

SCHEDULES

SCHEDULE 3

HOUSING ASSOCIATION TENANCIES

PART III

APPLICATION OF RENT (SCOTLAND) ACT 1971

- 13 (1) The provisions of this paragraph apply on and after the operative date in any case where—
- (a) a tenancy of a dwelling-house under which the interest of the landlord belonged to a housing association has come to an end at a time before the operative date (whether before or after the passing of this Act), and
 - (b) on the date when it came to an end, the tenancy was one to which sections 60 to 66 of the 1972 Act applied, and
 - (c) if the tenancy had come to an end after the operative date it would, by virtue of section 18(1) of this Act, have then been a protected tenancy.
- (2) No order for possession of the dwelling-house shall be made which would not be made if the tenancy had been a protected tenancy at the time it came to an end.
- (3) Where a court has made an order for possession of the dwelling-house before the operative date, but the order has not been executed, the court, if of opinion that the order would not have been made if the tenancy had been a protected tenancy when it came to an end may, on the application of the person against whom it was made, rescind or vary it in such manner as the court thinks fit for the purpose of enabling him to continue in possession.
- (4) If on the operative date the person who was the tenant under the tenancy which has come to an end duly retains possession of the dwelling-house, he shall be deemed to do so as a statutory tenant under a regulated tenancy and as a person who became a statutory tenant on the termination of a protected tenancy under which he was the tenant.
- (5) If on the operative date a person duly retains possession of the dwelling-house as being a person who, in the circumstances described in paragraph 1(3)(c) above, would have been the first successor, within the meaning of Schedule 1 to the 1971 Act he shall be deemed to do so as the statutory tenant under a regulated tenancy and as a person who became a statutory tenant by virtue of paragraph 2 or paragraph 3 of that Schedule.
- (6) If on the operative date a person duly retains possession of the dwelling-house as being a person who, in the circumstances described in paragraph 1(3)(c) above, would have become the statutory tenant on the death of a first successor, he shall be deemed to do so as the statutory tenant under a regulated tenancy and as a person

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who became a statutory tenant by virtue of paragraph 6 or paragraph 7 of Schedule 1 to the 1971 Act.

- (7) References in the preceding provisions of this paragraph to a person duly retaining possession of a dwelling-house are references to his retaining possession without any order for possession having been made or, where such an order has been made,—
- (a) during any period while its operation is postponed or its execution is suspended ; or
 - (b) after it has been rescinded.
- (8) Subject to sub-paragraph (9) below, the tenancy referred to in sub-paragraph (1) above shall be treated as the original contract of tenancy for the purposes of section 12 of the 1971 Act (terms and conditions of statutory tenancies) in relation to a statutory tenancy imposed by any of sub-paragraphs (4) to (6) above.
- (9) The court may by order vary all or any of the terms of a statutory tenancy imposed by any of sub-paragraphs (4) to (6) above in any way appearing to the court to be just and equitable (and whether or not in a way authorised by the provisions of sections 22 and 23 of the 1971 Act).
- 14 (1) This paragraph applies to—
- (a) a tenancy which becomes a protected tenancy by virtue of section 18(1) of this Act;
 - (b) a statutory tenancy which is deemed to arise under paragraph 13 above; and
 - (c) a statutory tenancy arising on the termination of any such tenancy as is referred to in head (a) or (b) of this sub-paragraph.
- (2) The contractual rent limit for any contractual period of a tenancy to which this paragraph applies or the limit of rent recoverable for any statutory period of that tenancy shall be determined as follows—
- (a) where no rent has been registered for the dwelling-house under the previous housing association tenancy, the limit for the purposes of section 19(1) or, subject to sections 22 to 24, of section 21(1) of the 1971 Act, shall be the rent recoverable for the last rental period of that tenancy determined in accordance with section 62(3) of the 1972 Act, until either—
 - (i) a rent is registered for the dwelling-house under Part IV of the 1971 Act, or
 - (ii) a rent agreement with a tenant having security of tenure is entered into with respect to the dwelling-house ;
 - (b) where a rent has been registered for the dwelling-house under the previous housing association tenancy and the rent recoverable for the last rental period of that tenancy was that registered rent, the limit, for the purposes of section 19(2) or section 21(2) of the 1971 Act, but subject to the provisions of those sections, shall be the registered rent until either—
 - (i) a new rent is registered for the dwelling-house under Part IV of the 1971 Act, or
 - (ii) the rent registered for the dwelling-house is cancelled in terms of section 44A of the 1971 Act;
 - (c) where a rent has been registered for the dwelling-house under the previous housing association tenancy and the rent recoverable for the last rental period of that tenancy was determined in accordance with section 63 of the 1972 Act, the limit, for the purposes of section 19(2) or of section 21(2) of the 1971 Act, shall be the rent limit as determined in accordance with the said

