

SCHEDULE 1

Article 3(1)(a)

PART I DETERMINATIONS

Significantly high rents

1.—(1) The rent officer shall determine whether, in his opinion, the rent payable under the tenancy of the dwelling at the relevant time is significantly higher than the rent which the landlord might reasonably have been expected to obtain under the tenancy at that time.

(2) If the rent officer determines under sub-paragraph (1) that the rent is significantly higher, the rent officer shall also determine the rent which the landlord might reasonably have been expected to obtain under the tenancy at the relevant time.

(3) When making a determination under this paragraph, the rent officer shall have regard to the level of rent under similar tenancies of similar dwellings in the locality (or as similar as regards tenancy, dwelling and locality as is reasonably practicable) and shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy.

Size and rent

2.—(1) The rent officer shall determine whether the dwelling, at the relevant time, exceeds the size criteria for the occupiers.

(2) If the rent officer determines that the dwelling exceeds the size criteria, the rent officer shall also determine the rent which a landlord might reasonably have been expected to obtain, at the relevant time, for a tenancy which is—

- (a) similar to the tenancy of the dwelling;
- (b) on the same terms other than the term relating to the amount of rent; and
- (c) of a dwelling which is in the same locality as the dwelling, but which—
 - (i) accords with the size criteria for the occupiers;
 - (ii) is in a reasonable state of repair; and
 - (iii) corresponds in other respects, in the rent officer's opinion, as closely as is reasonably practicable to the dwelling.

(3) When making a determination under sub-paragraph (2), the rent officer shall have regard to the same matter and make the same assumption as specified in paragraph 1(3), except that in judging the similarity of other tenancies and dwellings the comparison shall be with the tenancy of the second dwelling referred to in sub-paragraph (2) and shall assume that no one who would have been entitled to housing benefit had sought or is seeking that tenancy.

Exceptionally high rents

3.—(1) The rent officer shall determine whether, in his opinion, the rent payable for the tenancy of the dwelling at the relevant time is exceptionally high.

(2) In sub-paragraph (1) “rent payable for the tenancy” means—

- (a) where a determination is made under sub-paragraph (2) of paragraph 2, the rent determined under that sub-paragraph;

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- (b) where no determination is so made and a determination is made under sub-paragraph (2) of paragraph 1, the rent determined under that sub-paragraph; and
- (c) in any other case, the rent payable under the tenancy.

(3) If the rent officer determines under sub-paragraph (1) that the rent is exceptionally high, the rent officer shall also determine the highest rent, which is not an exceptionally high rent and which a landlord might reasonably have been expected to obtain at the relevant time (on the assumption that no one who would have been entitled to housing benefit had sought or is seeking the tenancy) for an assured tenancy of a dwelling which—

- (a) is in the same locality as the dwelling;
- (b) has the same number of bedrooms and rooms suitable for living in as the dwelling (or, where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria); and
- (c) is in a reasonable state of repair.

(4) For the purpose of determining whether a rent is an exceptionally high rent under this paragraph, the rent officer shall have regard to the levels of rent under assured tenancies of dwellings which—

- (a) are in the same locality as the dwelling (or in as similar a locality as is reasonably practicable); and
- (b) have the same number of bedrooms and rooms suitable for living in as the dwelling (or, in a case where the dwelling exceeds the size criteria for the occupiers, accord with the size criteria).

Local reference rents

4.—(1) The rent officer shall make a determination of a local reference rent in accordance with the formula—

$$R = \frac{H+L}{2}$$

where—

R is the local reference rent;

H is the highest rent, in the rent officer’s opinion,—

- (a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an assured tenancy of a dwelling which meets the criteria in sub-paragraph (2); and
- (b) which is not an exceptionally high rent; and

L is the lowest rent, in the rent officer’s opinion,—

- (a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an assured tenancy of a dwelling which meets the criteria in sub-paragraph (2); and
- (b) which is not an exceptionally low rent; and

(2) The criteria are—

- (a) that the dwelling under the assured tenancy—
 - (i) is in the same locality as the dwelling;
 - (ii) is in a reasonable state of repair; and
 - (iii) has the same number of bedrooms and rooms suitable for living in as the dwelling (or, in a case where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria); and

