



Housing Act 1985

1985 CHAPTER 68

PART IV

SECURE TENANCIES AND RIGHTS OF SECURE TENANTS

Succession on death of tenant

[^{F1}86A Persons qualified to succeed tenant: England

- (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.
- (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

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- (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.
- (6) Subsection (7) applies if, on the death of the tenant, there is by virtue of subsection (5) more than one person who fulfils the condition in subsection (1)(b).
- (7) Such one of those persons as may be agreed between them or as may, where there is no such agreement, be selected by the landlord is for the purpose of this section to be treated (according to whether that one of them is of the opposite sex to, or of the same sex as, the tenant) as the tenant's spouse or civil partner.]

Textual Amendments

- F1** S. 86A inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 160(1), 240(2)** (with s. 160(6)); [S.I. 2012/628](#), **art. 6(a)** (with **arts. 9, 11, 14, 15, 17**)

87 Persons qualified to succeed tenant^{F2}: Wales].

A person is qualified to succeed the tenant under a secure tenancy ^{F3}of a dwelling-house in Wales] 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 ^{F4}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.

Textual Amendments

- F2** Word in s. 87 heading inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 160(2)(a), 240(2)** (with s. 160(6)); [S.I. 2012/628](#), **art. 6(a)** (with **arts. 9, 11, 14, 15, 17**)
- F3** Words in s. 87 inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 160(2)(b), 240(2)** (with s. 160(6)); [S.I. 2012/628](#), **art. 6(a)** (with **arts. 9, 11, 14, 15, 17**)
- F4** Words in s. 87(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 81, 263(2), Sch. 8 para. 20**; [S.I. 2005/3175](#), **art. 2(1)**, **Sch. 1**

Modifications etc. (not altering text)

- C1** s. 87 modified (1.11.1993) by [1993 c. 28](#), s. 37, **Sch. 10 para. 2(3)**; [S.I. 1993/2134](#), **arts. 2, 5(a)**.

88 Cases where the tenant is a successor.

- (1) The tenant is himself a successor if—
- (a) the tenancy vested in him by virtue of section 89 (succession to a periodic tenancy), or
- (b) he was a joint tenant and has become the sole tenant, or
- (c) the tenancy arose by virtue of section 86 (periodic tenancy arising on ending of term certain) and the first tenancy there mentioned was granted to another person or jointly to him and another person, or
- (d) he became the tenant on the tenancy being assigned to him (but subject to subsections ^{F5}(2) to (3)) , or

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- (e) he became the tenant on the tenancy being vested in him on the death of the previous tenant [^{F6}or.]
- [^{F6}(f) the tenancy was previously an introductory tenancy and he was a successor to the introductory tenancy.]
- (2) A tenant to whom the tenancy was assigned in pursuance of an order under section 24 of the ^{M1}Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings) [^{F7}or section 17(1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce, &c.)] is a successor only if the other party to the marriage was a successor.
- [^{F8}(2A) A tenant to whom the tenancy was assigned in pursuance of an order under Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7, to the Civil Partnership Act 2004 (property adjustment orders in connection with civil partnership proceedings or after overseas dissolution of civil partnership, etc.) is a successor only if the other civil partner was a successor.]
- (3) A tenant to whom the tenancy was assigned by virtue of section 92 (assignments by way of exchange) is a successor only if he was a successor in relation to the tenancy which he himself assigned by virtue of that section.
- (4) Where within six months of the coming to an end of a secure tenancy which is a periodic tenancy (“the former tenancy”) the tenant becomes a tenant under another secure tenancy which is a periodic tenancy, and—
- (a) the tenant was a successor in relation to the former tenancy, and
- (b) under the other tenancy either the dwelling-house or the landlord, or both, are the same as under the former tenancy,
- the tenant is also a successor in relation to the other tenancy unless the agreement creating that tenancy otherwise provides.

Textual Amendments

- F5** Words in s. 88(1)(d) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 81, 263(2), [Sch. 8 para. 21\(2\)](#); [S.I. 2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#)
- F6** S. 88(1)(f) and word “or” immediately preceding it inserted (4.2.1997) by [1996 c. 52](#), s. 141(1), [Sch. 14 para. 1](#); [S.I. 1997/66](#), [art. 2](#) (with savings in [Sch.](#))
- F7** Words in s. 88(2) inserted (1.10.1996) by [1996 c. 52](#), s. 222, [Sch. 18 Pt. III para. 9](#); [S.I. 1996/2402](#), [art. 3](#) (subject to transitional provisions and savings in [Sch.](#))
- F8** S. 88(2A) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 81, 263(2), [Sch. 8 para. 21\(3\)](#); [S.I.2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#)

Modifications etc. (not altering text)

- C2** s. 88 modified (1.11.1993) by [1993 c. 28](#), s. 37, [Sch. 10 para.2\(3\)](#); [S.I. 1993/2134](#), [arts. 2](#), 5(a).

Marginal Citations

- M1** [1973 c. 18](#).

89 Succession to periodic tenancy.

- (1) This section applies where a secure tenant dies and the tenancy is a periodic tenancy.

