



# SUCCESSION

## Policy

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Reason for change</b>
1	September 2018	Kate Ryan	Final Draft
	09.10.2018	Alison Scott (on behalf of Estate Management Services)	Agreed & Accepted
	18.10.2018	Legal Services	Agreed & Accepted with minor clarification to wording & points of law
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## **1. Introduction**

This document sets out Bristol City Councils policy on Succession.

Succession is the process by which a tenancy is passed to another person on the death of a tenant. This document outlines the process for how the Council deal with requests for succession from Bristol City Council tenants and clarifies the circumstances under which a person may succeed to a tenancy.

## **2. Purpose**

The purpose of this policy is to:

- a) Ensure the succession and assignment of council owned property complies with national legislation, statutory guidance and good practice
- b) Offer guidance and clarification to staff and tenants on the circumstances where succession will be granted or refused
- c) Make best use of diminishing housing stock.

This policy applies to tenants that hold a Secure or Introductory tenancy with Bristol City Council and persons residing in the property as members of the household.

### 3. Law – What is the legal basis for Succession?

#### 3.1 The Housing Act 1985 – Succession to a tenancy that commenced before 1<sup>st</sup> April 2012

The statute relating to succession to a secure tenancy is contained in Section 87 and 89 of the *Housing Act 1985*.

A person is qualified to succeed to the tenancy under Section 87 of the *Housing Act 1985* if the tenancy commenced before 1<sup>st</sup> April 2012 and they occupy the property as their only or principal home at the time of the tenant's death and:

- They are the tenant's spouse or civil partner; or
- They are another member of the tenant's family and have resided with the tenant for twelve months preceding the death of the tenant.
- **Unless, in either case, the tenant was himself a successor, as defined in Section 88.**

There can only be one statutory succession. Therefore, if the deceased tenant was a successor, or the surviving party of a joint tenancy, or if there has been an assignment of the tenancy then there can be no further right of succession.

For family members, the onus should lie with the potential successor to prove that they meet the principal home and the twelve month residency requirement for succession (see section 13).

There is no residency requirement for a successor who is a spouse or civil partner but they **must** have resided in the property as their sole or principal home with the deceased at the time of their death.

A temporary absence from the property by the potential successor or exclusion under a court order, does not preclude the 'only or principal home' condition being filled.

Members of the family are defined in Section 113 of the *Housing Act 1985* as:

- parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews & nieces, including step-relation, half-relation & illegitimate children and persons living together as husband & wife or as civil partners.

Long term cohabiting partners are defined as family members by the *Housing Act 1985* and therefore can be required by law to move if the property they occupy is deemed to be too extensive or has adaptations they do not require whereas a spouse or civil partner cannot.

The Court of Appeal has held that the difference in treatment between spouses (and civil partners) and common law partners is justified, and is not a breach of the European Convention of Human Rights (Article 8).<sup>1</sup>

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<sup>1</sup> *Turley v London Borough of Wandsworth & Anor* [2017] EWCA Civ 189

### 3.2 The Localism Act 2011 - Succession to a Tenancy Created on or after the 1<sup>st</sup> April 2012

Succession to a secure tenancy created on or after 1<sup>st</sup> April 2012 will be subject to provisions introduced by Section 160 of the *Localism Act 2011* which amended the provisions in the *Housing Act 1985 & 1988*, regarding who can succeed to a tenancy.

Section 160 inserts a new section 86A into the *Housing Act 1985* which states that statutory succession to a secure or flexible tenancy entered into after 1 April 2012 only applies to the spouse or civil partner of the deceased tenant who was living in the property as their only or principal home at the time of the tenant's death. The statutory right of succession of a member of the family has been removed for new tenancies.

#### **Section 160 - Succession to secure tenancies**

(1) Before section 87 of the Housing Act 1985 insert—

“86A Persons qualified to succeed tenant: England

(1) A person (“P”) is qualified to succeed the tenant under a secure tenancy of a dwelling-house in England if—

(a) P occupies the dwelling-house as P's only or principal home at the time of the tenant's death, and

(b) P is the tenant's spouse or civil partner.

(2) A person (“P”) is qualified to succeed the tenant under a secure tenancy of a dwelling-house in England if—

(a) at the time of the tenant's death the dwelling-house is not occupied by a spouse or civil partner of the tenant as his or her only or principal home,

(b) an express term of the tenancy makes provision for a person other than such a spouse or civil partner of the tenant to succeed to the tenancy, and

(c) P's succession is in accordance with that term.

