

<b>1.0</b>	<b>CONTEXT</b>
1.1	This Policy is the main reference source for the general provisions relating to the recovery of possession of the Scottish Secure Tenancy (SST) and the Short Scottish Secure Tenancy (SSST) in compliance with relevant legislation. It should be read in conjunction with GWHA's Rent Arrears and Antisocial Behaviour Strategies, and Abandoned Properties, Assignment of Tenancy, Joint Tenancy, Succession to Tenancy and Forced Access Policies.
<b>2.0</b>	<b>AIMS</b>
2.1	To ensure that all reasonable steps have been taken to ensure that homelessness is prevented, and that repossession action is taken as a last resort.
2.2	To ensure that actions, alternative to recovery, are progressed where possible.
2.3	To ensure that the Association effectively manages breaches of tenancy that ultimately require the sanction of a repossession action.
2.4	To protect the rights of Tenants and the Association in the repossession of a property.
2.5	To minimise costs to the Association in relation to potential repairs, forced access etc.
2.6	To ensure compliance with legislation, guiding standards and best practice.
2.7	To mitigate risk.
<b>3.0</b>	<b>DEFINITIONS</b>
3.1	References are made in this policy to the following terms, defined as follows:
3.1.1	<u>Tenant</u> - The Tenant or Joint Tenant of the property, as named on the tenancy agreement
3.1.2	<u>Visitor</u> – Anyone permitted access to the house by the Tenant or Joint Tenant.
3.1.3	<u>Notice</u> – Notice of Proceedings for Recovery of Possession (NOPFROP)
<b>4.0</b>	<b>POLICY</b>
<b>4.1</b>	<b>General</b>
4.1.1	Legal action will be instructed only if all other reasonable attempts to resolve a breach of tenancy have been unsuccessful. A property will be repossessed only as a last resort and in circumstances where all reasonable measures of support have been provided in accordance with procedures; legal processes have been adhered to and, where applicable, a decree has been granted in court following the Sheriff's determination that recovery is reasonable.
4.1.2	Where a decree for repossession of a tenancy is granted by the Sheriff Court, this will be enforced at the earliest opportunity and always within 28 days of the expiry date. Variations from this Policy will be with the express written approval of the Chief Executive.
4.1.3	Where a tenant is issued with a NOPFROP (Notice) all relevant grounds will be incorporated to the Notice, except, for example, where this may delay action (i.e. where a violent act of anti-social behaviour occurs, and the tenant also has rent arrears which have not progressed through all stages of the pre action requirement process). In these circumstances, a Risk Assessment will be completed for authorisation by the Services Director.
4.1.4	Without exception, the approval of the Services Director and Chief Executive is required to proceed with repossession of a tenancy.
<b>4.2</b>	<b>Preventative Action</b>
4.2.1	Prior to an offer of housing being made, and during the tenancy sign-up interview, prospective and new tenants will be counselled on their obligations in respect of the tenancy agreement and the circumstances under which a tenancy may be repossessed. The Tenant's Handbook will be issued along with the tenancy sign-up papers and, in addition, the new Tenant must sign up to the conditions set out in the Good Neighbour Agreement.

4.2.2	New Tenant (settling-in) visits are carried out at set frequencies in the first year of the tenancy, and the Tenancy Sustainment service is available to ensure advice and support is provided, including sign-posting to other support agencies, to optimise the chances of successful tenancies.
<b>4.3</b>	<b>Abandonment</b>
4.3.1	In compliance with legislation, GWHHA Abandoned Properties Policy and Procedures set out the checks and actions that must be taken prior to notice being served of the intention to recover a tenancy abandoned either by a single or joint tenant, or in the event that a tenancy falls under the Adult with Incapacity Scotland Act 2000.
