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**BRIEFING PAPER**

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# Succession rights and social housing (England)

By Wendy Wilson


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# Summary

Within the current statutory framework there can only be one statutory succession to a council or housing association tenancy in England.

The *Localism Act 2011* amended the succession rights of people living with secure council tenants in England where the tenancy was created after 1 April 2012. In these cases, a statutory right to succeed is limited to the spouse/partner of the deceased tenant. This has always been the case in regard to succession to an assured housing association tenancy.

For secure tenancies created before 1 April 2012, the right to succeed may, currently, be claimed by a member of the deceased tenant's family, subject to certain eligibility criteria.

Even though a member of the deceased tenant's family may currently have a statutory right to succeed to a secure council tenancy, if they are under-occupying the property the landlord may seek repossession on the grounds that "suitable alternative accommodation" has been offered. There have been several legal challenges concerning attempts to regain possession of under-occupied properties in these circumstances.

The *Housing and Planning Act 2016* contains provisions which would have further restricted the right to succeed to a secure tenancy to spouses and civil partners and those who live together irrespective of when the tenancy was created. When introducing the new provisions in Public Bill Committee, the Minister, Marcus Jones, said the Government saw no justification for retaining an inconsistent approach to pre and post 2012 tenancies in terms of succession rights. These changes were associated with removing the ability of local authorities in England to offer 'lifetime' tenancies to new tenants. On publication of the social housing Green Paper on 14 August 2018, A new deal for social housing, the Government announced that **it would not implement the ending of lifetime tenancies "at this time".**

This briefing paper gives an overview of the statutory rights of occupiers of social housing in England to succeed to a tenancy on the death of the previous sole or joint tenant.

# 1. Council tenants

The *Localism Act 2011* made some significant changes to the succession rights of family members living with council tenants where the tenancy started after 1 April 2012.

## 1.1 Existing tenants at 1 April 2012

The majority of council tenants are secure tenants. The rights of existing occupiers of council housing as at 1 April 2012 to succeed to a secure tenancy in England are governed by sections 88 and 89 of the *Housing Act 1985.*

One statutory succession is allowed to a surviving spouse (this includes civil partners) or a member of the deceased tenant's family. Where a tenancy was originally a joint tenancy and one of the joint tenants dies, or surrenders their interest, this counts as a succession[1] and no further statutory successions will be allowed.

The would-be successor must, at the time of death of the original secure tenant, occupy the dwelling house as their only or principal home and be either the deceased tenant's spouse (or civil partner) or another member of the deceased tenant's family.[2] In the case of anyone other than a spouse/civil partner, it is necessary to show that the putative successor has been residing with the late tenant for at least 12 months before his/her death. "Residing with" means more than "living or staying at" the premises, although not necessarily so much as residing permanently or indefinitely.[3]

Section 113 of the 1985 Act defines members of a tenant's family for the purposes of succession and includes: spouses, parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews and nieces; including step-relations, half-relations and illegitimate children and "persons living together as husband and wife."

Where there is more than one qualifying person to succeed, the late tenant's spouse/civil partner takes precedence but otherwise the qualifying persons must agree amongst themselves who is to take over the tenancy.[4] If they cannot agree the landlord is entitled to choose the successor. There can be no joint succession.

### Succession and under-occupation

Where an occupier (with the exception of a surviving spouse/civil partner) succeeds to a secure tenancy on the death of the previous tenant, and the dwelling is deemed to be larger than is reasonably required, e.g. a single person succeeds to a two-bed property or larger, the council can seek to move the new tenant to a suitable alternative property. Despite the fact that the surviving family member may have

1 Section 88 of the 1985 Act
2 Section 8 of the 1985 Act
3 *Swanbrae v Elliot* [1987]; *Hildebrand v Moon* [1989]; *Freeman v Islington LBC* [2009] EWCA Civ 536
4 Section 89 of the 1985 Act

lived in the property for many years, local authorities will generally seek to recover repossession of under-occupied properties in order to ensure the best use of their stock; this is particularly the case in areas of high housing demand.