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section 63 of the 1972 Act and, for this purpose, that registration and the provisions of sections 62(4), 63(2) to (4) and 67 of that Act shall subject to the provisions of sub-paragraph (3) of this paragraph, continue to apply or, as the case may require, shall apply to the rent of a dwelling-house under a tenancy to which this paragraph applies as if that tenancy had been a tenancy to which sections 60 to 66 of the 1972 Act applied, until either—

- (i) a new rent is registered for the dwelling-house under Part IV of the 1971 Act, or
 - (ii) the rent registered for the dwelling-house is cancelled in terms of section 44A of the 1971 Act;
- (d) where a rent has been registered for the dwelling-house and the Secretary of State has given a direction under section 64(4) of the 1972 Act, specifying the rent limit for the dwelling-house under the previous housing association tenancy, the limit, for the purposes of section 19(2) or of section 21(2) of the 1971 Act, shall be the rent limit specified in the direction and, for this purpose, the provisions of sections 62(1), (2), (4) and (5), 64 and 67 of the 1972 Act shall continue to apply or, as the case may require, shall apply to the rent of a dwelling-house under a tenancy to which this paragraph applies as if that tenancy had been a tenancy to which sections 60 to 66 of the 1972 Act applies, until—
- (i) the direction ceases to have effect (whether because any condition included in the direction is not complied with or because the period for which the direction has effect ends), or
 - (ii) a new rent is registered for the dwelling-house under Part IV of the 1971 Act (whether or not the new rent exceeds the rent provisionally registered or the rent specified in the direction);

and where any of the events specified in the foregoing provisions of this sub-paragraph take place the said limits shall be determined in accordance with the provisions of the Rent (Scotland) Acts 1971 and 1972.

- (3) In the application, by virtue of sub-paragraph (2)(c) of this paragraph, of subsection (2) of section 63 of the 1972 Act to the rent of a dwelling-house subject to a statutory tenancy which is deemed to arise under paragraph 13 above, that subsection shall be deemed to have continued to apply throughout the period between the termination of the tenancy referred to in paragraph 13(1)(a) above and the operative date; but nothing in this sub-paragraph shall affect the rent recoverable for that dwelling-house at any time during that period.
- (4) In the case where sub-paragraph (2)(c) of this paragraph applies, and the rent limit therein referred to is the rent limit as determined in accordance with section 63 of the 1972 Act, any notice of increase under section 21(2)(b) of the 1971 Act shall not increase the rent for any statutory period of a tenancy to which this paragraph applies above the rent limit as so determined, and any such notice which purports to increase it further shall have effect to increase it to that limit but no further.
- (5) In the application of section 24(1) of the 1971 Act (increase of rent for improvements) to a tenancy to which this paragraph applies, for the reference to 8th December 1965 (the date after which the improvement must be completed) there shall be substituted a reference to the operative date.
- (6) Section 42 of the 1971 Act (determination of fair rent) shall apply in relation to a tenancy to which this paragraph applies as if the reference in subsection (3) of the

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said section 42 to the tenant under the regulated tenancy included references to the tenant under the previous housing association tenancy.

- (7) Any right conferred upon a tenant by section 31 of the 1971 Act, as applied by section 62(5) of the 1972 Act, to recover any amount by deducting it from rent should be exercisable by deducting it from rent for any rental period beginning after the tenancy has become a tenancy to which this paragraph applies to the same extent as the right would have been exercisable if the tenancy had not become such a tenancy.
- (8) The fact that the tenancy has become a tenancy to which this paragraph applies should not be taken as affecting any court proceedings which are pending under section 67(3) of the 1972 Act at the time when the tenancy becomes such a tenancy and a decision on which may affect the recoverable rent for any period before that time or the rent under the tenancy to which this paragraph applies so far as that depends upon the recoverable rent before that time.
- 15 The sheriff shall have jurisdiction, either in the course of any proceedings relating to a dwelling-house or on an application made for the purpose by the landlord or the tenant, to determine any question—
- (a) as to the application of this Part of this Schedule to any tenancy or as to any matter which is or may become material for determining any such question, or
 - (b) as to the amount of rent recoverable under a tenancy to which paragraph 13 above applies ;
- and section 123(1) of the 1971 Act shall apply to any application to the sheriff under this paragraph as it applies to any application under any of the provisions mentioned in section 123(3) of that Act.
- 16 In this Part of this Schedule—
- " the 1971 Act " means the Rent (Scotland) Act 1971 ;
 - " the 1972 Act " means the Housing (Financial Provisions) (Scotland) Act 1972 ;
 - " the court " means " the sheriff " ;
 - " the previous housing association tenancy ", in relation to a tenancy to which paragraph 14 above applies, means the tenancy to which sections 60 to 66 of the 1972 Act applied which either became the protected tenancy by virtue of section 18(1) of this Act or came to an end as mentioned in paragraph 13(1)(a) above ; and other expressions used in this Part of this Schedule which are also used in the Rent (Scotland) Acts 1971 and 1972 shall have the same meanings in this Part as they have in those Acts.