

Use of Tenancy/Occupancy Agreements & Leasing Policy

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1 Introduction & Aims

- 1.1 This Policy is intended to clarify the conditions that must be met for the provision of a tenancy type and to give guidance to both staff and prospective tenants.
- 1.2 The Association's policy will comply with statutory requirements, Scottish Government Guidance and the requirements of the Scottish Social Housing Charter.

2 Legal Framework

- 2.1 The Association will seek to conform and comply with all legislation, performance standards, guidance and good practice that directly or indirectly affect the type of tenancy to be offered.
- 2.2 The Housing (Scotland) Act 2001 (the Act) created the Scottish Secure Tenancy (SST) and Short Scottish Secure Tenancy (Short SST). The Act specified what tenancies could and could not be either of the above.
- 2.3 The Scottish Government also provided "Model" SST and Short SST Agreements that were to form the basis of all agreements developed by Registered Social Landlords (RSLs) and Local Authorities. In developing its tenancy agreements, the Association will use the Model Agreements developed by the Scottish Government; together with the Model Occupancy Agreements and Leases developed by SFHA and Communities Scotland.
- 2.4 The Housing (Scotland) Act 2014 introduces changes to the criteria by which a Short Scottish Secure Tenancy or a joint tenancy can be granted. As a result of the 2014 Act the Scottish Government will provide new "Model" SST and Short SST documents.

3 Types of Tenancy Agreements

- 3.1 The normal type of tenancy agreement offered to new tenants will be the Scottish Secure Tenancy Agreement (SST Agreement) as set out in the Housing (Scotland) Act 2001 (the Act). The exceptions to this are detailed in section 4.9 of this policy.
- 3.2 Where possible couples, unmarried partners, or unrelated individuals will be offered joint tenancies.
- 3.3 A Short Scottish Secure Tenancy Agreement (Short SST Agreement) may only be used in the circumstances set out in the Housing (Scotland) Act 2001 (as amended by the Housing (Scotland) Act 2014); as described in Section 6.2 of this policy.
- 3.4 Occupancy Agreements may only be used for shared housing where neither SST nor Short SST are allowed or are appropriate.
- 3.5 Leases will only be used where none of the above is permissible in order that residents of properties have the maximum level of security of tenure possible.

- 3.6 In all cases Agreements and Leases will be drafted and amended to suit the various elements that may affect a property (e.g. furnishings; services; district heating; etc.). In addition, the tenancy type offered will also be subject to a review of the tenant's circumstances. All Agreements and Leases used will be subject to legal advice and approval by the Association's Board.

4 Scottish Secure Tenancy (SST)

- 4.1 As set out in the Housing (Scotland) Act 2001 (the Act) a tenancy will only be an SST if:

- the house is let as a separate dwelling(self-contained);
- the tenant is an individual and the house is the tenant's only or principal home;
- the landlord is a local authority landlord, a registered social landlord (RSL), or a water or sewerage authority;
- where the landlord is a RSL which is a co-operative housing association, the tenant is a member of the association; and
- the tenancy was created on or after such date as specified by order or before that date description specified by government order or statute.

- 4.2 If a tenancy meets the above criteria then it is an SST and has all the rights, protections and obligations of the SST set out in the Act, regardless of what the tenancy agreement may say or be called by the landlord or tenant. Equally, any tenancy let as an SST by one of the bodies eligible to offer an SST must meet these criteria.

- 4.3 All previous secure and assured tenants of local authorities, RSLs, and water or sewerage authorities converted to the SST with effect from 30 September 2002, by an order under section 11 of the 2001 Act. An existing tenancy did not end at the date of conversion to the SST, it simply changed its status at that date from a secure or assured tenancy to an SST; conversion is not a new tenancy.

4.4 Definitions from the Housing (Scotland) Act 2001 (the Act)

- 4.4.1 "House" in this section includes a flat or any other part of a building which is occupied or intended to be occupied as a separate dwelling.

- 4.4.2 "House" and "flat" are defined under section 111 of the Act. "Separate dwelling" is not defined in the Act or elsewhere in housing legislation but is generally taken to include accommodation which is reasonably self-contained. The reference to "separate dwelling" mirrors section 44(1) (a) of the Housing (Scotland) Act 1987. There has been a considerable amount of case law in which the meaning of this provision of the 1987 Act has been examined. Basically, it means that, where the tenant shares an essential part of the living accommodation (e.g. living room or kitchen), the tenancy is excluded from the secure (and now Scottish secure tenancy regime).

