

**Changes to legislation:** Housing (Scotland) Act 2001, SCHEDULE 3 is up to date with all changes known to be in force on or before 21 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

### SCHEDULE 3

(introduced by section 22)

## SUCCESSION TO SCOTTISH SECURE TENANCY: QUALIFIED PERSONS

### Commencement Information

- I1** Sch. 3 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), [art. 2](#), Sch. (subject to transitional provisions and savings in [arts. 3-5](#))

### Qualified persons

- 1 For the purposes of section 22, a person falling within any of paragraphs 2 to 4 is a qualified person.
- 2 (1) A person whose only or principal home at the time of the tenant's death was the house and—
- (a) who was at that time—
    - (i) the tenant's spouse [<sup>F1</sup>or civil partner], or
    - (ii) living with the tenant as husband and wife or in a relationship which has the characteristics of the relationship between [<sup>F2</sup>civil partners], or
  - (b) who is, where the tenancy was held jointly by two or more individuals, a surviving tenant.
- (2) In the case of a person referred to in sub-paragraph (1)(a)(ii), the house must have been the person's only or principal home throughout the period of [<sup>F3</sup>12] months ending with the tenant's death.

### Textual Amendments

- F1** Words in sch. 3 para. 2(1)(a)(i) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 66\(a\)](#); [S.S.I. 2005/604](#), arts. 2(c), 4
- F2** Words in sch. 3 para. 2(1)(a)(ii) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 66\(b\)](#); [S.S.I. 2005/604](#), arts. 2(c), 4
- F3** Word in sch. 3 para. 2(2) inserted (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), [ss. 13\(a\)](#), 104(3); [S.S.I. 2018/153](#), [art. 2](#), sch. (with arts. 8, 9)

- 3 A member of the tenant's family aged at least 16 years where the house was the person's only or principal home [<sup>F4</sup>throughout the period of 12 months ending with] the tenant's death.

### Textual Amendments

- F4** Words in sch. 3 para. 3 substituted (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), [ss. 13\(b\)](#), 104(3); [S.S.I. 2018/153](#), [art. 2](#), sch. (with arts. 8, 9)

- 4 A carer providing, or who has provided, care for the tenant or a member of the tenant's family where—
- (a) the carer is aged at least 16 years,

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- (b) the house was the carer's only or principal home [<sup>F5</sup>throughout the period of 12 months ending with] the tenant's death, and
- (c) the carer had a previous only or principal home which was given up.

**Textual Amendments**

**F5** Words in sch. 3 para. 4(b) substituted (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\), ss. 13\(c\), 104\(3\); S.S.I. 2018/153, art. 2, sch.](#) (with arts. 8, 9)

*Only or principal home*

- [<sup>F6</sup>4A For the purposes of paragraph 2, 3 or 4 a period may be considered in relation to a person only if, at any time before that period began, the landlord was notified by—
- (a) the person, or
  - (b) any other person who was the tenant of the house in question when the notice was given,
- that the house in question was the person's only or principal home.]

**Textual Amendments**

**F6** Sch. 3 para. 4A inserted (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\), ss. 13\(d\), 104\(3\); S.S.I. 2018/153, art. 2, sch.](#) (with arts. 8, 9)

*Special rule: specially adapted house*

- 5 (1) This paragraph applies where the house has been designed or substantially adapted for occupation by a person whose special needs require accommodation of the kind provided by the house.
- (2) For the purposes of succession to a tenancy under section 22(1), a person is a qualified person only if that person—
- (a) falls within paragraph 2, or
  - (b) falls within paragraph 3 or 4 and has special needs requiring accommodation of the kind provided by the house.
- (3) For the purposes of succession to a tenancy under section 22(2), a person falling within any of paragraphs 2 to 4 is a qualified person only if that person has special needs requiring accommodation of the kind provided by the house.

*Order of succession*

- 6 If there is a qualified person falling within paragraph 2, the tenancy passes to that person unless the person declines the tenancy.
- 7 If the tenancy does not pass to a qualified person falling within paragraph 2 and there is a qualified person falling within paragraph 3, the tenancy passes to that person unless the person declines the tenancy.
- 8 If the tenancy does not pass to a qualified person falling within paragraph 2 or 3 and there is a qualified person falling within paragraph 4, the tenancy passes to that person unless the person declines the tenancy.

