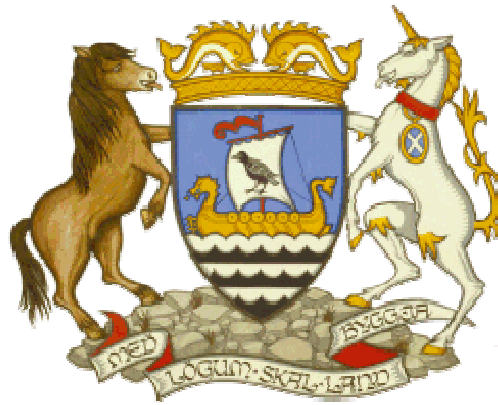


Operational Procedure 54

SHETLAND ISLANDS COUNCIL

Tenancy Management Policy



Responsible Officer	Senior Housing Officer – Estate Management						
Issue No.	1	Revision No.	1	Revision Date:	06/08/10	Doc Ref:	OP54 v1.1

Amendment and Authorisation Record

Tenancy Management Policy

Date	Author	Paragraph ref:	Nature of change	Authorised by
06/08/10	VS	n/a	Creation of OP	-

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Section 1

Abandoned Tenancies

If we have reason to believe a house let to you under a secure tenancy is unoccupied, and that you do not intend to occupy it as your home, we will visit your home and carry out basic inquiries to try to find out where you are. We will also write to you asking you to let us know within three weeks if you intend to occupy the house.

If your house is not secure, we will arrange for it to be secured. We can if necessary force open doors in order to secure the house e.g. open windows.

If you do not contact us, we will write to you again, giving you one week to respond.

If you have still not been in contact, and we are unable to determine your whereabouts, we will issue an Abandoned Tenancy notice. This notice will state that we believe the house is unoccupied and that you do not intend to occupy it as your home. We will ask you to inform us in writing within four weeks if you intend to occupy the house as your home; and if at the end of four weeks it appears to us that you do not intend to occupy the house as your home, your tenancy will be terminated.

If there are any items of furniture or personal belongings left in the house, we will also serve a notice under Article 2 (1) of the Secure Tenancies (Abandoned Property) (Scotland) Order 1982.

At the end of the four week period, if we have made inquiries and are satisfied that you do not intend to occupy the house as your home, we will serve a further notice on you, which will automatically end your tenancy from the date of service. We can then take possession of the house without any further proceedings.

If the house has not already been secured, it will be secured as soon as possible after serving the second notice.

If there are any items of furniture or personal belongings left in the property, we will take an inventory of these and arrange for them to be removed and stored for a period of six months. You will be recharged for the cost of storage of the items.

A copy of the inventory will be held on the Register of Abandoned Property for a period of five years, from the date on which possession of the house is taken.

Any unclaimed items will, after a period of six months from the date of end of tenancy, be sold or disposed of as appropriate. Any monies received from the sale of any property will be offset against any storage charges and rent account debt.

If at the stage of serving the first Notice or at any other stage of the proceedings, you contact us, then this procedure will be halted. We will then take appropriate action according to whether you intend to return to the house.

If you make contact with us after the termination of your tenancy, we will meet with you. If you are aggrieved by the termination of your tenancy, you can raise proceedings within 6 months after the date of the termination in the sheriff court. If it appears to the sheriff that we have failed to comply with legislation or that we did not have reasonable grounds or were in error in taking the action we did, the sheriff can instruct us to continue your tenancy (if the house has not already been let to a new tenant) or make other suitable accommodation available to you.

Section 2

Allocation Policy

The Shetland Islands Council's Allocation Policy is contained in a separate operational procedure, OP47.

A copy of this document can be provided on request or can be found online at <http://www.shetland.gov.uk/housing/policyandprocedures/documents/OP47v18updatedApril2011.pdf>

Section 3

Anti-Social Behaviour

The Shetland Islands Council's Anti-Social Behaviour Policy is contained in a separate operational procedure, OP22.

