

EAST AYRSHIRE COUNCIL

HOUSING COMMITTEE – 21 MARCH 2002

MODEL SCOTTISH SECURE TENANCY AGREEMENT

Report by Director of Homes and Technical Services

1. PURPOSE OF THE REPORT

- 1.1 The purpose of the report is to seek members' approval in principle to the terms of the draft Scottish Secure Tenancy Agreement for East Ayrshire attached as Appendix 1 to this report; and to seek members' approval to proceed to consult tenants on the terms of the draft Agreement.

2. BACKGROUND

- 2.1 The Housing (Scotland) Act 2001 received Royal Assent on 18th July 2001. Among its provisions is the introduction of a Scottish Secure tenancy which will apply to tenants of Local Authorities, Registered Social Landlords, including Housing Associations and Water and Sewerage Authorities. The Act also makes provision for the introduction of a short secure tenancy agreement for use by the landlord in certain defined situations in place of the Scottish Secure tenancy. Whilst a commencement order has not yet been issued it is anticipated that the relevant provisions of the Act will become effective in September 2002.
- 2.2 This Committee on 12th September 2001 authorised the Director of Homes and Technical Services in consultation with the Solicitor to the Council to prepare the necessary tenancy agreements and bring these back to Committee at the appropriate time for approval. A separate report on the Short Scottish Secure Tenancy will be submitted to a future meeting of this Committee. Guidance on the latter is still awaited from the Scottish Executive.

3. SCOTTISH SECURE TENANCY

- 3.1 The Scottish Executive in October 2001 produced a model text for the new Scottish Secure Tenancy agreement (SST) for consideration by landlords. The model provides a framework within which landlords can develop their new tenancy agreements.
- 3.2 The model SST consists of three elements i.e.
- The statutory elements namely those rights and obligations that are governed by statute and cannot be varied.
 - The common law elements which govern certain of the rights and obligations that the landlord and tenant enjoy and which again cannot be varied.
 - The contractual elements which regulate additional rights and obligations of both parties and are tailored to reflect good practice and local circumstances.

- 3.3 The model SST, provided by the Executive, contained various suggested clauses dealing with contractual rights and obligations. The original model agreement is held by officers within the department and is available for examination by members.
- 3.4 An officer working party consisting of officers from Homes and Technical Services and Legal Services have met regularly over the last few months to consider the contractual elements and frame these to meet local circumstances and reflect current practice.
- 3.5 Whilst not a requirement of statute it is considered to be good practice to consult with tenants groups about the terms of the proposed new tenancy agreement.
- 3.6 It is a requirement of statute that the local SST be completed and approved by the authority by the implementation date, anticipated to be September 2002.
- 3.7 Attached at Appendix 1 is a draft of the proposed SST for East Ayrshire for consideration by members. For ease of reading those elements which are contractual and therefore subject to local change are printed in bold. Those statutory or common law elements which cannot be changed are printed in normal type. The contractual elements proposed by this Council do not differ significantly from our current service.
- 3.8 It is proposed that the draft attached at Appendix 1, including any amendments from the members, will then be the subject of consultation with tenants.

4. CONSULTATION

- 4.1 Consultation will be undertaken in various ways
- Direct consultation with registered tenant/residents groups
 - Public meeting held in the north and south of the authorities area
 - Focus groups
- 4.2 The results of the consultation will be reported to the committee at their meeting on 22 May 2002, and a final version of the proposed SST for East Ayrshire will be submitted for approval.

5. EXISTING TENANTS

- 5.1 The legislation requires all new tenancies created from September 2002 to be in the form of the new SST. Existing tenants are not required to sign up to the new Tenancy Agreement, as they will automatically obtain the statutory rights contained within the Act. It is nevertheless good practice to have all tenants enjoying the same contractual rights and obligations as their neighbours. In addition as detailed in paragraph 6.1 below where contractual rights are being introduced all tenants must sign up to the new Agreement within 2 years of the date of implementation of the Act. It is therefore proposed that procedures be put in place to offer the new SST for East Ayrshire to all existing tenants after the date of implementation, anticipated to be September 2002.

6 FINANCIAL AND LEGAL IMPLICATIONS

- 6.1 In a letter dated 8th February 2002, the Executive informed the Authority that it would make funding available to affected landlords to meet the costs associated with the introduction of the SST. It is a condition of the funding that all existing tenants be signed up to the new SST within 2 years of the date of implementation.
- 6.2 The funding is based on a flat rate of approximately £14,800 for all landlords with more than 250 units and £10 per unit. On this basis East Ayrshire will be entitled to funding of approximately £184,800.
- 6.3 The Council requires to comply with its statutory obligations in terms of the Housing (Scotland) Act 2001, in connection with the introduction of the SST.

7. RECOMMENDATIONS

- 7.1 Members are asked to:
- (a) Approve, in principle, the draft Scottish Secure Tenancy for East Ayrshire, attached as Appendix 1 to this report
 - (b) Authorise the department enter into consultation as indicated at section 4.
 - (c) Note that the outcome of the consultation, together with a finalised version of the Scottish Secure Tenancy for East Ayrshire, will be brought back to members at their meeting on 22 May 2002.
 - (d) Authorise the department put into place the necessary procedures to achieve the signing up of all tenants to the new local Scottish Secure tenancy within 2 years of the implementation date.
 - (e) Otherwise note the contents of this report.

