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Housing Association

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TO:	Housing Services Sub-Committee
PREPARED BY:	Chris Chalk (DH&CI)
SUBJECT:	LODGER & SUB-LET POLICY
DATE OF MEETING:	25 June 2024
APPROVED BY:	Paul Martin (CEO)

LODGERS AND SUB-LET POLICY

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1. INTRODUCTION

The Housing (Scotland) Act 2001 gives Scottish Secure Tenants (SST) the right to take in a lodger, sublet or otherwise give up to another person possession of the house or any part of it.

This policy explains how MHA intends to accept, review, approve, and refuse applications for lodgers or sublets and how these arrangements will be managed. MHA aims to deal with requests for lodgers and sublets in a fair and transparent manner, and to provide a clear approach for approving and refusing applications.

2. ROLES AND RESPONSIBILITIES

The Housing Services function are responsible for ensuring adoption of, and adherence to, the policy and its associated procedures relevant to their operation and the following:

- Ensuring that this procedure and associated policy is implemented by staff.
- Monitoring the systems and practices in terms of dealing with lodger and subletting requests, ensuring that there is a consistent, fair approach.

3. REFERENCES AND SOURCES

The following legislation, references and sources are relevant to the development and delivery of this policy and associated procedure:

- The Housing (Scotland) Act 1987 provides the statutory definition of overcrowding.
- The Housing (Scotland) Act 2001, Section 32, and Schedule 5 Part 2, set out the legal framework for lodgers and subletting, including the right to take in a lodger and sublet, statutory refusal reasons, and the requirements of the application process.
- The Housing (Scotland) Act 2014, Part 2 Section 12 states notification requirements, residency conditions and new refusal reasons for lodgers and subletting applications.
- The Scottish Government Scottish Secure and Short Scottish Secure Tenancy Guidance further explains the legal framework set out in the Housing (Scotland) Act 20021 and the Housing (Scotland) Act 2014.

4. OPERATIONAL ARRANGEMENTS Introduction

Lodger = used to describe a person who pays a fee in return for a room in a tenant's house. For many tenants, E.g., those who are affected by the underoccupancy deduction, taking in a lodger is an important way to help meet their housing costs.

Subletting = used to describe a situation where a tenant moves out of their home and rents out the whole of their home to a subtenant. Subletting a property can be a valuable way for tenants to retain a secure tenancy when they have a temporary change in circumstances, E.g., short-term employment in another area.

A tenant may also give a person the right to occupy their property or part of their property without charging a fee. In this situation, the principles applying to applications to sublet and to take in a lodger will not apply.

Family members are not normally considered to be lodgers. Tenants must, however, inform MHA if a family member or other household member is living in the property.

Policy Principles

All SSTs have a right to take in a lodger or sublet with our approval, subject to the conditions set out in this policy. MHA will not unreasonably withhold consent to requests to take in a lodger or sublet, if the appropriate criteria are met. Any decision to refuse or accept an application to take in a lodger or for subletting will be made by the Housing Services Manager.

MHA will provide applicants with information on the implications on housing benefit, universal credit and/or a referral to our Income Maximisation Service.

If a tenant is experiencing difficulties with their subtenant or lodger, then MHA will signpost them to sources of information and advice such as Citizens Advice Scotland. If a complaint against the subtenant or lodger is received, (E.g., serious antisocial behaviour) this will be investigated first to ensure that the accusations can be evidenced. A decision will then be made by the Housing Services Manager on whether permission will be revoked and if a notice should be served on the tenant. The tenant will be informed of this decision in writing, and the subtenant/lodger instructed to leave the household. Once confirmation has been received that the subtenant/lodger has left the property, staff will update internal systems to ensure they accurately reflect household member details. A notice may also be served on the tenant using appropriate grounds if this is reasonable and proportionate.

Applications and Consent

Requests to take in a lodger or to sublet must be submitted in writing by the tenant and MHA will reply in writing within one month. The tenant must complete an application form. The Management Committee reserve the right to approve all subletting applications. The Housing (Scotland) Act 2014 states that any written application must include:

- The details of the proposed changes including who you want to sublet to or take as a lodger; and
- The amount of rent and any other payments (including a deposit) you propose charging (if any) to the subletter or lodger, the date, and the tenancy/occupancy terms on which you want the subletting or lodging arrangement to take place. As a condition of us giving permission, MHA will require that the tenant provides the lodger(s) and sublessees with a written agreement and that the terms of the agreement must be deemed acceptable to the Association.

If a tenant wishes to sublet all or part of the house, the house must have the tenant's only or principal home for at least 12 months. Immediately before the date that the written request to sublet the house to someone else is received by MHA. If the person seeking approval for a sublet was not the tenant throughout that period, the house must have been their only or principal home during those 12 months and the tenant of the house at the time the notice was given must have told MHA that they were living there as their only or principal home.

The length of time that the person who wants to sublet all or part of the house has been living in the house starts from the date MHA are notified that the person is living in the house as their only or principal home.

The Housing (Scotland) Act 2001 sets out that if consent or refusal is not advised in writing within one month, then it is taken that the landlord has consented to the application.

MHA may refuse consent if there are reasonable grounds to do so. the following are grounds under which an application for taking in a lodger may be refused, including those set out in the Housing (Scotland) Act 2001:

- The tenant or lodger has been issued with a Notice of Proceedings for Possession and the notice is still effective.
- An order for recovery of possession has already been made on the tenant or lodger.
- The tenant has rent arrears or other tenancy related debt owed to MHA to any other landlord (including sundry or former tenant arrears).
- The tenant has breached the terms of their current tenancy, e.g., through the condition of their property.
- There is an existing Anti-Social Behaviour Order against the tenant, member of the tenant's household or the lodger.

