

Succession Policy

Policy Owner	Tenancy and Neighbourhood Housing Manager
Version	V1
Frequency of Review	At least every 3 years – amend as necessary
Date Document Last Reviewed	Sept 2024
Date of Next Review	Sept 2027
Equality Impact Assessment Required / Completed	July 2025
Data Impact Assessment Required / Completed	Not required – no change in how we process data relating to succession
Reviewed By	Head of Service
Approved By	CLT 22/10/2024

1. Policy Statement

1.1 Succession is a legal term used when a person takes over a tenancy when a tenant dies and relates to the right of certain people to succeed to a tenancy following the death of a tenant.

2. Definitions

Succession	Means when a tenancy passes to someone else on the death of the original tenant.
Stock transfer	Refers to a large-scale voluntary stock transfer from a local authority to a housing association which is now part of Cottsway
Non-signer	A tenant who transferred on a stock transfer and refused to sign the new assured tenancy agreement offered to them at the time.
Member of Family	For the purposes of succession, family members are defined as: spouse, civil partner, parent, grandparent, children, grandchildren, siblings, uncle, aunt, nephew, and niece, including step relations and half relations, as well as persons living together as husband and wife or civil partners. The full definition is found in s113 Housing Act 1985.
Intestate	Where a tenant dies without a Will
Intestacy	The law that governs what happens where a tenant dies without a Will

Public Trustee	Official government office who act as trustee for a tenant when there is no one else who can
NHO	Neighbourhood Officer
Statutory	Governed by law (or statute).
Statutory Succession	An automatic transfer of a tenancy to another person on the death of the tenant. This happens by 'operation of law', not a grant of tenancy by a landlord
Contractual Succession (non-statutory)	A transfer of a tenancy to another person on the death of a tenant due to additional rights granted voluntarily by a landlord. The tenancy agreement will govern who can succeed and any terms and conditions that apply

3. Policy Scope and Objectives

- 3.1 When a tenant dies, the tenancy does not automatically come to an end. Succession may occur when a tenant dies, and an eligible person has a right either by law or given in the tenancy agreement to take over the tenancy.
- 3.2 This policy applies to all Cottsway Housing Association tenants where the tenancy type carries rights of succession and ensures the legal rights of tenant's are protected.
- 3.3 Cottsway tenants have different succession rights depending on the type and age if tenancy agreement they have.
- 3.4 This policy does not apply to licensees, leaseholders or shared owners.

4. Regulatory and Legal Considerations

- Housing Act 1988 for Assured Tenants
- Localism Act 2011 – which altered the mechanics of the process for contractual succession rights for family members of assured tenants if their tenancies started on or after 1 April 2012. The Localism Act also amended the 1988 Housing Act (s17) to extend the statutory right of succession of Assured Tenants to tenants with a fixed term assured shorthold tenancy of 2 years or more.
- The Housing Act 1988 was also amended by:
- The Civil Partnerships Act 2004 to extend statutory succession rights to couples in a registered civil partnership.
- The Marriages (Same Sex and Couples) Act 2013 which states all references to marriage in legislation shall be read as including a reference to marriage of a same sex couple.

4.1 This policy meets the expectation in the Tenancy Standard in the Regulator of Social Housing's Regulatory Framework that requires registered providers to set out their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members in a clear and accessible succession policy.

5. Stakeholder Consultation

5.1 Consultation with stakeholders is not applicable in this policy as succession law is set out and cannot be determined by any other means.

6. Policy Details

6.1 There are four ways an assured tenancy can pass on death. This is in addition to inheriting a tenancy via a Will/ intestacy:

6.2 Surviving Joint Tenant

If the tenancy agreement is in joint names and one of the joint tenants dies, the tenancy will continue with the surviving joint tenant as a sole tenant.

This is called the "right of survivorship" and happens automatically on the date of death. This right applies regardless of which tenancy agreement was signed by the tenant who died

6.3 Statutory Succession

If an assured tenancy agreement is in the name of a sole tenant and they die, then his or her spouse/partner/civil partner (or person who has been living together with the tenant as their spouse/partner/civil partner) succeeds to the tenancy automatically as at the date of death. This is on condition that immediately before the tenant's death, the spouse/partner/civil partner was occupying the property as their only or principal home.

There can only be one statutory succession of a tenancy, but successions before any stock transfer date do not count.

6.4 Contractual Succession

A contractual succession is where additional succession rights have been included in the tenancy agreement. These are usually rights granted to a family member (other than a spouse, partner, or civil partner) who lived with the tenant for 12 months prior to their death.

Our preserved rights tenancy agreement and our full assured tenancy agreement both contain additional requirements at paragraph 5.7. These are that they also satisfy us they had the right to inherit and apply for a grant of probate to have the tenancy vested in them within 6 months of the date of death. These are not likely to be met very often.

If the **original tenancy began before 1 April 2012**, then the successor needs to sign a new tenancy. We would usually backdate the tenancy start date to the date of death. The type of tenancy to be offered depends on what the deceased tenant's tenancy agreement says will be offered.