James Lavery,
Director of Homes and Technical Services
4 March 2002

LIST OF BACKGROUND PAPERS

Nil

For further information please contact Joe Cassidy, Policy Manager, on 01563 576617

Implementation Officer: Joe Cassidy

2. MODEL SCOTTISH SECURE TENANCY AGREEMENT

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1 INTRODUCTION

- 1.1** This document is a Scottish Secure Tenancy Agreement between us, East Ayrshire Council, having our main offices at Council Headquarters London Road, Kilmarnock, KA3 7BU, and you
.....(tenant/joint tenant) and
.....(joint tenant)
- 1.2** We agree to rent accommodation to you on the terms and conditions in this Agreement. The accommodation includes the fixtures and fittings contained within it, the garden area associated with the house, the use of the common parts and the means of access to it. It also includes any other facilities that we may specify in writing to you. It is referred to as the 'house' in this Agreement. The term 'common parts' is explained at paragraph 1.11. If you ask us, we will give you a more detailed description of the house and a plan detailing your rights relating to the common parts, and access to your house.
- 1.3** The full address of the house is:
.....
- 1.4** The tenancy will start on(the entry date). This is regardless of the date on which this Agreement is signed. This Agreement will continue from the entry date until and after that on a **weekly** basis. **There are different ways of ending the tenancy and these are described in Part 6 of this Agreement.**
- 1.5** The rent is £..... every **week payable in advance on or before the first day of each rental period . Payments by any other frequency must be by written agreement between us and you. The following period(s) is/are rent free**
.....
- 1.6** **We may provide services in connection with your tenancy. If we currently do so, they are set out in the schedule attached to this agreement which further details the type and cost of each of those services. The schedule forms part of this agreement. It is a condition of this agreement that you pay for the services provided. Should we subsequently provide services or vary the current services this will be by written agreement between us and you.**
- 1.7** We will consult you about any proposed increase in rent or service charge and have regard to your opinions before we make our decision. We are entitled to change the amount of rent and any service charge, as long as we tell you in writing at least four weeks before the beginning of the rental period when the change is to start. We will not normally change the rent more than once every twelve months. You have a right to a statement of our rent and service charge policy. See clause 8.3 for more details.
- 1.8** **If you break any part of this Agreement, we may:**

- take legal action against you (including eviction proceedings) AND
- charge you for any resulting losses we have suffered including any legal expenses as assessed by the court.

1.9 You can telephone us or write to us if you would like to know more about anything contained in this Agreement. We will do our best to help you. You can also get independent advice and information from a number of organisations such as Law Centres, Solicitors, Housing Advice Centres, Citizens Advice Bureaux, Tenants Associations, the Commission for Racial Equality and the Equal Opportunities Commission.

1.10 If you want another copy of this Agreement, we will provide one on request. If you require additional copies a charge will be made for these. If you want a copy of it in another language or another form (such as Braille or audio tape), please tell us and we will provide you with one as soon as we can. However, in the event of any dispute, it is this version of the Agreement which is binding on you and us.

1.11 INTERPRETATION

In this Agreement, the following words have the following meanings except where the context indicates otherwise.

- We/us - the Landlord.
- You - the tenant and any joint tenant.
- Tenant - includes any joint tenant.
- Neighbour - any person living in the locality.
- Neighbourhood - the locality of your house.
- Common Parts - this includes any part of the structure and exterior of the building in which the accommodation is located (such as the roof, **roof space**, guttering, and outside walls) as well as any common facilities in that building, **or in the garden area associated with the house**. (such as: the common close, common stairway, entrance steps, paths, entrance doors and doorways, passages, bin chute accesses, yard, gardens, outhouses, bin areas, cellar, back green and back court).
- Repair - see paragraph 5.1.
- House - see paragraph 1.2.
- Co-habitee - a person, whether of the opposite sex or not, who is living with you in a relationship similar to that of husband and wife.
- Family - this term includes your spouse, co-habitee, parent, grandparent, child (including a child treated by you as your child and stepchildren), grandchild, brother, sister, uncle, aunt, niece, nephew; and any of those of your spouse.
- Anti-social - see paragraph 3.2.
- Overcrowding - more people are permanently living in the house than is allowed by law.

- Scottish Secure Tenancy - a tenancy as defined by section 11 of the Housing (Scotland) Act 2001.
- 1.12** This Tenancy Agreement, in parts, attempts to summarise current legislation. In case of conflict between those parts and current legislation, the legislation shall prevail. Where legislation has been amended since this Agreement was entered into, this Agreement shall be read consistently with the amended legislation.
- 1.13** You are responsible for ensuring that no-one living with you does anything that would be a breach of this Agreement if they were the tenant. If they do, we will treat you as being responsible for any such action.
- 1.14** **CHANGING THIS TENANCY AGREEMENT**
No part of this Agreement may be changed except in the following circumstances:
- we and you agree in writing to change it; OR
 - we increase the rent or service charge in the way described in paragraph 1.7 above; OR
 - we or you apply to the sheriff under Section 26 of the Housing (Scotland) Act 2001 for an order to change the tenancy agreement and the sheriff grants such an order.
- 1.15** **JOINT AND SEVERAL LIABILITY**
If two or more people have signed this Agreement, they are joint and severally liable for the terms and conditions of this Agreement. This means that each one of them is fully responsible for making sure that all the conditions in this Agreement are kept to, including payment of rent. You can apply for a joint tenant to be added to the tenancy: see paragraph 4.1 below.

2 USE OF THE PROPERTY AND THE COMMON PARTS

2.1 You must take entry to the house, occupy and furnish it and use it solely as your only or principal home. **You are entitled to have members of your family occupying the house with you, as long as this does not lead to overcrowding. If we ask, you must tell us who is living in the house. You must tell us as soon as there is a change in those who are living in your house.**

2.2 You, those living with you, and your visitors must take reasonable care to prevent damage to:

- **the house and any garden area associated with the house ;**
- **decoration;**
- **our furniture;**
- **the fixtures and fittings;**
- **the common parts;**
- **your neighbours' property.**

during the whole period of your tenancy, including periods when you are not in occupation of the house.

For example:

- before you leave the house, you must check that there is no risk of damage from fire, water or gas supplies in your house;
- **you must tell us if you intend to go away, for more than four weeks and your house will be unoccupied during that time; You must also provide us with a contact address and telephone number in case we require to contact you in connection with your tenancy.**
- If your house is going to be unoccupied for any length of time, and there is a risk of water pipes freezing when you are away, you must tell us before you leave. **You must take reasonable steps to minimise the risk of water pipes freezing whilst the house is unoccupied. You must also ensure that the house is secure. We shall not accept responsibility for personal injury to you or any other person or for loss or damage to furniture, fittings or decoration which result from your failure to comply with this condition. We also reserve the right to recover all expenses incurred by us as a consequence of your failure to comply with this condition.**

2.3 You and anyone living with you must not run any kind of business from the property. **However, if you ask us, we may give permission. See Part 10.3 of this Agreement for more information about doing this. Any such permission will be subject to the business being incidental to your occupation, and not amounting to a change in use of the subjects. If we give permission, we may also increase your rent. If we refuse, you have a right to make an application to the sheriff.**

