

Succession of Tenancy Policy

Policy:	Succession of Tenancy
Scope:	This policy applies to occupants of a Council owned property where they wish to take over or inherit, a council tenancy when the tenant has died.
Effective Date:	December 2024
Review Date:	December 2027, or before if there is a significant change in legislation, caselaw or good practice
Signed off:	Assistant Director, Housing
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Statute:	The Localism Act 2011 The Housing Act 1985 Equality Act 2010 Homelessness Reduction Act 2017 Matrimonial Causes Act 1973
Connected Policies:	Housing Allocations Policy Tenancy Agreement terms and conditions Tenancy Strategy and Policy Assignment Policy

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Introduction

The Localism Act 2011 made some significant changes to the succession rights of family members living with council tenants where the tenancy started on or after 1st April 2012.

Section 87 of the Housing Act 1985 sets out who may succeed to a Secure Tenancy which commenced before 1st April 2012.

Existing Secure Tenants prior to 1st April 2012

The majority of council tenants are secure tenants. The rights of existing occupiers of council housing prior to 1st April 2012 to succeed to a secure tenancy in England are governed by sections 88 and 89 of the Housing Act 1985.

This states that a person is qualified to succeed if the property is their only or principal home at the time of the tenant's death and they are either:

1. The tenant's spouse or civil partner.
2. Another member of the tenant's family who has resided with the tenant for the twelve months ending with the tenant's death and the housing department were notified of this in accordance with section 5.5 of the tenancy agreement. Family members include husband/wife, parents, grandparents, children, grandchildren, brothers, sisters, uncles, aunts, nephews, and nieces. Step and half relatives are treated as full blood relatives.

Where there is more than one qualifying person to succeed, the late tenant's spouse/civil partner takes precedence but otherwise the qualifying persons must agree amongst themselves who is to succeed. If they cannot agree, the matter must be taken to the next Housing Review Panel for a decision as to who should succeed. There can be no joint succession.

It is SADC policy that a partner (including same sex), who lived with the tenant for the twelve months leading up to the death of the tenant, should be treated as a spouse for the purposes of this policy.

Section 87 of the Housing Act 1985 also details that a person cannot succeed a tenancy if there has already been a succession. Therefore, there can only be one succession to a Secure Tenancy. Section 88 details the circumstances in which a person will become a successor:

- The tenancy passed to them in accordance with the Housing Act 1985, when the tenant died.
- In certain circumstances when a fixed term tenancy comes to an end.
- When a joint tenant has become a sole tenant.
- If the tenancy has been assigned to the tenant in accordance with the Matrimonial Causes Act 1973 and the person assigning the tenancy over was already a successor.
- If an assignment takes place under section 91 of the Housing Act 1985 (assignment to a person who would theoretically qualify to succeed if the tenant would have died at the time of the application for the assignment).

- The tenancy was previously an Introductory Tenancy, and they were a successor to the Introductory Tenancy.

A person who is a successor is still a successor if they transfer to another SADC property, and if they carry out a mutual exchange to another property. Succession refers to the transfer of a tenancy, not the property itself.

When there is a joint tenancy and one of the tenants who is already a successor dies, the other remaining tenant still gets passed the sole tenancy by survivorship. This then counts as a succession.

Secure and Secure Fixed Term Tenants after 1st April 2012

The Localism Act 2011 amended the Housing Act 1985 to limit the succession rights for tenants of a secure or secure fixed-term tenancy established after 1 April 2012. Only the spouse or civil partner of the deceased tenant are qualified to succeed. However, SADC has extended succession rights to allow a member of the tenant's family in the absence of a spouse/civil partner, to succeed if they meet all of the following provisions:

- There has been no previous succession.
- They qualify to succeed and have lived at the property for the previous **24 months and** the housing department were notified of this in accordance with section 5.5 of the tenancy agreement.

Where there is a flexible fixed term tenancy, the succession will take effect for the remainder of the fixed term period, after which the tenancy will automatically become a lifetime secure tenancy.

SADC will not allow a second succession under any circumstances.

Under Occupation Following Succession

In all cases when a spouse or civil partner qualifies to succeed, the tenancy will be transferred to them regardless of property size.

When a non-spouse relative qualifies to succeed but lives in a property which exceeds their housing need by one bedroom or more, in line with our Housing Allocations Policy, they are to be offered accommodation that matches their needs. The successor will be required to complete and submit an online Housing Application and all requested documentation within 4 weeks of receipt of correspondence from the housing department requesting this.

Once the Housing Application has been verified, the successor's housing application will be allocated a priority band A. Time limited bidding of 3 months will apply after which we will review the case, and this could lead to a move to assisted bids and a direct offer. (See SADC Allocations Policy).

If the successor fails to submit an online application, the details submitted in the applicant's succession form will be used to assess and verify the successor's housing needs and time

limited bidding of 3 months will apply after which an assisted bid leading to a direct offer will be made.

If the successor wishes to request a review of the decision that they must downsize to an alternative property, this should be referred to the next Housing Review Panel for consideration.

If it is decided that alternative accommodation is to be offered and it becomes necessary to take possession action, a Notice of Seeking Possession can only be served after 6 months has passed from the date the Housing Management Department were notified of the tenant's death and no longer than 12 months after this date. A moving grant may be payable in cases of extreme hardship. This will be authorised by the Tenancy Services Manager.

No Succession Rights

When the occupant does not qualify to succeed, the occupant will be advised to look for alternative accommodation and requested to submit housing and homelessness applications to assess their housing needs. Their contact details would also be passed by the housing officer to the Homelessness Team, who will contact the occupant to give housing advice. A decision will then be made by the Housing Options Team, as to whether they should be allowed to remain, be offered alternative accommodation, or referred to Court for possession, with no offer of alternative accommodation. This decision should be based on all the facts at hand and the timing of any action should depend on the circumstances of the case. The matter should always be dealt with sensitively.

If the applicant wishes to request a review of the decision that they cannot succeed, the matter must be referred to the next Housing Review Panel.

In non-qualification cases, it is always necessary to serve a Notice to Quit on the appropriate person as soon as possible. This should be done in person. The housing officer will make an appointment to carry out a home visit to the occupant(s) and deliver a full letter of explanation. They will explain the reasons for the NTQ, stating that any payments received after the expiry date will be for Use and Occupation Charges only and recommend that the occupant(s) seek housing options advice and independent legal advice. On the expiry of the Notice to Quit, and by remaining in the property, the failed successor will be liable for the Use and Occupation charges until they return the keys and property in vacant possession to the Council.