeks</u>	20
<u>Permissions</u>	21
<u>Tenancy Fraud</u>	23
<u>Appeals</u>	25
<u>Appendix 1 - Guidance on the death of a tenant where there is no will</u>	26

1. Policy statement

- 1.1 The purpose of this policy is to set out a framework for the management of tenancies not covered in other policies such as the Anti-social Behaviour and Estate Management Policies. It covers the guiding principles related to the management of a tenancy from sign-up through to termination, including areas such as assignation and sub-letting to permission requests and succession of tenancy.
- 1.2 West of Scotland Housing Association (WSHA) is committed to providing an effective and efficient tenancy management service that reflects best practice, complies with legislation, and protects the rights of our tenants.
- 1.3 The aim of this policy is to:
- ensure that management of every tenancy is effective and consistent;
 - ensure that we fully comply with our obligations as a landlord;
 - ensure that we adhere to all relevant legal and good practice guidelines;
 - and provide a service which is fair, equitable, and transparent.

2. Roles and responsibilities

- 2.1 The Director of Housing & Community Services is responsible for ensuring adoption of, and adherence to, this policy and its associated procedures relevant to their operation.
- 2.2 The Housing Manager is responsible for:
- ensuring that this policy is implemented by their staff;
 - ensuring that staff are designated to deal with tenancy management;
 - and monitoring the systems and practices at local levels in terms of tenancy management, ensuring there is a consistent and fair approach.

3. References and sources

- 3.1 The following legislation, references and sources are relevant to the development and delivery of this policy and associated procedure:
- [Equality Act 2010](#); consolidates existing legislation and makes it unlawful to discriminate in the provision of services based on age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation.
 - [Human Rights Act 1998](#); our tenants have the right to a private and family life and are entitled to live without interference from public authorities, protection from discrimination and the right to peaceful enjoyment of their property. This policy promotes these rights along with balancing our obligations as a landlord.
 - [Freedom of Information \(Scotland\) Act 2002](#)
 - General Data Protection Regulation

- The [Housing \(Scotland\) Act 1987](#); defines overcrowding and sets out the powers and duties of landlords to prevent overcrowding.
- The [Housing \(Scotland\) Act 2001](#), section 33 and Schedule 5 Part 2 set out the legal framework for tenancy changes relevant to this procedure and section 30 and Schedule 5 Part 1 sets out the framework for alterations and compensation for improvements
- The [Housing \(Scotland\) Act 2014](#), includes amendments to the Housing (Scotland) 2001 Act in relation to assignments, successions, and joint tenancies, introducing new residency and notification requirements.
- The [Scottish Government Scottish Secure and Short Scottish Secure Tenancy Guidance](#) further explains the legal framework set out in the Housing (Scotland) Act 2001 and Housing (Scotland) Act 2014.

4. Equalities

- 4.1 We will not unfairly discriminate against any person within the protected characteristic groups as contained within the Equality Act 2010. To ensure equal access to the information contained in this policy for all, we are happy to provide copies in Braille, in larger print, translated into other languages or on tape to you or anybody that you know upon request and where practicable.
- 4.2 WSHA will seek to ensure that tenancies are managed in a manner that is fair to all sections of the community regardless of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.
- 4.3 As with all Association policies and practices, the Association will adhere to Outcome 1 of the Scottish Social Housing Charter (Equalities):
- ‘Social Landlords perform in all aspects of their housing services so that 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’.

5. Consultation

- 5.1 The Tenant Action Group and Tenant Scrutiny Panel were consulted on the proposed changes to this Policy and no further recommendations for changes were received.

6. Monitoring and compliance

- 6.1 This policy will be monitored on a regular basis to ensure that the content remains compliant with legislation and reflects best practice. Audits may take place if commissioned by the Director of Housing & Community Services to ensure there is consistent practice and adoption of the policy principles.

6.2 Period of review

- 6.2.1 Until a new policy is formally adopted this document will remain in force and operational.
- 6.2.2 This policy will be reviewed in accordance with the policy review programme agreed by CMT.
- 6.2.3 If there are significant changes to legislation or regulation or there are found to be deficiencies or failures in this policy, as a result of complaints or findings from any independent organisations, the Director of Housing & Community Services will initiate an immediate review.
- 6.2.4 Where appropriate, key stakeholders such as tenants and interested parties will be consulted as part of any review of this policy.

7. Approval

- 7.1 This policy is approved by the Board of Management of WSHA.

8 Tenancy changes

8.1 Principles

- 8.1.1 Unless required by law, we will only agree to tenancy changes taking place if this is considered to be in our best interests, in the best interests of our tenants and where relevant in the best interests of any new tenant.
- 8.1.2 We will not unreasonably withhold consent to requests for tenancy changes as long as the appropriate criteria are met. Any decision to refuse or accept an application for a tenancy change will be made by the Housing Officer or Team Leader or person of at least equivalent seniority.
- 8.1.3 The Team Leader or Housing Manager also has the discretion to refuse an application for reasons other than those set out specifically in this policy. The key principle to apply when deciding if the application should be refused is whether the refusal is reasonable.
- 8.1.4 Applications for succession, joint tenancies, assignation and sub-letting will normally only be approved where the property has been the applicant's only or principal home, and in some cases for a period of 12 months prior to the date of the request. Requests for tenancies to be passed to persons who do not meet the appropriate residential qualification will be considered on their merits but are unlikely to be approved.
- 8.1.5 Applications for tenancy changes may be refused if they would lead to overcrowding or under-occupation. Any decision on overcrowding will be made with reference to the criteria set out in the Housing (Scotland) Act 1987. Any decision on under-occupation will be made primarily with reference to the Allocations Policy.

