



## Tenancy Management

# Succession Policy

August 2020

Policy	Tenancy Management - Succession Policy
Users of Policy	Colchester Borough Council Officers, Colchester Borough Homes Officers
Date Adopted	30 January 2014
Date last Reviewed	August 2020
Review Frequency	Review every 3 years
Best Before Date	August 2023
<b>Scheme Delegation</b>	
Formation of Policy	Portfolio Holder with delegated responsibility for Housing
Amendments	Portfolio Holder with delegated responsibility for Housing
Monitoring	Housing Client Co-ordinator
Implementation	Housing Client Co-ordinator
Appeals	Client Services Manager, delegated to CBH Director of Operations

## 1. Aims of Policy

- 1.1 To ensure that tenancy changes in cases of succession are dealt with in accordance with current legislation, statutory guidance and good practice.
- 1.2 To treat all applicants wishing to succeed fairly and sensitively. The Succession Policy is compatible with the Gateway to Homechoice Allocations Policy and making best use of the Council's housing stock.
- 1.3 To provide high quality services which are clear and understandable to those who use them and help applicants/tenants understand the operation of the Succession Policy.

## 2. Legislation, Guidance and Background

- 2.1 The Housing Act 1985 Part IV s87 set out the persons qualified to succeed on the death of a tenant:

*A person ("P") is qualified to succeed the tenant under a secure tenancy if the "P" occupies the dwelling-house as their only or principal home at the time of the tenant's death and either—*

*(a) The "P" is the tenant's spouse or civil partner (Civil Partnership Act 2004 gave equal rights), or*

*(b) The "P" is another member of the tenant's family and has resided with the tenant throughout the period of twelve months ending with the tenant's death;*

*unless, in either case, the tenant was themselves a successor, as defined in section 88 of the Act.*

The Housing Act 1996 Chapter 1 Part IV s6 – deals with the issuing of guidance by the relevant authority (currently the Regulator for Social Housing) and states that:

*The Relevant Authority may issue guidance with respect to the management of housing accommodation by registered social landlords.*

*(2) Guidance under this section may, in particular, be issued with respect to—*

*(a) the housing demands for which provision should be made and the means of meeting those demands;*

*(b) the allocation of housing accommodation between individuals;*

*(c) the terms of tenancies and the principles upon which levels of rent should be determined;*

## 2.2 The Localism Act 2011

The Localism Act limits those persons who will be eligible to succeed to any new secure tenancy. The Act limits succession rights to only spouses or civil partners who are living with the deceased immediately prior to their death and are occupying the property as their only or principle home.

The act also gave Local authorities the power to grant additional succession rights to other family members or carers if they choose to do so. This will not affect existing tenants whose tenancies began before April 2012.

Colchester Borough Council (CBC) have decided under powers given by the Localism Act to limit succession rights to spouses, civil partners and a person who was living with the tenant as the tenant's spouse or civil partner. This will only apply to tenancies that started from 1<sup>st</sup> April 2012 as detailed in section 3 of the Localism Act.

## 2.3 The Housing and Planning Act 2016 Schedule 8 – **this Schedule is not currently in force.**

Once Schedule 8 comes in to force it amends the Housing Act 1985 to make rules governing succession before 1<sup>st</sup> April 2012 the same as those for tenancies granted from that date. Only the spouse, civil partner (or a person living with the deceased as a spouse or civil partner) are permitted to succeed to the tenancy. There would be no automatic statutory right to succeed of other family members for tenancies granted before 1<sup>st</sup> April 2012.

## 2.4 The Housing and Planning Act 2016 allows local authorities the discretion to grant succession rights to others, however, in the interest of making best use of our housing stock Colchester Borough Council will not apply any discretion, i.e. only the spouse, civil partner (or a person living with the deceased as a spouse or civil partner) would be permitted to succeed to the tenancy.

