

Changes to legislation: Housing (Scotland) Act 1988, SCHEDULE 6 is up to date with all changes known to be in force on or before 14 March 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

SCHEDULES

SCHEDULE 6

Section 46.

STATUTORY OR STATUTORY ASSURED TENANTS BY SUCCESSION

PART I

NEW SCHEDULES 1A AND 1B TO ^{M1}RENT (SCOTLAND) ACT 1984

Marginal Citations

M1 1984 c. 58.

- 1 After Schedule 1 to the Rent (Scotland) Act 1984 there shall be inserted the following Schedules—

“SCHEDULE 1A

STATUTORY OR STATUTORY ASSURED TENANTS BY SUCCESSION IN A CASE TO WHICH SECTION 3A(1) APPLIES

- 1 The provisions of paragraph 2 of this Schedule shall have effect for the purpose of determining who is the statutory tenant of a dwelling-house by succession after the death of the person (in this Schedule referred to as “the original tenant”) who, immediately before his death, was a protected tenant of the dwelling-house or the statutory tenant of it by virtue of his previous protected tenancy.
- 2 (1) The original tenant’s spouse where the dwelling-house was that spouse’s only or principal home at the time of the tenant’s death shall be the statutory tenant so long as the said spouse retains possession of the dwelling-house without being entitled to do so under a contractual tenancy.
(2) For the purposes of this paragraph, a person who was living with the original tenant as his or her wife or husband shall be treated as the spouse of the original tenant.
(3) If, immediately after the death of the original tenant, there is, by virtue of sub-paragraph (2) above, more than one person who fulfils the conditions in sub-paragraph (1) above, such one of them as then has occupancy rights under section 18 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (rights of cohabiting couples) or, if neither or none of them has such rights, such one of them as may be decided by the sheriff, shall be treated as the surviving spouse for the purposes of this paragraph.
- 3 Where paragraph 2 above does not apply but a person who was a member of the original tenant’s family was residing with him in the dwelling-house—

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- (a) continuously for the period commencing six months before the date of coming into force of section 46 of the Housing (Scotland) Act 1988 and ending on the tenant's death (where the person was so residing on the said date); or
- (b) at the time of and for the period of two years immediately before the tenant's death,

then, after the tenant's death, that person or if there is more than one such person such one of them as may be decided by agreement, or in default of agreement by the sheriff, shall be entitled to a statutory assured tenancy of the dwelling-house by succession.

4 A person who becomes the statutory tenant of a dwelling-house by virtue of paragraph 2 above is in this Schedule referred to as "the first successor".

5 If, immediately before his death, the first successor was still a statutory tenant, the provisions of paragraph 6 below shall have effect for the purpose of determining who is entitled to a statutory assured tenancy of the dwelling-house by succession after the death of the first successor.

6 Where a person who—

- (a) was a member of the original tenant's family immediately before that tenant's death; and
- (b) was a member of the first successor's family immediately before the first successor's death,

was residing with the first successor in the dwelling-house at the time of, and for the period of two years immediately before, the first successor's death, that person, or if there is more than one such person, such one of them as may be decided by agreement or, in default of agreement, by the sheriff, shall be entitled to a statutory assured tenancy of the dwelling-house by succession.

7 (1) Where after a succession the successor becomes the tenant of the dwelling-house by the grant to him of another tenancy, "the original tenant" and "the first successor" in this Schedule shall, in relation to that other tenancy, mean the persons who were respectively the original tenant and the first successor at the time of the succession, and accordingly—

- (a) if the successor was the first successor, and immediately before his death he was still the tenant (whether protected or statutory), paragraph 6 above shall apply on his death;
- (b) if the successor was not the first successor, no person shall become a statutory tenant on his death by virtue of this Schedule.

(2) Sub-paragraph (1) above applies even if—

- (a) a successor enters into more than one other tenancy of the dwelling-house; and
- (b) both the first successor, and the successor on his death, enter into other tenancies of the dwelling-house.

(3) In this paragraph "succession" means the occasion on which a person becomes the statutory or statutory assured tenant of a dwelling-house by virtue of this Schedule and "successor" shall be construed accordingly.

