



Sub-let/Taking in a Lodger Policy

If you have difficulty with reading this policy, including any difficulties with sight or hearing, or if you require this document translated into another language, please contact us and we will be happy to provide this information in a format that suits your needs.

Our Vision, Our Mission, Our Values

Our Vision

Elderpark Housing will lead the way in delivering outstanding customer services and great places to live.

Our Mission

To provide quality, affordable homes and excellent services which place a focus on our customers and enhancing our communities.

Our Values



Equality and Diversity Statement

Elderpark Housing are committed to ensuring people or communities do not face discrimination or social exclusion due to any of the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex or sexual orientation.

This document complies with our Equality and Diversity Policy.

We will regularly review this Policy and consider any equalities implications taking the necessary action to address any inequalities (either directly or indirectly) that result from the implementation of this Policy.

Executive Summary

Policy Author

The Housing Manager has developed this policy on behalf of the organisation. It applies to all requests to sublet or take in a lodger.

Purpose of the Policy

The sublet/taking in a lodger policy aims to ensure that we have an accountable process to identify, record and put in place procedures to deal with sublet and lodger requests, in accordance with legal provisions and contractual terms contained within the tenancy agreement.

Aims and Objectives of the Policy

The keys aims and objectives of this policy are:

- To give clear guidance on the process for dealing with sublet and lodger requests
- To ensure that all requests are dealt with in line with and in accordance with legal provisions and contractual terms contained within the tenancy agreement
- To ensure that any requests are dealt with in accordance with our equality and diversity policy
- To advise customers of the complaints process

Legislative and Regulatory Compliance

We will seek to meet all of our legal obligations as set out in the following legislation:

- Housing (Scotland) Act 1987
- The Housing (Scotland) Act 2001
- The Housing (Scotland) Act 2014
- Rent (Scotland) Act 1984
- Equality Act 2010

In addition, we will meet the outcomes and standards contained within the Scottish Housing Regulator's Regulation Framework.

- **Outcome 1: Equalities** - Social landlords perform all aspects of their housing services so that every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.
- **Outcome 2: Communication** - Social landlords manage their businesses so that tenants and other customers find it easy to communicate with their landlord and

get the information they need about their landlord, how and why it makes decisions and the services it provides.

- **Standard 2** -The landlord is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. In addition, its primary focus is the sustainable achievement of these priorities.
- **Standard 5** - The RSL conducts its affairs with honesty and integrity

Equalities

We will ensure there is a consistent approach in promoting equality and diversity across all areas and this policy will be administered in accordance with this policy.

Privacy

This document fully complies with General Data Protection Regulations (2018) and once approved will be published on our website to ensure transparency of how we will seek to ensure Equality and Diversity across everything we do.

Related Policies

Policy Title	Location
Allocations policy	V:\Elderpark Policy Suite\Housing Management Policies\H2 Allocations Policy.pdf
Equality and Diversity Policy	V:\Elderpark Policy Suite\Governance Policies\G13 Equality and Diversity Policy.pdf

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1 Introduction

- 1.1 Elderpark Housing Association (EHA) is a registered social landlord, established in 1975. We have strived to improve the lives of our residents, create opportunities and build a safe and secure environment. The Association is a 'not for profit' organisation, registered and regulated by the Scottish Housing Regulator and is governed by a voluntary Management Committee of up to 15 people who employ a team of staff to manage the Association on a day-to-day basis.
- 1.2 The Management Committee is responsible for approving this Policy, and for overseeing its implementation. The Chief Executive and Management Team have operational responsibility for policy implementation, and for reporting to the Management Committee on areas relevant to sublet and lodger requests.

2 Purpose of Policy

- 2.1 The sublet/taking in a lodger policy aims to ensure that we have an accountable process to identify, record and put in place procedures to deal with a occasions where there is a request to sublet or take in a lodger, in accordance with legal provisions and contractual terms contained within the tenancy agreement.
- 2.2 This policy is written in accordance with our Equality and Diversity Policy to ensure that tenants and residents in our community do not face discrimination, victimisation, harassment or social exclusion due to any of the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex or sexual orientation.