- 8.1.6 WSHA will provide applicants with information on the implications on housing benefit, universal credit and / or a referral for welfare rights advice as they relate to requests related to this policy. If a tenant is experiencing difficulties with a tenancy change related to this policy, then WSHA will signpost them to sources of information and advice such as Citizens Advice Scotland.

9. Succession

- 9.1 Succession is the term used when a tenant dies, and the tenancy passes to another household member. The new tenant takes on all the rights and responsibilities of the tenancy.
- 9.2 Level of priority for succession
- 9.2.1 When a tenant dies, the tenancy can be taken by a qualified member of the household. This could be a spouse, civil partner, cohabitee, family member, carer or joint tenant.
- 9.2.2 Any co-habitee, family member or carer applying to succeed the tenancy must have lived in the property as their only or principal home for at least 12 months immediately before the date of the tenant's death to qualify to succeed to the tenancy.
- 9.2.3 The 12-month period cannot begin unless WSHA has been notified of the individual living in the property as their only or principal home. WSHA must have been notified (see 9.2.6 below) by the (deceased) tenant, a joint tenant, or the person who wishes to succeed to the tenancy.
- 9.2.4 The length of time the proposed assignee has been living in the property starts from the date that WSHA are notified that the person is living in the property as their only or principal home.
- 9.2.5 For any spouse, civil partner or joint tenant applying to succeed the tenancy, they must have been residing in the property as their only or principal home at the time of the tenant's death.
- 9.2.6 Verbal notification alone will not be accepted; tenants will have to formally apply for permission before WSHA officially recognises and records a new household member.
- 9.2.7 Priority for the tenancy will be determined in accordance with the succession rights set out in the Housing (Scotland) Act 2001 and Housing (Scotland) Act 2014 as set out below. In all cases the property of the deceased tenant must have been the only or principal home of the qualifying person. For each separate round of succession there are 3 levels of priority.

9.3 First priority

9.3.1 First priority goes to:

- the surviving spouse or civil partner of the tenant, providing the property was their only or principal home at the time of the tenant's death; or
- the tenant's co-habitee of either sex, providing the property has been their only or principal home for at least 12 months before the tenant's death and WSHA were notified of this before the 12 month period began; or
- the surviving joint tenant, providing the property was their only or principal home at the time of the tenant's death.

9.4 Second priority

9.4.1 If nobody qualifies or chooses to succeed from the first priority group, then second priority goes to other members of the tenant's family as long as:

- they are aged at least 16 years at the date of the tenant's death; and
- the property was their only or principal home for at least 12 months before the tenant's death and WSHA were notified of this before the 12 month period began.

9.5 Third priority

9.5.1 If nobody in any of the above categories qualifies or chooses to succeed, then third priority goes to carers as long as:

- they are aged at least 16 years at the date of the tenant's death; and
- the property was their only or principal home 12 months before the tenant's death WSHA were notified of this before the 12 month period began.

9.6 There is no specific definition of carer. The principal test is not the level of care provided but that the individual has given up their only or principal home for the purpose of caring. The intention is to ensure that individuals who give up their homes to care for a tenant, or a member of the tenant's family, are not left homeless by the death of the tenant or other qualifying persons.

9.7 Rounds of succession

9.7.1 There are two rounds of succession, which means that the tenancy can only be inherited twice under the statutory succession framework described above.

9.7.2 Normally, the death of a tenant who had succeeded under a second round of succession, would lead to the termination of the tenancy. Where a tenant dies, and both rounds of succession have passed, the Housing Manager may allow

existing household members to succeed to the tenancy, depending on their needs and circumstances.

- 9.7.3 In the case of joint tenancies, tenancies are not terminated on the death of one of the joint tenants if the remaining tenant or tenants continue to live in the property (this is also referred to as 'survivorship'). Survivorship does count as a round of succession. There is no limit to the number of occasions on which a joint tenancy can be created following a death.

9.8 Adapted properties

- 9.8.1 A person can only inherit a tenancy over a property that has been designed or adapted to suit a person's special needs if they are a qualified person and meet the additional requirement of having special needs such that they require accommodation of the kind provided by the house. Further details around who is eligible to succeed to a specially adapted property are set out in paragraph 5 of schedule 3 to the Housing (Scotland) Act 2001.

- 9.8.2 Any person who would otherwise be qualified to succeed has a right to alternative suitable accommodation. The Housing (Scotland) Act 2001 defines the factors WSHA need to have regard to in making an offer of accommodation. The relevant factors are:

- its proximity to the place of work (including attendance at an educational institution) of the tenant and of members of the tenant's family, compared with the tenant's existing house;
- the extent of the accommodation required by the tenant and the tenant's family;
- the character of the accommodation offered compared to the tenant's existing house;
- if any furniture was provided by the landlord for use under the existing tenancy whether furniture is to be provided for use under the new tenancy which is of a comparable nature in relation to the needs of the tenant and the tenant's family; and
- any special needs of the tenant or the tenant's family.

9.9 More than one qualifying person

- 9.9.1 Where there is more than one qualified person at any level in the hierarchy of succession rights e.g. if there were both a spouse and a joint tenant with first priority, then it is open to the qualifying persons to come to an agreement about which one of them should succeed. If no agreement is reached within 4 weeks of the death of the tenant, or of the date we notified the qualifying persons of their right to succeed to the tenancy, then the Area or Housing Manager or person of at least equivalent seniority will decide who is to succeed.

9.10 Minute of variation

9.10.1 Any tenant succeeding to a tenancy must accept the terms of the tenancy by signing a minute of variation and should be given a copy of the tenancy agreement.

9.11 Arrears and other obligations

9.11.1 Following a succession, the successor does not inherit rent arrears or any other outstanding tenancy related obligations of the original tenant unless the new tenant agrees to take them on.

