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THE LEGAL FRAMEWORK FOR SOCIAL HOUSING ALLOCATIONS

STATUTORY GUIDANCE FOR SOCIAL LANDLORDS

HOUSING (SCOTLAND) ACT 2014



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Legal Framework for Allocation Policies

1. INTRODUCTION

1.1 This guidance sets out the legal framework which social landlords must work within when developing their allocation policies. Those provisions not already in force will take effect from 1st May 2019. More information can be found in [The Housing \(Scotland\) Act 2014 \(Commencement No. 8, Savings, Transitional and Supplemental Provisions\) Order 2018](#).

1.2 Sections 19 to 21 of the Housing (Scotland) Act 1987 ('the 1987 Act'), set out the legal framework for social housing lists and allocations¹. For ease of reference, the legislation as amended up to and including The Housing (Scotland) Act 2014 ('the 2014 Act') is set out in Annex A.

1.3 All social landlords must comply with this legislation when managing their housing lists and allocating housing. Within these legal constraints, which include the legislation on homelessness in Part II of the 1987 Act, landlords have discretion to develop allocation policies in line with local priorities². More information can be found in the [Scottish Government's Social Housing Allocations – a practice guide](#).

1.4 Landlords should however build flexibility into their allocation policies. There will sometimes be exceptional cases where a landlord considers it appropriate to make an allocation to an applicant who may not fit with the criteria in the allocations policy it has set out. By including an 'exceptional circumstances' clause in the allocations policy, landlords will give themselves the flexibility (within the legal constraints) to award a tenancy in exceptional circumstances.

1.5 It is not possible to predict all the exceptional circumstances that may arise but these could include circumstances such as:

- where a landlord makes a management transfer or special let outside the normal allocations policy;
- where a landlord makes an exceptional allocation to someone who does not qualify to succeed to a tenancy – for example a carer who has given up their previous home; or
- where the landlord makes an allocation, outwith its normal allocation system, to a household being resettled in the UK – for example through an official Resettlement Programme.

1 Section 19 of the Housing (Scotland) Act 1987 is amended by section 9 of the Housing (Scotland) Act 2001 ('the 2001 Act') and paragraph 4 of schedule 2 to the Housing (Scotland) Act 2014 ('the 2014 Act'). Section 20 is amended by section 10 of the 2001 Act and sections 3, 5 and 6 of, and paragraph 4 of schedule 2 to, the 2014 Act; it has also been amended by section 154 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') section 10 of the Homelessness etc. (Scotland) Act 2003 and paragraph 10 of schedule 15 to the Housing and Regeneration Act 2008. Section 20A is added by section 4 of the 2014 Act. Section 20B is added by section 6 of the 2014 Act. Section 21 is amended by section 155 of the 1993 Act, paragraph 13 of schedule 10 to the 2001 Act and section 4 of, and paragraph 4 of schedule 2 to, the 2014 Act.

2 Part II of the 1987 Act as amended in particular by the 2001 Act and the Homelessness etc (Scotland) Act 2003.

2. CONSULTATION AND PUBLICATION OF ALLOCATION POLICIES

2.1 Landlords have a duty to consult on and set out how they will prioritise the allocation of houses, transfers and exchanges and to publish these rules in an allocation policy³. Landlords are required to consult the following groups before making or altering their allocation policies⁴:

- applicants on the housing list;
- their tenants;
- registered tenant organisations;
- such other persons as landlords see fit.

2.2 The 2014 Act also requires landlords to prepare and publish a report on the consultation on its allocation policy. It states that social landlords may publish the report on the consultation 'in any such manner as it thinks fit (and may in particular publish a joint report with any other social landlord'. Landlords will already be reporting to their Board or council committee on the outcome of the review and any changes being made to their allocations policy. This could form the basis of the report or they could include a report on the consultation as part of the allocation policy itself. Landlords may also wish to consider including how they will report on the review and what format that will take, as part of the allocations review.

2.3 Allocation systems vary considerably and landlords will need to consider what forms of consultation will work best in their circumstances. For example the best way to consult a large number of applicants on a common housing register may be different to the best way to work with a limited number of registered tenant organisations. The law does not specify the extent or type of consultation to be used. It is good practice to use a variety of consultation methods such as online focus groups and paper surveys. Landlords should also ensure that they take into account the needs of specific groups such as disabled people and people with learning and support needs. There is more information on consultation practice in the [Scottish Government's Guide to Successful Tenant Participation](#). [The Scottish Social Housing Charter](#) also sets out outcomes and standards for landlords on communicating with tenants and other customers.

