

Issue 116 February 2017

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Housing matters

Housing matters is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

Published by:

Shelter, 88 Old Street, London EC1V 9HU

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shelter.org.uk

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Housing matters welcomes contributions from NHAS members. If you would like to provide an article or update for *Housing matters* please email

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National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is a partnership between Shelter and Citizens Advice funded by the Department for Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at www.nhas.org.uk

The NHAS provides the following to local authorities, local citizens advice and around 100 other advice agencies in England:

- a national telephone housing advice consultancy service for local authorities, local citizens advice and around 100 other advice agencies in England. Call **0300 330 0517** 9am–6pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of www.nhas.org.uk
- housing debt casework - specialist support for cases relating to mortgage arrears and other problems with housing affordability, including welfare benefits issues. Call **0300 330 0517** or use the online enquiries form (see above for details)
- free basic housing advice training courses to develop housing advice skills, covering the main housing advice presenting issues and how to advise households effectively on homelessness prevention options
- written briefings, articles in *Housing matters* and *Adviser*, information on housing issues and other written materials
- support in the implementation of new homeless prevention initiatives.

Contact details

For more information about NHAS training, please email JoanneK@shelter.org.uk or call **0344 515 1676**.

For general enquiries about the NHAS service, please email nhas@shelter.org.uk or call **0344 515 2268**.

Alternatively, please use the 'contact us' page at www.nhas.org.uk



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Registered charity in England and Wales (263710)
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Registered charity number 279057.

What's new?

Immigration (EEA) Regulations

The Immigration (European Economic Area) Regulations outline the rights of EEA nationals and their family members to reside in the UK.

With effect from 1 February 2017, the Immigration (EEA) Regulations 2016 SI 2016/1052, as amended by the Immigration (EEA) (Amendment) Regulations 2017 SI 2017/1, revoke and replace the Immigration (EEA) Regulations 2006 SI 2006/1003. Certain transitional arrangements apply.

The new regulations consolidate the 2006 regulations and give effect to certain judgments of the European Court of Justice. Although similar in form and approach to the 2006 regulations, the 2016 regulations are reorganised and renumbered. Schedule 7 contains a useful table that outlines how provisions of the 2006 regulations correspond to the provisions of the 2016 regulations.

The new regulations implement some changes, including:

- adding circumstances in which continuity of residence is broken – eg service of prison sentence (reg 3(3))
- a requirement that in order to acquire a permanent right to reside, family members of workers and self-employed people who have ceased activity must have been enjoying a right to reside as their family members at the point the workers/self-employed people ceased activity (reg 15(d))
- a requirement for applications for residence documents to be made online or on a prescribed form (reg 21).

A new definition of 'family members of British nationals' also came into force on 25 November 2016 (reg 9) (see 'What's new, HOMAT 115).

Guidance to local authorities from the Department for Work and Pensions can be found in [DMG memo 24/16](#). See the new regulations on legislation.gov.uk

New homelessness prevention funding

On 21 December 2016, the government announced funding plans for new homelessness prevention services in various parts of the UK. Go to Gov.uk for the [full list of successful bids](#) for the homelessness prevention programme.

Banning orders consultation

Under the Housing and Planning Act 2016, the government can create a national rogue landlord database which identifies landlords and agents who have been convicted of certain offences. The most serious offenders may be served with a banning order, forcing them either to fully comply with standards or to cease renting out properties.

The government has launched a consultation on what should constitute a banning order offence.

Find the [banning order consultation](#) on Gov.uk. The deadline for responses is 10 February 2017.

Benefit rates 2017/18

Housing benefits rates to take effect from Saturday 1 April 2017 (where rent is paid monthly), or Monday 3 April 2017 (where rent is paid weekly) can be found in Housing Benefit Circular A12/2016.

Go to Gov.uk for a copy of [HB circular A12/2016](#)

Working age benefits, including main elements of universal credit and housing benefit, will remain at the 2016/17 levels as part of the government's four-year freeze on welfare benefit levels.

