

## Higher National Unit Specification

### General information for centres

**Unit title:** Housing Law for Advisors: Introduction to Security of Tenure

**Unit code:** F1E6 33

**Unit purpose:** This Unit is designed for those whose work involves providing advice on housing issues, in particular housing law, to service users. Candidates may be in work either in a voluntary or paid capacity. The Unit will normally be delivered as part of the Professional Development Award: Housing Law Advice at level 6.

On completion of the Unit the candidate should be able to:

- 1 Identify different types of tenure.
- 2 Identify the essential elements of a tenancy.
- 3 Outline the processes of eviction and repossession.

**Credit points and level:** 1 HN credit at SCQF level 6: (8 SCQF credit points at SCQF level 6\*)

*\*SCQF credit points are used to allocate credit to qualifications in the Scottish Credit and Qualifications Framework (SCQF). Each qualification in the Framework is allocated a number of SCQF credit points at an SCQF level. There are 12 SCQF levels, ranging from Access 1 to Doctorates.*

**Recommended prior knowledge and skills:** Entry is at the discretion of the centre. It would be helpful if candidates had some prior knowledge/experience of housing or advice sectors.

**Core Skills:** There are no opportunities to develop Core Skills in this Unit.

**Context for delivery:** If this Unit is delivered as part of a Group Award, it is recommended that it should be taught and assessed within the subject area of the Group Award to which it contributes.

**Assessment:** Assessment for each Outcome is by a series of short answer questions which may be multiple choice questions. Each Outcome could be assessed separately or, alternatively, by one question paper covering all three Outcomes. Assessment should be carried out under closed-book conditions.

## **Higher National Unit specification: statement of standards**

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The sections of the Unit stating the Outcomes, knowledge and/or skills, and evidence requirements are mandatory.

Where evidence for Outcomes is assessed on a sample basis, the whole of the content listed in the knowledge and/or skills section must be taught and available for assessment. Candidates should not know in advance the items on which they will be assessed and different items should be sampled on each assessment occasion.

### **Outcome 1**

Identify different types of tenure

#### **Knowledge and/or Skills**

- ◆ Assured and short assured tenancies
- ◆ Scottish secure tenancies
- ◆ Regulated Tenancies
- ◆ Tied accommodation
- ◆ Limited security of tenure
- ◆ Non secure public sector tenancy
- ◆ Part V11 Tenancies
- ◆ Relevant legislation

#### **Evidence Requirements**

Candidates will need to provide evidence to demonstrate their Knowledge and/or Skills by showing that they can:

- ◆ identify the main features of at least six types of tenure in Scotland
- ◆ identify the main legislation surrounding each type of tenure

#### **Assessment Guidelines**

Evidence may be presented as responses to multiple choice and should be done as a closed-book exercise. Each candidate will be required to evidence that they can identify the legislation affecting different types of tenure in Scotland. All knowledge points must be covered.

## **Higher National Unit specification: statement of standards (cont)**

**Unit title:** Housing Law for Advisors: Introduction to Security of Tenure

### **Outcome 2**

Identify the essential elements of a tenancy

#### **Knowledge and/or Skills**

- ◆ Essential elements — parties, subjects, rent, duration and exclusive possession
- ◆ Relevant legislation
- ◆ Rights and responsibilities of landlords in the public and private sectors
- ◆ Rights and responsibilities of tenants in the public and private sectors

#### **Evidence Requirements**

Candidates will need to provide evidence to demonstrate their Knowledge and/or Skills by showing that they can:

- ◆ outline the essential elements of a tenancy
- ◆ identify relevant legislation
- ◆ identify the rights and responsibilities of landlords in the public and private sectors
- ◆ identify the rights and responsibilities of tenants in the public and private sectors

#### **Assessment Guidelines**

Evidence may be presented as responses to multiple choice and should be done as a closed-book exercise. Each candidate will be required to evidence that they can identify the legislation affecting different types of tenancies in the public and private sectors in Scotland. All knowledge points must be covered.

### **Outcome 3**

Outline the processes of eviction and repossession

#### **Knowledge and/or Skills**

- ◆ Relevant legislation
- ◆ Owners/tenants rights/protection
- ◆ Landlords rights/protection
- ◆ Recovery of possession
- ◆ Proceedings for possession
- ◆ Abandonment
- ◆ Legal grounds for eviction/repossession
- ◆ Proceedings for eviction

## **Higher National Unit specification: statement of standards (cont)**

**Unit title:** Housing Law for Advisors: Introduction to Security of Tenure

### **Evidence Requirements**

Candidates will need to provide evidence to demonstrate their Knowledge and/or Skills by showing that they can:

- ◆ outline the process for eviction
- ◆ outline the process for repossession
- ◆ identify relevant legislation

### **Assessment Guidelines**

Evidence may be presented as responses to multiple choice questions. Each candidate will be required to evidence that they can provide an accurate and clear understanding of the legislation affecting eviction and repossession. All knowledge points must be covered.