2.4 You must not allow your house to become overcrowded. **If the overcrowding is as a result of an increase in the size of your family living with you, you should apply to us for a house transfer. We will try to get you a larger house, in accordance with the terms of our allocations policy. If we offer you suitable alternative accommodation you must agree to take it unless there are good reasons for not taking it.**

2.5 KEEPING OF ANIMALS.

You must not keep animals (including domestic animals, poultry, pigeons, or fowls) in or about the premises without written approval of the Director of Homes and Technical Services Department. If permission is granted the following conditions will apply:

- **keeping your animal must not be prohibited by the Dangerous Dogs Act 1991, or by any other law,**
- **you are responsible for the behaviour of any animals owned by you or anyone living with you, or visiting you.**
- **you must take all reasonable steps to supervise and keep such animals under control,**
- **you must take all reasonable steps to prevent such animals causing nuisance, annoyance or danger to your neighbours. This includes fouling or noise or smell from your animal,**
- **you must take reasonable care to see that such animals do not foul or cause damage to the house, your neighbour's property, anything belonging to us or anything we are responsible for, such as the common parts,**
- **We are entitled to require you to remove from the premises any animal which we consider is causing nuisance or damage,**
- **You are responsible for cleaning up any mess caused by any animals owned by you or anyone living with you or visiting you.**

See Part 10.3 of this Agreement for more information about asking for permission. If we refuse you have a right to make an application to the Sheriff.

2.6 You must not use or allow the house **or garden area associated with the house** to be used for illegal or immoral purposes. This includes, but is not limited to, the following: dealing in controlled drugs; running a brothel; dealing in stolen goods; illegal betting and illegal gambling.

2.7 While you are in occupation of the house, you must make reasonable efforts to heat the house, taking into account your income. You must make reasonable efforts to ventilate the house using any suitable means provided in the house for doing so.

- 2.8** You must take your turn, with all other tenants and owner occupiers sharing the common parts, in keeping them clean and tidy. If you share a common stair, you must also take your turn in regularly cleaning, washing and keeping tidy the common stair, its windows, banisters and any bin chute accesses. If you and the others cannot agree on the arrangements for doing this or you fail to do the work, we are entitled to decide exactly what you should do and when. Before making our decision, we will consult with you and the others. Our decision will be intimated to you in writing and will be binding on you. If you do not do the work required of you under this paragraph, we may do it ourselves and charge you for it. This is in addition to any other legal remedies open to us.
- 2.9** You must comply with any local arrangements for the use and sharing of the common parts including drying greens and drying areas. You must allow neighbours to take access over paths and other areas set aside for access. You must comply with any local rotas for the use and sharing of the common parts. In cases of dispute between the users of the common parts, we are entitled to decide the arrangements and rotas for the use of, and the sharing of, the common parts. Before making our decision, we will consult with you. Our decision will be intimated to you in writing and will be binding on you.
- 2.10** If you have exclusive use of a garden attached to the house, you must take reasonable care to keep it from becoming overgrown, untidy or causing a nuisance (unless we have agreed to take care of it for you). If you fail to do this, we are entitled to decide exactly what work requires to be done so as to comply with this duty. Before making our decision, we will consult with you. Our decision will be intimated to you in writing and will be binding on you. If you do not do the work required of you under this paragraph we may do it ourselves and charge you for it. This is in addition to any other legal remedies we may have. You must not remove, chop down or destroy any bushes, hedges or trees without our written permission, you must also comply with any tree preservation order, or other statutory requirements affecting the bushes, hedges or trees in the garden.
- 2.11** If you share a garden with others, you must take your turn with them to keep it from becoming overgrown, untidy or causing a nuisance (unless we have agreed to take care of your turn for you). If you and the others cannot agree on the arrangements for doing this or you fail to do the work, we are entitled to decide exactly what you should do and when. Before making our decision, we will consult with you and the others. Our decision will be intimated to you in writing and will be binding on you. If you do not do the work required of you under this paragraph, we may do it ourselves and charge you for it. This is in addition to any other legal remedies we may

have. You must not remove, destroy or chop down any bushes, hedges or trees without our written permission, you must also comply with any tree preservation order, or other statutory requirements affecting the bushes, hedges or trees in the garden.

- 2.12** No property belonging to you or anyone residing with you, including bicycles, motorcycles or prams, should be placed or stored in any of the common parts except in areas which are specifically set aside for storage of your property. You must not do anything which may cause inconvenience or danger to anyone using the common parts.
- 2.13** You must put all your household rubbish for collection in the bin store or other proper place allocated for it. You must ensure that your rubbish is properly bagged and sealed. If rubbish is normally collected from the street, it should not be put out earlier than the evening before the day of collection. Rubbish containers should be returned to their normal storage places as soon as possible after the rubbish has been collected. You must comply with the local arrangements for the disposal of large items (such as large electrical items). You should contact the Cleansing department to arrange for garden refuse to be uplifted.
- 2.14** You may not use heaters fired by paraffin or liquid petroleum gas unless you have obtained our prior written permission. We will not withhold our permission unreasonably, and may impose conditions as to the number of heaters permitted, the storage of canisters, as well as conditions relating to safety precautions. See Part 10.3 of this Agreement for more information about applying for permission. If we refuse you have a right to make an application to the Sheriff.
- 2.15** No vehicle, boat, caravan or trailer other than one family sized motor car used for private use belonging to you or anyone living with you or anyone visiting you may be parked on the ground associated with the house or on any other land belonging to us unless:
- it is a public road; OR
 - we have given you written permission;
- AND, in every case,
- this does not cause an inconvenience or nuisance or annoyance to your neighbours.
- 2.16** Nothing belonging to you, or anyone living with you, or your visitors, may be placed or stored on our land without our prior written permission. No structures may be erected on or alterations made to our land without our prior written permission.
See Part 10.3 of this Agreement for more information about doing this. If we refuse you have a right to make an application to the Sheriff.

- 2.17** If you want to change any part of this agreement which restricts your use or enjoyment of the house, you must first ask us in writing. If we refuse, you may have a right to make an application to the Sheriff.
See Part 10.3 of this Agreement for more information about doing this. If we refuse you have a right to make an application to the Sheriff.