Schedule 2 to the *Housing Act 1985* sets out the "Grounds" on which a council can seek to evict a secure tenant. Only a court can decide whether a particular Ground is established and whether to issue a possession order.[5] Ground 15A of Schedule 2 (the successor Ground) provides a Ground for possession that can be used by an authority where there is a statutory right to succeed, but where the property in question is deemed to be too large for the successor's needs.[6] This Ground can never be used where the successor is the spouse/civil partner of the deceased secure tenant.

A local authority wishing to use Ground 15A against a successor must serve notice or begin proceedings no sooner than six months after the death of the previous tenant and not later than 12 months after the death. Before a court will issue a possession order under Ground 15A it must be satisfied:

(i) that it is reasonable to order possession; and

(ii) that suitable accommodation will be available for the tenant when the order takes effect.[7]

In determining whether it is reasonable to make an order under this ground, the court must take into account:

(a) the age of the tenant;

(b) the period during which the tenant has occupied the dwelling as his only or principal home; and

(c) any financial or other support given by the tenant to the previous tenant.

## Legal challenges

There have been several legal challenges concerning the use of the under-occupation Ground in succession cases.

The case of *Newport City Council v Charles*[8] the Court of Appeal considered whether the son of a deceased tenant, who had concealed her death for three years in order to avoid the council using Ground 16 (as it was then) to move him to alternative accommodation, could be evicted. On discovering that his mother had died, the council had claimed possession, asserting that because of his failure to notify them of the death, the defendant was estopped from asserting the true date of death to defeat the claim. The Court of Appeal held:

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5 Some Grounds are discretionary and some are mandatory. In respect of mandatory Grounds, if the court is satisfied that the Ground is made out (proven) there is generally no discretion over whether to issue a possession order.

6 This was previously Ground 16 but the *Localism Act 2011* replaced it with an amended Ground 15A. Ground 16 now only applies in Wales.

7 Consideration of what is suitable accommodation will take account of factors such as cost and location.

8 [2008] EWCA Civ 1541; [2009] 1W.L.R.1884, [2009] H.L.R.18

> The question was whether a proprietory estoppel arose which might found the action for recovery, since it was accepted that other forms of estoppel could be a shield but not a sword. The purpose and policy of ground 16 was that the housing authority should be entitled to recover family sized property but that it should do so neither too soon nor too long after the death. The doctrine of proprietory estoppel could not be said to apply in the circumstances, since the council's interest as freeholder was not in question. It was raising a strictly statutory claim to possession. The defendant's acts were estoppel by representation, and the council could not found a claim on it outside the time-limits laid down by the 1985 Act. This was unjust and frustrated the statutory purpose. It meant the house could not be used by a family who needed it. His Lordship hoped the legislature might find a way out.[9]

The *Localism Act 2011* replaced Ground 16 with Ground 15A with effect from 1 April 2012[10] io overcome the issues raised by *Newport CC v Charles*. Under Ground 15A the court has power to direct that the date from which the time limit runs is the date on which the landlord (or in the case of joint landlords, any one of them) becomes aware of the death.

**Case law (examples)**

In the case of *Bracknell Forest BC v Green* [2009] EWCA Civ 238 a brother who succeeded to a three-bedroom house on the death of his mother (and who lived in the house with his sister) refused to view any of the four offers of alternative accommodation made available by Bracknell Forest Council, including a bungalow with garden. He had lived there since 1958 and the sister had lived there for most of her life. The council, which had a shortage of three-bedroom homes, began possession procedures under Ground 16 (as it then was):

> In his judgment, the Recorder accepted that the authority had a shortage of three-bedroom houses. He said that he believed that the bungalow offered to the defendant was suitable alternative accommodation but went to say: "However, there is no point in discussing this issue until first the issue of reasonableness has been decided. Plainly if it is unreasonable to make a possession order it is immaterial whether suitable accommodation is available". The judge held that it was not reasonable to grant a possession order given the length of time that the defendant and his sister had lived in the house and their emotional attachment to it.
>
> The authority appealed to the Court of Appeal on the grounds that in deciding whether it was reasonable to make an order the recorder: (i) had not had regard to the suitability of the alternative accommodation; and, (ii) had given insufficient weight to the authority's pressing need for three-bedroom houses.
>
> The Court of Appeal dismissed the appeal. Where possession is claimed under ground 16, the availability of suitable alternative accommodation is relevant to whether it is reasonable to make an order. Reading the judgement as a whole, the Recorder had taken this into account. It was for the Recorder to consider all the relevant factors. The 1985 Act expressly contemplates cases in

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9 Ibid.

