

# OPS039 - Short Scottish Secure Tenancy Policy

<b>MONITORING FORM</b>	
Department	Housing
Department Director	Operations
This policy is applicable to	Housing Management
Author	Housing Manager
Date of approved by board	5/6/2019
Date of last review	1/5/2019
Version number	V1
Date of minor modification	1/5/2019
Period of Review	3yrs
Date of next review	1/5/2022
Internal /external consultees (if required).	

## **1. INTRODUCTION (AIM)**

1.1 Weslo Housing Management's (Weslo) aim is to provide all of its tenants with a secure tenancy agreement. This Policy sets out the circumstances when Weslo will utilise a short Scottish secure tenancy (SSST) in order to make the most efficient and effective use of its housing stock.

1.2 This policy complies with the Housing (Scotland) Act 2014 and is supported by procedures that reflect legal requirements and good practice.

1.3 We are committed to the principles of good corporate governance and sustainability and will endeavour to develop fair and consistent policies, procedures and practices.

1.4 In line with our commitment to equality and diversity, this policy can be made available in a variety of formats including large print, translated into another language or other media. We will make any reasonable adjustments to assist applicants if they have a disability.

## **2. SCOPE**

2.1 A SSST will only be offered to tenants and prospective tenants in certain circumstances and these are outlined in Part 4 of this policy.

## **3. OBJECTIVES**

3.1 The main objectives of this Policy are to ensure that we use a SSST to maximise the use of our stock in order to meet identified need and ensure sustainability in the provision, management and maintenance of housing stock.

3.2 The overall aims are to:

- Set out a clear framework for the use of a SSST.
- Specify the circumstances when Weslo will consider using a SSST
- Assist tenants to sustain their tenancies, with support where required, with a view to conversion to a Scottish Secure Tenancy (SST)
- Prevent homelessness occurring
- Assist in the creation of safe and sustainable communities by tackling antisocial behaviour

## 4. SHORT SCOTTISH SECURE TENANCY

4.1 Schedule 6 to the Housing (Scotland) Act 2001 and amended by the Housing (Scotland) Act 2014 prescribes the circumstances when an SST may be granted. In summary these are:

- where an eviction/repossession order has been made against the person, in the UK, for antisocial or similar behaviour in the previous three years;
- where an antisocial behaviour order (ASBO) under Part 2, of the Antisocial Behaviour etc. (Scotland) Act 2004 has been granted;
- where a course of antisocial behaviour has been carried out within the previous three years as set out in Section 7 of the Housing (Scotland) Act 2014;
- a temporary let is needed to take up an offer of employment in the area. This is in line with our Allocations Policy.
- if temporary accommodation is needed pending development work on a current property;
- if temporary accommodation is to be let to a homeless person for six months or more;
- if temporary accommodation is given to a person in receipt of housing support services;
- if we have leased the house from another body and the terms of the lease ban subletting under a Scottish secure tenancy; or
- if temporary accommodation is needed by a person pending the making of arrangements in relation to a property they own, which will allow the person's housing needs to be met.

A SSST cannot be granted unless the let falls into one of these categories.

4.2 Section 34 of the Housing (Scotland) Act prescribes other conditions for the creation of a SSST, and these are:

- The tenancy would have been a Scottish secure tenancy were it not for Section 34. That is, the requirements for the creation of a Scottish secure tenancy (Section 11 of the Housing (Scotland) Act 2001) must be met;
- the tenancy is for a fixed term of at least 6 months. There is no maximum period; and
- Weslo have served a statutory notice on the prospective tenant before the creation of the tenancy (i.e. when the tenancy agreement is signed). The notice must state that the tenancy will be a short Scottish secure tenancy and must detail the provisions of the tenancy.

4.3 The rights under a SSST are the same as the full SST but for the following exceptions

- No right of succession to the tenancy; and
- Security of tenure is limited; and
- Where section 36 of the 2001 Act, recovery for possession is raised household members have no right to have a notice of proceedings served and no right to be sisted as parties to the action.

