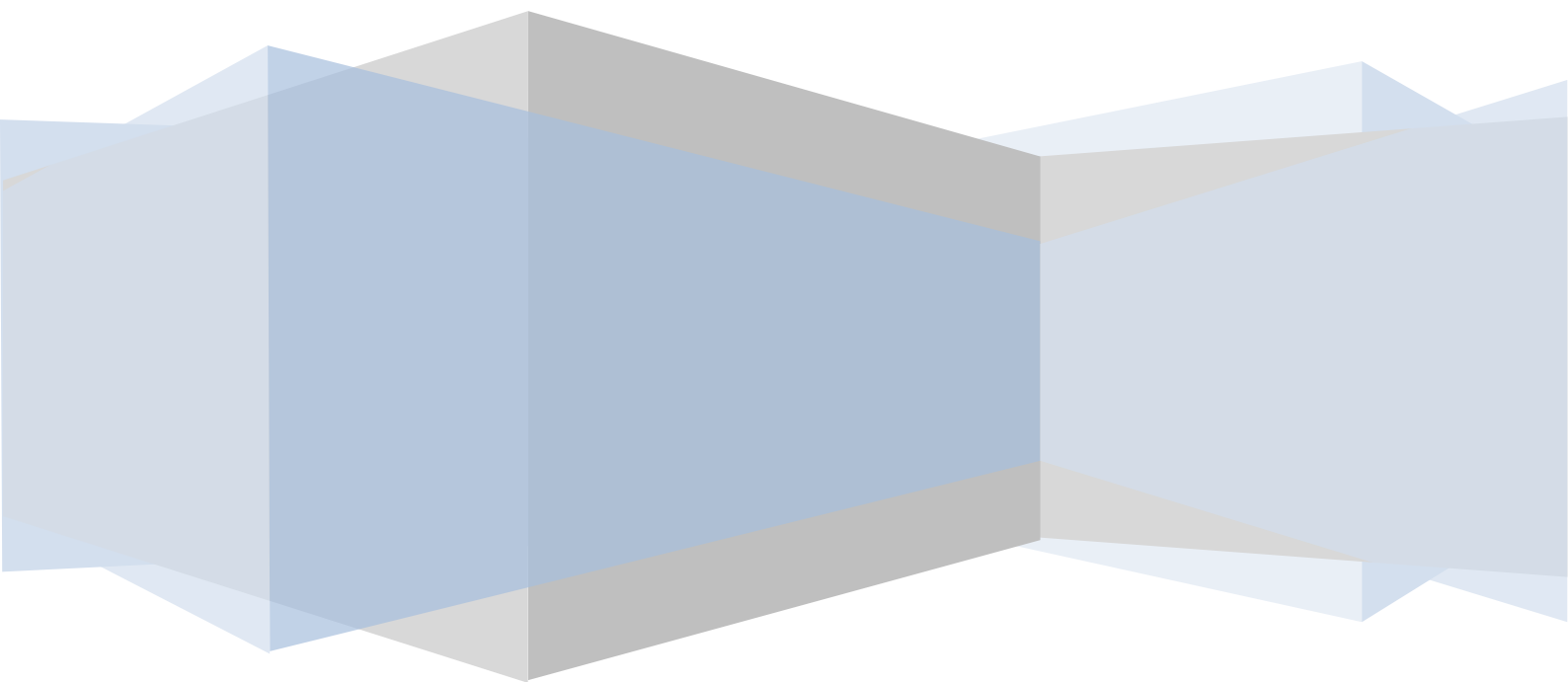




FORCED ACCESS POLICY

August 2023



All Policies are available on tape, in braille, and in translation into most languages. Please ask a member of staff if you would like this policy in a different format.

Date of Policy Review: August 2023
Date of Committee Approval: 15 August 2023
Date of Next Review: August 2028

SCOTTISH HOUSING REGULATOR STANDARDS	<p>STANDARD 1: The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.</p> <p>STANDARD 2: The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users, and stakeholders. Its primary focus is the sustainable achievement of these priorities.</p> <p>STANDARD 4: The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.</p> <p>STANDARD 5: The RSL conducts its affairs with honesty and integrity.</p> <p>STANDARD 6: The governing body and senior officers have the skills and knowledge they need to be effective.</p>
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1.0 CONTEXT

1.1 Cathcart and District Housing Association (CDHA) may require to gain entry to a property in certain circumstances. The Housing (Scotland) Act 2001 details the landlord's obligations and outlines the circumstances in which forcing access is permissible.

1.2 This Policy should be read in conjunction with the Rechargeable Repairs Policy, Gas Safety Inspection Policy, Electrical Safety Policy, Abandoned Properties Policy and Tenancy Repossession process.

