



**Drumchapel
Housing**
Co-operative Limited

Tenancy Changes Policy

Approved by the Board March 2021
Next Review Date March 2024

1. INTRODUCTION

- 1.1 This policy aims to address the requirements of legislation in relation to Scottish Secure Tenancies and to comply with Regulatory Standards and Regulatory Requirements.
- 1.2 Drumchapel Housing Co-operative Limited (DHC) will aim to ensure that in the implementation of this policy, no individual or group is treated unfairly or discriminated against on the grounds of race, colour, culture, ethnic or national origin, religion, gender, age, disability, sexual orientation, family circumstances or marital status.

2. POLICY OBJECTIVES

- 2.1 The purpose of this policy is to outline DHC approach to the following:
 - a) the use of tenancy agreements
 - b) the use of joint and sole tenancies
 - c) succession to tenancy
 - d) abandoned tenancies
 - e) mutual exchanges
 - f) assignation to tenancy
 - g) voluntary changes to tenancy
 - h) instructions to change tenancies under the Matrimonial Homes (Scotland) Act 1981

Legislation:

Housing (Scotland) Act 2001
Matrimonial Homes (Family Protection) (Scotland) Act 1981
General Data Protection Regulations 2018
Freedom of Information Scotland Act
Human Rights Act 1998
Disability Discrimination Act 1995
Sex Discrimination Act 1975
Housing Scotland Act 2014

3. USE OF TENANCY AGREEMENTS

- 3.1 In most circumstances, DHC will offer all tenants a Model Scottish Secure Tenancy (SST) - a tenancy as defined by section 11 of the Housing (Scotland) Act 2001, however in some circumstances, we may be offering an Occupancy Agreement (OA) or Short Secure Tenancy Agreement (SSST).
- 3.2 The Housing (Scotland) Act 2014 introduced the option to convert a SST to a SSST in appropriate circumstances, DHC will consider offering SSST in the following circumstances:

- a) where a tenant has been evicted from a previous tenancy with DHC or with a previous landlord; or
 - b) in response to a request by another landlord or partner agency to provide short term emergency accommodation; or
 - c) to homeowners where the home is to be let on a temporary basis pending the making of arrangements in relation a tenantable property owned by the person to allow their housing needs to be met
- 3.3 In the case of 3.2(a) above, the Short Scottish Secure Tenancy would be converted to a Scottish Secure Tenancy provided the tenant, if evicted for rent arrears, had repaid the debt, or, if evicted for breach of any other clause in the tenancy agreement, had demonstrated that such breach was unlikely to be repeated.
- 3.4 DHC can convert a Scottish Secure Tenancy to a Short Scottish Secure Tenancy by service a notice on the tenant in terms of Section 35 of the Housing (Scotland) Act 2001 where there has been an anti-social behaviour order or anti-social behaviour in the three years before the notice is served. The tenancy will convert back to an SST unless proper notice is served on the tenancy to end.
- 3.5 DHC will also consider offering Occupancy Agreements to the occupants of multiple occupation supported accommodation in partnership with other support agencies in providing support.
- 3.6 The Co-operative, by virtue of Fully Mutual Status, does not offer the Right to Buy or the transfer of preserved Right to Buy which was abolished in the Housing (Scotland) Act 2014. New Tenants are advised prior to signing the tenancy agreement and at the sign-up interview.

4. **JOINT AND SOLE TENANCIES**

- 4.1 If a tenant wants to add a joint tenant to their tenancy agreement, this needs our consent as the landlord. Section 12(1) of the 2014 Act made the following changes:
- the proposed joint tenant must have lived at the property as their only or principal home for the **12 months before** they apply to become a joint tenant; and
 - the 12-month period cannot begin unless DHC have been told that the person is living in the property as their only or principal home. DHC must have been told that by the tenant, a joint tenant, or the person who wishes to become a joint tenant.
- 4.2 DHC will not insist on joint tenancies at the start of a new tenancy, this decision will be that of the tenant and will normally be determined by the prospective tenant's details on their application form. All couples or partners will have the

options provided and they will choose if they require a joint tenancy agreement with single applicants being offered sole tenancies.