- The rent and/or deposit to be charged to the lodger is not reasonable, the rent/charges proposed exceeds the amount that would normally be owed by the tenant in line with their weekly/monthly contract.
- The lodger does not have the necessary support in place.
- The application would lead to statutory overcrowding.
- MHA has plans to carry out work to the house or building which would affect the accommodation.

Any other reason which the member of staff deciding on the application considers reasonable.

The following are grounds under which MHA may refuse an application for subletting, including those set out in the Housing (Scotland) Act 2001 and the Housing (Scotland) Act 2014:

- The tenant is not planning to use the property as their only or principle home in the future.
- The tenant or subtenant has been issued with a Notice of Proceedings for Possession and the notice is still effective.
- An order for recovery of possession has already been made on the tenant or subtenant.
- The tenant has rent arrears or other tenancy related debt (including sundry or former tenant arrears) with no current payment arrangement in place (see section on rent arrears below).
- The subtenant has tenancy related debt owed to MHA or any other landlord (including sundry or former tenant arrears).
- The tenant has breached the terms of their current tenancy, for example through the condition of their property.
- There is an existing Anti-Social Behaviour Order against the tenant, member of the tenant's household, or the lodger.
- The rent and/or deposit to be charged to the subtenant is not reasonable, the rent/charges proposed exceeds the amount that would normally be owed by the tenant in line with their monthly contract.
- The subtenant does not have the necessary support in place.
- The application would lead to statutory overcrowding.

- Under-occupation would be exacerbated by, or result from, the application.
- MHA has plans to carry out work to the house or building which would affect the accommodation.
- Any other reason which the member of staff deciding on the applications considers reasonable.
- MHA has not received notification that the relevant person has been living in the house as their only or principal home.
- The tenant making the application has not been living in the house for the required 12-month period.

The duration of the sublet exceeds 12 months.

Any decision on overcrowding will be made with reference to the criteria set out in the Housing (Scotland) Act 1987 and the Housing (Scotland) Act 2014. Any decision on under occupation will be made primarily with reference to MHA Allocations Policy.

The monthly rent MHA charge the tenant should be used as a guide of what is reasonable and the proposed charge to the subtenant should not exceed this amount. Similarly, the deposit should not exceed one month's rent for the house. Housing Benefit guidelines on Indicative Rent Levels may also be considered when determining what a reasonable rent is. The following factors will also be taken into consideration when deciding if the rent charged to a lodger is reasonable:

- The extent of the accommodation being made available for the lodger's exclusive use.
- The amenities that will be shared with other members of the household.
- Arrangements for the payment of utilities such as gas, electricity, phone etc; and
- The services being provided as part of the lodging or subtenancy agreement.

Permission to have a lodger or to sublet can be revoked if it is reasonable to do so, E.g., if there has been a breach of tenancy conditions. If permission is revoked MHA will write to inform the tenant and lodger/subtenant of the reason and set out the right for the tenant to appeal against the decision.

Rent Arrears

For tenants, e.g. those affected by the underoccupancy charge, taking in a lodger can be a good option to reduce the pressure from housing costs on the household budget.

The section above sets out that MHA may refuse an application where the tenant, subtenant or lodger owes rent arrears or other tenancy related debt. However, in certain circumstances MHA may approve an application, particularly if the new arrangement is likely to improve the prospects of the parties involved reducing their arrears or tenancy related debt. For any current tenant who is making an application for a lodger/sublet who has current arrears then they should be asked to clear their balance in one payment or have an agreement in place to clear the arrears before MHA gives permission.

Conditions of Consent

Any approval of an application to take in a lodger or to sublet will be given on the following conditions:

The lodger or subtenant is registered at the address for the purposes of Council Tax.

- All benefit applications for tenants, lodgers and subtenants are amended to reflect the new living arrangements; and
- Permission is given only for the proposed lodgers or subtenants named on the application form.

In cases where 12 months has passed for subtenants occupying an entire property MHA will not normally allow a subtenancy to continue for longer than one year, as the tenant may be in breach of their tenancy for not occupying the house as their only or principal home.

The tenants will be wholly responsible for any breach caused by the person living at the property and is expected to take appropriate action to prevent any breaches of tenancy occurring.

Where MHA has given consent for a tenant to take in a lodger or to sublet a property, the tenant must notify of any proposed increase in the rent payable by the subtenant or lodger. MHA may choose to object to the increase and refuse permission for the tenant to continue under the revised terms.

Appeals

MHA will offer tenants the opportunity to Appeal against any decision relating to lodgers or subletting. Any such appeal will be heard by the Director, or any other appropriate senior member of staff who has not previously been involved in deciding on the application. If the tenant is

still dissatisfied after the outcome of the appeal, then they may make a complaint which will be dealt with under the complaints handling procedure. The tenant is also entitled to appeal to court by summary application on decisions relating to lodgers and subletting. If the court considers the refusal to be unreasonable it can direct MHA to consent to the application.

Unapproved Lodgers or Subletting

Where MHA discovers that a tenant has taken in a lodger or sublet a property without consent, or if the arrangements continue once permission has been revoked, the following options will be considered:

- Regulate the position by completing procedures retrospectively.
- Insist that the subtenant(s) or lodger(s) move out; and/or
- Take legal action against the tenant(s) for breach of tenancy conditions.

5. POLICY REVIEW

The policy will be reviewed every three years, or as otherwise deemed necessary, in accordance with the policy review programme agreed by the Services Committee.