2.4 Allocation policies should be reviewed regularly in conjunction with applicants, tenants, registered tenants organisations and other appropriate people or organisations.

³ Section 21 of the 1987 Act, as amended.

⁴ Section 54 of the 2001 Act already requires landlords to consult tenants and registered tenant organisations on proposed changes to allocations policies that might affect them, as part of its duty to consult on housing management. Such consultation is also likely to be part of a landlord's tenant participation strategy. Section 4 of the 2014 Act, through its insertion of section 20A into the 1987 Act, provides a duty to consult the groups listed.

2.5 A landlord must have regard to the following documents before making or altering its allocation policies:

- any local housing strategy for its area; and
- any guidance published by the Scottish Ministers.

2.6 Landlords should make sure that their allocation policy is written in plain English and is available to all for scrutiny at their offices. A free summary of the allocation policy must be available to any member of the public who asks for one. It is also good practice for landlords to make their full allocation policy easily available and many landlords do so via their website.

3. PRIORITISING HOUSING APPLICATIONS

3.1 After admitting an applicant to the housing list landlords have to decide on the priority of the application. Section 20 of the 1987 Act sets out persons to whom a landlord must give a reasonable preference and specific factors which must not be taken into account.

4. REASONABLE PREFERENCE

4.1 In selecting tenants for their houses landlords must give reasonable preference to:

- homeless persons and persons threatened with homelessness and who have unmet housing needs (but not if they only become such persons as a result of a local authority landlord having regard to a 'restricted person'⁵);
- people who are living under unsatisfactory housing conditions and who have unmet housing needs; and
- tenants of houses which are held by a social landlord and which the social landlord selecting its tenants considers to be under-occupied.

5. HOMELESS PERSONS AND PERSONS THREATENED WITH HOMELESSNESS

5.1 Part II of the 1987 Act defines 'homeless persons'. A person is homeless if he or she has no accommodation in the United Kingdom or elsewhere, or if he or she has accommodation, but it would not be reasonable for him or her to occupy it. A person is homeless if he or she has accommodation, but:

5 Section 30(6) of the 1987 Act, amended by paragraph 11(3) of schedule 15 to the Housing and Regeneration Act 2008. A 'restricted person' means a person-

- (a) who is not eligible for assistance under this Part [*i.e. Part 2, Homeless Persons*],
- (b) who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996, and
- (c) either-
 - (i) who does not have leave to enter or remain in the United Kingdom, or
 - (ii) whose leave to enter or remain in the United Kingdom is subject to a condition to maintain and accommodate himself, and any dependants, without recourse to public funds.

- cannot secure entry to it;
- it is probable that occupation of it will lead to abuse;
- it is probable that occupation of it will lead to abuse from someone who previously lived with him or her whether in that property or elsewhere;
- it is a moveable structure, vehicle or vessel and there is no place where he or she is entitled or permitted to place it and live in it (this has particular relevance for Gypsies/Travellers);
- it is overcrowded and may endanger the health of the occupants; or
- it is not permanent accommodation and the local authority has a duty to provide permanent accommodation. Permanent accommodation includes accommodation owned by him or her or in which he or she is a tenant with a Scottish secure tenancy or assured tenancy that is not a short assured tenancy. It also includes a short Scottish secure tenancy where such a tenancy has resulted from anti-social behaviour⁶.

5.2 Part II of the 1987 Act also defines ‘persons threatened with homelessness’. A person is threatened with homelessness if it is likely that he or she will become homeless within two months.

6. UNSATISFACTORY HOUSING CONDITIONS

6.1 There is no legal definition of ‘unsatisfactory housing conditions’. The term covers a wide range of circumstances such as the physical condition of the house, its unsuitability as a result of a medical condition or disability of the occupant or other aspects of an applicant’s circumstances, such as unsatisfactory living arrangements, problems with neighbours, harassment and domestic abuse.

6.2 It could also cover houses which do not meet the tolerable standard or households which are overcrowded. These were previously separate reasonable preference categories which landlords had to provide for, but they now fall to be considered within the category of living under unsatisfactory housing conditions.

6.3 Landlords should set out what they consider as living under unsatisfactory housing conditions in their allocations policy. Factors that are usually taken into account include the following categories:

- overcrowding⁷;
- living in a house that is below tolerable standard⁸;
- health and disability;
- harassment and abuse;
- social, community or family support.

