

Succession Policy

Stevenage Borough Council

2024 - 2026

Date created	September 2024
Approved by	Key Officer Decision
Owner	Housing and Neighbourhoods
Version	1.1
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Policy Review Date	September 2026
Equality Impact Assessment Date	June 2024

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1. Purpose

1.1 Purpose of the Succession Policy

The purpose of this policy is to outline how we award statutory successions and discretionary awards of tenancies to residents living in rented homes owned by Stevenage Borough Council (the Council) reflecting current legislation on successions and the Council's housing allocations scheme.

Social housing is a valuable asset, which provides security and stability to people in housing need. As a responsible social landlord, the Council has a duty to make the best use of public resources by ensuring that its housing stock is managed appropriately.

1.2 The aim of the Succession Policy

The aim of the policy is to ensure that succession applications are dealt with consistently, fairly and in accordance with legislation.

The specific objectives of the policy are to:

- Make best use of the Council's available homes and to offer tenancies that best match the needs of individual households.
- Provide staff and tenants with a clear framework for managing and determining successions to tenancies.
- Set out the statutory rights available to succeed to a tenancy when a tenant passes away.
- Take full and fair consideration of the residents' or person in occupation's circumstances before taking decisions having due regard to the Public Sector Equality Duty.
- Be proactive in identifying fraud and reporting suspected cases to the relevant departments.
- Determine the circumstances where we might consider discretionary successions.

This policy replaces a previous Succession and Assignment Policy that was last revised in 2015.

2. Scope

This policy covers all homes let by the Council under secure and introductory tenancies as well as tenancies which have been demoted.

2.1 Roles and Responsibilities

- Resident Services Manager - Responsible for the implementation of this policy; reviewing and making appeal decisions; and the management of the Residents & Estates Team in processing succession applications and for approving them.
- Senior Housing Officer - Responsible for ensuring compliance with this policy, the management of the team in processing succession applications, and for approving applications.
- Housing Officers - Responsible for the receiving, assessing and processing of succession applications.
- Lettings Officers - Responsible for supporting Housing Officers in transferring a tenancy to a successor tenant, ensuring tenancy records are updated on our software systems and any appropriate documents are properly completed and signed.
- Customer Service Officers - Responsible for receiving and dealing with general enquiries about succession applications and transferring residents to Housing Officers for further information and support.

3. Legal Framework

3.1 Relevant Legislation

The following legislation relates to the Succession Policy and we are committed to applying the terms within this document.

- Housing Act 1985
- Housing Act 1996
- Localism Act 2011
- Matrimonial Causes Act 1973
- Matrimonial and Family Proceedings Act 1984
- Children Act 1989
- Family Law Act 1996
- Civil Partnership Act 2004
- Marriage Same Sex Couples Act 2013

- Equality Act 2010

4. Equalities

Under the Equality Act 2010 the Council has a legal duty to fulfil the requirements of the Public Sector Equality Duty (PSED). Through this duty, the Council will carry out its functions in a way that:

- a) Removes discrimination, harassment, victimisation and any other conduct that is unlawful under the Equality Act 2010;
- b) Promotes equal opportunities between people who have a protected characteristic(s) and those who don't; and
- c) Encourages good relations between people who have a protected characteristic(s) and those who don't.

Further information on the Council's fulfilment of the PSED is set out in the Equality, Diversity and Inclusion (EDI) Policy (2022) which is applicable to all employees of the Council, councillors and contractors or suppliers who provide services on behalf of the Council.

5. Data Protection

The Council regards respect for the privacy of individuals and the lawful and careful treatment of personal information as very important to its successful operations and to maintaining confidence between the Council and those with whom it carries out business. The Council will ensure that it treats personal information lawfully and proportionately as set out in the General Data Protection Regulation (GDPR) and Data Protection Act 2018.

The Council's principal aim is to ensure that all personal data processing carried out by the Council, or on its behalf, complies with the seven data protection principles and other key legislative requirements. For further information on the Council's approach to handling information please see [the Data Protection Act web page](http://www.stevenage.gov.uk) at www.stevenage.gov.uk

6. Policy

The right to succeed to a tenancy differs according to the type of tenancy held and when the tenancy was granted. It is also dependent upon the person applying to succeed to the tenancy meeting certain criteria. With all tenancies, there can

only be one succession. Our Succession Policy helps us to deliver our corporate and strategic aims by:

- Setting out clear criteria and expectations for residents requesting a tenancy succession.
- Helping to ensure the best use of our stock and to improve flexibility for our residents.

