



Current Arrears Policy

- 1.0 Introduction**
- 2.0 Objectives**
- 3.0 Policy Methods – Prevention Of Arrears**
- 4.0 Policy Methods – Management Of Arrears**
- 5.0 Wider Framework**
- 6.0 External Agencies**
- 7.0 Current Arrears Action**
- 8.0 Legal Action**
- 9.0 Technical Arrears**
- 10.0 Non Rent Debts**
- 11.0 Sequestration**
- 12.0 Garages**
- 13.0 Monitoring**
- 14.0 Standard Letters**
- 15.0 Computerised Rent Accounting System**
- 16.0 Conclusion**

LIST OF APPENDICES

- 1. Step by Step Guide to Setting Up Home**
- 2. Scottish Secure Tenancy Leaflet**
- 3. Housing Officers Checklist for Housing Management Visit**
- 4. Tenant Information Proforma**
- 5. Housing Benefit Direct Payment Mandate**
- 6. Flowcharts Detailing Arrears Process**
- 7. Voluntary Mandate**
- 8. Notice of Proceedings**
- 9. Notice of Proceedings – Qualifying Occupiers**
- 10. Eviction Procedure**
- 11. Solicitors Briefing Note**
- 12. Suite of Standard Letters**

1.0 Introduction

Rent arrears represent a significant problem for Social Landlords.

An arrear is delayed income. Money – due from a current or former tenant – which has not been paid.

As rent is the Association's main source of income and this impacts directly on its financial viability, it is in the interests of **both** tenant and landlord to keep arrears to a minimum. Therefore directing resources to deal with rent arrears can have a positive effect on the level of service to tenants.

Coping with debts can be a stressful experience for a tenant in arrears. Arrears can be a symptom of deeper financial problems. Trying to clear the outstanding debts can often lead to financial hardship and ultimately, if unsuccessful, to possible eviction and homelessness.

It is critical, therefore, that in its actions Linstone is sensitive to tenants' problems whilst taking positive and effective steps to minimise the level of tenant arrears.

The purpose of this policy is to provide a good practice guide in relation to arrears control for current tenants.

2.0 Objectives

Our policy aims to meet the following criteria:

- to offer good quality pre-tenancy advice and assistance
- to prevent arrears rising by early identification and personal contact.
- to ensure effective written and oral communication with tenants including offering the support of a named member of staff.
- to ensure that at both the start and throughout the period of a tenancy, tenants have access to clear information and advice about methods of rent payment, arrears control, Welfare Benefits, in particular Housing Benefit.

- to recover arrears with the voluntary co-operation of the tenant.
- to institute legal proceedings only when voluntary arrangements are not maintained satisfactorily or have failed.
- to establish clear procedures for both staff and committee members to ensure an equitable and consistent approach to arrears whilst ensuring confidentiality is maintained.
- to evict **only** as a last resort when the committee is satisfied that all other reasonable methods of dealing with arrears have been investigated and failed.
- to use Ground 1 of Part 1, Schedule 2 of the Housing (Scotland) Act 2001 when instigating proceedings for Recovery of Possession of the property due to current tenant arrears
- to ensure that Linstone complies with all relevant legislation and good practice in relation to the prevention and minimisation of rent arrears. At the time of writing the main pieces of legislation include:
 - ❖ Housing (Scotland) Act 2001
 - ❖ Introduces the Scottish Secure Tenancy which includes rent arrears recovery grounds for social landlords
 - ❖ Disability Discrimination Act 1999
 - ❖ Ensuring that our services are accessible to all. e.g. Payment methods, ramped access to office etc
 - ❖ Data Protection Act 1998
 - ❖ Implications for the gathering and sharing of information. e.g., Rent Allowance, Social Work Department, Homeless Persons Unit etc.
 - ❖ Human Rights Act 1998
 - ❖ Impacts on the way social landlord seeks recovery of possession.
 - ❖ Children (Scotland) Act 1995
 - ❖ Impacts on the way social landlord seeks recovery of possession.
 - ❖ Debtor (Scotland) Act 1987
 - ❖ Gives the social landlord power to seek wage arrestments from debtor.
 - ❖ Debt Arrangement and Attachment (Scotland) Act 2002

- ❖ Allows anyone with a multiple debt problem to apply for a debt payment plan
 - ❖ Good Practice Briefing (Issue 21) Managing Rent Arrears
 - ❖ Raising Standards: Rent Arrears Prevention, Management and Recovery
 - ❖ Housing Management Standards Manual
- to act in accordance with Communities Scotland's Performance Standards for Housing Associations.

3.0 Policy Methods – Prevention of Arrears

The cornerstone of our Rent Arrears Policy is **prevention**, which should be initiated at the very earliest stage.

We will achieve **prevention** in the following ways: -

3.1 Applying for Housing

At the point of application various measures should be taken to provide information and guidance on the obligations attached to renting a property.

These measures include:

- A step by step guide on setting up home given to applicants who have never held a previous tenancy. (Appendix 1)
- A Scottish Executive Information leaflet on the Scottish Secure Tenancy for all applicants which details the obligations of renting a property. (Appendix 2)
- Referral to Paisley Threads for all applicants under twenty-one to enable them to receive support and guidance on the implications of having and maintaining a tenancy.
- Information and advice given to applicants who have issues with a current or former tenancy. e.g. rent arrears, previously evicted or anti-social behaviour.

3.2 Pre-Tenancy

The pre-tenancy stage occurs when an applicant is selected for housing. Again we will provide information designed to assist the applicant to understand their obligations.

A Housing Management visit is carried out on all applicants (except statutory homeless and those residing outwith Renfrewshire). This visit is intended to verify their details and give the applicant advice about managing a tenancy. This includes information about rent levels, methods of payment, housing benefit, where to pay and other costs associated with running and establishing a home.

A Checklist (Appendix 3) should be completed to evidence that information was supplied.

3.3 Sign Up Process

When the tenant has accepted the property they will be invited to attend the office to complete their tenancy agreement and receive their keys. During this procedure we will:

- explain their tenancy obligations; the implications of joint and several liability (for joint tenants); the implications of the Data Protection Act 1998; the importance of advising us of any changes to their household
- Highlight the frequency of rent review, level of rent and any service charges together with the various methods of payment.
- Select the best option to suit individual circumstances and establish a formal payment plan which should be copied to the tenant to cover where, when and how the tenant intends to make payments. This should include the issue of Standing Order forms, requests for Post Office cards and how to make a debit or credit card payment via the office or internet. Details are recorded on the Tenant Information Pro-forma (Appendix 4).
- Ensure tenants are aware of the various welfare entitlements, particularly Housing Benefit. The Housing Officer will give advice in relation to potential Housing Benefit levels. In every case where it is appropriate, staff will ensure that assistance is given in the completion of a housing benefit application form including the provision of relevant evidence. We will also advise the tenant of the importance of responding to review forms and alerting Rent Allowance to any change in their circumstances. We will encourage the tenant to request benefit payments are made directly to us by completion of a mandate (Appendix 5).

Linstone Housing Association has been approved by Renfrewshire Council to verify all supporting documentation in connection with an application for benefit.

Claims submitted via Linstone will be monitored to ensure timeous processing and payment.

- Provide the tenant with guidance on who to contact if they are experiencing financial difficulties, with particular reference to rental payments. This should include their Housing Officer, National Debtline, Advice Works, Dealing with Debt publication and any other relevant support networks within their area.
- Give information and advice to tenants about local agencies who may be a source of assistance e.g. local charities, Advice Works, Dealing with Debt publication, community groups, Citizens Advice Bureau, Paisley Law Centre.
- Give a summary of rent arrears policy and procedures and emphasise that they should make and maintain contact with us should problems arise.
- Complete the income and expenditure details on the Tenant Information Pro- Forma (Appendix 4). This is signed by both the tenant and the officer and is retained by both parties. This will allow a comprehensive case history to be developed.
- Encourage all new tenants to complete the authorisation at Section 10 of the Tenant Information Pro-Forma (Appendix 4) to allow us to contact relevant external agencies on their behalf for support or assistance. For example Paisley Threads, Renfrew Council on Alcohol and Social Work. As part of this process staff should be concentrating on identifying whether there is an element of vulnerability in order that they can provide additional priority to these tenants.
- Obtain relevant contact details from the new tenant and note these on the Tenant Information Pro-Forma (Appendix 4). This includes employment details and hours of work, telephone number, household details, National Insurance number and next of kin.
- During this interview the tenant will be provided with a written tenancy agreement and a copy of Linstone's Tenants Handbook. These documents between them should give information relating to all of the above items.

3.4 New Tenant Visits

Within six weeks of the tenancy starting the Housing Officer will visit the property. At this visit they will discuss with the tenant their experiences to date. This will re-iterate the advice given at previous stages and is designed to allow the tenant to highlight any difficulties they are encountering. At this visit the Housing Officer should verify the details provided at the sign-up process on the Tenant Information Pro-Forma (Appendix 4) to obtain up to date information on the new tenant. This includes income / expenditure details, employment details and hours of work, telephone number and household details.

4.0 Policy Methods – Management of Arrears

The key feature of effective arrears management is prompt action, whilst the debt is still at a low level. This can prevent arrears escalating and reinforces to the tenant that rent arrears will be dealt with as a matter of priority. A realistic and consistent approach to arrears recovery is essential.

4.1 Main Elements of our Approach

- We will contact tenants seven days after they fall into arrears.
- We will conduct interviews in private – whether at the tenants home or in the office.
- We will establish the reasons for non-payment and reach realistic and affordable arrangements with tenants to pay off their debt on an agreed frequency.
- Our Housing Officers will adopt a sympathetic but practical approach with emphasis on early and continuing contact.
- We will implement agreements with the Benefits Agency in relation to Arrears Direct payments where applicable.
- If the tenant is vulnerable we will arrange for their advocate to be present.
- We will arrange for an interpreter or signer if necessary
- We will monitor tenants accounts on a fortnightly basis and take prompt action if payments are missed.
- We will use standard proformas to record all interviews and visits.
- We will ensure staff are knowledgeable on the range of welfare benefits available and the eligibility criteria for these.

- We will encourage payments by Standing Order. During 2005/2006, we will investigate the feasibility of extending this to include a Direct Debit facility.
- We will explain at every opportunity the importance of maintaining payments and the possible implications of any broken arrangements or non-payment.
- We will confirm all arrangements by letter detailing the date of first payment, the frequency of payments, the amount and how payments will be made.
- If not already in place, we will request tenants to complete a Mandate authorising direct payment of current or future Housing Benefit to Linstone Housing Association.
- We will make letters clear, concise and jargon free.
- We will ensure that all letters sent to tenants are appropriate based on their current situation. For example, the empty threat of legal action will not be used a tool to encourage payments.
- We will ensure that all letters have a named officer together with relevant contact details such as our telephone number, the officers availability, offering home visits etc.
- These letters will also contain information directing tenants to independent sources of advice and assistance.
- We will ensure that letters clearly set out the next stage in the process and the acceptability of reducing the outstanding arrears by instalments. These letters will always give a deadline for the tenant to make contact or payment.
- We will only instigate legal action when we believe it to be the most suitable option.

4.2 In summary: -

Policy Goals

1. Prevent arrears arising.
2. Maintain an effective arrears control system.
3. Respond promptly to missed payments.
4. Establish early personal contact.
5. Recover arrears.

Policy Methods

1. Reach realistic arrangements where necessary for tenants to repay arrears.

2. Effectively monitor payment arrangements.
3. Institute legal proceedings for recovery of arrears only when voluntary arrangements have failed or there is no other method of recovery available.

Keys To Prevention

1. Meet prospective and new tenants to explain methods of rent payments and select the best option for each individual.
2. Ensure qualifying tenants make an application for Housing Benefit and are aware of other welfare benefits.
3. Encourage, where possible, the habit of regular payments in advance.
4. Identify arrears early and take prompt action to contact tenants.
5. Monitor tenants accounts regularly.

The main overall factor in all of the above is for the Housing Officer to become aware of tenants' circumstances through **personal contact**.

