



THE SCOTTISH  
HOUSING  
REGULATOR

## GUIDANCE NOTE

**To:** All Registered Social Landlords (RSLs)

**Subject:** Criteria for Approval and Revocation of Approval as a Tenants Choice Landlord

**Issued by:** The Scottish Housing Regulator

**Ref no:** SHR 03

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### Summary

The Housing (Scotland) Act 1988 gives the right to acquire tenanted public sector houses to any person approved by Scottish Homes under the terms of the Act to do so. The right to acquire the houses is subject to the consent of the individual tenant concerned and the arrangements are therefore generally referred to as “Tenants Choice”.

Scottish Homes previously published its criteria for approval and revocation of approval in the form of an information pack. **That pack is superseded by this Guidance Note.**

This guidance note sets out the criteria for approval and revocation of approval as a Tenants Choice Landlord. Registered Social Landlords which are not and do not wish to be approved as Tenants Choice Landlords should disregard this guidance.

Registered Social Landlords wishing to be approved as Tenants Choice Landlords should complete the application form attached to the Guidance Note.

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For any references to Communities Scotland (or Scottish Homes) please read The Scottish Housing Regulator.

If you have any questions about this guidance, you should direct them to:

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**1 PART I  
INTRODUCTION**

- 1.1 Part III of the Housing (Scotland) Act 1988 (the Act) gives the right to acquire tenanted public sector houses to any person approved by Scottish Homes under the terms of the Act to do so. Because the right to acquire such houses is subject to the consent of the sitting tenants, the arrangement is generally referred to as "Tenant's Choice". The Act provides the possibility for certain public sector tenants to transfer to another landlord, provided that the landlord has been approved by Scottish Homes and is willing to purchase the tenant's house.
- 1.2 The Act sets out the ways in which Scottish Homes may give approval as a Tenant's Choice Landlord and provides that Scottish Homes may revoke any approval that it gives. All public sector landlords, other than Scottish Homes, are excluded from being given such approval.
- 1.3 Scottish Homes has revised the criteria it established previously for approval and revocation of approval as a Tenants Choice in the light of the following considerations:
- Scottish Homes requirement to be sure before approving a landlord that the landlord is reputable, responsible and likely to provide a good standard of service.
  - The fact that TCL status is seen by tenants, prospective tenants and other interested parties as a mark of approval by Scottish Homes of a landlord's activities.
  - Scottish Homes new arrangements to register a wider range of social landlords.
  - Much greater stock transfer activity in the public sector generally and the possibility of conflict and confusion between the different transfer mechanisms.
- 1.4 In view of the above, Scottish Homes has decided that Tenants Choice Landlord status may be granted from 1 August 1999 only to registered social landlords which have demonstrated a satisfactory performance at a base-line performance audit in accordance with the current grading system. Approval will be given only for specified public sector stock.
- 1.5 The revised criteria for approval and revocation are set out below in Parts II and III respectively.
- 1.6 The Act also provides that the consent of Scottish Homes in writing must be obtained before any subsequent disposal of property acquired through the Tenants Choice arrangements. The procedures to be followed for such disposals are set out in Part IV of this document.

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- 1.7 Sections 58 to 62 of the Act sets out the process to be used by a Tenants Choice landlord in acquiring public sector houses and the procedures to be followed if an application to acquire such property is refused. No guidance is offered on these sections in this document. Tenants Choice landlords are expected to comply with the terms of the Act.
- 1.8 The arrangements for existing Tenants Choice Landlords which are not registered social landlords are set out in Part V of this document. They will retain their Tenants Choice Landlord status provided they continue to comply with the requirements set out in Part V. However, their areas of operation will not be extended unless they become registered social landlords.
- 1.9 Existing Tenants Choice Landlords which are not registered social landlords and have not actively pursued Tenants Choice transfers in the two years to 1 August 1999 will be given notice that their status will be revoked unless they give an undertaking that transfers will be actively pursued within the next six months and supply supporting documentation.

## **2 PART II APPROVAL AS A TENANTS CHOICE LANDLORD**

### **Criteria**

- 2.1 The applicant must be a registered social landlord.
- 2.2 The applicant must have received a base-line performance audit and achieved at least a satisfactory grading.
- 2.3 The applicant must have prepared detailed proposals for operating Tenants Choice transfers which:
  - a) comply with the law; and
  - b) do not relate to stock which forms part of a public sector landlord stock transfer proposal having regard to the definition at paragraph 3.5 below.