3 Aims and Objectives

- 3.1 This policy is a key document within the Association. Its underlying objectives are:
 - To give clear guidance on the process for dealing with requests to sublet or take in a lodger
 - To ensure that all requests are dealt with in line with and in accordance with legal provisions and contractual terms contained within the tenancy agreement
 - To ensure that any requests are dealt with in accordance with our equality and diversity policy
 - To advise customers of the complaints process

4. Legal and Regulatory Framework

- 4.1 Legal Provisions exist that govern subletting/taking in a lodger of a Scottish Secure Tenancy as per The Housing (Scotland) Act 2001, section 32 and Schedule 5, Part 2 as amended by the Housing (Scotland) Act 2014, Part 2, section 12, 2(a) and (b).

5. Subletting/ Taking in a lodger Requests

- 5.1 A Scottish Secure Tenant is not allowed to sublet their tenancy or take in a lodger without first obtaining our written consent. Such consent cannot be withheld unreasonably. Subletting can involve either part of the house or the whole house. Taking in a lodger would only involve part of the house.
- 5.2 Tenants have the right to sub-let their homes or take in a lodger provided they meet certain conditions and eligibility criteria as detailed below. We will take account of both the tenant's and the proposed sub-tenant's/lodgers circumstances both of which should satisfy the criteria set down in Section 32 and Part 2 of Schedule 5 of the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014, Part 2, section 12, 2(a) and (b).
- 5.3 To be granted a sublet, we must have been informed, by the tenant or the proposed sub lessee that the person requesting the sublet was living in the house as their only or principal home 12 months prior to the application. If they were not the tenant throughout that period, the house must have been their only or principal home during those 12 months; and the person who was the tenant at that time must have notified us in writing that the person who is now the tenant was living there. An example of this could be where the tenant was not the tenant throughout the previous 12 months but has during this period succeeded to the tenancy and immediately wants to sublet it.
- 5.4 The 12-month period does not start until we have been notified in writing.
- 5.5 There are no residency conditions for the person that wants to live in the property as a sub-tenant or lodger.
- 5.6 It is a condition of a Scottish Secure Tenancy that the tenant occupies the property as his only or principal home. Therefore, if the sub-let request is for sub-letting of all of the house then permission will only be granted if tenant/s will be absent on a temporary basis only for a specific period of time and for a specific reason.
- 5.7 A lodger can be defined as a person, who is not related to the tenant and as someone who occupies a room or rooms of a tenanted property and may receive services in relation to the accommodation - meals, laundry services, utility bills etc.
- 5.8 We will ensure that the tenant understands the implications of subletting or having a lodger. There is no legal relationship between the sub-tenant/or lodger and us. The principal tenant will continue to be responsible for all the conditions of the tenancy and to pay rent directly to us. They will also be responsible for any costs incurred by us in relation to the sublet or lodging.
- 5.9 The Sub-tenant or Lodger does not have rights of succession to the property.

6 Timescale for Responding to Requests

- 6.1 Any requests to sublet or take in a lodger will be responded to within one calendar month from the date of receipt otherwise consent will have been deemed to have been granted.

7 Period of Sub-let

- 7.1 The period of the sublet/lodging will be for a maximum of 12 months. The sublet may be extended beyond this maximum period at our discretion, but only up to a maximum period of 2 years.

8. Examples of Consent

- 8.1 Some examples where consent would be granted are:
- Where the tenant is required by their employer to work in another area of the country and it is not reasonable for the tenant to commute
 - Where a temporary contract of employment has been offered and it is not reasonable for the tenant to move house
 - Where the tenant is moving away for study purposes
 - Where the tenant needs to spend time away either providing or receiving support in connection with serious illness or looking after family

9. Grounds for Refusing Consent

- 9.1 Reasonableness is not defined legally and each case must be considered on its merits. Specific reasons mentioned in the above Acts where it may be reasonable to refuse consent are:
- A Notice of Proceedings has been served that specifies any of grounds 1 to 7 (Schedule 2)
 - An order for recovery of possession has been made against the tenant
 - The rent proposed is not deemed to be reasonable by us
 - The deposit proposed is not deemed to be reasonable
 - The subletting would cause statutory overcrowding
 - Proposed works by us that would affect the accommodation to be used by the subtenant, or other person living in the house as a result of the transaction
 - Where the proposed person subletting or lodging has been suspended from our housing list under Section 20B(6)(a) or (b) of the Housing (Scotland) Act 2014
 - Where the person subletting/lodging is under 16 years of age
 - The sub tenancy/taking in of a lodger is likely to be problematic, for instance, previous anti-social behaviour of the proposed subtenant/lodger that is likely to continue in the property if sublet or they become a lodger

- The proposed sub lessee or lodger lacks capacity and is unable to understand the terms of sublet/being a lodger, for example, because of a serious learning disability

9.2 Notice of Proceedings

Although it is reasonable to refuse a sublet/taking in a lodger request where a Notice of Proceedings is in force, each situation will be treated on its merits. Thus, where a Notice is in force because of rent arrears but an arrangement is in place to pay the arrears and this arrangement is being adhered to, we may consider withdrawing the Notice and progressing the application to sublet/take in a lodger. The Housing (Scotland) Act 2001, section 14 (5) empowers us to withdraw the Notice. Again, granting the sublet /take in a lodger request may assist the tenant to repay arrears more effectively, for instance, where the tenant takes up temporary employment elsewhere during the period of the sublet.