- (b) if the tenant does not have the use under the tenancy of the dwelling of more than one bedroom or room suitable for living in—
 - (i) that under the assured tenancy the tenant does not have the use of more than one bedroom or room suitable for living in;
 - (ii) if the rent under the tenancy includes payments for board and attendance and the rent officer considers the amount fairly attributable to board and attendance is a substantial part of the rent, that a substantial part of the rent under the assured tenancy is fairly attributable to board and attendance;
 - (iii) if sub-paragraph (ii) does not apply and the tenant shares a kitchen or toilet with a person other than a member of his household, a non-dependant or a person who pays rent to the tenant, that the assured tenancy provides for the tenant to share a kitchen or toilet; and
 - (iv) if sub-paragraphs (ii) and (iii) do not apply, that the circumstances described in sub-paragraphs (ii) and (iii) do not apply in relation to the assured tenancy.
- (3) Where ascertaining H and L under sub-paragraph (1), the rent officer:
 - (a) shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and
 - (b) shall exclude the amount of any rent which, in the rent officer's opinion, is fairly attributable to the provision of services which are ineligible to be met by housing benefit.
- (4) In sub-paragraph (2)(b)—

“bedroom or room suitable for living in” does not include a room which the tenant shares with any person other than—

 - (a) a member of his household;
 - (b) a non-dependant (as defined in this sub-paragraph); or
 - (c) a person who pays rent to the tenant; and

“non-dependent” means a non-dependant of the tenant within the meaning of regulation 3 of the 1987 Regulations⁽¹⁾.
- (5) In sub-paragraph (3), “services” means services performed or facilities (including the use of furniture) provided for, or rights made available to, the tenant, but not—
 - (a) the provision of meals (including the preparation of meals or provision of unprepared food); or
 - (b) the provision of services to which any service charge for fuel relates.

Single room rents

5.—(1) The rent officer shall determine a single room rent in accordance with the following formula—

$$S = \frac{H + L}{2}$$

where—

S is the single room rent;

H is the highest rent, in the rent officer's opinion,—

- (a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an assured tenancy of a dwelling which meets the criteria in sub-paragraph (2); and

(1) S.I.1987/1971; regulation 3 was amended by S.I. 1989/416, S.I. 1990/546 and 1775, S.I. 1994/3061 and S.I. 1995/560.

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(b) which is not an exceptionally high rent.

L is the lowest rent, in the rent officer's opinion,—

(a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an assured tenancy of a dwelling which meets the criteria in sub-paragraph (2); and

(b) which is not an exceptionally low rent.

(2) The criteria are—

(a) that the dwelling under the assured tenancy is in the same locality as the dwelling and is in a reasonable state of repair;

(b) that, under the assured tenancy, the tenant—

(i) has the exclusive use of one bedroom;

(ii) does not have the use of any other bedroom or room suitable for living in;

(iii) shares the use of a toilet; and

(iv) shares the use of a kitchen and does not have the exclusive use of facilities for cooking food; and

(c) that the rent does not include any payment for board and attendance.

(3) Sub-paragraphs (3) to (5) of paragraph 4 apply when ascertaining H and L under this sub-paragraph as if the reference in those sub-paragraphs to H and L were to H and L under this paragraph.

Services

6.—(1) Where the dwelling is not in a hostel and the rent officer makes a determination under—

(a) paragraph 1(1) (where no determination is to be made under paragraph 1(2), 2(2) or 3(3));

(b) paragraph 1(2) (where no determination is to be made under paragraph 2(2) or 3(3));

(c) paragraph 2(2) (where no determination is to be made under paragraph 3(3)); or

(d) paragraph 3(3);

he shall also determine whether, in his opinion, any of the rent at the relevant time is fairly attributable to the provision of services which are ineligible to be met by housing benefit and, if so, the amount which in his opinion is so attributable (except where he considers the amount is negligible).

(2) In sub-paragraph (1)—

“rent”, in relation to a determination under paragraph 1(2), 2(2) or 3(3), means (as the case may be) the rent determined under paragraph 1(2), 2(2) or 3(3) and, in relation to a determination under paragraph 1(1), means the rent payable under the tenancy at the relevant time; and

“services” has the meaning given in paragraph 4(5).