
Briefing on Succession and Associated Policies

Housing Scrutiny Commission: 18 March 2025

Decision to be taken by:

Lead director: Chris Burgin

Useful information

- Ward(s) affected: All
- Report author: Nick Griffiths
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- Report version number: Ver 3.1

1. Summary

- 1.1 This briefing paper sets out Leicester City Council's succession, change of name and sole to joint and joint to sole policies and gives an overview of the legislation which needs to be followed.
- 1.2 It is important to note that in law, a succession happens immediately after the moment of death where a person qualified to succeed exists. A person cannot "apply" for a succession, it either happens or it doesn't. There is a great deal of case law on the matter of succession. As long as the qualifying conditions apply, a person will succeed to a tenancy. It follows that where the conditions are not met, a succession will not occur.
- 1.3 A tenant can apply to carry out a "Change of Name" on their tenancy. This normally occurs upon the tenant's name being changed due to their personal circumstances.
- 1.4 Sole to joint and joint to sole. A sole to joint tenancy change takes place where a sole tenant wishes to add another person to their tenancy, certain criteria must be met prior to the joint tenancy commencing. A joint to sole tenancy change; also known as a "relationship change or relationship breakdown" is where a joint tenancy ends when one person leaves the joint tenancy by virtue of submitting a termination notice.
- 1.5 Officers do not "approve" or "deny" a succession. The conditions for a succession other than statutory succession are set out in the Council's succession policy.
- 1.6 The change of name is mandatory due to the nature of the evidence provided, which normally consist of deed poll documents, marriage certificate or divorce documents.
- 1.7 A sole to joint tenancy change is discretionary and not a legal requirement. A joint to sole tenancy change is actioned upon a termination being received, consequently bringing the whole tenancy to an end within the 4 weeks' notice period and a new sole tenancy being created in its place.

2. Recommended actions/decision

2.1 To note the current policies and outcomes.

2.2 To agree to the commencement of a review of associated procedures to bring them into line with current legislation and best practice.

3. Scrutiny / stakeholder engagement

3.1 Residents and stakeholders will be consulted on any changes to the policies, and the approval process will be followed.

4. Background with supporting evidence

Succession

- 4.1 The 1985 Housing Act (as amended) sets down the legislation as regards to who may succeed a secure tenancy. The law on succession was substantially amended by the Localism Act 2012, which removed the right of succession for other family members apart from a spouse or partner. This applies to all tenancies signed after 1 April 2012. In these cases, only the spouse or partner can automatically succeed the tenancy. The law also allows for other succession to take place as specified in organisational policies.
- 4.2 Tenancies that commenced before 1 April 2012, have slightly different rights, providing that there has not been a previous succession. These rights remain as the previous legislation sets out. For a sole tenancy in the absence of a spouse or partner, another family member who has lived at the property as their main home for the 12 months immediately prior to the death will succeed, providing there has not been a prior succession.
- 4.3 When revising the Conditions of Tenancy in 2018, a decision was taken to continue to allow all tenants of Leicester City Council to continue to enjoy the same succession rights as before, regardless of the commencement date, so that a qualifying family member can also succeed, this is covered in Clause 86A 2(b) in the act and is an express clause of the Conditions of Tenancy (5.6.2). The clause sets out that succession may happen in line with the Succession Policy. This means that if changes are required, then there is no need to alter the Conditions of Tenancy, simply amending and approving the policy would allow a different approach to be taken.
- 4.4 In law, a succession happens immediately after the moment of death where a person qualified to succeed exists and there has not been a previous succession.
- 4.5 Where there is a joint tenancy, when one person dies, the tenancy will automatically pass to the remaining person (also known as survivorship).
- 4.6 In order for the right of succession to exist, there cannot have been a previous succession on the tenancy.
- 4.7 A succession is the continuation of a tenancy, with the successor inheriting all the rights and responsibilities, which includes any arrears and compliance with any court orders.

4.8 The current policy sets out who can succeed to a tenancy, providing the qualifying conditions are met. As this is a policy statement, it can be revised to bring it in line with current legislation if desired or altered in any other reasonable way. A flow chart of the process is enclosed at appendix I.