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- 9 Where there is more than one qualified person falling within any of paragraphs 2 to 4, section 22(9) and paragraph 6, 7 or, as the case may be, 8 apply in relation to—
- (a) such qualified person falling within the paragraph in question, or
  - (b) such two or more of those qualified persons as joint tenants,
- as may be decided by agreement between all the qualified persons falling within the paragraph in question or, failing agreement within 4 weeks of the death of the tenant or, where paragraph 10 applies, of the date on which notice under that paragraph was given, as the landlord decides.

#### *Notification of right to succeed to tenancy*

- 10 (1) Where there is a qualified person falling within paragraph 2 and that person (or, if more than one, each of those persons) declines the tenancy, the landlord must, as soon as possible thereafter—
- (a) use its best endeavours to ascertain whether there are any persons who may be entitled to the tenancy by virtue of paragraph 3 or, if not, paragraph 4, and
  - (b) give notice in writing to each such person.
- (2) Where there is a qualified person falling within paragraph 3 and that person (or, if more than one, each of those persons) declines the tenancy, the landlord must, as soon as possible thereafter—
- (a) use its best endeavours to ascertain whether there are any persons who may be entitled to the tenancy by virtue of paragraph 4, and
  - (b) give notice in writing to each such person.

#### *Declining a tenancy*

- 11 (1) A qualified person who is entitled to the benefit of paragraph 6, 7 or 8 may decline the tenancy by giving the landlord notice in writing within 4 weeks of the tenant's death or, where the qualified person was given notice under paragraph 10, within 4 weeks of the date on which that notice was given.
- (2) Notice under sub-paragraph (1) has effect as if given at the time of the tenant's death.
- (3) A qualified person who declines a tenancy—
- (a) must vacate the house within 3 months of the date of the notice under sub-paragraph (1) declining the tenancy,
  - (b) is liable to pay rent which becomes due after the tenant's death only in respect of any rental period (that is to say, a period in respect of which an instalment of rent falls to be paid) during any part of which the qualified person has occupied the house after the tenant's death.

#### *Qualified persons: co-operative housing associations*

- 12 (1) This paragraph applies where the landlord is a registered social landlord which is a co-operative housing association.
- (2) A qualified person who is entitled to the benefit of paragraph 6, 7 or 8 must, within 4 weeks of the tenant's death or, where the qualified person was given notice under paragraph 10, within 4 weeks of the date on which that notice was given, apply for membership of the co-operative housing association.
- (3) Where a qualified person—

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- (a) fails to comply with sub-paragraph (2), or
  - (b) complies with that sub-paragraph but the co-operative housing association refuses the application for membership,
- the person is to be treated as having declined the tenancy at the time of the tenant's death.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5(5A) inserted by [2003 asp 10 s. 5\(4\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S. 5 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 14(1)(a) words renumbered as s. 14(1)(a) by [2021 asp 16 s. 22\(2\)\(a\)\(i\)](#)
- s. 14(1)(b) inserted by [2021 asp 16 s. 22\(2\)\(a\)\(ii\)](#)
- s. 14(1A)(1B) inserted by [2021 asp 16 s. 22\(2\)\(b\)](#)
- s. 14(5C)-(5E) inserted by [2021 asp 16 s. 22\(2\)\(e\)](#)
- s. 16(2)(d)(e) inserted by [2021 asp 16 s. 22\(3\)\(b\)\(ii\)](#)
- s. 16(3ZA)(3ZB) inserted by [2021 asp 16 s. 22\(3\)\(c\)](#)
- s. 16(5C) inserted by [2021 asp 16 s. 22\(3\)\(e\)](#)
- s. 16(7)-(10) inserted by [2021 asp 16 s. 22\(3\)\(f\)](#)
- s. 34(7A)-(7C) inserted by [2003 asp 10 s. 6\(2\)](#) (This amendment not applied to legislation.gov.uk. S. 6 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 34(8)(b) and words inserted by [2003 asp 10 s. 6\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S. 6 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 89(12) inserted by [2019 asp 10 s. 18\(3\)](#)
- sch. 2 para. 15A inserted by [2021 asp 16 s. 22\(4\)](#)
- sch. 6 para. 5A and cross-heading inserted by [2003 asp 10 s. 5\(5\)](#) (This amendment not applied to legislation.gov.uk. S. 5 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)