

WISHAW AND DISTRICT HOUSING ASSOCIATION

LODGERS POLICY

As with all the Association's policies and procedures, this document, where required, can be translated into other community languages on request. For people with visual impairment, taped, large print or Braille versions can also be provided. Further information on the implementation of this policy is available at the office.

Wishaw and District Housing Association acknowledges that, under the Housing (Scotland) Act 2001, it is required to consult with residents on policies that directly affect the management of the properties. The consultation process on the Lodgers Policy took place between January and February 2010.

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1.0 INTRODUCTION

Both the Housing (Scotland) Act 2001 and the Scottish Secure Tenancy Agreement makes provision for tenants to take in a lodger with the consent of the Association.

Wishaw and District Housing Association accepts that there may be occasions when circumstances require a tenant to take another person into their home because of personal, financial or health reasons on the part of either the tenant or the proposed lodger. However, the Association is required to retain some measure of control over how the houses are occupied ensuring, for example, that a property is not allowed to become overcrowded through the taking in of lodgers. The Association is also obliged to ensure that its properties are not used as a commercial venture where rooms are rented out by tenants as a business.

The Lodgers Policy is intended to clarify what constitutes a lodging arrangement and the conditions that are required to be met by the tenant in making an application to take in a lodger, the lodger in accepting the terms and conditions of the lodging agreement and the Association in permitting a tenant to take in a lodger.

2.0 LEGAL FRAMEWORK

In all aspects of processing an application to take in lodgers, the Association will seek to conform and comply with all legislation, performance standards, guidance and good practice that directly or indirectly affects the process.

THE HOUSING (SCOTLAND) ACT 2001, Section 32 and Part 2 of Schedule 5 entitles a tenant to take in a lodger with the consent of the landlord. It also sets out the procedures for applying to take in lodgers and the grounds on which the Association can reasonably refuse the application.

Part 2 of Schedule 5 provides a right of appeal to the court by a tenant whose landlord refuses consent.

THE SCOTTISH SECURE TENANCY AGREEMENT, Part 4 obligates tenants to seek written permission from the Association to take in a lodger.

THE RACE RELATIONS ACT 1974, THE RACE RELATIONS (AMENDMENT) ACT 2000 AND THE RACE RELATIONS ACT 1976 (AMENDMENT) REGULATIONS 2003 make it unlawful for an Association to discriminate on the basis of colour, ethnic or national origin, race or nationality.

THE SEX DISCRIMINATION ACT 1975 makes it unlawful for the Association to discriminate on the basis of sex.

THE DISABILITY DISCRIMINATION ACT 1995 as amended and extended by THE DISABILITY DISCRIMINATION ACT 2005 makes it unlawful for the Association to discriminate against disabled people by treating them less favourably than someone else.

THE DATA PROTECTION ACT 1998 imposes obligations on the Association not to disclose personal information held on computer or certain types of non-computerised data.

ACCESS TO PERSONAL FILES ACT 1987 gives individuals the right to have access to personal information about themselves in files held by the Association.

THE CIVIL PARTNERSHIP ACT 1999 obliges the Association to ensure that civil partners are given the same rights as married couples.

3.0 AIMS AND OBJECTIVES

The primary aim of the Lodgers Policy is to put a structure in place that ensures that people do not move in and out of the Association's properties in an illegal or uncontrolled way. The policy is also intended to provide guidance to staff on implementing the correct procedures and to tenants on the requirements placed on them.

Arising from these overall aims, the key objectives of the Lodgers Policy include:

- Ensuring that the Association, at all times, complies with the law and operates in accordance with good practice.
- Ensuring that tenants meet all their statutory obligations relating to taking in lodgers.
- Recognising and protecting the rights of tenants and lodgers.
- Ensuring that all applications to take in lodgers are treated in a fair and equitable manner.
- Ensuring that the procedures for taking in lodgers are not used as a means of ultimately circumventing the Association's allocations procedures.
- Protecting lodgers from being treated in an unfair manner in terms of the rent charged and the conditions of their lodging agreement.
- Ensuring that the lodger is fully aware of the expectations of the Association in terms of their conduct and that the tenant is aware of their responsibilities should the lodger fail to conduct themselves in an acceptable manner.
- Allowing the Association to keep accurate records of who is residing in its properties.
- Ensuring that a tenancy with the Association is not used as a commercial venture.
- Ensuring that the Association's property is not allowed to become illegally overcrowded.

4.0 DEFINITION OF LODGER

For the purposes of this policy, a lodger will be deemed as being a person who rents the use of one or more rooms or part of a room with services such as meals and/or laundry and who has a formal financial arrangement with the tenant.