Subtenants/lodgers are deemed to be qualifying occupiers under the Housing (Scotland) Act 2001, section 14(6)) and are legally entitled to be party to court proceedings raised against the tenant(s). (Housing (Scotland) Act 2001, section 15)

9.3 Order of Recovery for Possession

Where an order for recovery of possession has been obtained, any subletting/taking in a lodger request should generally be refused, as we will be on the point of evicting the tenant, for example, because of serious rent arrears or serious anti-social behaviour.

9.4 Rent Payments

Rent payments charged by the tenant should be reasonable. In cases where the entire house is sublet, then the tenant may require to charge more than the current rent, for instance to cover the costs of additional furniture and insurance.

9.5 Deposits

Deposits charged must not exceed 2 months' rent as any further amount would be deemed to be a premium and therefore unlawful Rent (Scotland) Act 1984, section 90 (3).

9.6 Statutory Overcrowding

Any consent to sublet/take in a lodger must not lead to statutory overcrowding. Statutory overcrowding is defined by the Housing (Scotland) Act 1987, sections 135-137.

9.7 Works Proposed by Landlord

Where we are intending to undertake major improvements works that will change the accommodation, such as the size of the property, we will refuse consent.

9.8 Suspension from the Housing List

Where the proposed person subletting/lodging has been suspended from our waiting list under Section 20B (6)(a) or (b) of the Housing (Scotland) Act 2014. The sublet/lodger request can be refused on anti-social behaviour or previous convictions. Details of suspension under the Section 20B (6)(a)(b) are contained within our allocations policy.

9.9 Anti-social Behaviour

The sub tenancy/taking in of a lodger is likely to be problematic, for instance, previous anti-social behaviour of the proposed subtenant/lodger that is likely to continue in the property if sublet or they become a lodger. Similarly, if they have been evicted from a previous tenancy. Or the subtenant/lodger has been convicted of using a previous tenancy for illegal or immoral purposes or has an Anti-Social Behaviour Order (ASBO) out against them within the past 3 years.

Where there is substantial damage or disrepair to the property caused by the tenant, a member of the household or a visitor to the property

10. Grounds for Refusing Consent Cont'd

10.1 This list is not exhaustive and each case will be assessed individually on its merits. For example, other possible reasons where a request to sublet/take in a lodger may be refused are:

- Where the tenant is leaving for an indefinite period and unable to specify when they will return
- Where another person's occupancy rights are likely to be adversely affected if permission is granted
- Where the term or the conditions of the sub-letting/lodgers arrangement are deemed to be unreasonable
- The prospective sub-tenant/lodger has deliberately omitted, distorted or given false information on their application

11. Rent Increases

11.1 Tenants who have had permission to sublet /take in a lodger must notify us of any proposed rent increase from the level initially agreed.

12. Implementation of the Policy

- 12.1 This policy will be implemented in line with our sublet/taking in a lodger procedures. Staff will be fully conversant and trained to carry out all aspects of the policy and procedures in a fair and equal manner.

13. Monitoring of the Policy

- 13.1 In order to comply with our service commitments, we will monitor aspects of sublet/taking in a lodger requests, for example, complaints.

14. Appeals and Complaints

- 14.1 Tenants will be advised of their appeal rights in event of refusal. In cases of refusal tenants can appeal to the sheriff and have the right to raise a Court Action under Schedule 5 Part 2 of the Housing (Scotland) Act 2001.
- 14.2 In the case of complaint tenants can go through our Model Complaints Handling procedure. We monitor the effectiveness and efficiency of current practice by recording the following:
- The number of complaints received
 - The types of complaints
 - The outcome of complaints
 - Satisfaction levels through CX Feedback

15. Review

- 15.1 This policy will be reviewed every three years or as good practice and legislation dictate.

