



**Clackmannanshire  
Council**

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Comhairle Siorrachd  
Chlach Mhanann

# **Clackmannanshire Council**

## **Housing Service**

### **Eviction Policy**

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## **1. Scope of the Policy**

Clackmannanshire Council's Eviction Policy sets out the framework of how a Tenancy Agreement between the Council and the tenant will end due to eviction action pursued by the Council.

The Council has the responsibility to act within the legislative framework and adhere to statutory guidelines and recommendations. This policy recognises that the Council's role as a landlord may conflict with its statutory homelessness duties. As such, it also outlines the processes that will be followed to ensure that potential alternative solutions have been explored before resorting to eviction action.

## **2. Aims of the Policy**

The specific aims of the policy are:

- To identify tenants' support needs, use preventative action and provide early intervention in an attempt to prevent evictions and potential homelessness from occurring;
- To ensure that Clackmannanshire Council has a clear and concise policy for eviction action and the recovery of possession of the property;
- To deal with all repossession actions and evictions in a consistent way;
- For all repossession actions to meet all legislative requirements and statutory guidelines.

## **3. Legal Framework**

Clackmannanshire Council will ensure that this policy adheres to all legislative requirements under relevant legislation and gives due regard to statutory guidance.

The main legislative framework for tenancy repossession action and eviction is set out in the following acts:

- Housing (Scotland) Act 2001
- Housing (Scotland) Act 2010
- Housing (Scotland) Act 2014

Additional guidance may be sought in:

- Antisocial Behaviour etc. (Scotland) Act 2004
- Human Rights Act 1998
- Homelessness etc. (Scotland) Act 2003



- United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

#### **4. The Grounds for Recovery of Possession**

The complete list for grounds for recovery of possession of a property are contained within the Housing (Scotland) Act 2001, Schedule 2, Part 1, as amended by the Housing (Scotland) Act 2010, Part 16, Sections 153 and 155(2)-(7) and Part 2, Section 14 of the Housing (Scotland) Act 2014.

For the complete list of the grounds, please see appendix 2.

The main grounds that the Council will use to form the basis for eviction are the following conduct grounds:

##### *4.1. Ground 1*

- The tenant has rent arrears, or any other obligation of their tenancy agreement has been broken.

##### *4.2. Ground 2*

- The tenant, or someone living in or visiting the property, has been convicted of (a) using the house for immoral or illegal purposes or (b) an offence punishable by imprisonment committed in, or in the locality of, the house.
- An “offence punishable by imprisonment” means that the offence carries imprisonment as a possible, but not definite penalty.

##### *4.3. Ground 7*

- The tenant, or someone living in or visiting the property, has acted in an antisocial manner within the locality, or pursued a course of conduct amounting to harassment or antisocial behaviour.

Only the Sheriff, and not the Council, has the authority to grant a decree for repossession of the tenancy. To grant the decree for repossession, the Court must be satisfied that:

- Pre-action requirements have been complied with, if eviction action is sought under Ground 1 on the basis of rent arrears;



- It is reasonable to grant the decree, except where repossession is sought as part of the streamlined eviction process;
- A valid statutory notice of proceedings has been served on the tenant and all qualifying occupiers.

## **5. Tenancy Support**

At the start of a tenancy, the Council will aim to establish a strong relationship with its tenant. The Council will aim to ensure that the tenant is informed of all of their responsibilities associated with maintaining the tenancy.

The tenant will be informed once it becomes apparent that their tenancy is at risk. In line with the Council's tenancy management, antisocial behaviour and any other relevant policies and procedures, appropriate preventative and early intervention action will be considered and taken. The Council will aim to ensure that the relevant information, advice and/or support is given to the tenant. It will work together with other relevant internal departments and external partner agencies and third sector organisations to identify the needs of the tenant and deliver tailored support packages.

The Council will adopt a trauma-informed approach which considers the individual circumstances of the tenant and ensures that all other potential actions have been pursued before considering eviction action as a last resort.

Where all other remedies have been exhausted and eviction action is due to take place, the Council will advise the tenant and any qualifying occupiers of the homelessness duties that the Council has towards them.

## **6. Pre-action Requirements (Ground 1)**

If eviction action is sought on the basis of rent arrears, the Council must ensure that pre-action requirements have been fulfilled before serving the notice of proceedings and applying for the recovery of possession to the Court. Pre-action requirements are aimed at providing support and further protection for tenants facing eviction for rent arrears, and aiming to resolve the arrears before applying for eviction action as a last resort. The Council must:

- Provide the tenant with clear information about the terms of the tenancy agreement and any rent or other financial arrears owed to the Council;
- Aim to provide the tenant with advice and assistance on benefits available to them;
- Provide the tenant with information where they can seek help to manage their debts and make reasonable efforts to refer the tenant to appropriate support services;
- Aim to establish a rental payment/arrear repayment plan with the tenant;



- Provide the tenant with an opportunity to apply for housing benefits, adhere to a payment plan, or explore alternative measures of reducing outstanding arrears before initiating the formal eviction process.

