



**New Gorbals Housing Association**

## **Abandonment policy**

Date: 26<sup>th</sup> February 2019

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This document can be produced in different formats, for example, in larger print or audio-format, and in other languages, as appropriate.

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## **Notes**

New Gorbals Housing Association is generally referred to as “we” throughout this document.

## **Section 1: Context**

This policy describes New Gorbals Housing Association's approach to dealing with situations where we have good reason to believe that one of our properties has been abandoned by our tenant. By having a written detailed abandonment policy we are able to ensure that a uniform and professional approach is adopted throughout the organisation and the service delivered is compliant with law, best practice and internal policy.

## **Section 2: Equality**

We are committed to providing fairness and equality of opportunity in order to prevent discrimination. Our abandonment policy will try to ensure that no person is discriminated on the grounds outlined in the Equality Act 2010. This includes the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

Our policy and procedure will be flexible and where possible, take into account the individual needs of our tenants and their households. We will ensure that the relevant arrangements are made for communicating with our tenants with particular needs. This may include those with sight, hearing or learning difficulties, or those who find it difficult speaking or understanding English.

## **Section 3: Legal and regulatory requirements**

Our approach to managing the abandonment of one of our properties by our tenant is determined by our statutory and contractual obligations.

The Housing (Scotland) Act 2001 is the main Act that sets out the main requirements of our policy. The specific parts of this legislation with the most relevance to the abandonment of a property are:

- Sections 17, 18 and 19 of the Housing (Scotland) Act 2001 sets out requirements for the recovery of abandoned properties and the rights of recourse for the tenant to court. (Appendix 1)

- Sections 20 and 21 of the Housing (Scotland) Act 2001 sets out requirements for the recovery of abandoned properties for a joint tenant and their rights of recourse to court. (Appendix 2)
- Section 18, Subsection (4) of the Housing (Scotland) Act 2001 gives an order making power to the Scottish Ministers to outline arrangements for the securing of tenants' belongings in their absence and arrangements for their return or disposal. (see Appendix 1)
- The Secure Tenancies (Abandoned Property) (Scotland) Order 2002 (the order). This secondary legislation states that a notice is served on the tenant regarding delivery or collection of property within 28 days. (Appendix 3)

Our tenancy agreement also confirms the contractual responsibilities and rights in the case of an abandoned property by our tenant. The relevant sections are:

- Section 2: Use of the property and the common parts
- Section 6: Ending the tenancy  
(Appendix 4)

Our policy also complies with the Scottish Social Housing Charter:

- **Outcome 1: Equalities**  
Social landlords perform 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.”

- **Outcome 2 – Communication**  
Social landlords manage their businesses so that:

“tenants and other customers find it easy to communicate with their landlord and get the information they need about

their landlord, how and why it makes decisions and the services it provides.”

- **Outcome 6 - Estate management, anti-social behaviour, neighbour nuisance and tenancy disputes**

Social landlords, working in partnership with other agencies, help to ensure as far as reasonably possible that:

“tenants and other customers live in well-maintained neighbourhoods where they feel safe.”

- **Outcome 11 - Tenancy sustainment**

Social landlords ensure that:

“tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and by other organisations.”

#### **Section 4: Aims and objectives**

The aims and the objectives of the abandonment policy are to comply with legislation and best practice. It is also to minimise for the Association any potential lost revenue, risks of vandalism and consequential repair costs.

The policy will only be implemented when we have good reason to believe that a property has been abandoned by the tenant. This would apply where:

- a house is unoccupied, and
- our tenant does not intend to occupy it as their home, and
- the property has been abandoned, following investigation and checks by the Association.

## **Section 5: Abandoned property investigation**

Where it is suspected that one of our tenants has abandoned one of our properties, we will make reasonable enquiries on the whereabouts of our tenant. These checks will include letters, visits, checks with other agencies and neighbours as appropriate.

After carrying out the appropriate checks and we believe that the property has been abandoned by our tenant we will implement the procedure for repossession.

During this period we will continue to try and make contact with our tenants to find out what their intentions are in relation to our property.

A record will be kept of all checks and contacts carried out in the property file.

## **Section 6: Abandoned property repossession procedure**

There are two legal provisions that apply in two sets of circumstances depending on whether there is a sole or joint tenancy.