While the rights to assign, take in a lodger, sublet etc are available under a SSST, they are limited to the period of the SSST.

4.4 Weslo will ensure the term of individual SSST's meet the legislative requirements. This will vary depending on the ground used for the creation of the SSST

- Part 2, section 9 of the 2014 Act sets a minimum period of 12 months for SSSTs that are created on ASB grounds. This can be extended by 6 months to 18 months where the tenant is in receipt of housing support services.
- Section 34 of the 2001 Act sets 6 months as the standard minimum period for SSSTs on all other remaining grounds in Schedule 6 of the 2001 Act. There is no maximum period for these.

The term will start from the date the SSST is granted or the date the tenant is served with a notice to convert the tenancy from a SST to a SSST.

## **5. CREATING A SHORT SCOTTISH SECURE TENANCY**

5.1 Section 34 of the Housing (Scotland) act 2001 as amended by the Housing (Scotland) Act 2014 prescribes the conditions required (as at 4.2). These ensure that Weslo serves the correct statutory notice as prescribed by regulations on the prospective tenant before the creation of the tenancy (i.e. at the time the tenancy agreement is signed).

5.2 In order to create a new SSST, Weslo must serve a notice in accordance with Section 34 (2) of the Housing (Scotland) Act 2001 on the prospective tenant. This notice must state that the tenancy to which it relates is to be a SSST, the ground the SSST is based on and the term of the tenancy.

5.3 Weslo will ensure that when a SSST is granted it will be tailored to meet the individual needs of the tenant and where appropriate, support will be offered. In certain instances, the acceptance of support may be a condition of the tenancy. For example, where a SSST has been granted as a result of antisocial behaviour, the may offer and provide housing support services with a view to helping the tenant convert the tenancy to a Scottish secure tenancy at the end of 12 month term (or 18 months where an extension has been granted).

## **6. CONVERSION FROM AN EXISTING SCOTTISH SECURE TENANCY TO A SSST.**

6.1 Section 35 (2) of the Housing (Scotland) Act 2001, as amended by Section 7(2) of the Housing (Scotland) Act 2014 allows a Scottish secure tenancy to convert into a SSST where an existing tenant or specified person:

- is subject to an Antisocial Behaviour Order (ASBO); or
- has acted in an antisocial manner in relation to another person in the locality of the house or pursued a course of conduct amounting to harassment or antisocial conduct in relation to the other person.

In such circumstances, the SSST may convert back to a Scottish secure tenancy at a later stage if certain conditions are met (Housing (Scotland) Act 2001, Section 37).

6.2 The granting of an ASBO or eviction order is sufficient evidence to convert a tenancy due to the fact that the behaviour has already been proven and a court order is already in place. In attempts to protect the wellbeing of individuals and/or communities, Weslo will assist in trying to enable a rehabilitative process by converting the tenancy to a SSST. This will always be done on one of these two grounds first, where possible.

6.3 Where a course of antisocial behaviour over a three year period has taken place, appropriate and robust evidence of the behaviour and its impact on the household, neighbours and or the immediate community will be required prior to converting the tenancy to a SSST. Weslo will only consider this ground where none of the grounds mentioned in 6.1 above have been met.

6.4 Weslo will take the following into account when considering whether to convert the tenancy to a SSST:

- who has behaved antisocially and their connection to the property;
- the nature, frequency and duration of the antisocial behaviour;
- the effect and impact that the antisocial behaviour is having on any other person (including their connection to the property), neighbours and the community over the period of time ;
- what action has been taken to date by the parties involved, Weslo or any partner agencies. This should include any rehabilitative processes undertaken, with the view to securing a positive change or the cessation of that conduct;
- whether a court order has been breached and whether there are any convictions in that respect;
- any individual or household vulnerabilities and the expected support needs of those persons based upon any evidence held; and
- any other relevant factors in the individual circumstances of each case.