10 Section 162 of the *Localism Act 2011*

> which the tenant's personal circumstances may outweigh the pressures on local housing authorities. Given the unusual facts of the case, the recorder's decision was readily understandable.[11]

In *Greenwich LBC v McMullan* (6 December 2011) Woolwich County Court considered a claim for possession against Mr McMullan under Ground 16 (as it then was). His mother had died and he succeeded to a four bed property. He had lived with his mother since 1980 and was aged 65 in 2011. He was assessed as having a learning disability, a physical disability and epilepsy. A psychologist advised that moving to alternative accommodation would have an adverse impact on his health. His sister moved in to live with him as his principal carer after the mother's death.[12] Later, a brother returned to live in the property and also assisted with Mr McMullan's care needs. Greenwich Council offered a two-bedroom property as suitable alternative accommodation.

The council contended that the brother was not a member of Mr McMullan's family when assessing the suitability of alternative accommodation because he was only living there "as a matter of convenience." District Judge Blackhouse dismissed the claim. The brother was a member of the defendant's family; the composition of the household was to be determined at the date of the hearing. No additional test of whether or not it was reasonable for him to live with the defendant was necessary – thus an offer of a two bed property could not be suitable. In addition, it was held not reasonable to grant a possession order in the light of Mr McMullan's medical condition. The District Judge took account of the severe shortage of larger properties but held that the court could not countenance the possibility of Mr McMullan's mental health deteriorating.

*Bristol City Council v Hammond* (25 October 2011, Bristol County Court) involved a son succeeding to his late mother's tenancy of a five-bedroom house. The court decided it was not reasonable to grant a possession order taking into account Mr Hammond's age, the care he had provided to his mother and his vulnerability. These matters were found to outweigh the needs of Bristol Council to make best use of its housing stock. Similarly, in *Hackney LBC v Sheehan* (12 January 2012, Clerkenwell and Shoreditch County Court) the claim for possession was dismissed on the basis that it was not reasonable to grant the order. The judge took account of Mr Sheehan's age, the fact that he had lived in the three-bed flat almost all his life and the personal care he had provided to his late mother. His medical condition (chronic depression and diabetes) was also taken into account.

*Thurrock BC v West* [2012] EWCA Civ 1435 concerned repossession action by Thurrock Council against the grandson of the late tenant of a three-bedroom home. West, the defendant, moved into the house in 2007. At that time, his grandfather had moved into a care home and his grandmother was in ill health. He moved into the house partly because he needed somewhere to live but mainly to act as her carer. In due course, the defendant received a carer's allowance. Subsequently, his

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11 Sweet & Maxwell Housing View Bulletin, 31 March 2009

12 She had occupied a one bed flat which she was willing to surrender.

partner and their son joined him in the house. In 2008, the grandfather died and the grandmother became the sole tenant. In 2010, the grandmother died. In October 2011, the authority terminated the tenancy by serving notice to quit on the public trustee. In November 2011, a claim for possession was issued.

The defendant sought to defend the claim on the basis that his eviction would be a disproportionate interference with his right to respect for his home under Art.8, European Convention on Human Rights. In his defence, he relied on fact that he had occupied the house for nearly four years together with his wife and son and had paid rent during that time. The Court of Appeal held that a district judge was wrong to have held that it would be disproportionate to grant a possession order; in the court's view the circumstances of the defendant and his family were not exceptional and his defence should have been struck out as unarguable.[13]

In *Holt v Reading BC* [2013] EWCA Civ 641 Mrs Holt had lived in a three- bedroom council home all her life. From 1949 to 1977 her father had been the sole tenant and on his death his wife became the tenant. The tenancy became secure following the enactment of the *Housing Act 1980*. Her mother died in 2010 and Mrs Holt succeeded to the tenancy. Reading BC sought possession under Ground 16 (as it then was) – four offers of alternative accommodation were rejected by Mrs Holt. She argued that it was not reasonable to make an order for possession and that, because there was no live offer of a particular property at the time of trial, the court could not be satisfied that suitable accommodation would be available for her when the order took effect. The trial judge rejected both arguments and made an order for possession, conditional on Reading BC making the appellant an offer of accommodation which satisfied specific requirements set out in the order. An appeal to the Court of Appeal was dismissed.