Succession occurs when a sole tenant dies and an eligible partner or qualifying member of his or her family takes over the tenancy. Succession also includes when a joint tenant dies and the surviving joint tenant succeeds to the tenancy, known in law as survivorship.

The Council recognises that following the death of a tenant, their family members will be upset and grieving and that any requests for succession need to be handled with sensitivity and care.

6.1 Our legal position

Statutory Successions under the Housing Act 1985

Tenancies granted before 1 April 2012

Where a tenancy has been granted prior to 1 April 2012 the following are entitled to succession:

1. A tenant's spouse or civil partner if they occupy the property as their only principal home at the time of the tenant's death; or
2. Where there is no spouse or civil partner eligible to succeed a member of the tenant's family, as defined by section 113 Housing Act 1985, who has occupied the property as their only or principal home for the 12 months prior to the tenant's death.

Tenancies granted after 1 April 2012

The Localism Act 2011 amended the Housing Act 1985 provided for more limited succession rights for tenancies granted after 1 April 2012. The Housing Act 1985 Section 86A, which sets out the relevant provisions, provides that the following are entitled to succession:

1. A tenant's spouse or civil partner if they occupy the property as their only or principal home at the time of death; or
2. If, at the time of the tenant's death there is no spouse or civil partner occupying the property as their only or principal home and the tenancy

expressly provides for someone else to succeed in accordance with that term.

The Council's tenancy agreement only provides for succession under paragraph 1 above. While section 86A makes provision for a further person to succeed, the Council has not adopted such a position and it is an express term of the tenancy. As such there can be only one succession to a Council tenancy.

A succession under the 1985 Act will be deemed to have already taken place (i.e the one succession has been used) when:

The tenant is himself a successor if:

- (a) the tenancy vested in him by virtue of section 89 (succession to a periodic tenancy), or
- (b) he was a joint tenant and has become the sole tenant, or
- (c) the tenancy arose by virtue of section 86 (periodic tenancy arising on ending of term certain) and the first tenancy there mentioned was granted to another person or jointly to him and another person, or
- (d) he became the tenant on the tenancy being assigned to him (exceptions apply, see below); or
- (e) he became the tenant on the tenancy being vested in him on the death of the previous tenant or
- (f) the tenancy was previously an introductory tenancy and he was a successor to the introductory tenancy.

No succession will be deemed to have taken place when:

- An assignment has been made in pursuance of an order under section 24 of the Matrimonial Causes Act 1973 or section 17(1) of the Matrimonial and Family Proceedings Act 1984 and the original tenant was not a successor.
- An assignment has been made in pursuance of an order under Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7 to the Civil Partnership Act 2004 and the original tenant was not a successor.
- An assignment by way of exchange (Section 92) has taken place and the tenant was not a successor tenant to the previous tenancy - Section 88 (3).

Successions prior to 1980

Case law has clarified that when a succession to a tenancy has taken place prior to 1980, then it is not a statutory succession under the terms of the Housing Act 1985. (*Birmingham CC v Walker* (2007) UKHL 22)

Under-occupation on a Statutory Succession

The statutory right is to succeed to the tenancy not the property. Except in the case of a spouse or civil partner, if the successor tenant is under-occupying, Ground 15a of Schedule 2, Housing Act 1985 as amended by the Localism Act 2011, allows the Council to commence possession proceedings to require the successor tenant to move to smaller, more suitable accommodation.

A notice must be served not less than 6 months and not more than 12 months after the relevant date. Proceedings can be taken any time in the 12 months after the notice comes into effect.

Under Ground 15a, the “relevant date” is either:

- the date of the previous tenant’s death; or
- the date on which, in the opinion of the court, the landlord became aware of the previous tenant’s death. There are specific factors that the Court will take into account when considering whether to grant an order under Ground 15a including:
 1. The age of the successor tenant.
 2. The length of time the successor tenant has occupied the property as their only or principal home.
 3. Any financial or other support given by the successor tenant to the previous tenant.

Succession by minors

A minor child (aged 17 or under) can succeed to a tenancy provided the prescribed conditions for a statutory succession are met. If the deceased tenant leaves a will appointing a personal representative or trustee, the tenancy is held on trust by that person until the child becomes an adult. The child holds an equitable tenancy that automatically becomes a legal tenancy when they reach the age of 18.

Succession rights to an introductory tenancy

The Housing Act 1996 gives statutory succession rights to introductory tenancies under the same terms as those for secure tenancies under Housing Act 1985 section 86A. Any Qualifying Successor would succeed to the remaining period of the introductory tenancy, which would then become secure at the end of that period.