<b>4.4</b>	<b>Properties Designed or Adapted for Special Needs Households</b>
4.4.1	Section 15 of the 2014 Act amended paragraphs 11 and 12 of Schedule 2 of the 2001 Act by removing reference to occupiers 'no longer' requiring the specific adaptation. Recovery of such properties are now permitted where the property has been let to a tenant who did not need the adaptation in the house at the outset of the tenancy, and where it has been set out clearly to the tenant at the outset of the tenancy that they would be expected to move to alternative accommodation if someone later requires the adapted property. This amendment took effect from 1 May 2019, and in such instances the court must make the order if it considers that other suitable accommodation will be available for the tenant when the order takes effect, and GWHHA would require to demonstrate proof of a suitable offer of alternative housing.
4.4.2	In terms of assessment of suitability of alternative accommodation, if an adapted property is taken back as it is no longer required by the tenant, Part 2 schedule 2 of the 2001 Act sets out a number of criteria to determine whether the accommodation is likely to be reasonably suitable as rehousing for the tenant and the tenant's family. If the offer is refused, the offer will continue to be deemed to be suitable unless the tenant can satisfy the court that it was reasonable to refuse it. Such actions would only be considered as a last resort by GWHHA, and all reasonable efforts would be made to mutually source or agree alternative accommodation.
<b>4.5</b>	<b>Non eligibility following H(S)A2014</b>
4.5.1	In compliance with legislation, GWHHA Assignment, Succession and Joint Tenant Policies and Procedures set out the checks and actions that must be taken when such a request is received.
4.5.2	The 2014 Act set clearly defined periods of occupation in relation to any person who wishes to apply for Succession, Assignment and Joint Tenancy. Such persons must be formally declared as living within the property for the specific periods of time as defined by the Scottish Secure Tenancy agreement and 2014 Act. The Tenant must notify the Association in writing of any changes to their household, and if no such notification is received, the application will be refused.
4.5.3	Such residents who apply for, and are not eligible to assume a tenancy, may be permitted to remain in the property pending recovery action by GWHHA, which will be heard by a Sheriff. GWHHA reserve the right to seek expenses for any such unsuccessful action.
<b>4.6</b>	<b>Bankruptcy</b>
4.6.1	Under the Bankruptcy (Scotland) Act 1985 (as amended), a landlord cannot generally recover rent arrears through court action once a tenant has been made bankrupt, leaving the Association with the option of recovering possession of the property. Scottish Government Guidance on bankruptcy states that any decision to stop eviction proceedings that are ongoing when sequestration proceedings are ongoing is a matter for the landlord.
4.6.2	GWHHA have agreed that for tenants who are declared legally bankrupt before any legal proceeding is instigated, that the sequestrated debt will not be actively pursued by GWHHA, and that the sum owed will be transferred to a linked tenancy account. The outcome of this process will be that should payments be received by GWHHA at a later date, these would be credited to the linked account to reduce the specific debt.
4.6.3	Where GWHHA have begun court proceedings, having met pre action requirements, and notification of a tenant sequestration is received, GWHHA reserve the right to continue with the action.

<b>4.7</b>	<b>Rent Arrears</b>
4.7.1	In compliance with legislation, GWHHA Rent Arrears Management Strategy sets out the checks and actions that must be taken when a tenant's rent account enters into arrears.
4.7.2	Before serving a NOPFROP (Notice) GWHHA will ensure compliance with the pre-action requirements set out in legislation through adherence to the rent arrears procedures. The Notice advises the tenant that the landlord is considering court action to recover possession of the property. Pre-action requirements are aimed at providing further protection for tenants by:
4.7.3	<ul style="list-style-type: none"> <li>• Creating a greater consistency in practise between landlords;</li> <li>• Making sure that landlords and tenants explore other ways of resolving the arrears; and</li> <li>• Making sure that eviction for rent arrears is a last resort.</li> </ul>
4.7.4	Where the rent arrears procedures have been followed and a Notice has been served, legal action will be initiated where an arrangement with the tenant for repayment of the debt within a reasonable timeframe, and in manageable instalments, is unsuccessful. This will be guided by the Rent Arrears Management Strategy.