4.5 An SST can only be offered to an individual and cannot be offered to a company or organisation. This does not prevent a house being let to more than one individual – indeed, the Act provides a right to a joint tenancy (section 11(5) of the Act) so long as it is a principal home (section 11(7)). If a tenant breaks this condition, the landlord will be entitled to instigate proceedings for recovery of the property. If a joint tenant breaks this condition, the landlord will be entitled to instigate proceedings to bring that joint tenant’s interest in the tenancy to an end under section 20 of the Act.

4.6 A house will still be a tenant’s “only or principal home” where a tenant must live away from home for periods of time, for example for employment or study reasons or because they are in hospital or in custody. The principal home would be the place the tenant returned to – what is, in effect, the “family home”.

4.7 Joint Tenancies

4.7.1 Where possible couples, unmarried partners, or unrelated individuals will be offered joint tenancies.

4.7.2 The Association will not allow joint tenancies where it is seen as contriving a tenancy with individuals for whom the house is not their only or principal home; or where the normal rules of tenancy succession will apply (e.g. between parents and children).

4.7.3 As well as a right to a sole tenancy under an SST, any tenant is entitled to a joint tenancy with one or more individuals, so long as the house is, at the commencement of the joint tenancy, to be the only or principal home of all the tenants (section 11(5)). The tenant and prospective tenant(s) must apply in writing and where an application for a joint tenancy is made, the landlord must grant the joint tenancy unless it has reasonable grounds for not doing so. The Act does not seek to define what might count as “reasonable grounds” and landlords will need to decide for themselves where the circumstances are likely to justify what is clearly intended to be an exceptional course of action.

4.7.4 There is no limit to the number of occasions on which a joint tenancy can be created. Nor is there any limit to the number of joint tenants, subject to the maximum of tenancy limits for the property. The Act does not allow for a right of appeal for the tenant or prospective joint tenant in cases where the landlord has refused to grant the joint tenancy. However, the appeal process set out below will apply in the event of a tenant or prospective joint tenant being unhappy with a decision.

4.7.5 From 1 November 2019, changes made by the Housing (Scotland) Act 2014 mean that any proposed joint tenant must have lived at the property as their only or principal home for the 12 months before they apply to become a joint tenant (previously there was no qualifying period); and the 12 month period cannot begin unless the association has been advised that the person is living in the property as their only or principal home. The association must have been told that by the tenant, a joint tenant, or the person who now wishes to become a joint tenant. If the association

has already been told that the person is living in the property we do not have to be notified again.

4.8 Decant Accommodation

4.8.1 The tenancy rights of SST tenants who have been temporarily housed elsewhere are protected by section 11(9) of the Act. Where the house that the tenant normally occupies under an SST is not available for occupation and the tenant has been temporarily accommodated in another house, section 11 (9) provides that the other house is to be taken for the purposes of Chapter 1 of Part 2 of the Act except sections 12 - 16 and paragraph 4 of Schedule 1 to be the house which the tenant normally occupies. This means, in effect, that if tenants are moved on a temporary basis from their usual house they will continue to have the full rights of an SST in the temporary house except for the RTB. In this situation, landlords can simply recover possession of the alternative house as necessary and they are not required to use the normal procedures as set out in sections 12 to 16.

4.9 SST Exemptions

4.9.1 Section 11(4) of the Act says that a tenancy is not an SST if it is of a kind mentioned in Schedule 1 to the Act. (This does not mean that it is a short SST as short SSTs cannot be offered unless under section 34 and Schedule 6 of the 2001 Act.) The exceptions, where a tenancy is not an SST or a short SST, will apply to new tenancies and to existing tenancies which would otherwise become Scottish secure tenancies under section 11 of the 2001 Act.

