

Higher National Unit Specification

General information for centres

Unit title: Housing Law for Advisors: Security of Tenure

Unit code: F1E7 34

This Unit is designed for those who provide advice on housing, particularly housing law, to service users, as part of their job in a housing and/or advice setting. Candidates may be working (or plan to work) in a paid or voluntary capacity in a housing and/or advice setting. The Unit provides knowledge and skills relating to issues of Security of Tenure.

This Unit forms part of the Professional Development Award Housing Law Advice level 7.

Unit purpose:

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

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

Credit points and level: 1 HN credit at SCQF level 7: (8 SCQF credit points at SCQF level 7*)

**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. However, it would be beneficial if candidates had some prior knowledge/experience in a housing or advice setting, or have previous training/qualifications in this field. This could be evidenced by the Unit *Housing Law for Advisors: Introduction to Security of Tenure*.

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: This Unit is assessed by two assessment instruments. Outcomes 1 and 2 may be assessed jointly by a series of questions, which may be multiple choice questions. Outcome 3 could be assessed by structured questions based on a case study.

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

Describe 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
- ◆ Legislative framework

Evidence Requirements

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

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

Assessment Guidelines

This Outcome may be assessed jointly with Outcome 2. Evidence may be presented as responses to specific questions, which may include 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.

Outcome 2

Explain the essential elements of a tenancy

Knowledge and/or Skills

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

Higher National Unit specification: statement of standards (cont)

Unit title: Housing Law for Advisors: Security of Tenure

Evidence Requirements

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

- ◆ explain the essential elements of a tenancy
- ◆ outline the legislative framework in relation to security of tenure
- ◆ describe the rights and responsibilities of landlords in the public and private sectors
- ◆ describe the rights and responsibilities of tenants in the public and private sectors

Assessment Guidelines

This Outcome may be assessed jointly with Outcome 1. Evidence may be presented as responses to specific questions, which may include multiple choice and should be done as a closed book exercise. Each candidate will be required to evidence that they can provide an accurate and clear understanding of the legislation affecting different types of tenancies in the public and private sectors in Scotland. All knowledge points must be covered.

Outcome 3

Explain the processes of eviction and repossession

Knowledge and/or Skills

- ◆ Legislative framework
- ◆ Owners/tenants rights/protection
- ◆ Landlords rights/protection
- ◆ Recovery of possession
- ◆ Proceedings for possession
- ◆ Abandonment
- ◆ Legal grounds for eviction /repossession
- ◆ Proceedings for eviction
- ◆ Illegal eviction and harassment including unlawful discrimination

Evidence Requirements

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

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

Assessment Guidelines

Evidence may be presented as responses to specific questions, which could be based on a case study. 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

Unit code: F1E7 34

Unit title: Housing Law for Advisors: Security of Tenure

Superclass category: HE

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Higher National Unit specification: support notes

Unit title: Housing Law for Advisors: 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 and qualifications based on these standards.

This Unit forms part of the PDA Housing Law Advice level 7 and is designed to provide candidates with the knowledge and skills required to give advice to service users, (eg tenants) on issues surrounding security of tenure. The Unit provides progression from the Unit *Housing Law for Advisors: Introduction to Security of Tenure*.

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.

Higher National Unit specification: support notes (cont)

Unit title: Housing Law for Advisors: Security of Tenure

◆ 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.

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.

Higher National Unit specification: support notes (cont)

Unit title: Housing Law for Advisors: Security of Tenure

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.

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.

Guidance on the delivery and assessment of this Unit

Much of this Unit may be delivered and assessed in a classroom/workshop-based situation. Where possible, input from experienced practitioners could be used to enhance the teaching. There will also be opportunities to encourage self study through the use of publications and websites.

For all Outcomes, the following information applies:

Higher National Unit specification: support notes (cont)

Unit title: Housing Law for Advisors: Security of Tenure

There are three sources of law which govern housing rights:

◆ 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.

◆ Common Law

Common law refers to legal opinion and case law from the courts which interprets 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
- www.scotland.shelter.org.uk
- www.leavinghome.info
- www.ageconcernscotland.org.uk
- www.communitiesscotland.gov.uk

Assessment of Outcomes 1 and 2 could be by one question paper to cover the knowledge and skills. This could include multiple choice and restricted response and should be completed under closed book conditions. For Outcome 3, assessment should be by responses to a series of structured questions based on a case study.

Higher National Unit specification: support notes (cont)

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Opportunities for developing Core Skills

There may be some opportunity to develop the Core Skills of Communication and Problem Solving but there is no automatic certification of any Core Skill.

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).

General information for candidates

Unit title: Housing Law for Advisors: Security of Tenure

This Unit aims to provide you with knowledge and skills on Security of Tenure which you may need for your job. It will be of use to you if you work in the Housing and Advice sectors and you require to give advice on a range of housing issues.

It may be taken alone or as part of the PDA Housing Law Advice level 7.

For assessment you will require to answer a series of questions for Outcomes 1 and 2. For Outcome 3, you will be given a case study with related questions.

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