## **7. Test of Reasonableness**

Where the Court must be satisfied that it is reasonable to grant the decree for repossession, the Court must have regard to:

- The nature, frequency and duration of the conduct;
- The extent to which the tenant was personally responsible for the behaviour leading to eviction action;
- The impact of the conduct on other individuals and the wider community;
- Any alternative actions the Council has taken prior to eviction action in an effort to address the conduct of the individual in question.

## **8. Notice of Proceedings**

To start the formal eviction process, the Council will send a notice of proceedings to the tenant and any qualifying occupier who lives with the tenant. A qualifying occupier is a person who is 16 years old or more, or who may turn 16 during the life of any proposed legal action, and occupies the house as their main or only home.

The notice of proceedings must include the following:

- Signal the intent of the Council to apply for a decree for repossession from the Court;
- The reasons and grounds for recovery of possession;
- The earliest date the Council can request a Court hearing;
- How the Council has met the pre-action requirements where eviction action is sought on the basis of rent arrears.

The date given in the notice is the earliest date on which the Council can start court action for possession. Following the date, the Council has a 6-month window to initiate court action. Where the process of streamlined eviction is sought under ground 2, the notice of proceedings must be served anytime within 12 months of the conviction, or where the conviction was appealed, the day on which the appeal was dismissed or abandoned.



## **9. Streamlined Evictions**

If eviction is sought under ground 2, and the Council has served the notice of proceedings to the tenant for the recovery of possession within 12 months of the conviction, streamlined eviction process is followed. Streamlined eviction process removes the test of reasonableness, but the Council must give considerations to the relevant statutory guidance in relation to raising eviction action using the streamlined eviction process.

Before pursuing streamlined eviction, the Council will give due regard to and will exhaust other relevant Council policies and plans such as keeping to the commitments contained within the Promise to care experienced children and young people, considering the objectives of the Local Outcomes Improvement Plan as well as the Community Justice Improvement Plan.

The Council should also consider whether the reasons for pursuing streamlined eviction are appropriate and proportionate. This includes taking into account:

- The nature and severity of the offence(s);
- The individual who has been convicted of the offence and their connection to the property;
- Where the offence occurred and its relevance to the Council housing tenancy;
- The extent to which the offence has affected other individuals within the community, considering its impact over time and its influence on the stability of the community;
- Any proactive steps taken by the convicted individual to make positive change;
- Impact of eviction on household members;
- Other measures taken/that could be taken by the Council or partner agencies to address the conduct in question.

## **10. Authorising and Enforcing the Eviction**

Having served the notice of proceedings to the tenant, the tenant will be served the Statement of Claim and a warrant from the Court, which summons the tenant to a Court hearing and outlines the first date of the hearing. The papers will be served by hand by the responsible housing officer. On occasion, they may also be served by recorded delivery or by Sheriff Officers if the tenant is in prison or is living under non-usual circumstances.

If the Court agrees to proceed with the eviction action at the Court hearing, a decree for repossession will be granted, specifying the date for the tenancy to end. The Court must wait at least 14 days in case the tenant appeals the decision to evict. For further information on appeals procedure, please see the appeals section.

After the appeal period, Sheriff Officers will send the tenant a form of charge of removing, which sets out the deadline by which the tenant must vacate the property. Following the deadline, the Sheriff Officers will be sent to the tenant's home to remove them from it.





Once the removal is complete, Sheriff Officers must serve a letter to the tenant, informing them of the completion of the removal, the date it occurred and the individuals responsible for carrying it out.

## **11. Equal Opportunities and Diversity**

Clackmannanshire Council is committed to the elimination of unlawful discrimination, advancing equality of opportunity and fostering good relations between people.

The Council believes that equality of opportunity should be a guiding principle in all of its activities. The Council aims to ensure that its commitment to equality is embedded in all council services and in the organisations that it funds.

In accordance with the Equality Act 2010, the Council is actively working towards the elimination of policies and practices that discriminate unfairly on grounds including age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race including colour, nationality, ethnic or national origin; religion or belief; sex; and sexual orientation.

## **12. Privacy Statement**

Clackmannanshire Council must adhere with its legal obligations under Data Protection Legislation as set out in the Data Protection Act 2018 and UK General Protection Regulation (GDPR).

In order to provide the required and/or requested services, the Council will collect, store and process relevant personal information or data.

Personal information may also be shared with other partner agencies and organisations.

Personal information will be kept securely, as long as required by law and/or by specific service requirements. Once the data is no longer required, it will be securely disposed of. The Council has a Record Retention Schedule which sets out the period of time and reasons for keeping particular records. The Retention Schedule is available on request.