9.11.2 For survivorship cases where a joint tenant dies, the surviving tenant(s) is/are remaining jointly and severally liable for all rent arrears. Any credit on the account would also be retained by the remaining tenant(s).

10. Tenancies with no successor

10.1 If no-one is qualified to or wants to succeed, the tenancy will end when the tenant dies.

10.2 A person who would have succeeded to the tenancy but cannot because the second round of succession has passed, can continue as a tenant for a period not exceeding six months. This is to provide time for the person concerned to find alternative suitable accommodation. We may in exceptional circumstances consider if it is reasonable to allocate a new tenancy to the person concerned through a management transfer.

10.3 If someone living in the home and who is qualified to succeed chooses not to take on the tenancy, they must give four weeks' notice in writing and leave the property within three months.

10.4 Household members not succeeding to the tenancy will be liable for rent for any period in which they continue to occupy the property, but we will make it clear that no protected tenancy is created by acceptance of these payments.

10.5 Household members who do not qualify to succeed to the property but remain in the property, will be informed that they have no legal entitlement to the tenancy and that failure to vacate the property and remove their belongings will result in court action being taken to recover the property and reclaim loss of income.

10.6 Where there is no successor, the tenancy will be terminated on the date of death and create a new 'executor tenancy.' When a tenant dies any benefit entitlement will stop from the date of death. WSHA recognises that where the deceased has next of kin or personal representatives, they will want a certain amount of time to clear the tenant's belongings etc. WSHA will provide the next of kin or others with information on their rights and responsibilities and an

indication of when we would expect the property to be emptied and keys returned.

- 10.7 In all cases when a tenant dies with no relatives and has left no will, the estate reverts to the Crown. This means that we do not have the right to automatically dispose of items from the estate. **Appendix 1** - Guidance on death of a tenant where there is no will, provides further guidance on these circumstances.

10.8 Rent account credits

- 10.8.1 How any rent paid by the deceased or their estate is dealt with will depend on individual circumstances. The deceased may have been in receipt of benefits and in many cases the new tenant will be the person succeeding to the deceased's estate as well as the tenancy. Where a tenant dies and there is no successor, there may be a small element of pre-paid rent outstanding. We will normally retain any prepaid rent until the property is cleared and keys handed back. Any remaining credit which is Housing Benefit should be returned to the Local Authority. Where it is not Housing Benefit, this is a debt owed to the tenant's estate and arrangements should be made to refund this.

10.9 Rent account arrears

- 10.9.1 When a tenant dies and there is no successor, the executor will be pursued for any arrears the tenant had accrued. Where the executor states there are no funds to cover this, a declaration to this effect must be provided by the executor and the arrears will be written off. Where there is no executor, the arrears will be written off.
- 10.9.2 A period of up to two weeks will normally be allowed for the property to be cleared. Where the time taken is longer than 2 weeks, we may pursue the estate for any arrears accrued. The Team Leader or Housing Manager or person of at least equivalent seniority has the discretion to extend the period allowed to clear the property by a maximum of two further weeks, provided the previous tenant's estate will cover rent loss.
- 10.9.3 Any decision on whether to pursue the executor for arrears will be at the discretion of the Team Leader or Housing Manager or person of at least equivalent seniority.

11. Assignment

- 11.1 Assignment is the term used when a tenancy passes from one tenant to another. The tenancy itself continues on the same basis i.e. the tenancy does not end and neither does a new tenancy start. It is the identity of the tenant that changes. The new tenant takes on all the rights and responsibilities of the tenancy.
- 11.2 Requests for assignment will normally be received when the existing tenant wishes to move away and there are household members who do not wish to

move with them. Requests for assignation may also result from relationship breakdowns to avoid tenancy matters having to be resolved via the courts. In exceptional cases, requests for assignation may be received from tenants who intend to remain in their current home.

11.3 The proposed assignee and the current tenant(s) must have resided in the property as their only or principal home for 12 months before the date a written application for assignation is submitted.

11.3.1 In addition, the proposed assignee must have been living in the property as their only or principal home for at least 12 months before the date the written application is submitted, and the tenant, a joint tenant or the proposed assignee must have notified us of them moving into the house.

11.3.2 The length of time the proposed assignee must have been living in the property starts from the date we are notified that the person is living in the property as their only or principal home.

11.3.3 Verbal notification from the proposed assignee or tenant will not be accepted; tenants will have to formally apply for permission before WSHA officially recognises and records a new household member.

11.4 Applications and consent

11.4.1 Requests to assign a tenancy must be submitted in writing by the tenant and replied to within one month. If the current tenancy is a joint tenancy, then all joint tenants must consent to the assignation and sign any application form or letter. If a decision is not given to the applicant within one month, then the permission is assumed to be given.

11.4.2 We may refuse consent if we have reasonable grounds to do so. The following are possible but not exclusive grounds under which we may refuse an application, including those set out in the Housing (Scotland) Act 2001:

- the notification requirement as described in 11.3.3 has not been satisfied;
- the property has not been the assignee's only or principal home for 12 months prior to application for consent to assign;
- the proposed assignee is not a person to whom WSHA would give reasonable preference when selecting tenants for allocations under section 20 of the Housing Scotland Act 1987 as amended by the Housing (Scotland) Act 2014:
 - people who are homeless or are threatened with homelessness with unmet housing needs,
 - living under unsatisfactory housing conditions with unmet housing needs,
 - a social housing tenant which is under-occupying their current house

- the tenant or assignee has been issued with a Notice of Proceedings for Possession and the notice is still effective;
- an order for recovery possession has already been made on the tenant or assignee;
- the tenant has rent arrears;
- the tenant has breached the terms of their current tenancy, for example through the condition of their property;
- there is an existing Anti-Social Behaviour Order against the tenant, member of the tenant's household, or the assignee;
- the assignation would be to the financial benefit of either party or someone connected to them in some way;
- the assignation would lead to statutory overcrowding;
- the assignation would lead to under-occupation;
- the property has been specially designated or adapted for the benefit of someone with special needs, and there will be no one in the property after the assignation who would benefit from the adaptations; or we have plans to carry out work to the property or building which would affect the accommodation.