A copy of this document can be provided on request or can be found online at <http://www.shetland.gov.uk/housing/policyandprocedures/documents/OP22v2.1ASBProceduresupdated2009.pdf>

Section 4

Assignment of Tenancy

If you are a tenant of a council house, you can ask us for permission to pass on the tenancy to someone else who lives in the house with you, if they have been living in the property with you for at least 6 months and have been using it as their only or principle home.

The request should be put in writing to us and should include:

- The name of the person you want to pass on your tenancy to
- Your relationship to the person
- How long the person has lived with you in the house, and
- Any deposit or payment to be made to you as a result of passing on your tenancy e.g. for the sale of furniture in the house

We will not unreasonably refuse any request to pass on your tenancy. The following are the most common reasons why we would not agree to you assigning your tenancy:

- If a notice of recovery of possession or an order for recovery of possession has been served against you
- If a payment, other than a reasonable rent or a deposit has been received by you in relation to the assignment
- The assignment would result in substantial under-occupation or overcrowding
- You have substantial rent arrears and have not made arrangements to reduce them and stuck to the arrangement
- Legal action against your tenancy is ongoing or has been instructed by us
- A serious breach of your tenancy agreement is being investigated
- There is reason to believe that the assignment of your tenancy would lead to a serious breach of your tenancy agreement
- The prospective tenant has substantial outstanding housing arrears for a previous tenancy
- There are major refurbishment works that need to be carried out to your property
- Your house is currently a matrimonial home and your partner does not live with you but may have rights to the tenancy

We will notify you in writing of our decision within one month of receiving your completed request. If we do not agree to you passing on your tenancy we will tell you the reasons why.

You can appeal our decision by writing to the Estate Manager – Tenancy Management, 6 North Ness Business Park, Lerwick ZE1 0LZ. If we do not agree or refuse your request within one month, you have the right to pass on your tenancy without our written consent.

If we agree to you assigning your tenancy the assignment will take effect from the start of the next rental fortnight.

An assignment of tenancy does not create a new tenancy therefore the prospective tenant will not have to sign a new tenancy agreement. However, the prospective tenant will be asked to attend a meeting to discuss the content of the tenancy agreement, to ensure they are aware of their rights and responsibilities in relation to the tenancy.

You will both be asked to sign a Variation of Tenancy Agreement form to show that you accept the terms of the assignment of tenancy.

Section 5

Eviction Policy

Currently being drafted, to be inserted

Section 6

Homeswapper Scheme

Council tenants wishing to move to alternative accommodation within or out with Shetland are encouraged to organise mutual exchanges of property with other social tenants.

HomeSwapper.co.uk is for social tenants looking for a house swap (often called a "mutual exchange") whether it is a housing association or council house exchange.

You can register with the Homeswapper Website at www.homeswapper.co.uk and can choose up to 9 areas to move to. You will then be matched to any suitable exchanges meeting your criteria. These matches are placed in 'My Matches', a page on the website that is available after you have logged in.

You can be prompted about new matches by email or text message. There is a small admin charge for using this service.

Once two tenants agree they would like to swap houses, the mutual exchange can go ahead – subject to the formal approval required of each tenant's landlord (see the following section on Mutual Exchange).

Mutual Exchanges

An exchange can only be considered where the tenancy is a secure tenancy. Exchanges between tenants of the council and owner-occupiers or tenants in privately rented accommodation cannot be considered.

Tenants who are mutually exchanging within Shetland may be eligible for a Transfer Payment of £700, where they meet the conditions below.

