



MORAY COUNCIL

Housing and Property Service

Evictions Policy

1. Scope of the Policy

- 1.1 This policy sets out the circumstances in which a Scottish Secure Tenancy (SST) or Short Scottish Secure Tenancy (SSST) provided by Moray Council will end due to an eviction. This includes the associated activities and responsibilities that are expected and involved.
- 1.2 This policy recognises that the Council's role as a landlord may conflict with its statutory homelessness duties. It therefore sets out the processes that will be undertaken before an eviction is carried out, to ensure that all possible alternative remedies are considered and eviction is only used by the Council as a last resort.
- 1.3 An eviction is defined as the recovery of accommodation, owned or managed by Moray Council, through using the legal processes that are available.

2. Strategic Context

- 2.1 The Evictions Policy will assist the Council by contributing to Priority 1 of the Moray 2027 – Local Outcome Improvement Plan, the Local Housing Strategy while supporting the Housing Service Improvement Plan.

3. Objectives and Principles of the Policy

- 3.1 The overall aim of the Council's Evictions Policy is to ensure that evictions are carried out lawfully only after all other tenancy management options have been exhausted and proven to be ineffective.
- 3.2 The specific objectives of the Evictions Policy are:

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- to prevent homelessness occurring by exhausting all other management remedies, where appropriate;
- to provide early intervention in an attempt to prevent eviction occurring;
- to define the escalation and authorisation process for an eviction enforcement;
- to deal with evictions in a consistent way;
- to proactively disrupt any criminal activity taking place within a tenancy, such as but not limited to the illegal supply of drugs;
- to ensure that any action taken as a result of tenancy breach(es) due to any antisocial behaviour and/or criminal activity within the tenancy (such as, but not limited to, the illegal supply of drugs) are in line with robust procedures and escalation practices;
- to protect the wellbeing, safety and interests of qualifying occupiers and other residents within the neighbourhood and wider community; and
- where appropriate, to take action to protect the assets and income of the Council.

3.3 The principles underpinning the Evictions Policy are:

- the Housing Service will clearly explain to tenants, at the start and during their tenancy, the actions and behaviours that can lead to eviction and what their responsibilities are under their tenancy agreement in an attempt to avoid the need for any potential eviction action;
- to ensure the provision of information, advice and assistance to tenants on Universal Credit and other welfare benefits in order to maximise their ability to pay rent which will include actively promoting joint working and information sharing with housing support to assist with sustainment, other departments and partners;
- that training will be provided to ensure all staff are fully equipped to carry out the roles expected of them; and

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- that all communication will be in plain language and will make clear where appropriate advice and assistance can be accessed.

4. Legal Framework

- 4.1 The Council will ensure that the Evictions Policy meets all legislative and good practice requirements to minimise the number of evictions being carried out. This will include, but is not restricted to, the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2010 and the Housing (Scotland) Act 2014.

Other associated legislation includes:

- the Antisocial Behaviour etc. (Scotland) Act 2004;
 - the Homeowner and Debtor Protection (Scotland) Act 2010 Part 1;
 - the Equality Act 2010;
 - the Bankruptcy and Diligence etc. (Scotland) Act 2007;
 - the Homelessness etc.(Scotland) Act 2003;
 - Human Rights Act 1998, incorporating the European Convention on Human Rights (ECHR) and associated guidance - [Human Rights at Home: Guidance for Housing Providers](#); and
 - the Data Protection Act 2018 and the General Data Protection Regulations (GDPR).
- 4.2 The full list of grounds for recovery of possession of a property under a Scottish Secure Tenancy (SST) are contained within the [Housing \(Scotland\) Act 2001, Schedule 2, Part 1](#), as amended by the Housing (Scotland) Act 2010, Sections 153 and 155(2)-(7). The main grounds that usually form a basis for eviction are:

Ground 1

- Rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy has been broken.

Ground 2

- The tenant (or any one of joint tenants), a person residing or lodging in the house with, or subtenant of the tenant has been convicted of—
 - (a) using the house or allowing it to be used for immoral or illegal purposes, or

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(b) an offence punishable by imprisonment committed in, or in the locality of, the house.

Ground 7

- The tenant (or any one of joint tenants), a person residing or lodging in the house with, or any subtenant of, the tenant, or a person visiting the house has—

(a) acted in an anti-social manner in relation to a person residing in, visiting or otherwise engaged in lawful activity in the locality, or

(b) pursued a course of conduct amounting to harassment of such a person, or a course of conduct which is otherwise anti-social conduct in relation to such a person, and it is not reasonable in all the circumstances that the landlord should be required to make other accommodation available to the tenant.