How LHA is calculated

With effect from 23 January 2017, the Rent Officers (Housing Benefit and Universal Credit Functions) (Local Housing Allowance Amendments) Order 2016 SI 2016/1179 allows for exceptions to the four-year freeze on local housing allowance (LHA) rates. The LHA rate for certain properties in areas that the government has designated as subject to high rent increases will be raised by 3 per cent.

Civil legal aid

On 20 January 2017 the Legal Aid Agency (LAA) set out its approach for civil legal aid contracts from 2018 in a 'headline intentions' document. The LAA intends to award new contracts with services starting from 1 April 2018. The new contracts will be for specialist legal advice delivered both face-to-face and via the Civil Legal Advice telephone helpline.

The [tendering process for civil legal aid](#) contracts from 2018 can be found on Gov.uk.

Promoting sharing

In this article, Rebecca Derham highlights some pioneering approaches to shared housing in the social sector and explores how housing professionals can help foster a positive attitude to shared housing among under-35 year olds.

Rebecca Derham is Housing Best Practice Officer at Crisis.

For many under 35-year-olds looking for homes in the private rented sector (PRS), sharing with others is the likely option. The level of rents in the PRS has caused more people to share, and to share for longer, even if they are earning a decent wage. For those young people claiming benefits to help with their housing costs, the shared accommodation rate (SAR)¹ means that sharing is the only affordable option.

However, sharing can be a good option, not simply the only option. Tenants can increase their social network, acquire new independent living skills with support from peers, and be better off each week as a result of cheaper rent and shared utility costs.

As the 'shared accommodation rate' is due to be extended to social housing in 2019, a culture shift is required in terms of how shared accommodation is viewed both by social landlords and their potential tenants.

Sharing and single homeless people

Crisis has worked closely with organisations who have recognised the potential of sharing as a housing solution for single people in housing need. With the help of DCLG funding, Crisis administered the Sharing Solutions programme from October 2013 to March 2016. This enabled Help-to-Rent projects² based around the country to support homeless people limited by SAR to access and sustain accommodation by trialling models of shared housing including:

- training tenancies whereby clients with limited experience of managing a tenancy receive housing support
- lodgings placements where hosts and lodgers are matched and supported
- housing separated fathers with non-resident children in a property with an additional room to accommodate children on a mutually-agreed rota
- lead tenant and peer mentor models where tenants support the shared household and project.

Through the experience of these projects, Crisis has gathered learning about what makes shared housing work, and established best practice and key principles for services supporting and managing shared tenancies in the private sector.³

What about the social sector?

The landscape is changing. From 2019, Local Housing Allowance (LHA) rules will be applied to the amount of benefit social housing tenants can claim. For many single under-35 tenants, the SAR will not cover the cost of one-bedroom social housing. As a result, social landlords are considering their options for supporting under-35 tenants through increasing employment support; income maximisation programmes; lowering rents; and delivering shared housing models.

Crisis is not suggesting that sharing is the solution for everybody. For some tenants, especially if they have experienced homelessness, their vulnerabilities will mean that sharing is unsuitable. But sharing is certainly part of the answer, bringing with it benefits for both tenants and landlords.

Models of shared housing

Crisis is aware of a handful of existing models of shared housing using social housing stock. These models differ according to the status of the landlord, type of tenure available for use, number of tenants sharing, the type of stock being used and whether occupancy is of a temporary nature or not.

Where social landlords wish to take on full management of shared properties, the technicalities (security of tenure, rent setting, and so on) of such models will differ between local authorities and housing associations. Social landlords may prefer to avoid full management responsibilities, either by coming to management arrangements with other providers or by leasing properties.

Two examples of providers developing shared housing in the social sector are:

New Horizon and Network Homes

New Horizon Youth Centre (NHYC),⁴ a charity supporting homeless young people, act as managing agents guaranteeing a reduced rent to Network Homes, one of London's largest housing associations. NHYC issue protected licences to residents aged between 18 and 25 for a year during which they provide housing and employment related support. Properties comprise four to six en-suite bedrooms, with a large shared kitchen allowing space for the residents to cook and socialise together.