We do not unreasonably refuse any mutual exchange however; the following are the most common reasons why we would not agree to you exchanging your tenancy:

- Where a notice of recovery of possession has been served against one of the tenants
- An order for recovery of possession has been made against one of the tenants
- If a payment has been received by either tenant in relation to the mutual exchange
- The mutual exchange would result in substantial under-occupation or overcrowding
- Either tenant has substantial rent arrears and has not made arrangements to reduce them
- Legal action against one of the tenants is ongoing or has been instructed by us
- A serious breach of one of the tenancy agreements is being investigated
- There is reason to believe that the exchange would lead to a serious breach of one of the tenancy agreements
- There are major refurbishment works that need to be carried out to the property
- Either house is currently a matrimonial home and the partner does not live with the tenant but may have rights to the tenancy
- We are not satisfied that any tenant wishing to exchange in to one of our properties intends to remain in the property for at least 6 months
- If we have specially adapted the property, to meet the specific needs of the individual tenant, and the adaptations are not required by the proposed exchange tenant then the exchange may be refused. Similarly, the proposed exchange would result in a need for either property to be adapted or extended the exchange may be refused

In exceptional circumstances the Housing Service may relax the above conditions e.g. where a disabled tenant in an adapted property would significantly benefit from a move to alternative accommodation.

With the exception of repairs that are the Council's responsibility, an exchange tenant will be expected to accept the Council's property in its existing condition. Where any non-standard features exist e.g. garden sheds, built in kitchen appliances, shower etc. the incoming tenant will be expected to accept future responsibility for the maintenance, replacement and / or reinstatement of these.

If there is any damage or rechargeable repairs required within a property we may require the current tenant to reinstate to an approved standard prior to the exchange being approved.

Each tenant must put their request in writing to their own landlord. In the case of a joint tenancy each joint tenant must sign a written request.

An exchange must not take place until consent has been given in writing and all parties have signed the necessary documents.

Please note that an exchange results in a new tenancy and this may affect your Right to Buy.

Further Information

A mutual exchange leaflet and application form is available on our website at www.shetland.gov.uk/housingoptionsguide/councilhousing/documents/MutualExchange.pdf

www.shetland.gov.uk/housingoptionsguide/councilhousing/documents/FolderApplicationForm.pdf

Help is also available from Housing Staff.

Transfer Payment Scheme

We wish to encourage tenants who are under-occupying their accommodation to move to more suitable smaller accommodation. The transfer payment scheme operated by us provides a flat rate payment to assist with the expenses incurred in transferring to alternative accommodation.

Payment under this scheme is subject to the following conditions:

- You must be a tenant of the council
- You must be currently living in Lerwick, Scalloway, Bressay, Cunningsburgh or Tingwall
- You must have an active transfer application to move to smaller accommodation
- You must have a clear rent account and no other outstanding debt to the Council.
- On transfer or exchange from your present accommodation, you would be releasing at least one bedroom, e.g. transfer from a three-bedroom property to a two-bedroom property.

If you meet the above criteria, you will be entitled to a payment of £700, which will be paid once the tenancy agreement for the new property has been signed; we reserve the right to take action to recover the payment in the event that the transfer does not take place.

Tenants of the council, who undertake mutual exchanges within Shetland, will be entitled to this payment where the conditions laid out as above are fulfilled.

Section 7

Rents Collection and Arrears Prevention

The Shetland Islands Council's Rents Collection and Arrears Prevention Procedure is contained in a separate operational procedure, OP50.

A copy of this document can be provided on request or can be found online at <http://www.shetland.gov.uk/housing/policyandprocedures/documents/OP50RA00SICrentprocedures.pdf>

Section 8

Subletting and lodgers

If you are a tenant of a council house, you can ask us for permission to sub-let your home, for example if you are going away to college or on extended holiday for a few months.

The request should be made in writing to us and should include:

- The names and addresses of the people who you wish to sub-let the property to
- The amount of rent you intend to charge (this should not be more than the council rent of your property, but can include a charge for furniture if appropriate)
- A forwarding address and telephone number for you if the sub-let is agreed

We will not unreasonably refuse you permission to sub-let your home. The following are the most common reasons why we would not agree to you sub-letting your property:

- If a notice of recovery of possession or an order for recovery of possession has been served against you
- If a payment, other than a reasonable rent or a deposit has been received by you in relation to the sub-let
- The sub-let would result in substantial under-occupation or overcrowding
- You have substantial rent arrears and have not made arrangements to reduce them
- Legal action against your tenancy is ongoing, or has been instructed by us
- A serious breach of your tenancy agreement is being investigated
- There is reason to believe that the sub-let or lodger would lead to a serious breach of your tenancy agreement
- The prospective sub-lessee or lodger has substantial outstanding housing arrears for a previous tenancy
- There are major refurbishment works that need to be carried out to your property
- Your house is currently a matrimonial home and your partner does not live with you, but may have rights to the tenancy

- You wish to sub-let your property for more than six months. (You can apply to sub-let for a longer period of time; however the sub-let will be reviewed every 4 months)
- We are not satisfied that you intend to return to the property at the end of the sub-let

We will notify you in writing of our decision within one month of receiving your completed application. We will tell you the reasons for our decision. You can appeal our decision by writing to the Estate Manager – Tenancy Management, 6 North Ness Business Park, Lerwick.

If the sub-let is agreed, we will also write to the sub-lessees regarding the procedure and their obligations. If we do not notify you of our decision within one month, you have the right to sublet your property without our written consent.

Section 9

Succession to a Scottish Secure Tenancy

If you are living in a council house and the tenant of the property dies, it may be possible for the tenancy to be passed on to you. You should contact the Housing Service to inform us that the tenant has died as soon as practicable. The Housing Officer for your area will then contact you or visit you at home to find out if you can succeed the tenancy.

Under the terms of the Housing (Scotland) Act 2001 when a tenant dies the tenancy can be passed onto a qualified person.

If the qualified person then dies, the tenancy can be passed on to another qualified person as a second round succession.

If the second qualified person dies, the tenancy ends. Except, if you are a joint tenant and continue to use the house as your only or principal home, the Scottish Secure Tenancy will not be terminated. Or, if you are a qualified person, other than a joint tenant, you are entitled to continue as tenant of the house for a period not exceeding 6 months, but the tenancy ceases to be a Scottish Secure Tenancy during this time.

Qualified Persons

You are a qualified person if:

- 1 The house was your only or principal home at the time of the tenants death and:
 - a) You were at that time—

The tenant's spouse, or living with the tenant as husband and wife or in a same sex relationship, and where the house was your only or principal home for at least 6 months before the tenants death, or
 - b) You are the surviving tenant(s) of a joint tenancy.
- 2 You are a member of the tenant's family, aged at least 16 years and the house was your only or principal home at the time of the tenant's death
- 3 You are a carer providing, or who has provided, care for the tenant or a member of the tenant's family where -
 - a) You are aged at least 16 years, and

- b) The house was your only or principal home at the time of the tenant's death, and
- c) You had a previous only or principal home, which was given up.

Special rule: Specially adapted house

If your house has been designed or substantially adapted for occupation by a person whose special needs require accommodation of the kind provided by the house, for the purposes of a first round succession, you will only be a qualified person if you fall within paragraph 1, or if you fall within paragraph 2 or 3 and you have special needs requiring accommodation of the kind provided by the house.

For the purposes of a second round succession, you will only be a qualified person if you have special needs requiring accommodation of the kind provided by the house. If you do not have special needs for that accommodation, but you would otherwise be a qualified person, we must make other suitable accommodation available to you.

Order of succession

If you are a qualified person falling within paragraph 1, the tenancy will pass to you unless you decline the tenancy.

If the tenancy does not pass to a qualified person falling within paragraph 1 and you are a qualified person falling within paragraph 2, the tenancy will pass to you unless you decline the tenancy.

If the tenancy does not pass to a qualified person falling within paragraph 1 or 2, and you are a qualified person falling within paragraph 3, the tenancy will pass to you unless you decline the tenancy.

If there is more than one qualified person living in the property, agreement must be reached as to which one the tenancy shall be passed on to. Alternatively, with your agreement, the tenancy can be passed on to two or more qualified persons as joint tenants. If agreement cannot be reached with the qualified persons within four weeks of the tenant's death, we will decide which qualified person succeeds the tenancy.