11.5 Minute of variation

11.5.1 Any tenant taking over a tenancy through assignation must accept the terms of the tenancy by signing a minute of variation. The new assignee should be given a copy of the tenancy agreement.

11.6 Arrears and other obligations

11.6.1 Following an assignation, the assignee does not inherit rent arrears or any other outstanding tenancy related obligations of the original tenant. The proposed assignee can agree to take on the arrears if this is discussed and agreed with the current lead tenant.

11.7 Any credit on the account would be allocated to the former tenant.

12. Lodgers & Sub-letting

12.1 Lodger is the term normally used to describe a person who pays a fee in return for a room in a tenant's house. For many tenants, for example those who are affected by the under occupancy deduction, taking in a lodger is an important way to help meet their housing costs.

12.2 Subletting is the term normally used to describe a situation where a tenant moves out of their home and rents out the whole of their home to a subtenant. Subletting a property can be a valuable way for tenants to retain a secure tenancy when they have a temporary change in circumstances, such as short term employment in another area.

- 12.3 A tenant may also give a person the right to occupy their property or part of their property without charging a fee. In this situation, the principles applying to applications to sublet and to take in a lodger will not apply.
- 12.4 Family members are not normally considered to be lodgers. Tenants must however inform WSHA if a family member or other household member is moving into the property.
- 12.5 Applications and consent
- 12.5.1 Requests to take in a lodger or to sublet must be submitted in writing by the tenant and replied to in writing within one month. The tenant must complete an application form. The Housing (Scotland) Act 2014 states that any written application must include:
- the details of the proposed changes including who the tenant wants to sub-let to or take as a lodger; and
 - the amount of rent and any other payments (including a deposit) the tenant proposes charging (if any) to the sub-letter or lodger; and the date and the tenancy/occupancy terms on which the tenant wants the sub-letting or lodging arrangement to take place. As a condition of us giving permission, WSHA will require that the tenant provides the lodger(s) and sub-lessees with a written agreement and that the terms of this agreement must be deemed acceptable to WSHA.
- 12.5.2 If a tenant wishes to sublet all or part of the house, the house must have been the tenant's only or principal home for at least 12 months immediately before the date that the written request to sublet the house to someone else is received by WSHA.
- 12.5.3 If the person seeking approval for a sublet was not the tenant throughout that period, the house must have been their only or principal home during those 12 months and the tenant of the house at the time the notice was given must have told WSHA that they were living there as their only or principal home.
- 12.5.4 The length of time that the person who wants to sublet all or part of the house has been living in the house starts from the date WSHA are notified that the person is living in the house as their only or principal home. Notice can be given before 1 November 2019 and that time will count towards the length of time the person has been living at the house.
- 12.5.5 The Housing (Scotland) Act 2001 Schedule 5 Part 2 sets out that if consent or refusal is not advised in writing within one month, then it is taken that the landlord has consented to the application.
- 12.5.6 WSHA may refuse consent if there are reasonable grounds to do so. The following are grounds under which an application for taking in a lodger may be refused, including those set out in the Housing (Scotland) Act 2001:

- the tenant or lodger has been issued with a Notice of Proceedings for Possession and the notice is still effective;
- an order for recovery of possession has already been made on the tenant or lodger;
- the tenant has rent arrears or other tenancy related debt (see section 8.4 below);
- the lodger has rent arrears or other tenancy related debt owed to WSHA;
- the tenant has breached the terms of their current tenancy, for example through the condition of their property;
- there is an existing Anti-Social Behaviour Order against the tenant, member of the tenant's household, or the lodger;
- the rent and/or deposit to be charged to the lodger is not reasonable;
- the lodger does not have the necessary support in place;
- the application would lead to statutory overcrowding;
- WSHA has plans to carry out work to the house or building which would affect the accommodation;
- other reason which the member of staff making a decision on the application considers reasonable.

12.5.7 The following are grounds under which WSHA may refuse an application for subletting, including those set out in the Housing (Scotland) Act 2001 and the Housing (Scotland) Act 2014:

- the tenant is not planning to use the property as their only or principal home in the future;
- the tenant or subtenant has been issued with a Notice of Proceedings for Possession and the notice is still effective;
- an order for recovery possession has already been made on the tenant or subtenant;
- the tenant has rent arrears or other tenancy related debt (see section 12.7 below);
- the subtenant has tenancy related debt owed to WSHA;
- the tenant has breached the terms of their current tenancy, for example through the condition of their property;
- there is an existing Anti-Social Behaviour Order against the tenant, member of the tenant's household, or the lodger;
- the rent and /or deposit to be charged to the subtenant is not reasonable;
- the subtenant does not have the necessary support in place;
- the application would lead to statutory overcrowding;
- under-occupation would be exacerbated by, or result from, the application;
- WSHA has plans to carry out work to the house or building which would affect the accommodation;
- any other reason which the member of staff making a decision on the application considers reasonable.
- WSHA has not received notification that the relevant person has been living in the house as their only or principal home;
- The tenant making the application has not been living in the house for the required 12-month period;

- The duration of the sub-let exceeds six months.

12.5.8 Any decision on overcrowding will be made with reference to the criteria set out in the Housing (Scotland) Act 1987 and the Housing (Scotland) Act 2014. Any decision on under-occupation will be made primarily with reference to the Allocations Policy.