- **Single tenancy/joint tenancy**

We have reasonable grounds for believing that the property is empty and that our tenant does not intend to occupy it as their only or principal home.

(Housing (Scotland) Act 2001, sections 17-19)

- **Joint tenancy**

We have reasonable grounds for believing that our joint tenant is not occupying the house and does not intend to occupy it as their only or principal home.

(Housing (Scotland) Act 2001, sections 20 & 21)

## **Single tenancy/joint tenancy**

A notice will be served giving 4 weeks' notice to our tenants of their requirement to confirm, in writing, if they intend to occupy the property as their home. The notice will be delivered by hand on the property, or sent by registered post to another known address.

Following the serving of the first notice, if we are satisfied that the property has been abandoned, we may at the end of the 4 weeks' notice period serve a further notice bringing the tenancy to an end with immediate effect.

At this point we are then entitled to take possession of the house without further proceedings.

## **Joint tenancy**

When we believe that one of our joint tenants appears to have abandoned the tenancy we will take action which will bring to an end the interest of our joint tenant.

We will:

- give 4 weeks' notice by serving the appropriate notice.
- make sufficient enquiries to ascertain that the abandoning tenant is not occupying the house and does not intend to occupy it their home.
- If there is no response to the first notice, serve a further notice on the abandoning tenant bringing their interest in the tenancy to an end with effect from a specified date which must not be earlier than 8 weeks after the date of service of the second notice.

Notices will be served separately on both parties and delivered by hand on the property, or sent by registered post to another known address.

Similar enquiries on the whereabouts of our joint tenant will be made, although more rigorous checks may be required to guard against any false claims of abandonment by the remaining joint tenant. A record of steps taken will be retained in the house file.

At the end of the 8 week period after the second notice is served, the Association is entitled to take possession of the house without further proceedings.

### **Section 7: Disposal of tenants' belongings and property**

If we suspect a property has been abandoned we will implement our abandonment procedures for repossession set out in Section 18 of the 2001 Housing (Scotland) Act.

Following the serving of the appropriate notices and rigorous checks being made, if we are satisfied that the property has been abandoned, we may bring the tenancy to an end.

Two members of staff will attend when a property is being recovered and an inventory will be compiled on a room by room basis and kept on file. Where forced entry is required, police attendance will be requested.

If property is not collected within the initial 4 weeks' notice period, it may be disposed of accordingly, depending on the value of the property. Following the expiry of the 28 day period we are obliged to store the property for a further 6 months except in the following circumstances.

- Where the value of the property would not in the landlord's opinion exceed the costs which can be deducted for storage during the period

During the period where property is being stored, it will be returned if delivery is arranged by a person who appears to have ownership rights of the property, providing that payment is made equal to the costs of storage or a lesser amount at our discretion.

After the 6 month period, where this applies, we may dispose of the property as we see fit. Any proceeds from the sale of the property will be deducted accordingly for costs of storage with any remaining sum being paid to rent arrears, where applicable, after the expiry of the 6 month period.

## **Section 8: Abandoned properties register**

A register will be maintained for all abandoned properties. An inventory with photographs for all properties with personal belongings left behind after the tenancy has ended will be produced and kept in the former tenant file.

The register will be reviewed annually and properties will remain on the register for 5 years. The register will be available for inspection on request.

## **Section 9: Appeal process**

There is a right of appeal within 6 months of the repossession. Where the court finds that the landlord has acted wrongly or unreasonably, the tenancy will be ordered to continue or alternative suitable accommodation provided.

## **Section 10: Links to other policies**

Our abandonment policy links to the following policies:

- Empty homes management policy
- Disposal of tenants' personal belongings policy
- Tenancy sustainment policy (being developed early 2019)

## **Section 11: Consultation**

We promote consultation with our tenants and other service users. We do this through a wide range of methods, including consultation in writing, meetings, forums and working groups.

## **Section 12: Complaints handling procedure**

We use a complaints handling procedure that was developed for housing associations throughout Scotland. This complaint system was developed by the Scottish Public Services Ombudsman.

In line with housing law, we provide all tenants with detailed information about our complaints handling procedure when they become tenants. We also advise all service users about their right to complain.

A complaint is defined as being:

“An expression of dissatisfaction by one or more members of the public about the housing association’s action or lack of action, or about the standard of service provided by or on behalf of the housing association.”