- 4.3 In the case of joint applicants, their joint and several liability under the tenancy agreement will be explained.
- 4.4 Termination of a joint tenancy can bring the joint tenants' tenancy to an end by giving the Co-operative 4 weeks-notice and to the other joint tenant as noted at 6.9 of the SST. The tenancy will not end, and the Co-operative will then notify all parties to the changes in the joint tenancy.
- 4.5 If a joint tenancy wants to change to sole tenancy, they must make this request in writing to the Co-operative. In these circumstances the joint tenants' agreement will be necessary.
- 4.6 If a joint tenant abandons the tenancy and the other joint tenant remains in the property, the Co-operative must serve on the abandoned joint tenant a Notice of Abandonment in order to bring the abandoning joint tenant's interest in the house to an end as laid out in 6.8 of the SST.

5. **SUCCESSION TO TENANCY**

- 5.1 The 2014 Act changed some of the rules around when certain people can succeed to (take over) a Scottish Secure Tenancy on the death of the tenant. To ensure rights to succession are protected, tenants must have told DHC that the person wishing to succeed to a tenancy has moved into the property at the time they do so. All applicants for succession must be a least 16 years old.
- 5.2 **Unmarried Partners;** under Section 13(a) and 13(d) of the 2014 Act made changes to the rules on succession for unmarried partners:
 - the house must have been the unmarried partner's only or principal home for 12 months before they qualify to succeed to the tenancy; and
 - the 12-month period cannot begin unless we have been told that the individual is living in the property as their only or principal home. We must have been told that by you, a joint tenant, or the person who wishes to succeed to the tenancy.
- 5.3.1 **Family Members;** Section 13(b) and 13(d) of the 2014 Act made changes to the rules on succession for family members:
 - the house must have been the family member's only or principal home for 12 months before they qualify to succeed to the tenancy, and
 - the 12-month period cannot begin unless DHC have been told that the family member is living in the property as their only or principal home. DHC must have been told that by the Tenant, a joint tenant, or the person who wishes to succeed to the tenancy.

5.4 Carers; Section 13(c) and 13(d) of the 2014 Act make changes to the rules on succession for carers:

- the house must have been the carer's only or principal home for 12 months before they qualify to succeed to the tenancy; and
- the 12-month period cannot begin unless we have been told that the carer is living in the property as their only or principal home. We must have been told that by the tenants, a joint tenant, or the carer.

5.5 The tenancy can only be inherited twice under the provisions noted above. If the tenancy has already been inherited twice, the third death will normally end the tenancy. This will not happen if there is a surviving joint tenant whose Scottish secure tenancy will continue. However, if there is still a person in the house who would otherwise qualify to inherit the tenancy under the above paragraphs, the tenancy will continue for up to 6 months after the last death. The tenancy will not be a Scottish secure tenancy for that period and may be offered a Short Scottish Secure Tenancy by the Co-operative to enable the qualified person to continue to occupy the house for the period of six months. The person is liable to pay rent that becomes due after the tenant's death for the rental period in which they occupy the house.

5.6 All claims to succeed to a tenancy must be made in writing within four weeks of the tenant's death with the qualifying person must also apply for membership and be accepted as a member of the Co-operative within a four week period of the tenant's death or notification of right to succeed. If the qualifying person fails to do so or the Co-operative refuses the application for membership, the person will be treated as having declined the tenancy at the time of the tenant's death.

The tenancy shall not be capable of being bequeathed, or willed, on the death of the tenant or successor.

5.7 Succession rights for supported accommodation, designed or specially adapted for occupation by a person whose special needs require accommodation of the kind provided by the house are restricted to spouse, co-habitee, or same sex partner and joint tenants only

5.8 A qualified person who is entitled to succession to tenancy may decline the tenancy by giving the Co-operative notice in writing within 4 weeks of the tenant's death.

5.9 Where there is a qualified person and that person declines the tenancy, the tenancy shall pass to any other qualified person in the order of succession rights as outlined in the SST Part 7.7. They must vacate the house within 3 months of the date of the notice declining the tenancy. The person is liable to pay rent that becomes due after the tenant's death for the rental period in which they occupy the house.