4.9 The current position is that where there is no spouse or civil partner, a family member may succeed to the tenancy providing that they have been residing with the tenant for a period of 12 months immediately prior to the death, and they have been using the property as their sole or principal home.

4.10 The family members who are eligible to succeed (under the terms of the policy) are:

- Aunt / Uncle
- Brother
- Daughter (and stepdaughter)
- Father
- Granddaughter
- Grandfather
- Grandmother
- Grandson
- Mother
- Nephew
- Niece
- Sister
- Son (and stepson)
- Any half-blood relative of the tenant, including illegitimate children.

4.11 If there is more than one person who is eligible to succeed, they must make a decision on who will be the successor, as there can only be one person who succeeds. In the event of a dispute, we can make the decision for them (generally this will be by drawing names out of a hat).

4.12 The current policy also creates instances where a person under 18 years of age succeeds to a tenancy. This is called an Equitable tenancy and requires another person to become the responsible person.

4.13 Where a tenant dies, and there is no right of succession for example where there has been a previous succession or the people in the household are not family members, there are various actions which can be taken.

4.14 If the remaining person is a family member and they would have succeeded if there had not been a prior succession, we will consider if the property is suitable for their needs. Where the property is of the correct size for the remaining household, we may grant a new tenancy. If the property is not suitable, or the person is not eligible for the housing register, we will offer appropriate help, advice and assistance.

4.15 Where the remaining person is not a family member, they are an unlawful occupier. In this case, we will cease the tenancy and set up a Use and Occupation account and carry out further investigations. We will offer appropriate help, advice and assistance.

4.16 In all cases, we will look to avoid creating a situation where a person (or family) is made homeless and will look to make best use of our housing stock and resources.

Name Change

4.17 Name change applications are received from tenants following a change in their personal circumstances, either changing their name via deed poll, getting married or getting divorced.

4.18 This applies to all tenants, who are in a variety of tenures whether they be in a secure tenancy, introductory tenancy, demoted tenancy or HomeCome tenancy.

4.19 Supporting evidence of the name change is required when submitting a tenancy name change application, this could be in the form of a marriage certificate, deed poll document or divorce documents. This will enable the officer to facilitate the name change on the tenancy without any undue delay.

Sole to Joint

4.20 A sole to joint tenancy change this is where a tenancy originally commenced in a single(sole) name and the tenant applies for another person to be added onto their tenancy. Thus, changing their tenancy from sole to joint.

4.21 Only secure tenants (those being in a tenancy for the minimum 12 months) can apply to add a person onto their tenancy. The council has no legal obligation to allow a sole to joint tenancy change.

4.22 The persons eligible to be added to a tenancy are:

- wives,
- husbands,
- civil partners (including same sex partners)
- live-in carers

4.23 The current policy dictates that the applicant must meet the qualifying criteria which requires them to provide the necessary evidence to support the request.

4.24 The applicant must provide proof they have been living at the property for 12 months immediately prior to the application, as their only and principal home

4.25 Reasons for refusal of a sole to joint tenancy application:

- The current tenant is a successor (as defined in section 88 of the Housing Act 1985),
- The current tenant has rent arrears,
- A valid Notice of Seeking Possession has been served for a breach of tenancy conditions,
- There is a valid Court Order against the tenant for possession of the property. This also includes a suspended court order,
- The applicant owes money to the Authority for former tenancy arrears or other charges,
- The applicant owns a property or has a tenancy elsewhere,
- The applicant is under 18,
- One party does not intend to live in the property,

- The applicant is ineligible for an allocation of council accommodation.

4.26 Once the qualifying criteria is met the tenant must then terminate their sole tenancy.

4.27 The new joint tenancy will commence upon the expiry of the sole tenancy.

Joint to Sole

4.28 The joint to sole tenancy change is sometime referred to as either “a relationship change” or a “relationship breakdown”.

4.29 This is normally where the one person in a joint tenancy decides to leave the tenancy. This applies to those tenants who are Introductory, Secure and HomeCome tenants.

4.30 There are a few circumstances where this policy is applied.

- People who are unable to determine a tenancy through assignment.
- When a tenant leaves the property but does not terminate the tenancy

4.31 Demoted tenants are not considered as part of this process.

4.32 This policy is used when one tenant ends a joint tenancy leaving the remaining party in the property or when a tenant ends their sole tenancy leaving other family members in the property.