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### **Procedure**

- 2.4 RSLs applying for Tenants Choice status should complete the Application Form attached to this Guidance Note and submit it to Scottish Homes Registration and Supervision Department along with all supporting documentation.
- 2.5 The documentation should include details of the RSL's Tenants Choice proposals as follows:
- a) The public sector stock to which the application refers.
  - b) Any repair or improvement commitments the RSL intends to make to tenants transferring under the Tenant's Choice arrangements .
  - c) The proposals for funding the purchase of the houses and the commitments.
  - d) Financial projections showing the impact of projected Tenants Choice activity on the RSL's overall financial situation, including any costs to be incurred in promoting Tenants Choice activity.
  - e) The information to be given to tenants about Tenants Choice transfers.
  - f) The information to be given to tenants about the rights they will have on transfer including their right to an assured tenancy, the differences between that and their present tenancy and any contractual right to buy being offered.
  - g) The details of any contractual right to buy that tenants transferring under Tenants Choice will be offered.
  - h) The Code of Conduct to be followed in pursuing Tenants Choice activity.
- 2.6 Any publicity material the RSL intends to use in the promotion of its Tenants Choice activity should also be enclosed with the application along with details of how the publicity material is to be disseminated.
- 2.7 Applicants should note that, as part of the process of assessing an application, Scottish Homes will ask any local authorities affected by the application for their views on the RSL's proposals.
- 2.8 Information on Tenants Choice activity must be returned to Scottish Homes annually in the appropriate section of the Annual Performance and Statistical Return.
- 2.9 Tenants Choice approval will be given for the specific stock indicated in the application. RSLs wishing to have their approval extended to further areas of stock must complete a further application form and submit the relevant documentation as listed above.

### **3 PART III GROUNDS FOR REVOCATION OF APPROVAL**

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## **AS A TENANTS CHOICE LANDLORD**

### **Performance Grounds**

- 3.1 A Tenants Choice landlord whose performance falls below a satisfactory level at a performance audit will be given notice that approval will be revoked unless the situation is remedied within a specified period.
- 3.2 RSLs whose Tenants Choice status has been revoked on the grounds of poor performance may not apply for reinstatement until a satisfactory performance has been demonstrated.
- 3.3 Complaints about an RSL's Tenants Choice activity which are upheld on investigation may also be considered grounds for revocation.
- 3.4 RSLs which currently have Tenants Choice status but have not actively pursued Tenants Choice transfers within the two years before 1 August 1999, will have their Tenants Choice status revoked. Such RSLs may apply for reinstatement in accordance with the arrangements in Part II of this guidance.

### **Grounds Relating to New Housing Partnership or Large Scale Voluntary Transfer Activity (stock transfer proposals)**

- 3.5 TCL status will be revoked, subject to six months notice, for stock involved in a stock transfer proposal which has been confirmed by the public sector landlord. The public sector landlord must be able to demonstrate a serious commitment to the transfer of the stock before any action is taken on revocation. A transfer proposal will be regarded as having been confirmed therefore only when a formal decision has been taken by the public sector landlord to proceed to transfer its stock. This must include the publication of a strategy and timetable for the transfer showing when the ballot of tenants will take place. If the date of the ballot does not fall within two years of the date of publication of the strategy, notice of revocation will not be given until 18 months before that date. Similarly, a shorter period of notice will be given if the ballot is to take place within 18 months of the date of publication of the strategy.
- 3.6 The period of notice will allow a Tenants Choice landlord to bring the operation to an orderly conclusion and to alert tenants, if it so wishes, to the fact that their opportunity to transfer is coming to an end. Tenants Choice landlords are expected to adhere strictly to their Code of Conduct for Tenants Choice activity during this period.
- 3.7 TCL status may be reinstated, on application by the landlord:
  - a) should it become clear that the transfer is not proceeding in accordance with the published

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strategy; or

- b) following a majority vote against the transfer so that the transfer will not proceed. For the avoidance of doubt, Tenants Choice landlord status could be reinstated in individual ballot areas where there has been a majority vote against the transfer and the transfer consequently will not take place.

#### **Transfers in Process at Revocation**

- 3.8 Tenants Choice transfers, where Section 58 notices have been served by the Tenants Choice landlord on the public sector landlord on or before the date on which the notice of revocation is held to have been received will be permitted to continue.

#### **4 PART IV DISPOSAL OF STOCK ACQUIRED THROUGH TENANTS CHOICE**

##### **Section 63 Consent**

- 4.1 Section 63 of the Act provides that the consent of Scottish Homes must be obtained in writing before any subsequent disposal of stock acquired through Tenants Choice. Disposals include:
  - a) granting or disposing of any interest in property;
  - b) entering into a contract to dispose of property or to grant or dispose of any such interest; and
  - c) granting an option to acquire property or any such interest.

