

## SCHEDULE 3

*(introduced by section 22)*

## SUCCESSION TO SCOTTISH SECURE TENANCY: QUALIFIED PERSONS

*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, or
    - (ii) living with the tenant as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex, 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.
- 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.
- (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 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.