



# SUCCESSION OF TENANCY POLICY

<b>POLICY IMPLEMENTATION CHECKLIST</b>	
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# SUCCESSION TO TENANCY POLICY

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## 1.0 INTRODUCTION

This Policy outlines Garrion People's Housing Co-operative's requirement to accept and consider any application for the succession of a tenancy as set out in the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014.

This makes provision for succession to a Scottish Secure Tenancy on the death of a tenant. The legislation defines the person(s) qualified to succeed to a tenancy and the circumstances in which they can do so.

## 2.0 POLICY AIMS AND OBJECTIVES

The primary aim of this Policy is to put a structure in place which ensures the equality of opportunity and consistency of approach in dealing with a request from a person to succeed to a tenancy.

This Policy is also intended to ensure that all parties are aware of their legal obligations and can fulfil their respective responsibilities. Arising from these overall aims, the key objectives of this Policy include:-

- Ensuring that all applications for succession are treated in a fair and equitable manner;
- Recognising and protecting the legal rights of all members of the household;
- Ensuring the Co-operative meets its legal obligations and operates in accordance with good practice guidelines;
- Allowing the Co-operative to keep accurate records of tenants and household in their properties.

## 3.0 LEGAL REQUIREMENTS, REGULATORY FRAMEWORK AND GOOD PRACTICE GUIDE

In all aspects of the succession process, the Co-operative will seek to conform and comply with all legislation, performance standards, guidance and good practice that directly or indirectly affects the process.

### **Legal Requirements:**

**The Housing (Scotland) Act 2001, Section 22 and Schedule 3** makes provision for succession to a Scottish Secure Tenancy by a qualified person on the death of the tenant. Schedule 3 defines who is a qualified person and the circumstances in which they can succeed.

**The Housing (Scotland) Act 2014, Section 13** makes changes to the rules on succession for family members, unmarried partners and carers.

**The Scottish Secure Tenancy Agreement, Part 7** clarifies the rights for succession and the process for both the applicant and the Co-operative and in addition comply with the **Data Protection Act 2018 and Human Rights Act 1998**.

### **Regulatory Standards:**

The Scottish Housing Regulator has set out Regulatory Standards for all Registered Social Landlords (RSLs) to ensure that RSLs deliver good outcomes and services for its tenants and service users through good governance and financial management.

We will comply with the following Regulatory Standards:

**Standard 1:** The governing body leads and directs the RSL to achieve good outcomes for its tenants and other users.

**Standard 2:** The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.

**Standard 5:** The RSL conducts its affairs with honesty and integrity.

## **4.0 DEFINITIONS**

**4.1** **Succession to tenancy** operates when the tenancy is passed to another person on the death of the tenant.

**4.2** **Qualified persons** are those defined within the Housing (Scotland) Act 2001 as being eligible for succession. The Housing (Scotland) Act 2014 introduced a mandatory 12 month qualifying period of residence for 'qualified persons'. Section 6 of this policy outlines the order of succession and associated criteria in further detail.

**4.3** **A Co-habitee** is a person, whether of the opposite sex or not, who is living with the tenant in a relationship similar to that of husband and wife, or civil partner.

## **5.0 QUALIFYING PERSONS**

Succession can only arise on the death of the tenant, and where there is a relevant qualifying person. The Co-operative will ensure that succession to tenancy applications are processed in accordance with legal provisions as stated in the Housing (Scotland) Act 2014 and with regards to the contractual terms within the tenancy agreement.

A qualifying person must be registered with, and been accepted by, the Co-operative as a member of the household and be able to prove they have resided in the property for a 12 month period prior to the tenant's death, for example by:-

- Declared as part of the household on Housing Benefit claims, and/or
- Declared as part of the household with the Council Tax Department, and/or
- Be claiming any benefits from that address and

- Be able to provide evidence of residency.

The Co-operative will not permit a succession to any person who cannot prove the house has been their only or principal home for the relevant period prior to the application being made and was not registered as a member of the household at least 12 months prior to the tenant's death.

A qualified person is in order of priority.

## 6.0 LEVELS OF SUCCESSION

There are three levels of succession:-

- **Level One**

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

- 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.

There is no qualifying period for the tenant's spouse, civil partner or joint tenant.

In the case of a cohabitee, they must have occupied the house as their principal home for at least 12 months immediately prior to the death of the tenant. A cohabitee is the person living with the tenant as husband and wife or different or same sex.

The 12 month period cannot begin unless the Co-operative has been informed in writing that the individual is living in the property as their only or principal home. The Co-operative must have been informed by the tenant, a joint tenant, or the person who wishes to succeed to the tenancy. The length of time they have been living in the property starts from the date we are notified in writing that the person is living in the property as their only or principal home.

The 12 month residency requirement is from when the tenant notified the Co-operative in writing that the cohabitee had moved in and was living in the property as their only or principal home.

- **Level Two**

If no-one qualifies at Level One, or a qualified person does not want the tenancy, it may be inherited by a member of the tenant's family as long as:

- He or she is aged at least 16 at the date of death;
- The house was his or her principal home at the date of death and for a period of at least 12 months prior to the date of death of the tenant;
- The Co-operative has been notified in writing of, and given consent to the proposed successor's residency in the property.