In *Haringey LBC v Simawi* [2018][14] the tenancy was held in the sole name of the defendant's father. He died in 2001 and his wife succeeded to the tenancy (section 87). She died in October 2013. The council refused a request to transfer the tenancy into the defendant's name arguing that the one statutory succession had taken place. The authority issued possession proceedings. The defendant, who had lived in the property for over 10 years, resisted the proceedings:

> The defence was twofold. First, it was contended that the prohibition on a second succession was incompatible with art.14 (prohibition on discrimination) when read with art.8, European Convention on Human Rights. It was argued that there is a difference in treatment between an occupant in the defendant's position and an occupant whose parents' relationship breaks down leading to the tenancy being transferred in family proceedings to one parent. In the latter case, the transfer does not count as a succession so the child remains qualified to succeed. It was also argued that this gives rise to indirect

13 *Thurrock BC v West* [2012] EWCA Civ 1435
14 *Haringey LBC v Simawi* [2018] EWHC 290 (QB)

> discrimination on the grounds of gender because women live longer.
>
> The second basis of the defence was that the authority had not properly applied their discretionary tenancy policy.[15]

The claim was transferred to the High Court because of the public importance of the human rights defence. The defendant was successful on the second ground (non-application of the authority's discretionary tenancy policy) but that did not give him a right to a secure tenancy. All parties, including the Secretary of State for Housing, Communities and Local Government, who was joined as an interest party, agreed that if the defendant were to be granted a secure tenancy, the case would become academic:

> Nicklin J. decided that, even if the case did become academic, the question of discrimination should still be determined. At [31], he held that it was plain that the case raised a point of real importance and significance that potentially affects a large number of people and which was likely to arise in several succession cases for many years to come.[16]

The case has been listed for a hearing in October 2018.

## No right of succession

Where there is no statutory right of succession to a tenancy, social landlords can exercise their discretion to offer a new tenancy to people left in occupation on the death of a tenant (of the existing property or an alternative property), but in exercising this discretion they will usually want to ensure that their allocation policies are not undermined, e.g. by the allocation of a property to someone left in occupation who does not have as high a level of housing need as someone on the housing register.

The *Code of Guidance on the Allocation of Accommodation for Local Authorities* (2002) contained guidance on when it might be appropriate to grant a new tenancy to those members of the household who had been living with a deceased tenant but who did not have a legal right to succeed:

> Where a tenant dies and another household member (who does not have succession rights to the tenancy) has:
>
> (a) been living with the tenant for the year prior to the tenant's death; or
>
> (b) been providing care for the tenant; or
>
> (c) accepted responsibility for the tenant's dependants and needs to live with them in order to do so,
>
> housing authorities should consider granting a tenancy to the remaining person or persons, either in the same home or in suitable alternative accommodation, provided the allocation has no adverse implications for the good use of the housing stock and has sufficient priority under the allocation scheme. In the case of (a) and (b), the accommodation in question must be the principal or only residence of the survivor at the time the tenant dies.

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15 Arden Chambers [accessed on 2 September 2018]
16 Ibid.

The replacement Code of Guidance, Allocation of accommodation: guidance for housing authorities in England (June 2012) does not contain equivalent guidance.

