

Policy Name	Assignment Policy
Effective from	1 November 2019
<i>Date previous policy</i>	<i>22 August 2002</i>
Review Date	1 November 2024 (5 years)
Key changes	<p>Policy updated in line with Section 12 of the Housing (Scotland) Act 2014 which amends Section 32 of the Housing (Scotland) Act 2001 by making the following changes:</p> <ul style="list-style-type: none"> • The person taking on the tenancy must have been living in the property as their only or main residence for 12 months, and • The landlord must have been notified of that person being in the property, the 12-month residence period starting from the date of notification <p>The 2014 Act also introduces two additional grounds on which landlords can refuse an application to assign. These are:</p> <ul style="list-style-type: none"> • Where the landlord would not give the person to whom the tenant wishes to pass the tenancy reasonable preference under their Allocations Policy • Where, in the landlord's opinion, the assignment would result in the home being under-occupied



STIRLING COUNCIL
Housing Services
Assignment Policy 2019

(1) Introduction

This policy sets out how the Council will manage requests to assign tenancies. Assignment is where a tenant assigns (passes on) their tenancy to another person, known as the assignee. No new tenancy is created, but the rights and responsibilities associated with the tenancy are passed onto the assignee.

(2) Aim, Objectives and Principles of the Policy

The overall aim of the Assignment Policy is to assist the Council to meet housing need in the Stirling Council area.

The specific objectives of the Policy are:

- To ensure that assignments are dealt with in a transparent and consistent manner which complies with legislation and best practice;
- To make the best use of the existing housing stock in light of housing need and demand;
- That the Council will refuse assignments that do not comply with the above objective.

The principles of the Policy are:

- The Council will have detailed procedures and staff will receive training to ensure they can carry out the roles expected of them; and
- Communication with tenants and service users is in plain language and will make clear who the appropriate officer is to contact in the case of queries.

(3) Legal Framework

The primary legislation governing assignments is contained within Section 32 and Schedule 5, Part 2, of the Housing (Scotland) Act 2001 as amended by Section 12 of the Housing (Scotland) Act 2014. This provides every Scottish Secure tenant and short Scottish Secure tenant with the right to assign their tenancy provided that:

The tenant:

- Has lived in the house as their only or principal home for 12 months immediately before applying to assign the tenancy; and
- Has the written consent of the landlord.

The assignee:

- Is over 16 years of age; and
- Has lived in the house as their only or principal home for 12 months or more prior to the application to assign the tenancy.

The 12-month residency period will only start when the Council has been formally notified in writing that the person is living in the property as their only or main home.

In line with the legislation:

- Tenants cannot assign their tenancy without first obtaining the Council's written consent;
- The Council can only refuse such request if there are reasonable grounds for refusal;
- If the Council fails to respond to a request to assign a tenancy within one month of the receipt of the application, consent is automatically deemed given.

The Assignations Policy will adhere to housing and other relevant legislation. In addition to housing legislation detailed in (3), this includes, but is not restricted to, the following:

- Housing (Scotland) Act 1987
- Human Rights Act 1998
- Data Protection Act 2018
- Housing (Scotland) Act 2001
- Housing (Scotland) Act 2014
- Equality Act 2010
- Matrimonial Homes (Family Protection) (Scotland) Act 1981
- Marriage and Civil Partnership (Scotland) Act 2014

The Council will respect diversity and promote equality in everything that it does. The Council seeks to ensure that the Assignment Policy does not treat anyone unfairly on the grounds of their age, sex, disability, gender reassignment, marital status/civil partnership, pregnancy and maternity, race, religion or belief, or sexual orientation.

The Council will ensure that any information given to it as part of the application process will be used in line with the law and will be held securely.

(4) Application and assessment process

The Council will assess each application to assign a tenancy on its own merits, considering carefully all of the circumstances of the individual case.

Tenants who wish to assign their tenancy must have informed the Council that the person they wish to assign the tenancy to is living in the house. The person must have been living there for 12 months prior to the application. The 12-month period does not start unless the Council has been notified that the person is living in the property as their only or principal home (Housing (Scotland) Act 2014 Section 12 (2b)).

Tenants who wish to assign their tenancy must apply to the Council in writing.

Any tenant who wishes to assign their tenancy must provide the Council with the following information:

- That the tenant wishes to assign their tenancy;
- The address of their property;
- Specific details relating to the assignee:
 - Name;

- How long they have lived with the tenant;
- Any absences during the previous 12 month period (including lengths and reason for absence);
- The date of the proposed assignation; and
- Details of any payment that the tenant may receive if the assignation is granted.

The proposed assignee will be requested to complete a housing application form (if they have not already done so). This will be assessed in accordance with the Allocations Policy to determine the extent of their housing need. Before consent will be granted, the assessment must demonstrate that the proposed assignee has a significant housing need in contrast with others on the Housing List. Where the person is deemed not to be in housing need, the application may be refused.