5.10 Where an applicant does not qualify for succession to the tenancy, written notification will be issued to both the applicant and the next of kin if applicable,

detailing: -

- the reason they do not qualify
- tenancy end date
- advising that the house is cleared of furniture and effects within 14 days or with the prior agreement of the Co-operative

In the circumstances where there is doubt as to whether the successor qualifies or not, the onus will be on the successor to establish proof. The Co-operative will make every effort to establish entitlement to tenancy by direct contact with relevant external agencies.

6 ABANDONED TENANCIES

- 6.1 If DHC have reasonable grounds for believing that the tenancy has been abandoned, notice will be served giving at least 4 weeks' notice that we believe that the tenancy has been abandoned. If, at the end of that period, we have not had any response to the first notice, we will serve a second notice to end the tenancy. Tenants have the right to make application to the Sheriff against repossession within six months. DHC will secure the safe custody and delivery any property which is found in the house and may make a charge for this and to dispose of any property unless arrangements for its delivery within a given period are made.

7. MUTUAL EXCHANGE

- 7.1 A mutual exchange takes place where two or more tenants agree to exchange houses with each other. The Co-operative permits mutual exchanges between its own tenants and tenants of other RSL's subject to certain terms and conditions.

A mutual exchange can:

- assist tenant's mobility
- encourage the most effective and efficient use of the Co-operative's stock
- ensure equal access to mobility opportunities for tenants
- encourage and assist positively to the demand for moves within the social rented sector

7.2 MUTUAL EXCHANGE CRITERIA

The Co-operative may permit mutual exchanges subject to the following terms

and conditions:

- 7.3 The tenant(s) have been resident in their current properties for a minimum of **three years**, unless they have been required to move by the Co-operative.
- 7.4 Agreement to the exchange must have full written consent and approval of the appropriate landlords before taking place.
- 7.5 Any incoming tenant to the Co-operative through the mutual exchange route would be offered a Scottish Secure Tenancy Agreement.
- 7.6 The Co-operative will satisfy itself that the tenants have a valid reason for wishing to move and that both parties have conducted their tenancies in a satisfactory manner and that neither parties are in rent arrears and that satisfactory rent accounts have been maintained and neither parties have been or are currently subject to anti-social behaviour orders or breaches of their tenancy conditions.
- 7.7 An exchange will only be considered where the households are appropriate to the family complement and size of houses exchanged. There will be no overcrowding permitted. Under occupation may be considered to the standard of one person less than the intended occupancy.
- 7.8 For the purposes of defining occupancy standards, the criteria outlined in the Allocations Policy will be used (see Appendix 1 - Occupancy Guidelines).
- 7.9 The exchange will not incur any costs to the Co-operative other than any statutory checks which may be required and both parties accept the property as seen.
- 7.10 That the outgoing tenant leaves the property in a satisfactory decorative condition and without any outstanding repairs that are the tenant's responsibility, unless there are extenuating circumstances such as old age or infirmity.
- 7.11 The incoming tenant will be required to become a member of the Co-operative and complete a Share Application and payment of the share fee prior to signing the tenancy agreement.
- 7.12 Permission to exchange will **not normally be granted** in the following circumstances:
 - a) where the dwelling is designed to make it suitable, or has been adapted for a physically disabled person and if the exchange took place, no such person would be living in the house;
 - b) the dwelling is one of a group that has been let to persons with special needs, and a special care facility is provided close by in order to assist the tenant and if such an exchange took place, there would be no person with special needs living in the dwelling;

- c) where an order for recovery of possession of the property has been made against the tenants or a Notice of Proceedings has been served on the tenant and is still live;
- d) no exchange should be agreed for incoming tenants whose home has been provided by their landlord in connection with the tenant's employment.
- e) if the exchange would lead to overcrowding
- f) is not suitable to the needs of the tenant and their family
- g) the accommodation is substantially larger than required by the tenant and their family

8. ASSIGNATION TO TENANCY

8.1 Tenants can request to assign their tenancy. Assigantion (passing the tenancy to someone else) needs our consent as the landlord. Section 12(2) of the 2014 Act made the following changes:

- the house must have been the tenants only or principal home during the 12 months immediately before they apply for written permission to pass the tenancy to someone else; and
- the person that they wish to pass the tenancy must have lived at the property as their only or principal home for the 12 months before and the 12 month period cannot begin unless DHC have been told that the person is living in the property as their only or principal home.