⁶ Permanent accommodation will also include accommodation secured by a private residential tenancy by virtue of paragraph 4(3) of schedule 4 of the Private Housing (Tenancies) (Scotland) Act 2016 once that provision has been commenced.

⁷ Overcrowding is defined in Part VII of the 1987 Act.

⁸ Tolerable Standard is defined by section 86 of the 1987 Act as amended by section 102 of the 2001 Act and section 11 of the Housing (Scotland) Act 2006.

7. UNMET HOUSING NEEDS

7.1 The 2014 Act qualifies its categories of people who must be given reasonable preference in allocations by social landlords (apart from the under-occupying category) with the requirement that they have unmet housing needs. It says that people have unmet housing needs:

'...where the social landlord considers the persons to have housing needs which are not capable of being met by housing options which are available.'

7.2 Whether unmet housing needs exist in any given case will reflect two sets of factors: the circumstances of the applicant, which will vary widely among applicants; and the different housing options that are available to the applicant and whether these options are accessible to the applicant. Examples of where an applicant has unmet housing needs that could not be met by the housing options which are available to them, and where they would therefore be entitled to reasonable preference, could include:

- an applicant with disabilities whose housing needs could only be met in social housing because appropriate housing was not available in other tenures in the area and it was not possible to make essential adaptations to their current home to meet the applicant's assessed needs; or
- an applicant who needed to be located in a specific area for social reasons, for example to provide care to a family member, and who could not access other types of housing in the area.

7.3 There will also be circumstances where an applicant's needs could be met by the housing options that are available to them. This could, for example, include where the applicant's needs could be met in their current property with adaptations that can be made.

7.4 Landlords can allocate houses to applicants who meet other criteria in their allocation policy, provided that sufficient priority is given to applicants in the reasonable preference categories over the whole of the landlord's allocations.

8. TENANTS WHO ARE UNDER-OCCUPYING

8.1 The 2014 Act introduces a new category of applicant who must get reasonable preference in the allocation of social housing, tenants of social housing who are under-occupying.

Landlords use different definitions of under-occupancy and these should be set out in their allocation policies. Where a social housing tenant is seeking to transfer from one landlord to another, it is for the landlord that the tenant is applying to, to decide whether the tenant is under-occupying in line with its own definition, and therefore whether the tenant should be given reasonable preference.

8.2 Landlords are expected to make best use of their housing stock. As well as providing information on the benefits of downsizing, such as potentially lower fuel bills, landlords could incentivise tenants to move to a smaller house by:

- giving extra points/priority for each room under-occupied, within the landlord's allocation policy;
- paying financial incentives to the tenant; or
- providing help with removal costs or for things like white goods and carpeting.

9. WEIGHTING REASONABLE PREFERENCE GROUPS

9.1 Reasonable preference refers to the priority given to applicants for housing. It means that landlords must give that preference to persons in the three groups as set out above.

9.2 The law makes no distinction between people in the different reasonable preference categories and does not set out any weighting for them. Landlords must decide how much weight to give to each reasonable preference group.

9.3 Landlords who are local authorities have duties to provide accommodation and/or advice to those who are homeless or are threatened with homelessness. The '[Code of Guidance on Homelessness](#)' states that 'at the very least' landlords should not give homeless people lesser preference than the other specified groups.

9.4 RSLs also have duties under section 5 of the Housing (Scotland) Act 2001 ('the 2001 Act') to house statutory homeless people. RSLs have to meet section 5 requests from local authorities unless there are good reasons not to. [Guidance](#) was issued at the time of the introduction of section 5 by the Housing (Scotland) Act 2001. Further changes were made to the homelessness legislation by the Homelessness etc (Scotland) Act 2003 which set a target of phasing out the 'priority need' categories so that, from 31 December 2012, all unintentionally homeless households have been entitled to settled accommodation. The guidance describes circumstances where an RSL may have good reason not to comply with a section 5 request and the time period within which local authorities and RSLs should reach agreement. In summary, good reason is where:

- an RSL is unable to make suitable housing available within six weeks of the request; or
- the only housing the RSL has available is of a particular nature (for example sheltered housing for older people) and this is not suitable for the applicant.

9.5 There are no other grounds for an RSL to refuse a section 5 referral. RSLs cannot use any other terms of their allocation policy for refusing to deal with a section 5 referral. RSLs should make sure that their allocation policy reflects arrangements for section 5 referrals and nomination agreements, where these exist.

