

Status: Point in time view as at 05/12/2005.

Changes to legislation: Housing (Scotland) Act 2001, SCHEDULE 3 is up to date with all changes known to be in force on or before 28 June 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)

SCHEDULE 3

(introduced by section 22)

SUCCESSION TO SCOTTISH SECURE TENANCY: QUALIFIED PERSONS

Commencement Information

- II** 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 [^{F1}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 [^{F2}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 6 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

- 3 A member of the tenant's family aged at least 16 years where the house was the person's only or principal home at the time of the tenant's death.
- 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,
- (b) the house was the carer's only or principal home at the time of the tenant's death, and
- (c) the carer had a previous only or principal home which was given up.

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.

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- (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.
- 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

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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—
 - (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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