The family member must have occupied the house as his/her only or principal home for at least 12 months immediately prior to the death of the tenant to qualify to succeed to the tenancy.

The 12 month period cannot begin unless the Co-operative had been informed in writing that the tenant's family member is living in the property as their only or principal home.

The Co-operative must have been informed by the tenant, a joint tenant, or the person who wishes to succeed to the tenancy. The length of time they have been living in the property starts from the date we are notified that the person is living in the property as their only or principal home.

If no confirmation has been given, they will not be entitled to succeed to the tenancy.

- **Level Three**

If no-one qualifies under Level One, or Level Two, or a qualified person does not want the tenancy, it will be inherited by a carer as long as:

- He or she is aged at least 16 at the date of death;
- The house was his or her principal home at the date of death and for a period of at least 12 months prior to the date of death of the tenant;
- He or she is required to prove they gave up another only or principal home before the death of the tenant;
- He or she is providing, or has provided care for the tenant or a member of the tenant's family;
- The Co-operative had been notified in writing and had given consent to the proposed successors residency in the property.

The carer must have occupied the house as his/her only or principal home for at least 12 months immediately prior to the death of the tenant to qualify to succeed to the tenancy. The 12 month period cannot begin unless the Co-operative has been informed in writing that the carer is living in the property as their only or principal home. The Co-operative must have been informed by the tenant, a joint tenant, or a carer who wishes to succeed to the tenancy.

If no confirmation has been given, they will not be entitled to succeed to the tenancy.

## **7.0 MORE THAN ONE QUALIFYING PERSON**

If more than one person qualifies under the same category of priority, it is expected that the qualifying persons and/or family members would agree amongst themselves who should succeed to the tenancy.

However, where no agreement can be reached between the qualifying persons within 2 weeks of the tenant's death, the Co-operative may make the decision as to who will succeed to the tenancy. In making the decision we will take into consideration factors such as;

- The wishes of the deceased that may be included or indicated in their will;
- The length of time each qualifying person has resided in the house;
- Considering immediate family i.e. son, daughter of the deceased tenant and thereafter consider the extended family member i.e. parent, grandparent, grandchild, brother, sister, stepchild, etc. of the deceased tenant;
- The housing need of each applicant;
- The size of the property and the composition of each applicant's household;
- Past conduct within the house of each applicant.

## 8.0 NO QUALIFIED PERSONS IDENTIFIED

If there is no qualifying person, the effective date of the tenancy end will be the date of the tenant's death.

## 9.0 ADAPTED OR SPECIALLY DESIGNED PROPERTIES

If the house was designed or substantially adapted for a person with special needs, no person will qualify under level two or three above unless that person has special needs requiring the type of accommodation in the house. If a person would have qualified, but for this paragraph, we will make other suitable accommodation available.

A house that has been designed or substantially adapted for the use of persons with special needs can only be succeeded by:-

- The surviving husband or wife providing the house was their only or principal home at the time of the tenant's death OR
- The unmarried partner providing the house had been their only or principal home at the time of the tenant's death OR
- The surviving joint tenant if the house was their only or principal home at the time of the tenant's death OR
- A qualifying person under Level 2 and 3 that has special needs requiring the adaptations made to the property, providing the house was their only or principal home for 12 months prior to the tenant's death.

A person that would have qualified under level 2 or 3 but does not have special needs, have the right to suitable accommodation.

They will have the right to remain living in the house on a Short Scottish Secure Tenancy until the Co-operative is able to offer suitable alternative accommodation.

## 10.0 LIMITS ON SUCCESSION

Under the terms of the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014, the tenancy can only be inherited twice under the provisions noted in this Policy. If the tenancy has already been inherited twice, the third death will normally end the tenancy. This will not happen if there is a surviving joint tenant whose Scottish Secure Tenancy will continue.

However, where a member of the remaining household would have been a qualifying person but cannot succeed to the tenancy because both rounds of succession have been used, they have the right to remain in the property for six months after the last death. The tenancy will **not** be a Scottish Secure Tenancy for that period, but a Short Scottish Secure Tenancy will be granted while alternative accommodation is secured.

## **11.0 APPLYING FOR SUCCESSION**

To have the 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 Co-operative that the person has moved in and that the property is the “qualifying person’s” only or principal home. The qualifying period (as set out in this policy) does not commence until the Co-operative has been notified.

Applications for succession must be submitted in writing to the Co-operative no later than 1 week after the death of the tenant. Applicants will be required to complete the Co-operative’s application form, providing all the information and evidence required by the Co-operative to correctly determine the applicant’s eligibility to succeed to the tenancy.

Although not governed by statute, the Co-operative will endeavour to respond in writing to the application within 28 days of the completed application, and all relevant supporting documentation, being received.