The properties allocated to the scheme are ex-key work accommodation particularly appropriate for use by individuals sharing. Network Homes benefit from making good use of otherwise hard to let stock. They retain responsibility for repairs and maintenance.

Solihull Community Housing

Solihull Community Housing (SCH) is an ALMO⁵ delivering housing management on behalf of Solihull MBC. Noticing the need to increase housing options for single people but without the availability of one bedroom properties, SCH allocated four two-bedroom properties to pilot a model in which each property was let to two under 35-year-old tenants sharing a 'flexible' tenancy.

SCH are restricted by the secure tenancy regime. Under the Housing Act 1985 individual secure tenancies cannot be issued to tenants in shared housing due to the property not being occupied as a 'separate dwelling'⁶. SCH therefore issue joint tenancies, with safeguards in place to overcome some of the issues that joint tenancies might present. Amongst them, SCH have agreed with the local authority that, during the pilot, a discretionary housing payment (DHP) can cover the rent during void periods which result from one room becoming vacant on the departure of one joint tenant and where liability for the full rent falls to the sitting tenant.

Promoting sharing

Alongside gathering examples of existing practice, Crisis has been engaging with social landlords, and their membership bodies, to support the future development of shared housing models in the social sector.⁷ As well as discussions about the operational decisions social landlords will need to make around tenure, rent setting, allocations and management, conversations are also arising about tenants' willingness to share. If landlords develop a model, will tenants want to live there, and for how long?

It will not be enough for social landlords to say to those who can share: 'you will have to, it's the only affordable option'. Shared housing schemes are successful when tenants are committed to sharing. In order to foster this commitment, sharing needs to be framed in a positive light.

In order to make shared housing accepted in the social sector as well as the private, younger people will need to be prepared for sharing as a likely housing option.

A culture shift

Managing expectations of younger people about where they may end up living will be key to preparing them for the future. To do this, we can learn from the culture shift surrounding increased use of the PRS in discharge of homelessness duties following the Localism Act 2011. When promoting the PRS as an option, it is more palatable when offered in conjunction with the benefits, such as choice about areas, flexibility when a tenant's circumstances change, and the option of a furnished property.⁸

The same approach applies when promoting shared housing – benefits need to be highlighted, fears need to be addressed and housing professionals need to have the relevant knowledge to discuss housing options with confidence.

Top tips

Some key ways in which housing professionals can promote sharing as a positive option are:

- promote the benefits, eg cheaper bills
- provide training and pre-tenancy support, eg through peer mentors
- listen to what young people are saying, eg what will make sharing more desirable, and share this information
- offer incentives such as savings schemes whereby clients can save for a move-on deposit, or the offer of furnished properties through making links with furniture stores
- discuss clients' options for moving on after an allocation of shared housing
- encourage partner organisations to deliver positive and accurate messages about shared housing too.

Developing a shared housing model

Built on best practice and learning from the private sector, Crisis developed the toolkit 'Spare to Share'⁹, for social landlords setting up and delivering shared housing schemes. A revised toolkit will be launched shortly, reflecting conversations with social landlords ahead of the application of the LHA caps.

Crisis would welcome the opportunity to share best practice and learn from the experience of any social landlord who is operating a model of shared housing or considering developing one. For more information, contact Ella Wesolowicz at ella.wesolowicz@crisis.org.uk

Footnotes

¹ The shared accommodation rate (or 'single room rent determination') restricts housing benefit and universal credit housing costs element for under-35s to the LHA rate for a room in shared accommodation. Certain claimants are exempt.

² Projects brokering the relationship between homeless people and landlords to secure and sustain tenancies.

³ For details of the project outcomes see the [Sharing Solutions evaluation](#) report on the Crisis website.

