

1997 No. 1995 (S. 144)

HOUSING, SCOTLAND

The Rent Officers (Housing Benefit Functions)  
(Scotland) Order 1997

Made - - - - 15th August 1997  
Laid before Parliament 15th August 1997  
Coming into force for the  
purpose of article 18th August 1997

The Secretary of State, in exercise of the powers conferred upon him by section 70(1) and (2) of the Housing (Scotland) Act 1988(a), and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation and commencement**

1.—(1) This Order may be cited as the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997.

(2) This Order shall come into force for the purposes of article 8 on 18th August 1997 and for all other purposes on 3rd September 1997.

**Interpretation**

2.—(1) In this Order, unless the context otherwise requires—

▶<sup>1</sup>◀

“assured tenancy” has the same meaning as in Part II of the Housing (Scotland) Act 1988, except that it includes a tenancy which would be an assured tenancy but for paragraph ▶<sup>2</sup>7 or ◀<sup>3</sup>9 of Schedule 4 to that Act;

▶<sup>3</sup>“board and attendance determination” means a determination made in accordance with article 4C;◀

▶<sup>4</sup>“broad rental market area” has the meaning specified in paragraph 4 of Schedule 3B;

“broad rental market area determination” means a determination made in accordance with article 4B(1A);◀

*Defns. of “broad rental market area” & “broad rental market area determination” continue to be reproduced as they remain in force for certain cases. See art. 15 of S.I. 2007/2871 for details.*

“broad rental market area” has the meaning specified in paragraph 4 of Part I of Schedule 3A ▶<sup>5</sup>or paragraph 4 of Schedule 3B, as the case may be,◀ to this order;

“broad rental market area determination” means a determination made in accordance with article 4B(1) ▶<sup>5</sup>or 4B(1A), as the case may be;◀

“child” means a person under the age of 16;

“determination” means a determination made in accordance with Part I or IV of Schedule 1 to this Order;

“dwelling” means any residential accommodation whether or not consisting of the whole or part of a building and whether or not comprising separate and self-contained premises;

<sup>1</sup>Defn. of “applicable consumer prices index” omitted by art. 3(2) of S.I. 2013/1544 as from 1.9.13.

<sup>2</sup>Words inserted in art. 2(1) by art. 2(2) of S.I. 2004/2101 as from 31.8.04.

<sup>3</sup>Defn. of “board and attendance determination” inserted in art. 2(1) by art. 3(2) of S.I. 2003/2398 and will come into force in relation to the area of local authority specified in part II of Sch. 3 to this order on the date specified in that Schedule.

<sup>4</sup>Defns. of “broad rental market area” & “broad rental market area determination” substituted by art. 15(3) of S.I. 2007/2871 as from 7.4.08.

<sup>5</sup>Words inserted in defns. of “broad rental market area” & “broad rental market area determination” by art. 13(1) of S.I. 2007/2871 as from 20.3.08.

(a) 1988 c. 43.

## Art. 2

<sup>1</sup>In art. 2(1) defn. of “hostel” substituted & “the Housing Benefit Regulations” & “the Housing Benefit (State Pension Credit) Regulations” inserted by para. 12(2)(a) & (b) of Sch. 2 to S.I. 2006/217 as from 6.3.06 & by S.I. 2007/2871 as from 7.4.08.

<sup>2</sup>Defn. of “local housing allowance determination” substituted by art. 15(3) of S.I. 2007/2871 as from 7.4.08.

<sup>3</sup>Words inserted in art. 2(1) by art. 3(2) of S.I. 2003/2398 and will come into force in relation to the area of local authority specified in part II of Sch. 3 to this order on the date specified in that Schedule.

<sup>4</sup>Words inserted in defn. of local housing allowance determination by art. 13(1) of S.I. 2007/2871 as from 20.3.08.

<sup>5</sup>Defn. of “pathfinder authority” omitted & “relevant date” substituted in art. 15(3) of S.I. 2007/2871 as from 7.4.08.