## 1.2 New tenants after 1 April 2012

On 30 November 2010 the Coalition Government issued a consultation paper, Local decisions: a fairer future for social housing. In this paper the Government said it would legislate to:

> …create a new type of tenancy for [local authorities] to offer to some or all new tenants rather than a secure tenancy. That tenancy (referred to hereafter as a 'flexible tenancy') will be flexible, allowing landlords to provide tenancies with a range of fixed periods.
>
> And in the case of housing association landlords we want them to have the option to offer a fixed term tenancy at either an affordable rent or at a social rent, depending on local needs and circumstances.[17]

The consultation paper contained several proposals around the terms on which these fixed-term tenancies might operate, including:

> a right of succession for the spouse or partner of the deceased tenant – local authorities will have discretion to grant additional rights of succession.

The *Localism Act 2011* has, since 1 April 2012, given social landlords the power to offer fixed-term tenancies to new tenants after this date. Few social landlords have used this power. The 2011 Act also amended the statutory succession rights of new secure tenants.[18]

Statutory succession to a secure or secure fixed-term tenancy entered into after 1 April 2012 in England only applies to the spouse or civil partner of the deceased tenant.[19] The council landlord may, at its discretion, offer more extensive succession rights in its tenancy agreements (contracts).

As explained in section 1.1 of this note, there is a right for the spouse/civil partner of a secure tenant to succeed to the tenancy on the death of the tenant (as long as certain conditions are fulfilled) and, in the absence of a spouse/civil partner, this right extends to a member of the deceased tenant's family (again, as long as certain conditions are fulfilled). The 2011 Act amended the *Housing Act 1985* to limit the right of statutory succession to the spouse/civil partner of the deceased tenant (for new tenants).

The rights of existing secure tenants at 1 April 2012 (and the succession rights of people living with them) are unaffected by this change.

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17 DCLG, Local decisions: a fairer future for social housing, November 2010, para 2.11-12

18 For more information see Library Research Paper 11/03.

19 New section 86A of the *Housing Act 1985* introduced by section 160 of the *Localism Act 2011.*

The Act's provisions marked a step further away from the "single social housing tenancy" with extended succession rights recommended by the Law Commission (see section 4 below).

## 1.3 The Housing and Planning Act 2016

During the sixteenth sitting of the Public Bill Committee on this Bill, the Minister, Marcus Jones, moved new clause 32 (Secure tenancies etc: phasing out of tenancies for life). This new Government clause was considered with new clause 33 (Succession to secure tenancies and related tenancies) and Schedules 4 (Secure tenancies etc: phasing out of tenancies for life) and 5 (Succession to secure tenancies and related tenancies). These provisions are now contained in sections 118-121 and Schedules 7 and 8 of the 2016 Act. The sections/schedules are not in force.

When moving the clauses, the Minister said that these new provisions would prevent local authorities in England from offering secure tenancies for life in most circumstances. He said that social landlords had not taken advantage of the power to offer fixed-term and flexible tenancies under the *Localism Act 2011* and went on:

> …we believe that continuing to offer social tenancies on a lifetime basis is not an efficient use of scarce social housing. The new clauses will significantly improve landlords' ability to get the best use out of social housing by focusing it on those who need it most for as long as they need it. That will ensure that people who need long-term support are provided with more appropriate tenancies as their needs change over time and will support households to make the transition into home ownership where they can. In future, with limited exceptions, local authority landlords will only be able to grant tenancies with a fixed term of between two and five years, and will be required to use tenancy review points to support tenants' move towards home ownership where appropriate.[20]

He said that existing tenants would not lose their security of tenure. If these tenants are forced to move, e.g. due to a regeneration scheme, they would retain their existing tenancy rights. Where they chose to move their landlords would have "limited discretion" to offer "further lifetime tenancies." Regulations were to set out the circumstances in which this would be possible.[21]

Alongside these new provisions, the Minister also introduced new clause 33 and schedule 5 to the Bill to amend the rules on succession to secure tenancies.