Equality Impact Assessment

Name of Policy to be assessed	Sublet/Lodger Policy	New policy or revision of existing?	Revision of existing policy
Person(s) responsible for assessment		Elaine Somerville	
Briefly describe the aims, objectives and purpose of the policy.	<p>The aims, objectives and purpose of the policy are to:</p> <ul style="list-style-type: none"> • To give clear guidance on the process for dealing with sublet and lodger requests • To ensure that all requests are dealt with in line with in accordance with legal provisions and contractual terms contained within the tenancy agreement • To ensure that any requests are dealt with in accordance with our equality and diversity policy • To advise customers of the complaints process <p>The purpose of the policy is:</p> <p>To ensure that we have an accountable process to identify, record and put in place procedures to deal with sublet and lodger requests, in accordance with legal provisions and contractual terms contained within the tenancy agreement.</p>		
Who is intended to benefit from the policy? (e.g. applicants, tenants, staff, contractors)	Tenants will benefit from this policy		
What outcomes are wanted from this policy? (e.g. the measurable changes or benefits to members/ tenants / staff)	<p>The outcomes wanted from this policy are:</p> <ul style="list-style-type: none"> • To give clear guidance to staff and tenants on the process for dealing with sublet and lodger requests • To ensure that all requests are dealt with in line with in accordance with legal provisions and contractual terms contained within the tenancy agreement • To ensure that any requests are dealt with in accordance with our equality and diversity policy 		
Which groups could be affected by the policy? (note all that apply)			
Age		Disability	
Gender reassignment		Marriage and Civil Partnership	
Pregnancy and Maternity		Race	
Religion or Belief		Sex	
Sexual Orientation			
If the policy is not relevant to any of the equality groups listed above, state why and end the process here.			

The policy pertains to everyone and does not affect one particular group		
Have those affected by the policy / decision been involved?		
Tenants have previously been notified of the policy via newsletters and letters		
Describe the likely positive or negative impact(s) that the policy could have on the groups identified above.	Positive Impact(s)	Negative Impact(s)
What actions are required to address the impacts arising from this assessment? (This might include: additional data, putting monitoring in place, making adjustments, taking specific action to mitigate any potentially negative impacts)	Satisfaction/dissatisfaction will be recorded through our complaints procedure and any necessary policy/procedural changes implemented following this.	

Signed:	<i>Elaine Somerville</i>
Dated:	10/8/21

GDPR Impact Assessment

Name of Policy to be assessed	Sublet/Lodger Policy	New policy or revision of existing?	Revision of existing policy
Person(s) responsible for assessment	Elaine Somerville		
Briefly describe the aims, objectives and purpose of the policy.	<p>The keys aims and objectives of this policy are:</p> <ul style="list-style-type: none"> • To give clear guidance on the process for dealing with sublet and lodger requests • To ensure that all requests are dealt with in line with and in accordance with legal provisions and contractual terms contained within the tenancy agreement • To ensure that any requests are dealt with in accordance with our equality and diversity policy • To advise customers of the complaints process <p>The purpose of the policy is:</p> <p>To ensure that we have an accountable process to identify, record and put in place procedures to deal with sublet and lodger requests, in accordance with legal provisions and contractual terms contained within the tenancy agreement.</p>		
Which type of data will be used by implementation of this policy? (e.g. personal, sensitive or special category)	Personal data will be used to implement this policy		
What outcomes are wanted from this policy? (e.g. necessary to meet legal obligations)	<p>The outcomes wanted from this policy are:</p> <ul style="list-style-type: none"> • To give clear guidance to staff and tenants on the process for dealing with sublet and lodger requests • To ensure that all requests are dealt with in line with in accordance with legal provisions and contractual terms contained within the tenancy agreement • To ensure that any requests are dealt with in accordance with our equality and diversity policy 		
Which groups could be affected by the policy? (note all that apply)			
Tenants	X	Committee	
Employees		Contractors	
If the policy is not relevant to any of the data groups listed above, state why and end the process here.			

Have those affected by the policy / decision been involved?		
Tenants have previously been notified of the policy via newsletters and letters		
Describe the likely positive or negative impact(s) that the policy could have on the groups identified above.	Positive Impact(s)	Negative Impact(s)
What actions are required to address the impacts arising from this assessment? (This might include: additional data, putting monitoring in place, making adjustments, taking specific action to mitigate any potentially negative impacts)	The Association has robust systems and checks in place to ensure that personal data remains confidential.	

Signed:	<i>Elaine Somerville</i>
Dated:	10/8/21