9.6 Landlords can take the needs of other groups into account as well as the reasonable preference groups and can create other factors, such as giving priority to service leavers. However any other groups being prioritised for allocations must not dominate an allocation policy at the expense of the three groups set out in section 20. Any additional criteria that are used to prioritise allocations must also comply with the requirements set out below in section 20(2) of the 1987 Act.

9.7 Landlords must make sure, whatever system they develop, that they give reasonable preference to the groups in section 20(1ZA) of the 1987 Act and meet the limitations on factors that can be taken into account.

10. TAKING PROPERTY OWNERSHIP INTO ACCOUNT

10.1 Section 5 of the 2014 Act removes the previous prohibition on taking ownership of property into account in allocating social housing. Landlords may now take into account the ownership and/or value of heritable property owned by the person applying for housing, by a person who normally lives with the applicant, or by a person who it is proposed will live with the applicant.

10.2 Heritable property will include land, as well as anything built on land, and can be property currently owned, or that has previously been owned, in Scotland, the rest of the UK or abroad. This means that if the applicant, or a current or future member of the household, currently owns land or property or previously owned land or property, this can be taken into account when deciding on an applicant's priority for the allocation of social housing. This applies to existing tenants as well as new applicants.

10.3 As a result, landlords can consider property ownership as part of assessing an applicant's housing needs and their circumstances. For example, a landlord could give a lower level of priority or number of points to an applicant who owns their own home.

10.4 However landlords may not take property ownership into account in the following circumstances:

- in cases where the property has not been let, but the owner cannot secure entry to the property. This could, for example, be where it is not safe to enter the property due to severe structural faults or where there are squatters living in the property;
- where it is probable that occupying the property will lead to abuse from someone currently living in the property;
- where it is probable that occupying the property will lead to abuse from someone who previously resided with the applicant whether in that property or elsewhere;
- where occupation of the property may endanger the health of the occupants and there are no reasonable steps that can be taken by the applicant to prevent that danger.

10.5 Landlords do not need to use this flexibility if they do not wish to consider property ownership as a factor in allocating housing. They can take the circumstances of each case into account and may decide to allocate social housing to an applicant who owns property in some circumstances. For example a landlord could allocate housing if an applicant owned property but it did not meet their needs and they required to be re-housed urgently.

10.6 Section 8 of the 2014 Act amends the 2001 Act to give landlords the ability to grant a short Scottish secure tenancy (short SST) to homeowners, to allow their housing needs to be met by a temporary let. Further information on the circumstances in which landlords can grant short SSTs to homeowners, and the processes for doing so, is available in the guidance on The Short Scottish Secure Tenancy for Homeowners.

11. FACTORS WHICH MUST NOT BE TAKEN INTO ACCOUNT WHEN ALLOCATING HOUSING

11.1 Section 20(2) of the 1987 Act, as amended, sets out factors which must not be taken into account when allocating social housing. These are explained below.

12. RESIDENCY

12.1 Landlords cannot take into account the length of time an applicant has lived in their area. This makes sure that length of residence does not influence decisions on giving priority for housing. For local authorities, 'area' means the administrative area covered by the authority. For RSLs, 'area' means the local authority area(s) or parts of such areas in which the RSL has housing.

12.2 The law does not prevent landlords from giving points to applicants for the length of time they have been on the housing list. However the landlord's allocation policy must give any waiting time points to anyone on the list whether they are resident within or outwith the landlord's area.

12.3 Landlords must take no account of whether an applicant lives in its area if the applicant:

- is employed, or has been offered employment, in the area; or
- wishes to move into the area to seek employment and the landlord is satisfied that this is the applicant's intention; or
- wishes to move into the area to be near a relative or carer; or
- has special social or medical reasons for requiring to be housed within the area; or
- wishes to move into the area because he or she is subject to harassment⁹; or
- wishes to move into the area because he or she runs the risk of domestic abuse¹⁰.

12.4 Having special social or medical reasons to be housed within an area is not defined in law but could include such situations as a prison leaver needing to move to another area to make a fresh start.

12.5 The legislation does not prevent a landlord from giving priority to people who live within the landlord's area and have a local connection. However a landlord also has to give the same priority it gives to residents for having a local connection to applicants in the lists at paragraph 12.3 above. A landlord can give preference to applicants living within its area and those meeting the criteria in the list above, over applicants who live outside its area and who do not meet any of the criteria. If a landlord intends to give preference to applicants living in its area, this should be set out clearly in the allocation policy how this will be applied.

