

# Housing Services Succession and Assignment of Tenancy Policy

Department	Housing Services
Responsible Person	Director of Housing
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## 1. Definitions

<p><b>Statutory Succession</b></p>	<p>The rights of secure council tenants enable one succession to a secure tenancy in England, as governed by sections 88 and 89 of the Housing Act 1985. If the eligibility criteria is met, one statutory succession is permitted to a surviving spouse/ civil partner/ common-law partner, or a member of the deceased tenant's family.</p> <p>Where a tenancy was originally a joint tenancy and one of the joint tenants dies or surrenders their interest, this counts as a succession and no further statutory successions are permitted in law.</p>
<p><b>Discretionary Offer</b></p>	<p>A discretionary offer is the not the passing of a tenancy by way of succession. It is an offer of a new council tenancy that is made at the discretion of the Landlord.</p> <p>Discretionary offers are only considered in certain circumstances i.e. those left in occupation after the death of the tenant who do not qualify for statutory succession, but that have a significant housing need. The discretionary offer panel reviews and decides if discretionary offers will be granted or refused.</p>
<p><b>Office of the Public Trustee</b></p>	<p>The public trustee primarily performs the role of trustee of deceased's estates where there is no appointed executor, or the executor declines to act and there is no other appropriate person/ next of kin.</p> <p>In such cases, the Housing Officer would look to serve Notice to Quit on the Office of the Public Trustee to bring a secure council tenancy formerly and legally to an end.</p>
<p><b>Assignment</b></p>	<p>Assignment is the legal term used to describe the act of a tenant legally passing their secure tenancy to another eligible person or "assignee".</p>

## 2. Legislative Framework

Housing Act 1985 (as amended)

Housing Act 1996, Part VI and Part VII

Matrimonial Causes Act 1973

Civil Partnership Act 2004

Matrimonial and Family Proceedings Act 1984, section 17

The Children Act 1989

### **3. The Policy**

- 3.1 The Council is experiencing increasing challenges in relation to its housing stock. It is having to balance the pressures of high numbers of households on the housing register and all the social problems that come with poor housing, with an ambitious regeneration programme and a desire for existing communities and households to be stable by facilitating families to inherit tenancies.
- 3.2 This policy replaces the previous Council policy, agreed by Cabinet in 2016.
- 3.3 This policy therefore intends to ensure the Council can maximise social housing stock for the benefit of those households most in need.
- 3.4 This policy outlines the Council's approach to:
- Statutory Successions;
  - Statutory Successions where there is under-occupation;
  - Assignments; and
  - Discretionary Offers where tenants remain in the property but there is no statutory right to succeed.

### **4. Statutory Succession**

- 4.1 A tenancy does not automatically end when the tenant dies. A tenancy is regarded as property and may therefore be passed on to, for example, a family member through the process of succession.
- 4.2 The rights of secure council tenants enable one succession to a secure tenancy in England, as governed by sections 88 and 89 of the Housing Act 1985. For full provisions and definitions, please see s.86A, s.89 and s.90 of the Housing Act 1985 (as amended).
- 4.3 The Council's tenancy conditions paragraph 3.4 currently states:

*When you die, your tenancy may be transferred if there is a person who is entitled to succeed (take over) the tenancy, as long as you did not take over your tenancy by succession or were assigned it (that is, it was transferred to you) by someone who had taken the tenancy over by succession previously.*

*A person can take over a tenancy by succession if:*

- *he or she has lived with you continuously for the 12 months before your death;*
- *the property is their main home at the time of your death; and*

- *the tenancy is only passed on once. If you have succeeded to a tenancy (for example, because the previous tenant died, or because you were a joint tenant and have become the sole tenant), your partner and relatives will not have the right to take over your tenancy by succession.*

4.4 If there is more than one person entitled to succeed, the spouse will be preferred, or in the case of two or more members of the tenant's family, if they cannot agree, it is up to the landlord to select the successor. The following criteria will be used:

1. Partner
2. Son or Daughter
  - a) Length of occupancy and then, if necessary,
  - b) Age as a criteria.
3. Brother or Sister
4. Parents
5. Grandparents/Grandchildren
6. Uncle or Aunt or Nephew or Niece.