<sup>6</sup>Defn. of “pathfinder authority” inserted & words in defn. of “relevant time” inserted in art. 2(1) by art. 3(2) of S.I. 2003/2398 and will come into force in relation to the area of local authority specified part II of Sch. 3A to this order on the date specified in that Schedule.

<sup>7</sup>Defn. of “person who requires overnight care” inserted in art. 2(1) by art. 5(2) of S.I. 2010/2836 as from 1.4.11.

<sup>8</sup>Defn. of “relevant date” substituted by para. 12 of Sch. 2 to S.I. 2006/217 as from 6.3.06 & by S.I. 2007/2871 as from 7.4.08.

<sup>9</sup>Defn. of “relevant period” inserted by art. 3 of S.I. 2000/3 as from 3.4.00.

►<sup>1</sup>“hostel” has the same meaning as in regulation 2(1) of the Housing Benefit Regulations or, as the case may be, regulation 2(1) of the Housing Benefit (State Pension Credit) Regulations;

“the Housing Benefit Regulations” mean the Housing Benefit Regulations 2006; “the Housing Benefit (State Pension Credit) Regulations” means the Housing Benefit (Person who have attained the qualifying age for state pension credit) Regulations 2006; ◀

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a);

►<sup>2</sup>“local housing allowance determination” means a determination made in accordance with article 4B(2A); ◀

*Defn. of “local housing allowance determination” continues to be reproduced as it remains in force for certain cases. See art. 15 of S.I. 2007/2871.*

►<sup>3</sup>“local housing allowance determination” means a determination made in accordance with article 4B(2) ►<sup>4</sup>or article 4B(2A), as the case may be; ◀◀

“occupier” means a person (whether or not identified by name) who is stated, in the application for the determination, to occupy the dwelling as his home;

►<sup>5</sup> ◀

*Defn. of “pathfinder authority” continues to be reproduced as it remains in force for certain cases. See art. 15(3) of S.I. 2007/2871 for details.*

►<sup>6</sup>“pathfinder authority” means a local authority specified in column (1) of the table in Part II of Schedule 3A, on and after the date specified in column (2) of that table in relation to that authority ◀

►<sup>7</sup>“person who requires overnight care” has the meaning given by regulation 2(1) of the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations; ◀

“redetermination” means a redetermination made in accordance with article 4;

►<sup>5</sup>“relevant date” means the date specified by a local authority in an application for a local housing allowance determination made in accordance with regulation 13D(7)(a)(b) of the Housing Benefit Regulations or, as the case may be, regulation 13D(7)(a)(c) of the Housing Benefit (State Pension Credit) Regulations; ◀

*Defn. of “relevant date” continues to be reproduced as it remains in force for certain cases. See art. 15(3) of S.I. 2007/2871 for details.*

►<sup>8</sup>“relevant date” means the date specified by a pathfinder authority in an application for a local housing allowance determination made in accordance with regulation 13A(4)(a) of the Housing Benefit Regulations(d) or, as the case may be, regulation 13A(4)(a) of the Housing Benefit (State Pension Credit) Regulations (e); ◀

►<sup>9</sup>“relevant period” means—

(a) in relation to a determination, the period of five working days (or, where the determination does not relate to a prospective tenancy and the rent officer intends to inspect the dwelling before making the determination, 25 working days) beginning with—

- (i) where the rent officer requests further information under article 5, the date on which he receives the information; and
- (ii) in any other case, the date on which he receives the application for the determination; and

(b) in relation to a redetermination, the period of 20 working days beginning with—

- (i) where the rent officer requests further information under article 5, the date on which he receives the information; and
- (ii) in any other case, the date on which he receives the application for that redetermination; ◀

(a) 1994 c. 39.

(b) Regulation 13D is inserted by S.I. 2007/2868.

(c) Regulation 13D is inserted by S.I. 2007/2868.

(d) For regulation 13A, see Schedule 10, paragraph 7.