⁹ Section 8 of the Protection from Harassment Act 1997 (c.40) defines 'harassment' of a person as including causing a person alarm or distress.

¹⁰ Section 33 of the 1987 Act defines 'domestic abuse' as abuse from a person with whom, but for the risk of abuse, an applicant might reasonably be expected to live, or abuse from a person with whom they formerly lived. For this purpose, 'abuse' includes violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress.

13. RENT ARREARS OR OTHER OUTSTANDING LIABILITIES RELATED TO A TENANCY

13.1 In making allocations landlords can take into account outstanding debts which relate to the tenancy of a house, such as rent or service charges. However the law¹¹ does not allow landlords to take account of rent arrears or debts which fall within the following categories:

- any outstanding liability (such as rent arrears) attributable to the tenancy of a house of which the applicant is not, and was not when the liability accrued, the tenant;
- any rent or other liabilities accrued by the applicant on a previous tenancy which are no longer outstanding;
- any such liability which is outstanding but where the amount outstanding is not more than 1/12th of the annual amount payable (or which was payable) by the applicant to the landlord in respect of the tenancy; or the applicant has both:
 - agreed arrangements with the landlord for paying the outstanding liability; and
 - made payments in line with that arrangement for at least three months and is continuing to make such payments;
- any outstanding liability of the applicant or anyone who will live with the applicant which do not relate to the tenancy of a house.

13.2 These provisions are aimed at limiting the circumstances in which landlords refuse to allocate a house to an applicant because of their or others' earlier debts. In some circumstances it may be reasonable for a landlord to decline to allocate a house to an applicant if they have significant unpaid rent arrears or service charges. Landlords are not prevented from doing this however landlords cannot refuse to allocate a house to an applicant:

- because of non-housing debts;
- where previous arrears of rent or service charges have been paid;
- where the rent or service charge arrears amount to no more than a month's rent or charges; or
- where the applicant has come to an arrangement with the landlord for paying arrears, has kept to the arrangement for at least three months and is continuing to make the payments.

13.3 Local authorities which are considering refusing to allocate a house to an applicant because of significant unpaid rent arrears or service charges should also consider what duties they may have to the applicant under their homeless responsibilities. This will involve determining whether they are homeless, and if so, whether they are unintentionally homeless. Local authorities may also consider whether the applicant has a local connection with the landlord's area or another area. The [Code of Guidance on Homelessness](#) includes approaches to households who have become homeless due to financial problems.

¹¹ Section 20(2)(a) of the 1987 Act.

14. AGE

14.1 Landlords generally cannot take the age of an applicant into account, provided that the applicant is 16 years of age or over. The only exceptions to this are the allocation of:

- houses which have been designed or substantially adapted for occupation by persons of a particular age group; and
- houses to persons who are, or are to be, in receipt of housing support services (within the meaning of section 91 of the 2001 Act) for persons of a particular age group.

14.2 'Housing support services' include any service which provides support, help, advice or counselling to an individual with particular needs with a view to enabling that individual to occupy, or continue to occupy, a house as their home.

14.3 The 1987 Act does not define what 'substantially adapted' is, or what design factors would be relevant. Landlords would have to assess whether the circumstances justify use of the exemption.

14.4 These exceptions reflect the fact that age should not be a barrier to being allocated a house. In some cases, certain housing will be particularly or only suitable for certain age groups, and therefore can be allocated only to applicants in those age groups. The law does not define the age groups and such housing can include, but is not restricted to, sheltered housing for older people and supported housing, such as foyers, for young people.

14.5 While it is important to match a property to an applicant and take into account the potential impact on existing tenants, this can be achieved by a sensitive letting rather than by a blanket approach based on age. For example, housing a young person amongst a predominately older population may sometimes lead to housing management problems, but this is not always the case. Where there is a history of housing management problems landlords should take care to make sure the allocation delivers the most suitable housing for the applicant themselves and the surrounding neighbours. Essentially houses should be allocated on the basis of an applicant's needs and circumstances, without having regard to their age.

14.6 Housing legislation does not prevent the composition of the household being taken into account in allocating a particular property. So, it may be reasonable to decide not to house families with young children in multi-storey flats because of the lack of play space. Landlords would have to balance this against the make-up of their stock and the demand from young families. For example if a high proportion of family sized homes were multi-storey flats it would not be reasonable to impose this restriction. Landlords could also have to consider whether the Equality Act 2010 (which includes age as a protected characteristic for persons aged at least 18, but with exclusions) had a bearing on such policies they might develop.