Family members are not normally considered to be lodgers, although permission from the Association must still be sought before an additional family member can join the household. A family member will be defined by their relationship to the legal tenant and will include;

Spouse/civil partner	Co-habitee	Parent	Grandparent
Son or Daughter	Grandchild	Brother	Sister
Uncle	Aunt	Nephew or Niece	Father-in-law
Mother-in-law	Brother-in-law	Sister-in-law	Step-Parent
Step-Brother	Step-Sister		

5.0 APPLYING TO TAKE IN A LODGER

Under the terms of the Scottish Secure Tenancy Agreement, tenants must apply to the Association in writing, giving:

- Details of the proposed lodger.
- Details of any payments (such as rent to be charged, deposits etc) that the tenant proposes charging the lodger.
- Details of any services provided as part of the lodging agreement.
- Details of any terms and conditions of the lodging agreement.
- A copy of the proposed agreement.
- The date the lodger is intending to move into the property.

Where appropriate, or requested by the applicant, assistance will be given to complete the written application.

6.0 CONDITIONS FOR GRANTING PERMISSION TO TAKE IN A LODGER

Under the terms of the Housing (Scotland) Act 2001, permission to take in a lodger is at the discretion of the landlord. However, the Act also states that permission cannot be unreasonably withheld.

In considering an application to take in a lodger, the Association must be satisfied that:

- The proposed charge to the lodger and, if applicable the proposed deposit, is reasonable.
- The terms and conditions of the lodging agreement are acceptable.
- The proposed lodger has no history of anti-social behaviour with the Association and/or does not have an ASBO against them.
- The house will not be overcrowded.
- In the case of a joint tenancy, that all tenants are agreeable to the application to take in a lodger.
- All parties are fully aware of their obligations and responsibilities.

In considering the reasonableness of the proposed charge to the lodger, the Association will take into consideration:

- 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 for utilities such as gas, electricity, phone etc.
- The services being provided as part of the lodging agreement.
- The rent being charged for the property by the Association.

The assessment of the reasonableness of the proposed charge and consent or refusal of the application must be approved by the Housing Operations Manager.

7.0 GROUNDS FOR REFUSING CONSENT

7.1 Household Size

Consent for a tenant to take in a lodger will not be given where it would result in the property being overcrowded. The size definitions outlined in the Association's Allocations Policy will apply when assessing the issue of overcrowding.

7.2 Legal Action

7.2.1 *Notice of Proceedings for Recovery of Possession*

Where the Association has served a Notice of Proceedings for Recovery of Possession against the tenant specifying one of the grounds 1 to 7 of schedule 2 of the Housing (Scotland) Act 2001, permission to take in a lodger will not normally be given. Granting permission will only be considered where the Association believes it to be in the best interests of the Association and/or the tenant (e.g. where the notice was served due to rent arrears and the tenant intends the additional income to be used to clear the arrear).

7.2.2 *Decree for Recovery*

Permission for the tenant to take in a lodger will not be given where a Decree for the recovery of possession has been made against the tenant by the court.

7.2.3 *Anti Social Behaviour Order*

The Association will not normally grant permission for a lodger where there has been an Anti Social Behaviour Order (ASBO) granted against the tenant and/or a permanent member of the household nor will permission normally be given where the proposed lodger has a current ASBO against them.

The Housing Operations Manager will approve the granting of permission for a lodger where either the tenant, the proposed lodger and/or a member of their household have an ASBO granted against them.

7.3 Payments

The Association will not permit the tenant to take in the proposed lodger where the tenant has received a payment other than a reasonable rent or deposit, in return for making the application.

7.4 Proposed Works to the Property

Permission to take in a lodger may be withheld where the Association plans to carry out extensive modernisation or improvement works to the property.

7.5 General

Subsection (3) of Part 2 of schedule 5 of the Housing (Scotland) Act 2001 gives examples of what may be deemed as reasonable grounds for landlords to withhold consent for a tenant to take in a lodger. However, these grounds can be modified by Scottish Ministers through regulations.

The grounds for withholding permission given above are not, therefore, exhaustive and may be changed to reflect guidance from the Scottish Government and other bodies such as the Scottish Housing Regulator and SFHA.

The Association may also refuse to give permission where it believes it has other reasonable grounds to do so.

8.0 NOTIFICATION OF DECISION

The Association must notify the tenant of its decision regarding the application to take in lodger within one month of the completed application being made at the office. Where written notification has not been provided within one month it will be taken that consent to the application has been given.

Where permission for the tenant to take in a lodger is not being given, the Association must give the grounds for refusal in writing within one month of the completed application being submitted.