If the **original tenancy began after 1 April 2012**, then we do not offer a new tenancy agreement to be signed. The Localism Act 2011 provides that the tenancy "vests" i.e. passes automatically by law, to the qualifying successor as at the date of death.

6.5 The following tenancy agreements do **NOT** contain a family member succession right:

- Cottsway Starter tenancy 2020

6.6 The following tenancy agreements do contain this right:

- Preserved tenancy agreement - para 5.7
- Full assured tenancy - para 5.7

6.7 We will read the individual tenancy agreement and all related documentation to ensure contractual succession rights exist and if so, what criteria apply.

6.8 **Discretionary Succession**

A discretionary succession is where:

- the person requesting to succeed to the tenancy was left in the property on the death of the tenant but
- has no statutory right to succeed or
- has no contractual right to succeed under clause 5.7 of our preserved tenancy agreement and our full assured tenancy agreement
- the deceased tenant had a Preserved tenancy agreement or our full Assured tenancy agreement which says at clause 5.8 we will exercise our discretion to grant them a new tenancy

6.9 We will generally not agree any discretionary successions unless the tenancy agreement refers to this being an option.

6.10 Para 5.8 of our Preserved tenancy agreement and our full Assured tenancy agreement state that we will consider, at our discretion offering

a family member who lived in the home for 12 months prior to the late tenant's death, a new tenancy "either of the same home or of another more suitable property". These are called "Special succession rights". This only applies where the person asking us to grant them a new tenancy does not have a right to succeed.

6.11 **Inheriting an Assured Tenancy**

In addition to the above rights, it is possible for an assured tenancy to pass under a tenant's Will or, if they die without leaving a will, through intestacy rules. This is because a tenancy is an interest in land.

If the person who is named as the executor or a beneficiary (i.e. a person to whom the tenancy passes under the Will) lived in the property as their only or main home at the time of the tenant's death, they will inherit an assured tenancy.

Ground 7 exists specifically for this situation - **Appendix 1**

6.12 **Multiple Successors**

Only one person can succeed to a tenancy, Cottsway will never grant a joint tenancy upon succession.

If there is more than one person eligible for succession, they must decide themselves who should succeed.

If they are unable to:

- Where the late tenant's tenancy was granted prior to 1 April 2012, it depends on the provisions of the tenancy agreement as these determine who decides. It will usually be Cottsway who decides.
- Where the late tenant's tenancy was granted on or after 1 April 2012, they must apply to Court if they cannot agree

6.13 **Disputed Succession**

- Where in our view there is no right of succession based on the tenancy history or the documents provided and there is no agreement to make a discretionary offer of tenancy, Cottsway will, if necessary, take legal advice and commence legal proceedings to obtain possession.
- Whether or not someone is entitled to succeed to a tenancy is a question of fact based on the circumstances and tenancy agreement and is ultimately a decision for the Court.

6.14 Succession to a Minor

A minor (a person aged under 18 years) is legally entitled to succeed to a tenancy regardless of how young they are. We will always seek to find an adult to be the trustee to hold the tenancy interest until the minor reaches 18 years of age.

- If the deceased tenant had a Will, then the executor will be the trustee automatically. If there was no Will, Cottsway will speak to other adult family members or a social worker to ask one of them to act as the trustee.
- Where there is social services involvement, we will work with both the family and social services to try to ensure sufficient support is provided by the family. If no adult will agree to act as trustee, Cottsway will take legal advice about how to proceed.

6.15 Under occupation

- If a contractual succession would lead to under occupation as determined by our Lettings Policy and the tenancy agreement allows an offer of a smaller property, we will make one offer of suitable (smaller) alternative accommodation.
- If that accommodation is not accepted, we would serve an NTQ on the personal representatives of the late tenant. When the NTQ expires we will start legal proceedings to gain possession of the property on the basis that they are an unlawful occupier of the property.
- Ground 9 (except preserved tenancy agreements allows for this)

Appendix 2

6.16 Unauthorised Occupiers (UO)

- Once Cottsway has decided that a remaining occupant has no right to succeed to the tenancy, we will inform the occupants of our intention to seek possession of the property and serve the relevant legal notice.
- Cottsway will charge use and occupation charges equivalent to the current rent.
- Cottsway will make referrals and work with the UO as required to assist them with re-housing and will consider vulnerabilities when proceeding with possession of the property.

7. Appeals

- 7.1 The decision to refuse an application for succession will always be communicated to the customer in writing specifying the reason(s).
- 7.2 The customer then has a right to appeal the decision within five working days from the date of the decision being communicated to them.
- 7.3 The Tenancy and Neighbourhood Housing Manager will consider the appeal within 10 working days from the date of the appeal being made and provide a written letter of decision. This appeal decision is final.

8. Monitoring and Reporting

- 8.1 The Head of Housing is responsible for the succession policy and will ensure all employees are adhering to its principles.
- 8.2 All succession applications must be approved by the Tenancy and Neighbourhood Housing Manager.