3. RESPECT FOR OTHERS

- 3.1** You, those living with you, and your visitors, must not harass or act in an anti-social manner to, or pursue a course of anti-social conduct against, any person in the neighbourhood. Such people include residents, visitors, our employees, agents and contractors and those in your house.
- 3.2** 'Anti-social' means causing or likely to cause alarm, distress, nuisance or annoyance to any person **or causing or likely to cause damage to anyone's property**. Harassment of a person includes causing the person alarm or distress. Conduct includes speech. A course of conduct must involve conduct on at least two occasions.
- 3.3** In particular, you but without altering the terms of 3.1 and 3.2 above, those living with you, and your visitors must not:
- **make excessive noise. This includes, but is not limited to, the use of televisions, hi-fi's, radios and musical instruments and DIY tools;**
 - **fail to control your animals or allow them to cause nuisance, foul or cause damage to other people's property;**
 - **be noisy or disruptive or cause a nuisance to any person in neighbourhood;**
 - **use your house, or allow it to be used, for illegal or immoral purposes;**
 - **vandalise or damage our property or any part of the common parts or any other property in the neighbourhood;**
 - **leave rubbish in unauthorised places;**

- fail to prevent or allow your children to cause nuisance or annoyance to other people.
- harass or assault any person in the house, or neighbourhood, for whatever reason. This includes that person's race, colour or ethnic origin, nationality, gender, sexuality, disability, age, religion or other belief, or other status;
- use or carry offensive weapons in or in the vicinity of the house.

3.4 In addition, if you have been granted permission for any of the following you, those living with you, and your visitors must not do the following in an anti-social way:

- run a business from your house;
- park any vehicle, caravan or trailer;
- carry out work to any type of vehicle, caravan or trailer;

The particular prohibitions on behaviour listed in paragraphs 3.3 and 3.4 do not in any way restrict the general responsibilities contained in paragraph 3.1 above.

3.5 You, those living with you, and your visitors, must not bring into the house or store in the house any type of firearm or firearm ammunition.

3.6 You will be in breach of this Agreement if you, those living with you, or your visitors do anything which is prohibited in this part of the Agreement.

3.7 If you have a complaint about nuisance, annoyance or harassment being caused by a neighbour (or anyone living with him/her or his/her visitors), you may report it to us. We will act on your complaint in accordance with the procedures set out in our Neighbour Disputes Procedures. A copy of our Neighbour Disputes Procedures is available from us.

3.8 We will act fairly to you in all matters connected with your tenancy. We will not unfairly or unlawfully discriminate against you in any way on the grounds of your race, colour, ethnic origin, nationality, gender, sexuality, disability, age, religion or other belief or other status. If you believe we have acted unfairly to you in any way, you may wish to use our complaint's procedure. You may also wish to take independent advice.

4 SUB-LETTING, ASSIGNATION AND EXCHANGE OF YOUR TENANCY

4.1

If you want to:

- take in a lodger; OR
- sub-let part or all of your house; OR
- assign the tenancy (pass on the tenancy to someone else); OR
- carry out a mutual exchange;
- change your tenancy to a joint tenancy;

you must first get our written permission. To do this, you must tell us in writing:

- the details of the proposed change including who you want to sub-let or assign to, take as a lodger or joint tenant or exchange with (and the house involved); AND
- the amount of rent and any other payments (including a deposit) you propose charging (if any); AND
- when you want the sub-letting, lodging, assignation, exchange or change in tenancy to take place.

If you want to assign your tenancy, the house must have been the only or principal home of the person to whom you want to assign the tenancy for at least 6 months before the date of your written request.

We will not unreasonably refuse permission for an assignation, sub-letting, joint tenancy or taking a lodger. Reasonable grounds for refusing permission include the following:

- we have served a notice on you warning that we may seek eviction on certain grounds because of your conduct; **or such a notice has been served by any landlord on the person you wish to assign or sub-let to, or to become a joint tenant or lodger, or any of their family who shall be living with them.**
- we have obtained an order for your eviction; or such an order has been obtained by any landlord against the person you wish to **assign or sub-let to, or to** be assumed as a joint tenant **or lodger, or any of their family** who shall be living with them.
- the rent or deposit that you propose charging is unreasonable;
- the proposed change would lead to the criminal offence of overcrowding;
- we intend to carry out work on the house which would affect the part of the house connected with the proposed change.

These examples do not in any way alter our general right to refuse permission on reasonable grounds. If we give permission, you cannot increase the rent or other payments made to you by the other person unless we give our permission. See paragraph 10.3 for more details on getting permission.

4.2

We will not unreasonably refuse permission for a mutual exchange of your house. The exchange must be with another house where the tenant is also a

tenant of a local authority landlord, a registered social landlord, a water authority or sewerage authority. The landlord does not need to be us. The other landlord must also agree to the exchange. Reasonable grounds for refusing permission include the following:

- we have served a notice on you warning that we may seek eviction on certain grounds because of your conduct; or a similar notice has been served on the person with whom you wish to exchange, or any of their family who shall be living with them.
- we have obtained an order for your eviction; or an eviction order has been obtained against the person with whom you wish to exchange, or any of their family who shall be living with them.
- your house was let to you because of your employment with us;
- your house was designed or adapted for persons with special needs and if the exchange was allowed, there would be no person living in the house who required those designs or adaptations;
- the other house is substantially larger than you and your family need or it is not suitable for the needs of you and your family; or your house is substantially larger than the other family need, or is not suitable for the needs of the other family.
- the proposed change would lead to the criminal offence of overcrowding.

These examples do not in any way alter our general right to refuse permission on reasonable grounds. See paragraph 10.3 for more details on getting permission.

- 4.3 If you are married, or if you live in the house with someone as husband and wife, we may need their consent. If you are a joint tenant, we will need the other tenant's written consent to the proposed change. If you want to change the joint tenancy to a single tenancy because the other joint tenant has abandoned the tenancy, a separate procedure applies. See paragraph 6.7.