- 4.3 The Housing Officers will work closely with tenants to provide advice, support and continuity throughout the arrears recovery/control process.
- We will have in place and maintain an effective computerised rent accounting system. This will ensure that both staff and tenants will have clear, accurate and up-to-date information and that the most appropriate and effective action is taken.
 - To support our policy we will ensure that we have a set of procedures which will detail for staff and Committee members the action to be taken at each stage of the arrears process.
 - Ongoing training will be provided on these procedures and other aspects of arrears control and debt counselling as appropriate.
 - Performance Targets for arrears will be set and will be reported to the Management Committee on a monthly basis.

5.0 Wider Framework

There are significant links between this policy and a variety of other documents, both internal and external. These are listed below:

5.1 Internal Management Plan

Our Internal Management Plan details the association's future direction and is used as a mechanism for measuring success. It details our vision, our mission, our strategy and sets out our business objectives.

Within this document the effective recovery of current rent arrears is integral to the achievement of Strategic Direction 5.4 "maintain financial viability." and business objective 7.6 "increase efficiency in management"

5.2 Homelessness Strategy

Renfrewshire Council published their Homelessness Strategy in 2003 in line with the requirements of the Housing (Scotland) Act 2001. It details how the council together with its partners will ensure that homelessness services develop in line with the needs and aspirations of local people.

There are two major areas of relevance to homelessness within rent arrears. Firstly, that effective arrears control will potentially reduce the risk of homelessness on an individual basis and secondly, by providing good quality information and assistance in relation to welfare benefits it should enable the tenants to maximise their income.

5.3 Verification Framework

Under legislation, the Local Authority is responsible for the processing and award of housing benefit on behalf of the Department of Works and Pensions. The verification framework was introduced in order to identify and reduce fraudulent claims and requires the claimant to provide extensive information in support of their claim. For example, they must provide original documentation relating to their identity, National Insurance number, residency and income. This process increases the time it takes to administer claims and in an

effort to ensure that this did not have a detrimental effect on our tenants, Linstone became involved in providing a verification service.

We can therefore assist the tenant in completing housing benefit forms and are able to ensure that they are submitted timeously to Renfrewshire Council. There is a commitment from Renfrewshire Council that claims submitted in this way will be processed within the 14-day timescale.

5.4 Publicity / Communication Strategy

We produce various publications that highlight the importance of tenants maintaining rental payments or ensuring that if difficulties arise they should make contact with their Housing Officer. We regularly supply information in relation to payment methods, office opening hours etc.

5.5 Rent Setting Policy

Under the Housing (Scotland) Act 2001 landlords must, before giving notice of any rent increase, consult with tenants and have regard to the views expressed. Our policy in relation to Rent Setting has five key objectives.

- 1) To ensure that the rents set meet the Association's costs and provide sufficient funds to undertake the planned refurbishment and replacement programme. The aim is to provide high quality homes for rent and to ensure the long term financial viability of the Association.
- 2) To ensure, whenever possible, that rents are affordable for those in low paid employment.
- 3) To ensure, wherever possible, that rents are comparable with the rents of other social landlords providing similar accommodation.
- 4) To consult fully with tenants who would be affected by any rent increase proposal and to have regard to these views.
- 5) To ensure compliance with those clauses relating to rent in the 1998 Sale/Purchase agreement with Scottish Homes,

It is contained in this policy that rent notifications, informing tenants of any increase in their rent, will be sent out as soon as possible but with at least a minimum of one month's notice.

5.6 Performance Standards

As a social landlord we are regulated by Communities Scotland and their expectation for our performance is clearly defined within the Performance Standards documentation.

These performance standards are divided into two areas, Activity Standards and Guiding Standards. Within the guiding standards there are a number of areas relevant to this policy such as the requirement to have high quality written policies and procedures, good quality information and advice, our responsiveness to service users and financial viability. The activity standard (AS 1.8) which governs the management of rent arrears states "We act to prevent arrears of rent and service charges building up. We recover any arrears fairly and effectively." Our policy is designed specifically to meet these standards.

5.7 Tenant Participation

In line with the requirements of the Housing (Scotland) Act 2001 we will consult with tenants in developing and amending any of our policies including the Rent Arrears Policy. We will seek input from residents, Tenants and Residents groups and any other ad-hoc groups of residents to achieve as representative consultation as is possible. We will have due regard to such representations before agreeing any change.

5.8 Allocations

The Housing (Scotland) Act 2001 places new rules on the allocation of houses. A prospective landlord cannot take into account various factors, which include:

- any rent arrears or other tenancy debt no longer outstanding
- any rent arrear less than 1/12th of the current amount.
- where a tenant with rent arrears has maintained a suitable arrangement for at least three months.
- any outstanding debts, such as council tax arrears, which are not directly attributable to the tenancy of the house.

The above guidelines will be applied to any Linstone tenant seeking rehousing with another landlord or to any non-Linstone tenant applying to us. If however a current tenant is applying for a transfer within Linstone then they will require to meet the following criteria before any offer will be made: -

- a clear rent account if there is no level of housing need within any of the categories of Overcrowding, Underoccupation, Medical / Community Care, Urgent Social Need and / or Family Support.
- For employed applicants, a reduction of 50% in the total arrear within 7 days of selection or an acceptable repayment arrangement maintained for a period of 6 months.
- For unemployed applicants, a reduction of 25% in the total arrear within 7 days of selection or an acceptable repayment arrangement maintained for a period of 6 months.
- When arrears are accruing it is necessary that the current tenant is fully aware of the implications of non-payment of rent with regards to rehousing by Linstone or another landlord.

5.9 Right To Buy

The Housing (Scotland) Act places restrictions on tenants wishing to purchase their property under Right to Buy. Section 46 allows landlords to refuse an application from a tenant wishing to exercise their Right to Buy if they have accrued rent or council tax arrears.

If a tenant has received a Notice of Proceeding for rent arrears they will automatically be suspended from exercising their Right to Buy.

5.10 Health and Safety Manual

This document highlights the risks associated with dealing with members of the public, either in the office or on site. It also gives the staff guidance on what procedures they should follow to minimise or eliminate these risks.

5.11 Renfrewshire Council's Supporting People Strategy

This document defines the Council's aims and objectives for housing support services and summarises current provision, needs and gaps. It has a role when considering the Association's arrears policy because it comments on various vulnerable groups many of whom may also be affected by financial difficulties and therefore be subject to this policy.

6.0 External Agencies

In an effort to provide a network of support for those tenants with multiple debts we will work closely with our colleagues in other agencies, including: the Benefits Agency; Advice Works, local charities, community groups, Renfrewshire Council – Social Work and Housing; Citizens Advice Bureaux.

Any information shared will require to be compliant with the Data Protection Act 1998 and we will endeavour to obtain the tenants written consent before entering into dialogue with any other agency.

It is essential that effective and close working relationships be fostered between ourselves and Renfrewshire Council's Rent Allowance Section. A proportion of rent arrears cases may be avoided if efficient systems are in place between both organisations.

7.0 Current Arrears Action

7.1 Current Arrears Process

Our current arrears process is summarised by the flowcharts in Appendix 6. These flowcharts represent the semi-automated arrears stages the Housing Officer should adhere to when reviewing their cases in arrears. This process incorporates a mixture of methods available to us to pursue the debt including letters, telephone calls, impromptu visits and specific appointment visits. The two flow charts cover:

1) House Arrears

This flowchart represents tenants who are not maintaining payments.

2) Garage Arrears

This flowchart represents tenants who have rent arrears on their garage account.

7.2 Interviewing Process

Whether in the tenant's home or in the office/contact point, the interview is a crucial part of the Arrears Control Procedure. So much so that if there are access difficulties during the day, or the tenant is unable to call at the office, arrangements should be made to carry out the visit outwith office hours. The evening visit is a standard step within our arrears procedure.

Before any action can be taken against a tenant in arrears, a clear picture must be gained of their situation/circumstances.

The following information should be obtained from any interview and a Tenant Information Pro-Forma completed or updated (Appendix 4):

-

- i) Confirm tenant(s) full name(s).
- ii) Family (and others) living in household and ages
- iii) National Insurance Number
- iv) Contact details – employment, telephone, e-mail
- v) All income -
 - Wages/salary of tenant, husband/wife/partner, children etc
 - Child Benefit
 - Working Families Tax Credit
 - Pensions
 - Childrens Tax Credit
 - Other welfare benefits
- vi) All expenditure -
 - Rent
 - Council Tax
 - Fuel
 - Other utilities
 - Average food bill
 - Regular financial commitments
 - Credit/store cards, loans, etc
 - Any other debts

- vii) Reason for arrears e.g.-
 - Unemployment
 - Sickness
 - Irregular employment
 - Other debt/financial commitments
 - Non payment
 - Housing Benefit issue

- viii) Arrangement for repayment
 - The amount to be paid to rent
 - The amount to be paid to arrear
 - The frequency of payments
 - The method of payments
 - The date arrangement will commence

* The reason for arrears may highlight benefit entitlements for which the tenant could qualify.

If the tenant refuses to divulge the information required then it can only be emphasised during the interview **and by letter** that by not doing so and not making payments they are putting their tenancy at risk. The Housing Officer must record on the Tenant Information Pro-Forma and the Tenancy Diary that the tenant has refused to divulge information.

Home visits present the Housing Officer with a number of challenges. Firstly, the Housing Officer's approach must be firm, but sensitive and non-threatening. Staff must always be respectful when discussing a tenants rent arrears in their own home. In particular the situation should never be discussed with or in front of anyone other than the tenant, without their expressed permission.

The other major issue faced by staff carrying out home visits is to ensure their own personal safety. Housing Officers should be aware that there are risks associated with home visits and should ensure their safety is paramount at all times. For further guidance on this topic please refer to the Health and Safety Manual.

7.3 Telephone Calls

An alternative method of making contact with the tenant other than in person or by letter is the effective use of telephone calls.

There are various times when it is appropriate to telephone the tenant, for example when no response from letters or home visits.

There are also a number of methods of telephone contact we will undertake if appropriate, such as, day and evening home calls, day and evening work calls, mobile phone calls and text messages. When leaving messages either by text, on an answering machine or with another person, we will **only** ask that the tenant contact their housing officer to discuss their rent account. Under no circumstances will details be given about the level of arrears or actions that may be taken, as we cannot control who has access to these messages.

In addition to following the Current Arrears Process the Housing Officers should use telephone contact as essential tool to pursue the tenant for the outstanding debt. This is particularly useful for cases, which have progressed to legal action. This method of contact provides the Housing Officer with a quick way of attempting to maintain communication with the tenant during the lengthy court process.

Telephone calls can allow the Housing Officers access to a greater number of people in a shorter period of time than would be the case with letters or home visits.

7.4 Arrangements

Assuming that at some point during this process contact will have been made with the tenant then it is probable that an instalment arrangement will be required to clear the arrear.

This must be set at a **realistic sum** and reflect both the tenants ability to pay and the level of arrear. It follows then that a realistic arrangement cannot be reached without full knowledge of the tenant's financial situation. Therefore a Tenant Information Pro-Forma should be completed or updated by the Housing Officer on every occasion.

The minimum arrangement will be generally be the charge plus a payment towards the arrear. For a tenant in receipt of full Housing Benefit this minimum will be similar to the arrears direct amount payable by the Benefits Agency.

It should be stressed that any change in circumstances (e.g. if he/she becomes unable to keep to the arrangements) must be notified to us

as soon as possible so that the situation can be reassessed in light of the change. The consequence of not keeping to the agreed arrangement must also be stressed to the tenant i.e. broken arrangements are likely to result in legal action.

The arrangement should be logged onto our computerised tenancy management system.

A letter must be sent to the tenant immediately following any visit or interview confirming the arrangement made: -

- the amount to be paid to rent
- the amount to be paid to arrear
- the frequency of payments
- the method of payments
- the date arrangement will commence

The letter should also advise the tenant to contact the office if a change of circumstances arises.

Providing agreed payments are maintained the Housing Officer will continue to monitor the situation until the arrear is clear.

7.5 Voluntary Mandate (Appendix 7)

This is a document, signed by the tenant, which authorises his/her employer to deduct a given sum for his/her wages and send it directly to Linstone.