9. Equality, Diversity and Inclusion

- 9.1 Cottsway will treat all customers with fairness and respect. Our staff will work positively with residents based on their individual needs and preferences and not exert any unwanted pressure for residents to move.
- 9.2 We recognise we have an ethical and a legal duty to advance equality of opportunity and prevent discrimination on the grounds of age, sex and sexual orientation, disability, race, religion or belief, gender reassignment, pregnancy and maternity, marriage, and civil partnership.
- 9.3 We will ensure that the individual needs of our customer are met as far as possible in implementing this policy, for example the provision of home visits and sign posting to other support agencies where appropriate.
- 9.4 An Equality Impact Assessment has been carried out and is attached to this policy.

10. Review

- 10.1 This policy will be reviewed every three years or sooner should regulatory or legislative changes occur.

Associated Documents Policies and Procedures

Lettings Policy
Equality Diversity and Inclusion Policy
Vulnerable Tenants Policy
Tenancy Agreement

List of changes

Date	Change
April 2024	Full review of policy in line with legislative changes and legal advice and guidance
July 2025	Review of policy document to allow for a policy and procedure

Appendices

APPENDIX ONE - RELEVANT GROUNDS FOR POSSESSION

Assured tenants - GROUND 7 Schedule Two Housing Act 1988

Ground 7

The tenancy is a periodic tenancy (including a statutory periodic tenancy) , or a fixed term tenancy of a dwelling-house in England, which has devolved under the will or intestacy of the former tenant and the proceedings for the recovery of possession are begun not later than twelve months after the death of the former tenant or, if the court so directs, after the date on which, in the opinion of the Court, the landlord or, in the case of joint landlords, any one of them became aware of the former tenant's death.

For the purposes of this ground, the acceptance by the landlord of rent from a new tenant after the death of the former tenant shall not be regarded as creating a new tenancy, unless the landlord agrees in writing to a change (as compared with the tenancy before the death) in the amount of the rent, the period of the tenancy, or the length of term, the premises which are let or any other term of the tenancy.

This ground does not apply to a fixed term tenancy that is a lease of a dwelling-house-

- granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or
- under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.

APPENDIX TWO - RELEVANT GROUNDS FOR POSSESSION

Suitable Alternative Accommodation – Ground 9 (and related Schedule) for use when successor is under-occupying.

Ground 9

Suitable alternative accommodation is available for the tenant or will be available for him when the order for possession takes effect.

SCHEDULE TWO HOUSING ACT 1988. PART 3 SUITABLE ALTERNATIVE ACCOMMODATION

- 1 For the purposes of Ground 9 above, a certificate of the local housing authority for the district in which the dwelling-house in question is situated, certifying that the authority will provide suitable alternative accommodation for the tenant by a date specified in the certificate, shall be conclusive evidence that suitable alternative accommodation will be available for him by that date.
- 2 Where no such certificate as is mentioned in paragraph 1 above is produced to the court; accommodation shall be deemed to be suitable for the purposes of Ground 9 above if it consists of either—
 - a) premises which are to be let as a separate dwelling such that they will then be let on an assured tenancy, other than—
 - (i) a tenancy in respect of which notice is given not later than the beginning of the tenancy that possession might be recovered on any of Grounds 1 to 5 above, or
 - (ii) an assured shorthold tenancy, within the meaning of Chapter II of Part I of this Act, or
 - (b) premises to be let as a separate dwelling on terms which will, in the opinion of the court, afford to the tenant security of tenure reasonably equivalent to the security afforded by Chapter I of Part I of this Act in the case of an assured tenancy of a kind mentioned in sub-paragraph (a) above, and, in the opinion of the court, the accommodation fulfils the relevant conditions as defined in paragraph 3 below.
- 3(1) For the purposes of paragraph 2 above, the relevant conditions are that the accommodation is reasonably suitable to the needs of the tenant and his family as regards proximity to place of work, and either—

(a) similar as regards rental and extent to the accommodation afforded by dwelling-houses provided in the neighbourhood by any local housing authority for persons whose needs as regards extent are, in the opinion of the court, like those of the tenant and of his family; or

(b) reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent and character; and that if any furniture was provided for use under the assured tenancy in question, furniture is provided for use in the accommodation which is either like that so provided or is reasonably suitable to the needs of the tenant and his family.

(2) For the purposes of sub-paragraph (1)(a) above, a certificate of a local housing authority stating—

(a) the extent of the accommodation afforded by dwelling-houses provided by the authority to meet the needs of tenants with families of such number as may be specified in the certificate, and

(b) the amount of the rent charged by the authority for dwelling-houses affording accommodation of that extent, shall be conclusive evidence of the facts so stated.

4 Accommodation shall not be deemed to be suitable to the needs of the tenant and his family if the result of their occupation of the accommodation would be that it would be an overcrowded dwelling-house for the purposes of Part X of the Housing Act 1985”.