4.9.2 These exemptions are:

- premises occupied under contract of employment – i.e. tied houses;
- tied properties of police and fire authorities;
- lettings to students by specified educational institutions of a type specified by regulations made by Scottish Ministers;
- temporary accommodation for occupation by a tenant while work is being carried out on the tenant's only or principal home and to which home the tenant is entitled to return after the work is completed (often referred to as "decant housing");
- temporary accommodation for homeless persons (This applies where the intention is that temporary accommodation should last for less than 6 months although this arrangement could be extended. Where temporary accommodation is being offered expressly for a period of 6 months or more a short SST would be appropriate.);
- temporary accommodation granted for less than 6 months for the rehabilitation of ex-offenders – this is accommodation let for up to 6 months which is designed to support the care and supervision by a local authority of person's subject to supervision by an order of court or, following release from prison, a license of Scottish Ministers (This

applies where the intention is that temporary accommodation should last for less than 6 months although this arrangement could be extended. Where temporary accommodation is being offered expressly for a period of 6 months or more a short SST would be appropriate.);

- tenancies under a shared ownership agreement;
- agricultural and business premises – where the house is let together with agricultural land of more than 2 acres; consists of or includes premises which are used as a shop or office for business, trade or professional purposes; consists of or includes premises licensed for the sale of excisable liquor or is let in conjunction with any of these;
- if the house forms part of, or is within the curtilage of, a building which is let by the landlord for purposes other than the provision of housing accommodation, and mainly consists of accommodation other than housing accommodation. An example would be a janitor's house lying within the boundaries of a school or college; and
- if the house is leased by the landlord from another body and the terms of the lease preclude the landlord from letting the house under an SST.

5 Short Scottish Secure Tenancy (SHORT SST or SSST)

5.1 The Short Scottish Secure Tenancy (Short SST) is based on the Scottish Secure Tenancy. Both were introduced by the Housing (Scotland) Act 2001 (the Act). As described above most tenancies that social landlords will offer to their tenants will be Scottish Secure Tenancies. In a relatively small number of cases, social landlords will be entitled, but not obliged, to offer a prospective tenant a Short SST instead. The circumstances in which this may be done are set out in Schedule 6 to the 2001 Act and Section 7(2) of the 2014 Act.

5.2 In summary they are:

- the tenant has had an order for repossession made against him/her in the UK on the grounds of anti-social or similar behaviour in the previous three years;
- the tenant or member of household is subject to an Anti-Social Behaviour Order (“ASBO”); granted under S19 of the Crime and Disorder Act 1998^[3];
- From 1 May 2019, changes made by the Housing (Scotland) Act 2014 mean that where a tenant or someone living with the tenant has acted in an antisocial manner or pursued a course of conduct amounting to harassment of another person can have their tenancy converted to a short SST for an initial period of 12 months. This conduct must have been in or around the house occupied by the tenant and it must also have happened in the 3 years before the notice is served. Housing support services must be provided to the tenant following the conversion of the tenancy to a short SST.
- temporary letting to person moving into the area to take up employment;
- temporary letting pending development of the principal house to persons on a temporary basis pending development affecting the house in terms of the Town and Country Planning (Scotland) Act 1997;
- temporary letting to a homeless person; for tenancies of 6 months or over (lets to homeless persons of under 6 months are covered by schedule 1 to the act, i.e. tenancies which are not Scottish Secure Tenancies);
- temporary letting for a person requiring or receiving housing support services (i.e. as defined in section 91(8) of the Act);

- the landlord has leased the house from another body, and the terms of the lease preclude sub-letting under a Scottish Secure Tenancy.

5.3 Unless the let falls into one of these categories, a Short SST cannot be granted. In the first two cases, the tenancy is effectively a “probationary” tenancy.

5.4 Appeal to the Sheriff Court

5.4.1 The prospective tenant has a right of appeal to the sheriff against being offered a Short SST or Occupancy Agreement instead of a Scottish Secure Tenancy or Short SST, as the case may be (s38). The sheriff may order the landlord to let the house offered under a different agreement if s/he considers that there are “good grounds” for doing so.

5.5 Anti-Social Behaviour and Anti-Social Behaviour Orders (ASBOs)

5.5.1 A Short SST may come into being by operation of s35 of the 2001 Act. That section provides that a Scottish Secure Tenancy will convert into a Short SST where the landlord serves a notice on the tenant to that effect. The landlord may only do so where the tenant or a member of the household is subject to an ASBO. In that circumstance, the Short SST may convert back to a Scottish Secure Tenancy at a later stage if certain conditions are met (s37).

5.5.2 If the tenancy does convert into a short SST, there is no statutory obligation to provide a fresh tenancy agreement such as one based on the model Short SST. There is a right of appeal (s35 (5)) by way of summary application to the sheriff by a tenant who has been served with a notice converting the SST to a Short SST. That appeal must be within 21 days after the date of intimation of the notice, or a longer period if “special cause” is shown (Rule 2.6 of the Summary Applications, Statutory Applications and Appeals etc. Rules 1999 (SI 1999/929)). The sheriff may grant the appeal if s/he is satisfied that there are “good grounds” for doing so.