12.5.9 The rent WSHA charge the tenant should be used as a guide of what is reasonable and the proposed charge to the subtenant should not greatly exceed this amount. Similarly, the deposit should not greatly exceed one month's rent for the house. Housing Benefit guidelines on Indicative Rent Levels may also be considered when determining what a reasonable rent is. The following factors will also be taken into consideration when deciding if the rent charged to a lodger is reasonable:

- the extent of the accommodation being made available for the lodger's exclusive use;
- the amenities that will be shared with other members of the household;
- arrangements for the payment of utilities such as gas, electricity, phone etc; and
- the services being provided as part of the lodging or sub-tenancy agreement.

12.5.10 Permission to have a lodger or to sublet can be revoked if it is reasonable to do so, for example if there has been a breach of tenancy conditions. If permission is revoked WSHA will write to inform the tenant and lodger/subtenant of the reason and set out the right for the tenant to appeal against the decision.

12.6 Rent arrears

12.6.1 For tenants, for example those affected by the under occupancy charge, taking in a lodger can be a good option to reduce the pressure from housing costs on the household budget.

12.6.2 Sections 12.5.6 and 12.5.7 sets out that WSHA may refuse an application where the tenant, subtenant or lodger owes rent arrears or other tenancy related debt. However, in certain circumstances WSHA may approve an application, particularly if the new arrangement is likely to improve the prospects of the parties involved reducing their arrears or tenancy related debt.

12.7 Conditions of consent

12.7.1 Any approval of an application to take in a lodger or to sublet will be given on the following conditions:

- the lodger or subtenant is registered at the address for the purposes of Council Tax;

- all benefit applications for tenants, lodgers and subtenants are amended to reflect the new living arrangements; and
- permission is given only for the proposed lodgers or subtenants named on the application form.

12.7.2 In cases where six months has passed for subtenants occupying an entire property, a decision will be made on whether or not to extend permission, and further review carried out every six months thereafter. WSHA will not normally allow a sub-tenancy to continue for longer than one year, as the tenant may be in breach of their tenancy for not occupying the house as their only or principal home.

12.7.3 The tenants will be wholly responsible for any breach caused by the person living at the property and is expected to take appropriate action to prevent any breaches of tenancy occurring.

12.7.4 Where WSHA has given consent for a tenant to take in a lodger or to sublet a property, the tenant must notify of any proposed increase in the rent payable by the subtenant or lodger. WSHA may choose to object to the increase and refuse permission for the tenant to continue under the revised terms.

12.8 Unapproved lodgers or subletting

12.8.1 Where WSHA discovers that a tenant has taken in a lodger or sublet a property without consent, or if the arrangements continue once permission has been revoked, the following options will be considered:

- regulate the position by completing procedures retrospectively; or
- insist that the sub tenant (s) or lodger (s) moves out; and/or
- take action against the tenant(s) for breach of tenancy conditions.

13. Sole to joint tenancy changes

13.1 Any individual has a right to become a joint tenant, as long as the property is to be their only or principal home. The property must have been the only or principal home of the proposed joint tenant for at least 12 months immediately before the date a written request is submitted and the tenant, a joint tenant or the person who wishes to become a joint tenant must have notified WSHA of them moving into the house.

13.1.1 The proposed joint tenant, and any existing joint tenants must apply to WSHA in writing along with the tenant. Verbal notification alone will not be accepted.

13.1.2 The length of time the proposed joint tenant must have been living in the property starts from the date WSHA are notified that the person is living in the property as their only or principal home. Tenants will have to formally apply for permission before WSHA officially recognises and records a new household member.

13.1.3 The residency and notification requirement applies to spouses, civil partners and cohabitants.

13.2 There is no limit on the number of occasions on which a joint tenancy can be created. Joint tenants each have exactly the same rights and obligations as each other.

13.3 Joint waiting list applicants, married couples, and co-habiting couples will normally be offered a joint tenancy when offered their first tenancy.

13.4 There is no limit to the number of joint tenants, unless this would breach the maximum number of occupants allowed in the property.

13.5 Applications and consent

13.5.1 The tenant and prospective joint tenant(s) must both apply in writing if they wish to request a joint tenancy. We will grant the joint tenancy unless there are reasonable grounds for not doing so. The following are possible but not exclusive grounds under which we may refuse an application:

- the proposed joint tenant has not lived in the property as their only or principal home for 12 months, starting from the date of notification;
- WSHA have not been notified that the proposed joint tenant has been living in the property for 12 months prior to the joint tenancy application date;
- the tenant or applicant has been issued with a Notice of Proceedings for Possession and the notice is still effective;
- an order for recovery of possession of the property has been made against the tenant or applicant;
- creation of the joint tenancy will result in statutory overcrowding;
- the tenancy will not be used by the proposed joint tenant as their only and principal home; or
- the request would be to the financial benefit of either party or someone connected to them in some way;
- there is an existing Anti-Social Behaviour Order against either party;
- if the tenant has arrears and has not adhered to an arrangement for a minimum of 3 months.
- proposed joint tenant does not have an immigration status of leave to remain granted.

13.5.2 If a joint tenant breaks the condition that the property will be used as their only or principal home, then we may take action to end their interest in the tenancy by following our Abandonment Policy.

13.6 Minute of variation

12.6.1 Both the existing tenant and the new joint tenant must accept the new terms of the tenancy by signing a minute of variation.

