

**Committee: Cabinet**

**Agenda Item**

**Date: 2 August 2012**

**14**

**Title: Tenancy Succession Policy**

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Item for decision

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## **Summary**

1. This report is to inform Cabinet of the Localism Act changes to the succession rights for secure tenants that became law on the 1<sup>st</sup> April 2012 and the need to have a new local succession policy in place to take account of these changes.

## **Recommendations**

2. That the Cabinet agree that Council tenants, providing they are not a successor (Housing Act 1985 Part IV Section 8.8) and that at the time of the tenant's death the dwelling-house is not occupied by a spouse or a civil partner of the tenant as his/her only or principal home then, as long as there is no under-occupation, an immediate family member will be allowed to succeed to the tenancy. This is providing they meet all of the succession rules set out under the Housing Act 1985 Part IV and have been residing at the property as their only or principal home for at least the three years preceding the tenants death. These succession rights are in addition to those set out in the Localism Act which came into force on the 1st April 2012.

Where the property is under-occupied by an immediate family member, if the family member meets all of the succession rules set out under the Housing Act 1985 Part 1V and has been residing at the property as their only or principal home for at least the three years preceding the tenants death, they be made one offer of suitable alternative accommodation. If the successor tenant refuses to move, then the Council would take Court action to seek possession under Ground 15A of Schedule 2 of the Act.

3. That the Council's Standard Tenancy Agreement for all post-Localism Act Tenancies be amended (and applied retrospectively to commence from 1 April 2012) to reflect the new legislative requirements and further conditions agreed by Cabinet

## **Financial Implications**

4. None

## **Background Papers**

5. Localism Act 2011

## Impact

6.

Communication/Consultation	N/A
Community Safety	N/A
Equalities	N/A
Health and Safety	N/A
Human Rights/Legal Implications	Tenancies granted since 1 April 2012 will have limited succession rights, due to a change in legislation. If the Council did not have a succession policy in place for post – Localism Act tenants immediate family members of tenants whose tenancies commenced after the 1 April 2012 will have no right of succession. By giving immediate family members' succession rights it will ensure that they will not be as disadvantaged by the change in legislation as if a succession policy was not in place.
Sustainability	N/A
Ward-specific impacts	Tenants in all wards affected
Workforce/Workplace	N/A

## Situation

7. All of the Council's existing secure tenants, providing they are not already a successor, enjoy many rights under the Housing Act 1985 Part IV (Tenants Charter). One of these is the right to succeed a tenancy which takes place upon the death of the tenant. Any successor tenant who is either a spouse or a Civil Partner is able to remain in the accommodation regardless of any under-occupation. Under the previous legislation, in the case of a family member, if the accommodation afforded by the dwelling-house is more extensive than is reasonably required by the tenant then the Council can serve a notice of possession more than six months but less than twelve months after the tenant's death requiring them to vacate and move to smaller accommodation.
8. Under the new Localism Act, the right to succession to family members has been repealed for all new post-Localism Act secure tenants. However, the Localism Act inserts a new provision within the Housing Act 1985 which gives

powers to councils, if they wish to use them, to still allow family members to succeed.

9. The Cabinet is asked to consider if this additional succession right should be granted to all new tenants following the enactment of the new Localism Act. This element of the Localism Act came into force on 1 April 2012, it is therefore important that the Council has a policy in place and that it is applied retrospectively to all new tenancies from 1 April 2012. It is suggested that the Council uses its power to allow all new post Localism Act secure tenants to be given the right for immediate family members to succeed (as pre Localism Act tenants have) provided there is no under-occupation and that they have been living within the tenants household as their only or principal home for at least the three years preceding the tenants death (i.e. longer than the previous statutory 1 year).
10. Where they are under-occupying they will be required to move to smaller more suitable accommodation in accordance with the possession proceedings under the Housing Act 1985 Schedule 2 Ground 15A

## Risk Analysis

11.

Risk	Likelihood	Impact	Mitigating actions
Current two tier succession policy more likely to be challenged as no right of succession for family members following changes made in the Localism Act	2	2	New local succession policy in place

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.