## **12.0 REFUSING A SUCCESSION**

Applications for succession will only be refused where the applicant cannot show to the Co-operative’s satisfaction that they are a qualified person; or did not reside in the property for the 12 month qualifying residency period prior to the tenant’s death. It will be the responsibility of the applicant to provide the Co-operative with the evidence required to prove they have the right to succeed to the tenancy.

The Co-operative can refuse a succession request from anyone who doesn’t satisfy these conditions, and if they have been living in the property we will be able to request that they leave on the basis that they have no legal right to be there. In this case we would give such a person two months to find alternative accommodation.

## **13.0 SUITABLE ALTERNATIVE ACCOMMODATION**

Where an applicant does not have the right to succeed to the tenancy, the Co-operative does not have any discretion to grant a succession to tenancy. The Co-operative will consider whether it is appropriate, in all circumstances to offer a tenancy to the applicant at that property or another property in order to prevent homelessness and in line with the Co-operative’s Allocation Policy.

In these exceptional cases, and depending on the individual circumstance, we may consider it appropriate to allocate a tenancy to the applicant, for example the existing tenancy or the tenancy of another property where the applicant can provide documentary evidence that they have lived in the property for over 12 months.

In these cases a new tenancy will be granted and it will not be a succession. In all cases, the Co-operative will seek clarity regarding proof of residency from the applicant and all cases will be assessed in line with the current Allocations Policy. This may mean that the applicant is offered another property of a smaller size in order to meet their housing need.

A house inspection will be carried out prior to the succession or transfer of the tenancy and any statutory repairs carried out.

## 14.0 DECLINING THE TENANCY

If the qualified persons declines the tenancy they must advise the Co-operative in writing, within four weeks of the tenant's death.

Where the qualifying person declines the tenancy, they must vacate the tenancy within three months of the death of the tenant.

In this situation a charge equivalent to the monthly rent will be due from the qualifying person for the period of occupancy commencing from the date of the tenant's death, and ending on the date the property is vacated and keys returned to the Co-operative. Any monies received will be placed in a new separate account rather than the original rent account to avoid a new tenancy being created.

## 15.0 GENERAL PRINCIPLES

- 15.1 On the death of a tenant, the tenancy pass to a qualified person as described in the Housing (Scotland) Act 2001 as amended in the Housing (Scotland) Act 2014 and in the Scottish Secure Tenancy Agreement.
- 15.2 The tenant(s) is required to inform us of any changes in the household within the requirement of the Tenancy Agreement. The Co-operative will accept notification in writing or by email.
- 15.3 Consent to succeed to a tenancy will only be given by the Co-operative after consideration of the circumstances of qualified person(s).
- 15.4 If there is no qualifying person(s) or the qualifying person(s) does not wish to succeed to the tenancy, the tenancy will be terminated.
- 15.5 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.
- 15.6 A person succeeds to a tenancy (as opposed to a property). Therefore the Successor is entitled to identical tenancy conditions, rights, obligations and responsibilities including date of entry, as the original tenant. As such, the Successor will be required to sign a Variation to the Tenancy, as opposed to signing a new Tenancy Agreement. Rent will be due from the qualifying successor from the date of the tenant's death.
- 15.7 With the exception of joint tenants, any arrears outstanding at the time of the tenant's death will be charged against the tenant's estate. If this cannot be pursued they are written off.
- 15.8 A house inspection will be carried out prior to the succession and any statutory repairs carried out.
- 15.9 It is the responsibility of the successor to advise the statutory authorities, including Council Tax, Housing Benefit, Department of Works and Pension (Universal Credit), gas, electricity and telephone suppliers of the death of the tenant and the date of their succession. The Co-operative will provide advice and assistance with this if required.



15.10 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.

15.11 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
- They provided care for the (deceased) tenant or that they continue to provide care for a surviving member of the tenant's family.

## **16.0 APPEALS AND COMPLAINTS**

In the event of a claim to succession being refused and the applicant is unhappy about the decision they will need to appeal in writing to the Co-operative within 28 days of receiving the decision.

The Co-operative will review the appeal and provide the applicant with the result of their decision in writing.

If the applicant is still dissatisfied, recourse can be sought through the Co-operative's Complaints Policy.

## **17.0 EQUALITY & DIVERSITY**

The Co-operative is committed to promoting an environment of respect, understanding, encouraging diversity and eliminating discrimination by providing equality of opportunity for all.

We will endeavour to ensure a fair and equal service to everyone and that all services are carried out in an undiscriminating manner in line with the Co-operative's Equality and Diversity Policy.

In particular, we will not discriminate on the grounds of age, disability, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender reassignment, sex and sexual orientation.

We will ensure that everyone has equal access to information and services to meet specific need. Upon request we will make available documents in a range of alternative formats/languages.

## **18.0 GENERAL DATA PROTECTION REGULATION (GDPR)**

The Co-operative will process information and data contained within the application in accordance with its policies and procedures relating to the General Data Protection Regulations.

Information regarding how data will be used and the basis for processing data is provided in the Co-operative's Fair Processing Notice.

## **19.0 POLICY REVIEW**

This Policy will be reviewed on a 5 yearly basis or earlier if the legislation changes or to ensure that its aims and good practice are being met.