



## **SUCCESSION TO TENANCY 2022**

### **1.0 INTRODUCTION**

The purpose of this policy is to set out how we will manage succession rights to Ochil View tenancies as set out in the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014 and the Association's Scottish Secure Tenancy Agreement.

### **2.0 DEFINITION OF SUCCESSION**

Succession is the passing of a tenancy from a tenant who has died to another person who becomes the new tenant – known as the "successor". Succession cannot take place unless a tenant dies. If there is no person qualified to succeed to the tenancy, or if every person who is qualified does not wish to succeed, the tenancy is terminated.

### **3.0 TERMS ON WHICH SUCCESSION CAN OCCUR**

The terms on which Succession to a tenancy can occur are set out in Section 7 of the Association's Scottish Secure Tenancy Agreement. These are as follows:

#### **3.1 Level One Successors**

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

- ✓ Late tenant's spouse, civil partner, or cohabitee, but only if the house was their only or principal home at the time of the tenant's death;
- ✓ Any surviving joint tenant, if the house was their only or principal home at the time of the tenant's death.

In the case of a partner or cohabitee, they must have occupied the house as their only or principal home for at least 12 months immediately prior to the tenant's death.

A partner or cohabitee is a person living with the tenant as husband and wife or in a relationship with the tenant which has the characteristics of a relationship between husband and wife except that the persons are of the same sex.

The Association must have been notified of, and have given consent to the proposed successor's residency in 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. If they cannot agree, the Association will decide who will become the tenant.

### 3.2 Level Two Successors

If a 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 to succeed as a Level Two successor may succeed to the tenancy.

Level Two successors can only succeed to the tenancy if there are no Level One successor or there is a Level One successor, but they do not want to succeed to the tenancy. Level Two successors are persons who are members of the tenant's family and are aged at least 16 at the date of death and

- ✓ The house was their only or principal home at the date of death of the tenant and had been so for a period of not less than 12 months prior to the date of death of the tenant and
- ✓ The Association had been notified of in writing, and had given consent to, the proposed successor's residency in the property

If more than one person qualifies to succeed to the tenancy at Level Two, they should, in the first instance, decide among themselves who will become the tenant. If they cannot agree, the Association will decide who will become the tenant.

### 3.3 Level Three Successors (Carers)

If no-one qualifies at Level One or Level Two, or a qualified person at Level One or Level Two does not want to succeed to the tenancy, it may be inherited by a Level Three Successor (a carer) if:

- ✓ they are aged at least 16 at the date of death and
- ✓ the house was their only or principal home at the date of death of the tenant and for a period of at least 12 months prior to the date of death of the tenant and
- ✓ they gave up another only or principal home before the death of the tenant and
- ✓ they are providing, or has provided, care for the tenant or a member of the tenant's family and
- ✓ The Association had been notified in writing of and had given consent to the proposed successor's residency in the property

If more than one person qualifies for the tenancy under Level Three, they should, in the first instance, decide among themselves who will become the tenant. If they cannot agree, the Association will decide who will become the tenant.

### 3.4 Adapted or specially designed properties

Under terms of paragraph 5 of schedule 3 of the Housing (Scotland) Act 2001, a house that has been designed or substantially adapted for a person with special needs, (for example Wheelchair Adapted properties or Elderly Amenity properties as they are specially designed for persons over pensionable age). Arrangements for succession depend on whether it is a first or second succession.

At the first succession, we will allow Level One Successors to remain in the house whether or not they have a need to live in a property with special design or adaptation characteristics.

At the first succession, if someone qualifies for the tenancy at Level Two or Level Three and does not have special needs requiring accommodation of that kind, then they are not a qualified person for the purposes of the Housing (Scotland) Act 2001

which, means they cannot succeed to the tenancy and therefore, we will terminate the tenancy on the death of the tenant.

At a second succession where someone qualifies at Level One, Level Two or Level Three and does not have special needs requiring accommodation of that kind, we will also terminate the tenancy.

In both these cases where possible we will offer the person suitable alternative accommodation. However, if there is no suitable alternative accommodation available to offer the person, we may consider allocating the property as an Exceptional Allocation.

The decision to grant the tenancy or offer suitable alternative accommodation must be approved by the Director of Housing Services.

Section 9.0 of this Policy sets out the meaning of suitable alternative accommodation.

#### **4.0 PERSONS WHO ARE ENTITLED TO SUCCEED BUT DO NOT WISH TO DO SO**

If someone qualifies at any level to succeed to the tenancy but does not wish to become the tenant and they confirm this in writing within four weeks of the death of the tenant and leave the house within three months, then rent will be charged only for the actual period of occupation.

#### **5.0 LIMITS ON SUCCESSION**

The Association will permit a tenancy to be inherited on a maximum of two occasions (subject to the criteria set out above) under the provisions of our Scottish Secure Tenancy Agreement.

If a tenancy has already been inherited twice, the third death will normally end the tenancy. The tenancy will not end, however if there is a surviving joint tenant whose Scottish Secure Tenancy will continue.

However, if there is still a person in the house who would otherwise qualify to inherit the tenancy under the tenancy agreement if it had not been previously succeeded to on two occasions, the tenancy will continue for up to 6 months after the last death.