5 REPAIRS, MAINTENANCE, IMPROVEMENTS AND ALTERATIONS

REPAIRS AND MAINTENANCE: OUR RESPONSIBILITIES AND RIGHTS

- 5.1** In this Agreement, the word 'repair' includes any work necessary to put the house into a state which is wind and watertight, habitable **and, in all respects, reasonably fit for human habitation.**
- 5.2** Before the start of the tenancy, we will inspect your house to ensure that it is wind and watertight, habitable and, in all other respects, reasonably fit for human habitation. If repair or other work needs to be done to bring the house up to that standard, we will do so before the tenancy begins. We will notify you about any such work. Any other repairs may be carried out after the tenancy begins.
- 5.3** During the course of your tenancy, we will carry out repairs or other work necessary to put the house in a condition which is tenantable, wind and watertight and, in all other respects, reasonably fit for human habitation. We will carry out all repairs within a reasonable period of becoming aware that the repairs need to be done. Once begun, the repairs will be finished as soon as reasonably possible. **All repairs will be done to the standard of a reasonably competent contractor, using good quality material.**
- 5.4** We will carry out a reasonably diligent inspection of the common parts before the tenancy begins. We will take reasonable steps to remove any danger we find before you move into your house. We will repair any other defect we find as a result of the inspection which will significantly affect your use of the common parts, or the house, within a reasonable period. **We will repair any damage to boundary walls and fences for which we are responsible within a reasonable period if the damage poses a danger to any user. We may require the consent of another person to carry out such repairs. We will do our best to get this but may be unable to do the repairs until we get such permission.**
- 5.5** If we need the co-operation or permission of another person to carry out repairs or other work to the house or common parts, or to inspect, we will do our best to get it. We may be unable to do non-emergency repairs until we get such permission.
- 5.6** Our general repair obligations contained in paragraphs 5.2 and 5.3 include a duty to carry out repairs relating to water penetration, rising dampness and condensation dampness as well as the obligations contained in this paragraph. We will provide and maintain the house so that any tenant who we might reasonably expect to live in the house can heat the house to a reasonable temperature at a reasonable cost, so as to avoid condensation dampness and mould. If during the tenancy, the house suffers from condensation dampness which is partially or wholly caused by a deficiency in, or absence of, any feature of the house (including insulation, provision for heating or ventilation), we will carry out repairs (including, where appropriate, replacement, addition or provision

of insulation, ventilation or heating systems) within a reasonable time so that that feature is not a cause of the condensation dampness.

5.7 Our duty to repair includes a duty to take into account the extent to which the house falls short of the current building regulations by reason of disrepair or sanitary defects.

5.8 We will:

- keep in repair the structure and exterior of the house;
- keep in repair and in proper working order, any installations in the house provided by us for;
- the supply of water, gas and electricity,
- sanitation (for example basins, sinks, baths, showers, toilets),
- hot water heating,
- space heating (for example central heating) including fireplaces, flues and chimneys. **However you will be responsible for the cleaning of any fireplace, flue and chimney serving the house.**
- Installations include those, which we own or lease which directly or indirectly serve the house. We will not, however, be responsible for repair of any fixtures and fittings not belonging to us which make use of gas, electricity or water. Neither will we be responsible for the repair or maintenance of anything installed by you or belonging to you, which you would be entitled to remove from the house at the end of the tenancy unless we have specifically agreed.
- **We will inspect annually any gas installations in the house provided by us. We will provide you with a copy of the inspection report within 28 days of the inspection. If the inspection reveals the need for repair or replacement of any such installation, we will do so within a reasonable period. We will give you a copy of the current inspection record before the beginning of the tenancy.**
- **Gas fires, gas cookers and other gas appliances which are not owned by the Council will also be subject to an annual gas safety check, however repairs and /or replacements are not included in this service and are your responsibility . Any gas fire, gas cooker or other gas appliance found to be faulty will be disconnected from the gas supply and marked unsafe. Thereafter, it is your responsibility to ensure the necessary works are carried out by a corgi registered contractor, and in accordance with the current gas regulations.**
- **If your house is served by a communal television or communications aerial provided by us, we will take reasonable steps to repair any defect within a reasonable period. Where repairs or maintenance have to be done, we will make reasonable efforts to minimise disruption to you. We will not be responsible for replacing any**

communal television or communication aerial should this become obsolete.

- 5.9 We will take all reasonable steps, together with any other joint owners of the water supply installations, to comply with the Water Bye-Laws in force in your area.**
- 5.10** Nothing contained in this Agreement makes us responsible for repairing damage caused wilfully or negligently by you, anyone living with you or an invited visitor to your house. If we decide to carry out the work, you must pay us for the cost of the repair. This paragraph does not apply to damage caused by:
- fair wear and tear;
 - vandals, provided that you have reported the damage to the police and us as soon as the damage is discovered.
- 5.11 We will carry out necessary repairs due to fire, flood or Act of God, within a reasonable time or offer equivalent permanent re-housing as soon as such a house becomes available. Until that time, we will try to help you to get temporary accommodation if the house is uninhabitable.**
- 5.12** We have the right to come into your house to inspect it and its fixtures and fittings or carry out repairs or improvements to it, or adjoining property, during reasonable times of the day. We will give you at least 24 hours' notice in writing. **We have the right of access to your house in order to lay wires, cables and pipes for the purposes of telecommunications, water, gas and electricity, providing we give you reasonable notice in writing.** We have the right of access to the common parts at any reasonable time for the purposes of carrying out inspections, repairs or improvements to the house or adjoining property. If you refuse us entry, we will have the right to make forcible entry provided we have given you every reasonable opportunity to let us in voluntarily. If we have to make forcible entry, in this situation, you are liable for the costs of any damage reasonably caused. In an emergency, we have the right to make forcible entry to your house without notice.
- 5.13** If we know that any house or flat adjoining your house, which we own, is likely to remain unoccupied for longer than four weeks, we will take all reasonable steps to avoid damage or danger to you or your property arising from that house or flat being unoccupied. **These steps may include, but are not limited to the following:**
- **requiring the tenant to secure its doors and windows;**
 - **requiring the tenant to take steps to minimise the risk of water pipes freezing, whilst the house is unoccupied.**
- 5.14** If we cause damage to the house or your property in connection with repairs we will reinstate the damage or compensate you for your losses. We have a right to

require you to move temporarily to suitable alternative accommodation if this is necessary for the repairs to be done. **If you are moved temporarily, we will reimburse you for any expenses you reasonably incur as a direct result. You will be charged rent during this period but no more than you normally pay.**

5.15 Our duties to repair contained in this part of the Agreement continue until this Agreement comes to an end.

REPAIRS AND MAINTENANCE: YOUR RESPONSIBILITIES AND RIGHTS

5.16 You must report to us, as soon as reasonably possible, any damage to the house, the common parts or loss or damage to our property. **You can do this in person or by telephone. You can arrange for someone else to do this on your behalf. We operate an emergency telephone service outside office hours. Telephone 0845 724 0000. We will not be responsible for any loss or damage to property or injury to any person arising from any delay by you in reporting the need for repair.**

5.17 You are responsible for taking reasonable care of the house. This responsibility includes carrying out minor repairs and **attending to the** internal decoration. It also includes keeping the house **tidy and** in a reasonable state of cleanliness.