If you are a qualified person but you do not wish to accept the tenancy, you must confirm this in writing within four weeks of the tenant's death. You must then vacate the property within three months. You will be liable to pay any rent only for the period after then tenant has died.

If there is no qualified person living in the property, or every qualified person declines the tenancy, the tenancy ends on the date of the tenant's death. In this instance a member of the tenant's family should contact the Housing Office as soon as practicable. Unless there are special circumstances, we normally ask for keys to be returned to the Housing Service within 2 or 3 weeks

Section 10

Variation to a Secure Tenancy

If you are a tenant of a council house, you can ask us for permission to change your tenancy from a joint to a sole tenancy, or from a sole to a joint tenancy.

A Variation of Tenancy Agreement form is available at the Housing Office for you to complete. All persons involved in the change of tenancy agreement must sign the request and have it witnessed.

The following details must be completed:

- The name and current address of the person you want to add to your tenancy
- Your relationship to the person and
- How long the person has resided in your home, or
- The name and current address of the person who wants their name to be removed from the tenancy

We will not unreasonably refuse any request to change your tenancy agreement. The following are the most common reasons why we would not agree to a change in your tenancy agreement:

- Legal action to end your tenancy is ongoing, or has been instructed by us.
- A serious breach of your tenancy agreement is being investigated
- There is reason to believe that the change of your tenancy agreement would lead to a breach of your tenancy conditions e.g. the change would result in serious overcrowding
- Your house is currently being sub-let
- The prospective tenant has substantial rent arrears or has been previously evicted for anti-social behaviour
- The person you want to add to your tenancy is not your spouse or co-habitee, and has not been living in the house with you for at least six months
- There is reason to believe that one or other of the proposed joint tenants does not intend to occupy the house as his/her main home
- The house is currently a matrimonial home and your spouse does not live with you, but may have rights to the tenancy

We will notify you in writing of our decision within one month of receiving your completed request. If we do not agree to your request we will tell you the reason why. You can appeal our decision by writing to the Estate Manager – Tenancy Manager, 6 North Ness Business Park, Lerwick ZE1 0LZ.

If we agree to the change in your tenancy, the variation will take effect from the start of the next rental fortnight. A variation does not create a new tenancy therefore you will not need to sign a new tenancy agreement, but we will meet with you to explain the terms of the existing tenancy agreement.

Terminating your Tenancy

A joint tenant can also terminate their part of the tenancy, without the permission of the other tenant, by writing to the Housing Service and the joint tenant(s), giving four weeks notice of their intention to terminate.

Section 11

Voids Policy

The Shetland Islands Council's Voids Policy is contained in a separate operational procedure, OP49.

A copy of this document can be provided on request or can be found online at <http://www.shetland.gov.uk/housing/policyandprocedures/documents/OP49SICVoidsPolicy.pdf>

Section 12

Appeals and Complaints

If you are dissatisfied with any aspect of the handling of your tenancy you should contact us.

We welcome problems being brought to our attention as this allows us the opportunity to make changes and improve our services.

This information does not replace your rights to use the Shetland Islands Council's corporate complaints procedure or the right to refer a complaint to the Scottish Public Services Ombudsman.

Telephone or Writing?

Telephone complaints may seem easier, but it can sometimes be difficult to get through to the appropriate person. It can also be impossible to prove that you complained in the first place if you do not feel that adequate action is taken as a result of your conversation.

We recommend that you write to us, addressing your letter to a Service Manager, because then you will have a record of events to draw upon at a later date.

However, you may first need to telephone us to clarify the issues and identify the Service Manager responsible for dealing with your complaints and find out whether there are any special procedures for lodging your complaint. It is good practice to note the name and position of the person you are speaking to and to note the time and date of the call.

Of course, your problem may be so urgent that you have no choice but to complain over the telephone. If this is the case, make sure you keep notes of what is said, including any statements about what will be done to address your problem, the name and position of the person and time and date of the call.

You may also want to follow-up any conversation in writing to confirm your understanding of the conversation and ask for acknowledgement of your letter.