4.33 There is no legal requirement to consider a change in tenancy after a relationship change. However, it is good practice to do so.

4.34 A husband, wife and same sex civil partners can apply to take over the tenancy.

4.35 The other persons eligible to take over the tenancy are:

- Unmarried heterosexual partners
- Daughter (and stepdaughter)
- Son (and stepson)
- Grandfather / grandmother
- Uncle/ aunt
- Father / mother
- Nephew / niece
- Brother / sister
- Grandson / granddaughter
- A long-term carer

4.36 All applicants must meet one part of qualifying criteria to then be offered the sole tenancy.

4.37 The qualifying criteria is divided into two sections, the first section is where they must meet only one part, and the second section is that they must meet all parts in the section.

4.38 The first section of the qualifying criteria that an applicant must meet one part is

- The person remaining would qualify for the property if they had applied through the Housing Register. In addition to this, we will (other than in cases involving a single person or couple) approve cases where a family would be under-occupying the property by one bedroom.
- The person applying needs to remain in the property to give or receive support.
- The property has been adapted for the remaining person.

4.39 The second section of qualifying criteria where applicants must meet all parts are:

- The applicant must have been living at the property when the termination notice is received.
- The rent account must be clear, if the applicant had been the joint tenant, or no former tenancy arrears, if the applicant is not currently a tenant. Exceptional circumstances will be considered by a Head of Service.
- The applicant must be over the age of 18, or below this age with a guarantor.

4.40 Either party of a joint tenancy can terminate the tenancy, in which this will bring the whole tenancy to an end. Whereas the remaining party doesn't have the right to then take on the tenancy in their sole name.

4.41 If a joint tenant leaves without terminating the tenancy, the remaining joint tenant can continue living at the property, until a Termination Notice is received. The outgoing tenant is equally responsible for the property, and any rent due, while the tenancy remains joint.

4.42 If one tenant of an existing joint tenancy has given notice to terminate the tenancy, the remaining joint tenant may ask for the tenancy in his/her own right under the Relationship Change Policy. As long as this is dealt with before the joint tenancy ends.

4.43 The property must be suitable for their requirements in which they are not considered to have 'reasonable preference' such as:

- Homelessness
- Insanitary or overcrowding or unsatisfactory housing conditions
- Medical or welfare reasons

4.44 If the property is not suitable, the remaining joint tenant will have to register for re-housing with Leicester HomeChoice and will be subject to eligibility checks under Part VI of the Housing Act 1996.

4.45 Applicants who are not tenants, but who are applying for a joint tenancy under the Relationship Change Policy, must apply under Part VI of the Housing Act 1996 and will be subject to eligibility checks. This is because a tenancy given in such circumstances is not exempt from the allocation provisions in the Housing Act 1996.

4.46 If an application doesn't meet the qualifying criteria the officer will provide the necessary advice, help and assistance. A Use and Occupation account will be created enabling the applicant to continue to reside at the property and carry out further investigations.

4.47 We will look to avoid creating a situation where a person (or family) is made homeless and will look to make best use of our housing stock and resources.

5. Number of cases

5.1 The division manages approximately 19,300 tenanted properties, a figure which has steadily declined from around 21,000 in 2017.

The number of successions carried out on an annual basis since 2018¹ is:

- 2018 150
- 2019 163
- 2020 129
- 2021 141
- 2022 160
- 2023 145
- 2024 133

The number of name change applications completed on an annual basis since 2018¹ is:

- 2018 105
- 2019 126
- 2020 63
- 2021 112
- 2022 82
- 2023 92
- 2024 80

The number of sole to joint tenancy changes completed on an annual basis since 2018¹ is:

- 2018 108
- 2019 146
- 2020 69
- 2021 114
- 2022 163
- 2023 149
- 2024 105

¹ Prior to 2018, a different ICT system was in use, and the method of recording succession was different. The data is held on the legacy/archive system

The number of joint to sole tenancy changes completed on an annual basis since 2018¹ is:

- 2018 70
- 2019 114
- 2020 112
- 2021 92
- 2022 97
- 2023 107
- 2024 81

5.2 An approximate average of succession is 150 per annum (three per week) so succession happens in around 0.75% of properties every year.