5.5.3 From 1 May 2019, changes made by the Housing (Scotland) Act 2014 place new requirements on social landlords when issuing a notice to a tenant converting a tenancy to a short Scottish secure tenancy as a result of antisocial behaviour. In cases where no antisocial behaviour order has been granted by the court, the landlord must include in the notice the actions of the person who has behaved in an antisocial manner, the landlord’s reasons for converting the tenancy and details of the tenant’s right of appeal to the sheriff court.

5.6 Other Conditions

5.6.1 The other conditions for the creation of a short SST are provided for in s34. In summary, they are as follows:

- the tenancy would have been a Scottish secure tenancy were it not for s34. That is, the requirements for the creation of a Scottish secure tenancy (see s11) must be met;
- the tenancy is for a fixed term of at least 6 months (12 months for short SST's created as a result of the changes to the Housing (Scotland) Act 2014 related to anti-social behaviour). There is no maximum period; and
- the prospective landlord has served a statutory notice on the prospective tenant **before** the creation of the tenancy (i.e. before the tenancy agreement is signed). The form of the statutory notice is found in The Short Scottish Secure Tenancies (Notices) Regulations 2002.

5.6.2 If the last two conditions are not met, the tenancy created will be a Scottish Secure Tenancy rather than a Short SST.

5.7 Conversion from Short SST to SST

5.7.1 A short SST will convert to a Scottish Secure Tenancy in limited circumstances (s37).

5.7.2 The circumstances are that:

- the Short SST has been granted as a “probationary” tenancy; or
- the Short SST had been created by the service of a notice; and
- no notice of proceedings under s14(2) or s36(2) has been served in the 12 months following the creation of the tenancy; or if such a notice has been served, the notice has expired or been withdrawn; or
- court proceedings were finally resolved in favour of the tenant.

5.7.3 The fact of conversion and the date of the conversion must be notified by the landlord to the tenant.

6 **Occupancy Agreements**

6.1 Occupancy Agreements are intended for use by RSLs and local authorities in permanent (i.e. long term) shared housing in which two or more unrelated individuals/households each have their own room and share other facilities (non-self-contained properties).

6.2 The Housing (Scotland) Act 2001 allows neither Scottish Secure Tenancies nor Short SSTs to be given in accommodation that is not self-contained.

6.3 However, in certain cases it is possible to allow a Scottish Secure Tenancy to unrelated individuals as Joint Tenants where issues of joint and several liability are clear and the scale of shared responsibilities are not too onerous. A joint SST may be possible in smaller (two or three-bedroom houses); in larger properties, an Occupancy Agreement will often be the most appropriate form of tenancy.

6.4 RSLs and local authorities which have shorter term shared housing (where, for example, an RSL might previously have given a short-assured tenancy) will be

given an Occupancy Agreement, which replicates as far as possible the terms of the Short SST.

7 Leasing

- 7.1 Leases will be used where SSTs, Short SSTs and Occupancy Agreements cannot be used. These will generally apply to houses let to organisations such as care agencies or other third-party agencies. Leases will also be used for non-residential properties (e.g. garages; offices; etc).
- 7.2 Our aim is to meet our obligations to promote equalities and contribute to meeting the needs of the wider community. To achieve this, we may make several properties available to organisations working with people with support needs and to the local authority / HSCP where appropriate.
- 7.3 In line with good practice Cloch Housing Association will only lease properties to a third party on an exceptional basis. Our policy is to provide the most secure form of tenancy compatible with the purpose of the housing. Therefore, wherever possible we will provide direct tenancies for individuals. For example, generally when the accommodation is self-contained and long term we do not consider leasing to be appropriate.
- 7.4 When we lease property we will ensure the lessee uses the appropriate model leases, tenancy and occupancy agreements currently available.
- 7.5 When we enter into a lease where we need to consider a variation on an existing model tenancy or occupancy agreement we will seek legal advice to ensure that we are maximising the security of tenure for the individual. This may arise because of the design of the accommodation or the nature of the client group.
- 7.6 Where a Lease is to be granted, the Association's Board gives authority for the Housing Services Manager or Senior Housing Officer to complete the relevant forms to obtain and record General Consent for the lease as per Section 107 of the Housing (Scotland) Act 2010 (formerly Section 66 of the Housing (Scotland) Act 2001).
- 7.7 We will lease properties to the following organisations where it is appropriate due to the client group being housed and the nature of the support being provided:
- Inverclyde Council / Inverclyde HSCP – accommodation for use as temporary accommodation for homeless people;
 - Inverclyde Council / Inverclyde HSCP– accommodation for use as respite for people with high levels of physical and learning disabilities;
 - Care Providers E.g. Key HA, Richmond Fellowship, Turning Point – Accommodation for use as supported accommodation.
- 7.8 We will make every effort to safeguard our properties and the people living in them. In determining an organisations suitability as a lessee, we will consider its

