



# **Succession Policy**

**Issued by Housing & Communities**

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## **Succession Policy Quality Record**

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## **1. Introduction**

- 1.1 When a Council tenant dies it may be possible for the spouse, civil partner or certain other family members to take over the tenancy – this is known as succession. The rights to succeed to a secure tenancy are set out in the Housing Act 1985.
- 1.2 This Policy sets out Nuneaton and Bedworth Borough Council's position regarding the rights of a spouse, civil partner or other family members to take over a tenancy following the death of a tenant.
- 1.3 The Policy will outline the process of how the Council will deal with requests for succession and will also outline the criteria in which an applicant will succeed to a tenancy.

## **2. Purpose**

- 2.1 The purpose of this policy is to:
  - ensure the succession and assignment of council owned properties complies with legislation, statutory guidance and good practice
  - treat all applicants for housing fairly, whilst being sensitive to their particular circumstances.
  - make the best use of housing stock
  - provide high quality services which are clear and understandable to those who use them and help applicants/tenants understand the operation of the Succession Policy.

## **3. Scope**

- 3.1 This policy applies to tenants that hold a secure tenancy with Nuneaton and Bedworth Borough Council.

## **4. Responsibility**

- 4.1 The Landlord Services Manager retains the overall responsibility for the implementation of this Policy
- 4.2 The Landlord Services Manager and Landlord Services Team Leader are responsible for the operational delivery of this policy and the associated procedures. This includes responsibility for monitoring and reviewing, staff awareness and training, policy development and communication to tenants.

## **5. Legislation & Guidance**

- 5.1 Section 87 of the Housing Act 1985 sets out who may succeed to a secure tenancy. The legislation relating to succession to secure tenancies has been changed significantly by the Localism Act 2011 and is due to change again shortly due to further changes made by Schedule 8 to the Housing and Planning Act 2016 which is yet to come into force. This has made the rules very complicated.
- 5.2 There can only be one succession to a secure tenancy, so if the deceased tenant was themselves a successor to the tenancy, there are no further succession rights in law. A person is a successor if:

- a) they gained the tenancy via a will or intestacy of a previous tenant;
- b) they gained the tenancy by surviving a previous spouse or civil partner who was a joint tenant; (when there is a joint tenancy and one of the tenants who is already a successor does, the other remaining tenant still gets passed the joint tenancy by survivorship – this counts as a succession)
- c) they became a tenant as a result of an assignment (not mutual exchange);
- d) they mutually exchanged to the property and they were a successor at the address that they assigned (old address).

5.3 For a person to qualify to succeed to a tenancy he or she must occupy the property as his or her only or principal home.

#### **5.4 Where tenancy granted before 1 April 2012**

5.4.1 Where a secure tenancy has been granted before 1 April 2012, then a person will be qualify to succeed to the tenancy where they are either:

- the sole tenant's spouse or civil partner or a person living with the tenant as their spouse or civil partner; or
- another member of the sole tenant's family and has resided with the tenant for twelve months ending with the tenant's death

5.4.2 Family members include parents, grandparents, children, grandchildren, brothers, sisters, aunts, uncles, nephews, nieces. Step and half relatives are treated as blood relatives.

5.4.3 This rule will be changed once Schedule 8 to the Housing and Planning Act 2016 comes into force, upon which there will no longer be any statutory rights of succession for other family members for tenancies granted before 1 April 2012.

#### **5.5 Where the tenancy granted after 1 April 2012**

5.5.1 Where a secure tenancy has been granted after 1 April 2012, then a person will only be qualified to succeed to the tenancy where they are either the sole tenant's spouse or civil partner or a person living with the tenant as their spouse or civil partner. There are no longer any statutory rights of succession for other family members.

5.5.2 Where a Secure tenant dies and their spouse or civil partner lived at the property as their only or principle home (whether or not a joint tenant), the tenancy automatically vests in the spouse on death, subject to them qualifying as above. A person living with a tenant as husband or wife or a civil partner is treated as spouse. Accordingly, they do not need to have resided with the tenant for 12 months before the death.

#### **5.6 Changes to be brought in by the Housing and Planning Act 2016**

5.6.1 Until the coming into force of Schedule 8 of the Housing and Planning Act 2016, if a tenancy started on or before 31st March 2012 and the tenant passes away, another member of the tenant's family, who has also lived at the property for the preceding twelve months, may qualify to succeed, if there is no spouse or partner.

5.6.2 Once Schedule 8 of the Housing and Planning Act 2016 comes into force, even for tenancies which were granted before 1 April 2012, only the spouse or civil partner (or

a person living with the deceased as a spouse or civil partner) are permitted to succeed to a tenancy.

- 5.6.3 It has always been the case since 2012 that all tenancies commenced after 1 April 2012, only the spouse or civil partner (or a person living with the deceased as a spouse or civil partner) are permitted to succeed to a tenancy. If there is no surviving spouse or partner, a succession will not take place.
- 5.6.4 In circumstances where there is more than one person who claims to qualify to succeed the tenancy and the parties cannot agree, the matter will be referred to the Landlord Services Manager for consideration. In the event of competing claims for succession, an application may need to be made to the County Court.
- 5.6.5 If the accommodation is larger than is reasonably required by the successor who is not the deceased tenant's spouse, then the Council can seek possession under Ground 15A of Schedule 2, Part III of the Housing Act 1985. The Council will work with the successor to seek smaller, more suitable alternative accommodation. Every effort will be made to find accommodation that the successor will be happy to move to. However, if the successor refuses to move or does not apply for alternative accommodation, then the Council has the option of regaining possession of the property if an agreement cannot be reached.
- 5.6.6 Upon a succession occurring under a statutory right, no new tenancy is created (as the existing tenancy is in effect taken over by the successor and as such the existing rent charge will continue to apply to the successor).

## **6. Civil Partnership Act 2004**

Schedule 8 Section 41 of the Civil Partnership Act has amended the Housing Act 1985 to allow succession to persons who have been living with the deceased tenant as a civil partner or as though they were civil partners. There is no requirement for a civil partnership to have taken place.

## **7. Operational principles**

- 7.1 The Council will exercise the statutory right given to secure tenants under the Housing Act 1985, amended Localism Act 2011 and Housing & Planning Act 2016 to pass on their tenancy following their death.
- 7.2 Where possible, the Tenancy Services team will investigate and respond to an application for succession within 10 working days of a written application.
- 7.3 The successor succeeds to the tenancy, not the property. A successor who is the joint tenant, spouse or civil partner of the deceased will not be requested to move to a different property. There may be however, instances where any other successors may not be offered a tenancy at the same property.
- 7.4 An application by a person qualified to succeed to the tenancy must provide formal proof of residency at the property. This must cover a period of 12 months prior to the death of the tenant. Formal proof may constitute benefit documentation, documentation submitted by the tax office, pay slips, medical documentation.
- 7.5 A successor will take on the original terms of the tenancy terms and obligations of the original tenancy agreement (including the payment of any rent arrears owed).

**8. Appeals**

- 8.1 Any person who is dissatisfied with a decision made concerning their application for succession should discuss the matter in the first instance with the Landlord Services Team Leader. If they are still dissatisfied, then the complaint will be dealt with through the Council's complaints policy.

**9. Review date**

- 9.1 Every three years or on the introduction of new legislation, regulation or good practice guidance.