⁴ NHYC works with 16 to 25 year olds. It is one of five organisations Crisis is currently funding as part of the [Help-to-Rent programme 2016-2018](#)

⁵ Arms-length Management Organisation.

⁶ An occupier who shares living accommodation (eg a living room) with someone from another household is not occupying the premises as a separate dwelling.

⁷ For shared housing models that could be applied in PRS or social sector, see toolkits: (1) A Shared Approach and (2) Spare to Share. Both are available on the Crisis website as part of the [Sharing Solutions Programme](#)

⁸ See the Crisis website for [resources for housing workers](#) supporting clients to move into the PRS, including 'Move On to Private Renting' training, and an accompanying toolkit.

⁹ See the [Spare to Share](#) toolkit on the Crisis website.

Mobile homes

In this article, Douglas Jensen summarises the legal rights of people who live in mobile homes, and explains the significance of living on a protected site.

Douglas Jensen is a training and support officer at Shelter.

Queries about mobile homes can be daunting even for experienced housing advisers. The government estimates that there are 85,000 households living in mobile homes in England,¹ of which a large proportion may be older people.² Mobile home occupiers can encounter problems including disputes about pitch fees and site management, through to possession proceedings, harassment and illegal eviction.

Mobile home occupiers' rights vary depending on whether the mobile home is owned or rented, and whether or not it is on a protected site.

Is it a mobile home?

A mobile home is: *'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted.'*³

This includes most caravans⁴ and motor homes. A mobile home must be capable of being moved in one piece or in sections.⁵

Is it on a protected site?

The first point when dealing with a query from a mobile home occupier is to establish whether they live on a protected (or 'park home') site. A protected site requires a licence from the local authority and has planning permission for year-round use, with no restrictions as to when caravans can be occupied (i.e. it is not solely for holiday use). Mobile home occupiers living on protected sites will have some legal protection.

Local authorities must keep a register of site licences issued in their area. The register should be open for inspection by the public at any reasonable time.⁶ Some registers are made available on the authority's website,⁷ while it might be necessary to make a request, usually to the authority's planning department, to view a copy of others.

The local authority can attach conditions to the licence, eg restrictions on the number of caravans on the site or the spacing between them. These are enforceable by the authority. The site owner must display the conditions of the licence in a 'conspicuous place'.⁸

Mobile home owners: protected sites

Mobile home owners who live on protected sites (where the site was protected at the onset of the agreement⁹) and who occupy the mobile home as their only or main residence have rights under the Mobile Homes Acts of 1983 and 2013.

Buying a mobile home

A person buying a new mobile home from a site owner must be given a written agreement by the site owner setting out:¹⁰

- basic rights and obligations such as the right to keep the home on its pitch
- site rules, charges and services.

The buyer has 28 days to review the agreement before finalising the purchase unless they agree in writing to accept a shorter period.

A person buying an on-site home from an existing owner is bound by the seller's existing agreement with the site owner. The buyer must be given a '**buyer's information form**' containing information about the site and the seller's agreement with the site owner. If the existing owner bought their mobile home before 26 May 2013, the site owner may object to the sale if the buyer does not meet site rules on age, vehicles or pets, otherwise the site owner's consent to a sale is not required.¹¹

Implied and express terms

The 1983 Act implies a number of terms into agreements, including rights for the mobile home owner to:¹²

- recover payments to the site owner in respect of time after the agreement ends
- quiet enjoyment of the plot
- not have the mobile home moved without a court order, except for essential emergency or repair works.

Site owners must maintain the site and services provided, carry out repairs to the base of the mobile home, consult on improvements and provide evidence in support of any new charges applied. They have the right to enter the pitch without notice to deliver communications, with reasonable notice for essential works, or with 14 days' notice for any other purpose.

Site owners may only change site rules, which form part of the express terms, following consultation with occupiers.¹³

Disputes relating to whether either party is in breach of the implied or express terms of the agreement can be dealt with by the First Tier Tribunal (Property Chamber), or via arbitration if the agreement allows for it.