4.3 The Council must adhere to the prescribed legal process which includes demonstrating to the Court, where necessary, that reasonable alternatives to repossession have been considered. This is not necessary in the case of a streamlined eviction based on ground 2 where a criminal conviction already exists. The Council will also comply with any pre-action requirements where necessary, and ensure the correct process is followed when serving a valid statutory notice of proceedings on the tenant and all qualifying occupiers. A qualifying occupier is defined as anyone who is a member of the tenant's family aged 16 or over living with the tenant as their principal home or any subtenant, lodger or assignee (someone to whom the tenancy has been transferred with the consent of the Council).

4.4 Eviction will only be granted in the majority of cases where when the Sheriff is required to be satisfied that it is reasonable to do so. In satisfying itself that it is reasonable to make the order for repossession, the court must have regard to:

- the nature, frequency and duration of the conduct;

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- the extent to which the conduct was the responsibility of persons other than the tenant;
- where delays in the payment of universal credit or Housing Benefit have led to rent arrears and are primarily the responsibility of the local authority;
- the effect the conduct has had on neighbours and people other than the tenant; and
- any alternative action taken by the landlord, before seeking possession, to bring about an end to the conduct of the person in question.

4.5 Where a streamlined eviction is being sought under Ground 2, within 12 months of a conviction, there is no requirement on the Council to prove that the eviction order is reasonable. Where a conviction for serious antisocial or criminal behaviour already exists, the Council will however have to show that the request for eviction is proportionate.

4.6 The decision to grant a decree for ejection can only be made by a Sheriff, not the Council.

4.7 The Council will ensure that no tenant's human rights are breached by the implementation of this policy. In particular the Council will ensure that tenants have a fair hearing and will have respect for their private and family life in accordance with the Human Rights Act 1998.

4.8 It will be necessary during the course of the eviction process to exchange certain information with other agencies. This will be carried out in accordance with the General Data Protection Regulations (GDPR) and the Data Protection Act 2018 and any agreed guidelines and/or with respect to any information sharing protocols. This includes other internal departments such as Social Work and statutory agencies such as the NHS, Police Scotland and any other relevant parties. This will be where the information:

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- will help ensure the safety of the tenant, children or other people at risk or harm;
- is required by law; and/or
- is necessary to prevent and detect crime.

5. Tenant's Responsibilities

- 5.1 The term 'tenant' refers to sole and any joint tenants. If two or more people have signed a tenancy agreement they are jointly and severally liable for ensuring that the tenancy conditions are adhered to. This includes ensuring that the actions of those living in, or visiting, their tenancy are acceptable (as detailed in the tenancy agreement).
- 5.2 Tenants have an obligation under the terms and conditions of their tenancy agreement to pay rent due every week, in advance, on or before the first day of each rental period. Failure to do this may lead to eviction action being taken by the Council; after all other management options have been exhausted.
- 5.3 Tenants are also responsible under their tenancy agreement for actively managing their tenancy to ensure that they, their household or any visitors do not act antisocially. They are also responsible for ensuring that the house is not used for any illegal or immoral purposes including but not limited to the illegal supply of drugs, which can cause significant alarm and distress within the neighbourhood.
- 5.4 Tenants have a responsibility to ensure that they and the people living with them, or visiting them, have respect for others. This includes, but is not limited to, ensuring that excessive noise is not created, pets are kept under control, vandalism and damage is not caused, rubbish is not left in unauthorised places and no harassment or assault is caused to any person in the house or neighbourhood, for whatever reason.