8.2 Assigantion of tenancy involves the transfer of the rights and responsibilities which are held by the original tenant (the assignor) to another individual (the assignee). Assigantion can only take place where a tenant intends to leave the household and the assignee becomes a member of the Co-operative.

8.3 Where assigantion is approved, the new tenant acquires the rights and obligations of the previous tenant from the date the assigantion of the tenancy is granted.

8.4 The Co-operative will not unreasonably withhold its consent to assigantion requests but will consider such requests for assigantion of a tenancy provided the conditions clause 14 are met, subject to the following criteria:

- a) assigantion must have formal written consent of the Co-operative
- b) the original tenant will leave the household
- c) in the event of a marital breakdown where the departing spouse/co-habitee provides written agreement to an assigantion in favour of the remaining spouse/co-habitee; or

- d) as defined by the Housing (Scotland) Act 2001 on non-agreement of a departing spouse who has abandoned the tenancy
- e) in the case of a joint tenancy where one of the parties wishes to relinquish the tenancy in favour of the remaining tenancy
- f) the proposed tenant is over 16 years of age
- g) the proposed tenancy does not constitute a contrived tenancy under the housing benefit regulations
- h) where the tenant is leaving the area and wishes to assign the tenancy to a son or daughter over the age of 16 years who have been living in the property and require to remain in the area to continue employment.

8.5 The new tenant (assignee) will acquire the rights and obligations of the previous tenant by a written assignation document referring to the original tenancy agreement and will also include any outstanding rent arrears which have been due by the assignor and are the subject of a Notice under Section 14 (2) of the Housing (Scotland) Act 2001. The Assignation Document will then be attached to the Assignor's Tenancy Agreement and held in the original file.

8.6 The Co-operative will ensure the assignee is fully aware of their rights and obligations of the tenancy before permission for the assignation is granted.

8.7 The Co-operative maintains an open housing list and will aim to ensure that applicants on the housing list will not be compromised and will not normally consent to assignations other than those mentioned above.

9 REFUSAL OF AN ASSIGNATION

9.1 An assignation can only be considered where the house has been the assignee's only or principal home throughout the period of 12 months prior to the date of the application for consent to the assignation and the 12 month period will only begin to run from the date Drumchapel Housing Co-operative have been advised by the tenant or by assignee that the property is the assignees only or principal home.

9.2 Where an order for recovery of possession has been made against the tenant or a Notice of Proceedings has been raised against the tenant and is live.

9.3 Where the assignation would lead to overcrowding.

9.4 Where the assignation would not make appropriate use of the house and the purpose for which it had been designed or adapted.

9.5 ASSIGNATIONS - GENERAL INFORMATION

- 9.6 The Co-operative aims to respond formally to consent or refusal of applications for assignation within 28 days of receipt of application.
- 9.7 The Co-operative will not unreasonably withhold consent.
- 9.8 An assignee acquires the rights and obligations of the previous tenant.
- 9.9 The Co-operative's policy is not to permit assignations other than those detailed above as it is unfair to a qualified applicant on the waiting list to be denied the opportunity of rehousing because an outgoing tenant has nominated his or her own choice of assignee. In exceptional circumstances, the granting of an assignation to an individual other than a spouse or co-habitee will be at the discretion of the Depute Director and approval of the Management Committee.
- 9.10 There may be an occasion when it is felt that refusal to permit an assignation is exceedingly harsh and would result in homelessness for the proposed assignee. In such cases, the Depute Director may wish to consider granting permission for the assignation or the granting of rehousing via the Co-operative's waiting list procedures.

10. **VOLUNTARY CHANGES IN TENANCY**

- 10.1 A voluntary change in tenancy occurs where the tenant wishes to relinquish the rights and responsibilities of the tenancy to another member of the household. In a voluntary transfer the original tenant does not leave the household.
- 10.2 The Co-operative will consider requests for a voluntary transfer of a tenancy from spouse, co-habitee or joint tenant.
- 10.3 Applications in respect of a voluntary change in tenancy are individually considered, with approval of the tenancy change at the discretion of the Depute Director and approval of the Management Committee.