<b>4.8</b>	<b>Antisocial Behaviour</b>
4.8.1	Prior to initiating legal action for the recovery of a property on the grounds of antisocial behaviour, GWHHA will ensure, through investigation, liaison with partner agencies and options to adjust behaviour, that all options have been explored.
4.8.2	GWHHA in conjunction with Glasgow City Council Community Relations Unit (CRU), will investigate allegations of antisocial behaviour. Where there is evidence to substantiate an allegation, appropriate warnings will be issued to encourage the perpetrator to modify their behaviour to allow them to remain living in the property, whilst safeguarding the interests of neighbours. When a set number of warnings have been issued and if the antisocial behaviour continues, or if the behaviour is of a very serious nature, GWHHA will refer such matters to CRU for investigation, engagement and action up to and including application for an Antisocial Behaviour Order and/or to prepare a case for GWHHA to consider tenancy repossession via legal action.
4.8.3	Where the antisocial behaviour strategy procedures have been followed and a Notice has been served, legal action will commence if the tenant does not remedy their behaviour and where there is a risk to other tenants or GWHHA property.
4.8.4	GWHHA will demonstrate the decision making process for repossession of the tenancy based on the needs to protect the interests of neighbours and/or the wider community, and the GWHHA property.
4.8.5	In relation to repossession of tenancy due to antisocial behaviour, GWHHA will demonstrate that all other available actions have been considered, including conversion of Scottish Secure Tenancy to Short Scottish Secure Tenancy, and are able to evidence the reasons why this was not deemed appropriate.
4.8.6	If a decision to repossess a tenancy is based on antisocial grounds, GWHHA will require to demonstrate that it is not reasonable to rehouse the tenant elsewhere within our stock i.e. to show that the behaviour was not a result of a direct neighbour dispute, and that it would be likely to occur no matter where the Tenant lived. This will be determined by the nature of the antisocial behaviour, the information from partner agencies and the impact on the surrounding community. GWHHA will advise GCC that a future section 5 referral of the individual will not be accepted.
4.8.7	The CEO/SD will approve any decision to convert a SST to a SSST due to anti-social behaviour.
<b>4.9</b>	<b>Repossession of Tenancy</b>
4.9.1	Any action by GWHHA must be within the grounds permitted in the 2001 Act, as amended by the 2014 Act. These grounds are detailed within the tenancy agreement and are discussed during the tenancy sign-up process. These include:
4.9.2	<b>Using the house for illegal or immoral purposes or other criminal offences</b>

4.9.2.1	This ground requires the Tenant, the Joint Tenant, someone living with, or someone visiting the property to be convicted of using or allowing the property to be used for illegal or immoral purposes. The offence must be punishable by a prison sentence, regardless of whether a custodial sentence is administered as a court outcome. The conviction must relate to the tenancy or the locality of the tenancy.
4.9.2.2	In such instances CRU will provide a full recovery file including details of the conviction(s). Upon receipt of the recovery file, GWHHA Tenancy Services Manager will determine whether it is appropriate and proportionate to pursue repossession of such tenancies.
4.9.2.3	Consideration will be given to any improvement in behaviour of those within the household following the conviction, and if the conviction followed a one-off incident or if it related to a series of incidents showing a pattern of behaviour. GWHHA will also take into account the circumstances of the individual who has been convicted, and their relationship to the Tenant, the property and the locality.
4.9.3	<b>Failure to Occupy as only or principal home</b>
4.9.3.1	This requires GWHHA to be satisfied, through liaison with partner agencies that the tenant is not able to live in the property for health, care or employment reasons. Commencing any action based on this ground will be considered in conjunction with the Abandoned Properties policy to determine the most suitable action. All actions will be taken promptly to minimise the financial impact on the tenant and GWHHA, and to make best use of GWHHA property.
