

Housing Services Management of tenancy during incarceration Policy

Department	Housing Services
Responsible Person	Director of Housing
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1. Introduction

- 1.1 A tenant will not automatically lose their rights as a secure tenant when sentenced to a term of imprisonment. Once Housing Services become aware that a tenant has been sent to, or is likely to be sent to prison, a decision will be made regarding the future of the tenancy without delay.

2. Purpose

- 2.1 The purpose of this policy is to:
- Outline the process Housing Services follow upon notification that a tenant will be or has been imprisoned,
 - Outline the role of the tenant nominated property custodian,
 - Outline the anti-social behaviour mandatory grounds for possession that can be pursued by the Landlord to evict the tenant.

3. Legislative Framework

Housing Act 1985, Schedule 2A

Anti-social Behaviour, Crime and Policing Act 2014

4. Notification received of tenant in prison

- 4.1 It is important that the Housing Officer is informed by the tenant if they are in prison or awaiting sentence following a criminal conviction which is in line with section 3.3 of the tenancy conditions which states;

“to avoid us repossessing your property, you must tell us if you will be away from your home for more than 4-weeks”.

- 4.2 The Housing Officer working in conjunction with the Anti-Social Behaviour (ASB) Team decides the correct course of tenancy management and/or action. This could include taking legal proceedings to take back possession of the property based on whether the offence meets mandatory grounds for possession.

- 4.3 A secure tenant does not automatically lose their rights as a secure tenant when sentenced to a term of imprisonment.

- 4.4 To make a decision on the tenancy, the following criteria will be considered;

- The length/term of imprisonment,

- The nature, severity, and location of the crime committed in order to determine whether the council as the landlord would want to seek possession under mandatory grounds. Mandatory grounds for possession would normally apply for crimes such as murder, terrorism, kidnap, domestic abuse, drug offences and weapons offences.

4.5 In addition the tenant will be required to provide the following details;

- The prison address (forwarding address), and associated prison number,
- Contact details for the prison liaison officer,
- Up to date account of who is residing at the tenant's address in their absence,
- Whether the convicted tenant intends to end the tenancy by way of serving a notice to quit on the landlord or plans to nominate a property custodian.

4.6 If legal action is not proposed, the Housing Officer must reiterate the tenant's responsibility for all aspects of the tenancy (including arranging payment of rent) even though they may not be present at the property for a significant time.

4.7 If the tenant intends to terminate the tenancy, they are advised of their responsibilities in respect of clearing the property, ensuring all arrears are settled, and giving vacant possession of the property upon expiry of the Notice to Quit.

4.8 If the tenant intends to retain the tenancy no action is required as long as:

- The tenant continues to pay rent or receives Housing Benefit so that no rent arrears accrue.
- A named individual acts as 'property custodian', granting access to the property when requested by the council as the landlord or on behalf of the landlord (repairs contractors etc).

4.9 Once it has been decided how the tenancy will be managed, all other relevant council departments will be notified accordingly i.e. Revenue and Benefits Department and Council Tax.

5. The role of the Property Custodian

- 5.1 Where legal action is not proposed, and the tenant intends to return to the property upon release from prison, the tenant is required to nominate a 'property custodian'.
- 5.2 The property custodian would then be responsible for:
- Allowing access to the property upon request i.e. annual gas safety check, repair appointments, tenancy update visits, emergency access etc.
 - Reporting repair issues to ensure the property is well maintained.
 - Adhering to all other tenancy conditions as if they were the tenant i.e. no nuisance, anti-social behaviour etc.
- 5.3 If the property custodian fails to comply with the above tenancy conditions, the Landlord will take the appropriate tenancy action, which may include legal action to seek possession of the property. If this is the case, the convicted tenant is kept informed, in writing, to the prison address.
- 5.4 Ideally, the property custodian would already be an authorised household member i.e. partner or child over the age of eighteen. However, the property custodian does not necessarily need to live at the property, they just need to be able to provide access to the property when requested.
- 5.5 The property custodian cannot be a person that the council as the landlord has previously evicted, either from this address or any other council address.
- 5.6 In order to nominate a property custodian, the tenant should provide signed and dated written confirmation outlining the person they wish to nominate, giving this person consent to liaise with the Council on their behalf in relation to matters concerning the tenancy and/or property. The letter should also include details such as:
- The property custodian's full name and date of birth
 - The property custodian's relationship to the tenant
 - Clarification over whether the property custodian is a household member or not
 - Contact details for the property custodian i.e. mobile and email address
- 5.7 Alongside this written consent from the tenant, the Housing Officer should also request that a similar signed letter is provided by the nominated property custodian, in order to ensure that they are aware of this nomination and all that it entails.

- 5.8 If the nominated person does not wish to take on the role of property custodian, the tenant would then be responsible for nominating another suitable person to take on the role of property custodian and provide the council as the landlord with all relevant details as described above.
- 5.9 In cases where the tenant is unable to nominate a property custodian, the Housing Officer reiterates the implications of not being able to uphold the tenancy conditions in writing to the convicted tenant.

6. Mandatory Grounds for Possession (ASB)

- 6.1 In the Anti-social Behaviour, Crime and Policing Act 2014, the 'absolute ground(s) for possession for anti-social behaviour' are outlined in five specified conditions. They are:
- Condition 1: Conviction of serious offence
 - Condition 2: Breach of IPNA (Injunction to prevent nuisance or annoyance)
 - Condition 3: Breach of a criminal behaviour order
 - Condition 4: Closure order
 - Condition 5: Noise nuisance
- 6.2 The court must award possession if any one of the above five specified conditions is met, and the landlord has served the correct notice of seeking possession (NOSP) and complied with all obligations in respect of the tenant's right to review.
- 6.3 There are also three discretionary grounds for possession for reasons of anti-social behaviour available to landlords of secure tenants:
- Ground 2 – nuisance or annoyance, or the illegal or immoral use of the property
 - Ground 2A – domestic violence
 - Ground 2ZA – offence committed during a riot.
- 6.4 If any of the five specified conditions can be applied to the convicted tenant, the Anti-Social Behaviour Manager is responsible for taking the lead on any proposed legal action, including the serving of the NOSP and meeting all other obligations in relation to the tenants' right of appeal.

7. Equality Impact

- 7.1 Applying this policy consistently and sensitively will ensure that all tenants and their household members in Council owned homes who have protected characteristics and/or are deemed vulnerable for other reasons receive services that are based on a recognition of their vulnerability. The Council will make all appropriate adjustments to the services they receive in order to mitigate any potential negative impacts on them and to ensure they receive fair and equal treatment from the Council as their landlord.