Succession rights to a demoted tenancy

If a tenant under a demoted tenancy dies the Housing Act 1996 s143H states that:

If the tenant was a successor, the tenancy—

- ceases to be a demoted tenancy, but
- does not become a secure tenancy.

In any other case a person is qualified to succeed the tenant if:

- He occupies the dwelling-house as his only or principal home at the time of the tenant's death.
- He is a member of the tenant's family, and he has resided with the tenant throughout the period of 12 months ending with the tenant's death.

6.2 Statutory Succession

Statutory succession to a spouse

The Council's Allocations Scheme defines a "spouse" to be an eligible partner. Eligible partners are those who are married; are civil partners; or are co-habiting couples who have lived together for 6 months or more or have a child of the relationship.

Where no succession to the tenancy has taken place, eligible partners who occupy the property as their only or principal home at the time of the tenant's death are statutory successors, who will not be required to move to smaller accommodation if they are under-occupying the existing property.

Statutory succession to another family member (this does not apply to tenancies created on or after 1 April 2012)

Where it is agreed that there is the right of statutory succession to another family member and there is no under-occupation of the existing property, the successor tenant will remain in the property.

Where there is under-occupation (even if only by one bedroom), the successor tenant will be required to move to smaller, more suitable accommodation, in accordance with Ground 15a of Schedule 2, Housing Act 1985.

When more than one person is eligible to be a statutory successor

The Housing Act 1985 Section 89 states that where more than one person qualifies to succeed to a tenancy, the following rules should be applied to determine who should be preferred:

- The tenant's spouse is to be preferred to another member of the tenant's family -section 89 (2) (a).
- Where two or more members of a tenant's family are qualified to succeed, they should agree between them who is to be preferred; if there is no agreement, the preferred person will be selected by the Council – section 89 (2) (b).

6.3 Discretionary Succession

Where a statutory succession has already taken place, (either under Housing Act 1985 or Housing Act 1985 as amended by Localism Act 2011) the Council will consider allowing a discretionary succession to:

- The tenant's spouse (eligible partner).
- Another member of the tenant's family.
- The tenant's permanent, full time, live-in carer.

if certain qualifying criteria are met.

Discretionary succession to a spouse

The Council's Allocations Scheme defines a "spouse" to be an eligible partner. Eligible partners are those who are married; are civil partners; or are co-habiting couples who have lived together for 6 months or more or have a child of the relationship.

An eligible partner who is occupying the property as his only or principal home at the time of the tenant's death and has resided with the tenant throughout the period of 12 months ending with the tenant's death will be considered to be a discretionary successor.

Eligible partners who are accepted as discretionary successors may be required to move to smaller accommodation if they are under-occupying the existing property at the time of the tenant's death.

Discretionary succession to another family member

The Council will consider a written request for discretionary succession to a tenancy from a family member other than an eligible partner when the following criteria are met and documentary evidence is provided:

- they are a qualifying person under the same criteria as for a Housing Act 1985 statutory successor; and
- they and every other person they want the Council to consider as a permanent member of their household, occupy the property as their only or principal home at the time of the tenant's death; and
- they and every other person they want the Council to consider as a permanent member of their household, have resided with the tenant throughout the period of twelve months ending with the tenant's death; and
- they are otherwise both eligible to join and qualify to join the housing register in accordance with the Council's Allocations Scheme.

Where more than one family member qualifies under this policy to be regarded as a discretionary successor and make written requests to the Council for a discretionary succession, the Council will select which person will be regarded as the discretionary successor.

Discretionary Succession to a permanent, full-time, live-in carer

The Council will also allow a long-term live-in carer who is neither the partner nor a relative of the tenant to request to be regarded as a discretionary successor to a tenancy following the death of the tenant. A carer will be regarded as a discretionary successor to a tenancy providing, they can provide documentary evidence that:

- they have been the main carer of the tenant and have provided personal or physical care and support to meet the tenant's needs throughout the period of 12 months ending with the tenant's death; and
- they, and every other person they want the Council to consider as a permanent member of their household, occupy the property as their only or principal home at the time of the tenant's death; and
- they, and every other person they want the Council to consider as a permanent member of their household, have resided with the tenant throughout the period of 12 months ending with the tenant's death; and
- they are otherwise both eligible to join and qualify to join the housing register in accordance with the Council's Allocations Scheme; and
- they provide independent proof of their role as full-time, live-in carer, including written confirmation from Adult Care Service, and receipt of carers allowances; and they have no other accommodation available to them.