6. Council's Responsibilities

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- 6.1 The Council has a duty to protect its interests. Enforcing the terms of the Scottish Secure Tenancy, Short Scottish Secure Tenancy, or any other tenancy agreement provided by the Council will assist this.
- 6.2 The Council also has a duty to all its tenants, their households and the wider community to ensure that they are able to live in an environment that is attractive, well maintained, safe and secure. This includes taking appropriate action against those living in, or visiting, Council tenancies when the behaviour of the person either threatens to disrupt the neighbourhood and put the safety and security of other tenants, household members and/or residents at risk or becomes criminal.
- 6.3 Tenants will be advised of the consequences of failing to adhere to the tenancy agreement. This will include any action that may be taken by the Council to remedy a situation.
- 6.4 Where appropriate, tenants will be offered support and assistance to ensure their tenancy is managed successfully.
- 6.5 Where enforcement action is taken this will be proportionate to the breach of tenancy conditions. The Council will advise the tenant what they should do to resolve the situation and what action the Council will take if the breaches of tenancy continue.
- 6.6 The Council will write to tenants prior to serving them with a notice of proceedings to advise them of the process involved and the legal requirement placed on the Council to serve a Notice of Proceedings for Recovery of Possession on qualifying occupiers.
- 6.7 Repossession action will only be used as a last resort and only after all other management remedies prove ineffective.

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6.8 Tenants and any qualifying occupiers who are due to be evicted will be fully advised of the homelessness responsibilities the Council has towards them. This will include advice and assistance on temporary accommodation and how to secure alternative permanent accommodation.

7. Required and Preventative Actions

Rent Arrears

7.1 In accordance with legislation and good practice the Council will explore all possible alternatives to eviction before raising court action.

7.2 A Notice of Proceedings cannot be served until the Council has complied with the pre-action requirements set out in Section 155 of the Housing (Scotland) Act 2010. The list of requirements is set out below:

- **Provide clear information** about the terms of the tenancy agreement, the rent due, or any other financial obligation of the tenancy.
- **Offer help and advice** – the Council must make reasonable efforts to provide the tenant with advice and assistance on the tenant's eligibility to Universal Credit or other types of financial assistance.
- **Offer help with debt management** – the Council must provide the tenant with information about sources of advice and assistance in relation to management of debt.
- **All required 'Pre-Action Requirements (PARs)' are carried out** to try and resolve any underlying debt and financial difficulties.
- **Agree an affordable repayment plan** – the Council must make all reasonable efforts to agree a reasonable repayment plan for future payments, this plan must include proposals in respect of future payments of rent, outstanding rent and any other financial obligations of the tenancy.
- **Ensure that landlords do not start an eviction action before considering:**
 - **any Universal Credit application** – if an application for the housing element of Universal Credit has been made (but not yet determined) and is, in the Council's opinion, likely to result in benefit being paid at a

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level which would allow the tenant to pay, or reduce by an amount acceptable to the Council, the outstanding rent and any other financial obligation of the tenancy.

- **steps taken by the tenant** – the Council must not serve a Notice of Proceedings if the tenant is taking other steps which, in the opinion of the Council, are likely to result in payment within a reasonable timescale of the outstanding rent and any other outstanding financial obligation of the tenancy, or the tenant is complying with a repayment plan agreed with the Council.

7.3 The Council's approach to rent arrears aims to establish a culture of early and direct contact with tenants to avoid escalation of debt and/or evictions action. This shifts the focus of rent arrears recovery to early intervention, prevention and support. These measures include offering comprehensive advice and information as well as signposting to other departments and agencies that can provide specialist money advice, budgeting and tenancy sustainment support. This includes:

- helping to source welfare benefit advice;
- assistance in applying for, and renewing, claims for Universal Credit rent and service charges;
- ensuring the completion of a Universal Credit application or the payment of rent in advance when a tenant signs their tenancy; and
- visits made to all new tenants within the first six weeks to assess how well they are settling in, with follow up visits continuing for as long as help is needed.

7.4 In all situations where the Council feels that it is reasonable to recover possession of a property due to rent arrears, the Council will ensure that reasonable preventative measures have been taken to avoid progressing to eviction action. Failing this the eviction action must satisfy ground 1, Schedule 2 of the 2001 Act as detailed above (para 4.2).

Antisocial Behaviour/ Criminal Activity

- 7.5 The Council will ensure that all reasonable steps will be taken when dealing with antisocial behaviour and criminal activity. In accordance with the Council's Neighbour Nuisance and Antisocial Behaviour Policy this will include early, regular and/or sustained intervention when appropriate to avoid the escalation of a situation. This is however heavily dependent on the level of engagement received from the tenant/household. The Council will follow supporting, operational procedures which detail any possible prevention measures and operational actions that will be carried out in proportion to the individual circumstances of the case. These actions may be carried out in conjunction with the Community Safety Office and Police Scotland where necessary, with the aim of helping change, reduce and/or ultimately eliminate behaviours while safeguarding the neighbourhood and community.
- 7.6 The Council will ensure that a preventative approach is followed, where possible, with the aim of encouraging a change of behaviour and/or engagement with support services, which may remove the need for court action to recover possession of a property.
- 7.7 The Council will always consider whether to pursue eviction proceedings where a tenant has been convicted of using the house or allowing it to be used for immoral or illegal purposes, or an offence punishable by imprisonment¹ committed in, or in the locality of, the house. In each case, action will be considered in light of the individual household circumstances and evictions will only be carried out as a last resort.
- 7.8 In cases where eviction is being considered due to antisocial behaviour or following a relevant criminal conviction, legal advice will be taken to establish