The deduction will cover the debit charge plus a sum towards the arrears. It should be explained to the tenant that payment by this method, as opposed to an arrestment of wages through legal action, has two advantages: -

- It incurs no legal costs which would have been recharged to the tenant
- The tenant can choose how much to deduct from his/her wages

There is also an advantage for Linstone in that monies received from a voluntary mandate can be paid to the current rent charge with the remainder set to arrears. (Money received from an arrestment must only go to arrears up to the limit at the time decree is awarded, with no provision for the ongoing rent charge)

7.6 Case Progress

The Housing Officer should note any actions, contact and general information relating to the tenancy on the '**diary**' section of the tenancy database. This includes all information from letters, telephone calls, visits, reports, Housing Benefit awards, etc together with dates. Any contact which we have with the tenant should be fully detailed in these screens. This should allow a concise record of the case which may be readily followed and understood by others.

All proformas completed with the tenant should be filed alongside any non-standard letters sent.

7.7 Housing and Welfare Benefits

Training will be provided to ensure that Housing Officers have a working knowledge of Welfare Benefits so that tenants in difficulty can be given on the spot advice regarding appropriate uptake. Where appropriate Housing Officer should try to make specific appointments for tenants at the relevant agencies i.e. Rent Allowance, Benefits Agency etc. As stated earlier we can also assist the tenant in completing housing benefit forms, verifying income and identity and are able to ensure that they are submitted timeously to Renfrewshire Council. Once the claim is submitted close contact should be maintained with Rent Allowance department to ensure that Housing Officer is aware of any developments surrounding the tenants' claim for Housing Benefit. Tenant should however be made aware at the earliest opportunity that they are **solely responsible** for submitting and pursuing any claim for benefit.

8.0 Legal Action

Legal action can only be instructed after the tenant and any qualifying occupiers have been served with a valid Notice of Proceedings. Before serving the Notice of Proceedings we will send a final warning letter in-house in an attempt to reduce the requirements for serving a Notice of Proceedings.

8.1 Notice of Proceedings (Appendix 8)

Section 14 of the Housing (Scotland) Act 2001 allows a landlord to seek a court order for recovery of possession of a house. In order to raise court proceedings we MUST serve Notices of Proceedings on each of the tenant(s) and any qualifying occupiers indicating the date when we can seek an order from the court.

The Notice requires to advise the tenant of the period in which proceedings for possession may be raised. This notice lasts for 6 months. The notice must be served at least 28 days prior to it becoming valid. Within Linstone, all notices are served with valid dates of the 29th of the Month, (except February when the valid date will generally be the 1st March). This means that service must be made by the 28th of the previous month.

This notice does not terminate the tenancy and rental payments remain due until the court agrees to an eviction order.

The notice must state the grounds under which action is being raised. These grounds are contained in Schedule 2 of The Housing (Scotland) Act 2001. E.g. for rent arrears, Ground 1, of Part 1, Schedule 2 **“Rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy has been broken”**

A Notice of Proceedings should only be served where there is a definite intention to pursue legal action and **not** as a threat to encourage payment.

Notices should be served in line with the flowcharts at Appendix 1. Staff can however use discretion, common sense and their knowledge of individual cases to decide if the service of a Notice of Proceedings is suitable. The approval of Housing Services Manager **must** be sought if the Housing Officer seeks to delay service of the Notice. It is essential that Housing Officers check with Rent Allowance before serving to ensure that there is no backdated payment outstanding.

8.2 Qualifying Occupiers (Appendix 9)

A qualifying occupier under the Housing (Scotland) Act 2001 is defined as:

- someone who occupies the house as their only or principal home

and is:

- a member of the tenant's family aged 16 or over
- a person to whom the tenant has assigned, sublet or otherwise given up the possession of the house or any part of it
- a person whom the tenant has taken in as a lodger.

Before serving the Notice of Proceedings we will take reasonable steps to establish whether there are qualifying occupiers in the property.

Identifying Qualifying Occupiers

In order to establish if there are any qualifying occupiers in the property, we will use the following process:

- when a new tenant signs for property they will complete a census form detailing who will reside in property.
- all tenants are advised in their tenancy agreement to inform Linstone of any changes to their household.
- when completing Tenant Information Pro-Forma during arrears visits we will obtain details of everyone who resides in property.
- during any routine visits we will enquire whether there are any changes to the household.
- we will carry out a five yearly census of all tenanted households
- we will pick up household changes via Rent Allowance notifications or applications for rehousing.

Service of Notices

Notices of Proceedings will be delivered to the tenant and qualifying occupiers in one of two ways.

Hand Delivery

- The Notice and Certificate of Service must be served on the tenant at the tenancy address where the rent arrears have accrued and should be hand delivered by two members of staff. If we have reason to believe that the tenant is residing at

- another known address a copy of the Notice can also be handserved or posted there by recorded / special delivery.
- If the tenancy is a joint or shared tenancy then each tenant will be served with an individual Notice of Proceedings.
 - Each of the qualifying occupiers will also be served a Notice of Proceedings.
 - A copy of the Notice(s) and the Certificate of Service duly signed by the two officers should be kept in the office.
 - The envelope containing the Notice should be clearly marked **“Statutory Notice”**.

Recorded / Special Delivery

As detailed above the appropriate Notices will be served on both the tenant and any qualifying occupiers when rent arrears have accrued in the tenancy. These Notices may be served by recorded / special delivery if we are unable, for any reason to hand deliver the Notices to the tenant and qualifying occupiers address.

8.3 7 Day Warning Letter

Prior to requesting approval for court action, our solicitor will be instructed to send a 7-day warning letter. This confirms that legal action will proceed if no payments are received within 7 days. The costs of these letters sent by the solicitor are borne by Linstone and cannot be passed on to the tenant.

8.4 Approval for Court Action

Assuming there is no satisfactory response from the tenant to either the final warning letter and the Notice of Proceedings an Approval for Court Action report should then be compiled by the Housing Officer, detailing all action taken i.e. visits, arrangements, previous correspondence. This report contains details of all members of the household and indicates whether they are tenants, qualifying occupiers or non-qualifying occupiers. The Housing Services Manager will then agree the report (if appropriate) and briefly outline any recommendations of further action required before legal action commences or whilst awaiting court date- e.g. a night visit, contact employers or contact Rent Allowance.

The Housing Services Manager will also at this stage issue an appointment to the tenant to ascertain if there are any circumstances or reasons for non-payment prior to court hearing.

On receiving approval for legal action the Housing Officer will contact Social Work Department or any other appropriate agencies to determine whether the tenant has any current involvement with their department providing mandate authorising contact has been completed. If there is a current caseworker we will arrange a case conference with the agency and tenant(s) in an attempt to resolve the case before it calls at court.

8.5 Information to Solicitor

When the decision has been made to pursue Decree a package of information will be sent to the solicitor. This information includes:

- A copy of the Scottish Secure Tenancy Agreement or any other applicable Tenancy Agreement
- The approval for Court Action report
- A valid Notice of Proceedings (including copies of Qualifying Occupiers Notices)
- Copies of any rent arrears letters sent to the tenant(s).
- Current rent statement

On this instruction the Solicitor will lodge the case in court, serve a Summons on the tenant(s) by Recorded Delivery. Again, as with the previous Notice of Proceedings, 28 days notice must be given before proceeding to Court. Where a tenant responds at this stage and a new agreement reached, the solicitor should be provided with further instructions.

If the Summons is not accepted by the tenant on recorded delivery then a Sheriff Officer service will be arranged by the Solicitor.

8.6 Court Action

There are two main legal actions available to the Association when dealing with rent arrears and these are described briefly below.

1) Small Claims Procedure

Generally Linstone will pursue a Summary Cause/Repossession Action although in special circumstances a Small Claims Procedure may be considered (for debts up to £750). It is only relevant when: -

- There is up to 2-3 months rent due
- The tenant is employed or self employed (because the purpose of this type of action is to secure repayment of arrear either in full or by instalment).
- We are aware of the tenants employment details or bank details.

The Housing Services Manager will give advice on the suitability of this approach on an individual case by case basis. This method will be used very infrequently as it is difficult to enforce.

On receipt of the Summons from our Solicitor the tenant may take 3 courses of action: -

- (i) Ignore it. In this case an **Open Decree of Repayment** will normally be granted by the Court.
- (ii) Return to the Court the Form Q enclosed with the Summons proposing an amount for regular payments towards the debt. In this case an **Instalment Decree of Repayment** will normally be granted. The Landlord may object to terms offered by the Form Q.
- (iii) Appear in Court to defend the action. Consequently the Solicitor must always have up to date information on the case. The result of this is that at the hearing we will, **if successful**, be awarded a decree in line with 1 or 2 above. Alternatively the Sheriff may feel there is no case and dismiss the action.

If an Open Decree is granted then arrestment action can be instructed immediately providing payments are not forthcoming from the tenant.

If an Instalment Decree is granted then arrestment action can only be instructed when the Form Q arrangement fails and the whole sum then becomes due.

2) Summary Cause Repossession Action or Ordinary Cause Repossession Action

Summary cause will be pursued where debt is up to £1500 and Ordinary Cause if outstanding debt is in excess of £1500. These actions allow us to seek repossession of the property together with recovery. The process for both, however, is identical.

Summary Cause Action

Payments received and changes in circumstances etc, must be note in full and passed to the Solicitor.

On the calling day the Solicitor should have up to date information on the case(s) with which he is dealing. The Housing Officers will complete Solicitor briefing note for any cases at Court that week and give to Housing Services Manager who will discuss with Solicitor. This should include an up to date situation report from Renfrewshire Council Rent Allowance Department.

There are several possible conclusions: -

- (i) The tenant pays in full before the calling date – Solicitor should be instructed to seek decree for expenses only.
- (ii) The tenant makes payment in part and reaches an arrangement to repay the balance – The case can either be **sisted** i.e. put off indefinitely **or continued** i.e. postponed until a specific date set by the Court.

A sist can only be used once and is the option for longer term arrangements.

If arrangements are not adhered to, proceedings are resumed either on the next “continued” date or, in the case of a sist, by recalling the case.

- (iii) The tenant makes no payment and does not appear in Court to defend the case. Decree will normally be requested.
- (iv) Tenant calls to Court to defend the case, which will ultimately result in either Decree, Sist, Continuation or Dismissal of the case.

Ordinary Cause Action – Arrears Over £1500

Solicitor lodges case in court and relevant papers sent to tenant advising that the action is proceeding. The tenant has 21 days to lodge a response in court with an offer to pay. If no response is lodged by tenant after 21 days have expired Solicitor requests Decree from Court for repossession and repayment of arrears.

If tenant does lodge a response, the offer to pay can be accepted or rejected by Linstone. If Linstone accepts the offer, the case is dismissed. If the tenant fails to keep to the arrangement, a new action has to commence.

If we refuse the offer, a Court date is set for the case to be heard. The arrangement can be accepted at this stage and the case continued or sisted. If the tenant then does not keep arrangement, case can be recalled if sisted and Decree requested.

8.7 Decree Awarded – Either Summary or Ordinary Cause

If a decree for repossession is awarded the tenancy will normally end on the date specified by the Court. The award of decree does not absolve us of responsibility to pursue the arrear. Two options exist and the one used will depend on the action taken by the tenant. In all cases the final decision on whether or not a Decree will be enforced lies with the Housing Management Sub Committee: -

- (i) Enforce repossession and evict the tenant

Option (i) will normally be taken if: -

- a) Tenant cannot be contacted and/or avoids efforts by staff to contact.
- b) No effort is made to pay the arrear.
- c) A suitable final arrangement cannot be reached.

- (ii) Create a new tenancy and allow tenant to remain in house with new Scottish Secure Tenancy.

Option (ii) will normally be taken if: -

- a) Tenant pays full balance of the arrear.

- b) Tenant agrees with Housing Services Manager to pay a substantial part of the balance with regular payments towards the outstanding amount.
- c) There are changes in circumstances, or new information comes to light which warrant reconsideration of the case e.g. employers mandate received, etc.

Prior to a decision being reached every effort must be made for the Housing Services Manager and Operations Director to interview the tenant. A decision on the appropriate course of action must be reached as quickly as possible to avoid causing the tenant undue certainty about their future.

A full description of the Eviction Procedure is contained within this document as Appendix 10.

8.8 Money Received From Tenant

Any money received from the tenant after the Calling Date when decree is awarded must **not** be put into the rent account but instead lodged into the Sundry Account for Violent Profits. Violent profits is a form of damages owed to the landlord by a person occupying the property without a legal right to do so, for example, a person remaining after a possession order has taken effect. While a decision is being reached about enforcement of the Decree the occupier should be made aware that any payments they make are being treated as violent profits and not recognised as rental payments otherwise a new tenancy may be created by implication.