track record including its financial position (consideration of financial viability is relaxed in the case of local authorities).

- 7.9 If organisations that have not previously leased from the Association want to lease property from Cloch HA, the Housing Services Manager will present a report to the Board or Housing and Property Services Sub-Committee making recommendations as to their suitability and requesting either approval or refusal to accept the organisation as a future lessee.

7.10 Commercial Leases

7.10.1 The Leadership Team do not have the authorisation to enter into commercial leases without the prior authority of the Board or the Housing & Property Services Sub Committee. When considering a commercial lease, a report must be presented considering issues such as financial risk to the Association. The Lease must be compliant with the Scottish Housing Regulator's Guidance Note "Consent to disposals of land or Assets" (April 2012). Specific consent from the Scottish Housing Regulator may be required in the case of commercial leases.

7.11 Managing Equalities and Leasing

7.11.1 Our policy is to ensure fair and open access to our housing and to be responsive to people's individual support needs. We will therefore ensure that appropriate selection and assessment criteria are used by the lessee in allocating the properties.

7.11.2 We undertake to ensure that equal access to appropriate property types and locations across the range of our stock is given to lessees. Properties made available for leasing should not be confined to one area or to less desirable stock.

7.12 Audit Trail

7.12.1 We will maintain a clear audit trail showing that we have: –

- Examined all other available options in deciding that leasing is the most appropriate arrangement;
- Ensured that the lessee has granted the most secure form of tenure compatible with the purpose of the housing;
- Demonstrated good reason for departing from the terms of any model agreements. This should include where the –
 - Lease is for longer than three years;
 - Appropriate SFHA model lease is not used;
 - Model is used but some clauses are omitted or amended;
 - Appropriate model occupancy or tenancy agreement is not used.
- Managed risks, covered costs and taken steps to ensure sustainability where it is a commercial lease.

7.13 Performance and Review of Leasing Arrangements

7.13.1 We will review the management of leased properties regularly by holding liaison meetings with the lessee at least every six months or as appropriate to the project.

7.13.2 We will report annually to the Housing and Property Services Sub-Committee setting out:

- The number of leases;
- The organisations we have leased to;
- The expiry date for the lease;
- Any management issues relating to the conduct of the lease (this should include estate management issues, complaints made and received, financial issues and repairs) and;
- Whether we have renewed leases.

8 **Delegation of Authority**

8.1 The practical implementation of the policy and the day-to-day operation of the procedures will be undertaken by members of the Association's Housing Services Section. The Housing Services Manager will have the delegated authority to decide which form of agreement will apply; if there is any doubt about the type of tenancy that should be offered (subject to the guidelines set out above).

8.2 The Leadership Team have delegated authority to enter leasing arrangements in line with this policy but any proposal to lease which falls outwith the terms of this policy must be referred to the Board or Housing and Property Services Sub-Committee for consideration. This policy should be read in conjunction with Scottish Housing Regulators Guidance "Consent to disposals of land or Assets" (April 2012).

8.3 The Board has given delegated authority to the Housing Services Manager and Senior Housing Officer to negotiate and sign Leases, Supported Housing Occupancy Agreements and Tenancy Agreements on behalf of Cloch Housing Association.

8.4 In addition, the Board also gives delegated authority to all members of staff whose grade is EVH Grade 5 or higher (Customer Services Officer and higher) to sign all forms of tenancy agreements (including decant agreements) and Supported Housing Occupancy Agreements on behalf of the Association.