(e) For regulation 13A, see Schedule 9, paragraph 7.

“relevant time” means the time the application for the determination ▶<sup>1</sup>or board and attendance determination◀ is made or, if earlier, the tenancy ends;

▶<sup>2</sup>“rent” means any of the periodical payments referred to in regulation 12(1) of the Housing Benefit Regulations or, as the case may be, regulation 12(1) of the Housing Benefit (State Pension Credit) regulations;◀

“size criteria” means the standards relating to bedrooms and rooms suitable for living in specified in Schedule 2 to this Order;

“tenancy” includes any other right of occupancy and a prospective tenancy or right of occupancy and references to a tenant, a landlord or any other expression appropriate to a tenancy shall be construed accordingly; and

▶<sup>2</sup>◀

▶<sup>3</sup>“Working day” means any day other than a Saturday, a Sunday or a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(a)◀

(2) In this Order any reference to a notice or application is to a notice or application in writing, except in a case where the recipient consents (whether generally or specifically) to the notice or application being transmitted by electronic means.

### **Determinations**

**3.**—(1) Subject to ▶<sup>4</sup>articles 3A and 6◀, where a local authority, in accordance with regulations made under section 136(2) or (3) of the Social Security Administration Act 1992(b) ▶<sup>5</sup>or section 122(5) of the Housing Act 1996(c)◀ applies to a rent officer for determinations in respect of a tenancy of a dwelling, a rent officer shall—

- (a) make the determinations in accordance with Part I of Schedule 1 (determinations);
- (b) comply with Part II of Schedule 1 when making the determinations (assumptions etc.); and
- (c) give notice in accordance with Part III of Schedule 1 (notifications) ▶<sup>5</sup>within the relevant period or as soon as is practicable after that period◀.

(2) A rent officer for each registration area (within the meaning of section 43 of the Rent (Scotland) Act 1984(d) on the first working day of each month shall—

- (a) make determinations in accordance with Part IV of Schedule 1 (indicative rent levels) in the registration area ▶<sup>6</sup>◀;
- (b) comply with paragraph 8(2) of Part II of Schedule 1 (assumptions etc.) when making the determinations; and
- (c) give to the local authority notice of the determinations relating to its area when they have been made.

### **▶<sup>7</sup>Transitional arrangements for determination of Single Room Rents with effect from 2nd July 2001**

**3A.** In a case where the rent officer has made and notified an authority of a determination of a single room rent pursuant to paragraph 5 of Schedule 1 in the period of 12 months before 2nd July 2001 that determination shall cease to have effect ▶<sup>8</sup>◀ before 2nd July 2001 and a rent officer shall—

- (a) make a new determination of that single room rent in accordance with Part I of Schedule 1;
- (b) comply with Part II of Schedule 1; and
- (c) give notice in accordance with Part III of Schedule 1 within the relevant period or as soon as is practicable after that period;

without an applicable for a determination under ▶<sup>9</sup>regulation 14 of the Housing Benefit Regulations or, as the case may be, regulation 14 of the Housing Benefit (State Pension Credit) Regulations◀ having been made.◀

<sup>1</sup>Words in defn. of “relevant time” inserted in art. 2(1) by art. 3(2) of S.I. 2003/2398 and will come into force in relation to the area of local authority specified part II of Sch. 3A to this order on the date specified in that Schedule.

<sup>2</sup>Defn. of “rent” substituted & defn. of “the 1987 Regulations” omitted by para. 12 of Sch. 2 to S.I. 2006/217 as from 6.3.06 & by S.I. 2007/2871 as from 7.4.08.

<sup>3</sup>Defn. of “working day” inserted by art. 13(1) of S.I. 2007/2871 as from 20.3.08.

<sup>4</sup>Words substituted in art. 3(1) by art. 3 of S.I. 2001/1326 as from 2.7.01.

<sup>5</sup>Words inserted in art. 3(1) by art. 4 of S.I. 2000/3 as from 3.4.00.