The day before the case calls to court, and it is clear that we are seeking a decree, the Housing Services Manager will apply a “trespasser” bar to the rent account, which automatically send any payments made into a suspense account.

Should we not obtain a decree, the bar is removed and an email is sent to the Finance and customer service departments to transfer any payment made to the current rent account.

8.9 Legal Expenses

Pursuing legal action will inevitably result in an invoice from the Solicitor for his services i.e. professional fees plus postage, outlays,

VAT etc. In addition if eviction is enforced then there will be costs for the services of a Sheriff Officer(s).

Legal costs can only be recovered where decree is awarded. The Solicitor should always be instructed to obtain a decree plus expense, or where the tenant has cleared their account, a decree for expenses only.

When the decree is received from the court the amount of expenses which can be recharged will be shown under the “extract of decree” paragraph.

If the expenses awarded are less than the solicitor’s fee then the amount contained in the decree will be charged to the tenants account. The difference is irrecoverable. If the expenses awarded are greater than the solicitors fee then the tenant will be charged only the lesser amount.

The expenses incurred by use of a Sheriff Officer are also recoverable from the tenant along with legal charges incurred in use of the decree e.g. solicitors fees, may be recharged to the tenant.

The exceptions to recovery of expenses are Value Added Tax and 7 day Warning Letters, the costs of which must be borne by the Landlord.

8.10 External Solicitor

It is important to foster a good working relationship with the solicitor who deals with arrears cases since their goodwill and co-operation can only enhance performance in arrear recovery.

Linstone must ensure that instructions are being carried out promptly and satisfactorily while at the same time taking advice and guidance on legal matters.

The solicitor must be contacted in good time regarding key dates e.g. hearing, return of decree, etc and to advise of any material changes in the case e.g. payment of money by tenant. These instructions are provided to the solicitor in the form of a briefing note, (Appendix 11) which is forwarded to them on a weekly basis prior to the case calling at court. This briefing advises the solicitor of the current balance, date of last payment and our recommended action.

Normally the day after the calling, the Housing Services Manager should contact our solicitor for the outcome of the hearing. This enables timeous action on items such as closure of the rent account.

Any dissatisfaction with the solicitor's service will be taken forward with a partner of the firm by the Operations Director and Chief Executive.

The legal firm employed to carry out arrears recovery work on behalf of the Association should be asked to provide a monthly report detailing: -

- (i) the cases currently being processed
- (ii) which stage they are at
- (iii) key future dates
- (iv) actions taken that month
- (v) potential problems etc

9.0 Technical Arrears

Sometimes a rent account will show an arrear that is not actually caused by the tenant's non-payment of rent. These are known as technical arrears and result from a number of circumstances.

- Maladministration of housing benefit (housing benefit outstanding but not yet received by us)
- Housing benefit cycle. This occurs because of the mismatch between the housing benefit payment cycle and our debit period. For example, housing benefit is paid to us on a four weekly basis, whereas our rent is charged calendar monthly.
- Arrears direct payments, which are paid by the Benefits Agency four weeks in arrears.

These amounts are deducted from the full rent arrear figure for reporting purposes.

10.0 Non Rent Debts

Within the rent accounting module there are three other types of debt in addition to the standard rent arrears for which the tenant is liable.

- Housing Benefit Overpayments are the result of a clawback of housing benefit paid by the council in error. These should only be recovered via the landlord in very limited circumstances – normally at the end of tenancy or on the death of the tenant.
- Rechargeable Repairs occur when the Association carries out work but recovers the resultant costs from another party.

It will normally only happen in the following circumstances: -

- (i) The repair is the result of damage / negligence / vandalism by the tenant, a member of the household, a lodger, a pet or a visitor to the house.
 - (i) The work is necessary at the end of the tenancy to return the property to an acceptable and lettable standard, and exceeds what would normally be expected through fair wear and tear.
 - (iii) The tenant asks the Association to carry out work for which they themselves are responsible.
- Legal expenses occur when the court has awarded a Decree. These are intended to cover the cost incurred by us pursuing legal action.

In all of the above the method of recovery is different to that available for rent arrears. It is not permitted to take action for repossession of the property for any of these debts. The only legal recourse available to recover the debt is Small Claims Action.

Reviews of arrears cases are carried out twice monthly by the Housing Officer (see section 15 for further information) and non-rent debts should be examined during the second review of the month. A variety of letters and visits should be used in an attempt to recover the outstanding arrear and where there is an existing rental debt we will seek arrangements to cover both types of debt. Letters must make it clear that the figure quoted is only relative to the non-rent debt and there may be further monies owed in relation to rent.

11.0 Sequestration

Sequestration is the Scots law term for bankruptcy. The process is administered by a trustee, appointed by the court.

Sequestration proceedings can be initiated by a debtor (e.g. the tenant) or a creditor. We will not however initiate sequestration proceedings against any of our tenants due to arrears of rent. Neither will we discriminate against any applicant for housing who has undergone sequestration proceedings.

Recent legislation, the **Bankruptcy (Scotland) Act 1993**, has made it more difficult for debtors to initiate their own sequestration. A individual must have a debt of at least £1500 before sequestration can be initiated. The previous level was £750. Notice of sequestration proceedings is served in the Edinburgh Gazette.

If a Linstone tenant undergoes sequestration proceedings, the trustee should inform the Association, assuming of course that the tenant has told the trustee about his tenancy debt. Details of any outstanding rent arrears should then be forwarded to the trustee. The Housing Officer dealing with arrears recovery within the office will then attempt to recover that debt by liaising with the trustee. If we are not formally informed about the sequestration, but become aware we should proactively contact the trustee to lodge a claim.

It is in the tenant's own interest to inform us about an impending sequestration as it requires any creditor to desist from direct attempts to recover the debt. The tenant must not be put under any duress to clear the debt by making direct payments since there is no liability for any outstanding pre-sequestration arrears.

When a tenant has been sequestrated, all other legal actions for the recovery of debt, accrued prior to sequestration, fall (e.g. proceedings for recovery of possession due to arrears). After sequestration, the tenant may accumulate subsequent arrears. Linstone can initiate new recovery procedures for this debt which is not covered by the sequestration action.

At the point of sequestration the Housing Services Manager should send a memo to the Director of Finance and Corporate Services requesting that the debt be written off. If subsequently a payment is received from the estate then that element of the debt will be recreated. Tenants should **not** be issued with a new rent account number and cannot be refused a transfer of housing or other tenancy as a result of sequestration. Individuals who have undergone sequestration can sign missives. There is no requirement for a guarantor.

If any of the outstanding arrear at the time of sequestration includes a non rental debt, for example housing benefit overpayment, rechargeable repairs or court costs then these sums must be treated in exactly the same way. That is only recovered through a claim lodged with the trustee.

12.0 Debt Arrangement Scheme

The Debt Arrangement and Attachment (Scotland) Act 2002 is the product of a Working Group on tackling debt and makes provision for the setting up of debt arrangement schemes whereby “individuals” may arrange for their debts to be paid under debt payment programmes”

This involves the debtor contacting an approved money advisor who will discuss with the client whether a debt arrangement application is the best way to deal with their debt problems. A successful debt payment programme prevents the creditor (in this case Linstone Housing Association) from using any legal remedy to recover the monies owed.

A debt payment programme allows someone with multiple debts problems to make one single payment to a “payment distributor” who will then forward money to creditors on an agreed basis – normally pro-rata based on the amount outstanding. This is a formal legal agreement which will avoid any further court action providing it is maintained.

In Renfrewshire, both Citizen’s Advice Bureau and Advice Works are in the process of appointing / registering DAS approved Money Advisors.

In terms of this policy, where it is clear that a tenant has a multiple debt problem, staff will automatically make a referral to one of the above agencies to see whether invoking the Debt Arrangement Scheme would be appropriate.

Whilst the assessment process is ongoing the Housing Officer will continue to progress the arrears through the stages described in this policy but will keep in contact with the referral agency to seek an outcome on any DAS application.

Any request for consent to a Debt Payment Programme must be passed to the Housing Services Manager for decision.

13.0 Garages

The legal agreement used when signing to rent a garage is a contract which does not require legal intervention for recovery of to rent arrears.

The contract states that “in the event of the rent not being paid on the due date, or if any of the conditions herein are not fulfilled, I agree that Linstone Housing Association Limited may terminate the let without notice”.

This therefore means that the arrears recovery process for garages is much simpler than that of rental debt for a house. See Appendix 6 for details of the stages involved in recovering garage arrears. **No garage should be more than three months in arrears without recovery action having been taken.**

14.0 Monitoring

To achieve continuous improvement in service delivery we need to have a clear picture of our current level of performance, both in absolute terms and in comparison with other organisations. Various methods will be employed in relation to performance monitoring.

- **Targets**

Each Housing Officer will be set an individual target in relation to the number of tenants in arrears and the level of current tenant non technical arrears within their area. This will be expressed as a % of the Gross Rental Income.

- **Housing Services Manager**

The Housing Services Manager has a significant monitoring role in relation to arrears recovery. In addition to looking at performance in relation to the above the Housing Services Manager will also carry out the following: -

Arrears Amount V Stages – a monthly comparison of the level of each arrear compared to the stage it is currently at within the legal process. This should highlight any cases which are not progressing in line with policy.

This will also form the basis of her monthly discussion with each Housing Officer regarding caseload/performance.

Uncommitted Stages – when updating the arrears review within the computerised rent accounting system an exception report is produced detailing all cases where the semi automated system recommendation was not followed. This report will also be used by the Housing Services Manager to monitor deviation from this policy.

Legal Actions

The Housing Services Manager will monitor and report on the number of Notices being served; the number of cases progressing through legal process; the number of decrees granted and their outcome.

Other Statistical Reports

On a regular basis various other statistical reports will be produced to assist with monitoring the various other parts of this policy e.g.

- New tenant balances – looking at tenancies created a defined period and whether there is now an arrears issue. The purpose of this is twofold – to monitor the success of our pre tenancy/sign up work and also to assess the performance of the Council’s Rent Allowance department.
 - Arrangements – the success/failure rates of arrangements made.
 - Age profiles of tenants in arrears.
 - Length of tenancy of tenants in arrears.
 - Arrears Direct Caseload – number and amount of debt covered.
- **Case Conferences**
On an ad hoc basis the Housing Officer will get together with the Housing Services Manager and any other appropriate, interested party to discuss an individual case where either:
 - ❖ the Housing Officer feels they need advice or assistance

- ❖ the case has some special feature which may require consideration
 - outwith the policy
 - ❖ the case is particularly complex and there are other issues in addition to arrears
- **Role Of Committee**

The Housing Management Sub Committee under the auspices of the full Management Committee have two main functions in relation to current arrears.

 - 1) monitoring performance
 - 2) approving action to be taken when decree awarded by the court

The Housing Management Sub Committee receives quarterly statistical performance reports covering all aspects of Housing Management Service. In addition they receive a monthly commentary detailing progress.

Legal Action cases are submitted with a recommendation to the first Housing Management Sub meeting following the award of decree.

- **Internal/External Audit**

The Association employs a robust system of audit which looks at the accuracy of our annual accounts and examines the adequacy of our internal control systems. Both of these functions will require examination of our performance and policy compliance in relation to arrears recovery.
- **Benchmarking**

All Registered Social Landlords including Linstone are required to submit an APSR (Annual Performance and Statistical Return) to Communities Scotland. This provides details on the stock holdings, characteristics and performance of each landlord in relation to all functions including arrears. This data is then produced in a report for all landlords and is used by Linstone to assess our performance against comparable associations.

In addition Linstone is part of a local benchmarking group organised via FLAIR (Federation of Local Associations in

Renfrewshire) which examines performance in a wide number of functions; exchanges information about successes/failure and share good practice.

- **Publishing Performance**

Linstone will regularly publish details of our performance. This is done in number of ways: -

- Annual Report
- Newsletters
- Website
- Tenant & Resident Associations

15.0 Standard Letters

To assist Housing Officers in the process of arrears control, a suite of standard arrears letters covering most circumstances has been prepared. A list of these is contained in APPENDIX 12.