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- 4.2 Section 63 consent is therefore required, for example, if the landlord is funding the initial acquisition of, or repairs or improvements to, the property by a granting a mortgage over it, as would be shown by the granting of a standard security. In this case, Section 63 consent should be sought at the same time that the section 58 notice is served on the public sector landlord. Section 63 consent is also required for any subsequent refinancing of any such initial mortgage.
- 4.3 All applications for section 63 consent should be made on **Form TCL** attached to this Guidance Note.
- 4.4 The Act also provides that
- a) tenants are to be consulted about any proposed disposal ;
  - b) Scottish Homes should have regard to their views before consenting to a disposal; and
  - c) Scottish Homes can place conditions on any consent to dispose that it may give.
- 4.5 Applications for Section 63 consent, therefore, must be accompanied by details of the consultation with the tenant(s) about the proposed disposal and a copy of any response by the tenant(s) to the consultation. This requirement is noted on the Section 63 Application Form.

#### **Disposal to a Sitting Tenant under a Contractual Right to Buy**

- 4.6 The Regulations covering the Preserved Right to Buy do not provide a preserved right to buy for tenants transferring under the Tenants Choice arrangements. Tenants Choice Landlords, however, may choose to offer a contractual right to buy. Since Scottish Homes consent to disposals is required, landlords should agree the details of their proposed contractual right to buy with Scottish Homes before entering into contracts with tenants. Scottish Homes will normally agree to landlords granting a contractual right to buy to tenants transferring under the Tenants Choice arrangements, provided that the terms of the contractual right to buy are not substantially different from the terms of the statutory or preserved right to buy.

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- 4.7 Despite Scottish Homes having agreed to the terms of the contractual right to buy, section 63 consent is required for individual right to buy disposals. Applications should confirm that the disposal is in accordance with the agreed terms and indicate if any repayment of surplus is due to the previous public sector landlord under the terms of the initial transfer. Since it is a statutory requirement, the landlord must also confirm that the tenant has been consulted about the sale of the house, and copy to Scottish Homes the response of the tenant (if any).

#### **Other Disposals**

- 4.8 Scottish Homes will not normally grant consent for outright disposal of stock acquired under Tenants Choice unless the disposal is to a registered social landlord.

### **5 PART V EXISTING TENANTS CHOICE LANDLORDS WHICH ARE NOT RSLs**

- 5.1 Existing Tenants Choice landlords which are not RSLs retain their Tenants Choice status as long as they can provide evidence, on request by Scottish Homes, of compliance with the Criteria for Approval of a Tenants Choice Landlord under which they were granted approval. However, Tenants Choice status will not be extended to housing for which it was not originally given, unless the landlord becomes an RSL.
- 5.2 Generally, Tenants Choice landlords should be able to demonstrate financial viability, compliance with the law and that they are providing a good standard of service to tenants. This includes the content and quality of any promotional information about Tenants Choice provided for tenants.

#### **Financial Viability**

- 5.3 To enable Scottish Homes to assess financial viability, landlords are required to submit annual audited accounts to Scottish Homes within six months of their financial year end. The auditor's management letter should also be submitted along with any annual internal audit report.
- 5.4 The landlord is required to furnish any further financial information Scottish Homes may reasonably need to reassure itself fully of the landlord's financial position.

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### **Compliance with the Law**

- 5.5 To enable Scottish Homes to assess compliance with the law, landlords may be required to provide specific documents from time to time such as Tenancy Agreements and documentation providing evidence of compliance with anti discrimination legislation – this list is not exhaustive.

### **Standard of Services to Tenants and Prospective Tenants**

- 5.6 To enable assessment of the standard of service provided, landlords are required to complete an annual return (TCL return) covering:
- a) housing management and maintenance activities;
  - b) the number of acquisitions in the year under the Tenant's Choice arrangements and the total number of such acquisitions to date; and
  - c) the number of disposals of houses acquired under the arrangements and the total of such disposals to date.
- 5.7 The landlord is required to furnish any further service provision information Scottish Homes may reasonably require to reassure itself fully that the services provided are of a good standard in relation to commitments made to tenants transferring under the Tenants Choice arrangements.

### **Revocation of Tenants Choice Status**

- 5.8 The following may lead to revocation of TCL status:
- a) Evidence of a poor financial situation.
  - b) Evidence of non-compliance with the law.
  - c) Evidence of a poor standard of service to tenants.
  - d) Complaints about a landlord's Tenants Choice activity which are upheld on investigation.
  - e) Failure to comply with Scottish Homes requirements in regard to the submission of annual information or any other information required by Scottish Homes to satisfy itself of the

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landlord's continuing compliance with the criteria under which Tenants Choice status was granted.

- f) The establishment of an LSVT proposal in accordance with section 3.5 of this document; in this situation the arrangements will be those set out in Part III, sections 3.5 to 3.7 of this guidance.
- 5.9 Tenants Choice status will also be revoked if two years elapse without the landlord actively pursuing Tenants Choice transfers.
- 5.10 Existing Tenants Choice Landlords which are not registered social landlords and have not actively pursued Tenants Choice transfers in the two years to 1 August 1999 will be given notice that their status will be revoked unless they give an undertaking that transfers will be actively pursued within the next six months and supply supporting documentation.