¹ NOTE – although punishable by imprisonment, service of a prison sentence is not necessary for this ground to be used.

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whether the eviction action is proportionate and justified. The rights of the tenant should be balanced against the rights of the household and the wider community. All social and support requirements of the case must be taken into consideration. This should be supported by risk assessment as outlined in Section 8 below as well as a robust and evidenced audit trail of operational actions that have proven ineffective. The eviction action must satisfy either ground 2 or ground 7, Schedule 2 of the 2010 Act as detailed above (para 4.2).

- 7.9 A Notice of Proceedings should not be served until the Council has considered all factors in deciding whether to raise eviction action.
- 7.10 The Council will ensure the following considerations are fulfilled where a criminal conviction for criminal or antisocial behaviour exists:
- **Receipt and verification of any criminal conviction extract/information** which will establish and evidence the extent of the criminal offence and whether it includes the use of the property for immoral or illegal purposes;
 - **The nature and seriousness of the offence** including any recurring convictions or cumulative effect of a series of incidents as well as the potential seriousness of a one-off offence;
 - **Who has been convicted of the offence and their connection to the property** – this may include visitors and what action the tenant is taking to stop the person returning to the property;
 - **Where the offence was committed and any connection to the tenancy** – whether the offence was committed in the house or the locality of the house and what the circumstances were;
 - **To what extent the offence has affected neighbours or others in the community** – whether there has been a serious impact locally as a result of the behaviour and the period of time that the behaviour has been causing the detrimental effect in the area;
 - **Whether the convicted person is making any attempts to make any positive changes** – where repeat offenders/behaviours have stopped, the

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- person is engaging in training/employment, engaging in rehabilitation programmes and/or regular and meaningful engagement with any other relevant support services;
- **The overall impact of an eviction on the household members** – which will not be considered in isolation. This will be balanced against the impact of the behaviour on the wellbeing of the neighbourhood as a whole; and
 - If any other steps can be taken by the Council and/or partner agencies to address any antisocial behaviour or criminal behaviour.
- 7.11 Where there is a risk of abuse, violence and/or danger to neighbours, staff or the person who is being evicted, the Council will act as quickly as possible and appropriately to ensure the risk is minimised.
- 8. Risk Management, Support and Liaison with Other Agencies**
- 8.1 The Council will offer a detailed risk assessment to all tenants when it is identified that their tenancy is at risk.
- 8.2 During the assessment, the tenant's needs (and those of their household) will be identified to ensure that a full picture of their circumstances is known and support appropriately delivered. This will involve consultations with relevant services within the Council such as Community Care, Housing Needs and Social Work (Children and Families). The Risk Assessment Plan will seek to measure the potential impact of eviction on households and any contingency measures which will need to be put in place, for example, storage of furniture or provision of temporary homeless accommodation.
- 8.3 Where an external agency or Council service is providing support, full co-operation will be given by the Housing and Property Service to try to resolve a situation without the need for legal action to recover possession of a property. For example, where Money Advice is being given by Trading Standards, the Housing and Property Service will suspend action for 21 days to allow an

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agreement to be reached and implemented. However, the Housing and Property Service retains the right to proceed with recovery action where the situation is not improving.

9. Notice of Proceedings

9.1 The Council will ensure that all correct statutory notice of proceedings are served within the correct timescales for each case. This will depend on the ground being used for the eviction.

9.2 Where a streamlined eviction is being sought using Ground 2, for a criminal conviction, the notice of proceedings starts from the date of the conviction, or if there is an appeal against the conviction then from the date the appeal is dismissed by the court or abandoned by the tenant. Any arrears action will be dealt with separately.