## Administrative Information

<b>Unit code:</b>	F1E6 33
<b>Unit title:</b>	Housing Law for Advisors: Introduction to Security of Tenure
<b>Superclass category:</b>	HE
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<b>Version:</b>	01

### History of Changes:

Version	Description of change	Date

**Source:** SQA

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SQA acknowledges the valuable contribution that Scotland's colleges have made to the development of Higher National qualifications.

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## **Higher National Unit specification: support notes**

**Unit title:** Housing Law for Advisors: Introduction to Security of Tenure

This part of the Unit specification is offered as guidance. The support notes are not mandatory.

While the exact time allocated to this Unit is at the discretion of the centre, the notional design length is 40 hours.

### **Guidance on the content and context for this Unit**

This Unit has been designed to reflect the requirements of the Scottish National Standards for Housing Information and Advice Services developed by Homepoint and communities Scotland for workers engaged in providing advice on a range of housing issues and, in particular, housing law advice in the specific areas of homelessness, security of tenure, repair and disrepair and housing-related financial issues. This Unit will form part of a suite of Units and qualifications based on these standards.

This Unit forms part of the PDA Housing Law Advice at level 6. It is designed to introduce candidates to the basic features and key legislation surrounding Security of Tenure.

### **Guidance on the delivery and assessment of this Unit**

The following should be covered:

#### **Outcome 1**

##### **Scottish Secure Tenancy**

This is the kind of tenancy issued by local authorities and Registered Social Landlords as of 30th September 2002. As the name implies, it is the most secure of tenancy types. The landlord's solicitor will need to persuade the Sheriff that it is reasonable to evict the tenant.

##### **Short Scottish Secure Tenancy**

This is a type of tenancy issued by the same landlords that issue Scottish secure tenancies. It can only be used in very limited circumstances and must last for at least six months. Depending on the circumstances it may revert to a Scottish secure tenancy after a year.

##### **Assured Tenancy**

Assured tenancies are now the most common type in the private sector. These kinds of tenancies are not as secure as Scottish secure tenancies, but do guarantee important rights for the tenant.

##### **Short Assured Tenancy**

A short assured tenancy is a type of assured tenancy with a specific end date. It must run for at least six months. If the landlord serves the correct legal notices before the tenancy begins and at the correct time as it reaches its end, then the tenant will need to leave the property.

##### **Regulated Tenancy**

Regulated tenancies are a type of private sector tenancy beginning before January 2nd 1989. This tenancy type is no longer common, but it is important to be aware of it because of the rights it grants to the tenant.

## **Higher National Unit specification: support notes (cont)**

### **Unit title:** Housing Law for Advisors: Introduction to Security of Tenure

The following groups of people have limited or no security of tenure and may require expert legal advice if under pressure to leave their accommodation:

- ◆ tenants with resident landlords
- ◆ clients living in hostels
- ◆ clients living in lodgings or bed and breakfast
- ◆ clients living in temporary accommodation
- ◆ clients living in student accommodation provided by an educational institution
- ◆ clients who are staying with friends or family

### **Outcome 2**

The essential elements of a tenancy in Scottish Law are:

#### **Parties**

This term means that there should be someone acting as landlord, and someone acting as tenant.

#### **Subjects**

The term 'subjects' means that there should be a physical property or subject that is being let.

#### **Rent**

There has to be some form of regular payment for occupying the property. Housing Benefit counts as payment of rent.

#### **Duration**

There must be an intention that the tenancy is to last for a reasonable period of time. If the tenancy agreement does not specify, a year will be assumed. The requirement that a tenancy has some duration is to avoid holiday lets and similar arrangements being seen as tenancies.

#### **Exclusive Possession**

A tenant needs to be able to show that there is some area that is theirs to exclusively occupy. This aspect is particularly contentious and legal advice will be needed to clarify if this is not obviously met. A tenant with her/his own door to a flat s/he lives in alone will have exclusive occupation. A tenant who lives in the landlord's backroom and shares all facilities probably has exclusive occupation of that room, but has less security of tenure because the landlord is resident. Someone who lives in a hostel with several beds to a room is unlikely to be able to show exclusive possession.