4.9.4	<b>False Statement made to obtain the Property</b>
4.9.4.1	If the Tenant has knowingly provided materially false or misleading information in their application for housing, and this information has resulted in the tenant being allocated a property to which they would otherwise not have been entitled, the Association may instruct legal action under this ground for repossession.
4.9.4.2	In these circumstances, the tenant will be given 3 months' notice to vacate the property.
4.9.5	<b>Deterioration of the property or common parts, or furniture</b>
4.9.5.1	If the condition of the house or common parts, or furniture that has been supplied by GWHHA has deteriorated because of the fault of the Tenant, sub-tenant or somebody in the household, the Association may instruct legal action under this ground for repossession. In these circumstances, legal action for recovery of the property will only commence where reasonable action has been taken to work with the tenant to improve the condition of the property and where the deterioration in the condition of the property is such that the fabric of the building and its components have seriously deteriorated and present a risk.
4.9.6	<b>Circumstances where a landlord can apply to the court for an order for eviction to evict a tenant but has to offer another house or flat that is suitable to the tenants needs</b>
4.9.6.1	<p>Under Schedule 2 of the Act, there are 8 grounds where a landlord can apply to the court for an eviction order to evict a tenant but they have to offer another property suitable to the tenants needs. A sheriff will not grant an eviction order unless they are satisfied that the new accommodation is suitable. The grounds are as follows:</p> <ul style="list-style-type: none"> <li>• Nuisance, annoyance or conduct amounting to harassment</li> <li>• The house is overcrowded</li> <li>• Demolition of, or substantial work on, the property</li> <li>• The property is designed or adapted for people with special needs (as in 4.4 above)</li> <li>• The property is part of a group designed or located near facilities for people with special needs</li> <li>• The landlord has leased the property</li> <li>• The landlord is an islands council and the property is for an education worker</li> <li>• The landlord wants to transfer the property</li> </ul> <p>In all the circumstances described above, GWHHA will have identified an alternative suitable property prior to any eviction action being taken.</p>

<b>4.10</b>	<b>Court Costs</b>
4.10.1	GWHA will endeavour to recoup court costs, except in cases where legal advice is such that the cost of pursuing is disproportionate to the sums likely to be recovered. In all such cases authorisation will be made at Executive Team level. .
<b>4.11</b>	<b>Streamlined eviction process</b>
4.11.1	GWHA may choose to pursue a streamlined eviction process for breaches of the tenancy agreement for serious criminal offences which result in a conviction which is punishable by imprisonment. This process removes the requirement that the court considers whether it is reasonable to make an eviction order. This is regardless of whether a custodial sentence is the resulting court outcome. The conviction must relate to the property or the locality of the property. Examples include breach of Antisocial Behaviour Order, drug dealing or drug supply offences, offensive weapon offences including gun possession, and acts of violence or threats of violence towards neighbours.
4.11.2	GWHA will demonstrate the decision making process that consideration has been given to any improvement in behaviour following such criminal offences, and will provide clear evidence of the conviction and resulting community impact in demonstrating a streamlined eviction is necessary.
<b>4.12</b>	<b>Enforcing a Repossession Order</b>
<b>4.12.1</b>	<b>Rent Arrears Grounds</b>
4.12.2	In the case of rent arrears, a tenancy ends, only when the landlord recovers possession. This means that the tenancy can continue, and further efforts can be made to resolve matters (e.g. accept payments without the risk of “creating a new tenancy”) if the tenancy has not been ended by enforcement of decree. Under the H(S)A2010, the Order granted by the court will now specify a period during which GWHA have a right to recover possession of the house and this will not be greater than 6 months, beyond which the court order will become null and void. GWHA will ensure the review panel meets 72 hours after the order is granted and that a full and final decision is made 28 days or more before the repossession order expires.