15. INCOME

15.1 Landlords cannot take the income of the applicant or their family into account when allocating houses. This includes income from all sources including any benefits being received. This restriction also applies to applicants for housing who are non-UK nationals, whether or not they can receive benefits, and who may as a result, have problems in paying their rent.

16. OTHER FACTORS

16.1 Landlords are prohibited from imposing certain requirements before allocating housing to an applicant¹². They cannot require that:

- an application must have been in force for a minimum period prior to allocation, except as permitted by section 20B; or
- the applicant gets a divorce or judicial separation; or
- the applicant gets a dissolution of a civil partnership or a decree of separation of civil partners; or
- the applicant no longer lives with, or in the same house as, some other person.

¹² Section 20(2)(b) of the Housing (Scotland) Act 1987.

ANNEX A

SECTION 19-21 OF THE HOUSING (SCOTLAND) ACT 1987: AS AMENDED BY THE HOUSING (SCOTLAND) ACT 2001 AND THE HOUSING (SCOTLAND) ACT 2014

19 Admission to housing list

(1) An applicant for housing held by a social landlord is entitled to be admitted to a housing list unless the applicant is under 16 years of age.

(2) In this section, 'housing list' means a list of applicants for housing which is kept by any social landlord or jointly by or on behalf of any two or more social landlords in connection with the allocation of housing held by it or them for housing purposes.

(3) In this Part, 'social landlord' means any local authority or any registered social landlord.

20 Persons to have priority on housing list and allocation of housing

(1) A social landlord must, in relation to all houses held by it for housing purposes, secure that in the selection of its tenants a reasonable preference is given to the persons mentioned in subsection (1ZA).

(1ZA) The persons are-

(a) persons who-

- (i) subject to subsection (1A), are homeless persons and persons threatened with homelessness (within the meaning of Part 2), and
- (ii) have unmet housing needs,

(b) persons who-

- (i) are living under unsatisfactory housing conditions, and
- (ii) have unmet housing needs, and

(c) tenants of houses which-

- (i) are held by a social landlord, and
- (ii) the social landlord selecting its tenants considers to be under-occupied.

(1ZB) For the purposes of subsection (1ZA), persons have unmet housing needs where the social landlord considers the persons to have housing needs which are not capable of being met by housing options which are available.

(1A) Homeless persons and persons threatened with homelessness (within the meaning of Part 2) are to be disregarded for the purpose of subsection (1) if they would not be such persons without the local authority having had regard to a restricted person (also within the meaning of Part 2).

(2) In the allocation of housing falling within subsection (1) a social landlord-

(a) shall take no account of-

- (i) the length of time for which an applicant has resided in its area; or
- (ii) any outstanding liability (for payment of rent or otherwise) attributable to the tenancy of any house of which the applicant is not, and was not, when the liability accrued, a tenant; or

- (iii) except to the extent permitted by section 20B, any liability (for payment of rent or otherwise) of the applicant which is attributable to the applicant's tenancy of a house but which is no longer outstanding; or
 - (iv) any such liability which is outstanding but in respect of which subsection (2A) is satisfied; or
 - (v) any outstanding liability of the applicant or any person who it is proposed will reside with the applicant which is not attributable to the tenancy of a house; or
 - (vi) except to the extent permitted by subsection (2B), the age of the applicant provided that the applicant has attained the age of 16 years; or
 - (vii) the income of the applicant and his family; or
 - (viii) where any of the circumstances in subsection (2C) apply to that person, the ownership of, or value of, heritable property owned by—
 - (A) the applicant,
 - (B) a person who normally resides with the applicant, or
 - (C) a person who it is proposed will reside with the applicant;
- (aa) shall take no account of whether an applicant is resident in their area if the applicant—
- (i) is employed, or has been offered employment, in the area; or
 - (ii) wishes to move into the area and they are satisfied that his purpose in doing so is to seek employment; or
 - (iii) wishes to move into the area to be near a relative or carer; or
 - (iv) has special social or medical reasons for requiring to be housed within the area; or
 - (v) is subject to conduct amounting to harassment ('conduct' and 'harassment' being construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40)) and wishes to move into the area; or
 - (vi) runs the risk of domestic abuse (within the meaning of section 33(3)) and wishes to move into the area; and
- (b) shall not impose a requirement—
- (i) except to the extent permitted by section 20B, that an application must have remained in force for a minimum period; or
 - (ii) that a divorce or judicial separation be obtained; or
 - (iia) that a dissolution of a civil partnership or a decree of separation of civil partners be obtained, or
 - (iii) that the applicant no longer be living with, or in the same house as, some other person,
- before the applicant is eligible for the allocation of housing.