Our complaint handling procedure, including advice on how to make a complaint, is available from our offices or via our website.

## **Section 13: Policy Review**

We review our organisational policies every five years, or earlier if required. For example, we may review sooner to reflect changes in law or, if guidance changes occur. We may also decide to make changes requested by our tenants.

## **Appendix 1: Extract of Housing (Scotland) Act 2001, Part 2, Chapter 1, for abandoned tenancies**

### **17 Abandoned tenancies**

(1) This section applies where a landlord under a Scottish secure tenancy has reasonable grounds for believing that—

(a) the house is unoccupied, and

(b) the tenant does not intend to occupy it as the tenant's home.

(2) The landlord may enter the house at any time for the purpose of securing the house and any fittings, fixtures or furniture against vandalism.

(3) For the purposes of subsection (2), the landlord and its servants or agents may open, by force if necessary, doors and lockfast places.

(4) The landlord may take possession of the house in accordance with section 18.

### **18 Repossession**

(1) A landlord wishing to take possession of a house under section 17(4) must serve on the tenant a notice—

(a) stating that the landlord has reason to believe that the house is unoccupied and that the tenant does not intend to occupy it as the tenant's home,

(b) requiring the tenant to inform the landlord in writing within 4 weeks of service of the notice if the tenant intends to occupy the house as the tenant's home, and

(c) informing the tenant that, if it appears to the landlord at the end of that period that the tenant does not intend so to occupy the house, the tenancy will be terminated with immediate effect.

(2) Where—

(a) the landlord has—

(i) served on the tenant a notice complying with subsection (1), and

(ii) made such inquiries as may be necessary to satisfy the landlord that the house is unoccupied and that the tenant does not intend to occupy it as the tenant's home, and

(b) at the end of the period mentioned in subsection (1)(b) the landlord is so satisfied,

the landlord may serve a further notice on the tenant bringing the tenancy to an end with immediate effect.

(3) Where a tenancy has been terminated in accordance with this section the landlord is entitled to take possession of the house without any further proceedings.

(4)The Scottish Ministers may by order make provision for the landlord, in taking possession of the house, to secure the safe custody and delivery to the tenant of any property which is found in a house to which this section applies and, in particular—

(a)for requiring charges to be paid in respect of such property before it is delivered to the tenant, and

(b)for authorising the disposal of such property, if the tenant has not arranged for its delivery to the tenant before the expiry of such period as the order may specify, and the application of any proceeds towards any costs incurred by the landlord and any rent due but unpaid by the tenant to the landlord.

## 19 Tenant's recourse to court

(1)A tenant under a Scottish secure tenancy who is aggrieved by termination of the tenancy by the landlord under section 18(2) may raise proceedings by summary application within 6 months after the date of the termination.

(2)Subsection (3) applies where, in proceedings under this section, it appears to the court that the landlord—

(a)has failed to comply with any provision of section 18,

(b)did not have reasonable grounds for finding—

(i)that the house was unoccupied, or

(ii)that the tenant did not intend to occupy it as the tenant's home, or

(c)was in error in finding that the tenant did not intend to occupy the house as the tenant's home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of the tenant's intention so to occupy it.

(3)Where this subsection applies the court must—

(a)if the house has not been let to a new tenant, grant a declarator that the notice under section 18(2) is of no effect, or

(b)in any other case, direct the landlord to make other suitable accommodation available to the tenant.

(4)On granting a declarator under subsection (3)(a) the court may make such further order in relation to the Scottish secure tenancy as it thinks fit.

(5)Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (3)(b).

## **Appendix 2: Extract of Housing (Scotland) Act 2001, Part 2, Chapter 1, for joint tenancies**

### **20 Abandonment by joint tenant**

(1) This section applies where a landlord under a Scottish secure tenancy has reasonable grounds for believing that a joint tenant under the tenancy (the “abandoning tenant”)—

- (a) is not occupying the house, and
- (b) does not intend to occupy it as the tenant’s home.

(2) A landlord wishing to bring to an end the interest of an abandoning tenant in the tenancy must serve on the abandoning tenant a notice—

- (a) stating that the landlord has reason to believe that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant’s home,
- (b) requiring the abandoning tenant to inform the landlord in writing within 4 weeks of service of the notice if the abandoning tenant intends to occupy the house as the tenant’s home, and
- (c) informing the abandoning tenant that, if it appears to the landlord at the end of that period that the abandoning tenant does not intend so to occupy the house, the abandoning tenant’s interest in the tenancy will be brought to an end by the service of a notice under subsection (3).