As explained in section 1.2 (above) the *Localism Act 2011* amended the rules on succession for new secure tenancies granted after April 2012. In Public Bill Committee the Minister said that the Government saw no justification for retaining an inconsistent approach to pre and post 2012 tenancies in terms of succession rights:

> We therefore propose that the succession rights for secure tenancies granted before April 2012 be aligned with those

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20 PBC Deb 10 December 2015 (morning) c650
21 PBC Deb 10 December 2015 (morning) c650

> granted after that date. The amendments will deliver a consistent approach across all secure tenancies and ensure that common-law partners are put on an equal footing with married couples and civil partners.
>
> Other family members who may have had an expectation of succeeding to a secure tenancy granted before April 2012, having lived with the tenant for at least 12 months, will lose their statutory right to succeed. We do not think that it is right that those who may not need social housing, because, for example, they can rent or buy privately, should have the automatic right to succeed to a social home when nearly 1.4 million households are on council waiting lists.[22]

The Minister said that spouses, civil partners and those who live together will "continue to have an automatic right to succeed to a lifetime tenancy."[23]

The Committee divided on new clauses 32 and 33 – they were both agreed to, Ayes 11 Noes 7.[24]

As noted above, the relevant sections and schedules of the 2016 Act have not been brought into force. On publication of the social housing Green Paper, A new deal for social housing on 14 August 2018, the Government announced that it would not restrict the ability of local authorities in England to offer lifetime tenancies "at this time".[25] The Green Paper makes no specific reference to the succession measures in the Act.

22 PBC Deb 10 December 2015 (morning) c653
23 PBC Deb 10 December 2015 (morning) c654
24 PBC Deb 10 December 2015 (morning) c669
25 MHCLG, A new deal for social housing, 14 August 2018, paras 183-86

# 2. Housing association tenants

These landlords are also referred to as private registered providers of social housing.

## 2.1 Secure tenants

Housing association who entered into their tenancy agreements prior to 15 January 1989,[26] and who have remained living in the same property, are likely to be secure tenants. The same rights to succeed apply as in the case of secure council tenants (see section 1 of this paper).

## 2.2 Assured tenants

Housing association tenants who entered into their tenancy agreements after 15 January 1989 are likely to be assured tenants. The *Housing Act 1988* governs the right to succeed to an assured tenancy.

Where a council transfers its stock to a housing association its secure tenants become assured tenants of the new landlord. Some associations who took over ex-local authority stock issued new tenancy agreements to give the ex-council tenants contractual rights to some of the statutory rights they enjoyed as secure tenants of the council. It is therefore advisable to check the tenancy agreements of these tenants when dealing with succession queries as it is possible that there may be a contractual right for relatives other than a spouse/civil partner to succeed.

As with secure council tenants, there can only be one statutory succession to an assured tenancy. On the death of an assured tenant his or her spouse/civil partner can succeed provided that immediately before the death s/he was occupying the dwelling as his/her only or principal home.[27] The definition of spouse in this context includes persons who have been living together as husband and wife. In *Amicus Horizon Ltd v (1) The Estate of Judy Mabott (deceased) (2) Anthony Brand* (30 May 2012) Ms Mabott had been the sole assured periodic tenant of a flat for 12 years until her death. Mr Brand had lived with her and her young daughter for 10 years. Following her death, Amicus sought possession. Mr Brand contended that the tenancy had vested in him under section17 of the *Housing Act 1988*. The Court of Appeal dismissed the appeal and held that, although Mr Brand had been in a loving, lasting and important relationship with Ms Mabott, he had not been living with her as her husband:

> The judge had concluded that Ms Mabott had not committed herself to Mr Brand in a manner akin to marriage. In particular, they had been careful to claim benefits separately and had not made a public affirmation of their relationship, such as to display commitment to the outside world. This was a conclusion which was properly open to him on the facts.[28]

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26 The date on which Part 1 of the *1988 Housing Act* came into force.
27 Section 17(1)(a) of the 1988 Act
28 Sweet & Maxwell's Housing View, 6 June 2012

There can be no statutory succession if the deceased was already a successor. If the tenancy was a joint tenancy and the deceased became the sole tenant on the death of the other original tenant, there can be no statutory succession.[29]

Where there is no statutory succession, a tenancy can pass under a will or intestacy and if the inheritor occupies as their only or principal home, the tenancy will still be assured but the landlord will have a mandatory Ground for possession against the successor.[30]

Ground 7 of Schedule 2 to the *Housing Act 1988* gives an association a mandatory ground for possession where a tenancy has devolved under the will of a tenant or on the late tenant's intestacy. Proceedings must be commenced no later than one year after the death of the tenant.