8.5 Where appropriate the Association's Board gives authority for the Director, Housing Services Manager or Senior Housing Officer to complete the relevant forms to obtain and record consent, where appropriate, for any lease as per Section 107 of the Housing (Scotland) Act 2010.

9 Appeals and Complaints

- 9.1 Appeals or complaints against our operation of this policy will be processed through the Association's complaints handling procedure.
- 9.2 Every service user has final recourse to the Scottish Public Services Ombudsman, please refer to the separate Complaints Handling Procedure.

10 Data Protection & Confidentiality

- 10.1 All information supplied to the Association by applicants will be treated as strictly confidential and will be handled in line with current Data Protection Act legislation. Information will not be revealed to any other party without the prior consent of the applicant or in line with data protection principles. Applicants have the right to inspect any records held on their housing application. For more information please refer to the association's Privacy Policy.
- 10.2 The Association may have to make enquiries to confirm information provided in the application. Express consent is granted by the applicant by accepting the declaration on the application form for data to be revealed to allow exchange of information with other agencies where appropriate and for their application to form part of their tenancy record.

11 Equalities Commitment

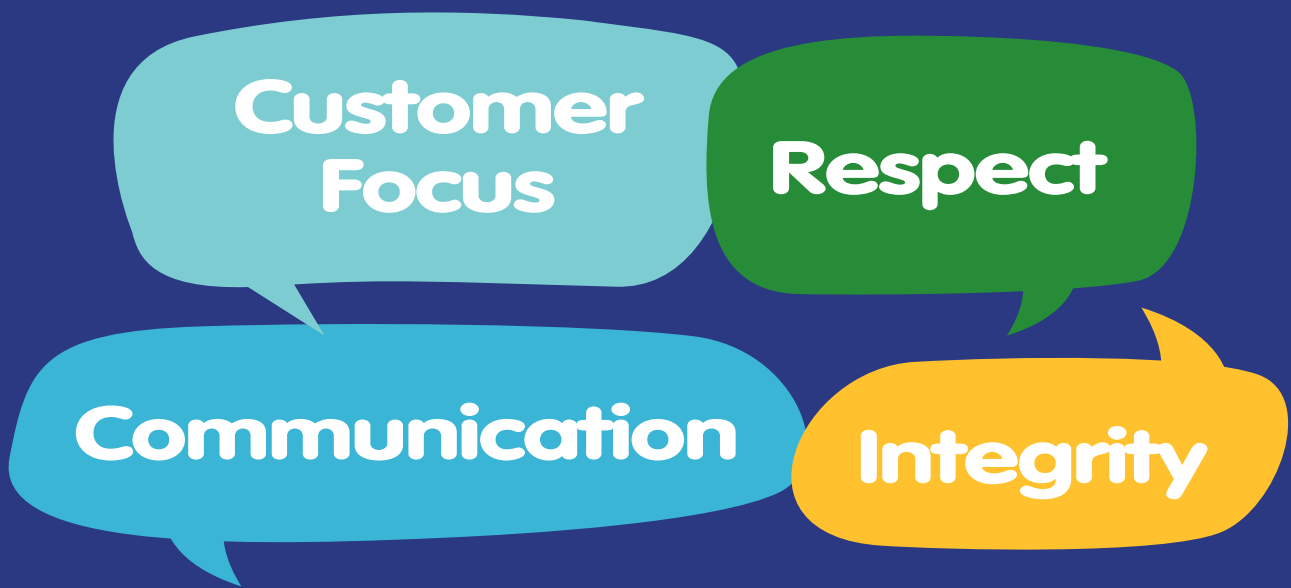
- 11.1 Cloch Housing Association Ltd is committed to tackling discrimination on the grounds of sex or marital status, racial grounds, or grounds of disability, age, sexual orientation, language, social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.
- 11.2 Cloch seeks to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination in all areas of our work.

12 Policy Availability

- 12.1 This document can also be provided in large print, braille, audio or other non-written format and in a variety of languages, on request.

13 Monitoring and Review

- 13.1 This policy will be reviewed every five years or as legislative changes deem appropriate.



CLOCH HOUSING ASSOCIATION LTD	
Policy Name	Use of Tenancy/Occupancy Agreements & Leasing Policy
Policy Category	HM
Policy Number	038
Date Adopted	20/09/2004
This Review	27/11/2018
Next Review	November 2023
Equalities Impact Assessment Required	No
Link to other policies	
Consultation	Internal
Need for Procedure	No