<b>4.12.3</b>	<b>Non-Rent Grounds</b>
4.12.4	In the case of non-rent arrears cases, it remains imperative that these Orders are used with immediate effect. GWHA will ensure the review panel meets 72 hours after the Order is granted and a decision is made with a view to enforcing these Orders with 10 working days of being granted.
<b>5.0</b>	<b>Feedback, Appeals and Complaints</b>
<b>5.1</b>	<b>Feedback</b>
5.1.1	GWHA Tenants and other customers may provide feedback about this document by emailing <a href="mailto:admin@glasgowwestha.co.uk">admin@glasgowwestha.co.uk</a>
<b>5.2</b>	<b>Appeals</b>
<b>5.2.1</b>	<b>Appeals against refusal of tenancy action</b>
5.2.1.1	A resident may submit an appeal against a decision to refuse their specific tenancy request to the Tenancy Services Manager, clearly outlining the reason(s) why they believe the decision was incorrect. They will receive a decision within 28 days.
<b>5.2.2</b>	<b>Appeals against repossession of property</b>
5.2.2.1	The H(S)A2001, Chapter 1, Section 19 sets out that an individual who is aggrieved that their tenancy has been ended due to the Abandonment Policy being applied, can raise a summary application to challenge the validity of the notices served. This must be done within 6 months of the second notice being served.

5.2.2.2	<p>GWHHA will be obligated to allow continuation of the tenancy (if the property has not been re-let) or make other such accommodation available to the Tenant if the court decrees that the Association:</p> <ul style="list-style-type: none"> <li>a) Has failed to comply with the statutory procedures;</li> <li>b) Did not have reasonable grounds for finding that the: <ul style="list-style-type: none"> <li>(i) house was unoccupied, or</li> <li>(ii) Tenant did not intend to occupy it as their home;</li> </ul> </li> <li>c) Made an error in establishing the Tenant's lack of intention to occupy the property as their home, and the Tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of their intention so to occupy it.</li> </ul>
5.2.3	<b>Appeals against repossession of joint tenancy</b>
5.2.3.1	In accordance with section 21 of the H(S)A2001, a Tenant who is aggrieved by termination of their interest in a joint tenancy by GWHHA under Section 20(3) of the Act may raise proceedings by summary application within 8 weeks after the date of service of the final notice.
5.2.3.2	<p>GWHHA will be obligated to reinstate the joint tenancy or make other such accommodation available to the Tenant if the court decrees that the Association:</p> <ul style="list-style-type: none"> <li>a) Has failed to comply with the statutory procedures;</li> <li>b) Did not have reasonable grounds for finding that the tenant: <ul style="list-style-type: none"> <li>(i) was not occupying the house, or</li> <li>(ii) did not intend to occupy it as their home;</li> </ul> </li> <li>c) Made an error in establishing the Tenant's lack of intention to occupy the property as their home, and the Tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of their intention so to occupy it.</li> </ul>
5.2.3.3	In the case where a declarator is granted (reinstatement of joint tenancy), the court has additional powers to grant further orders in relation to the Tenant's interest in the tenancy as it sees fit; for example, for compensation to be paid.
5.3	<b>Complaints</b>
5.3.1	Applicants with a grievance arising from use of the Association's Tenancy Repossession Policy will be considered in accordance with GWHHA's Comments and Complaints Policy.
5.3.2	Once the Association's Comments and Complaints Policy is exhausted, there is a right of appeal to the Scottish Public Services Ombudsman (SPSO). As the SPSO is unlikely to comment on matters of a legal nature, a review will focus on the proper application of the Association's policy, rather than the legalities of the repossession.
6.0	<b>Review</b>
6.1	This policy will be reviewed every five years, or sooner, subject to a change in legislation or circumstance.
6.2	The policy, in parts, attempts to summarise current legislation. In any case of conflict between the two, legislation will always preside.
7.0	<b>Delegated Authority</b>
7.1	Delegated authority is granted by the Management Committee to the Chief Executive and Staff to implement this Policy and the associated procedures.