For these and other disputes, the Leasehold Advisory Service¹⁴ provides specialist advice for mobile home owners (and renters).

Pitch fees

There is no statutory control of the initial level of pitch fees (the fee for renting the pitch) but the fee can only be increased annually, following 28 days' notice from the site owner in a prescribed form.¹⁵ If the mobile home owner does not agree to an increase, the site owner must apply to the First Tier Tribunal (Property Chamber). The tribunal will only allow the increase if it considers it to be reasonable.

Terminating the agreement

If the mobile home owner wants to end their agreement, they must give at least four weeks' notice in writing.¹⁶

Site owners can apply to the county court to end an agreement where the:¹⁷

- mobile home owner has breached a term of the agreement, or
- mobile home is not the owner's main residence, or
- poor condition of the mobile home is having a detrimental effect on the site.

In the case of a breach of the agreement, site owners must first serve a notice on the mobile home owner requiring them to remedy the breach. If the breach is not remedied within a reasonable period of time, site owners can then apply to court. Notice does not need to be in any prescribed form. This obligation does not apply where a breach is incapable of being remedied.

If a site owner successfully obtains a court order to end the agreement, they must also obtain a separate court order (although usually in the same set of court proceedings) allowing them to regain possession of the pitch. This will only be granted if the court considers it reasonable to do so.

Legal aid might be available (subject to the means test) for mobile home owners against site owners seeking possession of the pitch.

Mobile home renters: protected sites

Mobile home renters on protected sites who have a tenancy may have protection under the Rent Act 1977 or the Housing Act 1988. Those who do not will be protected under the Caravan Sites Act 1968.

Licence or tenancy?

Many people who rent a caravan will have a licence rather than a tenancy. This is because, in legal terms, a caravan is normally seen as a 'chattel' (by being deemed to 'float' above the land). A tenancy, however, relates to an interest in land and in order to have the protection of either the Rent Act 1977 or the Housing Act 1988 the property must be a 'dwelling house' affixed to the land.

In establishing whether a mobile home is a 'dwelling house', a key question is whether it could be removed from the land in one or two pieces, or whether removing it would entail demolition (as per an ordinary house).¹⁸

Terminating the agreement

A mobile home renter who wants to end their agreement will have to give notice as required by statute, their tenancy, or common law depending on their tenure.

A mobile home renter who lives in 'dwelling house' may have a regulated tenancy or an assured/assured shorthold tenancy. A site owner can only evict if the statutory grounds for possession are met, and by following the correct procedures.

Other mobile home renters on protected sites are entitled under the Caravan Sites Act 1968 to at least four weeks' notice (and a court order),¹⁹ although the Act does not specify what form the notice should take. The court has limited power to postpone or suspend an order for up to 12 months in certain circumstances.

As for mobile home owners, renters might also qualify for legal aid to defend against possession proceedings or illegal eviction.

What if the site is not protected?

Mobile home owners on unprotected sites fall outside all statutory protection. Any contractual terms regarding notice and termination will still apply. Court proceedings are not required to evict them from the site.

Mobile home renters may be covered by the Protection from Eviction Act 1977, as they are occupying the mobile home as a 'dwelling'. This would entitle them to valid notice to quit and a court order.

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Footnotes

¹ House of Commons Library Briefing Paper, 4 January 2016: Mobile (Park) Homes.

² Age UK, [Campaign for warm park homes](#)

³ s.29 Caravan Sites and Control of Development Act 1960; s.5(1) Mobile Homes Act 1983 as amended.

⁴ under s.13 Caravan Sites Act 1968, twin unit caravans above specified dimensions do not come within the definition of mobile home.

⁵ Carter v (1) Secretary of State for the Environment (2) Carrick DC, CA, [1994] 1WLR 1212.

⁶ s.25 Caravan Sites and Control of Development Act 1960.

⁷ eg [York City Council](#)

⁸ s.5(3) Caravan Sites and Control of Development Act 1960.