8 Paragraphs 5 and 6 above do not apply where the statutory tenancy of the original tenant arose by virtue of section 20 of the Rent Act 1965.

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SCHEDULE 1B

STATUTORY ASSURED TENANTS BY SUCCESSION
IN A CASE TO WHICH SECTION 3A(2) APPLIES

- 1 The provisions of this Schedule shall have effect for the purpose of determining who is the statutory assured tenant of a dwelling-house by succession after the death of the person (in this Schedule referred to as “the first successor”) who, immediately before his death, was the statutory tenant of the dwelling-house by virtue of paragraph 2 or paragraph 3 of Schedule 1 above.
- 2 If, immediately before his death, the first successor was still a statutory tenant, the provisions of paragraph 3 below shall have effect for the purpose of determining who is entitled to a statutory assured tenancy of the dwelling-house by succession after the death of the first successor.
- 3 Where a person who—
 - (a) was a member of the original tenant’s family immediately before that tenant’s death; and
 - (b) was a member of the first successor’s family immediately before the first successor’s death,was residing with the first successor in the dwelling-house—
 - (i) continuously for the period commencing six months before the date of coming into force of section 46 of the Housing (Scotland) Act 1988 and ending on the tenant’s death (where the person was so residing on the said date); or
 - (ii) at the time of and for the period of two years immediately before the tenant’s death,that person, or if there is more than one such person, such one of them as may be decided by agreement or, in default of agreement, by the sheriff, shall be entitled to a statutory assured tenancy of the dwelling-house by succession.
- 4 (1) Where after a succession the successor becomes the tenant of the dwelling-house by the grant to him of another tenancy, “the original tenant” and “the first successor” in this Schedule shall, in relation to that other tenancy, mean the persons who were respectively the original tenant and the first successor at the time of the succession, and accordingly—
 - (a) if the successor was the first successor, and immediately before his death he was still the tenant (whether protected or statutory), paragraph 3 above shall apply on his death;
 - (b) if the successor was not the first successor, no person shall become a statutory tenant on his death by virtue of this Schedule.(2) Sub-paragraph (1) above applies even if—
 - (a) a successor enters into more than one other tenancy of the dwelling-house; and
 - (b) both the first successor, and the successor on his death, enter into other tenancies of the dwelling-house.

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- (3) In this paragraph “succession” means the occasion on which a person becomes the statutory assured tenant of a dwelling-house by virtue of this Schedule and “successor” shall be construed accordingly.
- 5 Paragraphs 2 and 3 above do not apply where the statutory tenancy of the original tenant arose by virtue of section 20 of the Rent Act 1965.”.

PART II

STATUTORY ASSURED TENANTS BY SUCCESSION—MODIFICATION OF ENACTMENTS

- 2 In relation to the assured tenancy to which the person becomes entitled by succession, section 18 of this Act shall have effect as if in subsection (3) after the word “established” there were inserted the words “or that the circumstances are as specified in any of Cases 11, 12, 17, 18, 19, and 21 in Schedule 2 to the ^{M2}Rent (Scotland) Act 1984”.

Marginal Citations

M2 1984 c. 58.

- 3 (1) In relation to the assured tenancy to which the person becomes entitled by succession, any notice given for the purpose of Case 13, Case 14 or Case 16 of Schedule 2 to the Rent (Scotland) Act 1984 to the original tenant (within the meaning of Schedule I to the Rent (Scotland) Act 1984) shall be treated as having been given for the purposes of whichever of Grounds 4 to 6 in Schedule 5 to this Act corresponds to the Case in question.
- (2) Where sub-paragraph (1) above applies, the regulated tenancy of the said original tenant shall be treated, in relation to the assured tenancy of the person so entitled, as “the earlier tenancy” for the purposes of Part IV of Schedule 5 to this Act.

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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. 66(1)(aa) and word inserted by [2001 asp 10 s. 50\(2\)\(c\)](#)
- s. 66(2A) inserted by [2001 asp 10 s. 50\(3\)](#)
- s. 66(5A) inserted by [2001 asp 10 s. 50\(4\)](#)
- sch. 17 para. 19-26 repealed by [2014 asp 14 sch. 2 para. 5\(4\)](#)