Succession of Tenancy Policy and Procedure

Policy Author: [REDACTED]	Policy Valid From: 01/10/2018
Policy Approved Date: 22/10/2018	Policy Review Date: 25/05/2029

Policy/Strategy Control Statement

1	Document Title	Succession of Tenancy Policy and Procedure
2	Date of Document (Created Date)	October 2018
3	Service Lead	[REDACTED]
4	Author	[REDACTED]
5	Date Approved and approved by who i.e. Service Delivery Project Board, Executive, Group Board, etc.	23/05/2025
6	Date last reviewed	07/04/2025
7	Amendment record	October 18
8	Next review date (Planned review Date)	25/05/2029
9	Staff Consultation	July 2024
10	Other Services Consultation	No
11	Customer Consultation	No
12	Equality Impact Assessment: insert priority as agreed with E/D team, Insert date copy of EIA sent to E/D team.	Approved
13	Confirm that document meets current legislative requirements	Yes
14	Further Information/Comments	Review of multiple landlords' policy to bring consistent

		policy across Communities Added relevant legislation for Scotland.
15	Sign off of statement by Author and Service Lead (name and date):	02/01/2025

Policy Applicable To

Business Area: Homes Plus Applicable to: Homes Plus

Amendment Sheet Record

Revision Date	Description of Changes	Approved By	Date Approved
28/02/2022	Neighbourhood Management Team peer review December 2021	[REDACTED]	05 July 2022
15/08/2024	Review of the process to be followed, adding procedure flowchart and templates	[REDACTED]	January 2025

Please summarise the current policy requirements and how this is changed in the new policy.

This policy outlines the approach to succession of tenancies, upon the death of the current tenant

Please explain the reason for changes/improvements/new policy.

Review of policy and procedure to provide consistent approach to succession applications across Communities

Please explain any new actions required to put the policy changes into practice.

N/A

Table of Contents

Succession Policy

1.0 Aim of the Policy

Succession is the process by which a tenancy passes to an eligible individual following the death of Customer. This individual could be:

- Appointed by the deceased Customer in their Will (England Only)
- A joint tenant
- A person identified by relevant statute (law) (England Only)
- A person approved by Places for People as entitled to succeed in accordance with the terms of the deceased Customer's tenancy terms.
- A person who is inheriting a tenancy that has been inherited once only. (Scotland only)

Succession rights will depend on tenancy type and the tenancy terms. This Policy covers survivorship in the case of joint tenancies, statutory successions and contractual successions. We recognise that there will be situations when discretion is required when there is no right to succession. This Policy will set out how we will approach the exercise of discretion in such situations to ensure housing stock is being used fairly and efficiently.

We recognise the need to treat the family members of a deceased Customer with sensitivity and care during what we know will be a difficult and upsetting time. We will respect this when considering claims for succession.

Different rules apply to the law of succession, depending upon the type of tenancy granted to the deceased customer and when. Legislation also differs between Scotland and England. In each case, these details should be checked carefully – but in most cases, succession for the purposes of this Policy will likely relate to an assured tenancy in England, or a Scottish Secure Tenancy in Scotland.

2.0 Scope of the Policy

The Policy sets out the framework that Places for People will use to consider written claims to succeed to assured and secure tenancies. It does not apply to licensees as they do not have rights of succession, nor does it apply to leaseholders.

The key legislation that affects this policy are as follows:

- Housing Act 1985 (as amended)

- Housing Act 1988 (as amended)
- Localism Act 2011
- Succession (Scotland) Act 1964 (as amended)
- Housing (Scotland) Act 2001 (as amended)
- Housing (Scotland) Act 2014

Where appropriate, the headings will state if the policy or procedure applies only to Scotland or England.

Succession Procedure

3.0 Joint Tenancies Procedure

If a Customer held a joint tenancy, following the Customer's death, the tenancy will automatically vest in the surviving joint tenant's sole name. This is known as "survivorship". No new tenancy is created and there will be no further rights of succession for the surviving Customer.