⁹ Murphy v Wyatt [2011] EWCA Civ 408.

¹⁰ s.1(2) Mobile Homes Act 1983 as amended; Mobile Homes (Written Statement) (England) Regulations 2011 SI 2011/1006; see also collected factsheets on park homes on [Gov.uk](#)

¹¹ Mobile Homes (Selling and Gifting) (England) Regulations 2013 SI 2013/981.

¹² s.2(1) and Part 1 of Schedule 1, Mobile Homes Act 1983 as amended.

¹³ Mobile Homes (Site Rules) (England) Regulations 2014 SI 2014/5.

¹⁴ See the [Park Homes Advice](#) website provided by LEASE

¹⁵ Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 SI 2013/1505.

¹⁶ Para 3, Part 1, Sch 1 Mobile Homes Act 1983 as amended.

¹⁷ Paras 4-6, Part 1, Sch 1 Mobile Homes Act 1983 as amended.

¹⁸ Spielplatz Ltd v Pearson [2015] EWCA Civ 804.

¹⁹ s.2 Caravan Sites Act 1968.

Non-statutory succession

In this article, Richard Lee explains that extra succession rights may be available to household members who would not otherwise qualify to succeed following the death of a tenant in the social rented sector.

Richard Lee is a trainer with NHAS.

'Succession' is where one person takes over from another as tenant of a property on the tenant's death. Statutory succession rights apply in all cases where the statutory conditions, as set out in the Housing Acts 1985 and 1988, are met. For example, a spouse, civil partner or cohabitee who lives with an assured tenant can succeed to the tenancy after the tenant dies.¹

Extra succession rights

This article considers where extra succession rights may be granted as a result of a:

- term in the tenancy agreement
- council or housing association policy.

Depending on the circumstances, the successor may inherit the tenancy, or be granted a new tenancy.

Where a 'succession' results in the grant of a new tenancy, it will in fact be an allocation of social housing.² The 2002 Code of Guidance on allocations³ contained specific guidance on when it might be appropriate to grant a new tenancy to a member of the deceased's household who did not meet the statutory criteria; the replacement 2012 Code⁴ does not contain equivalent guidance.

Extra succession rights may:

- widen the group of potential successors from those allowed by statute
- allow for more than the statutorily allowed number of successions.

For example, a tenancy agreement might state that succession is allowed, on certain conditions, to a carer who would otherwise not qualify as a successor. If the carer meets these conditions, then s/he can succeed on the death of the tenant.

Contractual right: tenancy granted on or after 1 April 2012

For periodic secure or assured tenancies, or fixed-term assured shorthold tenancies of at least two years granted by a housing association, that were created on or after 1 April 2012, legislation allows for extra succession rights where these are set out in the tenancy agreement.⁵

In these cases, a successor will inherit the tenancy previously held by the deceased.

Other contractual rights to succession

There are other instances in which a tenant may have extra succession rights through their contract. For example, extra rights might have been granted following a stock transfer of council property to a housing association before 1 April 2012, so that tenants did not lose out on moving from secure to assured status.

In addition, a landlord may have included a contractual term in the tenancy agreement giving extra succession rights where the tenancy began before 1 April 2012.

A succession will usually operate as the grant of a *new tenancy* in both of these cases.

Discretionary succession policy

In some cases, social landlords will have a policy of granting a 'discretionary' succession, also known as 'non-statutory succession'. The situations in which discretionary successions will be granted, when and to whom should be clearly set out in the landlord's policy dealing with the kinds of tenancies they grant.⁶

The landlord grants a *new tenancy* to the successor in these cases.

Identifying 'extra' succession rights

The first place to look for any succession rights above the statutory minimum is the original tenant's contract. This may be difficult to find but a person wishing to succeed could request a copy from the landlord - it would be sensible to accompany the request with the death certificate and proof of relationship.