Where a tenant gives up a Scottish Secure Tenancy in order to occupy another house which is subject to Scottish Secure Tenancy following termination of the first tenancy by virtue of an order under Section 16(2) (b) of the Housing Scotland Act 2001 (a "Management Transfer"), those tenancies are, for the purposes of this section, to be treated as one tenancy.

Therefore, when a person has been subject to such an order, there may only be two successions, however they may take place at different addresses.

#### **6.0 CONFIRMATION OF CIRCUMSTANCES RELATED TO SUCCESSION**

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 Association of the person has moved in and that the property is the "qualifying

person's" only or principal home. The qualifying period (as set out above) does not commence until the Association has been notified.

The Association 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 our existing tenancy records to confirm the entitlement of persons claiming to be entitled to succeed. The tenant is required to inform us in writing of changes in the household within the requirements of the Tenancy Agreement.

The Association will accept notification in writing or by email. In the case of children in the household reaching the age of 16, who were part of the household when the property was allocated and it is their long term and principal home, no further notification is required.

On notification, the Association will consider whether it is appropriate for that person to reside in the property. We will refuse consent if it is not reasonable that they do so. Consent will not be given in the case where a property is overcrowded as a result of their residency, and the person may not remain.

Any period following refusal of consent to reside will not count towards any qualifying period for succession. There may be other reasons why the Association does not consent to residency and the unsuccessful applicant will be notified of the reason at the time.

Where a person claims to be entitled to succeed through a relationship to the deceased tenant they must produce birth, marriage or civil partnership certificates to prove a relationship that would entitle them to succeed to the tenancy.

Level three successors must provide evidence to confirm:

- ✓ 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.

#### **7.0 GROUNDS FOR SELECTING A SUCCESSOR WHERE QUALIFIED SUCCESSORS CANNOT AGREE.**

In making such a decision, the Association shall consider carefully the respective needs and circumstances of those involved.

#### **8.0 DEFINITION OF CARE**

The Association recognises the rights of genuine carers to succeed to a tenancy where qualifying conditions are met. The Association recognises "care" as comprising "Personal Care" as defined within Section 2 (28) of the Regulation of Care (Scotland) Act 2001 or Social Care as defined within Schedule 1 of the Community Care and Health (Scotland) Act 2002.

#### **9.0 SUITABLE ALTERNATIVE ACCOMMODATION**

Where an applicant does not have the right to succeed, we have no discretion to grant a succession of tenancy. The Association will consider whether it is appropriate, in all the circumstances, to offer a tenancy to the applicant at that property or any other property, for example in the interest of preventing homelessness.

Such a grant of tenancy will not be a succession but an exceptional allocation and can only be offered with the approval of the Director of Housing Services and the homologation of the Association's Customer Services Committee (or such other Committee as may succeed it) as set out in the Association's Housing Allocations Policy.

Where the proposed recipient of an Exceptional Allocation of tenancy is within the definition of a relevant person as defined in the Entitlements, Payments and Benefits Policy, the decision to grant an exceptional allocation shall only be made by the Customer Services Committee or Board of Management following receipt of a report.

In determining the suitability of any alternative accommodation that an unsuccessful claimant to succession may be offered, the Association will have regard to the definition of suitability in Schedule 2 Part 2 of the Housing (Scotland) Act 2001.

## **10.0 COMPLAINTS AND APPEALS**

Persons who are dissatisfied by the operation of this Policy or a decision made by staff of the Association in terms of this Policy or related procedures will be informed of their right to Complain within the Association's Complaints Policy.

## **11.0 SUCCESSION AND FINANCIAL SUPPORT WITH HOUSING COSTS**

The Association works in partnership with local authorities to minimise fraud and overpayment in payment of financial support with housing costs. We are required to notify the local authority of a significant change in the circumstances of any tenant that may affect their entitlement to financial support with housing costs.

We will notify the local authority and where applicable the Department of Work and Pensions of any changes in household of which we are notified and of Successions that take place.

## **12.0 SUCCESSORS AND RENT ARREARS, RECHARGEABLE REPAIRS AND THE CONDITION OF THE PROPERTY**

Only successors who were joint tenants prior to the death of the tenant shall have responsibility for rent arrears and rechargeable repair accounts that are outstanding at the death of the tenant.

Where a property has tenant responsibility repairs, tenant damage, unauthorised alterations or non-standard fittings at the death of the tenant, the Association will repair only those items that present a risk to the safety of the succeeding tenant.

## **13.0 REVIEW**

This policy will be reviewed at least every three years.

Linda McLaren  
Director of Housing Services

**Policy Review Process and Consultation**

Reviewed by Senior Management Team on	31 <sup>st</sup> May 2022
Considered by the Customer Services Committee on	2 <sup>nd</sup> June 2022
Approved by the Board of Management	30 <sup>th</sup> June 2022
Policy amendments considered by the Customer Services Committee on	<b>14<sup>th</sup> December 2023</b>
Policy amendments approved by the Board of Management	<b>25<sup>th</sup> January 2024</b>
Date of Next Review	<b>June 2025</b>

APPROVED