The repairs you are responsible for are as follows:

Inside

- **Any fitment that you have added to your home**
- **Decoration**
- **Doors, hinges, drawers and shelves**
- **Pelmets, curtain rails coat hooks and pulley ropes**
- **Chimney sweeping**
- **Fireplace kerbs, tiles and ash pans**
- **Electric plugs and fuses**
- **Light bulbs, tubes and starters for fluorescent lighting**
- **Batteries for smoke detectors**
- **Plugs for sinks and baths**
- **Toilet seats and covers**

Outside

- **Keys, door bells and name plates**
- **Garden and drive**
- **Clothes props and rotary drier lines**
- **Coal bunkers**
- **Other paths which are not access paths to the front or back door.**

However, you are not responsible for carrying out repair which are due to fair wear and tear.

5.18 If we have delayed or failed to carry out certain types of repair, the Executive intends to make regulations which will give tenants the right to have certain repairs carried out. You may also be entitled to compensation.

5.19 If we have failed to carry out repairs that we should under this agreement, you have the right to carry out the repairs yourself and deduct the reasonable cost of doing so from your rent. **However, you may only do so if:**

- **you have notified us in writing about the need for the repairs; AND**
- **we have not done those repairs within a reasonable period; AND**
- **you have made a formal complaint under our complaints procedure (see paragraph 9.1); AND**
- **you have finished the complaints procedure and you are still dissatisfied, OR 3 months have passed since you made the formal complaint under the complaints procedure.**

YOU ARE STRONGLY ADVISED TO TAKE LEGAL ADVICE BEFORE EXERCISING YOUR RIGHT UNDER THIS PARAGRAPH. YOUR HOME IS AT RISK IF YOU WRONGLY EXERCISE THIS RIGHT. All repair work instructed by you must be done by a reputable firm, to the standard of a reasonably competent contractor using good quality materials, and must conform to all current legislation.

5.20 You are strongly recommended to insure your personal possessions against loss or damage caused by fire, flood, theft, accident, etc. We operate such a scheme further details of which can be obtained on request.

ALTERATIONS AND IMPROVEMENTS

5.21 If you want to:

- alter, improve or enlarge the house, fittings or fixtures;
- add new fixtures or fittings (for example kitchen or bathroom installations, central heating or other fixed heaters, double glazing, or any kind of external aerial or satellite dish);
- put up a garage, shed or other structure;
- decorate the outside of the house or install any paths or driveways;

you must first get our written permission. Your application for permission must contain details of the works you propose to do. We will not refuse permission unreasonably. We may grant permission with conditions including conditions regarding the standard of the work **and conditions requiring you to obtain all necessary statutory permissions, including Planning Permissions, Building Warrants and Roads Permissions.** See paragraph 10.3 for more details about the procedure.

5.22 If you have made alterations or improvements with our permission, you may be entitled to compensation at the end of your tenancy under regulations governing such arrangements. We also have the power, even if you do not qualify under these Regulations, to make a discretionary payment.

5.23 If you carry out any alterations or improvements without our permission we can ask you to restore the house to its previous condition, during, or at the end of your tenancy. If you do not do so, we are entitled to do the works required to restore the house to its previous condition and to charge you for this work.

6 ENDING THE TENANCY

The Tenancy Agreement can be ended in any one of the following ways.

6.1 By Notice

You, together with any joint tenant, give us at least twenty-eight days written notice. **You must tell us at the same time if you are married or if you live in the house with another person. If you do, their agreement may also be required before the Tenancy Agreement can be terminated. You must also tell us your new address.**

OR

6.2 By Written Agreement

By written agreement between you, any joint tenant, and us. **You must tell us at the same time if you are married or if you live in the house with another person. If you do, their agreement may also be required before the Tenancy Agreement can be terminated. You must also tell us your new address.**

OR

6.3 By Court Order

The sheriff grants an order for eviction following a request by us. You have a right to defend any legal action taken by us against you. People who live with you also have a right to be represented. We may ask for such an order under Section 14 of the Housing (Scotland) Act 2001 on any of the grounds contained within Schedule 2 of the Act. Before we do so, we will first send you a written warning. We will also send that written warning to anyone else living with you who is your spouse, co-habitee, sub-tenant, lodger, assignee, joint tenant or member of your family aged 16 or over; if we know about them. The following is a summary of the grounds contained within that Act and does not change the legal position contained in that Act.

- you owe us rent or you have broken some other condition of this Agreement.
- You or someone residing in your house, or anyone visiting it, have been convicted of using the house or allowing it to be used for illegal or immoral purposes or have been convicted of a criminal offence, punishable by imprisonment, which was committed in the house or the locality.
- the condition of the house, garden area associated with the house or common parts, or furniture we have supplied, has deteriorated because of the fault of you or somebody in your household.
- you, and your spouse or co-habitee, have been absent from the house for more than six months without good reason or you have stopped living in it as your principal home.
we gave you this tenancy as a result of false information given by you in your application for the house.

- You or someone residing in your house, or anyone visiting it, has been anti-social to anyone else in the locality and it is not reasonable for us to transfer you to another house.
In all the above cases, the sheriff must also be satisfied that it is reasonable to make an order for eviction.
- You or someone residing in your house has been guilty of harassment, nuisance or annoyance in or in the neighbourhood of the house, or has continued to caused alarm or distress to someone in the locality and it is appropriate, in our opinion, to transfer you to another house.
- the numbers of people in the house amount to the criminal offence of overcrowding.
- we intend to demolish or carry out substantial work to your house (or the building in which it is located) within a reasonable time and that work cannot be done if you are still living there.
- the house has been designed or adapted for people with special needs and no one in your household has such special needs but we require the house for someone who has.
- the house is part of a larger group of houses which have been designed or adapted or located near facilities for people with special needs and no-one in your household has those needs but we require the house for someone who has.
- we have leased your house from somebody else and that lease has ended, or will end, in six months.
- the landlord is an islands council, the house is held for education purposes, it is occupied by someone who used to be employed by the council for education purposes and now it is needed for someone else for those purposes.

