

Successions, assignments and granting of discretionary tenancies to existing occupants policy 2022

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1. Purpose of the policy

1.1 The purpose of this policy is to outline the circumstances under which a tenancy can transfer to another person by succession or assignment or, where that is not possible, the circumstances under which the Council will grant a discretionary tenancy to that person. It will also deal with applications from a sole tenant for a joint tenancy and from joint tenants for a sole tenancy.

Death of a joint tenant. When a joint tenant dies, the tenancy will remain in the name(s) of the other joint tenant(s) and will not transfer to anyone else.

Succession is the transfer of a tenancy to a qualifying person following the death of a tenant.

Assignment is the transfer of a tenancy to a qualifying person where death has not occurred.

1.2 The policy will ensure:

- The Council meets its statutory responsibilities;
- The process for dealing with succession and assignment is consistent, clear and fair;
- Applications are dealt with sensitively and effectively at times of personal grief and difficult circumstances;
- A consistent approach is applied in relation to individuals who have no statutory right to succession or assignment, and to applications from a sole tenant for a joint tenancy and from joint tenants for a sole tenancy. This approach will take into account the Council's Allocations and Lettings Policy; and
- The Council makes best use of its housing stock.

2. Scope of the policy

2.1 This policy covers all homes let by the Council under secure and introductory tenancies.

3. Succession

3.1 On the death of a tenant, the tenancy cannot transfer to anyone else if the deceased tenant is classed as a successor.

3.2 The deceased tenant is classed as a successor where:

- He or she became the tenant by succession;
- He or she was the last surviving joint tenant and became so after 1980;

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- The tenancy was assigned to him or her as a potential successor;
- He or she previously exchanged from another property and had been a successor there;
- He or she became the tenant under a court order and the previous tenant was a successor; or
- He or she was a successor under a previous tenancy which ended within 6 months of the current tenancy starting.

3.3 If the deceased tenant is not classed as a successor, an applicant will qualify to succeed to the tenancy if he or she was occupying the property as his or her main home at the date of death **and**:

(a) For secure tenancies, where the start date of the tenancy was before 1st April 2012, either:

- He or she is the deceased tenant's spouse or civil partner, or
- He or she is another member of the deceased tenant's family AND had lived with the deceased tenant for the preceding 12 months.

Member of the family means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or a person who had been living with the deceased tenant together as if they were husband and wife or as if they were civil partners. In determining family membership, a relationship of the half-blood is treated as a relationship of the whole blood; the stepchild of a person is treated as their child; and an illegitimate child is treated as the legitimate child of their mother and reputed father.

(b) For secure tenancies, where the start date of the tenancy was after 1st April 2012, he or she is the deceased tenant's spouse, civil partner or a person who had been living with the deceased tenant together as if they were husband and wife or as if they were civil partners.

(c) For introductory tenancies, either:

- He or she is the deceased tenant's spouse or civil partner, or
- He or she is another member of the deceased tenant's family AND had lived with the deceased tenant for the preceding 12 months.

Member of the family means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or a person who had been living with the deceased tenant together as if they were husband and wife or as if they were civil partners. In determining family membership, a relationship of the half-blood is treated as a relationship of the whole blood; the stepchild of a person is treated as their child; and, an illegitimate child is treated as the legitimate child of their mother and reputed father.

3.4 Statutory succession overrides any other claims to the tenancy (for example, under the deceased tenant's will).

Situations where more than one person is qualified to succeed

3.5 Where more than one person qualifies to succeed to the tenancy, the deceased tenant's spouse or civil partner takes priority over other members of the family. If this does not resolve the issue they should agree between themselves which of them should succeed to the tenancy, as only one person can succeed. If they cannot agree, the Council will decide to which one of them the tenancy should transfer.

4. Succession: Underoccupied and specially adapted homes

4.1 It should be noted that the succession rules, outlined in section 3 above, do not differentiate between property types (for example between houses and bungalows). The tenancy automatically transfers to the successor on the death of the tenant. However, there are some circumstances where a property would be much more suitable for other individuals than for the successor. In these situations the Council may seek to recover possession of the property. This may happen where, for example:

- the successor is under-occupying the property. Note - the law will not allow the Council to recover possession for this reason where the successor is the deceased tenant's spouse or civil partner; or
- the property was specially built or significantly adapted for a disabled person and there is no longer a person living there who requires that type of accommodation; or
- the property is one of a group normally let for occupation by a person with special needs, which has a facility to assist that person, and there is no longer a person with those special needs living there.