In Scotland, if the successor is a Joint Tenant then the tenancy should not be ended and there is no need for a new tenancy agreement. A copy of the death certificate must be attached to the existing tenancy agreement and tenancy details updated on the system. There is no further paperwork to complete.

4.0 Statutory Successions Procedure

A Statutory Succession is one that is granted by operation of law.

Places for People will not have any discretion in relation to such successions. When a Statutory Succession takes place, no new tenancy agreement is issued, and the tenancy passes upon death to the successor.

Whether a secure or assured tenancy, or granted before or after 1 April 2012, there is no statutory right to succeed if the deceased tenant was themselves a successor.

In Scotland, succession of the Scottish Secure Tenancy is set out by Schedule 3 of the 2001 act. It sets out three levels.

Tenancies granted before 1 April 2012

- *Secure tenancies*

  A spouse or civil partner who occupied the Property as their only or principal home at the time of the Customer's death qualifies for a statutory succession.

If there is no spouse or civil partner, “family members” can qualify for a statutory succession. “Family members” are defined in [Housing Act 1985 Part IV section 113.] The definition includes a cohabitee, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew or niece.

“Family members” can qualify to a statutory succession if they occupied the Property as their only or principal home at the time of the Customer’s death and for the 12 months prior to death.

- *Assured periodic tenancies (including periodic assured shorthold tenancies)*

A spouse, civil partner or cohabitee who occupied the Property as their only or principal home at the time of the Customer’s death qualifies for a statutory succession. The deceased Customer must not have been a successor themselves.

Tenancies granted after 1 April 2012

- *Secure tenancies*

A spouse, civil partner or cohabitee who was living in the Property as their only or principal home qualifies for a statutory succession.

Other family members do not have a statutory right to succeed.

- *Assured periodic tenancies, fixed term assured tenancies of two years or less and periodic assured shorthold tenancies*

Unless there has been a previous succession, a spouse, civil partner or cohabitee can succeed to an assured tenancy if immediately before the Customer’s death, the individual occupied the Property as their only or principal home. Family members can qualify for a statutory succession only if the tenancy agreement expressly allows this.

Scottish Secure Tenancies

There are three levels of qualified persons eligible for statutory succession. With exception of the joint tenant, or tenant’s spouse, all other parties must have occupied the house as their only principal home for 12 months prior to the date of death.

The 12-month period cannot begin unless we have been told the individual is living in their property as their only or principal home. We must be told by the tenant, a joint tenant or the person who wishes to succeed the tenancy. The length of time they have lived in the property starts from the date we are notified. This does not require written confirmation, as the legislation requires us to be notified rather than given written notice as defined by the Housing (Scotland) Act 2001.

Level 1 passes in the first instance to:

- The tenant’s spouse.

- The tenant's civil partner or co-habitee (they must have occupied the house as their only principal home for 12 months previous to the death)
- A surviving joint tenant.

Level 2 is if there is no one who meets the above criteria, or the tenancy is declined by the qualifying person. The tenancy passes to:

- A member of the tenant's family aged at least 16 years (at the date of birth) where the house was the person's only or principal home at the time of the tenant's death.

Level 3 is the tenant's carer, so long as:

- They are aged at least 16 at the date of death.
- The house was their only principal home at the date of death.
- They gave up another home before the before the death of the tenant.
- They are providing or provided care for the tenant or a member of the family.

If more than one person qualifies for the same level, they must decide who succeeds. If they cannot agree, Places for People decides.

As soon as you are advised of the death of a tenant, you should identify any qualified person(s) who are entitled to the tenancy. If you have not received a succession request, you must write to the qualifying person informing them of their right to succeed.

Under succession in Scotland, no debts are transferred. Therefore, whilst the rights of the tenancy transfer, any rent arrears do not. The existing debt is written off at the date of death.

Only a maximum of two successions can take place under the original Scottish Secure Tenancy – unless there is a surviving joint tenant. If Places for People makes the decision that the person should have a tenancy for the property in question, a new Scottish Secure Tenancy can be signed which is separate from the deceased tenant's contract with the organisation.