14. Joint to sole tenancy changes

- 14.1 If one joint tenant wants to bring their interest in a joint tenancy to an end, they can do so by giving four weeks' written notice to the landlord and to each of the other joint tenants.
- 14.2 Under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, any joint tenant relinquishing a tenancy must also give notice to any 'non-entitled spouse' i.e. wife, husband or civil partner who is not a joint tenant. This would apply where the non-entitled spouse was not a joint tenant. An example might be where two sisters were joint tenants, but one sister had a partner who was not a joint tenant.
- 14.3 When the four week notice period has expired, the joint tenant who has given notice will be freed of his or her right and obligations under the SST. It is not possible for a joint tenant to terminate the rights of any other joint tenant.
- 14.4 Any remaining joint tenant(s) will be responsible for any outstanding obligations of the tenancy, including rent arrears and any other tenancy related debts.

14.5 Mutual Exchanges

- 14.6 The Association is committed to enabling tenants to exchange houses, wherever possible, in order to satisfy their housing need, to promote mobility and to make the best use of its housing stock. This aim is in accordance with the Housing (Scotland) Act 2001 which governs mutual exchanges and states that a landlord must not unreasonably refuse permission for the mutual exchange of a house.
- 14.7 In general, mutual exchanges will be allowed subject to the following:
- 14.8 the exchange must not result in overcrowding of the properties being exchanged. Our Allocations Policy will be used to assess this.
- 14.9 the exchange must not result in the properties being under-occupied by more than one bedroom.
- 14.10 tenants must have clear rent accounts at the time of the mutual exchange and not owe any other debts to their landlord, unless they have adhered to an agreed and affordable repayment arrangement for a minimum of three consecutive months.
- 14.11 neither tenant has been issued with a current Notice of Proceedings for Possession by their landlord under grounds 1 to 7, Schedule 2 of the Housing (Scotland) Act 2001 or similar grounds if the applicant is from another part of the United Kingdom.
- 14.12 neither tenant has had an Order for Recovery of Possession granted against them by their current landlord.

- 14.13 neither of the properties were provided by the landlord in connection with the tenant's employment, for example, what is known as tied accommodation.
- 14.14 neither of the properties have been designed or adapted for a person whose special needs require this type of accommodation and if the exchange were to proceed there would no longer be a person with such special needs occupying the property.
- 14.15 tenants who wish to exchange must have a Scottish Secure Tenancy.

15. Tenancy Visits

15.1 General information on visits

- 15.1.1 Tenancy visits can happen at any time during the tenancy and can be triggered by events that happen such as antisocial behaviour (ASB), rent arrears, repair issues, etc.

15.2 Timing and frequency of visits

- 15.2.1 When a tenancy begins, a judgement will be made on whether a settling in home visit or telephone appointment is required. Factors to consider in this judgement will include pre-tenancy history and whether any support needs have been identified during pre-allocation.
- 15.2.2 Periodic home visits will also be carried out for all tenancies at a frequency to be determined by the Director of Housing & Community Services.

15.3 Purpose of visits

- 15.3.1 Home visits are important not only to address the issues which have triggered the visit but also to explore other issues that the tenant may be experiencing. When undertaking any visit to a tenant's home the following should be explored, wherever possible:
- ensure that the tenancy is being managed and the property maintained effectively;
 - establish if there are any issues regarding the rent account and refer to the Welfare Rights Officer where required;
 - identify any unreported ASB issues;
 - identify any assistance needed to sustain the tenancy and signpost to appropriate services/teams; and address any other issues that may be pertinent to the tenancy.

16. Tenants serving a prison sentence

16.1 General information on tenants serving a prison sentence

- 16.1.1 For the purpose of this policy, a long-term prison sentence will be defined as any greater than 26 weeks and a temporary absence from the property is classed as anything less than 26 weeks.
- 16.1.2 If a tenant is held on remand then Housing Benefit will normally be paid for a maximum of 52 weeks. Under Universal Credit, the housing cost element will only be paid for a maximum of 26 weeks, for both sentenced prisoners and those held on remand. Payments will only continue to be made if the total length of the absence is not expected to exceed 26 weeks.
- 16.1.3 Where there is a joint tenant, WSHA will provide both tenants with information and guidance where required and ensure that the interests of both tenants are maintained.
- 16.1.4 In all cases contact will be made with the Scottish Prison Service to ascertain the prisoner's whereabouts and length of sentence.
- 16.1.5 WSHA must make best use of limited housing stock and will therefore seek to terminate tenancies on properties that are unoccupied for long periods of time. However, WSHA is aware that the property may be a significant factor in the long-term rehabilitation of the offender and will take into account the needs of the individual tenants and the views of the Scottish Prison Service and courts.

17. Absences for less than 26 weeks

- 17.1 For absences expected to be for less than 26 weeks, staff must carry out checks and investigations at regular intervals, to ascertain that:

- the rent is being paid;
- the tenancy continues to be conducted satisfactorily; and
- the tenant has the intention to return.

- 17.2 Providing that the above criteria are met no further action will be taken. However, if this is not the case, WSHA will seek to terminate the tenancy.

18. Absences for more than 26 weeks

- 18.1 For absences expected to be for more than 26 weeks, staff should consider whether to allow the tenancy to continue or to take steps to terminate the tenancy. In addition to the checks detailed above, staff should also establish:

- how long the property is expected to remain empty;
- whether an appropriate person to take care of the tenancy has been appointed;
- whether a sustainable rent payment arrangement has been made; and
- whether the return of the tenant to the area is likely to impact on ASB levels or create other problems for the local community or individuals.

- 18.2 If the tenancy is not being conducted appropriately then contact will be made with the tenant at the prison. The tenant will be given the opportunity to

terminate the tenancy. If WSHA decides to seek to end the tenancy through the courts, then correspondence will be sent to the prison and copied to the Probation Officer.

- 18.3 Absences for greater than 26 weeks may include circumstances where the tenant has been released but bail or remand conditions mean they are not allowed to return to their tenancy.