<sup>6</sup>Words omitted in art. 3(2)(a) by art. 14 of S.I. 2007/2871 as from 7.4.08.

<sup>7</sup>Art. 3A inserted by art. 3 of S.I. 2001/1326 as from 2.7.01.

<sup>8</sup>Words omitted in art. 3A by art 2 of S.I. 2001/2318 as from 2.7.01.

<sup>9</sup>Words substituted in art. 3A by para. 12(3) of Sch. 2 to S.I. 2006/217 as from 6.3.06 & by S.I. 2007/2871 as from 7.4.08.

(a) 1971 c. 80.

(b) 1992

(c) 1996 c. 52.

(d) 1984 c. 58 section 43 was amended by the Local Government etc. (Scotland) Act 1994

(c. 39), Schedule 13, paragraph 137(3) and the Deregulation and Contracting Out Act 1994

(c. 40), Schedule 16, paragraph 5.

## Arts. 4-4B

<sup>1</sup>Art. 4 substituted for 4 & 4A by art. 5 of S.I. 2000/3 as from 3.4.00.

►<sup>1</sup>Redeterminations

4.—(1) Subject to article 6, where the local authority applies to a rent officer for a redetermination of any determination or redetermination in respect of a tenancy of a dwelling the rent officer shall, in accordance with Schedule 3—

- (a) make redeterminations of any effective determinations and any effective redeterminations in respect of that tenancy; and
- (b) give notice within the relevant period or as soon as is practicable after that period.

(2) For the purposes of paragraph (1)—

- (a) “effective determinations” means any determinations made in accordance with Part I of Schedule 1 which have effect at the date of the application for a redetermination of a determination or redetermination; and
- (b) “effective redeterminations” means any redeterminations made in accordance with Schedule 3 which have effect at that date.

(3) A rent officer whose advice is sought as provided for in Schedule 3 shall give that advice.

## Substitute determinations and substitute redeterminations

<sup>2</sup>Words substituted in art. 4A by para.12(4) of Sch. 2 to S.I. 2006/217 as from 6.3.06 & by S.I. 2007/2871 as from 7.4.08.

4A.—(1) Where a local authority applies to a rent officer for a substitute determination, in accordance with ►<sup>2</sup>regulation 17 of the Housing Benefit Regulations or, as the case may be, regulation 17 of the Housing Benefit (State Pension Credit) Regulations◄, the provisions of this Order shall apply to that substitute determination as they apply to a determination, but as if references to the relevant time were references to the date the application for the original determination was made or, if earlier, the date the tenancy ended.

(2) Where a local authority applies to a rent officer for a substitute redetermination, in accordance with that regulation, the provisions of this Order shall apply to that substitute redetermination as they apply to a redetermination.◄

<sup>3</sup>4(B)-(E) inserted by art. 3(5) of S.I. 2003/2398 and will come into force in relation to the area of local authority specified in part II of Sch. 3A to this order on the date specified in that Schedule.

►<sup>3</sup>Broad rental market area determinations and local housing allowance determinations4B.—(1) ►<sup>4</sup>◄

*This paragraph continues to be reproduced as it remains in force for certain cases. See art. 15 of S.I. 2007/2871 for details.*

<sup>4</sup>Art. 4B(1) omitted by art. 15(4) of S.I. 2007/8271 as from 7.4.08.

4B.—(1) On the day on which this article comes into force in relation to a ►<sup>5</sup>pathfinder authority◄ and so often thereafter as a rent officer, having regard to the definition of “broad rental market area” in paragraph (1) of article 2, considers appropriate, a rent officer shall—

<sup>5</sup>Words substituted in art. 4B(1) by art. 13(2) of S.I. 2007/2871 as from 20.3.08.

- (a) determine one or more broad rental market areas which will (during the month which next begins after the determination is made) fall, in whole or in part, within the area of that local authority so that every part of the area of that authority falls within a broad rental market area and no part of the area of that authority falls within more than one broad rental market area; and
- (b) give to that authority a notice which—
  - (i) specifies the area contained within each broad rental market area as falls, in whole or in part, within the area of that authority, by reference to the postcodes for each such broad rental market area; and
  - (ii) identifies such of those postcodes as fall within the area of that authority.