5.0 Contractual Succession - England

A contractual succession is granted by the terms of the tenancy agreement. Each tenancy agreement should be checked carefully to see if contractual succession rights exist, who can qualify for any such rights and the criteria that needs to be satisfied.

Time restrictions may also be specified in the tenancy agreement for a claim to a contractual succession to be submitted.

When an individual has a contractual right to succeed:

Assured tenancies granted prior to 1st April 2012 – a new tenancy agreement will be issued to the successor.

Secure and assured tenancies granted after 1st April 2012 – the tenancy will vest in the successor's name and no new tenancy agreement is issued.

Scottish Secure Tenancies – No new tenancy agreement is required where there is a joint tenant. Where there is a qualified person, they will receive a **Succession of Tenancy** form and the original SST paperwork.

6.0 Discretionary Tenancies - England

If no-one qualifies for a statutory or a contractual succession, Places for People may consider exercising its discretion to grant a tenancy to an individual remaining in the Property following a customer's death. A discretionary tenancy will only be considered if there have been no previous successions.

We recognise that there may be exceptional circumstances where discretion is to be exercised outside of guidelines set out in section 6 and should this be required, there will need to be approval by a Head of Communities or senior before a final decision is made.

The Community Housing Manager may consider an application for a discretionary succession on its own merits. The Applicant must complete an Application for Succession form (**APPENDIX 2**) and submit it together with any supporting evidence to the Community Housing Manager for consideration. **APPENDIX 2** must be reviewed and completed by the Community Housing Manager upon receipt of a completed succession form.

In order to be considered for a discretionary tenancy, an Applicant must:

1. Provide a death certificate for the deceased Customer *and*

2. Demonstrate their relationship to the deceased Customer *and*

3. Be able to evidence that they:
   a) lived at the Property with the deceased Customer at the time of death *and*
   b) occupied the Property as their only or principal home for the 12 months prior to the Customer's death.

   Supporting evidence that can be provided by the Applicant includes but is not limited to:

   - ✓ Utility bills addressed to the Applicant at the Property

- ✓ Bank statements addressed to the Applicant at the Property
- ✓ GP registration details
- ✓ Wage slips addressed to the Applicant at the Property
- ✓ DVLA documents and/or vehicle registration documents

If the above criteria have been satisfied, Places for People will then consider the following factors (which are not intended to be exhaustive) in determining whether to grant a discretionary tenancy:

- The Applicant must have the Right to Rent (guidance can be found in the Lettings Policy)

- The proposed household composition and the extent of any under/over occupation (guidance can be found in the Lettings Policy as above.)

- The Applicant must be able to demonstrate that the rent would be affordable and be willing to pay any Use and Occupation charges that have accrued since the Customer's death.

- The Applicant's ability to sustain a tenancy such as any support needs.

- Whether or not the Applicant owns another property or has the financial capability to purchase property or rent in the private sector

- The Applicant's suitability for the Property, e.g. sheltered or supported schemes.

- There must be no risk of harm to the Property or community by granting a discretionary tenancy. For example, the Applicant must not have been involved any anti-social behaviour in the Property or the surrounding area.

If we agree to grant a discretionary tenancy, it could be in respect of the deceased customer's Property or for another property. If we determine that the Property is too big for the Applicant's household, we may make one offer only of suitable alternative accommodation subject to the availability of housing stock.

If we decide not to grant a discretionary tenancy, the Applicant will be notified of this decision in writing (**APPENDIX 3**). The Applicant will be given 7 days to request a review of the decision. Such a request must be made in writing, and the review will be conducted by an Area Manager who has not had any prior involvement in dealing with the request. The appeal will only be upheld if the original decision did not follow the relevant law or this policy. If following the review, the original decision is upheld, there will be no further right of appeal.