(3) Subsection (1) or (2) does not apply if the tenant was a successor as defined in section 88.

(4) In such a case, a person (“P”) is qualified to succeed the tenant if—

(a) an express term of the tenancy makes provision for a person to succeed a successor to the tenancy, and

(b) P's succession is in accordance with that term.

(5) For the purposes of this section—

(a) a person who was living with the tenant as the tenant's wife or husband is to be treated as the tenant's spouse, and

(b) a person who was living with the tenant as if they were civil partners is to be treated as the tenant's civil partner.

(6) Subsection (7) applies if, on the death of the tenant, there is by virtue of subsection (5) more than one person who fulfils the condition in subsection (1)(b).

(7) Such one of those persons as may be agreed between them or as may, where there is no such agreement, be selected by the landlord is for the purpose of this section to be treated (according to whether that one of them is of the opposite sex to, or of the same sex as, the tenant) as the tenant's spouse or civil partner.”

Under the new section 86A *Housing Act 1985*, the definition of spouse or civil partner is enlarged to include those who occupy the home and were living with the late tenant “as” the tenant's spouse or “as if” they were the tenant's civil partner ( s86A(5)) thus widening primary succession rights to include cohabitants.

Other family members no longer have the right to succeed to tenancies created on or after 1<sup>st</sup> April 2012.

[House of Commons - Succession Rights & Social Housing briefing paper 2018.pdf](#)

### **3.3 Survivorship Rules relating to Joint Tenancies**

Where there is a joint tenancy, held by two persons, and one of the joint tenants dies, the tenancy passes automatically to the remaining joint tenant through the common law concept of survivorship.

The tenant cannot 'succeed' to the tenancy, as they are already a tenant. However, where only one right of succession is allowed, survivorship will count as such, and therefore, no further rights of succession exist.

### **3.4 Tenancies Created Before 1980**

Secure tenancies were created by the *Housing Act 1980*, which came into force on 3<sup>rd</sup> October 1980. The provisions were later incorporated into the *Housing Act 1985*.

As such any survivorships or successions occurring before 3<sup>rd</sup> October 1980 are not counted as successions, as they pre-date any relevant legislation.

### **3.5 Changes to be brought in by the Housing & Planning Act 2016**

Once Schedule 8 of the *Housing & Planning Act 2016* comes in to force, even if a tenancy was granted prior to 1<sup>st</sup> April 2012, only the spouse or civil partner (or a person living with the deceased as a spouse or civil partner) will be permitted to succeed to a tenancy.

### **3.6 No-one Entitled to Succeed to the Tenancy**

When a tenant dies and there is no one entitled to succeed and there is no property transfer order application pending, the tenancy automatically ceases to be secure and cannot be made secure.

The tenancy does not end on death and the landlord is not entitled to possession of the property while the tenancy is still in existence. The tenancy must be brought to an end by service of a Notice to Quit on the Public Trustee if the tenant died intestate, or if they have a will by way of the executor giving Notice to Quit.

In cases where there is no statutory right to succeed, Bristol City Council may in exceptional circumstances agree to rehouse the remaining occupants or grant a new tenancy at the address. This decision will be made via the Occupation Decision Panel.

**When making a decision the panel will only consider the household (as set out in Bristol Allocation Scheme) at the time of the deceased tenants death and will not give consideration to persons who occupied the property after the date of the tenants death.**

### 3.7 Succession to an introductory tenancy

It is possible to succeed to an introductory tenancy. A successor will succeed to the same term as the previous tenant – for example if the previous tenant had been an introductory tenant for 3 months, then the successor will be an introductory tenant for 9 months until the tenancy becomes secure, unless it is extended or they are served with a Notice of Seeking Possession Proceedings (NOPP)

**The rights for succeeding to an introductory tenancy are the same as for tenancies that started before 1<sup>st</sup> April 2012.**

As Ground 13, 15 & 15a Housing Act 1985 cannot be applied to Introductory tenancies therefore if applicable we will consider terminating the tenancy by way of serving a Notice of Possession Proceeding (NOPP) if there is a breach of tenancy conditions.

Any such cases should be referred to a Supervisor for further guidance and will be dealt with on a case by case basis.