19. Permissions

19.1 General information on permissions

- 19.1.1 In accordance with the Tenancy Agreement, tenants may request permission from WSHA to carry out various activities, such as running a business from home or making alterations to a property.
- 19.1.2 All requests will be considered in the context of the conditions of tenancy, the potential impact of the proposal on the property and the potential for disruption to the neighbourhood.
- 19.1.3 Any request which would result in an immediate breach of the tenancy agreement will be refused. It should be noted that in all cases permission may be revoked, and tenants should be made aware of this.
- 19.1.4 All permissions may be withdrawn if the activity which we have given permission for causes tenancy breach or disruption to the neighbourhood.
- 19.1.5 Certain requests do not need our permission and are merely required for information purposes i.e. partners or children moving into the household. If a change in household composition results in a clash of lifestyles between neighbours WSHA will manage this by reference to the relevant tenancy agreement and Antisocial Behaviour Policy, including encouraging tenants to speak to each other to resolve the dispute amicably. Where it is not possible to resolve the issue using the remedies associated with tenancy management and antisocial behaviour options, WSHA will consider a management transfer for one of the parties involved in line with the Allocations Policy. This will only be used as a last resort, where all other options have been exhausted, and must be approved in accordance with the Allocations Policy.
- ### **19.2 Permission for improvements**
- 19.2.1 Requests which are likely to have an impact on the fabric of the building, such as requests to install showers, replace kitchen units or fit cat flaps, will be referred to the Property Team for consideration.
- 19.2.2 Tenants must apply in writing and have written permission before carrying out any alterations or improvements. We must not unreasonably withhold our consent, but we can set any reasonable conditions with respect to the work, including any standards that the work must meet. Permission may be withdrawn if conditions are not adhered to.

19.2.3 The Housing (Scotland) Act 2001 sets out that if we do not provide the tenant with an outcome in writing within one month of the request, then we will be deemed to have agreed to the application.

19.2.4 Depending on the circumstances, tenants are entitled to compensation for improvements at the end of the tenancy where they have received written permission from WSHA. Further guidance on requests for improvements and entitlement to compensation in this regard can be found in the Repairs and Maintenance Policy and also the Compensation Policy.

19.3 Pets in properties

19.3.1 WSHA recognises that many of its tenants wish to keep pets and domestic animals. It is also understood that if domestic pets are not cared for, or controlled appropriately, they can cause nuisance and sometimes a hazard to other tenants and visitors to the property.

19.3.2 Tenants must request written permission from WSHA, prior to obtaining any type of pet. Tenants with assistance animals do not need to seek permission; however, it is good practice for staff to be aware of assistance animals at the property.

19.3.3 Applications will be considered on an individual basis and will take into account factors including:

- the size, type and suitability of the property;
- the type, size, and number of animal(s);
- the type and size of the proposed pet accommodation;
- the availability of a garden or proximity of other exercise and toileting area;
- history of previous or current pet ownership (where known);
- availability of the tenant to ensure the welfare of the animal(s);
- guidance from professionals such as vets and animal charities; and
- any relevant property restrictions.

19.3.4 Tenants are responsible for the behaviour of pets or animals occupying or visiting the property and in communal areas, as stated within the terms and conditions of their tenancy agreement.

19.3.5 Tenants must not cause, permit, or allow any animals or pets they own or allow to visit the property to:

- cause a nuisance annoyance or damage;
- interfere with the reasonable peace and comfort of others;
- disturb, frighten, or intimidate; and/or
- cause injury or offence to persons or premises in the locality of the property or any of WSHA's tenants, agents, employees or contractors or anyone acting on behalf of WSHA.

19.3.6 WSHA will notify the appropriate authorities if it is found that a tenant has neglected an animal's welfare, mistreated, or caused unnecessary suffering. In such cases, permission to keep a pet will be withdrawn.

20. Tenancy Fraud

20.1 Tenancy fraud generally falls into two categories:

- Not using the property as the "sole or principal home."
- Attempting to obtain property using false information and/or documents that do not genuinely represent the applicant's actual circumstances; including applying for housing on our waiting list, succeeding to, assigning or exchanging the tenancy without the landlord's permission.

20.2 Examples of not using the property as the "sole or principal" home include:

- The registered tenant uses the property as a second property. They may have a legal interest in other property (or properties).
- The registered tenant lives at a different address, usually with a partner or family.
- The property is kept in reserve for future safeguard should the registered tenant's personal circumstances change.
- The registered tenant lives at a different address and uses the property as a base for claiming benefits or for criminal activity.
- The registered tenant allows someone else to live at the property and that person pays "rent" to the registered tenant or directly to the Association but the Association is unaware that the person paying rent is not the registered tenant.

20.3 Examples of attempting to obtain a property using false information and/or documents include:

- **Applying to our waiting list** - misrepresentation of circumstances in a housing application form, for example not declaring a legal interest in another property or responsibility for dependents; Providing false identification, including using false documents belonging to another individual; Withholding information such as former tenant rent arrears or eviction from a previous property; Making false statements to increase priority on the waiting list.
- **Succession to tenancy** - in certain circumstances, individuals have the legal right to succeed to a tenancy when the tenant dies, however succession requires landlord consent. In some cases, the unauthorised occupier may believe they have the legal right to succeed to the tenancy. In other cases they may have provided inaccurate information regarding their relationship with the previous tenant or how long they have lived at the property.