2.0 AIMS

2.1 To ensure compliance with legislative requirements and best practice.

2.2 To outline the policy for dealing with instances of forced access and to minimise risk.

2.3 To ensure landlord obligations are satisfied in relation to damage caused as a result of a forced access.

2.4 To provide clear guidelines to staff and ensure consistency in approach.

3.0 DEFINITIONS

3.1 References are made in this policy to the following terms, defined as follows:

3.1.1 Tenant

The tenant or joint tenant(s) of the property, as named on the tenancy agreement.

3.1.2 Occupant

Anyone permitted access to the house by the tenant or joint tenant. This can include permanent household members, or visitors.

3.1.3 Pest control

A pest is a destructive insect or animal which has both human health and aesthetic implications. Pest control is the regulation or management of a species defined as a pest.

3.1.4 Emergency

Instances in which emergency repairs are required, or there are concerns for welfare (see 3.1.5 and 3.1.7 below)

3.1.5 Emergency Repairs

Any defects that put the health, safety or security of tenants, or anyone else, at immediate risk. Emergencies also include defects that can affect the structure of the building. Examples may include, but are not limited to suspected fire (or fire risk), flood, blocked or leaking main drain or soil pipe, serious water leak, serious roof leak, unsafe electrical fittings etc.

3.1.6 Reasonable Enquiries

The enquiries undertaken to contact the tenant or to ascertain their whereabouts. Examples may include but are not limited to enquiries via family, friends, neighbours, known contacts, employers, or agencies such as Police Scotland, Social Services, GP or other Health Services, Hospitals, or HM Prison Services, dependent on the individual circumstances.

3.1.7 Concerns for Welfare

Concerns about an individual's physical or mental health. Examples may include but are not limited to injury, a fall within property rendering the Occupant unable to answer the door, threat to life, self-harm, threat of physical violence, negligence, abuse etc. Concerns for welfare can apply to both humans (tenants, Occupants or other), and animals.

3.1.8 Public Utilities

Electricity, gas or water authorities.

3.1.9 Works (ref 4.7)

Investment or repair works within a tenanted property or the common parts of property aimed at bringing it up to Scottish Housing Quality Standards (SHQS), towards Energy Efficiency Standard for Social Housing (EESH) obligations; disposal, demolition, cyclical maintenance, or other regulatory requirement for either health and safety or effective asset management, as informed by regulatory changes, property survey, or life cycle investment. This could include but is not limited to repair/modernisation/replacement of windows, bathrooms, kitchens, heating or electrical safety systems, monitoring/surveying property conditions or common utility services, and any treatment programme identified in the case of prolonged water damage.

3.1.10 Survey

Inspection of property for purposes of ascertaining condition, informing the scope of planned works, verifying compliance with statutory obligations/asbestos management records, evaluating Energy Performance, and general sustainment purposes in line with tenancy agreement obligations.

3.1.11 Abeyance

Circumstances beyond landlords' control sometimes prevent the completion (or commencement) of a programme of planned works. In these circumstances works to bring relevant SHQS elements up to standard may be delayed or put into "abeyance" when people-related, behaviour-related, or social factors prevent them from being progressed. In such instances, to be considered as an abeyance, every reasonable effort must have been made to inform and explain to the tenant why the work is necessary, when it is being done and why their participation and cooperation is important. Landlords should be prepared to explain to the Scottish Housing Regulator that they have made such efforts if required to. In such cases, the SHQS abeyance might last as long as the individual's or individuals' tenancy or tenancies.

4.0 POLICY

4.1 General

4.1.1 Where circumstances allow, and in line with the terms of the tenancy agreement, CDHA will provide at least 24 hours' notice of forced access, in writing. Examples may include the undertaking of the annual gas service, fire detection and electrical safety servicing, to inspect any fixtures, and fittings or undertake routine repairs, or to undertake pest control works. In such instances the Tenant will have been given more than one opportunity to facilitate access, culminating in a legal letter (via CDHA Solicitors) confirming forced access.

4.1.2 CDHA reserves the right to access any unsecured property for the purpose of securing it, or its contents against vandalism or unauthorised entry. Such instances will be managed as an emergency repair.

4.1.3 CDHA will endeavour to ensure that forced access is undertaken using the most cost-effective means, and that damage is minimised, as appropriate to the urgency of the situation.

4.1.4 CDHA will endeavour to liaise with Police Scotland in advance of forced access in all cases where a potential risk has been identified, or where there is a concern for welfare. Risks will include the health, safety & wellbeing with respect to the tenant, occupants, surrounding residents, staff, contractors or animals within the property.