### 3. The Policy

- 3.1 Succession is where upon the death of the tenant, a partner or certain family member may have the right to take over the tenancy. For a person to qualify to succeed to a tenancy they must occupy the property as their only or principle home at the time.
- 3.2 Upon the death of either an Introductory or Secure tenant **one succession** will be granted to either:
- *A partner or spouse of the tenant as long as they lived at the property with the deceased at the time of death.*
  - *A spouse or civil partner who have signed a civil partnership document or person living as though they were civil partners (there is no requirement for a civil partnership to have taken place), and were living at the property with the deceased at the time of death.*
  - *A member of the tenant's family (where the tenant had no partner or spouse living at the home) who lived with the tenant at the home as his or her main or only home for at least twelve months before the tenant's death. Family members include parents, grandparents, children, grandchildren, brothers, sisters, uncles, aunts, nephews and nieces. We call these people "eligible successors"*
- This right of succession only applies to tenancies that began before 1 April 2012 and until the amendment made by Schedule 8 of the Housing and Planning Act 2016 comes into force.**
- 3.3 Succession does not involve the creation of a new tenancy; instead the statutory successor takes over the existing tenancy:
- Any existing rent arrears become the successors' responsibility.
  - Any legal notices applying to the tenancy still take effect.
  - All rights to the tenancy apply to the successor.
- 3.4 In cases where the "eligible successor" (excluding spouse, partner or civil partner) is living in a home that is larger than their housing need, or the property had been adapted for the deceased tenant and the successor does not have a need for those adaptations, or properties where the Council specifies the minimum age of the person that can live in them and the successor is younger than that age, the eligible successor is required to move to a more suitable property. This is in line with the Gateway to Homechoice Allocations Policy.
- 3.5 The "eligible successor" would not qualify for a payment under the Transfer Incentive Scheme in this situation. Eligibility for a bungalow will be assessed in line with the Gateway to Homechoice Allocations Policy.
- 3.6 Where the deceased tenant is a successor tenant there will be no further right to succession. However, there are limited circumstances where the person living with the deceased at the time of death may qualify for alternative housing assistance. These are:
- If the applicant has lived with the deceased for at least five consecutive years prior to their death and has provided the deceased with a high level of personal care (full details of the care provided and welfare benefits would need to be evidenced).

- If the applicant is considered to be a vulnerable homeless person and in priority need in line with homelessness legislation the council would owe a duty to rehouse them if they were required to leave.

#### **4. Appeals Procedure**

- 4.1 Appeals must be received in writing within 28 days of the date of the decision.
- 4.2 Appeals must clearly set out the grounds for the appeal including which aspect(s) of the policy or procedure the appeal is based on.
- 4.3 Appeals against the decision will be investigated and responded to by the Client Services Manager, delegated to CBH Director of Operations, or another officer appointed by the responsible officer named under the management agreement between Colchester Borough Council and Colchester Borough Homes.

#### **5. Service Standards**

- 5.1 Colchester Borough Homes (CBH) will acknowledge requests to succeed to a council tenancy within 2 working days, requesting all supporting evidence required to consider the request. A decision will be made within 5 working days of receipt of all information requested.
- 5.2 If further investigation is required, the applicant will be advised of the reason for the delay in a decision being reached and an estimated date by which the decision will be made.

#### **6. Monitoring and Review**

- 6.1 Cases and outcomes will be recorded by Colchester Borough Homes. Where necessary, individual cases can be discussed at the monthly management meetings between CBC and CBH.
- 6.2 Reviews of the policy will be conducted every 3 years to make sure the policy continues to be efficient and effective or sooner if there is a relevant change in legislation, case law or in response to a change of relevant CBC policy.

#### **7. Communicating the Policy to Staff**

- 7.1 Managers and staff involved in the implementation of the Policy will receive a copy of the policy.
- 7.2 CBH will provide training to enable staff to understand and comply with the Policy.
- 7.3 A copy of the Policy will be accessible from the Council's document management system.
- 7.4 Any amendments affecting the implementation of the policy will be communicated to managers and staff in a timely manner.

## **8. Communicating the Policy to Customers**

- 8.1 Information including a leaflet “Ending your tenancy – death of the tenant” will be published on the Colchester Borough Homes website. <https://cbhomes.org.uk/you-and-your-home/your-tenancy/changes-to-your-tenancy/>
- 8.2 A copy of the policy will be placed on the Council’s website and available via a link on Colchester Borough Home’s website.