However it should be noted that often special letters or adhoc documents will be required in addition to ensure that the tenant received the most appropriate information/contact at each stage in the process.

When sending any correspondence regarding the tenants account a rent statement should be enclosed.

16.0 Computerised Rent Accounting System

We currently use IBS Integrated Housing Management system, which includes a Rents Module. This IT system covers the raising of rent debits, records payments / housing benefit, monitors arrangements to pay and allows for a semi-automated arrears management process. It also allows reporting on arrear levels and recovery performance.

There are a number of regular functions, which require to be carried out in relation to this latter process:

- 1) 29th of each month raise the debit
- 2) 1 week later Recalculate Net Rent, Validate Status of Arrangements and Extract Tenancies in Arrears.
- 3) Housing Officers then use this extract to review their arrears cases.

- 4) On the 3rd week of month the above processes are repeated with the exception of raising the rent debit.
- 5) Housing Officers then use this extract to review their arrears cases and in addition to this they must carry out a review of their outstanding Category 2 non-rent debts.
- 6) On the 28th of the month the Housing Benefit Cancellation report and update individual cases.
- 7) On the 28th of the month Recalculate Net Rent, Validate Status of Arrangements and Extract Tenancies in Arrears must be done for monitoring purposes only.

These steps are repeated on a monthly basis.

17.0 Conclusion

Whilst this policy tries to provide guidance on the stages and timescales involved in the arrears recovery process, it should be noted that each case must be dealt with individually i.e. no two cases are likely to follow exactly the same path since so much is dependent on the actions/circumstances of the tenant concerned.

However as far as possible the process detailed above should be followed. Deviation should only be done in consultation with the Housing Services Manager.

Appendix 1

Step By Step Guide To Setting Up Home

Appendix 2

The Scottish Secure Tenancy – A Leaflet For Tenants

Are you a tenant of a local authority or housing association? If so, then you should read this leaflet. The Housing (Scotland) Act 2001 introduces a number of important changes to your tenancy rights, which will apply from 30 September 2002. From this date, the new Scottish secure tenancy (SST) will replace the old secure and assured tenancies to provide a single tenancy for both local authority and housing association tenants, with improved rights.

Read on to find out more about these changes and what they will mean for you.

What is the Scottish secure tenancy?

It is a new statutory tenancy that will replace your existing secure or assured tenancy.

From 30 September 2002, all tenants of local authorities, housing associations (including tenants who are members of fully mutual co-operative housing associations), and water and sewerage authorities, will become Scottish secure tenants. There are some exceptions to this, for example, tied houses (i.e. a house you have to live in because of your job). If you are not sure about your tenancy, you should contact your landlord.

What will my rights be under the Scottish secure tenancy?

From 30 September 2002, you will have the following rights.

Security of tenure

You cannot be evicted from your home without a court order.

Joint tenancy

You and anyone who lives in (or is going to stay in) your house and uses it as their only home can apply for a joint tenancy. Your landlord must agree to this unless they have good reasons for not doing so.

Succession

If you die, your tenancy can be succeeded to by either:

- your husband or wife;
- the other joint tenant;
- your partner (of either sex) who was living with you for at least six months beforehand.

If none of the above people qualifies or chooses to succeed, the tenancy can pass to:

- another member of your family who was living with you when you died.

If none of the above people qualifies or chooses to succeed, the tenancy can pass to:

- a carer who lives with you in your home and gave up their only or main home to care for you or a member of your family.

The tenancy can be succeeded to twice. For example, if there is a couple who are husband and wife and the man is the tenant, the tenancy would pass to his wife when he dies. If the wife died later on, an adult son or daughter would have the right to succeed to the tenancy.

Assignment, exchanges, subletting

You can sublet your tenancy, exchange your house or take in a lodger. You can also assign (sign over) your tenancy to anyone who has lived in your house as their only home for at least six months. You must get written permission from your landlord. Your landlord can only refuse permission if there are good reasons for doing so. You should think carefully before doing any of the above and get advice.

Repairs

Your landlord must carry out certain types of small urgent repairs within a given timescale (this is referred to as the 'right to repair').

Compensation for improvements

You have a right to receive compensation at the end of your tenancy for certain types of improvements you have made to your home, as long as your landlord gave you permission to make the improvements in the first place.

Information

Your landlord must give you a written tenancy agreement, information about your landlord's complaints procedure and, before your tenancy begins, information about the right to buy and any responsibilities you may have if you buy your home.

If you ask, your landlord must give you information about policies on setting rent, allocating houses, repairs and maintenance.

Consultation

Your landlord must consult with you, and take account of your views, before making or changing any housing management policies that are likely to significantly affect you, for example, repairs and maintenance, rent and service charges. Tenants' groups can register with their landlord and have a right to be consulted. You can ask your landlord for a copy of their tenant participation strategy, which outlines their arrangements for asking and considering your views.

Right to manage

You and your neighbours can get together to form a tenant management co-operative and enter into an agreement with your landlord to manage your own homes.

Will I lose any of my existing rights?

No, you will not lose any of your existing rights. In fact, some of your existing rights will be strengthened **and** you will also receive new rights. If you currently have the right to buy your home, the conditions you enjoy will be protected for as long as you stay in the same house (see below).

Will I need to sign a new tenancy agreement?

On 30 September this year, your current tenancy will automatically convert to a Scottish secure tenancy and you will receive all the rights that go with it. Your landlord will contact you, probably within the next few months, to sign a new tenancy agreement which may include matters in addition to your statutory tenancy. However, your landlord cannot change any of the tenancy rights set out in legislation. When you sign your tenancy agreement, your landlord will explain all the rights and responsibilities that are set out.

What is the short Scottish secure tenancy?

This is a new type of tenancy which can only be used in limited circumstances if the tenancy will be temporary. The circumstances in which the short Scottish secure tenancy can be used are set out in legislation. The short SST includes the same rights as the full SST except that there is no right to buy, your tenancy cannot be succeeded to when you die and your right to stay in your home is more limited than with a full Scottish secure tenancy. If your landlord offers you a short SST and you are not happy with it, you have the right to appeal.

Will I be able to buy my house?

If you had the right to buy before 30 September this year, the conditions you enjoy (including a discount and eligibility period) will not change as long as you continue to stay in the same house.

If you are a tenant of a housing association and you do not currently have the right to buy, you may gain the right to buy your home in the future. Although you will not be able to buy your home for up to 10 years, the time you spend in a relevant tenancy will count towards your eligibility and discount.

You will not be able to buy your home from your landlord if you are a tenant of:

- a charitable housing association that was a registered charity set up before 18 July 2001 (unless you had the right to buy before 30 September 2002 or have a preserved right to buy following a stock transfer);
- a fully mutual co-operative housing association;
- a housing association with fewer than 100 houses; or

- a group housing scheme for people with special needs.

If you only gain the right to buy your home for the first time on or after 30 September 2002, or if you choose to move house after this date, you will get the modernised right to buy. The qualifying time for the modernised right to buy will be a continuous five-year period with a maximum discount of 35% or £15,000, whichever is lower.

If you are not sure about whether or not you have the right to buy or which conditions apply, you should contact your landlord first.

You can get separate leaflets on 'Your Right to Buy Your Home', 'Compensation for Improvement Scheme' and 'Right to Repair Scheme' from your landlord or:

The Scottish Executive

Housing 2:3

Area 1-G

Victoria Quay

Edinburgh EH6 6QQ.

Phone: 0131 244 2105

www.scotland.gov.uk

e.mail: housing.information@scotland.gsi.gov.uk

Alternative formats and community language versions of this leaflet are available on request from the Scottish Executive, Housing 2:3, Area 1-G, Victoria Quay, Edinburgh EH6 6QQ Tel: 0131 244 2105. The leaflet can also be viewed on the Scottish Executive website at www.scotland.gov.uk

Tha cumaidhean atharraichte agus dreachan den bhileag seo ann an cànanan coimhearsnachd ri fhaighinn le iarrtas bho Riaghaltas na h-Alba, Taigheadas 2:3, Roinn 1-G, Cidhe Bhictoria, Dùn Èideann EH6 6QQ Fòn: 0131 244 2105. Faodar a' bhileag fhaicinn cuideachd air làrach-lìn Riaghaltas na h-Alba aig www.scotland.gov.uk

Appendix 3

Housing Management Visit Checklist

Property Address:

Applicants Name:

Applicants Address:

1. Verify Application Details
Correct Yes / No
If not correct note changes below

2. Verify Points Award
Correct Yes / No
If not correct note changes below

3. Full Offer to be made **Y / N**
If no, why not

4. Information supplied to applicant on:-

- Monthly rent level
- Service charge
- How and where to pay rent
- Housing Benefit/Council Tax Benefit
- Tenancy obligations e.g. maintenance of common areas, gardens, neighbours, etc
- Other services e.g. caretakers
- Contents Insurance
- Repairs
- Gas/electricity supplies
- Decoration and Furnishings
- Neighbourhood (school, doctors)

Signed by applicant _____

Signed by Staff Member _____

Designation _____

Date _____

Appendix 4

Tenant Information Pro-Forma

1. **Date of Interview:** _____ **Any Special needs/requirements** _____

Location of Interview: _____

Present at Interview: _____

2. **Address of Property:** _____ **Reference No.** _____

Name of Tenant: _____ **Name of Joint Tenant:** _____

Date of Birth: _____ **Date of Birth:** _____

N.I. Number: _____ **N.I. Number:** _____

3. **Contact Details** Tenant _____ Joint Tenant _____

Home Telephone: _____

Mobile Telephone: _____ **Mobile Telephone:** _____

E-Mail Address: _____ **E-Mail Address:** _____

Next of Kin Name: _____ **Next of Kin Name:** _____

Next of Kin Address: _____ **Next of Kin Address:** _____

Next of Kin Phone No.: _____ **Next of Kin Phone No.:** _____

Relationship to Tenant: _____ **Relationship to Tenant:** _____

4. **Employment Details**

Employer: _____ **Employer:** _____

Employer's Address: _____ **Employer's Address:** _____

Telephone No.: _____ **Telephone No.:** _____

Position Held: _____ **Position Held:** _____

Hours of Work: _____ **Hours of Work:** _____

5. Household Details:

Appendix 4 Cont'd

Name	Relationship to Tenant	Date of Birth
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. Income Details: (delete as applicable)

Employment Income of Tenant(s): £ _____ per week/month

Employment Income of any Non-Dependent(s): £ _____ per week/month

Benefits (please specify)

Benefits (please specify)	Tenant	Partner	Other Household Members
_____	_____ wk/mth	_____ wk/mth	_____ wk/mth
_____	_____ wk/mth	_____ wk/mth	_____ wk/mth
_____	_____ wk/mth	_____ wk/mth	_____ wk/mth
_____	_____ wk/mth	_____ wk/mth	_____ wk/mth
_____	_____ wk/mth	_____ wk/mth	_____ wk/mth

Other Income (please specify)	Tenant	Partner	Other Household Members
_____	_____ wk/mth	_____ wk/mth	_____ wk/mth
_____	_____ wk/mth	_____ wk/mth	_____ wk/mth

Expenditure Details (delete as applicable)

Rent £ _____ wk/mth Average food bill £ _____ wk/mth

Council Tax £ _____ wk/mth Regular Financial Commitments (i.e. travel expenses) £ _____ wk/mth

Fuel £ _____ wk/mth Credit/store cards, loans etc £ _____ wk/mth

Other Utilities £ _____ wk/mth

Any other debts (please specify)

_____ £ _____
_____ £ _____
_____ £ _____

Reason for rent arrears (if applicable)

7. Arrangements for Payment

Amount of 1st payment £ _____

Date of first payment £ _____ Payment method _____

Amount of further payments £ _____

Frequency of Payments _____

Method of future payments _____

For office use only

SO PO Inter CH DB/CR

Action Taken _____ Date _____

8. Bank Details

Name of Bank _____

Address of Bank _____

Sort Code _____

Account Number _____

Name(s) of Account Holder _____

9. The tenant refuses to disclose sections: _____

For reasons: _____

10. Declaration

Please tick

- I hereby confirm that the details listed above are accurate and that I will notify Linstone immediately should there be any changes.
- I will notify Linstone immediately if, for any reasons, I am unable to keep to the payment plan. I understand that defaulting on this agreement could result in legal action, which may lead to my eviction.
- I hereby consent to Linstone Housing Association making contact on my behalf with appropriate external agencies to assist with maintenance of my tenancy.