4.2 Where any of these circumstances occur, the Council will offer to re-house the successor. The offer will be made in accordance with the Council's Allocations and Lettings Policy and will comply with the statutory rules in relation to the suitability of alternative accommodation.

4.3 Court proceedings for possession will not be started unless the successor has refused a reasonable offer of alternative accommodation.

5. Instances where a discretionary tenancy may be granted to an existing occupant where no right of succession exists

5.1 The Council may grant a discretionary tenancy of the property to an existing occupant where no succession right exists.

5.2 The applicant must have been living at the property as their main home at the date of death of the deceased tenant and must either have been:

- the deceased tenant's spouse or civil partner or a person who had been living with the deceased tenant together as if they were husband and wife or as if they were civil partners; or
- another member of the deceased tenant's family AND must have lived with the deceased tenant for the preceding 12 months.

Member of the family means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece. In determining family membership, a relationship of the half-blood is treated as a relationship of the whole blood; the stepchild of a person is treated as their child; and, an illegitimate child is treated as the legitimate child of their mother and reputed father.

5.3 Each case will be considered on its merits and in accordance with the Council's Allocations and Lettings Policy. If granted, the discretionary tenancy will be an introductory tenancy.

5.4 Where a discretionary tenancy is not granted, the applicant's entitlement to alternative accommodation will be in accordance with the Council's Allocations and Lettings Policy and the occupant(s) will be required to vacate the property. The applicant has a right to a review of a decision not to grant a discretionary tenancy in accordance with the Allocations and Lettings Policy.

6. Assignment

6.1 Assignment of a tenancy is possible only in the following circumstances:

- By transferring to someone who would be qualified to succeed to the tenancy; or
- By a court order following a relationship breakdown or orders relating to children; or
- Swapping of tenancies between secure council tenants and most housing association tenants. This is known as "mutual exchange".

Assignment to a Person Qualified to Succeed

6.2 A person will be eligible for assignment if he or she would be entitled to succeed the tenant if the tenant died. This is not, therefore, possible where the tenant is classed as a successor (see section 3.2 above). The tenant and any proposed assignee must be living at the tenant's address as their main home at the date of the proposed assignment. Eligible people include:

- (a) For secure tenancies, where the start date of the tenancy is before 1st April 2012:

- the tenant's spouse or civil partner, or
- another member of the tenant's family who has lived with the tenant for the preceding 12 months.

Member of the family means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or a person who has been living with the tenant together as if they were husband and wife or as if they were civil partners. In determining family membership, a relationship of the half-blood is treated as a relationship of the whole blood; the stepchild of a person is treated as their child; and an illegitimate child is treated as the legitimate child of their mother and reputed father.

(b) For secure tenancies, where the start date of the tenancy is after 1st April 2012, the tenant's spouse, civil partner or a person who has been living with the tenant together as if they were husband and wife or as if they were civil partners.

(c) For introductory tenancies:

- the tenant's spouse or civil partner, or
- another member of the tenant's family who has lived with the tenant for the preceding 12 months.

Member of the family means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or a person who has been living with the tenant together as if they were husband and wife or as if they were civil partners. In determining family membership, a relationship of the half-blood is treated as a relationship of the whole blood; the stepchild of a person is treated as their child; and an illegitimate child is treated as the legitimate child of their mother and reputed father.

Court Ordered Assignment

6.3 In certain circumstances, such as relationship breakdown, an applicant can apply to court to have the tenancy transferred into in their name.