4.1.5 Forced access will be attended by no less than two CDHA staff members, with photographic evidence taken to record property contents and conditions at the point of entry. Evidence will be signed and dated by both parties and saved to the tenancy file.

4.1.6 The approval of the Director/Senior Manager is required to proceed with forced access in all instances.

4.2 Emergency Repairs

4.2.1 In an emergency CDHA has the right to make forcible entry to the property without notice, as per the terms of the Tenancy Agreement. This includes forcing access for the completion of emergency repairs and forcing access to an adjacent property in the course of completing major works or improvements. Reasonable enquiries will be undertaken where possible, depending on the urgency of the situation, in an attempt to contact the tenant prior to forcing access.

4.2.2 The tenant will not be held responsible for the costs associated with forced access on emergency repairs grounds unless it transpires that the emergency occurred as a result of the tenant's negligence (e.g. leaving a tap running, leaving property unsecured) or unacceptable conduct (e.g. vandalism, wilful damage, irresponsible key management, tampering with pre-payment utility meters etc.)

4.2.3 In instances of negligence, CDHA will recoup the cost of repairing the damage in line with the terms of the Rechargeable Repairs Policy.

4.2.4 In instances of unacceptable conduct, CDHA will recoup the cost of repairing the damage in line with the terms of the Rechargeable Repairs Policy AND will take further action for breach of tenancy.

4.3 Concerns for Welfare

4.3.1 In an emergency CDHA has the right to make forcible entry to the property without notice, as per the terms of the Tenancy Agreement. This includes forcing access where there are concerns for welfare.

4.3.2 The tenant will not be held liable for the costs associated with forced access on concerns for welfare grounds unless it transpires that the emergency occurred as a result of the tenant's negligence (e.g. absence from property and leaving vulnerable occupant or pet unattended) or unacceptable conduct (e.g. assault on occupant within the property).

4.3.3 In instances of negligence, CDHA will recoup the cost of repairing the damage via its Rechargeable Repairs Policy. Tenants will be considered to be liable in the event their absence from the property was due to detainment via Police Scotland or HM Prison Service. Tenants will not be considered to be liable in the event their absence was due to hospital admittance, so long as the hospital admittance was not the result of criminal activity on their part. CDHA reserves the right to undertake reasonable enquiries to verify details of this nature.

4.3.4 In instances of unacceptable conduct, CDHA will consider both recouping the cost of repairing the damage via its Rechargeable Repairs Policy AND taking further action for breach of tenancy and/or anti-social behaviour.

4.4 Public Utilities

4.4.1 Utility companies have statutory rights of access to a property for the purpose of accessing public utilities. These rights can be extended to CDHA by utility companies to allow access to installations which rely on the use of a public utility.

4.4.2 If access is forced by an agency responsible for managing and maintaining public utilities the tenant will not be held liable for the cost of the damage caused unless access was required as a result of the tenant's negligence (for example: leaving gas on, failure to pay bills resulting in disconnection etc).

4.5 Police Access

4.5.1 Where Police Scotland force access to a property in possession of a warrant, the tenant will be held liable for the cost of forced access, lock change and repairing any damage. The tenant will be advised to direct any challenges concerning the validity of the warrant, or forced access to Police Scotland.

4.5.2 Where Police Scotland force access to a property in error (e.g. incorrect address), or without possession of a warrant (e.g. threat to life/concern for welfare), the tenant will not be held liable for the cost of repairing the damage. CDHA reserves the right to pursue Police Scotland for the cost of forced access, lock change, and repairing any damage in such instances.

4.6 Gas Servicing

4.6.1 CDHA will work with the tenant and provide multiple opportunities to gain access for the Annual Gas Service. In the event the tenant fails to cooperate, CDHA is empowered to force access to satisfy its statutory obligations. This process will be managed in adherence to CDHA's Gas Safety Inspection Policy.

4.7 Major Works/Improvements

4.7.1 CDHA will work with the tenant and provide multiple opportunities to gain access to the property for the completion of works or surveys.

4.7.2 Where planned works are required to meet Tolerable Standard or other statutory obligation (for example SHQS, EESSH, electrical, fire, legionella), or for the purposes of governance and performance reporting to the Scottish Housing Regulator, and the tenant refuses access this will be captured in writing and formally recorded as an abeyance.

4.7.3 Abeyances will be reviewed every six months.

4.7.4 Where possible, works will subsequently be carried out at the same time as any future Annual Gas Service, or forced access on any other grounds.