10. Authorisation for Eviction Enforcement

10.1 Where a Sheriff grants a Decree for ejection, the date after which the Council can recover the property will be specified on the order. A charge must be served upon a tenant before an eviction can take place. The charge must provide the tenant with a period of at least 14 days in which to remove from the property prior to the eviction being carried out. A Sheriff Officer will only be able to carry out an eviction upon expiry of a 14 day period.

10.2 Where a Decree for ejection has been granted, an eviction can only be enforced after the Housing Services Manager, or the Head of Housing and Property, has given authorisation. No decision will be made without an updated Risk Assessment Plan and an Eviction Approval request being authorised by the above staff.

10.3 A Decree for ejection will be acted upon within six months of being granted (the date specified on the order) unless there is evidence to justify another course of

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action, for example, the tenant has become seriously ill. Any material change in the tenant's circumstances or delay in implementing an eviction must be notified to and approved by the Housing Services Manager or the Head of Housing and Property. Tenants/qualifying occupiers will be kept fully informed during this process.

11. Carrying Out an Eviction

- 11.1 An eviction cannot be carried out until a Sheriff Court has granted an Order for possession and an eviction authorisation has been signed by the Housing Services Manager or the Head of Housing and Property.
- 11.2 Sheriff Officers will send a letter to tenants to advise them of their date of eviction. The letter provides the tenant with a minimum of 4 weeks' notice prior to eviction unless there is evidence to justify another course of action, for example, the property has been abandoned, left unsecured, and is at risk of vandalism. Reduction of this period of notice will be on the authorisation of the Housing Services Manager or the Head of Housing and Property.
- 11.3 Prior to any eviction, housing staff will provide advice and practical assistance to the tenant and qualifying occupiers in preparation for their eviction. This will be offered during a visit to the tenant's home. This includes details of temporary accommodation available, storage arrangements for furniture (if temporary accommodation is provided) and arrangements the tenants must make.
- 11.4 Only Sheriff Officers are authorised to carry out an eviction, not Council employees. However, an Area Housing Manager, an Area Housing Officer and a Building Services joiner will all be present to ensure the eviction is successfully completed. If necessary, Social Work and support staff will also attend.
- 11.5 Evictions will be carried out following legal guidelines and in accordance with associated procedures and good practice.

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- 11.6 Any locks will be changed after each eviction and a detailed void inspection of the property, garden and any outbuildings made. This will be in accordance with the Housing Service's Void Management Policy and associated procedures.
- 11.7 All tenants evicted will be recharged for the expenses incurred by the Council during and after the eviction. This will include legal expenses, Sheriff Officers' fees and the cost of any rechargeable repairs.
- 11.8 Tenants who have been evicted will be liable for all debts they have with Moray Council after their eviction takes place.
- 11.9 The Housing (Scotland) Act 2010 Section 153 provides that a tenant's tenancy in a rent arrears eviction case will not come to an end, even after the Sheriff Court has granted a decree for ejection, until such time as the Council has actually recovered possession.
- 11.10 The Council will evict the tenant(s) as soon as possible after the date specified on the decree for ejection. However, if a decree for ejection is granted for rent arrears, and full payment of the rent arrears and legal expenses is made prior to the eviction, the eviction may be cancelled. This is at the discretion of the Housing Services Manager or the Head of Housing and Property. Tenants will be fully advised of this in communications with staff.

12. Complaints

- 12.1 Any person wishing to make a complaint about the eviction process should, in the first instance, contact the Housing Services Manager. If the complainant is not satisfied with the Service response, they may use the Council's Complaints Procedure. Leaflets giving further information and contact details are available from any Council Access Point or on the Council's website at www.moray.gov.uk.

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12.2 The Council will ensure that complaints are dealt with fairly and within agreed timescales, in accordance with its Complaints Policy.

13. Performance Monitoring

13.1 The level of evictions and reasons for evictions will be monitored and analysed internally at Housing Operational Management Team meetings as well as Housing Property and Management meetings. Performance Reports are presented bi-annually to the Communities Committee.

13.2 The Council also has a statutory duty to complete the Annual Return on the Charter (ARC) to the Scottish Housing Regulator (SHR). This provides key information on eviction cases that have taken place throughout the financial year. This is included in Indicator 24 of the return and monitors the:

- number of properties recovered by reason (i.e. rent arrears, ASB or other);
- total number of court actions initiated during the reporting year; and
- percentage of court actions initiated which resulted in eviction and the reasons for eviction.

13.3 This policy will be reviewed in 2022 or earlier if required by changes to legislation and/or guidance.