Assignment by mutual exchange

6.4 Mutual exchange can take place between council secure tenants and most housing association tenants, but only after both landlords have given their written consent. Introductory tenants have no right to exchange. The Council must either give or refuse consent within six weeks of the application to exchange being received. Consent can only be refused for specified reasons, which include:

- Where a court order for possession exists;

- Where possession proceedings have begun, or where a notice of intention to seek possession has been served, on grounds which do not require alternative accommodation to be provided if possession is obtained;
- Where specified action has been taken in relation to anti-social behaviour;
- Where the property would become under occupied;
- Where the extent of the accommodation would not be suitable to the needs of the intended occupiers, for example too small for them;
- Reasons connected with the employment by the Council, or other specified bodies, of the current tenant or predecessor;
- Where the property was specially built or significantly adapted for a disabled person and the intended occupiers do not need that type of accommodation;
- Where the property is one of a group normally let for occupation by a person with special needs, which has a social service or special facility to assist that person, and the intended occupiers do not need that type of accommodation.

6.5 Whilst this is not a ground for refusing consent, where the tenant is in breach of their tenancy agreement (including being in rent arrears), the Council can impose a condition requiring the breach to be put right. If a condition is imposed the exchange cannot take place until the breach has been remedied.

6.6 A mutual exchange can also take place between a council tenant with a periodic secure tenancy and a flexible secure tenant or an assured shorthold tenant of a housing association who has a fixed term tenancy of at least two years. In such a case, the mutual exchange is not carried out by assignment but, instead, new tenancies are granted to each tenant. As with mutual exchange by assignment, the exchange can only take place if both landlords have given their written consent and a landlord can refuse consent for any of the reasons set out in section 6.4 above or can impose conditions as explained in section 6.5 above.

7. Sole to joint tenancy [discretionary tenancy]

7.1 A sole tenant can apply for a joint tenancy. The application will be considered in accordance with the following criteria:

- (a) The rent account on the sole tenancy must be clear and there must be no other breaches of the tenancy agreement;
- (b) The proposed joint tenant must be living at the property as their main home at the date of the proposed joint tenancy and must be either:
 - the tenant's spouse or civil partner or a person who has been living with the tenant together as if they were husband and wife or as if they were civil partners; or
 - another member of the tenant's family who has lived with the tenant for the previous 12 months. Member of the family means parent,

grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.

- (c) Joint tenancies will be granted at the discretion of the Council and in accordance with the Council's Allocations and Lettings Policy.

7.2 If a joint tenancy is approved the tenancy will be a new tenancy of the same type as the previous tenancy. Applications for joint tenancies, which include more than one additional tenant, will not normally be approved. If a joint tenancy is not approved, the applicant has a right to a review of that decision in accordance with the Allocations and Lettings Policy.

8. Joint to Sole Tenancy [discretionary tenancy]

8.1 Joint tenants can apply for a sole tenancy to be granted to one of them. The proposed sole tenant must be living at the property as their main home at the date of the proposed sole tenancy. The following matters will be taken into account:

- (a) Whether the joint tenants have complied with the terms of the tenancy agreement and if not the extent of the breach (for example the level of rent arrears);
- (b) the relationship or breakdown of the relationship between the joint tenants;
- (c) Whether the property has any adaptations or services which the proposed sole tenant does not need;
- (d) The sole tenancy will be granted at the discretion of the Council, and in accordance with the Council's Allocations and Lettings Policy.

8.2 If a sole tenancy is approved the tenancy will be a new tenancy of the same type as the previous tenancy.

8.3 If a sole tenancy is not approved, the applicant has a right to a review of that decision in accordance with the Allocations and Lettings Policy.

9. Complaints

9.1 If an applicant is unhappy with any decision made under this policy he or she may make a formal complaint by using Your Homes Newcastle's complaints procedure.

9.2 Provided that the complaints procedure has been followed, an applicant may complain to the Housing Ombudsman if he or she considers that an injustice has been caused due to maladministration. The Ombudsman may investigate the way in which the decision has been made. The contact details are:

The Housing Ombudsman Service

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PO Box 152
Liverpool L33 7WQ
Telephone: 0300 111 3000
info@housing-ombudsman.org.uk

10. Implementation

10.1 The Managers will be responsible for ensuring that the procedures for dealing with successions, assignments and discretionary tenancies are consistent with this policy.

11. Related legislation, policies and documents

11.1 These are as follows:

- Housing Act 1985
- Housing Act 1996
- Newcastle City Council's Allocations and Lettings Policy
- Newcastle City Council's Tenancy Agreement(s)