

<b>Policy on :</b>	<b>Sub-Letting Policy</b>
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<b>Compliant with Charter Outcomes and Standards:</b>	<b>Outcome 1 Equalities</b> <b>Outcome 2 Communication</b> <b>Outcome 3 Participation</b> <b>Outcome 5 Repairs, Maintenance &amp; Improvements</b> <b>Outcome 6 Estate management, anti-social behaviour, neighbour nuisance and tenancy disputes</b> <b>Outcome 7 8 &amp; 9 Housing Options</b> <b>Outcome 10 Access to Social Housing</b> <b>Outcome 11 Tenancy Sustainment</b> <b>Outcome 13 Value for Money</b> <b>Outcome 14 &amp; 15 Rents &amp; Service Charges</b>
<b>Compliant with Tenant Participation Strategy :</b>	<b>Yes</b>
<b>Compliant with Equality &amp; Diversity:</b>	<b>Yes</b>
<b>Compliant with Business Plan :</b>	<b>Yes</b>

<b>Approved at Meeting on:</b>	<b>December 2018</b>
<b>Date for Review :</b>	<b>December 2021</b>

<b>Responsible Officer :</b>	<b>Director of Customer Services</b>
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## **1. Introduction**

All Scottish Secure Tenants of Barrhead Housing Association have a legal right to sub-let their home. Sub-letting describes the process which takes place when a tenant (principal tenant) rents all or part of their home to another person (the sub-tenant) on a temporary basis.

This policy enables tenants to sub-let their home when eligible and also lists reasons whereby consent might be refused

## **2. Background**

The Association understands that there may be occasions when circumstances require a tenant to leave their home for a period of time. During that period the tenant may wish to allow another person to sub-let the property on a temporary basis.

However, the Association is also obliged to ensure that its properties are not used as a commercial venture or that the sub-letting process is not used as a means to by-pass the normal allocation procedure.

## **3. Regulatory Standards, Legal Framework & Guidance**

Provisions for sub-letting a tenancy are outlined in:

- Section 32 of the Housing (Scotland) Act 2001 allows a Scottish Secure tenant to sub-let their tenancy to another person only if the Association agrees to it in writing.
- Section 12 of the Housing (Scotland) Act 2014 which makes the following changes to the 2001 Act.

The tenant must have been the tenant of the house throughout the 12 months immediately before they apply for written permission to sublet their home; or

If they were not the tenant throughout that period, the house must have been their only or principal home during those 12 months; and the person who was the tenant at that time must have notified the association that the person who is now the tenant was living there. The 12 month period does not start until the Association has been notified.

There are no residency conditions for the person that wants to live in the property as a sub-tenant.

The Scottish Social Housing Charter Outcomes Relevant to this Policy are:

Outcome 1	Equalities
Outcome 2	Communication
Outcome 3	Participation
Outcome 5	Repairs, Maintenance & Improvements
Outcome 6	Estate management, anti-social behaviour, neighbour nuisance and tenancy disputes
Outcome 7 8 & 9	Housing Options
Outcome 10	Access to Social Housing
Outcome 11	Tenancy Sustainment
Outcome 13	Value for Money
Outcome 14 & 15	Rents & Service Charges

#### **4. Applications for Sub-Letting**

Any tenant who has signed a Scottish Secure Tenancy agreement with Barrhead Housing Association and wishes to sub-let their tenancy must obtain written consent from the Association before they can sub-let all or part of their tenancy.

Barrhead Housing Association will not unreasonably withhold consent to a tenant and will issue written confirmation of our decision. If we have not responded to your request within 28 days of receipt of a tenant request, then under the Housing (Scotland) Act 2001 deemed consent is assumed for the application.

#### **5. Criteria for Withholding Consent**

Under the terms of the Housing (Scotland) Act 2001 permission to sub-let is at the discretion of the landlord, however, Section 32, subsection 3 of the Housing (Scotland) Act 2001 details reasonable grounds for refusing the request. These are detailed below:

- A Notice of Proceedings has been served that specifies any of grounds 1 to 7 (Schedule 2).
- An order for recovery of possession has been made against the tenant.
- The rent proposed is not deemed to be reasonable by the Association.
- The deposit proposed is not deemed to be reasonable.
- The sub-letting would cause statutory overcrowding.
- Proposed works by the landlord that would affect the accommodation to be used by the subtenant, or other person living in the house as a result of the transaction.