If there is no contractual right to an extra succession, the next step is to find out if the landlord has a policy on discretionary or non-statutory succession. Details may be found in a free-standing policy, or as part of the tenancy policy. In addition, any policy should be reflected in the allocation scheme. If the policy is not on the landlord's website, contact them to ask for a copy.

Consequences of succession type

The rights of successors depend on whether they succeeded to the deceased's original tenancy, or they were granted a new tenancy:

Subsequent successions

Where the successor inherits the deceased's tenancy, her/his right to pass on the tenancy is limited by the Housing Acts 1985 and 1988. Both Acts allow only one succession, except (as above) for tenancies created on or after 1 April 2012⁷ if the tenancy agreement specifically allows for a further succession.

Where a new tenancy is granted, however, there will be a fresh right of succession according to the statutory procedure.

Grounds for possession

For secure tenancies only, a landlord has a ground for possession in certain situations where a tenancy passes to another person on succession and this results in under-occupation of the property.⁸

This is not the case where a new tenancy is granted. However, landlord policies on discretionary succession are likely to ensure that any new tenancy does not result in under-occupation (for example, by only offering a smaller alternative property).

Note that mandatory ground 7 for assured tenants⁹ only applies where a person inherits a tenancy through a will or on intestacy, which is beyond the scope of this article.

Tenancy terms

Where the successor 'takes over' an existing tenancy, it will be on the same terms. So if the original tenant was a fixed-term flexible or assured shorthold tenant, the successor will continue under the same fixed term. On the other hand, if a new tenancy is granted, the policy may allow for a periodic tenancy.

Examples of extra succession rights

Extra succession rights will vary greatly from landlord to landlord so it is essential to check what may be available. Four examples are considered below.

Contractual succession – stock transfer

Milecastle Housing (now ISOS Housing Association) took over stock from Tynedale DC in 1999. At the time, it issued new tenancy agreements to all former Tynedale tenants so that previous successions were disregarded. The contracts also allow for a second succession in certain circumstances.¹⁰

Discretionary succession – local authority policy

Camden LBC has a discretionary policy under which it will grant a new tenancy to carers, and/or allow for a second succession. Its policy sets out the factors it will consider. It also clearly states that the new tenancy will be granted in accordance with the allocation scheme, and in cases of under-occupation it may be at an alternative property.¹¹

Discretionary succession – housing association policy

NCHA 'will always consider offering a new tenancy to an adult member of the family [of an assured tenant] even if they have no legal right of succession'. This is discretionary, and the policy suggests that they will consider factors such as whether the family member has other options for rehousing, how long s/he has lived there and her/his behaviour.¹²

Challenging refusal of extra succession

In most cases, extra succession rights given by landlords' policies are discretionary, and allow for alternative accommodation to be provided. A challenge to a refusal, or an offer of an alternative property will have to be by way of judicial review and proceed on grounds of public law, human rights or public sector equality duty.

Disputes may also arise around the size of property offered. For example, Luton BC was found to be within its powers to decide that a brother living with the discretionary successor in order to receive care was not part of the household as his length of residence was short and his illnesses not 'sufficient to render him... dependent'. As a result, the 'successor' was offered a one rather than a two-bedroom property.¹³

A potential successor should check with the landlord if s/he will succeed to the original tenancy, or be granted a new agreement. S/he will probably need to provide evidence of meeting any required criteria.

Where a landlord is reluctant to accept that succession has occurred and, for example, refuses to accept rent, legal advice may be required. If the tenancy began after 11 May 2000, it may be possible for the potential successor to take action for breach of contract to compel the landlord to recognise the succession.¹⁴ Alternatively, if possession action is taken on the property, the successor may have to assert his or her status as a tenant by defending the proceedings.

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11.5.2.5 Secure tenancies

11.5.2.50 Flexible tenancy rights - the right to pass on your tenancy

11.5.6.2 Assured tenancies

Footnotes

¹ s.17(1), Housing Act 1988.

² s.159 Housing Act 1996.

³ Code of Guidance on the Allocation of Accommodation for Local Authorities (2002).