10.4. **CRITERIA FOR CONSIDERING VOLUNTARY CHANGE OF TENANCY**

- 10.5 The Co-operative, in considering a voluntary change of tenancy, will aim to ensure that qualified persons on the housing list are not compromised. The circumstances where a voluntary change of tenancy may occur are listed below. This list is not in order of priority or exhaustive:
- transfer of a single tenancy to a joint tenancy e.g. where a tenant marries and both spouses wish a joint tenancy

- transfer of a tenancy to an adult child will not normally be considered as they would normally succeed to the tenancy; if this is requested, the dangers of an adult child evicting the original tenant will be explained
- transfer of tenancy from spouse or co-habitee to spouse or co-habitee e.g. where a spouse or co-habitee is hospitalised or imprisoned or unable for health reasons to sustain the tenancy
- transfer of a tenancy to another member of the household e.g. where the tenant loses the ability to manage their own affairs

11. TENANCY SUBLETTING

11.1 Tenants can apply to sublet all or part of the tenancy which requires consent from DHC. Section 12 (2) of the Housing (Scotland) Act 2014 requires that that applicant must:

- have been the tenant of the house throughout the 12 months immediately before applying for written permission to sublet the home, or
- if you they not the tenant throughout the whole of that period, the house must have been their only or principal home during those 12 months; and the tenant must have told us that you were living there prior to the start of those 12 months.

11.2 The Co-operative will not unreasonably refuse permission for subletting or a request for taking in a lodger. Written permission must be obtained by the tenant or joint tenants requesting to either sublet the property or take in a lodger. The tenant or joint tenants must have occupied the property as their only or principal home throughout the period of 12 months ending with the date of the application to Drumchapel Housing Co-operative for consent to sublet.

11.2 The tenant or lodger will be deemed as a qualifying occupier.

11.3 That the subtenant or lodger becomes a member of the Co-operative.

11.4 The Co-operative will refuse consent to subletting or the taking in of a lodger on the following grounds:

1. The criteria at 21.1 is not met.
2. An order for Recovery of Possession of the property may be made against the tenant.
3. If the Co-operative suspects that a payment is being made to the tenant in regard to rent or a payment given as a security for a subtenant obligations in regard to utilities supply or other domestic supplies has been received by the tenant in consideration of the subletting or lodger.
4. If the consent would lead to overcrowding.

5. The Co-operative intends to carry out works that would affect the accommodation likely to be used by the subtenant or lodger.

12. VOLUNTARY CHANGES - GENERAL INFORMATION

- 12.1 The Co-operative has responsibility for the sensitive management of the housing stock and fairness towards the housing need of waiting list applicants and in some circumstances, conflict of interest may arise.
- 12.2 In granting a voluntary change in tenancy, care must be taken that qualified waiting list applicants are not being unfairly treated or disadvantaged by the deliberate removal of a property from the lettings pool. This will need to be balanced with the needs of our tenant members who also must not be disadvantaged.
- 12.3 The Co-operative aims to formally respond to consent or refusal of an application for a voluntary change in tenancy within 4 weeks of receipt of the application.
- 12.4 Voluntary changes in tenancy, other than from spouse to spouse or co-habitee will be individually considered, bearing in mind the circumstances of the case and the appropriateness, or otherwise, of the provisions of the occupancy rights under the Matrimonial Homes Act and the Requirements of the Housing (Scotland) Act 2001.

13. MONITORING AND REPORTING

- 13.1 The Co-operative will record and monitor on a regular basis to ensure we are complying with our policy and report all relevant information to the Management Committee.
- 13.2 All tenancy changes will be recorded in the monthly Performance Reports.

14. RIGHT OF APPEAL

- 14.1 Any applicant who feels they have been unfairly treated in the processing or administration of this policy may pursue their grievance through the Co-operative's Complaints Policy and Procedure.

15. REVIEW

- 15.1 The effectiveness of this policy will be monitored on an ongoing basis and will be reviewed as appropriate, or according to statute and no later than 5 years from the date of implementation