

<b>Policy Name</b>	<b>Succession Policy</b>
<b>Effective from</b>	<b>1 November 2019</b>
<b>Review Date</b>	<b>1 November 2024</b>
<b><i>Date previous policy</i></b>	<b><i>22 August 2002</i></b>
<b>Key changes</b>	<p>There continues to be no residency requirement for the tenant's spouse/civil partner or joint tenant provided in all three cases that the person's only or main residence was the house in question at the time of the tenant's death.</p> <p>Policy updated in line with Section 13 of the Housing (Scotland) Act 2014 which amends Schedule 3 of the 2001 Act and introduces <b>a new 12-month</b> residency and notification requirement. This applies to all other categories of persons applying to succeed to a tenancy.</p> <p>The following successors will have to have been living in the house as their only or main residence for the previous 12 months prior to the tenant's death. This will apply to:-</p> <ul style="list-style-type: none"> <li>• cohabitees/partners (of either sex)</li> <li>• family members</li> <li>• carers</li> </ul>



**STIRLING COUNCIL**  
**Housing Services**  
**Succession Policy 2019**

**(1) Introduction**

This policy sets out how the Council will manage succession rights to Stirling Council tenancies. Succession is the transfer of a tenancy from the tenant to someone else when the tenant dies.

**(2) Aim, Objectives and Principles of the Policy**

The overall aim of the Succession Policy is to assist the Council to meet housing need in the Stirling Council area.

The specific objectives of the Policy are:

- To ensure that requests to succeed to a tenancy are dealt with in a transparent and consistent manner which complies with legislation and best practice;
- To make the best use of the existing housing stock.

The principles of the Policy are:

- The Council will have detailed procedures and staff will receive training to ensure they can carry out the roles expected of them; and
- Communication with the applicant is in plain language and will make clear who the appropriate officer is to contact in the case of queries.

**(3) Legal Framework**

The primary legislation governing succession to a Scottish secure tenancy is contained within Section 22 and Schedule 3, Part 2, of the Housing (Scotland) Act 2001 as amended by Section 13 of the Housing (Scotland) Act 2014.

There is no provision for succession in the arrangements for a short Scottish secure tenancy.

The Succession Policy will adhere to housing and other relevant legislation. In addition to housing legislation detailed above, this includes, but is not restricted to, the following:

- Housing (Scotland) Act 1987
- Human Rights Act 1998
- Data Protection Act 2018
- Housing (Scotland) Act 2001
- Housing (Scotland) Act 2014
- Equality Act 2010
- Matrimonial Homes (Family Protection) (Scotland) Act 1981

- Marriage and Civil Partnership (Scotland) Act 2014

The Council will respect diversity and promote equality in everything that it does. The Council seeks to ensure that the Succession Policy does not treat anyone unfairly on the grounds of their age, sex, disability, gender reassignment, marital status/civil partnership, pregnancy and maternity, race, religion or belief, or sexual orientation.

The Council will ensure that any information given to it as part of the application process will be used in line with the law and will be held securely.

#### **(4) Eligibility criteria - terms on which succession can occur**

There are three distinct levels of priority for qualifying successors, which are listed below in order of priority:

##### Level One Successors

The highest priority to succeed to a tenancy attaches to any person who is the:

- Late tenant's spouse, civil partner, joint tenant or co-habitee, provided the house was their only or principal home at the time of the tenant's death.

In the case of a co-habitee or partner (of either sex), they must have been living in the house as their only or principal home for the previous 12 months prior to the tenant's death.

The 12-month qualifying period begins after the Council has been formally notified in writing that the proposed successor has moved into the property.

If more than one person qualifies for the tenancy as a Level One successor, they should, in the first instance, decide among themselves who will become the tenant, or they can agree to form a joint tenancy. If they cannot agree, the Council will decide who will become the tenant.

If any person is qualified to succeed to the tenancy as a Level One successor and that person wants to succeed to the tenancy, no-one who is qualified as a Level Two successor may succeed to the tenancy.

##### Level Two Successors

Level Two successors can only succeed to the tenancy if there are no Level One successors who want to succeed to the tenancy.

Level Two successors are persons who are members of the tenant's family and:

- They are aged at least 16 years at the date of the tenant's death;
- The house was their only or principal home at the date of death and had been so for the previous 12 months prior to the tenant's death.

The 12-month qualifying period begins after the Council has been formally notified in writing that they have moved into the property. Where a child of the household reaches the age of 16, a practical approach to notification will be taken, e.g. where the person was a part of the household when the house was allocated and/ or it is a long-term principal home and their occupation of the property is therefore a matter of record.

If more than one person qualifies for the tenancy as a Level Two successor, they should, in the first instance, decide among themselves who will become the tenant, or they can agree

to form a joint tenancy. If they cannot agree, the Council will decide who will become the tenant.

### Level Three Successors

If no-one qualifies as a Level One or Level Two successor, it may be inherited by a Level Three successor.