(2A) This subsection is satisfied in respect of an outstanding liability where—

- (a) the amount of the outstanding liability is not more than one twelfth of the annual amount payable (or which was payable) by the applicant to the landlord in respect of the tenancy in question; or

(b) the applicant-

- (i) has agreed with the landlord an arrangement for paying the outstanding liability;
- (ii) has made payments in accordance with that arrangement for at least three months; and
- (iii) is continuing to make such payments.

(2B) A local authority and a registered social landlord may take into account the age of applicants in the allocation of-

- (a) houses which have been designed or substantially adapted for occupation by persons of a particular age group;
- (b) houses to persons who are, or are to be, in receipt of housing support services (within the meaning of section 91 of the Housing (Scotland) Act 2001 (asp 10)) for persons of a particular age group.

(2C) The circumstances are that-

- (a) in the case of a property which has not been let, the owner cannot secure entry to that property,
- (b) it is probable that occupation of the property will lead to abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14)) from some other person residing in that property,
- (c) it is probable that occupation of it will lead to abuse (within the meaning of that Act) from some other person who previously resided with that person, whether in that property or elsewhere,
- (d) occupation of the property may endanger the health of the occupants and there are no reasonable steps which can be taken by the applicant to prevent that danger.

(3) A member of a local authority shall be excluded from a decision on the allocation of local authority housing, or of housing in respect of which the local authority may nominate the tenant, where-

- (a) the house in question is situated; or
- (b) the applicant for the house in question resides,
in the electoral division or ward for which that member is elected.

(4) In the application of this section to registered social landlords, any reference to their area means the local authority area or areas, or the part of that area or those areas, in which the registered social landlord holds houses for housing purposes.

20A Rules on priority of allocation of housing: consultation

(1) Before making or altering its rules governing the priority of allocation of houses, a social landlord must-

- (a) consult the persons mentioned in subsection (2), and
- (b) prepare and publish a report on the consultation.

(2) The persons are-

- (a) applicants on its housing list (within the meaning of section 19),
- (b) tenants of the landlord,
- (c) bodies for the time being registered in the register of tenant organisations maintained by the landlord under section 53(3) of the Housing (Scotland) Act 2001 (asp 10), and
- (d) such other persons as the landlord thinks fit.

(3) A social landlord may publish a consultation report mentioned in subsection (1)(b) in such manner as it thinks fit (and may in particular publish a joint report with any other social landlord).

20B Determination of minimum period for application to remain in force

(1) A social landlord may impose a requirement that an application must have remained in force for a minimum period before the applicant is eligible for the allocation of housing falling within section 20(1) if, before making that application, any of the circumstances mentioned—

- (a) in subsection (6) applied in relation to the applicant, or
- (b) in paragraphs (a) to (g) of subsection (6) applied in relation to a person who it is proposed will reside with the applicant.

(2) But a social landlord may not impose a requirement under subsection (1) if the landlord—

- (a) in relation to the same application has previously relied on the same circumstance as it applied to an applicant or a person who it is proposed will reside with the applicant to impose a requirement under subsection (1), or
- (b) is a local authority and has a duty to the applicant under section 31(2) (duty to secure accommodation where applicant is homeless).

(3) In considering whether to impose a requirement under subsection (1), a social landlord must have regard to any guidance about this section (including the matters mentioned in subsection (5)) published by the Scottish Ministers.

(4) Before publishing any guidance mentioned in subsection (3), the Scottish Ministers must consult such persons as they consider appropriate.

(5) The Scottish Ministers may by regulations prescribe—

- (a) the maximum period preceding the application which a social landlord may consider in relation to any circumstances mentioned in subsection (6),
- (b) the maximum period for an application to have remained in force which a social landlord may impose in relation to any circumstances mentioned in subsection (6), and

such regulations may make different provision for different cases.