A housing association can seek possession against an assured tenant under Ground 9 of Schedule 2 to the *Housing Act 1988* where "suitable alternative accommodation is available for the tenant or will be available for him when the order for possession takes effect." The court has discretion over whether to grant an order under Ground 9.

The *Localism Act 2011,*[31] with effect from 1 April 2012, amended section 17 of the *Housing Act 1988* to allow associations to include express provisions in their tenancy agreements granting additional succession rights for assured tenants should they choose to do so.

29 Section 17(2) of the 1988 Act
30 The court has no discretion not to grant a possession order if a mandatory Ground is established.
31 Section 161

# 3. Succession and same-sex couples

The rights of same-sex couples to succeed to a tenancy were subject to a number of legal challenges before legislative changes were made.

*Harrogate BC v Simpson* (1986) established that a homosexual couple could not be considered to be living together as husband and wife for the purposes of succeeding to a council tenancy.[32] However, in *Ghaidan v Godin-Mendoza* (2004)[33] the House of Lords held that the exclusion of same-sex relationships from paragraph 2 of Schedule 1 to the *1977 Rent Act* (as amended) infringed Article 14 of the European Convention on Human Rights. Article 14 provides that:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

While the Mendoza case concerned succession rights to a private sector tenancy, it was clear that the decision would have far-reaching implications for the granting of succession rights to same-sex partners in social rented housing.

Paragraph 20 of Schedule 8 to the *Civil Partnerships Act 2004* amended section 87 of the *Housing Act 1985* to ensure that a civil partner has the same rights to succeed to a secure tenancy as a spouse. Paragraph 27 of Schedule 8 amended the definition of "member of a person's family" in Parts 3 and 4 of the 1985 Act to include references to a civil partner or civil partnership alongside references to spouse or to marriage. The amendment also extends the definition to couples who are living together as if they were civil partners as well as people who are living together as husband and wife. Similar amendments were made to the *Housing Act 1988*.

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32 [1986] 2 FLR 91

33 *Ghaidan v Godin-Mendoza* (2004) *Times,* 24 June 2004

# 4. The Law Commission's proposals (2006)

Between 2001 and 2005 the Law Commission carried out a project aimed at modernising and simplifying the law on housing tenure. Renting Homes: the final report, together with a draft Bill, was published in May 2006 and contained recommendations in relation to residents' succession rights.[34]

The Commission recommended the creation of single social housing tenancy which would remove the different succession rules that apply to secure council tenants and assured tenants of housing associations. The Commission believes that allowing only one statutory succession to a tenancy is "too restricted." Under the Commission's proposed scheme of succession rights a further succession would be allowed to a "reserve successor" on the death of a "priority successor." A priority successor would be the spouse or partner of the original contract holder, while a reserve successor would be either a carer or someone who fulfils "the family member condition." Reserve successors would also have to fulfil a residence condition and occupy the premises at the time of the contract-holder's death as their only or principal home. Full details of the Commission's recommendations in regard to succession rights can be found in chapter 7 of the final report.

In June 2006, commenting on the Law Commission's work, the then Minister for Housing, Yvette Cooper, said that the Government had not yet decided on the best way forward.[35] In 2009 the Under-Secretary of State at Communities and Local Government, Iain Wright, responded to a PQ on this issue:

> **Mr. Illsley:** To ask the Secretary of State for Communities and Local Government
>
> (1) whether she plans to implement the proposals of the Law Commission to facilitate the succession of secure tenancies of social housing to the children of couples upon their demise;
>
> (2) if she will bring forward legislative proposals to amend the Housing Act 1985 to facilitate the succession of a secure tenancy to the child of a couple following their demise.
>
> **Mr. Iain Wright:** We have no current plans to amend the rights of succession. While the law currently allows each tenancy to be succeeded only once, local housing authorities do have the freedom to grant new tenancies to those unable to succeed, having considered the merits of individual cases in line with their duty to address housing need.[36]

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34 Cm 6781, Law Com No 297, May 2006
35 HC Deb 26 June 2006 c142W
36 HC Deb 26 February 2009 cc1049-10W

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