<sup>6</sup>Paras. (1A) inserted in art. 4B by art. 13(2) of S.I. 2007/2871 as from 20.3.08.

►<sup>6</sup>(1A) ►<sup>7</sup>At such times as a rent officer considers appropriate, a rent officer shall, if the Secretary of State agrees◄ in relation to each local authority,—

<sup>7</sup>Words substituted in art. 4B(1A) by art. 3(3)(a) of S.I. 2012/646 as from 2.4.12.

- (a) determine one or more broad rental market areas which will (during the month which next begins after the determination is made) fall, in whole or in part,

within the area of the local authority so that every part of the area of that local authority falls within a broad rental market area and no part of the area of that authority falls within more than one broad rental market area; and

- (b) give to that local authority a notice which—
  - (i) specifies the area contained within each broad rental market area as falls, in whole or in part, within the area of that authority, by reference to the postcodes for each such broad rental market area; and
  - (ii) identifies such of those postcodes as fall within the area of that authority.◀

(2) ▶<sup>1</sup>◀

▶<sup>2</sup>(2A) ▶<sup>3</sup>In 2014 and in each subsequent year, on the date specified in paragraph (2B),◀ a rent officer shall—

- (a) for each broad rental market area determine, in accordance with Schedule 3B, a local housing allowance for each of the categories of dwelling set out in paragraph 1 of Schedule 3B; and
- (b) notify each local authority of the local housing allowance determination made in accordance with sub-paragraph (a) for each broad rental market area falling within, in whole or in part, the area of that authority.◀

▶<sup>3</sup>(2B) The date specified for the purposes of paragraph (2A) is—

- (a) 15th January where that is a Tuesday; or
- (b) where 15th January is not a Tuesday, the first Tuesday following 15th January.◀

(3) ▶<sup>1</sup>◀

▶<sup>2</sup>(3A) Any broad rental market area determination made in accordance with paragraph (1A) shall take effect—

- (a) on the day the determination is made for the purpose of enabling a rent officer to determine a local housing allowance for that area; and
- (b) for all other purposes on the next 1st April following the day on which the determination is made.

(3B) Any local housing allowance determination made in accordance with paragraph (2A) shall take effect on the next 1st April following the day on which the determination is made.◀

(4) ▶<sup>4</sup>◀

(4A) ▶<sup>5</sup>◀

(5) Where a rent officer has made a local housing allowance determination in accordance with paragraph (4)—

- (a) he shall give notice of the determination to the ▶<sup>6</sup>local authority◀ that made the application;
- (b) any local housing allowance determination made in accordance with sub-paragraph (4)(a) shall take effect for the month in which the relevant date falls ▶<sup>6</sup>, except that no such determination can have effect before 7th April 2008◀; and
- (c) any local housing allowance determination made in accordance with sub-paragraph (4)(b) shall take effect for the month in which notice is given in accordance with sub-paragraph (a) ▶<sup>6</sup>, except that no such determination can have effect before 7th April 2008◀.

<sup>1</sup>In art. 4B paras. (2) & (3) omitted by art. 15(4) of S.I. 2007/2871 as from 7.4.08.

<sup>2</sup>Art. 4B(2A) & (3A) substituted by reg. 3(3)(b) & (c) of S.I. 2012/646 as from 2.4.12.

<sup>3</sup>Words in art. 4B(2A) substituted & para. (2B) inserted by art. 3(3)(a) & (b) of S.I. 2013/1544 as from 1.9.13.

<sup>4</sup>Art. 4B(4) deleted by art. 4(2)(a)(i) & (ii) of S.I. 2010/2836 as from 15.3.11.

<sup>5</sup>Art. 4B(4A) deleted by art. 4(2)(a)(iii) of S.I. 2010/2836 as from 18.3.11.