Tenant

Joint Tenant

Signed _____

Signed _____

Print Name _____

Print Name _____

Staff Member

Signed _____

Print Name _____

Designation _____

Date Of Further Interview	Information Verified
	YES / NO
Detail Changes	
Tenants Signature	Staff Signature
Date Of Further Interview	Information Verified
	YES / NO
Detail Changes	
Tenants Signature	Staff Signature
Date Of Further Interview	Information Verified
	YES / NO
Detail Changes	
Tenants Signature	Staff Signature
Date Of Further Interview	Information Verified
	YES / NO
Detail Changes	
Tenants Signature	Staff Signature
Date Of Further Interview	Information Verified
	YES / NO
Detail Changes	
Tenants Signature	Staff Signature

Appendix 5



Present Tenancy Details			
Tenant's Name(s)			
Address			
Postcode			
Tenancy Reference No		Date Tenancy Ended	
HB Reference No			

New Tenancy Details			
Tenant's Name(s)			
Address			
Postcode			
Tenancy Reference No		Date Tenancy Started	
HB Reference No			

I _____ (tenant's name(s))

Confirm that I will move into my new address by ____/____/____ and I understand that Housing and

Council Tax Benefit can only be paid from the date that I move in.

I also confirm that I will tell the Council if I don't occupy this address from the above date and understand that this will affect my entitlement to Housing and Council Tax Benefit.

Signature of person claiming	
Date	

I authorise my landlord to obtain information from Renfrewshire Council regarding my Rent Allowance claim, and discuss details of my claim in order to ensure my application for Rent Allowance is properly processed and payments are correctly made.

Furthermore, I instruct any Rent Allowance to which I am entitled to be paid directly to my landlord.

I hereby declare this mandate to be irrevocable.

Landlord's Name: **Linstone Housing Association**

Landlord's Address: **32 Burnbrae Avenue
Linwood PA3 3DD**

Landlord's Telephone No: **01505-382383**

Tenant's Signature: _____

Date: _____

Joint Tenant's Signature: _____

Date: _____

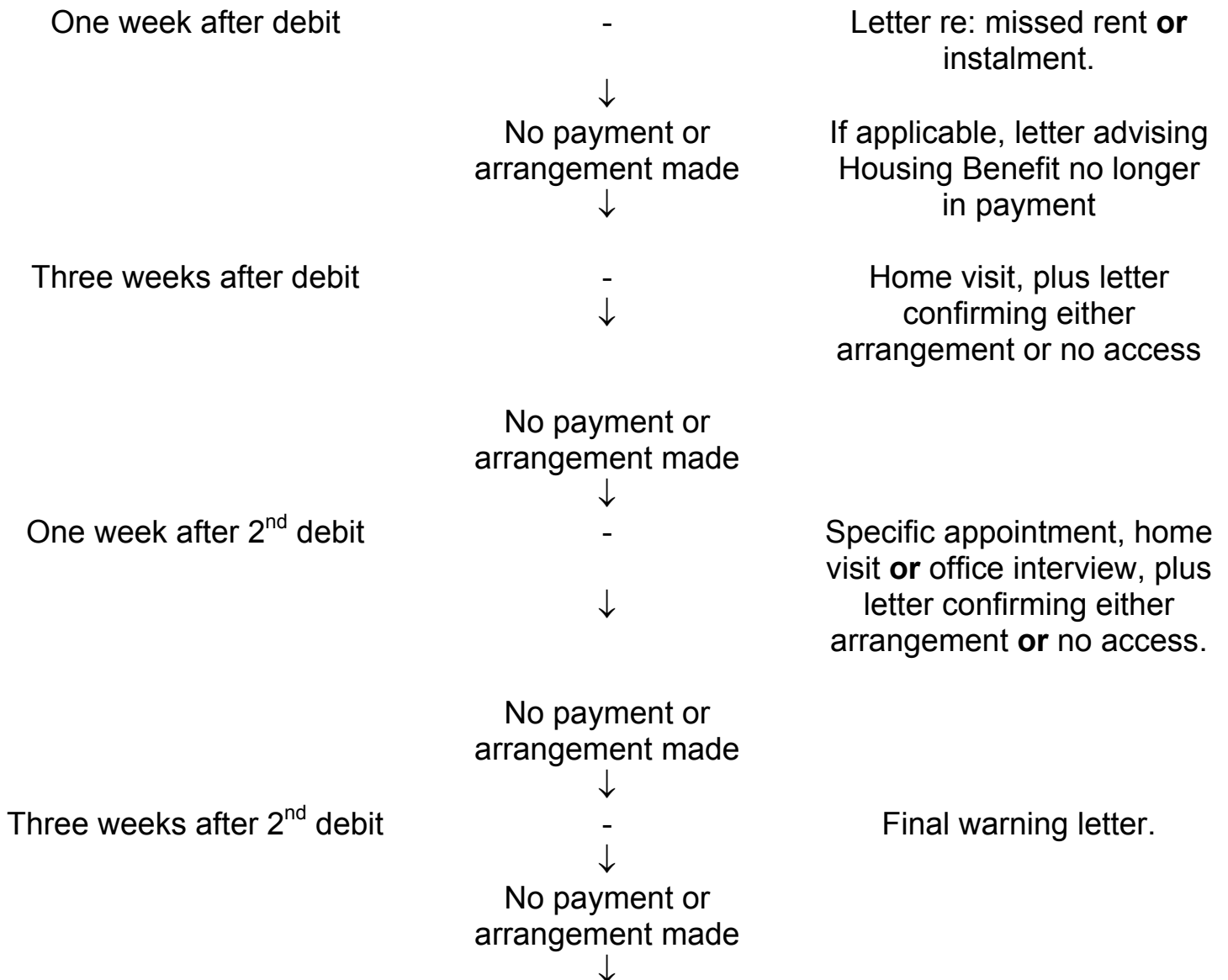
Appendix 6

Summarised Arrears Process

It is the Housing Officers responsibility to ensure that they review their cases fortnightly. This process should commence one week after the debit is raised with a further review carried out three weeks after the debit is raised.

This procedure should continue on a monthly basis with all cases being reviewed in this manner.

The Housing Services Manager will run the extract which allows arrears review process to be conducted.



One week after 3rd debit

-



No payment or
arrangement made



Notice of Proceedings

Three weeks after 3rd debit

-



No payment or
arrangement made



Evening home visit, plus
letter confirming
arrangement **or** no access.

One week after 4th debit

-



No payment or
arrangement made



Solicitor 7 day warning
letter.
Request for legal action
approval. (Must be
completed and authorised
within one week).

One week after request for legal action approval

-
↓

Request court date, plus letter to tenant detailing action.

No payment or arrangement made

↓

Other actions arising from court

-

- Letter confirming date of calling.
- Letter confirming outcome of court calling (continued, sisted or decree).
- Letter to appropriate agencies (e.g. Social Work), providing consent has been obtained.
- Ad-hoc telephone calls and home visits.

- Where housing benefit is in payment and the net rent relatively low it may not be appropriate to accelerate the case at the rate detailed above. In such instances the Housing Officer should make use of the adhoc steps described earlier in this document. For example, more telephone calls, visits or less severe letters.

Garage Arrears Cases

One week after debit

-
↓

Letter re missed rent or instalment.

No payment or arrangement made

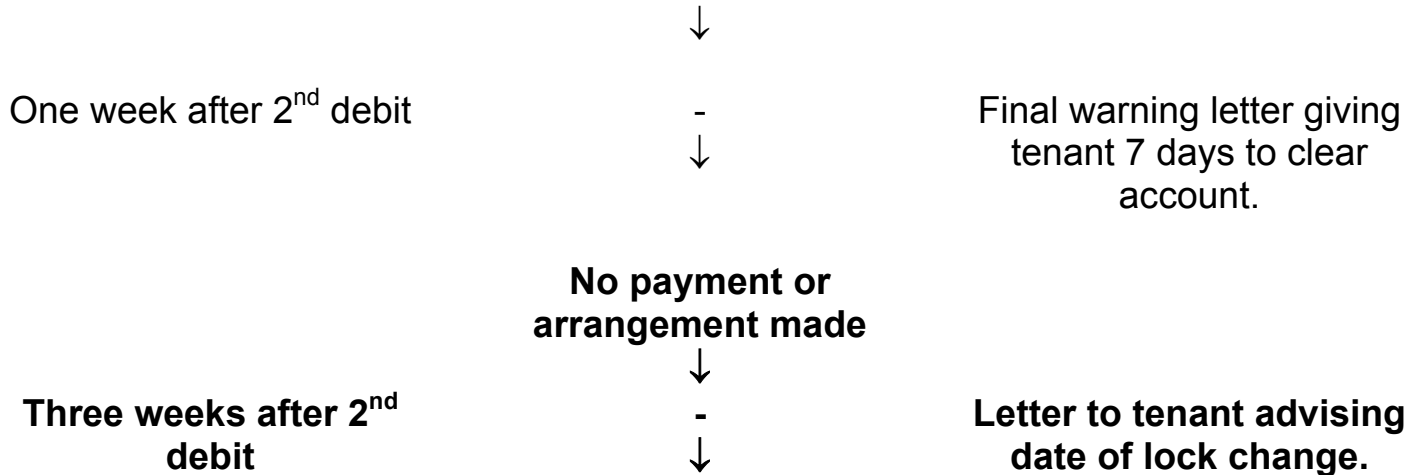
↓

Three weeks after debit

-
↓

Home visit, plus letter confirming arrangement or no access.

No payment or arrangement made



The above flowcharts represent the summarised arrears process assuming no payments are received **or** arrangements made. It is expected that this will not be the normal progression for most cases as some payments **or** arrangements will be made.

The system has a significant number of adhoc stages with relevant documents attached which the Housing Officer can select when reviewing each case. This deviation will not automatically progress the case and it is essential that the Housing Officer manually progresses the appropriate action – at least until it is moved onto an automated stage.

Appendix 7

Voluntary Mandate

To _____ (Employers Name)

_____ (Employers Address)

I _____ (tenants name) of _____ (property Address) hereby consent to a direct salary deduction in respect of my rental obligation to Linstone Housing Association Ltd.

Amount to be deducted £ _____ per _____

Rent account number _____

Start date _____

Linstone Housing Association Bank Details: Bank of Scotland

**Address of Bank: Bath Street
Glasgow**

Sort Code: 80 – 07 – 48

Account No.: 00505511

Signed: _____

Print Name: _____

Date: _____

Appendix 8

«T1Title» «T1Inits» «T1Surn»
«PAddr1»
«PAddr2»
«PAddr3»
«PAddr4»
«PAddr5»
«PPC»

Contact: Catherine Wilkie

Our Ref: NOPCert

23 March, 2006

Notice of Proceedings – Certificate of Service

Name: «T1Title» «T1For» «T1Surn»

Address: «PAddr1» «PAddr2» «PAddr3» «PAddr4» «PAddr5» «PPC»

The attached Notice of Proceedings was hand served on the above named by 2 members of staff from Linstone Housing Association Limited on _____. It was introduced into the dwelling house at «PAddr1» «PAddr2» «PAddr3» «PAddr4» «PAddr5» «PPC» by means of a letter box.

Served By: _____ **Designation:** _____

Witnessed By: _____ **Designation:** _____

Date: _____

Appendix 8 Cont'd

«T1Title» «T1Inits» «T1Surn»
«PAddr1»
«PAddr2»
«PAddr3»
«PAddr4»
«PAddr5»
«PPC»

Contact: Catherine Wilkie

Our ref: NSP 1

Your ref: «TencyRef»

Dear «T1Title» «T1Surn»

Notice of Proceedings for Recovery of Possession

I note that despite previous warnings your arrears of rent amount to £«CurBal» and it is therefore necessary to serve on you the attached Notice of Proceedings.

This Notice of Proceedings is required by law and could lead to your eviction.

It is absolutely imperative that within the period of this Notice you should have cleared the outstanding debt or come to an acceptable arrangement with Linstone Housing Association for repayment. To make such an arrangement you should contact our Housing Services Manager, Catherine Wilkie, at this office as a matter of urgency.