4.7.5 In instances where the tenant refuses access or fails to engage, CDHA may seek to undertake a tenancy sustainment assessment and may initiate joint working with external agencies to assess any unmet support needs, subject to individual circumstances. Upon conclusion, CDHA will consider the appropriateness of initiating further action for breach of tenancy, up to and including recovery of possession.

4.7.6 Where tenants refuse access after contractor fabrication of kitchen/windows etc. CDHA may seek to recover any fees or costs incurred for the Contractor's time or materials etc.

4.7.8 In the event that unplanned / emergency access is required in the course of Major Works or Improvements the provisions of 4.2 above will apply

4.8 Abandoned or Unsecured Properties & Acts of Tenancy Repossession

4.8.1 Section 17 of the Housing (Scotland) Act 2001 empowers the landlord to enter the house at any time for the purpose of securing the house and any fittings, fixtures, or furniture against vandalism where they believe that the house is unoccupied and the tenant does not intend to occupy the house.

4.8.2 Section 18 of the Housing (Scotland) Act 2001 allows the landlord to serve notice where the landlord has reason to believe the house is unoccupied. Upon expiration of the notice, the landlord is entitled to force access and take possession of the property. This process will be managed in adherence to CDHA's Abandoned Properties Policy.

4.8.3 Where CDHA has carried out a forced entry and lock change, CDHA will seek to charge the tenant all costs associated with forced access and, where applicable, lock change, in line with the terms of the Rechargeable Repairs Policy.

4.9 Access to non-CDHA properties

4.9.1 In the event access is required to non-CDHA properties (owner occupier, private let, HMO etc.) the default course of action will be to apply for a court decree for access.

4.9.2 In an emergency situation, CDHA will liaise with the relevant emergency services (Police/Fire Service) to facilitate forced access.

5.0 FEEDBACK AND COMPLAINTS

5.1 Feedback

5.1.1 CDHA tenants and other customers may provide feedback about this document by emailing info@cathcartha.co.uk

5.2 Complaints

5.2.1 Tenants with a grievance arising from a forced access incident will be considered in accordance with CDHA's Comments and Complaints Policy.

5.2.2 Once the Association's Comments & Complaints Policy is exhausted, there is a right of appeal to the Scottish Public Services Ombudsman (SPSO). As the SPSO is unlikely to comment on matters of a legal nature, a review will focus on the proper application of the Association's policy, rather than the legalities of forcing access.

6.0 REVIEW

6.1 This Policy will be reviewed every 5 years, or sooner, subject to a change in legislation or circumstance.

6.2 The Policy, in parts, attempts to summarise current legislation. In any case of conflict between the two, legislation will always preside.

7.0 DELEGATED AUTHORITY

7.1 Delegated authority is granted by the Management Committee to the Director and Staff to implement this Policy and the associated procedures.

**Cathcart & District Housing Association
Appendix 1: Equality Impact Assessment**

Name of policy to be assessed	Forced Access Policy	Is this a new policy or a review?	New
Person completing the assessment	Grahame Cairns, Housing Maintenance Manager	Date of Assessment	25.07.23

1. Briefly describe the aims, objectives, and purpose of the policy	When and where necessary is to after suitable notices have been provided advise tenants that for the Association to comply with Regulation and Health Safety Guidance, will access the property to carry out these duties. The tenant will be recharged for this additional work
2. Who is intended to benefit from the policy? (e.g. staff, applicants, tenants, staff, contractors)	The policy will ensure the Association complies with regulation and guidance and tenants will ensure their home is safe
3. What outcomes are wanted from this policy? (e.g. benefits to customers)	To ensure our tenants are safe and the Association meets in obligations as set by the Scottish Government or other Regulatory bodies.

4. Which protected characteristics could be affected by the policy (tick all that apply)		
Minority Ethnic: X		Age:
Gender:		Religion/belief:
Disability: X		Transgender:
Sexual Orientation:		Maternity/Pregnancy:
Marriage/civil partnership:		Socio-economic status:
5. If the policy is not relevant to any of the protected characteristics listed in part 4. State why and end the process here.		
There were no adverse impacts identified for some groups with protected characteristics. Any differential impacts can be adequately mitigated by existing procedures and operational practice.		
6. Describe the likely positive or negative impacts the policy could have on the groups identified in part 4.	Positive Impacts	Negative Impacts
	Their homes will be safe and compliant	Minority Ethnic – letters are written in English and could be restrictive for those where English is not the person's first language. Disability – letters are written in English and could be restrictive for those with learning disabilities.
7. What actions are required to address the impacts arising from this assessment?	1. Letters will be written in plain English and a translated version or another format will be provided where needed	

Signed: Grahame Cairns

Date: 25.07.23