Any person providing care in a professional capacity, e.g., is employed and paid by the tenant or by Adult Care Services (either directly or indirectly via an agency) to provide care, will be unable to request a discretionary succession.

Discretionary succession to a household member temporarily living away from home while at university or serving in the armed forces

The Council will consider a request for a discretionary succession from a household member who is temporarily living away from home while at university or serving in the armed forces. We would require proof that the person is otherwise permanently resident at the property and that they return to the property on a regular basis, e.g. during vacations or when on leave. Applicants must also be both eligible to join and qualify to join the Council's housing register.

If the discretionary successor is unable to take up permanent occupation of the property at the time because of their studies or their service, then a re-housing guarantee will be offered. A property of the size and type that would have met their needs at the time of the succession will be offered to them when they re-apply to the Council for housing. The re-housing guarantee will be invalid, and no offer of accommodation made if their circumstances change in the interim and they require larger accommodation.

Timescales

Requests for a discretionary succession must be made in writing, within three months of the date of the death of the tenant. Requests made outside this time limit will not be considered and the occupant of the property will be required to leave and give vacant possession to the Council.

Under-occupation following discretionary succession

When deciding if there is under-occupation, the Council will only take into account those members of the discretionary successor's household considered to be permanent members of a household under the terms of the Council's allocations scheme, who were residing with the tenant at the date of their death and had done so throughout the period of twelve months preceding the tenant's death.

Those not considered to be permanent members of a household under the terms of the Council's allocations scheme, or those living in the property for less than twelve months, or those who move into the property after the tenant's death will not be taken into account when deciding if there is under-occupation.

Suitable alternative accommodation will be offered to the discretionary successor. If this offer of accommodation is refused, the offer of a discretionary succession will be withdrawn, and the Council will commence legal action to recover possession of the property.

6.4 Appeals Procedure

Applicants may make an appeal against a decision not to allow a succession in writing or dictated over the phone to a Housing Officer within five working days from the date of refusal.

The Resident Services Manager will consider the appeal and will advise the applicant in writing of the decision. A decision will be made within ten working days unless an alternative timescale is agreed. The decision of the Resident Services Manager will be final.

This appeal procedure does not affect the right to use our complaint handling process or make a complaint to the Housing Ombudsman.

7. Consultation

This policy has been developed in consultation with key staff within the Council. Government has directed the legal perspective of the policy, but key related stakeholders have also influenced how the Council intends to implement and manage the policy. The Board and Executive Team champion this policy.

8. Monitoring and Review

This policy and the related procedure will be reviewed in full every two years or when there are changes in legislation to ensure they are still relevant and to incorporate change to legislation or best practise.

9. References and Resources

- Equalities Act 2010
- Human Rights Act 1998
- Welfare Reform Act 2012
- Housing Act 1996(IT's) Court Orders that effect assignment: 8
- Section 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings)
- Section 17 (1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce)
- Paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents)

- Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7 to the Civil Partnership Act 2004 Internal Tenancy Agreement
- SBC Allocations Scheme
- Rental Income and Arrears Management Policy

10. Abbreviations and Definitions

EDI	Equality, Diversity and Inclusion
GDPR	General Data Protection Regulation
PSED	Public Sector Equality Duty

We have defined the following terms we use throughout the Policy:

- A Qualifying Successor is a relative of a deceased tenant who is able to provide evidence that they satisfy the requirements to succeed to the tenancy.
- Survivorship is when the remaining joint tenant becomes a sole tenant on the death of a joint tenant. Survivorship is a type of statutory succession.
- Statutory succession is a right set down in legislation to inherit a tenancy on the death of a tenant. In this event, the tenancy does not end following the death of a tenant. The tenancy continues in the name of the successor.
- Family member is defined by the Housing Act 1985 (Section 113) as: a spouse or civil partner, a parent, grand-parent, child, grand-child, brother, sister, uncle, aunt, nephew or niece. This includes family relationships through marriage or civil partnership, relationships by half-blood, and stepchildren.
- Cohabitee is when a couple is living together as if married or civil partners. Whether a couple meet these criteria will depend upon the facts in each individual situation.
- Previous tenant is a tenant who is passing on the tenancy by succession.
- Potential successor is a person who may qualify to succeed to a tenancy.
- Principal Home is the main home in which someone is living.
- Under-occupation is when there are too many bedrooms for the number of occupants.

11. Appendices

Appendix – 1 Equality Impact Assessment

12. Version History

Date	Outlined Amendments	Author
June 2024	Updated the template and reassessed version 2 policy in line with current legislation.	Amanda Rogers