7.0 Succession by Minors - England

A person under the age of 18 can succeed to a tenancy if the relevant criteria, as set out above, are met. However, as it is not possible for a minor to hold a legal interest in land, they cannot be granted a tenancy. In these circumstances, an equitable tenancy will be granted, and the tenancy will be held on trust for the minor until s/he reaches the age of 18. The Sign-Up Policy contains further details on granting a tenancy to a person under the age of 18.

8.0 Inheritance under a Will or Intestacy - England

A tenancy can be passed to a person under the terms of a deceased Customer's Will or through intestacy rules. If the beneficiary lived in the Property as their only or main home at the time of the deceased Customer's death, then they may acquire security of tenure pursuant to that tenancy.

In these circumstances, Places for People can take legal action to recover possession of the Property from the beneficiary. A mandatory ground for possession is available in such instances for assured tenants, namely Ground 7 of Schedule 2 of the Housing Act 1988. Any such possession proceedings must start no later than 12 months after the death of the Customer (or the date on which Places for People became aware of their death).

9.0 Multiple Succession Applicants

Secure tenancies granted before 1 April 2012

If there is no spouse or civil partner and more than one family member is qualified to succeed, then the family members may agree between themselves who will succeed the tenancy and, in default of agreement, Places for People may decide who will succeed.

Secure tenancies granted after 1 April 2012

A spouse or civil partner will take priority.

If more than one person is qualified to succeed, then they may agree between themselves who will succeed the tenancy and, in default of agreement, Places for People may decide who will succeed.

Assured tenancies granted before 1 April 2012

If more than one person is qualified to succeed, then any dispute should be determined in accordance with the terms of the tenancy agreement.

Assured tenancies granted after 1 April 2012

If more than one person is qualified to succeed, then they may agree between themselves who will succeed the tenancy and, in default of agreement, the County Court may determine who will succeed.

Scottish Secure Tenancies

Succession will be awarded to the highest-level qualifying person accepting the succession. If there are more than one eligible qualifying person, then they must decide between themselves. If they cannot agree then Places for People will decide.

10.0 Adapted Houses – Scotland

If the house has major adaptations, then only the following qualifying persons may succeed the tenancy:

1. The tenant's spouse.
2. A qualifying person who requires accommodation of the kind provided by the tenancy.

Any other person who would have otherwise qualified must be provided with a suitable alternative offer of accommodation. If the customer declines, then there is no need to offer further properties.

11.0 Completing Successions – Scotland

At the point of notification of the death:

1. The Community Housing Manager should make enquiries if there is anyone else living in the property.
2. The CHM should also confirm what details Salesforce and NEC hold on registered household members.
3. The CHM must check if there have been successions previously. If this is the third succession, then there is no legal right to a succession – however we can award a new tenancy at our discretion.
4. The CHM should check what type of tenancy and whether the tenancy has fair rent – though fair rent applies to Level 1 qualified persons only.
5. Within five working days, the CHM should identify any qualifying persons and confirm if they wish to succeed and complete **APPENDIX 6**.

6. The CHM must complete the Succession of Tenancy (**APPENDIX 7**) and provide a copy of the original signed SST.

If there is a joint tenant, then the tenancy continues in their sole name and the death certificate should be stored in the Salesforce case. If there are no qualifying persons, then the tenancy should be terminated.

12.0 Declining Successions – Scotland

If the qualified person refuses the tenancy and there is no other qualified person(s) in the house, you must write to the person informing them:

- They have a right to succeed but have refused the tenancy.
- They will be charged violent profits – on a daily rate – for the period that they occupy the house from the date of death until they vacate the house.

If the succession is declined, then Places for People must give clear written guidance on the reasons why. This written notification must also confirm that no further rent will be charged, however, violent profits (on a daily rate) will be charged to the executor from the date of death until keys are returned.

13.0 Possession proceedings

If it is determined that a succession will not be granted and the occupants fail to vacate the Property after a Notice to Quit expires, a referral should be raised to the Community Safety Team to consider issuing possession proceedings. When the Notice to Quit ends, the rent account should be terminated and a Use and Occupation account opened.

In Scotland, the Community Safety Team will work with our solicitor to raise an action to seek a decree for repossession.