(3) Where—

- (a) the landlord has—
  - (i) served on the abandoning tenant a notice complying with subsection (2), and
  - (ii) made such inquiries as may be necessary to satisfy the landlord that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant’s home, and
- (b) at the end of the period mentioned in subsection (2)(b) the landlord is so satisfied,

the landlord may serve a further notice on the abandoning tenant bringing the abandoning tenant’s interest in the tenancy to an end with effect from a date specified in the notice, being a date not earlier than 8 weeks after the date of service of the notice.

(4) A landlord serving a notice on an abandoning tenant under subsection (2) or (3) must serve a copy of the notice on each of the other joint tenants under the tenancy.

### **21 Joint tenancies: abandoning tenant’s recourse to court**

(1) A joint tenant under a Scottish secure tenancy who is aggrieved by the bringing to an end of the tenant’s interest in the tenancy under subsection (3) of section 20 may raise proceedings by summary application within 8 weeks after the date of service of the notice under that subsection.

(2) Subsection (3) of this section applies where, in proceedings under this section, it appears to the court that the landlord—

(a) has failed to comply with any provision of section 20,

(b) did not have reasonable grounds for finding that the tenant—

(i) was not occupying the house, or

(ii) did not intend to occupy it as the tenant's home, or

(c) was in error in finding that the tenant did not intend to occupy the house as the tenant's home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of the tenant's intention so to occupy it.

(3) Where this subsection applies, the court must—

(a) grant a declarator that the notice under section 20(3) is of no effect, or

(b) if it would be unreasonable to grant such a declarator, direct the landlord to make other suitable accommodation available to the tenant.

(4) On granting a declarator under subsection (3)(a) the court may make such further order in relation to the tenant's interest in the tenancy as it thinks fit.

(5) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (3)(b).

# Appendix 3: The Scottish Secure Tenancies (Abandoned Property) Order 2002

S C O T T I S H   S T A T U T O R Y   I N S T R U M E N T S

## 2002 No. 313

HOUSING

### The Scottish Secure Tenancies (Abandoned Property) Order 2002

*Made*

*26th June 2002*

*Laid before the Scottish Parliament*

*27th June 2002*

*Coming into force*

*30th September 2002*

The Scottish Ministers, in exercise of the powers conferred by sections 18(4) and 109(2) of the Housing (Scotland) Act 2001(1), and of all other powers enabling them in that behalf, hereby make the following Order:

#### **Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Scottish Secure Tenancies (Abandoned Property) Order 2002 and shall come into force on 30th September 2002.

(2) In this Order “the Act” means the Housing (Scotland) Act 2001.

#### **Procedure by landlord**

2.—(1) Where property is found in a house to which section 18(1) of the Act applies the landlord shall immediately serve a notice on the tenant that the property is available for delivery into the hands of the tenant or the tenant’s agent at a place specified in the notice on payment of any sum payable in terms of article 5(1) of this Order and that if the property is not collected by the tenant from the specified place on or before the date specified in the notice (being a date not fewer than 28 days from the date of service of the notice and not earlier than the date on which the landlord repossesses the house) it may be disposed of in accordance with this Order.

(2) The notice provided for in paragraph (1) of this article shall be served by posting it to the tenant in a recorded delivery letter addressed to the tenant at the tenant’s last known address or by leaving the notice for the tenant at that address.

3.—(1) Where property in respect of which a notice under article 2 of this Order has been served on the tenant has not been collected by the date specified in the notice, the property shall, subject to paragraph (2) of this article, be stored by the landlord for a period of 6 months from the date on which the landlord took possession of the dwellinghouse and after expiry of the said period the landlord may sell any item remaining in its custody.

(2) Paragraph (1) of this article shall not apply to any property the value of which would not, in the opinion of the landlord, exceed the amount which the landlord would be entitled to deduct under article 6 of this Order from the proceeds of any sale of such item.

#### **Disposal of property**

4. Where property to which article 3(1) does not apply and in respect of which a notice under article 2 has been served on the tenant has not been collected by the date specified in the notice the landlord may sell or otherwise dispose of it.