5.3 Where the division is notified of the death of a tenant, generally through the weekly list from the registrar, we will start investigations. In some cases, the executors will serve a Notice to Quit (NTQ) which ends the tenancy. In other cases, an investigation may be necessary to determine if the property still has occupants.

5.4 There are several possible outcomes for this:

- Where there is a person in the property who succeeds to the tenancy, then the necessary paperwork is completed, and the tenancy continues in the successor's name.
- There is no one left in the property. The tenancy is brought to an end and the property is relet.
- There are occupants in the property who are relatives of the deceased, and do not qualify to succeed. In this case, if the occupants would qualify for the property under the terms of the allocation policy. In these cases, a request is made to make a direct allocation which is considered by Head of Service.
- There are occupants in the property who do not qualify to succeed, and the property is not suitable for their needs. We will consider the individual circumstances and look to recover possession of the property so it can be relet. In some cases, we will find suitable alternative accommodation (such as a one bed flat) for the remaining person via a direct allocation. In some cases, we have no duty towards the remaining person, and we will ask them to leave. If they do not do so we will apply for possession order in the Court.

5.5 In terms of other instances where a tenant death leads to a tenancy change, the figures since 2020 are:
 (note, the figures for 2018 and 2019 appear to be low due to under-recording and a change of process so are not included below)

Year	Deceased tenant	Unlawful occupation	Succession
2020	429	42	129
2021	440	40	141
2022	480	45	160
2023	392	37	145
2024	402	47	133

5.6 As can be seen from the above figures, in around 10% of cases action is needed to deal with an occupier in the property who has no rights to remain there, and in around a third of cases there is a succession.

5.7 However, it is not possible to take from the figures alone what the effect of the succession is on housing stock i.e. if the succession was to someone other than the spouse.

5.8 In terms of property type, there have been 709 successions since 1 Jan 2020, of these:

Property type	Bedroom	Number	% of total
GN bungalow	1	133	18.7 %
GN flat	1	66	9.3 %
Sheltered flat	1	5	0.7 %
GN bungalow	2	13	1.8 %
GN flat	2	36	5.1 %
GN house	2	71	10.0 %
GN maisonette	2	28	3.9 %
Supported house	2	1	0.1%
GN bungalow	3	3	0.4 %
GN flat	3	2	0.3 %
GN house	3	291	40.9 %
GN maisonette	3	29	4.1 %
GN House	4	23	3.2 %
GN House	5	7	1.0 %
GN House	6	1	0.1 %

5.9 It is of note that 46% of successions have taken place in three-bed properties and 21% in two bed homes, both of which are in very high demand.

5.10 It is recommended that the policies are reviewed to bring Leicester into line with the current legislation and follow best practice adopted by other social landlords. The existing policies were last reviewed in 2017, and best practice suggests that policies should be reviewed every 3 – 5 years. There are already existing processes in place which allow an allocation to another family member where the property is suitable for their needs, and any amendments to these policies would also require that these processes are strengthened and clarified.

5. Financial, legal, equalities, climate emergency and other implications

5.1 Financial implications

There are no significant financial implications arising from the contents of this report.

Signed: Jade Draper, Principal Accountant

Dated: 28/01/2025

5.2 Legal implications

The legislative background is as follows.

**Succession rights for tenancies granted pre-April 2012 are governed by S. 87 Housing Act 1985 (now repealed post 2012).
Persons qualified to succeed tenant.**

A person is qualified to succeed the tenant under a secure tenancy if he occupies the dwelling-house as his only or principal home at the time of the tenant's death and either—

(a) he is the tenant's spouse [or civil partner] , or

(b) he is another member of the tenant's family and has resided with the tenant throughout the period of twelve months ending with the tenant's death;

unless, in either case, the tenant was himself a successor, as defined in section 88.

**Succession rights for tenancies granted post April 2012 are governed by S. 86A of the Housing Act 1985
Persons qualified to succeed tenant**

(1) A person ("P") is qualified to succeed the tenant under a secure tenancy of a dwelling-house in England if—

(a) P occupies the dwelling-house as P's only or principal home at the time of the tenant's death, and

(b) P is the tenant's spouse or civil partner.