9.0 CONDITION OF CONSENT

Where the Association gives its permission to the tenant taking in a lodger, consent is given on the following conditions:

- That the lodger is declared on any benefit applications, including applications for Housing Benefit.
- That the lodger is registered as part of the household for the purposes of Council Tax.
- Permission is given for a maximum of six months. Application to renew the consent may be made by the tenant no later than 1 month before the end of the six month period.
- The Association's approval is sought for any changes in the household's circumstances or to the charges made to the lodger or to the terms and conditions of the lodging agreement,
- The lodger has no statutory right to occupy the house and is present only with the consent of the tenant and the Association. If the tenancy is terminated at any time, either by the tenant or by court order, the lodger will not be allowed to remain in occupation.
- The lodger has no right of succession upon the tenant's death.
- Permission is only given for the proposed lodger(s) named on the application form.
- The tenant will be held responsible for the conduct of the lodger and any legal action arising from the unacceptable behaviour of the lodger will be taken against the tenant.

10.0 THE RIGHT OF APPEAL

Any party directly affected by the Association's decision relating to an application to take in a lodger has the right to appeal any decision made by the Association in relation to that application. They may also make a formal complaint if they feel aggrieved at the treatment they have received during the process of making application. A copy of the Complaints and Appeals Procedures will be made available at the office.

Section 32 and Part 2 of Schedule 5 of the Housing (Scotland) Act 2001 gives tenants that are aggrieved by the Association's decision the right to apply to the sheriff court to reconsider the decision. Where the court finds the Association's decision to be unreasonable, the court must order the Association to consent to the tenant taking in a lodger.

11.0 DELEGATION OF AUTHORITY

The practical implementation of the policy and the day-to-day operation of the procedures for assessing an application to take in a lodger will be undertaken by members of the Association's Tenancy Services Department. The Housing Operations Manager will have delegated authority to give or withhold consent for a lodger within the statutory timescale.

Where an application does not meet the normal conditions for approval but it is felt that to refuse would be extremely harsh or detrimental to the tenant, the household or the Association, the application will normally be referred for a decision by the Chief Executive and/or the Assistant Chief Executive.

12.0 PROVISION OF INFORMATION

It is the responsibility of the person(s) applying for an assignation to provide all the necessary evidence required to support their application. Any costs incurred in obtaining this evidence will be the applicant's responsibility.

13.0 CONFIDENTIALITY

All personal information provided to the Association during the course of processing an application to take in a lodger will be treated with the strictest of confidence

Personal details provided in the course of processing an application will only be disclosed to the Association's staff on a 'need to know' basis as determined by the Housing Operations Manager and in line with the Lodgers Procedures.

No personal details will be divulged to any body or person other than those mandated by the tenant or allowed under the Association's Data Protection Policy or the Data Protection Act 1998.

14.0 ACCESS TO INFORMATION

The Association maintains computerised tenancy records. In line with the Data Protection and Access to Information legislation the Association will therefore respond to written requests by a tenant or applicant for access to any records stored pertaining to their application. Under normal circumstances there will be a fee of £10.00 made for requests for copies of information. This fee is to cover administration, stationary, postage and incidental expenses. However, the Association reserves the right to waive the fee where it is felt appropriate to do so.

In line with the Association's Equal Opportunities Policy no charge will be made in respect of charges incurred by the Association in providing information in alternative formats such as large print, Braille and languages other than English.

15.0 EQUAL OPPORTUNITIES

Wishaw and District Housing Association is committed to Equal Opportunities and will endeavour to ensure that all functions within the process of considering an application to take in a lodger are carried out in a fair and undiscriminating manner in line with both the Lodgers Policy and the Equal Opportunities Policy.

In particular the Association will not discriminate on the grounds of race, colour, culture, age, gender, religious beliefs, sexual orientation, national or ethnic origin, political affiliations or beliefs, disability, marital status or social background and medical conditions (including those with AIDS or are HIV positive).

To ensure that the Association's lodger's process is accessible to all applicable residents, translation and interpretation services will be provided where required and, where appropriate information will be made available in other formats including tape, Braille and large print. These services will be provided in line with the Association's Translating & Interpreting Policy.

16.0 INFORMATION & ADVICE

A summary of the Association's Lodgers Policy will be made available on request and, where necessary, will be made available in other medium such as on tape or in Braille or will be translated into other languages as required.

17.0 REVIEW OF THE POLICY

The full Lodgers Policy will be reviewed at least once every three years. However elements of the policy may be reviewed within this timescale if required.

18.0 CONSULTATION

The Association will seek to carry out a consultation exercise prior to final approval being given for any proposed review and/or amendment to the Association's Lodgers Policy and, where appropriate will seek comments and views from interested and affected parties. All comments and views formally expressed and notified to the Association as part of the consultation exercise will be for considered prior to final implementation.

However, in order to allow the Association to provide as high a standard of services as possible the proposed reviewed and/or amended policy may be implemented as an interim policy during the consultation period, pending final approval.

Document History

First Adopted by the Management Committee	-	27 February 1990
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Written by EL