4.5 Where there is no person entitled to succeed, the secure tenancy comes to an end, although it may be that a common law tenancy still legally has to be ended by service of a Notice to Quit , and the service of this Notice will depend on matters like whether or not a Will was left by the deceased.

## **5. Right to Succeed under statute but property is under occupied or adapted**

5.1 Social housing is a scarce resource. Given the extent of demand for larger and adapted or accessible homes, the Council reserves the right to request that those other than spouses or civil partners who succeed to a secure tenancy move to more suitable accommodation where:

- a succession right has been accepted, but with doing so, the property is under occupied thus the home is larger than the Council's allocations scheme assesses their household needs; and/or
- the home is sheltered accommodation or designed or adapted to be accessible to a disabled person and nobody in the household succeeding to or being granted a tenancy needs this sort of accommodation; and/or
- accommodation is available for people who are down-sizing from larger accommodation.

5.2 Where a succession right has been accepted but by doing so the property is deemed unsuitable for one or all of the aforementioned reasons, the Council will take steps to repossess the property and offer an alternative property to the successor. In such cases, a Notice of Seeking Possession will be served as required by law, at least 6 months after the Council is made aware of the tenant's death, but within 12 months. The Notice of Seeking Possession will

specify Ground 15A, as well as any other Grounds, which may be relevant. Please see the Housing Act 1985 for appropriate grounds for seeking possession.

## **6. Assignments**

- 6.1 Assignments in general are prohibited under the Housing Act 1985 (see section 91). However, the Act permits assignments in certain circumstances, such as following a mutual exchange (see policy on Mutual Exchange) and with a court order under the following Acts:
- section 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings),
  - section 17(1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce)
  - paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents)
  - Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7, to the Civil Partnership Act 2004 (property adjustment orders in connection with civil partnership proceedings or after overseas dissolution of civil partnership, etc).
- 6.2 The Act also states that a secure tenancy can be assigned to a person who would be qualified to succeed the tenant if the tenant died immediately before the assignment (section 91(3)(c)). If a tenancy is assigned under this section, it qualifies as a succession (section 88(1)(d)).

## **7. Circumstances where there are no automatic rights of succession – ‘Discretionary Offer’**

- 7.1 Following the tenant’s death if a person is left in occupation without a right to succeed then the Council may consider granting a new tenancy in certain circumstances (or a tenancy of alternative property through the allocation process if the current property would be under occupied or not be suitable to meet the current need) at the discretion of the Director of Housing (or nominated Heads of Service) (or equivalent).
- 7.2 The decision to grant a new tenancy in these circumstances will be made taking in to account the needs of the household and the local housing demand. Consideration will also be given to the criteria for homelessness assistance and the allocations policy as set out in Housing Act 1996, Part VI and Part VII.
- 7.3 If a discretionary offer is made, this is done by way of a new tenancy, not by legal succession of the existing tenancy, which will have ended upon the tenant’s death. A successful applicant will be granted a new Introductory Tenancy in the first instance.

- 7.4 Discretionary offers may also be made when assessing housing need in partnership with the council's Children's Services.

## **8. Decisions/Appeals**

- 8.1 Decisions and appeals will be decided upon by the Strategic Director of Housing, who has had no prior involvement with the original decision-making, ensuring impartial consideration.

## **9. Equality Impact**

- 9.1 Applying this policy consistently and sensitively will ensure that all tenants and their household members in Council owned homes who have protected characteristics and/or are deemed vulnerable for other reasons receive services that are based on a recognition of their vulnerability. The Council will make all appropriate adjustments to the services they receive in order to mitigate any potential negative impacts on them and to ensure they receive fair and equal treatment from the Council as their landlord.