



## AGENDA ITEM: 7

### SUMMARY

<b>Report for:</b>	<b>Housing and Communities Overview and Scrutiny Committee</b>
<b>Date of meeting:</b>	<b>October 2015</b>
<b>Part:</b>	<b>1</b>
If Part II, reason:	

<b>Title of report:</b>	<b>Assignment and Succession to a Council Tenancy</b>
<b>Contact:</b>	Margaret Griffiths, Portfolio Holder for Housing  Author/Responsible Officer: Andy Vincent, Group Manager – Tenants and Leaseholders
<b>Purpose of report:</b>	1. To update Members relating to legislation and process pertaining to succession and assignment of council tenancies
<b>Recommendations</b>	1. Report to be noted
<b>Corporate objectives:</b>	AFFORDABLE HOUSING  • Maintain good social housing
<b>Implications:</b>	<u>Financial</u>  None - for information only
<b>'Value for money' implications</b>	<u>Value for money</u>  None – for information only
<b>Risk implications</b>	Risk assessment reviewed on 8 September 2015
<b>Community Impact Assessment</b>	A wider Community Impact Assessment of the Housing Service is currently being concluded, this will be concluded in the new calendar year.
<b>Health and safety Implications</b>	None
<b>Consultees:</b>	Cllr Margaret Griffiths – Portfolio Holder for Housing

	<p>Mark Gaynor – Director of Housing and Regeneration</p> <p>Elliott Brooks – Assistant Director, Housing</p> <p>Dharini Chandarana – Interim Team Leader – Tenants and Leaseholders</p>
Background papers:	None
Historical background <i>(please give a brief background to this report to enable it to be considered in the right context).</i>	<p>The three background papers are referenced within the report.</p> <p>Housing Act 1985 Section 91 – due to the age of this legislation this is not available online.</p> <p>Localism Act 2011 Section 160</p> <p><a href="http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted">http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted</a></p> <p>Flexible and Secure Tenancy Agreement - this is a restricted document and cannot be published online. This is because if a tenant signs a new version this may confer new rights on them.</p>
Glossary of acronyms and any other abbreviations used in this report:	None

## 1.0 Purpose

The purpose of this report is to update the Housing and Communities Overview and Scrutiny Committee on the legislation that relates to succession and assigning a tenancy and the process followed by the Housing Service when an assignment or succession request is received.

This report was requested by Committee members following a query raised at the April 2015 meeting.

## 2.0 Background and Legislation

### 2.1 What is a Succession?

Put simply a Succession is the right of a family member (partner and child) to take on the rights of a former tenant after their death provided they have been living in the family home for at least 12 months prior to the death of their family member. This right can only be used once for secure/flexible tenants and can in certain circumstances apply to introductory tenants.

For newer tenants (those with a tenancy commencement date more recent than 31 March 2012) these rights have been restricted to apply only to spouses or Civil Partners.

The right of Succession applies only to a right to succeed to a tenancy not necessarily to a property – where a property is considerably too large for the new occupiers they will be moved to a smaller home.

## 2.2 What is an Assignment?

In simple terms an Assignment is a process of giving a tenancy to another ‘qualifying’ person whilst the tenant is still alive. For example a parent may be moving away to take up work leaving an adult child in the property. The parent may therefore request that the child is able to take on the tenancy; this request would be considered by looking at the size of the property, the manner in which the current tenancy was conducted, the housing need and level of income of the child.

There is no absolute right to assign a tenancy.

Assignment becomes more complicated when dealing with a mutual exchange which must be granted in certain circumstances. Permission must be granted by the landlord prior to an assignment for a mutual exchange going ahead.

The Council can only withhold consent to an assignment for a mutual exchange on certain grounds which are set in the Housing Act 1985 schedule 3. If consent is withheld, the Council must serve notice within 42 days of the tenant’s request stating the ground which it relies upon to refuse the assignment.

### *How the Council’s Tenancy Agreements (Introductory, Flexible and Secure) cover Assignment requests*

Section 12 of the Council’s Introductory, Flexible and Secure Tenancy Agreements cover assignments (Note: It is very unlikely that an Introductory Tenancy would be able to assign their tenancy – but any request would be considered on the merits of the case):

12. *You must request permission if you wish to assign (transfer) your Tenancy. You may not assign your tenancy except:*
  - *To a person who would be qualified to succeed to the tenancy if you died.*
  - *As a result of an order made in certain family, children or civil partnership proceedings.*

*In addition, when you are a secure tenant you may assign the Tenancy when exercising the right of tenancy exchange set out later in this agreement.*

## 2.3 Legislation

The legislation that relates to an assignment is the same as the legislation that relates to succession.

The relevant legislation is the Housing Act 1985 Section 91(3) which states:-

*A secure tenancy cannot be assigned except in three circumstances:*

- 1) *By way of mutual exchange*
- 2) *By a court order in certain matrimonial, civil partnership or children act proceedings*
- 3) *To a potential successor of the tenancy*

The Localism Act 2011 Section 160 Succession to secure tenancies states:

*(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.*

*(5) For the purposes of this section*

*(a) a person who was living with the tenant as the tenant's wife or husband is to be treated as the tenant's spouse, and.*

*(b) a person who was living with the tenant as if they were civil partners is to be treated as the tenant's civil partner.*

The consequence of the Localism Act 2011 amendment is that the household members that a tenancy can be assigned to has been reduced to only those family members who could succeed to the tenancy through what is known as 'survivorship' – namely husbands or wives, civil partners or long term partners.

### **3.0 Numbers of Assignments/Successions**

In 2014/15 Dacorum Borough Council Tenancy Team received 2 Assignment requests, both of these were considered for non-qualifying successors. These were received for concern about future housing circumstances of child. Of these requests 1 was approved.

In 2014/15 Dacorum Borough Council Tenancy Team received 18 non-statutory succession requests and 14 statutory succession requests where the new home was too large for the needs of the new household. Of these all 14 statutory requests were approved and 9 of the non-statutory requests were approved.

#### **3.1 The process for dealing with Assignments/Successions**

Approving an Assignment or Succession constitutes a new letting; this is therefore covered within the Housing Allocations Policy - section 11 exemptions "changes to a tenancy that does not result in a vacancy".

There is no statutory (legal) right to Assign; a landlord has the discretion to consider an Assignment request. At Dacorum each assignment request is considered on its merits – including Assignments to non-qualifying successors.

There is a statutory right to succeed; the landlord also has the discretion to approve non-statutory succession requests where for example the succession right has been used up or where a family member is living in the home and does not have a statutory right to succeed but would benefit from Council owned accommodation.

Exemptions from the Housing Allocations Policy are considered by a panel of senior staff within the Housing Service who have delegated authority within the Council's Constitution to deal with these issues. An audit trail can be evidenced from these meetings which ensures high quality decisions are routinely made. The processes adopted by the Housing Panel are developed from best practice within the industry.

Tenants/Applicants who are declined by the Housing Panel are offered the right of review by appealing to the Assistant Director for Housing.