### **Outcome 3**

#### **Eviction**

In all cases where the client can be shown to be a tenant (even where there is no tenancy agreement) it will be illegal to evict her/him without a court order. It is also illegal to harass a tenant into leaving. In order to obtain a court order for repossession the landlord must raise proceedings in the Sheriff Court of the district in which the house is situated. The form of action is by way of summary cause.

#### **Possession**

Proceedings for recovery of possession may not be raised unless a notice of intention to take proceedings has been served on the tenant.

## Higher National Unit specification: support notes (cont)

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The date proceedings can be raised cannot be earlier than four weeks from the date of service of the notice. The notice of proceedings remains in force for six months from the date when proceedings could be raised and if proceedings are not raised within this period the landlord would need to begin the process again. The notice must be served on the tenant and any other qualifying occupiers.

It is important that all the requirements of statute have been met because failure to meet any of the requirements could render the whole action invalid. For example, landlords may fail to serve notice on qualifying occupiers.

The grounds of possession that are available to the landlord are Conduct Grounds or Management Grounds. It is important that 'conduct' is not simply considered as anti-social behaviour, but that conduct refers to the wider definition, meaning that the actions of other parties need to be considered.

Abandonment — tenants and landlords rights.

**All Outcomes:** the following information is relevant to all three Outcomes

There are three sources of law which govern housing rights:

- ◆ Statute
- ◆ Contract
- ◆ Common Law

#### Statute

Statute is the law passed by Parliament. It cannot be ignored or overridden and can be thought of as the bedrock of a client's rights. It will not always be immediately obvious which statute, or piece of legislation, applies to a client. This is why one of the key skills of housing advice is the ability to ask the right questions.

There are many Acts that set out a client's statutory housing rights.

Currently the most important, or most frequently referred to, are as follows:

- ◆ Housing (Scotland) Act 2001 and Homelessness etc. (Scotland) Act 2003
- ◆ Housing (Scotland) Act 1987
- ◆ Housing (Scotland) Act 1988
- ◆ Rent (Scotland) Act 1984
- ◆ Conveyancing and Feudal Reform (Scotland) Act 1970
- ◆ Mortgage Rights (Scotland) Act 2001

#### Contract

Statutory rights can be enhanced by rights given in a contract. For example, a client may have a contract in the form of a tenancy agreement, which allows her/him to keep a pet. A contract cannot weaken a client's statutory rights. For example, if a tenant agrees to sign a tenancy agreement for an assured tenancy which states s/he must leave at a fortnight's notice this should not be legally binding. This is because the law is clear that a tenant should not be required to leave without a Notice to Quit and Notice of Proceedings having been served and a court order obtained.



## Higher National Unit specification: support notes (cont)

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### Common Law

Common law refers to legal opinion and case law from the courts which interpret the legislation. It is often used by advisors and solicitors when arguing for a particular interpretation of the law, and can sometimes lead to the law being redrafted.

The following websites will be useful:

- ◆ [www.cab.org.uk](http://www.cab.org.uk)
- ◆ [www.scotland.shelter.org.uk](http://www.scotland.shelter.org.uk)
- ◆ [www.leavinghome.info](http://www.leavinghome.info)
- ◆ [www.ageconcernscotland.org.uk](http://www.ageconcernscotland.org.uk)
- ◆ [www.communitiesscotland.gov.uk](http://www.communitiesscotland.gov.uk)

Assessment may be in the form of a single question paper to cover all three Outcomes. Questions may be short answers or multiple choice format.

### *Opportunities for developing Core Skills*

There are no opportunities to develop Core Skills in this Unit.

### Open learning

This Unit may be delivered in an Open Learning or electronic format where appropriate.

### Candidates with disabilities and/or additional support needs

The additional support needs of individual candidates should be taken into account when planning learning experiences, selecting assessment instruments, or considering alternative Outcomes for Units. Further advice can be found in the SQA document *Guidance on Assessment Arrangements for Candidates with Disabilities and/or Additional Support Needs* ([www.sqa.org.uk](http://www.sqa.org.uk)).

## **General information for candidates**

### **Unit title:** Housing Law for Advisors: Introduction to Security of Tenure

This Unit provides you with an introduction to aspects of Security of Tenure which are relevant to those required to give housing advice as part of job role, in either a paid or voluntary position.

The Unit highlights the basic features of security of tenure for tenants and the main responsibilities and rights of the tenant. It also covers the responsibilities of the landlord and relevant legislation.

The Unit may be taken alone or may be taken as part of the PDA Housing Law Advice level 6. For assessment you will require to answer short answer questions, which may be multiple choice.

This Unit is developed from the Scottish National Standards for Housing Information and Advice Services developed by Communities Scotland.