In the seven cases above, the sheriff must grant an order for eviction if we also offer you a suitable alternative house as defined by Schedule 2 (Part 2) of the Housing (Scotland) Act 2001.

- we want to transfer the house to your husband or wife (or ex-husband or ex-wife) or co-habitee, where one of you no longer wishes to live with the other. In this case, we will offer you a suitable alternative house as defined by Schedule 2 (Part 2) of the Housing (Scotland) Act 2001. The sheriff must also be satisfied that it is reasonable to grant the order.

OR

6.4 By Abandonment by you.

We have reasonable grounds for believing that you have abandoned the house. In this case, we may forcibly enter the house to make it secure. We will also give you at least 4 weeks' notice that we believe that you have abandoned the house. If, at the end of that period, we have reasonable grounds for believing that you have abandoned the house, we may repossess it by service of another notice.

You have a right to make application to the sheriff against repossession within six months. We will secure the safe custody and delivery to you of any property which is found in the house. We will have the right to make a charge for this and to dispose of any property if you have not made arrangements for its delivery within a given period.

OR

6.5 By Death

By your death, if the tenancy does not pass to someone else (see Part 7 below).

OR

6.6 By Sale to You

If you buy your house from us, your tenancy will terminate on the date of transfer of ownership. Until that point, this Agreement remains in force.

OR

6.7 By conversion to a Short Scottish Secure Tenancy

If an anti-social behaviour order has been made against you, or anyone living with you, we may serve a notice on you converting your tenancy to a Short Scottish Secure Tenancy. Your tenancy under this agreement ends on service of that notice. You have a right to make application to the sheriff if we do this.

6.8 Abandonment by a joint tenant

If we have reasonable grounds for believing that your joint tenant has abandoned the house, we will give that tenant 4 weeks' notice. If we have reasonable grounds for believing, at the end of the four week period, that the joint tenant has abandoned the house, we may serve another notice. This second notice will terminate that joint tenant's interest in the tenancy in not less than 8 weeks. That second notice will not, however, terminate the tenancy which will continue.

6.9 Termination by joint tenant alone

A joint tenant may, at any time, end his or her interest in the tenancy of the house by giving 4 weeks' written notice to us and to the other joint tenant. That notice will not, however, terminate the tenancy which will continue.

6.10 Before moving out of your house, you must do the following:

- **leave the house in a clean and tidy condition, if you do not do so we shall arrange for the house to be cleared and cleaned and will charge you for this.**
- **leave any garden associated with the house in a clean and tidy condition, if you do not do so we will arrange for the garden to be cleared and cleaned and will charge you for this.**
- **remove all your belongings;**
- **make sure any lodgers or sub-tenants leave with you and remove all of their belongings;**
- **allow us access to your house before you move out, at reasonable times, to show new tenants round;**
- **hand in your keys to the housing office;**

- **remove any fixtures and fittings you have installed without our written permission and put right any damage caused. This does not affect your obligations under paragraph 5.21 above;**
- **check with us to make sure that you have paid all payments due to us;**
- **apply for any compensation you may be entitled to under clause 5.22 above;**
- **leave the house in good decorative order;**
- **do the repairs you are obliged to do;**
- **give us a forwarding address, unless there is good reason for not doing so.**
- **leave any garage in a clean, tidy and safe condition. If the garage is unsafe we will arrange for it to be removed and will charge you for this.**

7 AFTER THE TENANT'S DEATH

7.1 If you die, the tenancy may be inherited by one of the following people in the following way.

7.2 Level One

- your husband or wife or co-habitee if the house was their only or principal home on your death; OR
- a joint tenant, if the house was his or her only or principal home on your death.

In the case of a co-habitee, he or she must also have occupied the house as his/her only or principal home for at least 6 months immediately before your death. If more than one person qualifies for the tenancy under Level One, they must decide among themselves who should get the tenancy. If they cannot agree, we will decide.

7.3 Level Two

If no-one qualifies at Level One, or a qualified person does not want the tenancy, it may be inherited by a member of your family as long as:

- he or she is aged at least 16 at the date of death;
- the house was his or her only or principal home at the date of death.

If more than one person qualifies for the tenancy under Level Two, they must decide among themselves who should get the tenancy. If they cannot agree, we will decide.

7.4 Level Three

If no-one qualifies at Level One or Level Two, or a qualified person does not want the tenancy, it will be inherited by a carer as long as:

- he or she is aged at least 16 at the date of death;
- the house was his or her only or principal home at the date of death;
- he or she gave up another only or principal home before the death of the tenant.

If more than one person qualifies for the tenancy under Level Three, they must decide among themselves who should get the tenancy. If they cannot agree, we will decide.

7.5 If someone qualifies for the tenancy but does not want it, they should tell us in writing within four weeks of the death and leave the house within three months. Rent will be charged only for the actual period of occupation.

7.6 The tenancy can only be inherited twice under the provisions noted above. If the tenancy has already been inherited twice, the third death will normally end the tenancy. This will not happen if there is a surviving joint tenant **who continues to occupy the house as their only or principle home**, whose Scottish Secure Tenancy will continue. However, if there is still a person in the house who would otherwise qualify to inherit the tenancy under the above paragraphs, the tenancy will continue for up to 6 months after the last death. The tenancy will not be a Scottish Secure Tenancy for that period.

Housing(Scotland)Act 2001
Model Scottish Secure Tenancy Agreement

- 7.7 The provisions noted above are a summary of the law which is contained within Section 22 of the Housing (Scotland) Act 2001. This summary does not alter that law.