A Level Three successor is a carer. They will qualify to succeed if:

- They are aged at least 16 years at the date of the tenant's death;
- The house was their only or principal home at the date of death and has been so for the previous 12 months prior to the tenant's death;
- They gave up another or only principal home before the death of the tenant; and
- They are providing, or have provided, care for the tenant or a member of the tenant's family.

The 12-month qualifying period begins after the Council has been formally notified in writing that they have moved into the property.

If more than one person qualifies for the tenancy as a Level Three successor, they should, in the first instance, decide among themselves who will become the tenant, or they can agree to form a joint tenancy. If they cannot agree, the Council will decide who will become the tenant.

### *Carers*

It is essential to recognise the important role of carers and to ensure that they are not disadvantaged by the new 12-month residency qualifying period.

The Council recognises that there will be some cases when an individual has given up their main residence to care for a Stirling Council tenant but has not informed the Council that they have moved in, and the tenant dies before the 12-month qualifying period has been met. The Council recognises that there may be genuine reasons why a carer or tenant has not told the landlord of a change in household composition.

Where an applicant does not meet the criteria for succession, the Council will consider carefully all of the circumstances of the individual case and consider where it is appropriate to allocate a new tenancy for the same or another property to that person.

### **(5) Adapted or specially designed properties**

Where a property has been designed or substantially adapted for the use of person(s) with particular needs, only the late tenant's spouse, civil partner, joint tenant, co-habitee can succeed to the tenancy, provided the house was their only or principal home at the time of the tenant's death.

In the case of a co-habitee or partner (of either sex), they must have been living in the house as their only or principal home for the previous 12 months prior to the tenant's death.

The 12-month qualifying period begins after the Council have been notified that they have moved into the property.

Family members and carers can only succeed to the tenancy if they have particular needs requiring the type of accommodation in the house. Family members and carers who would otherwise be qualified, but for this condition, have a right to alternative suitable accommodation.

## **(6) Limits on Succession**

The Housing (Scotland) Act 2001, Section 22 provides for two rounds of succession provided the qualifying person meets the criteria outlined in (4) above.

If a tenancy has already been succeeded to twice, the third death will normally end the tenancy. The tenancy will not end, however, if there is a surviving joint tenant or tenants whose Scottish secure tenancy will continue.

However, if there is still a person in the house who would otherwise have succeeded to the tenancy but who cannot because the second round of succession has passed, that person is entitled to remain in the house for a period of up to six months. This is not a secure tenancy. This is to provide time for the person concerned to find alternative suitable accommodation. The occupant is liable to pay rent for the period spent in occupation after the death of the tenant.

## **(7) Qualifying person declines the tenancy**

If a person qualifies for the tenancy but does not wish to become the tenant, they should tell the Council in writing within four weeks of the death of the tenant and leave the house within three months. Rent will be charged only for the actual period of occupation after the death of the tenant.

## **(8) Application and assessment process**

The Council will assess each application to succeed to a tenancy on its own merits and in line with this policy but will consider all the circumstances of each individual case particularly where exceptional circumstances apply.

Applicants who wish to succeed must apply using the Succession Application form.

To have a right to succeed to a tenancy after living in a house, the tenant or any one of the joint tenants, or the person who has moved in, must have notified the Council that the person has moved in and that the property is the person's only or principal home. The qualifying period as set out in (4) does not begin until the Council has been formally notified in writing.

The Council anticipates that the majority of issues related to succession will be straightforward and confirmation of a successor's rights will be achieved by reference to the Council's existing tenancy records to confirm the entitlement of persons claiming to be entitled to succeed. The tenant is required to inform the Council of changes in the household within the requirements of the tenancy agreement.

Level Three successors must provide evidence to confirm that:

- That they gave up another only or principal home prior to the date of death of the tenant; and
- That they provided care for the (deceased) tenant or that they continue to provide care for a surviving member of the tenant's family.

## **(9) Notification of decision**

The Council will notify the applicant of its decision in writing within one month of receipt of the application to succeed to the tenancy.

Where the application to succeed is refused, the Council will advise the applicant of the reasons for refusal. Whilst there is no statutory right of appeal to the court, applicants who are aggrieved by the decision may request a review of the decision (refer to 11).

### **(10) Consent**

When permission to succeed to the tenancy is granted, the tenancy ends and a new tenancy will begin. A new tenancy agreement will be required.

### **(11) Refusal of consent**

We will consider each application to succeed to a tenancy on its own merits and will consider all the circumstances of each individual case.

Applications for succession will only be refused where the applicant cannot demonstrate to the satisfaction of the Council that they are a qualified person, as defined within this policy, for the duration of the qualification period of 12 months, where applicable.

### **(12) Appeals**

The Housing (Scotland) Act 2001 does not allow for a right of appeal to the courts against decisions made on succession.

However, the applicant may request a review of the decision by applying in writing to the relevant Team Leader no later than (within) 14 days of the decision. The Team Leader will notify the applicant of the outcome of the review within four weeks of receiving the request to review the decision.

The Team Leader's decision shall be final.

### **(13) Review of Policy**

This policy will be reviewed in 2024, unless an earlier review is required due to legislative changes or other reasons.