(2) A person ("P") is qualified to succeed the tenant under a secure tenancy of a dwelling-house in England if—

(a) at the time of the tenant's death the dwelling-house is not occupied by a spouse or civil partner of the tenant as his or her only or principal home,

(b) an express term of the tenancy makes provision for a person other than such a spouse or civil partner of the tenant to succeed to the tenancy, and

(c) P's succession is in accordance with that term.

(3) Subsection (1) or (2) does not apply if the tenant was a successor as defined in section 88.

(4) In such a case, a person ("P") is qualified to succeed the tenant if—

(a) an express term of the tenancy makes provision for a person to succeed a successor to the tenancy, and

(b) P's succession is in accordance with that term.

The legislation is clear on who is entitled to succeed and the criteria to be applied. LCC's policy on allowing other members of the deceased's family to succeed is contained at Part 5.6 of the LCC's Terms and Conditions of Tenancy 2020. These refer to the Council's succession policy (which is assumed to be the provisions of the Tenancy Policy relating to succession) and state as follows:-

A person can only succeed to a secure or flexible tenancy if they were occupying the dwelling as their only or principal home at the time of the tenant's death. Temporary absence from the dwelling at the time of death or exclusion under a court order (for example, an occupation order) does not prevent the condition being satisfied. Entitlement to succeed a tenancy, depends upon when the tenancy started.

The conditions of the legislation pre and post April 2012 are thereafter repeated.

The Terms and Conditions of Tenancy 2020 state (inter alia):-

5.6.1

Your tenancy may pass onto someone else after your death. This is called succession. Your tenancy may be passed to your husband, wife or civil partner or anyone living with you in such a relationship at the time of death.

If your tenancy was passed on to you following the death of someone else, you cannot pass the tenancy on again to another person following your death.

5.6.2

If there is no husband, wife or civil partner the tenancy may be passed to another member of your family who has lived with you for at least 12 months before your death in line with our Succession Policy.

The Terms and Conditions refer to a succession policy, however it is noted that there is no such policy document available.

A more controversial point arises in cases where a previous succession has already taken place, and the spouse / civil partner or other family member seeks to succeed the tenancy. In these instances, the legislation does not allow a further succession however some Council's do operate a 'discretionary' scheme which goes beyond the ambit of the

legislation (such discretion is not allowed under the legislation) in a bid to take a reasonable approach.

At the moment it is unclear whether LCC has such discretionary policies in place, however if they are available, they must be reasonable and applicable fairly to all applicants in such circumstances (case of *Holley v Hillingdon LBC* 2016).

It is recommended that a clear separate policy document is prepared which sets out the Council's position with respect to succession in line with the legislation and to cater for circumstances where the Council is likely to (or not) exercise discretion as above.

Signed: Shazmina Ghumra

Dated: 31 January 2025

5.3 Equalities implications

Under the Equality Act 2010, public authorities have a Public Sector Equality Duty (PSED) which means that, in carrying out their functions, they have a statutory duty to pay due regard to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Act, to advance equality of opportunity between people who share a protected characteristic and those who don't and to foster good relations between people who share a protected characteristic and those who don't.

Protected Characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The briefing provides details of the Council's succession policy and gives an overview of the legislation which needs to be followed. Having a clear policy that is in line with current legislation and clarifies the rights and status of all tenants should lead to positive impacts for people from across all protected characteristics. As should improved operational practice and understanding of the terms and conditions: setting out the rights and responsibilities of both council tenants and the council (as a social landlord).

It is important to ensure equality considerations are taken into account as an integral part of any review of procedures - It is recommended that Equality Impact Assessments is carried out. Carrying out an EIA is an iterative process, which should be revisited throughout the process and updated to reflect any feedback/changes due to consultation as appropriate. The EIA findings should be shared with decision makers, throughout the process, in order to inform their considerations and used as a tool to aid consideration around whether we are meeting the aims of the PSED.

Any consultation with stakeholders in relation to any changes to the policy must be fair, transparent and accessible.

Signed: Equalities Officer, Surinder Singh

Dated: 30 January 2025

5.4 Climate Emergency implications

There are no significant climate emergency implications associated with this report.