8 INFORMATION AND CONSULTATION

- 8.1** You are entitled, under the Data Protection Act 1998 to inspect personal information held on you in the housing files. We will provide photocopies of this information on request. We may make a charge for this. We will provide you with a copy of any such information we hold within forty two days of your request in writing. You may have other rights under that Act in relation to your personal data, which we will honour. You are entitled to check information you have provided in connection with your housing application free of charge.
- 8.2** We will publish an annual report on our housing management performance which you may obtain from us on request. We will give you information about your right to buy your house, and the likely consequences for you if you decide to buy your house, before the beginning of the tenancy. We will give you information about our complaints procedure.
- 8.3** On request, we will provide you with free information relating to:
- the terms of your tenancy;
 - our policy about setting rent and service charges;
 - our policy and rules about;
 - applying to the housing lists,
 - allocations,
 - transfers of tenancies,
 - exchanges of houses between tenants, including where one party to the exchange is the tenant of another social landlord,
 - repairs and maintenance,
 - the right to buy your house;
 - the likely consequences for you if you decide to buy your house;
 - our tenant participation strategy;
 - our arrangements for taking decisions about housing management and services.
- 8.4** We will consult you about making or changing:
- policies regarding housing management, repairs and maintenance if the proposal is likely to significantly affect you;
 - proposals for changes in rent and service charges;
 - proposals for the sale or transfer of your house to another landlord;
 - decisions about the information to be provided relating to our standards of housing management and performance;
 - performance standards or targets in relation to housing management repairs and maintenance;
 - our tenant participation strategy.

Housing(Scotland)Act 2001
Model Scottish Secure Tenancy Agreement

We will take into account any views that you have before making a final decision. Any consultation with you will include giving you comprehensive information in an accessible form and reasonable time to express views.

9 COMPLAINTS

- 9.1** If you think that we have broken this Agreement or have failed to do anything we promised, you can complain to us under the complaints procedure which we will have made available to you.
- 9.2** If you are still dissatisfied after going through our complaints procedure, you may also have the right to complain to the Ombudsman. **You may also wish to take advice from an independent source such as a Law Centre, Solicitor, Citizens' Advice Bureau or Tenants' Association.**
- 9.3** If we have failed to carry out any of our material obligations under this Agreement, you have a right (in addition to any other legal rights you may have) to withhold your rent until we do comply with our obligations. **However, you may only do so if:**
- **you have told us in writing why you think we have broken this Agreement; AND**
 - **we have not fulfilled our obligations within a reasonable period; AND**
 - **you have made a formal written complaint under our complaints procedure (see paragraph 9.1); AND**
 - **you have finished the complaints procedure and you are still dissatisfied,**
OR 3 months have passed since you made the formal written complaint under the complaints procedure.

YOU ARE STRONGLY ADVISED TO OBTAIN LEGAL ADVICE BEFORE WITHHOLDING YOUR RENT. YOUR HOME IS AT RISK IF YOU WRONGLY WITHHOLD RENT. IT IS ESSENTIAL IN MOST CASES THAT ALL THE RENT WITHHELD IS PLACED IN A SECURE ACCOUNT AND THAT YOU CAN PROVIDE EVIDENCE OF THIS. IN MOST CASES YOU WILL HAVE TO PAY TO US ANY SUMS WITHHELD ONCE WE HAVE COMPLIED WITH OUR OBLIGATIONS.

10 GENERAL PROVISIONS

10.1 RIGHT TO BUY

You may have the right to buy your house under Part III of the Housing (Scotland) Act 1987 as amended by the Housing (Scotland) Act 2001. The price and other terms will be decided according to the terms of those Acts.

10.2 MANAGEMENT SERVICES

You have the right, in terms of Section 55 of the Housing (Scotland) Act 2001 together with other local tenants in a tenant management co-operative, to seek to take over or perform the management of one or more aspects of the housing service that we provide. We will provide more details to you about this right on request.

10.3 PERMISSIONS

- Where this Tenancy Agreement requires you to obtain our permission for anything you must make your request in writing. We will not refuse the request unreasonably.
- If we refuse permission, we will tell you what the reason is. We will give you our decision in writing as soon as possible.
- We may give you permission on certain conditions. We may withdraw our permission if the activity which we have given you permission for is anti-social to anyone in the neighbourhood.
- If you object to our decision, you can appeal using our complaints procedure.
- If the request for permission is about taking a lodger, sub-letting, assignation, exchanging the house or creating a joint tenancy (see Part 4 of this agreement), we will reply to your written request within one month of receipt of the written application. If we do not reply within one month, we are taken to have agreed to your request. If we refuse this kind of permission, we must notify you of the reasons for our refusal in writing within one month of receipt of your application. If you are unhappy about our refusal you have the right to make application to the sheriff.
- If the request for permission is about alterations or improvements, etc. to the house (see paragraph 5.21 of this agreement), we will reply to your written request within one month of receipt of the written application. In that reply we will tell you if we agree to the proposed alterations, **etc.** and if so, whether we attach any conditions. If we do not reply within one month, we are taken to have agreed to your request. If we refuse this kind of permission, we will let you know in writing our reasons for refusal within one month of receipt of your written application. If you are unhappy about our refusal you have the right to make application to the sheriff. You can appeal against a refusal or the conditions we have attached.
- If the request for permission is about changing the terms of the tenancy relating to your use or enjoyment of the house (see paragraphs 2.3 and

2.18) and we refuse permission, you have a right of application to the sheriff.

10.4 NOTICES

If you want to send any form of document to us, it will be sufficient if you send or deliver it to us at our Offices at John Dickie Street or your local area housing office. If we want to send you any document, we will send it to your house. We will be entitled to assume that this is your current address and that all documents to you should be sent there unless you tell us in writing that you want anything to be sent to another address.

10.5 COMPLETION OF THIS AGREEMENT

By signing below, you are completing a legally binding contract committing you to all of the terms of this Agreement. The terms and conditions of this Agreement replace the terms and conditions under any other Tenancy Agreement that you had with us, immediately before this agreement came into effect, in relation to this house.

SIGNED FOR LANDLORD
NAME
WITNESS NAME
WITNESS SIGNATURE.....
WITNESS ADDRESS.....
DATE

SIGNED BY TENANT/JOINT TENANT
WITNESS NAME
WITNESS SIGNATURE
WITNESS ADDRESS
DATE

SIGNED BY TENANT/JOINT TENANT
WITNESS NAME
WITNESS SIGNATURE
WITNESS ADDRESS
DATE

AGENDA