6.5 The tenancy will automatically convert from a Scottish secure tenancy to a SSST by service of the correct statutory notice on the tenant. Weslo will serve the notice by first class recorded delivery. This notice must state:

- that the tenancy to which it relates is to be a SSST;
- specify what ground the SSST is in relation to, by reference to Schedule 6 of the 2001 Act, as amended;
- the name of the tenant or person who is the subject of the Antisocial Behaviour Order (ASBO);
- where there is no ASBO, the name of the tenant or person who has behaved antisocially, their behaviour and the reasons for the notice; and
- details of the tenant's right of appeal to the court if they are not satisfied with the conversion of the tenancy.

## **7. SSSTs AND SUPPORT SERVICES**

7.1 The Housing (Scotland) Act 2001 (Section 91 (8)) defines housing support services as including: "... any service which provides support, assistance, advice or counselling to any individual with particular needs with a view to enabling the individual to occupy, or continue to occupy, as the person's sole or main residence, residential accommodation other than that excepted accommodation."

7.2 The Housing (Scotland) Act 2001, section 34 (7), as amended by Section 7 (1a) of the Housing (Scotland) Act 2014, requires Weslo (where the tenant is subject to a SSST because of previous antisocial behaviour or an ASBO) to provide or ensure the provision of housing support services as it considers appropriate to enable the tenancy to convert to a Scottish secure tenancy. These should be services aimed at helping the tenant sustain their tenancy or change their behaviour to an acceptable level for conversion back to a full Scottish secure tenancy at the end of the agreed term.

7.3 Where housing support is required Weslo will ensure that all appropriate referrals are made and support assessments carried out. Housing support services will be provided where necessary to assist in sustaining the tenancy. This will be explained fully to the tenant and the support offered.

7.4 Where the applicant refuses support, Weslo may use its discretion when deciding whether to offer a SSST without support. Weslo will consider whether the reason for the SSST, for example, antisocial behaviour, will improve with support, or whether it wishes to make acceptance of support a condition of the offer of a SSST.

7.5 Where a SSST is provided without support, Weslo will record any unwillingness to accept support and the situation will be reviewed before the two months prior to the end of the term. Weslo will decide whether to:

- terminate the tenancy (the review period will allow Weslo sufficient time to provide the tenant with 2 months' notice of Weslo's intention to end the tenancy, as required by law);
- convert the tenancy to a Scottish secure tenancy; or
- continue the tenancy for a further 6 months, but on the condition that support is taken.

7.6 The tenancy may convert to a Scottish secure tenancy when it can be established that housing support is no longer required in order to sustain a tenancy.

7.7 In situations where a SSST has been granted due to any antisocial behaviour grounds, the tenancy will automatically convert to a Scottish secure tenancy after 12 months, unless the landlord has served a notice to extend the SSST by an additional 6 months or has served a notice to terminate the tenancy at the end of its period or a notice of proceedings under s14 (please refer to Section xx below).

## **8. HOMEOWNERS**

8.1 Section 8 of the 2014 Act introduces a new ground which enables landlords to grant a short SST to a homeowner who has applied for housing where they have a short term, temporary housing need and require time to sort out their permanent housing arrangements.

8.2 A homeowner must be able to evidence why they cannot live in their home. This could be for a number of reasons, for example because of the condition of the property or a medical issue and they need to move out their home to allow adaptations to be made.

8.3 Weslo will consider the circumstances of each individual case before making a decision to grant an SSST to a homeowner.

8.4 The house is to be let expressly on a temporary basis to a person pending the making of arrangements in relation to the property they own.

8.5 The property must be heritable property owned by the person or a person who is proposed to reside with them.

8.6 Prior to making a decision to extend or end the SST to a homeowner Weslo will consider if the applicant still has the same housing need.

## **9. CONTINUATION OF A SSST**

9.1 A SSST will continue for the fixed period agreed at the outset of the tenancy. SSSTs (with the exception of those granted on any of the ASB grounds) will, at the date of termination or expiry of the tenancy agreement (known as the ish date of the tenancy), continue either by:

- (a) tacit relocation\*, or
- (b) express agreement.