Where appropriate, tenancy references may be sought in the same way as for any other housing applicant and in accordance with the Allocations Policy.

Each application to assign a tenancy will be assessed to take into account the following:

- The level of housing need that the proposed assignee has;
- The demand for housing in the letting area of the tenancy;
- The suitability of the property; and
- Whether the assignation will lead to the property being under occupied or overcrowded.

If the tenant applying to assign the tenancy is a joint tenant, they are required to obtain the consent of the other joint tenant(s). If the consent is not obtained, the tenancy may not be assigned.

If the property to be assigned is the matrimonial or family home, the rights of occupation of the spouse or civil partner may be affected by the assignation. Where the consent of the spouse is required the tenant who wishes to assign the tenancy should endeavour to obtain it from their partner. If the consent is not available, the tenancy may not be assigned.

(5) Notification of decision

The Council will notify the tenant of its decision in writing within one month of receipt of the application to assign the tenancy. In accordance with Schedule 5, Part 2 (13) of the Housing (Scotland) Act 2001, if a decision is not given within this timescale, consent is automatically deemed to have been granted.

Where consent has been refused, the Council will advise the tenant of the reasons for refusal, what action should be taken to address the reasons for refusal and the tenant's rights to appeal the decision (refer to 8).

(6) Consent

The application to assign a tenancy may be granted when:

- The proposed assignee's housing application, once assessed in line with the Allocations Policy, demonstrates that the proposed assignee is in housing need; and
- That by assigning the tenancy, the Council will be alleviating housing need and demand in the area.

When permission to assign the tenancy is granted, the tenancy does not end and a new tenancy does not begin. The tenancy continues. No new tenancy agreement is required. It is the identity of the tenant which changes.

The assignee will be asked to attend a meeting to discuss the content of the tenancy agreement and make them aware of their rights and responsibilities in relation to the tenancy.

The new tenant will take on all the rights and responsibilities associated with the tenancy, including any outstanding housing debt. The former tenant will no longer be liable for any outstanding housing debt and will not be pursued for debt recovery.

It is the responsibility of the tenant to advise other relevant authorities and services providers of the assignation arrangements.

(7) Refusal of consent

In line with the Housing (Scotland) Act 2001, the Council cannot unreasonably withhold consent when a tenant applies to assign their tenancy.

The Council can only refuse a request to assign a tenancy where there are reasonable grounds for refusal. Reasonable grounds, as specified by Section 32 of the Housing (Scotland) Act 2001 (as amended by the Housing (Scotland) Act 2014) include the following examples:

- Where the proposed assignee would not receive reasonable preference under the terms of the Allocations Policy;
- Where the Council believe that the change in the household will result in the property being under occupied (in line with the Allocations Policy);
- A notice of proceedings for possession has been served on the tenant in line with Section 14 (2) of the Housing (Scotland) Act 2001 which specifies any of the 'conduct' grounds for eviction set out in Schedule 2;
- An order for recovery of possession has been made against the tenant under Section 16 (2) of the Housing (Scotland) Act 2001;
- It appears that the tenant is to receive a payment for the assignation which is other than reasonable;
- Where the assignation would lead to overcrowding as defined under section 139 of Housing (Scotland) Act 1987; or
- The landlord proposes to carry out work on the house or building which would affect the property in question.

The grounds for refusal taken from legislation are not exhaustive. There is no definitive list of grounds for refusal and each case will be assessed on its own merits. Other factors which may be considered include:

- Whether or not the transaction is for unreasonable financial gain;
- Where the tenant has housing-related debt and there is a risk that this will not be repaid to the Council;
- Where the house was designed or adapted for persons with special needs and, if the assignation were allowed, there would be no person living in the house who required those designs or adaptations;

- Where the proposed assignee, member of his/her household, or visitors to his/her previous tenancy, have within the past three years, engaged in anti-social behaviour in their previous tenancy;
- Where an eviction order has been made against the assignee, or member of their household, in the past three years, on the grounds of anti-social behaviour, or illegal activity in the previous tenancy;
- Where the proposed assignee, or member of their household, is subject to an Anti-Social Behaviour Order;
- Where the proposed assignee does not require accommodation of the type, size or standard that is proposed to be assigned;
- Whether the assignation is deliberately intended to circumvent the Allocations Policy.

The Council will complete an assessment of the assignee's housing need. Where the applicant is deemed not to be in housing need, the application may be refused.

(8) Appeals

If an application to assign a tenancy is refused, the tenant may seek a review of the decision. This request must be made in writing, in the first instance, to the relevant Team Leader who will review the original decision.

The Team Leader will notify the tenant of the outcome of the review within four weeks of receiving the appeal request.

If the tenant is not satisfied with the outcome, the tenant has the right to raise legal proceedings by way of summary application to the Sheriff Court within 21 days of the final decision. The Council will advise the tenant of this right and advise the tenant to seek independent legal advice.

(9) Review of Policy

This policy will be reviewed in 2024, unless an earlier review is required due to legislative changes or other reasons.