Signed: Duncan Bell, Change Manager (Climate Emergency). Ext. 37 2249

Dated: 29.01.25

5.5 Other implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

6. Background information and other papers:

7. Summary of appendices:

8. Is this a private report (If so, please indicate the reasons and state why it is not in the public interest to be dealt with publicly)?

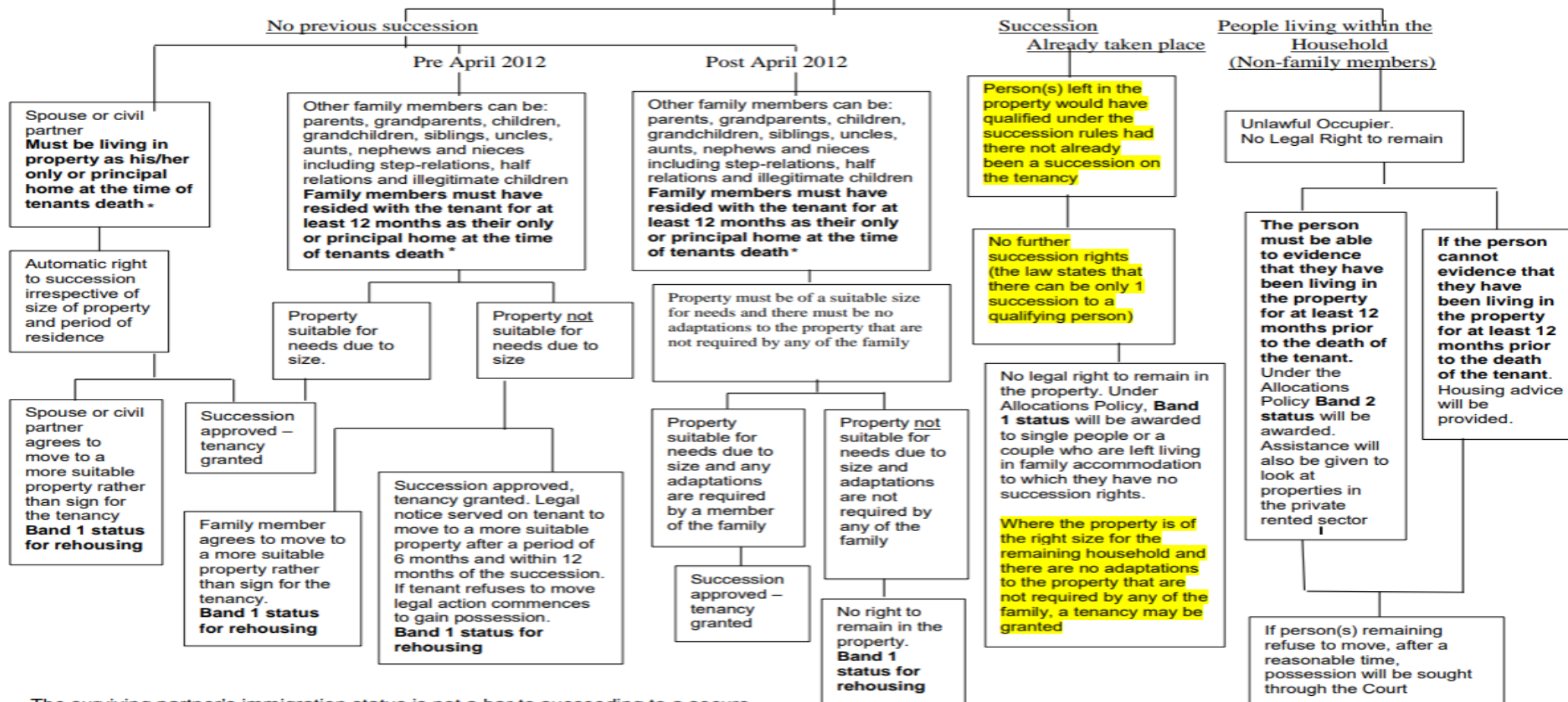
9. Is this a “key decision”? If so, why?

Appendix 1

(Version produced 26.4.2013)

Guidance notes for where a person(s) has been left in a Council owned property following the death of the tenant

Death of Tenant



*The surviving partner's immigration status is not a bar to succeeding to a secure tenancy. Spouses and civil partners will succeed to a tenancy regardless of their immigration status. The same also applies to a qualifying family member.