Under the Data Protection Act 2018 and the Freedom of Information(Scotland) Act 2002, individuals have the right to access personal information and data held about them by Clackmannanshire Council as well as the right to access information from records held by the Council.

To submit a Subject Access or Freedom of Information request, please follow [the link](#).

To make a complaint in relation to the Council's handling and processing of personal data and information, please contact the [Information Commissioner's Office](#).



For further information on Clackmannanshire Council's data protection practices, please visit the Council's [Data Protection Statement](#). For the Council's Data Protection Policy, please follow the [link](#). For further information on freedom of information laws, please visit the [Scottish Information Commissioner webpage](#).

### **13. Complaints**

If the tenant is dissatisfied with the provided services and/or the standards of service, please follow the Council's Complaints Procedure. Complaints can be made in person, in writing, by email or online. For further information on the Complaints Procedure and how to make a complaint, please visit the [Council's Complaints Procedure webpage](#).

If the tenant remains dissatisfied with the final decision or the way the complaint has been handled following the Council's Complaints Handling Procedure, they can make a complaint to the Scottish Public Services Ombudsman (SPSO) by completing a [complaints form found online](#) or calling on 0800 377 7330.

For further information on how to make a complaint to SPSO, please visit the [SPSO website](#).

### **14. Appeals**

If the tenant or their representative was absent at the Court hearing for the decree for repossession, a process of Minute for Recall may be initiated. This gives the tenant another opportunity to state a defence at the Court and potentially recall the decree for repossession. The Minute for Recall must be submitted within 14 days of receiving the date for eviction.

In all other cases, the tenant can also appeal the Court's decision to grant an eviction decree within 14 days of granting the decree if the tenant believes that the Sheriff did not follow the law or the Court procedures correctly.

### **15. Monitoring and Reviewing**

The policy will be continuously monitored to ensure that it is performing efficiently against the aims set out in the policy.

The Council will review and evaluate this policy every 3 years to ensure the adherence to the relevant legislation and statutory guidance as well as changes in organisational practices and policies.



## 16. Appendices

### 16.1. *Appendix 1. Glossary of Terms and Interpretations*

**Antisocial Behaviour** – behaviour as defined by section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004. Antisocial behaviour occurs where a person “acts in a manner that causes or is likely to cause alarm or distress; or pursues a course of conduct that causes or is likely to cause alarm or distress to at least one person who is not of the same household.”

**Decree for Repossession** – an order for recovery of possession granted by the Court

**Eviction** – the physical removal of a tenant from the premises following Court action

**Form of Charge for Removing** – an official Court letter sent to the tenant which confirms the enforcement and the deadline for the eviction

**Notice of Proceedings** – legal document which states that the Council may raise proceedings in the Court to gain possession of the tenancy

**Tenant** – includes any joint tenants

**Recovery of Possession** – Court proceedings for recovery of possession of the tenancy

### 16.2. *Appendix 2. Complete List of Grounds for Recovery of Possession*

There are 14 grounds that Clackmannanshire Council may use to form the basis for eviction, as defined by Housing (Scotland) Act 2001, and amended by Housing (Scotland) Act 2010 and Housing (Scotland) Act 2014.

Where eviction action is sought under grounds 1 to 8, the Court must be satisfied that it is reasonable to grant the decree for repossession. Grounds 9 to 15 are known as ‘management’ grounds and require the Council to offer suitable alternative accommodation to the tenant in order for the Court to grant decree for repossession.

The grounds for recovery of possession that the Council may use are as follows:

1. The tenant has rent arrears, or any other obligation of their tenancy agreement has been broken.
2. The tenant, or someone living in or visiting the property, has been convicted of (a) using the house for immoral or illegal purposes or (b) an offence punishable by imprisonment committed in, or in the locality of, the house.
3. The tenant, or someone living in the property, has caused deterioration of the property or common parts;



4. The tenant, or someone living in the property, has caused deterioration of furniture provided with the property;
5. The tenant has been absent from the property for a continuous period of more than 6 months without a reasonable cause;
6. The tenant knowingly or recklessly made a false statement in order to obtain the tenancy;
7. The tenant, or someone living in or visiting the property, has acted in an antisocial manner within the locality, or pursued a course of conduct amounting to harassment or antisocial behaviour;
8. The tenant, or someone living in the property, has been guilty of conduct which is a nuisance or annoyance within the locality, or harassed someone living in or visiting the local area;
9. The tenant has allowed the property to become overcrowded;
10. The Council intends to demolish or carry out substantial works on the property;
11. The property is designed or adapted for a person with special needs, there is currently no one living in the property with such needs, and the Council requires it for a person who has such needs.
12. The property is designed, provided with or located near facilities for a person with special needs, there is currently no one living in the property with such needs, and the Council requires it for a person who has such needs;
13. The Council has leased the property and the lease has ended;
15. The tenant has had a relationship breakdown and their spouse, civil partner or cohabitee has requested that the tenancy is transferred to them.