### 3.8 Bristol City Council Tenancy Agreement (2010 version)

Section 4.3 (page 12) of Bristol City Councils current tenancy agreement, first published in 2010 states:

#### 4.3 Right to pass on your tenancy

If you die your tenancy can pass to your husband, wife or civil partner if they were living with you when you died; or to your partner (if you are not married, in a civil partnership or a family member) that was living with you for the 12 months prior to your death. This is called succession but it can only happen once, so if you are a successor tenant i.e. the tenancy was passed to you by a spouse, partner or family member then the tenancy cannot be passed on again. In some circumstances it will be necessary for the successor tenant to move to a different property.

You can also gift your tenancy to someone whilst you are alive. This is called assignment but you can only assign your tenancy to someone who would be eligible to succeed to your tenancy if you had died.

**Bristol City Council's tenancy agreement does have an express term that allows for non-statutory (discretionary) successions.**

Section 86A of the *Housing Act 1985* (which was inserted by Section 160 of the *Localism Act 2011*) states that a social landlord may, at its discretion, contractually provide for more extensive succession rights. This gives social landlords the power to grant succession rights to other classes of people not defined by the Act by inserting a clause into any new tenancy agreements. There is no requirement for these classes of people to have occupied the property for any period of time prior to the tenant's death. It is for the individual social landlord to insert any required period of occupation into their tenancy agreements if they so wish.

#### 4. Policy

1. The Council will exercise the statutory right given to secure tenants under the *Housing Act 1985* and amended *Localism Act 2011* to pass on their tenancy following their death. The Council will review its policy once the *Housing & Planning Act 2016* comes in to force in order to comply with national legislation.
2. Following a claim of succession after the death of a tenant, the Council will aim to advise the claimant in writing of the information that is required to qualify for succession within 28 days. Once an application has been received, the Council will aim to respond with its decision within 15 working days.
3. All succession applicants making the request will need to provide evidence and information to prove they qualify to succeed as tenants under this policy. The Housing Officer will make the final decision on succession in accordance with the law. If an application is refused, the occupation will be considered an unauthorised occupation and the Housing Occupation Decision Policy will apply
4. In cases where there is more than one eligible successor who has a statutory right to succeed and an agreement cannot be reached between the parties as to which household member should succeed to the tenancy then the Council will select a successor to the tenancy. The factors that will be considered are length of occupation, capacity to sustain a tenancy and relationship to the original tenant. There can be no joint succession.
5. Where an occupier, with the exception of a spouse or civil partner (or if the tenancy commenced on or after 1<sup>st</sup> April 2012, a long-term partner living together as if a spouse or civil partner) succeeds to a secure tenancy on the death of the previous tenant, and the accommodation afforded by the property is deemed to be more extensive than is reasonably required (under occupied), the council may seek to move the new tenant to another suitable property using Ground 15a, Schedule 2 of the *Housing Act 1985*. The notice of possession will only be served no sooner than six months after the death of the previous tenant and not later than 12 months after the death.
6. The Council will consider a property to be under-occupied (as defined in the Bristol Allocation Scheme) if there is one bedroom or more in excess of housing need, except in exceptional circumstances.
7. Where an occupier, with the exception of a surviving spouse or civil partner (or if the tenancy commenced on or after 1<sup>st</sup> April 2012, a long-term partner living together as if a spouse or civil partner) succeeds to a secure tenancy on the death of the previous tenant, and the accommodation has adaptations that they do not require, the council may seek to move the new tenant to another suitable property using Ground 13, Schedule 2 of the *Housing Act 1985*. This will be considered in line with the Making Best Use of stock policy.



## Equalities & Diversity

We will take into account every successor and non-successor's needs when applying for succession. Each case will be considered individually and appropriate tailored advice and assistance provided to help meet any housing need. This includes assisting those under the age of 18, those with disabilities, special needs and the elderly on their rights to apply for succession or other housing assistance, if they are not aware.

This may include referral to other agencies including social services and floating support where needed.

Any decision on whether or not to rehouse someone who is not entitled to succeed under statute will be decided by the Occupation Decision Panel taking into account Public Sector Equality Duties, Article 8 rights and any public law duty.

## Appeals

Any complaint on the process will be dealt with under the Fair Comment complaints procedure.

There is however no internal right to appeal against the Council's decision to seek possession of a property.

## OWNERSHIP & REVIEW

This policy is owned by Estate Management. For any questions regarding this policy or its contents please contact Estate Management on [estates@bristol.gov.uk](mailto:estates@bristol.gov.uk).

This policy will be reviewed on a regular basis to ensure continued compliance with national legislation, best practice and the legitimate aim of Bristol City Council to manage its housing stock in a fair and transparent manner to ensure that properties are allocated to those with the greatest need.

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