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- [^{F9}(1A) Where there is a person qualified to succeed the tenant under section 86A, the tenancy vests by virtue of this section—
- (a) in that person, or
 - (b) if there is more than one such person, in such one of them as may be agreed between them or as may, where there is no agreement, be selected by the landlord.]
- (2) Where there is a person qualified to succeed the tenant [^{F10}under section 87], the tenancy vests by virtue of this section in that person, or if there is more than one such person in the one to be preferred in accordance with the following rules—
- (a) the tenant’s spouse [^{F11}or civil partner] is to be preferred to another member of the tenant’s family;
 - (b) of two or more other members of the tenant’s family such of them is to be preferred as may be agreed between them or as may, where there is no such agreement, be selected by the landlord.
- ^{F12}[(3) Where there is no person qualified to succeed the tenant, the tenancy ceases to be a secure tenancy—
- (a) when it is vested or otherwise disposed of in the course of the administration of the tenant’s estate, unless the vesting or other disposal is in pursuance of an order made under—
 - (i) section 24 of the Matrimonial Causes Act 1973 (property adjustment orders made in connection with matrimonial proceedings),
 - (ii) section 17(1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce, &c.), ^{F13} . . .
 - (iii) paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents) [^{F14}, or
 - (iv) Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7, to the Civil Partnership Act 2004 (property adjustment orders in connection with civil partnership proceedings or after overseas dissolution of civil partnership, etc.)]
 - (b) when it is known that when the tenancy is so vested or disposed of it will not be in pursuance of such an order.]
- (4) A tenancy which ceases to be a secure tenancy by virtue of this section cannot subsequently become a secure tenancy.

Textual Amendments

- F9** S. 89(1A) inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), **s. 160(3)(4)240(2)** (with s. 160(6)); [S.I. 2012/628](#), **art. 6(a)** (with [arts. 9, 11, 14, 15, 17](#))
- F10** Words in s. 89(2) inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 160(5), 240(2)** (with s. 160(6)); [S.I. 2012/628](#), **art. 6(a)** (with [arts. 9, 11, 14, 15, 17](#))
- F11** Words in s. 89(2)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 82, 263(2)**, **Sch. 8 para. 22(2)**, [S.I. 2005/3175](#), {**art. 2(1)**}, **Sch. 1**
- F12** S. 89(3) substituted (1.10.1996) by [1996 c. 52](#), s. 222, **Sch. 18 Pt. III para. 10**; [S.I. 1996/2402](#), **art. 3** (subject to transitional provisions and savings in [Sch.](#))
- F13** Word at the end of s. 89(3)(a)(ii) repealed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 261(4), 263(2)**, **Sch. 30**; [S.I. 2005/3175](#), **art. 2(6)**
- F14** S. 89(3)(iv) and preceding word inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 81, 263(2)**, **Sch. 8 para. 22(3)**; [S.I. 2005/3175](#), **art. 2(1)**, **Sch. 1**

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Modifications etc. (not altering text)

C3 S. 89 modified (1.11.1993) by 1993 c. 28, s. 37, **Sch. 10 para. 2(3)**; S.I. 1993/2134, **arts. 2, 5(a)**.

90 Devolution of term certain.

- (1) This section applies where a secure tenant dies and the tenancy is a tenancy for a term certain.
- (2) The tenancy remains a secure tenancy until—
 - (a) it is vested or otherwise disposed of in the course of the administration of the tenant's estate, as mentioned in subsection (3), or
 - (b) it is known that when it is so vested or disposed of it will not be a secure tenancy.
- (3) The tenancy ceases to be a secure tenancy on being vested or otherwise disposed of in the course of administration of the tenant's estate, unless—
 - ^{F15}(a) the vesting or other disposal is in pursuance of an order made under—
 - (i) section 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings),
 - (ii) section 17(1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce, &c.),^{F16} . . .
 - (iii) paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents), or
 - ^{F17}(iv) [Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7, to the Civil Partnership Act 2004 (property adjustment orders in connection with civil partnership proceedings or after overseas dissolution of civil partnership, etc.), or]
 - (b) the vesting or other disposal is to a person qualified to succeed the tenant.
- (4) A tenancy which ceases to be a secure tenancy by virtue of this section cannot subsequently become a secure tenancy.
- ^{F18}(5) The following provisions apply where a tenancy that was a secure tenancy of a dwelling-house in England—
 - (a) has been vested or otherwise disposed of in the course of the administration of the secure tenant's estate, and
 - (b) has ceased to be a secure tenancy by virtue of this section.
- (6) Subject as follows, the landlord may apply to the court for an order for possession of the dwelling-house let under the tenancy.
- (7) The court may not entertain proceedings for an order for possession under this section unless—
 - (a) the landlord has served notice in writing on the tenant—
 - (i) stating that the landlord requires possession of the dwelling-house, and
 - (ii) specifying a date after which proceedings for an order for possession may be begun, and
 - (b) that date has passed without the tenant giving up possession of the dwelling-house.

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- (8) The date mentioned in subsection (7)(a)(ii) must fall after the end of the period of four weeks beginning with the date on which the notice is served on the tenant.
- (9) On an application to the court for an order for possession under this section, the court must make such an order if it is satisfied that subsection (5) applies to the tenancy.
- (10) The tenancy ends when the order is executed.]

Textual Amendments

- F15** S. 90(3)(a) substituted for s. 90(3)(a) and the word “or” at the end of the paragraph (1.10.1996) by 1996 c. 52, s. 222, **Sch. 18 Pt. III para. 11**; S.I. 1996/2402, **art. 3** (subject to transitional provisions and savings in Sch.)
- F16** Words at the end of s. 90(3)(a)(ii) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(4), 263(10)(c), **Sch. 30**; S.I. 2005/3175, **art. 2(6)**
- F17** S. 90(3)(a)(iv) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 81, 263(2), **Sch. 8 para. 23**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F18** S. 90(5)-(10) inserted (1.4.2012) by Localism Act 2011 (c. 20), **ss. 162(1)**, 240(2); S.I. 2012/628, art. 6(b) (with arts. 9, 11, 14, 15, 17)

Modifications etc. (not altering text)

- C4** S. 90 modified (1.11.1993) by 1993 c. 28, s. 37, **Sch. 10 para. 2(3)**; S.I. 1993/2134, **arts. 2, 5(a)**.

Status:

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