

PROCESS GUIDANCE

LOCAL AUTHORITY HOUSING MANAGEMENT

March 2014

Succession

www.portsmouth.gov.uk

For queries about this guidance please contact Kate English
(business officer)

Telephone 023 9283 4887

Email kate.english@portsmouthcc.gov.uk

1. INTRODUCTION

1.1 The intention and scope of this document is to explain the minimum legal rights of secure tenants in respect to Succession, give guidance to staff in deciding how succession rules should be applied, and where discretion can be considered when no legal right exists.

1.2 In brief **Succession** is when a tenant dies and someone else takes over the tenancy

1.3 The basis of this policy is the Housing Act 1985, the Civil Partnership Act 2004 and the Localism Act 2011. Extracts from all three are set out as appendices.

1.4 Generally, there can be only one succession to a tenancy, with the succession rules for periodic secure tenancies depending on when the tenancy commenced:

2. LIST OF KEY WORDS

2.1 For clarity the following key words which are used in this document are defined:

- **Secure tenancy**
 - Was granted by the local authority to the named tenant
 - Is occupied by those tenant(s) at their principal home
- **Previous tenant** - tenant who is passing on the tenancy by succession
- **Potential successor** - person who may qualify to succeed to a tenancy
- **Successor** - someone who succeeds to a tenancy by succession
- **Principal Home** - Main home in which someone is living
- **Under-occupation** - too many bedrooms for the number of occupants
- **Spouse** - the wife or husband of the tenant
- **Civil partner** - same sex couple who have undertaken a civil partnership ceremony
- **Family Member (Pre-April 2012 tenancies)** - someone who has lived with the previous tenant for at least 12 months prior to the death of the previous tenant, where their relationship to their previous tenant was as their:
 - Son /Daughter or step-son/daughter
 - Father/Mother
 - Brother/Sister
 - Grandchild
 - Aunt/Uncle or Niece/Nephew
- **PLAN** - Acronym, a decision making process that ensures decisions are Proportionate, Legal, Accountable and Necessary.

- **Special Accommodation** - sheltered housing, a disabled persons unit, or properties where significant adaptations have been undertaken

3. SUCCESSION

3.1 A succession occurs when a tenant dies and someone carries on the tenancy in their place. After one succession has taken place, no subsequent successions can occur

3.2 When succession occurs a new tenancy is not started as the person who takes over the tenancy simply continues the existing tenancy in a new name

3.3 The successor takes on the "benefits and burdens" of the existing tenancy. This means they are, for example, responsible for any outstanding housing account charges.

3.4 The successor has the same rights as a secure tenant, except for the right to pass on the tenancy by further succession

3.5 Only one individual can take over from the previous tenant; it is not possible to have 'joint tenancy' succession and no subsequent joint tenancies can be granted where succession has taken place as this could create the possibility of further succession or survivorship.

3.6 A legal right to succession only exists if:

- There is a secure tenancy; and
- No succession has already occurred on that tenancy; and
- **Pre-April 2012 Tenancies** - the potential successor is the tenant's spouse, civil partner or family member (defined by 1985 Housing Act), and they have been using the property as their only or principal home and in the case of a family member resided in the property for the previous 12 months. (1985 Housing Act); or
- **Post- April 2012 Tenancies** - The potential successor is the spouse or civil partner or those living with tenants as if they held these titles and occupying the property as their only or principal home.(2011 Localism Act)

3.7 A succession is to a tenancy and not necessarily to the particular property occupied by the previous tenant. (see appropriate sections on under-occupation and special accommodation)

- A legal right to the property exists only to spouse and civil partner
- No automatic right to the property exists if it is deemed special accommodation (sheltered or disabled persons units) and these facilities are no longer required by the potential successor

- No automatic right to the property exists for potential successors who are family members

4. CLAIMS FOR SUCCESSION

4.1 A claim for succession can be emotive and will need to be handled with tact and sensitivity. It may involve speaking to people feeling grief at the loss of a close relative and worried about losing their home. Reassurance can be given to long term family members that it may be prudent to wait until after the funeral has taken place before starting detailed discussions with family members about their long term housing situation. However, it may also be necessary to assist individuals to apply for Housing Benefit to cover interim use and occupation charges to avoid unnecessary debt accruing.

4.2 When an occupier is in a succession situation, the most important thing to establish is whether a legal right to succeed exists. If there is no legal right, then the offer of the property in question or alternate accommodation is done so purely on a discretionary basis and the Housing Service will be able to seek a court order to remove any person with no legal right to a tenancy. As highlighted above the things to consider are:

Has a succession to this tenancy already occurred?

Yes - No legal right exists to succession regardless of who the claim is from and when the tenancy commenced

No - A legal right may exist dependent on who the claim is from and when the tenancy commenced

Claim is from spouse, Civil partner or joint tenant - This is straightforward as they have an automatic legal right to succession

Claim is from a family member -

Tenancy commenced after 1st April 2012 - No legal right to succession exists regardless of status.