\*Tacit relocation is a principle of Scots Law where leases of land or buildings renew for the same period, on the same terms and conditions as previously existed where no notice of termination is given within the requisite period. This is subject to a maximum period of one year. This will continue indefinitely until either of the parties apply the correct steps/notice to end the tenancy and prevent tacit relocation operating

## **10. TERMINATION OF A SSST**

10.1 A SSST can be terminated by any of the following methods:

- termination by the tenant;
- by written agreement;
- on the death of the tenant;
- by Court Order once the fixed period of tenancy has ended with Section 36 of the Housing (Scotland) Act 2001 as amended by Section

- 11 of the Housing (Scotland) Act 2014. There is no need to demonstrate any specific or management grounds in this instance; or
- by Court Order in accordance with Section 14 or Schedule 2 of the Housing (Scotland) Act 2001.

10.2 Where necessary Weslo will issue the tenant with a notice to recover possession by either first class recorded delivery or personal delivery by a member of housing staff. The notice must specify a date for recovery of possession that is no earlier than 2 months from the date of service of the notice. This notice period may be longer if the tenancy agreement expressly states so.

## **11. RECOVERY OF A SSST**

11.1 Weslo can seek recovery of possession of a SSST on the same grounds applicable to Scottish secure tenants within the Housing (Scotland) Act 2001. What action is taken depends on whether the repossession action is being taken at the end of the term of the tenancy (Section 36 of the 2001 Act, as amended by Section 11 of the 2014 Act) or during the term of the tenancy (Section 14 of the 2001 Act).

11.2 Recovery at the end of the term of SSST - Section 36 of the 2001 Act, as amended by Section 11 of the 2014 Act can be used by Weslo for recovery of possession. The court must grant an order for recovery of possession, provided:

- the tenancy has reached its term;
- tacit relocation is not operating (i.e. it will not automatically be renewed for a further period);
- no further contractual tenancy has been entered into.

11.3 Recovery of SSST on any of the antisocial behaviour grounds - In cases where the SSST has been granted under Section 35 paragraph 1, 2 or 2A of Schedule 6 of the 2001 Act on any of the antisocial behaviour grounds Weslo cannot raise proceedings for eviction unless:

- the correct statutory notice of recovery of possession, which includes the correct prescribed information, has been served;
- a tenancy obligation under the SSST has been broken;
- the proceedings are raised on or after the date specified in the notice; and
- the notice is in force at the time the proceedings are raised.

11.4 Any order granted as above must specify a date for recovery, which will effectively terminate the tenancy and give the landlord the right to repossess the house on that date.

11.5 Where Weslo seeks to recover a SSST in accordance with Section 36 of the Housing (Scotland) Act 2001, members of the tenant's household have no right to have a notice of proceedings served on them and have no right to be sisted as parties to the action.

## **12. AUTOMATIC CONVERSION OF A SSST TO A SCOTTISH SECURE TENANCY**

12.1 In situations where a SSST has been granted due to an ASBO, or previous antisocial behaviour, Section 37 of the 2001 Act, as amended by Section 10(2) of the 2014 Act (to allow a six month extension), provides for the automatic conversion to a Scottish secure tenancy after the 12 or 18 month period. This would happen where:

- the SSST has been granted as a 'probationary' tenancy; or
- the SSST had been created by the service of a notice; and no notice of proceedings under sections 14 or 36 of the Housing (Scotland) Act 2001, as amended by the 2014 Act, has been served in the 12 or 18 months following the creation of the tenancy; or if such a notice has been served, the notice has expired or been withdrawn.

12.2 The tenancy becomes a Scottish secure tenancy on the date that the notice ceased to be in force or was withdrawn or at the end of the 12 month period, whichever is later. Where proceedings for recovery of possession find in favour of the tenant, the tenancy becomes a Scottish secure tenancy from the date when the court found in favour of the tenant or the end of the 12 month period.