Independent Advice

You can seek independent advice from:

Shetland Citizens Advice Bureau
Market House
14 Market Street
Lerwick
ZE1 0JP

Telephone: 01595 694696

Fax: 01595 696776

Email: sicab@shetland.org

Web: www.cas.org.uk/WebOfficeDetails.aspx?id=86&letter=L

You can also seek independent advocacy assistance from:

Advocacy Shetland
Market House
14 Market Street
Lerwick
ZE1 0JP

Tel: 01595 743929 / 743930

Fax: 01595 696787

Email: advocacy@shetland.gov.uk

Who Should I Address My Complaint To?

Address your complaint to the Service Manager responsible for the person or area you have a problem with.

The Service Manager – Housing Business Support is responsible for:

- Administration support
- Policy and Information
- Asset Management

The Service Manager – Housing and Property is responsible for:

- Estate Management
- Homelessness Service
- Supported Accommodation
- Outreach Support Service

What Should I Include In My Letter?

You should try to summarise the problem, including:

- When and what happened
- Who was involved
- Why the situation is unfair or wrong
- Details of any conversations or meeting that have taken place
- Attach copies of any relevant correspondence or documents

Anything Else?

It is important to keep copies of all letters and materials you send and receive and to keep a record of telephone calls including dates, times and what was said. This information may help further down the track if we fail to adequately address your complaint.

What If This Doesn't Work?

If the above steps don't work within a reasonable time, you may decide to take your complaint further. You may wish to make a formal complaint to Shetland Islands Council. This can be done through writing a letter or completing a Council complaint form and sending it to:

Chief Executive's Office
Shetland Islands Council
Executive Services Department
Town Hall
Hillhead
LERWICK
ZE1 0HB

The complaint will then be sent to the Head of Service to deal with. Following this, if you are still dissatisfied and wish to take the matter further, it is, on request, returned to the Chief Executive for investigation.

You also have the right to make a formal complaint to the Scottish Public Services Ombudsman who deals with complaints in Scotland about local government and other public services and can be contacted at:

Website: www.spsso.org.uk
Tel: 0870 377 7330.

Section 13

Performance Monitoring

Any Council policy should ensure accountability, and monitoring is the means of achieving this as well as a high quality service. We will monitor and publicise the following aspects of the tenancy management policy:

- The number of abandoned tenancies investigated and terminated
- The value of rechargeable repairs relating to any abandoned tenancy
- The time taken to resolve suspected abandoned tenancies
- The number of updates to the Register of Abandoned Property
- The cost of storage of abandoned property
- The number of assignation requests received and approved
- The number of mutual exchange requests received and approved
- The number of subletting / lodger requests received and approved
- The number of succession requests received and approved
- The number of variation requests received and approved
- The number of requests out with the 28 days statutory deadline
- The number and nature of appeals received
- Complaints specific to the Tenancy Management Policy

The Housing Management Team will undertake this monitoring on an annual basis.

A newsletter will be circulated annually to all tenants, local Community Councils, the Tenants Forum, as well as being made available at the housing office to applicants and members of the public.

The views of applicants on the tenancy management policy, the procedures adopted and the manner of dealing with individual requests will be welcomed.

The confidentiality of individual tenant's or prospective tenant's circumstances will be maintained.

For further information please contact us at:

**Housing,
6 North Ness Business Park,
Lerwick**

Telephone **01595 744360**
Freephone **0800 212 829**
Fax **01595 744395**

In an emergency out with office hours please contact:

- Homelessness: **01595 695611**
- Council House Repairs: **01595 693972**
- Available 24 hours a day, 365 days a year

Email: Housing@shetland.gov.uk
Website: www.shetland.gov.uk/Housing

Our Office is Open

Monday to Friday 9 am to 5 pm,

We are open during lunchtimes.

Information on the various housing options available in Shetland can be found online in the Housing Options Guide.

This Policy and other housing information can, on request, be made available in Braille, on tape, in large print and in different languages. For further information please telephone Housing on 01595 744360, or email housing@shetland.gov.uk.