Tenancy commenced prior to 1st April 2012 - These need to be verified to ensure that they are from a 'family member' within the meaning of the Housing Act 1985.

5. SUCCESSION AND UNDER OCCUPATION

5.1 Succession is to a tenancy and not always to the home of the former tenant.

5.2 The introduction of the size criteria restrictions to Housing Benefit regulations brought about by the Welfare Reform act 2011 and introduced in April 2013,

reducing the amount of Housing Benefit dependent on the number of bedrooms required by a household has made under-occupation a more pertinent issue.

The City Councils Allocation policy was amended in April 2013 to reflect the same accommodation standards and Housing Benefit.

5.3 However, if a spouse or civil partner succeeds to a tenancy they are entitled to succeed to the property regardless of the size. If under-occupation will occur, then a discussion should still be held with the potential successor regarding the suitability and affordability of remaining in the property.

- If the potential successor in this circumstance wishes to remain, then the Housing Service will have no legal recourse and succession will occur. (A full financial assessment should be made to establish the tenancy will be financially sustainable)

- If the potential successor wishes to move to a more suitable property then this should be agreed and arranged through the allocations process. (An application for a Discretionary Housing Payment may be appropriate to help with rental liability in the interim)

5.4 If the claim for succession is from a family member (pre-April 2012 tenancies) no automatic right to the property exists and the issue of under-occupation should be fully investigated.

The right of a potential successor to remain will depend on the extent of under-occupation. However, the definition of under-occupation in the Housing Act 1985 is not precise: - **"The accommodation is more extensive than reasonably required"**. As brief guide, if under-occupation is by more than one bedroom then this should be considered as more extensive than reasonably required. If the under-occupation will only be by one bedroom then further factors should be considered.

The factors that will be taken into account by the courts should possession of the property be sought and should therefore be considered by the Housing Service aside from the extent of under-occupation are:

- The age of the tenant
- The period during which the tenant has occupied the dwelling housing as his only or principal home, and
- Any financial or other support given by the tenant to the previous tenant.

Thus it is not possible to give exact guidance on how to deal with under-occupation as every case will be different. Offices should use PLAN in making decisions on how to proceed and should also consider supplementary factors such as:

- Demand for property type - Is the property in high demand with those on the waiting list and therefore in allowing under-occupation is this best use of our stock?
- Affordability - Will the potential successor be subjected to an under-occupation deduction from any Housing Benefit award which they may not be able to afford? Is the potential successor in sustainable long-term employment? Is the tenancy financially sustainable?
- Length of under-occupation - Will the potential successor only be deemed to be under-occupying for a short-period of time?

If a potential (family member) successor refuses to consider moving to more suitable accommodation, how to proceed should be discussed with an Estate/Area Manager.

5.5 Where under-occupation is created or worsened by succession from a Housing Benefit perspective, then a 52 week protection from the under-occupation deductions will be awarded.

5.6 Where no legal right to succession exists, the offer of a tenancy is done so on a discretionary basis or via the normal allocations process and therefore under-occupation by 1 bedroom should only be allowed in exceptional circumstances and under occupation by 2 or more bedrooms should not be considered.

6. SUCCESSION AND SPECIAL ACCOMMODATION

6.1 Special accommodation is treated differently to general needs housing.

6.2 If, on the death of the former tenant, the need for special accommodation has ended, the successor might not be granted the tenancy of that particular property. The decision will depend on the degree of demand for that type of property - for example, a disabled persons unit.

6.3 Where the same legal rights to succession apply, the ability to seek possession of these property types if suitable alternative accommodation is available is strengthened by additional grounds contained within the Housing Act 1985.

6.4 Cases of this nature should be discussed with Housing Options and Estate/Area Managers to decide the most appropriate course of action.

7. APPLYING DISCRETION TO SUCCESSION CASES

7.1 The policy of the Housing Service on succession is more flexible than the minimum legal requirements. In practice this means someone may still be offered a tenancy even when they are legally not entitled to succeed.

7.2 The Housing Service will take the full circumstances of any resident left in occupation into account with the Allocation Policy and property demand when applying discretion.

7.3 Having established that no legal right to succession exists there will be a need to establish the circumstances of any person '**attempting**' to claim succession

- Did they contrive the situation in order to obtain a council tenancy? (E.g. leave undesirable accommodation to move into a parent's house shortly prior to death)
- Would they have been rehoused anyway had they applied before the death of the previous tenant?
- Does the decision not to award a tenancy give the individual priority need through the allocations process?
 - o If the person would be unlikely to be housed should they approach housing options then it is unlikely we would apply discretion.

7.4 Officers should then use PLAN, in conjunction with their local managers and advice from Housing Options in determining whether to apply discretion and award a tenancy. However, if this would result in under-occupation, then the offer should normally be for more suitable accommodation.

7.5 If a failed successor refuses to leave a property or to move to more suitable accommodation, then possession of the property can easily be sought through the courts.