12.3 Where Weslo has served a notice to quit on the tenancy no conversion can take place. There is no automatic conversion to a Scottish secure tenancy for tenants who have been granted a SSST on other grounds.

12.4 Weslo must notify the tenant of the conversion and the date on which the tenancy became Scottish secure tenancy (Section 37(4) of the Housing (Scotland) Act 2001. Weslo will advise the tenant of their rights and responsibilities under a Scottish secure tenancy.

## **13. RIGHT OF REVIEW**

13.1 Where an applicant/tenant is not satisfied with any of the following they may request a review of the decision:

- the decision to offer a SSST;
- the decision to convert a SST to a SSST; or
- the decision to recover possession of the property.

Section 11 (c) of the Housing (Scotland) Act 2014 amends Section 36 of the 2001 Act. This gives every tenant a right to request a review of the decision to take action to recover the property before the case goes to court.

13.2 Any request to review these decisions should be made in writing to the Housing Services Manager and should include the grounds on which it is made. Where the review is in relation to the recovery of possession, the tenant will have 14 days from the date on which they are served the notice of proceedings to apply for a review of the repossession action.

13.3 The review will be considered by a senior manager not previously involved with the original decision with a target of reviewing and responding within 28 days. However where the review is in relation to the recovery of possession the response will be issued within 14 days and no later than 2 days prior to the date of any intended eviction process. The latter response will contain confirmation of whether the recovery of possession action will continue along with the reasons why or if it will be withdrawn.

13.4 Where the applicant/tenant remains dissatisfied regarding an offer or conversion of a SSST they may ask the Housing Manager to consider their case. Where the Housing Manager upholds the decision to offer or convert to a SSST instead of a Scottish secure tenancy and the tenant is still not satisfied, the applicant/tenant will have a right of appeal to the Sheriff Court (Housing (Scotland) Act 2001, Section 38 for an offer or by summary application under Section 35 for a conversion.

13.5 The tenant's appeal must be within 21 days after the date of intimation of the notice, or a longer period if 'special cause' is shown (Rule 2.6 of the Summary Applications, Statutory Applications and Appeals etc. Rules 1999 (SI 1999/929). The Sheriff may grant the appeal if they are satisfied that there are 'good grounds' for doing so.

## **14. COMPLAINTS**

14.1 Anyone wishing to make a formal complaint about the services provided by the organisation should do so as per our complaints procedure. The Complaints Policy and information about how to complain are available on the website and from our office.

## **15. EQUALITY & DIVERSITY**

15.1 This Policy will always be carried out in accordance with Weslo's Policy of Equality & Diversity which aims to promote diversity, fairness, social justice and equality of opportunity by adopting and promoting fair policies and procedures.

## **16. PUBLICISING AND AVAILABILITY**

16.1 This policy is available on the Weslo website, to Board and staff members and any other key stakeholders. Copies are available free of charge. A summary of this policy can be made available in other formats and languages.

## **17. MONITORING AND REPORTING**

18.1 Weslo has performance measures in place which are reviewed on a monthly basis to ensure the aims of this policy are being achieved.

## **18. OTHER RELEVANT POLICIES AND PROCEDURES**

This Policy also relates to:

- Short Scottish Secure Tenancy policy
- Allocation policy
- Antisocial behaviour policy
- Complaints procedure
- Data Protection policy
- Equality and Diversity policy

And these must be read in conjunction with this Policy.

## **19. LEGAL AND GOOD PRACTICE REQUIREMENTS**

This policy is compliant with the following legislation and good practice guidance:

- [Data Protection Act 2018](#) (DPA 2018)
- [General Data Protection Regulation](#) (GDPR) (Regulation (EU) 2016/679)
- Equality Act 2010
- Housing (Scotland) Act 2014
- Scottish Social Housing Charter

## **20. POLICY REVIEW**

This policy will be reviewed every 3 years to ensure compliance with applicable legislative changes, changes within the organisation and best practice