##### **5.1 Notice of Proceedings**

Although it is reasonable to refuse a sub-letting request where a Notice of Proceedings is in force, each situation should be treated on its merits. This may include where a Notice is in force because of rent arrears, but an arrangement is in place to pay the arrears and this

arrangement is being adhered to, then the Association will consider and progressing the application to sub-let.

The Housing (Scotland) Act 2001, section 14 (5) empowers the Association to withdraw the Notice. Again, granting the sub-let request may assist the tenant to repay arrears more effectively, for instance, where the tenant takes up temporary employment elsewhere during the period of the sub-let.

It is important to remember that subtenants are deemed to be qualifying occupiers under the Housing (Scotland) Act 2001, section 14(6)) and are legally entitled to be party to court proceedings raised against the tenant(s). (Housing (Scotland) Act 2001, section 15)

## **5.2 Order of Recovery for Possession of the Tenancy**

Where an order for recovery of possession has been obtained, any sub-letting request will generally be refused, as the Association will be on the point of evicting the tenant, for example, because of serious rent arrears or serious anti-social behaviour.

## **5.3 Rent Level & Deposit**

Rent levels charged and any deposit by the tenant should be reasonable. This does not mean, however, that rents charged cannot be more than the current rent. The tenant may require to charge extra, for instance, to cover costs of additional furniture and insurance. Each case will be assessed on its merits however if the rent levels or deposit appear excessive the Association may refuse the request.

## **5.4 Statutory Overcrowding**

The Association will not consent to a sub-let application when it creates an overcrowding situation as defined by the Housing (Scotland) Act 1987, section 135-137.

## **5.5 Works Proposed by Barrhead Housing Association**

Before granting consent, the Association will check whether there are any works intended that are likely to affect the accommodation, for example, major improvement works that may change the nature of the house such as the size of accommodation.

## **5.6 Absence Period**

Where a tenant is leaving for an indefinite period and unable to specify when they will return, the Association may refuse the application. We will not normally grant a sub-let for more than 12 months.

## **5.7 Occupancy Rights**

The Association may refuse an application where another person's occupancy rights are likely to be adversely affected if permission is granted, for example matrimonial separation.

## **5.8 Anti-Social Behaviour**

The Association may refuse an application if the proposed sub-tenant has a proven record of anti-social behaviour and believes that the anti-social behaviour will continue if the sub-let is granted. The criteria for refusing consent is not exhaustive, the Association will assess each case on its individual merits.

## **6. Rent Increases**

Tenants who have had permission from the Association to sub-let their tenancy must notify the Association of any proposed rent increase from the level initially agreed.

The tenant will be given a copy of the relevant letter to be used should they wish to propose a rent increases.

## **7. Appeals**

Should the Association refuse consent to a tenant to sub-let their tenancy they will have the right of appeal. This will be done through our Complaints Policy, a copy of which is available from the Association's office.

## **8. Equality & Diversity**

Barrhead Housing Association is committed to providing fair and equal treatment to all our customers and to comply with the Equality Act 2010. The Act established 9 protected characteristics (the grounds on which discrimination is unlawful). These cover age, race, sex, religion/belief, sexual orientation, pregnancy/maternity, gender reassignment, disability and marriage/civil partnership.

We will offer customers a range of options for communicating with us, since requiring to contact us may have to be in writing and this may be a deterrent, for example for people with poor literacy skills, visual impairment, or where first language is not English.

## **9. General Data Protection Regulations**

The Association will treat all personal data in line with our obligations under the current General Data Protection Regulations and our own Data Protection Policy Statement, Privacy Policy and Data Retention Policy.

Information regarding how your data will be used and the basis for processing your data is provided within our employee and resident Fair Processing Notices.

## **10. Policy Review**

This policy will be reviewed at least every three years.