If, however, you do not clear the debt or make an acceptable arrangement for repayment, then Linstone Housing Association will instruct it's Solicitor to apply to the Court for a Decree for Recovery of Possession, which would bring your tenancy to an end and may result in your eviction.

It should be noted that the expense of any legal proceeding will be borne by you and these can be considerable.

If you are uncertain about what this Notice means, or if you are in doubt about anything in them, or about their validity, or whether they are filled in properly you should immediately consult a Solicitor or an organisation which gives advice on housing matters. You may also find it helpful to discuss the Notice with a Linstone Housing Association member of staff.

I sincerely hope that action beyond this Notice of Proceedings will not be required.

Yours sincerely

Catherine Wilkie
Housing Services Manager

Appendix 8 Cont'd

«T1Title» «T1Inits» «T1Surn»

Contact: Catherine Wilkie

«PAddr1»

«PAddr2»

Our ref: NSP 1

«PAddr3»

«PAddr4»

Your ref: «TencyRef»

«PAddr5»

«PPC»

23 March 2006

Dear «T1Title» «T1Surn»

Notice of Proceedings for Recovery of Possession

Although you have made an arrangement to repay the outstanding arrears of rent, a balance of £«CurBal» still remains. Because of the level of the arrear and your past payment history, it is necessary to serve on you the attached Notice of Proceedings.

This Notice of Proceedings is required by law and could lead to your eviction.

It is absolutely imperative that within the period of this Notice you should have cleared the outstanding debt or come to an acceptable arrangement with Linstone Housing Association for repayment. To make such an arrangement you should contact our Housing Services Manager, Catherine Wilkie, at this office as a matter of urgency.

If, however, you do not clear the debt or make an acceptable arrangement for repayment, then Linstone Housing Association will instruct it's Solicitor to apply to the Court for a Decree for Recovery of Possession, which would bring your tenancy to an end and may result in your eviction.

It should be noted that the expense of any legal proceeding will be borne by you and these can be considerable.

If you are uncertain about what this Notice means, or if you are in doubt about anything in them, or about their validity, or whether they are filled in properly you should immediately consult a Solicitor or an organisation which gives advice on housing matters. You may also find it helpful to discuss the Notice with a Linstone Housing Association member of staff.

I sincerely hope that action beyond this Notice of Proceedings will not be required.

Yours sincerely

Catherine Wilkie
Housing Services Manager

Appendix 8 Cont'd

Housing (Scotland) Act 2001 - Section 14

Notice of Proceedings for Recovery of Possession

a) This notice is to inform you,

«T1Title» «T1For» «T1Surn» (Tenant)

that Linstone Housing Association Limited, being the landlord of the dwellinghouse at

«PAddr1», «PAddr2», «PAddr3», «PAddr4» «PAddr5»

may at any time during the period of 6 months beginning on 29th
(See Note 3), raise proceedings for possession of that dwellinghouse on the following grounds:

- **Rent lawfully due from you has not been paid**

Which are deemed to fall within the terms of paragraph(s) 1 (see note 4) of Part I of Schedule 2 to the Housing (Scotland) Act 2001.

We also inform you that we are seeking possession under the above ground for the following reasons:

- **Rent arrears of £«CurBal» are outstanding. This amount has accrued during the period from _____ to Present**

(state particulars of how the ground(s) have arisen: continue on additional sheets if required).

Signed _____ Housing Services Manager

Dated _____

* Delete as appropriate

Appendix 8 Cont'd

Notes for the Guidance of Qualifying Occupiers

1. You as a qualifying occupier have a right to play a part in any court proceedings arising from the notice. If you wish to make an application to be included in any subsequent court action, you should consult a solicitor. You are entitled to have your rights considered alongside the tenant and you or your representative will be able to put your point of view to the court, for example, to explain the consequences of the repossession action for you.
2. You should also read the notes for the guidance of tenants, which explain in detail why the notice is being serviced and the procedures that require to be followed.

Notes for the Guidance of Tenants

1. This notice is a warning that your landlord may be going to raise proceedings against you in the sheriff court to gain possession of your house. It is not a notice to quit and it does not affect your right to continue living in the house or your obligation to pay rent. You cannot be evicted from your house unless the sheriff court grants your landlord a possession order. You should read the rest of the notes carefully to find out what might happen if your landlord does start possession proceedings against you.
2. Your landlord will also serve a notice on any qualifying occupiers who reside with you. A qualifying occupier is a person who occupies your house as their only or principal home and who is aged at least 16 years. This can be a lodger or a person to whom with the consent of the landlord, you have assigned, sublet or otherwise given up possession of the house or part of it. The qualifying occupier can be party to the possession proceedings by applying to the court. This allows a qualifying occupier's rights to be considered. For example, the qualifying occupier can put his/her point of view to the court, to explain the consequences of repossession on him/her.
3. Now that this notice has been served on you there is no other preliminary step which your landlord need take before starting court action against you for possession of the house referred to in the notice. The date given in the notice is the earliest date on which your landlord can take court action. After that date the landlord is allowed to start possession proceedings against you at any time

during the following 6 months. If that 6 month period passes without possession proceedings being started, your landlord would have to serve another one of these notices on you before it could start court action for possession and that notice would, like this one, have to give you at least 4 weeks warning before court action could be started.

4. Your landlord has explained in the notice the reason or reasons why it is considering taking possession against you. In order to help you understand your legal position if proceedings are taken, the paragraph number (referring to Part 1 of the Schedule 2 of the Housing (Scotland) Act 2001) which applies to your landlord" reason for considering possession proceedings is given near the end of the notice. If, for example, your landlord's reason for considering possession proceedings is rent arrears, the paragraph number given will be 1. If the number is between 1 and 7, read note 5 below; if the number is between 8 and 14 read note 6 below. If the numbers is 10, read note 7 as well as note 6. If the number is 15 read note 8.
5. If the paragraph number given near the end of the notice is between 1 and 7, and your landlord does take court action for possession against you, the sheriff court will be concerned with whether the facts on which your landlord is founding are correct (for example, whether you are in rent arrears if that is the reason which your landlord has given) and, if it decides that the facts are correct, whether it is reasonable that you should be evicted, which will depend on the circumstances of your case. In deciding whether it is reasonable to make an order for the termination of the tenancy, the court must take into account all the circumstances of the case. The 2001 Act also sets out specific criteria which courts must take into account although they are at liberty to take account of any other relevant considerations as well.

The specific criteria are set pout in section 16 of the Act and are broadly as follows:

- (a) in the case of numbers 1 and 3 to 7, the nature, frequency and duration of the conduct leading to the eviction proceedings;
- (b) in the case of number 2, the conduct in respect of which the person in question was convicted.
- (c) how far the tenant was personally responsible for the conduct or whether it was the consequence of acts or omissions by others, for example, if the recovery action results from rent arrears, whether any housing benefit entitlement has been paid timeously of in full;

(d) the effect of the tenant's conduct on others for example, whether there are serious adverse consequences for other local residents;

(e) whether the landlord has considered and, if appropriate, progressed other possible courses of action with a view to securing the cessation of the conduct before option for eviction.

The court can postpone a decision on the case and impose conditions on you, for example about paying off rent arrears, if it wishes. If you obey the conditions the court would not normally grant your landlord a possession order afterwards. If a possession order is granted against you, your landlord will have to evict you once the date given in the order has passed, unless it decides to grant you a new tenancy of your house. If it evicts you, it will not be under any obligation to rehouse you. Any action which must be taken by a local authority under its powers and duties in relation to some categories of homeless people is a separate matter and you should not assume that you will be entitled to rehousing.

If you apply to purchase your house once a notice for recovery of possession is served on any of the grounds set out in paragraphs 1 to 7 of Part 1 of Schedule 2 of the 2001 Act your application will not be accepted. While the repossession proceedings are ongoing any application will be rejected and you may only reapply to purchase your house once the notice has been withdrawn by your landlord or it has expired or the court has made a decision and appeals have been considered and dealt with.

6. If the paragraph number given near the end of the notice is between 8 and 14, the court must grant a possession order against you provided the landlord can show that it (the landlord) has arranged for suitable alternative accommodation to be made available to you. If considering whether the alternative accommodation offered to you is suitable the court has to take account of the following points:-

- of you or your family, compared to your existing house,
- the extent of the accommodation required by you and your family.
- the character of the accommodation offered compared to your existing house,
- the terms on which the accommodation is offered compared with the terms of your existing tenancy,

- if any furniture was provided by the landlord under the existing tenancy, whether furniture is to be provided under the new tenancy which is comparable in relation to your need and the needs of your family,
- any special needs of yourself or your family.

Your landlord must make you an offer of alternative accommodation in writing, and must give you at least 14 days to make up your mind about the offer. Until your landlord has done this the court will not grant a possession order. Once it has been done the court will grant a possession order unless you tell the court that you do not consider the offer suitable and explain why.

7. If the paragraph number given near the end of the notice is 10, and your landlord only wants to move you out of your house temporarily while works are carried out, the court will make an order entitling you to return to your house once the works are completed. This will not affect your right to suitable alternative accommodation but you will not become a Scottish secure tenant of the house that you are moved to and you will have no right to stay there once the house which you live in now is ready for occupation.
8. If the paragraph number given near the end of the notice is 15 and your landlord wants to transfer the house to your husband or wife (or ex-husband or ex-wife) or co-habitee, where one of you no longer wishes to live with the other, the court must be satisfied that it is reasonable to grant the order and the landlord will offer suitable alternative house.
9. If you are at all uncertain about what this notice means or of your rights you should obtain advice as quickly as possible. You may be able to get this from your landlord, from a number of sources of free and independent advice such as your local Citizens' Advice Bureau or Housing Advice Centre or from a solicitor. If you need to employ a solicitor, legal aid may be available, depending on your income
10. These Notes are intended for guidance only.

Appendix 9

«PAddr1»
«PAddr2»
«PAddr3»
«PAddr4»
«PPC»

Contact: Catherine Wilkie

Our Ref: NOP Cert

23 March 2006

Notice of Proceedings – Certificate of Service

Name:

Address: «PAddr1» «PAddr2» «PAddr3» «PAddr4» «PAddr5» «PPC»

The attached Notice of Proceedings was hand served on the above named by 2 members of staff from Linstone Housing Association Limited on _____. It was introduced into the dwelling house at «PAddr1» «PAddr2» «PAddr3» «PAddr4» «PAddr5» «PPC» by means of a letter box.

Served By: _____ **Designation:** _____

Witnessed By: _____ **Designation:** _____

Date: _____

Appendix 9 Cont'd

«PAddr1»
«PAddr2»
«PAddr3»
«PAddr4»
«PAddr5»
«PPC»

Contact: Catherine Wilkie

Our ref: NSPQual

Your ref: «TencyRef»

23 March 2006

Dear

Notice of Proceedings for Recovery of Possession

Despite previous warnings the tenant of the above property has accrued arrears of rent and in accordance with the requirements of the Housing (Scotland) Act 2001 it is therefore necessary to serve the attached Notice of Proceedings on qualifying occupiers.

A qualifying occupier under the Housing (Scotland) Act 2001 is defined as someone other than the tenant who occupies the house as his or her only or principal home and is

- either a member of the tenant's family aged 16 or over
- a person to whom the tenant has assigned, sublet or otherwise given up the possession of the house or any part of it
- a person whom the tenant has taken in as a lodger

Our records indicate that you meet the above criteria.

This Notice of Proceedings is required by law and is the first step in the legal process to recover possession of the property and the outstanding debt. This could ultimately result in the eviction of all persons residing in the property.

In particular we would draw your attention to the notes for guidance at the end of the enclosed Notice. If you are uncertain about what this Notice means, are in doubt about anything in it, or are unclear about its validity you should immediately consult a Solicitor or an organisation which gives advice on housing matters. You may also find it helpful to discuss the Notice with a Linstone Housing Association member of staff.

Yours sincerely

Catherine Wilkie
Housing Services Manager

Appendix 9 Cont'd

Housing (Scotland) Act 2001 – Section 14

Notice of Proceedings for Recovery of Possession

a) This notice is to inform you,

(Qualifying Occupier)

that Linstone Housing Association Limited, being the landlord of the dwellinghouse at

«PAddr1», «PAddr2», «PAddr3», «PAddr4» «PAddr5»

may at any time during the period of 6 months beginning on 29th _____
(See Note 3), raise proceedings for possession of that dwellinghouse on the following grounds:

- **Rent lawfully due has not been paid**

Which is/are deemed to fall within the terms of paragraph(s) 1 (see note 4) of Part I of Schedule 2 to the Housing (Scotland) Act 2001.