(6) The circumstances are—

- (a) the person has—
 - (i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person,

- (ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person, or
 - (iii) acted in an antisocial manner, or pursued a course of conduct which is antisocial conduct, in relation to an employee of the social landlord in the course of making the application,
- (b) the person has been, or has resided with a person who has been, convicted of–
- (i) using a house or allowing it to be used for immoral or illegal purposes, or
 - (ii) an offence punishable by imprisonment which was committed in, or in the locality of, a house occupied by the person,
- (c) an order for recovery of possession has been made against the person in proceedings under–
- (i) the Housing (Northern Ireland) Order 1983 (S.I. 1983/1118),
 - (ii) the Housing Act 1985 (c.68),
 - (iii) this Act,
 - (iv) the Housing (Scotland) Act 1988 (c.43),
 - (v) the Housing (Scotland) Act 2001 (asp 10),
- (d) the person’s tenancy has been terminated by the landlord under section 18(2) of the Housing (Scotland) Act 2001 (repossession where abandoned tenancy),
- (e) the person’s interest in a tenancy has been terminated by the landlord under section 20(3) of the Housing (Scotland) Act 2001 (abandonment by joint tenant),
- (f) in relation to a house where the person was a tenant, a court has ordered recovery of possession on the ground set out in paragraph 3 or 4 of schedule 2 to the Housing (Scotland) Act 2001,
- (g) there is or was any outstanding liability (for payment of rent or otherwise) in relation to a house which–
- (i) is attributable to the person’s tenancy of the house, and
 - (ii) either–
 - (A) section 20(2A) would not be satisfied in respect of that debt, or
 - (B) in the case of a debt which is no longer outstanding, section 20(2A) would not have been satisfied at any time while that debt remained outstanding,
- (h) the person knowingly or recklessly made a false statement in any application for housing held by a social landlord,
- (i) the person has refused one or more offers of housing falling within section 20(1) and the landlord considers the refusal of that number of offers to be unreasonable.

(7) In subsection (6)–

‘antisocial’, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,

‘conduct’ includes speech, and a course of conduct must involve conduct on at least two occasions, and

'harassment' is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).

(8) The Scottish Ministers may by regulations modify subsections (6) and (7).

(9) After the social landlord imposes a requirement under subsection (1) (whether or not previously varied under this subsection), it may—

- (a) withdraw the requirement, or
- (b) vary the requirement in order to shorten the period imposed for the application to have remained in force.

(10) An applicant may by summary application appeal to the sheriff against any decision of a social landlord under subsection (1).

(11) Regulations under subsection (5) and under subsection (8) are subject to the affirmative procedure.

21 Rules relating to the housing list and to transfer of tenants

(1) It shall be the duty—

- (a) of every local authority to make and to publish in accordance with subsection (4), and again within 6 months of any alteration thereof, rules governing—
 - (i) [...]
 - (ii) the priority of allocation of houses;
 - (iii) the transfer of tenants from houses owned by the landlord to houses owned by other bodies;
 - (iv) exchanges of houses,
- (b) [...].

(2) It shall be the duty of every registered social landlord—

- (a) to make rules governing the matters mentioned in subsection (1)(a)(ii) to (iv);
- (b) within 6 months of the making of rules under paragraph (a), and within 6 months of any alteration of such rules (whether or not made under that paragraph)—
 - (i) to send a copy of them to each of the bodies mentioned in subsection (3); and
 - (ii) to publish them in accordance with subsections (4) and (5).

(3) The bodies referred to in subsection (2)(b)(i) are—

[...];

- (ii) every local authority within whose area there is a house let, or to be let, by a registered social landlord under a Scottish secure tenancy.

(3A) In making or altering its rules governing the priority of allocation of houses, a social landlord must have regard to—

- (a) any local housing strategy (within the meaning of section 89(1)(b) of the Housing (Scotland) Act 2001) for its area, and
- (b) any guidance published by the Scottish Ministers.

(3B) Before publishing any guidance mentioned in subsection (3A), the Scottish Ministers must consult such persons as they consider appropriate.

(3C) The Scottish Ministers may by regulations prescribe persons of a description or type who a social landlord must include in its rules governing the priority of allocation of houses.

(3D) Regulations under subsection (3C) are subject to the affirmative procedure.

(4) The rules to be published by a body in accordance with subsection (1) or (2) shall be-

- (a) available for perusal; and
- (b) on sale at a reasonable price; and
- (c) available in summary form on request to members of the public,

at all reasonable times-

- (i) in a case where the body is a local authority or a development corporation, at its principal offices and its housing department offices; and
- (ii) in any other case, at its principal and other offices.

(5) Rules sent to a local authority in accordance with subsection (2)(b) shall be available for perusal at all reasonable times at its principal offices.

(6) An applicant for housing provided by a body mentioned in subsection (1) or (2) shall be entitled on request to inspect any record kept by that body of information furnished by him to it in connection with his application.



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