#### **Charges payable**

5.—(1) Subject to paragraph (2) of this article, where at any time prior to the sale or disposal of property under this Order the tenant, or any other person who appears to the landlord to have a right of ownership or of possession in the property, arranges for delivery to the tenant or such other person of any item the landlord shall relinquish custody of that item upon receipt of a payment equal to the amount of any costs incurred by the landlord in complying with this Order in relation to that item or such lesser amount (including a nil amount) as the landlord may think fit.

(2) Nothing in this article shall affect the landlord's exercise of its right of hypothec.

6. Where a landlord sells property under article 3 of this Order it may deduct from the proceeds of sale the amount of any costs incurred by it in complying with this Order in relation to that property and, if there is any remainder after deduction of such amount, the amount of any arrears of rent.

#### **Public Health and Safety**

7. Nothing in articles 2 to 5 of this Order shall prevent the exercise by any person or authority of any power under any enactment relating to public health or public safety.

#### **Register of abandoned property**

8.—(1) Landlords shall maintain a register of houses in which property has been found on the exercise of their powers under section 18 of the Act.

(2) A house shall remain on the register until after the expiry of a period of 5 years from the date on which the landlord took possession of the house.

(3) The landlord shall make the register available for inspection by members of the public at all reasonable times.

*MARGARET CURRAN*

St Andrew's House,  
Edinburgh  
26th June 2002

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision for the procedure to be followed by a landlord in respect of property found in a house which has been re-possessed under section 18 of the Housing (Scotland) Act 2001.

Article 2 provides that the tenant will be advised by notice that if the tenant's property is not collected within a specified time it may be disposed of in accordance with this Order. Article 3 provides that property of a value sufficient to cover the cost of storage will be stored for six months and may thereafter be sold. Article 4 provides that property of a value insufficient to cover the cost of storage may be disposed of.

Article 5 provides that, subject to the landlord's security for unpaid rent, the landlord shall, on receipt of payment of its expenses, surrender any property to which the Order applies to any person appearing to be a person entitled to delivery. Article 6 provides that the landlord may deduct its expenses and the amount of any arrears of rent from the proceeds of sale of any property to which the Order applies.

Article 8 provides that landlords will maintain for five years, in a register open to public inspection, information as to the houses in which property to which the Order applies has been found.

## **Appendix 4: Extract of section 2 and 6 NGHA Scottish secure tenancy agreement**

### **Section 2: Use of the property and the common parts**

- 2.1 You must take entry to the house, occupy and furnish it and use it solely as your only or principal home. Failure to occupy the house as your only or principal home will constitute a breach by you of an obligation under the terms of the Agreement which will allow us to (a) raise Proceedings for Recovery of Possession in the Sheriff Court to terminate this tenancy in accordance with Section 6.3 of this Agreement, or (b) follow the procedure to recover abandoned property under Section 6.4 of this Agreement.
- 2.2 .....you must tell us if you intend to go away, for more than four weeks and your house will be unoccupied during that time;

### **Section 6: Ending the tenancy**

#### **6.4 By Abandonment by you**

We have reasonable grounds for believing that you have abandoned the house. In this case, we may forcibly enter the house to make it secure. We will also give you at least 4 weeks' notice that we believe that you have abandoned the house. If, at the end of that period, we have reasonable grounds for believing that you have abandoned the house, we may repossess it by service of another notice.

You have a right to make application to the sheriff against repossession within six months. We will secure the safe custody of any property, found in the house, as long as we consider its value to be greater than the cost of storing it plus any rent or other arrears you owe us in relation to your tenancy. We will deliver any such property to you as long as you have paid us for the costs of storing it, and made arrangements for and paid for the delivery of it to you. We have the right to make such a charge, and to dispose of any such property if you have not made arrangements for and paid for its delivery within a given period.

## **6.8 Abandonment by a joint tenant**

If we have reasonable grounds for believing that a joint tenant has abandoned the house, we may give that tenant 4 weeks' notice. If we are satisfied on reasonable grounds, at the end of the four week period, that the joint tenant has abandoned the house, we may serve another notice. This second notice will terminate that joint tenant's interest in the tenancy in not less than 8 weeks. That second notice will not, however, terminate the tenancy which will continue. That person has a right to make application to the sheriff if we do this.