⁴ Allocation of accommodation: guidance for housing authorities in England (June 2012).

⁵ s.86A(2) and s.86A(4), Housing Act 1985; s.17(1A) and s.17(1E), Housing Act 1988.

⁶ Paragraph 2.2.1(i), [Tenancy Standard, HCA](#) (2012).

⁷ s.160(6), Housing Act 1985; s.161(7), Housing Act 1988.

⁸ Ground 15A, Schedule 2, Housing Act 1985.

⁹ Ground 7, Schedule 2, Housing Act 1988.

¹⁰ [ISOS succession policy 2012](#)

¹¹ [Camden's Tenure Policy](#) (October 2012).

¹² Paragraph 3.6 and 3.9, B08, [Succession policy NCHA](#) 2014.

¹³ Jones v Luton BC [2016] EWHC 2036 (Admin).

¹⁴ s.1, Contracts (Rights of Third Parties) Act 1999.

Mobile home owners

This leaflet looks at the rights of people who live on a protected site in a mobile home that they own.

If you own a mobile home, unless you also own land, you'll need to rent a pitch on a site to keep it on.

Protected and unprotected sites

Sites are protected or unprotected. This leaflet only applies to people living on protected sites.

A protected site has planning permission that allows you to live there all year round. These sites are also known as park home sites. Unprotected sites only have permission for holiday use. You can't lawfully live on the site all year.

Your local council's planning department will tell you if a site is protected, and the conditions of the site licence. Privately owned sites must clearly display the licence on the site.

Statement of rights and obligations

A site owner must give you a written statement setting out your rights and obligations before you agree to buy a mobile home and rent a pitch. If you buy an on-site mobile home from an existing owner, you will be bound by the agreement they signed with the site owner.

Buying a mobile home

When you buy a mobile home the seller must give you written information which includes the:

- purchase price
- name and address of the site owner
- terms of the agreement to rent the pitch
- limits (if any) on planning permission.

Each site has its own rules, including the permitted age of residents, rules on what pets you may keep, and use of the site.

Pitch fees and other charges

You will pay a pitch fee to the site owner. This is usually paid monthly, but it could be weekly or yearly.

The fee can't be increased more than once a year. The site owner must give you 28 days' notice of any increase on a 'Pitch Fee Review Form'. This form explains your rights. If you don't agree to the increase the site owner must apply to a tribunal to set the new fee. You will have the chance to say why it should not be increased by the amount proposed.

You are usually charged separately for water, gas and electricity. You will pay council tax to the local council. If you are on benefits or a low income you can apply for:

- housing benefit or universal credit to help pay your pitch fee
- council tax support.

Repairs and maintenance

You are responsible for the condition of the mobile home itself.

The site owner is responsible for repairing:

- the hardstanding your mobile home is on
- common areas
- services they supply, like sewerage.

Selling your mobile home

You can find a copy of the information you must give your buyer on [Gov.uk](https://www.gov.uk)

If you bought your mobile home on or after 26 May 2013 you can sell it to whoever you wish. If you bought before that date, the site owner can object if your buyer does not meet site rules on age, vehicles or pets.

Giving notice

You must give at least four weeks' notice in writing if you want to end your agreement.

Being evicted

You have the right to keep your mobile home on the site you occupy indefinitely (unless the site owner's planning permission is time-limited). The site owner can only evict you from the site if s/he gets a court order. A court will only make an order to evict you if it is reasonable to do so and:

- you've breached the site agreement, or
- you are not occupying the mobile home as your only or main residence, or
- your mobile home is in a poor condition and has a detrimental effect on the site.

Further advice

You can get further advice from Shelter's free* housing advice helpline (0808 800 4444), a local Shelter advice service or local Citizens Advice office, or by visiting shelter.org.uk/advice or adviceguide.org.uk

*Calls are free from UK landlines and main mobile networks.



Note
Information contained in this leaflet is correct at the time of publication. Please check details before use.