We also inform you that we are seeking possession under the above ground for the following reasons:

- **Rent arrears of £«CurBal» are outstanding. This amount has accrued during the period from _____ to Present**

(state particulars of how the ground(s) have arisen: continue on additional sheets if required).

Signed _____ Housing Services Manager

Dated _____

* Delete as appropriate

Appendix 9 Cont'd

Notes for the Guidance of Qualifying Occupiers

1. You as a qualifying occupier have a right to play a part in any court proceedings arising from the notice. If you wish to make an application to be included in any subsequent court action, you should consult a solicitor. You are entitled to have your rights considered alongside the tenant and you or your representative will be able to put your point of view to the court, for example, to explain the consequences of the repossession action for you.
2. You should also read the notes for the guidance of tenants, which explain in detail why the notice is being serviced and the procedures that require to be followed.

Notes for the Guidance of Tenants

1. This notice is a warning that your landlord may be going to raise proceedings against you in the sheriff court to gain possession of your house. It is not a notice to quit and it does not affect your right to continue living in the house or your obligation to pay rent. You cannot be evicted from your house unless the sheriff court grants your landlord a possession order. You should read the rest of the notes carefully to find out what might happen if your landlord does start possession proceedings against you.
2. Your landlord will also serve a notice on any qualifying occupiers who reside with you. A qualifying occupier is a person who occupies your house as their only or principal home and who is aged at least 16 years. This can be a lodger or a person to whom with the consent of the landlord, you have assigned, sublet or otherwise given up possession of the house or part of it. The qualifying occupier can be party to the possession proceedings by applying to the court. This allows a qualifying occupier's rights to be considered. For example, the qualifying occupier can put his/her point of view to the court, to explain the consequences of repossession on him/her.
3. Now that this notice has been served on you there is no other preliminary step which your landlord need take before starting court action against you for possession of the house referred to in the notice. The date given in the notice is the earliest date on which your landlord can take court action. After that date the

landlord is allowed to start possession proceedings against you at any time during the following 6 months. If that 6 month period passes without possession proceedings being started, your landlord would have to serve another one of these notices on you before it could start court action for possession and that notice would, like this one, have to give you at least 4 weeks warning before court action could be started.

4. Your landlord has explained in the notice the reason or reasons why it is considering taking possession against you. In order to help you understand your legal position if proceedings are taken, the paragraph number (referring to Part 1 of the Schedule 2 of the Housing (Scotland) Act 2001) which applies to your landlord's reason for considering possession proceedings is given near the end of the notice. If, for example, your landlord's reason for considering possession proceedings is rent arrears, the paragraph number given will be 1. If the number is between 1 and 7, read note 5 below; if the number is between 8 and 14 read note 6 below. If the number is 10, read note 7 as well as note 6. If the number is 15 read note 8.
5. If the paragraph number given near the end of the notice is between 1 and 7, and your landlord does take court action for possession against you, the sheriff court will be concerned with whether the facts on which your landlord is founding are correct (for example, whether you are in rent arrears if that is the reason which your landlord has given) and, if it decides that the facts are correct, whether it is reasonable that you should be evicted, which will depend on the circumstances of your case. In deciding whether it is reasonable to make an order for the termination of the tenancy, the court must take into account all the circumstances of the case.

The 2001 Act also sets out specific criteria which courts must take into account although they are at liberty to take account of any other relevant considerations as well.

The specific criteria are set out in section 16 of the Act and are broadly as follows:

- (a) in the case of numbers 1 and 3 to 7, the nature, frequency and duration of the conduct leading to the eviction proceedings;
- (b) in the case of number 2, the conduct in respect of which the person in question was convicted.

(c) how far the tenant was personally responsible for the conduct or whether it was the consequence of acts or omissions by others, for example, if the recovery action results from rent arrears, whether any housing benefit entitlement has been paid timeously or in full;

(d) the effect of the tenant's conduct on others for example, whether there are serious adverse consequences for other local residents;

(e) whether the landlord has considered and, if appropriate, progressed other possible courses of action with a view to securing the cessation of the conduct before option for eviction.

The court can postpone a decision on the case and impose conditions on you, for example about paying off rent arrears, if it wishes. If you obey the conditions the court would not normally grant your landlord a possession order afterwards. If a possession order is granted against you, your landlord will have to evict you once the date given in the order has passed, unless it decides to grant you a new tenancy of your house. If it evicts you, it will not be under any obligation to rehouse you. Any action which must be taken by a local authority under its powers and duties in relation to some categories of homeless people is a separate matter and you should not assume that you will be entitled to rehousing.

If you apply to purchase your house once a notice for recovery of possession is served on any of the grounds set out in paragraphs 1 to 7 of Part 1 of Schedule 2 of the 2001 Act your application will not be accepted. While the repossession proceedings are ongoing any application will be rejected and you may only reapply to purchase your house once the notice has been withdrawn by your landlord or it has expired or the court has made a decision and appeals have been considered and dealt with.

6. If the paragraph number given near the end of the notice is between 8 and 14, the court must grant a possession order against you provided the landlord can show that it (the landlord) has arranged for suitable alternative accommodation to be made available to you. If considering whether the alternative accommodation offered to you is suitable the court has to take account of the following points:-

- of you or your family, compared to your existing house,
- the extent of the accommodation required by you and your family.
- the character of the accommodation offered compared to your existing house,

- the terms on which the accommodation is offered compared with the terms of your existing tenancy,
- if any furniture was provided by the landlord under the existing tenancy, whether furniture is to be provided under the new tenancy which is comparable in relation to your need and the needs of your family,
- any special needs of yourself or your family.

Your landlord must make you an offer of alternative accommodation in writing, and must give you at least 14 days to make up your mind about the offer. Until your landlord has done this the court will not grant a possession order. Once it has been done the court will grant a possession order unless you tell the court that you do not consider the offer suitable and explain why.

7. If the paragraph number given near the end of the notice is 10, and your landlord only wants to move you out of your house temporarily while works are carried out, the court will make an order entitling you to return to your house once the works are completed. This will not affect your right to suitable alternative accommodation but you will not become a Scottish secure tenant of the house that you are moved to and you will have no right to stay there once the house which you live in now is ready for occupation.
8. If the paragraph number given near the end of the notice is 15 and your landlord wants to transfer the house to your husband or wife (or ex-husband or ex-wife) or co-habitee, where one of you no longer wishes to live with the other, the court must be satisfied that it is reasonable to grant the order and the landlord will offer suitable alternative house.
9. If you are at all uncertain about what this notice means or of your rights you should obtain advice as quickly as possible. You may be able to get this from your landlord, from a number of sources of free and independent advice such as your local Citizens' Advice Bureau or Housing Advice Centre or from a solicitor. If you need to employ a solicitor, legal aid may be available, depending on your income
10. These Notes are intended for guidance only.

Appendix 10

Eviction Procedure

1. Introduction

Linstone's Current Tenant Arrears Policy states that when a Decree is awarded the tenancy will end on the date specified by the Court.

2.0 Objectives

This procedure aims to meet the following criteria:

To bring to a conclusion the Court Action that has culminated in a Decree being awarded by

: repossession of the property

or

: granting of a new tenancy

and / or

: recovery of the outstanding arrears

3.0 Methods

After Decree is awarded a report is submitted to Linstone's Housing Management Sub Committee giving them all relevant information regarding the case. Each case is judged individually and a decision is made based on all the available facts. Case are submitted without reference to tenants name or address.

The Sub Committee has three options: -

1. Request case is resubmitted to them with more information or that further actions are taken before they can reach their decision.
2. Enforce repossession and evict the tenant.
3. Create a new tenancy and allow tenant to remain in house with new Contractual Scottish Secure Tenancy.

4.0 Procedure

After Decree granted

- As soon as Solicitor advises that Decree is granted a letter EV1 is sent to tenant inviting them to attend interview in office with Operations Director and Chief Executive . At the same time Letter EV5(b) is sent to Renfrewshire Council Social Work Department and Letter EV5(c) to Renfrewshire Council's Homeless Persons Unit - providing tenant has given consent to contact other agencies. The Housing Services Manager will also advise the Finance Team that the Trespasser Bar (which should have been added to the account prior to the court hearing) will remain until committee decision on the future of the tenancy
- Before the interview with Housing Services Manager and Operations Director the Housing Officer should prepare the case summary section of the Eviction Report (EVA)
- The purposes of this final discussion are: -
 - to ensure tenant is aware of what has happened and to explain the processes involved after award of Decree.
 - to understand the reasons behind the debt.
 - to explore any significant change in circumstances which might suggest problems can be resolved and will not re-occur.
 - to agree a repayment arrangement for the outstanding debt.

Following the interview, or in the event that the tenant did not attend, the Housing Services Manager and Operations Director will finalise the Summary and Recommendation sections of the report respectively.

The completed document is then tabled at the next Housing Management Sub Committee for discussion.

Based on the information contained in the report, a decision is taken by the Sub Committee as to which of the three options below is appropriate.

Option 1- More Information/Further Action Required

The Sub Committee may feel they require further information or answers to specific questions from either the tenant or any currently involved support agency. Alternatively they may wish that either the tenant or staff take some

specific action and report back to them on the outcome before making any decision.

- Letter EV3 is sent to tenant (if appropriate) advising them that more information must be submitted for Committee to make final decision. Or that they require to take the action proposed by Committee.
- Contact is made with any relevant support agencies, for example Renfrew Council on Alcohol, Paisley Threads, Social Work Department, etc. to seek their views on the tenant's progress.
- Form EVA2 is completed with any new information contained or attached as appropriate. This report is re-submitted to the Committee and a decision made whether to evict or grant a second tenancy (Option 2 or 3).

Option 2- Enforce repossession and evict the tenant

- Letter EV2(a) is sent to tenant advising them of the decision.
- Letter EV4 is sent to Sheriff Officers with Decree for date to be set for eviction.
- When a date is received from Sheriff Officers for the eviction, Letter EV5(a) is sent to resident advising date of eviction.
- Eviction is carried out on date arranged with Sheriff Officer.
- Two staff members must be present at each eviction and should complete an inventory (with photographs) of any items left.
- Efforts should be made to contact the tenant to give an opportunity for removal of personal property. Should we be unable to make contact with the former tenant, the procedure for dealing with abandoned property as described in Section 7-11 of the Abandoned House Policy HM12 should be followed.
- After the eviction the Housing Officer should request that any payments currently lodged in the suspense account as violent profits be transferred to the former rent account.

- The property should then be treated as a void in the normal manner and any outstanding debt be pursued in line with our Former Tenant Arrears Policy (HM16).

Option 3 -Create a new tenancy

- Letter EV2(b) is sent to resident to advise them that a new tenancy has been agreed and arranging for them to come into office to sign a new Scottish Secure Tenancy Agreement.
- A new tenancy is created on computer with the start of tenancy date the day after previous tenancy is ended.
- At the time of signing the tenancy agreement a Tenant Information Pro-forma is completed to make arrangement to pay any arrears still outstanding and agree a payment plan for ongoing rental commitments.
- After the new tenancy is signed the Housing Officer should request that any payments currently lodged in the suspense account as violent profits be transferred to the former rent account.

5.0 Abandonment

It is possible that a tenant against whom court action is proceeding and Decree is or is about to be awarded may decide to abandon the property. In such cases the procedure detailed in HM12 "ABANDONED HOUSE POLICY" will be followed. An Eviction Report EVA will however still be completed and submitted to Housing Management Sub Committee to approve recovery via this method.

Appendix 11

Solicitors Briefing Note

Reference Number: _____

Name: _____

Address: _____

Current Balance: £ _____

as at _____

Full monthly rent charge : £ _____

Monthly Housing Benefit Amount : £ _____

Net Monthly Rent Charge : £ _____

Payments Received (from last submission to solicitor)

<u>Amount</u>	<u>Date</u>	<u>Method of Payment</u>

Contact (Brief summary of contact since last submission to solicitor)

Housing Officer Action (since last submission to solicitor)

Recommendations

Reason for recommendation

Signed

Designation

Date