- **Assigning the tenancy** - tenants have the legal right to assign their tenancy to another individual, subject to specific criteria, and landlord permission is required. In some cases of fraudulent assignation, the unauthorised occupant may believe the tenancy has been legally assigned to them giving them a legal right to stay in the property.
- **Exchanging the tenancy** - tenants have the legal right to exchange their tenancy (mutual exchange) with any other Scottish Secure Tenant of a Council or Registered Social Landlord. However, this is subject to certain criteria and requires the permission of both landlords. Fraud can occur where either tenant provides false information about their circumstances or the parties exchange properties without written permission.
- **Subletting the property** - tenants have the legal right to sublet all or part of their property to another person subject to certain criteria and with the landlord's permission. Fraud can occur where the tenant claims to be living in the property, but instead lets it out without landlord's consent. This may also include the unauthorised sub-tenant paying the tenant or WSHA a rent. In some cases, the sub-tenant may be unaware that the sublet has not been authorised by the landlord and that they are unauthorised occupants.

20.4 **Preventing and detecting Tenancy Fraud**

20.5 The most effective way of tackling tenancy fraud is to prevent it taking place in the first place. To achieve this, WSHA will apply rigorous prevention and detection procedures at the application assessment and lettings stage of the allocation process. This approach is also applied to assignation, exchange, sublet or succession and throughout the duration of the tenancy.

20.6 **Taking Action against Tenancy Fraud**

20.7 Where tenancy fraud has been proven, WSHA will consider the following actions:

- Seek to recover possession of the property.
- Consider legal action against perpetrators of tenancy fraud.
- Where the unauthorised occupants of the property have a housing need, they will be assisted to apply for social housing and referred to the relevant Council who will provide advice and where appropriate temporary accommodation under the Homelessness etc. (Scotland) Act 2003.
- Consider applying penalties against households who have deliberately committed tenancy fraud such as applying suspensions under WSHA Housing Allocations Policy.

21. Appeals

- 21.1 When writing to a tenant letting them know the outcome of their application, we will provide them with reasons if the request has been refused.
- 21.2 If the tenant is still dissatisfied after the outcome of the appeal, then they may make a complaint which will be dealt with under our complaints handling procedure.
- 21.3 The applicant is entitled to appeal to court by summary application on decisions relating to assignation, sub-letting, lodgers and permission for improvement. The court may consider any refusal to be unreasonable and direct us to consent to the application.

Appendix 1 Guidance on the death of a tenant where there is no will

Property

Where there is no will, all furniture and personal effects left in the property normally pass to the next of kin. If the next of kin does not contact the office, efforts must be made to find a next of kin so that the legal situation can be established. This can be done in the following ways:

- Refer to the house file (especially the original application form)
- Write to social services/GP
- Ask neighbours
- Look through personal effects.

Where there is next of kin

If the next of kin agrees to take responsibility for the estate, they must apply to be appointed executor. They have the power to deal with any property left behind by the deceased tenant. In practice, if you are sure that there is no relative with a claim on the tenancy, the tenancy will terminate.

Where there is one, the next of kin should be asked to clear the property as quickly as possible.

If the next of kin is unwilling or unable to take responsibility for the estate, they should be advised to take legal advice. They should be informed that the Queen's and Lords Treasurer's Remembrancer (QLTR) will be contacted, and any personal effects disposed of on the instructions received and no further reference will be made to the next of kin.

If there is no next of kin, the estate vests in the Crown. The death should be reported immediately to the National Ultimus Haeres Unit of the QLTR. The contact details for the National Ultimus Haeres Unit are:

National Ultimus Haeres Unit
Procurator Fiscals Office
Ballater Street Glasgow G5 9PS

Telephone number - 0844 561 4846

Fax number - 0844 561 4839

Email - NationalUltimusHaeresUnit@copfs.gsi.gov.uk

Information can also be found at <http://qltr.gov.uk/>

Entering the premises

If WSHA receives information that the tenant has died with no next of kin and intestate and there is no access to keys to the property, the locks to the premises should be changed, with two members of staff present (for example, Retirement

Assistant, designated officer etc.). The key should be kept securely at the local office (for example, in a safe).

Searching the Premises

The property must be searched to:

- locate a Will or evidence that such a document may exist elsewhere;
- locate any evidence of the existence of living relatives or close friends;
- make a full inventory of furniture and personal effects;
- collect together all personal papers, especially bank or building society books, savings books, premium bonds etc.; and/or
- collect any items that may be of value, for example, jewellery and money.

Local authorities have a legal obligation to organise and pay for the funeral of a person who has no next-of-kin. In order to establish that there is no-one else to take on the responsibility they may be willing to undertake the initial search of the premises. The Council should be contacted as soon as the situation is known to see whether they will do this. After the Council Officer has completed the search, two members of staff should make an inventory.

Dealing with cash

The Council Officer will give advice if there is a small amount of cash (less than £50). It should be kept securely in the office safe, pending a decision as to what should be done with it.

If the amount exceeds £50, the QLTR should be approached. They will probably advise that a separate bank account be set up, or that the amounts be paid into any accounts of the deceased tenant.

Any items removed should be noted and receipted by both members of staff.

Removal of furniture

Compile a full inventory of furniture and personal effects. These cannot be removed until authorised by the QLTR. These should be stored for a period of at least three months. The designated officer must obtain the Housing Manager's approval prior to disposal of the furniture. Estimates for income/cost from removal should be obtained in writing from two reputable firms. Any profit should be put in accounts as advised by the QLTR. Any costs, for example, storage fees can be charged to the estate, if any.

Administration in sheltered schemes

Throughout the process the Housing Officer will be responsible for all actions; when the death of a tenant occurs on a scheme with a Retirement Assistant, residential or non-residential, that officer will report to and liaise with the Housing Officer.

Funerals

Where the tenant dies outside hospital and there is no next of kin, the funeral is arranged by an officer of the council, often from social services or Environmental Health department. Where the tenant dies in hospital, the hospital Social Worker will arrange the funeral.

Where there is an executor, they will be responsible for funeral arrangements - this must be the first thing paid out of the estate. They should be advised to check the cost before proceeding, as the local authority will not cover money already spent.