<sup>6</sup>In art. 4B(5) words substituted and inserted by art. 15(4) of S.I. 2007/2871 as from 7.4.08.

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(5) Where a rent officer has made a local housing allowance determination in accordance with paragraph (4)–

- (a) he shall give notice of the determination to the pathfinder authority that made the application;
- (b) any local housing allowance determination made in accordance with sub-paragraph (4)(a) shall take effect for the month in which the relevant date falls; and
- (c) any local housing allowance determination made in accordance with sub-paragraph (4)(b) shall take effect for the month in which notice is given in accordance with sub-paragraph (a).

►<sup>1</sup>(6) Where a rent officer has made a local housing allowance determination in accordance with paragraph (2A) ►<sup>2</sup>◄ he shall—

- (a) make an approximate monthly allowance determination in relation to that local housing allowance determination; and
- (b) give notice of the approximate monthly allowance determination to each authority to which he is required to give notice of the local housing allowance determination when he gives notice of that determination.◄

<sup>1</sup>Art. 4B(6) inserted by art. 13(2) of S.I. 2007/2871 as from 20.3.08.

<sup>2</sup>Words omitted in art. 4B(6) by art. 4(2)(b) of S.I. 2010/2836 as from 18.3.11.

### **Board and attendance determinations and notifications**

►<sup>3</sup>4C.—(1) Where a relevant authority makes an application to a rent officer in accordance with regulation 13D(10) of the Housing Benefit Regulations or, as the case may be, regulation 13D(10) of the Housing Benefit (State Pension Credit) Regulations, a rent officer shall determine whether or not a substantial part of the rent under the tenancy at the relevant time is fairly attributable to board and attendance.

<sup>3</sup>Art. 4C(1) & (2) substituted by art. 15(5) of S.I. 2007/2871 as from 7.4.08.

(2) Where a rent officer determines that a substantial part of the rent under the tenancy at the relevant time is fairly attributable to board and attendance, he shall—

- (a) notify the relevant authority accordingly; and
- (b) treat the application as if it had been made in accordance with regulation 14(1) of the Housing Benefit Regulations or, as the case may be regulation 14(1) of the Housing Benefit (State Pension Credit) Regulations.◄

*These paragraphs continue to be reproduced as they remain in force for certain cases. See art. 15 of S.I. 2007/2871 for details.*

4C.—(1) Where a pathfinder authority makes an application to a rent officer in accordance with ►<sup>4</sup>regulation 17(6) of the Housing Benefit Regulations or, as the case may be, regulation 13A(6) of the Housing Benefit (State Pension Credit) Regulations◄, a rent officer shall determine whether or not a substantial part of the rent under the tenancy at the relevant time is fairly attributable to board and attendance.

<sup>4</sup>Words substituted in art. 4C(1) & (2) by para. 12(6) of Sch. 2 to S.I. 2006/217 as from 6.3.06.

(2) Where a rent officer determines that a substantial part of the rent under the tenancy at the relevant time is fairly attributable to board and attendance, he shall—

- (a) notify the pathfinder authority accordingly; and
- (b) treat the application as if it has been made in accordance with ►<sup>4</sup>regulation 14(1) of the Housing Benefit Regulations or, as the case may be, regulation 14(1) of the Housing Benefit (State Pension Credit) Regulations◄

(3) Where a rent officer determines that a substantial part of the rent under the tenancy at the relevant time is not fairly attributable to board and attendance, he shall notify the pathfinder authority accordingly.

►<sup>5</sup>(4) Where an application for a board and attendance determination is treated as if it had been made in accordance with regulation 14(1) of the Housing Benefit Regulations or, as the case may be, regulation 14(1) of the Housing Benefit (State Pension Credit) Regulations, then, for the purposes of paragraph (a)(ii) of the definition of “relevant period” in article 2(1), it shall be treated as having been received on the day on which the further information provided in accordance with regulation 114(4)(a) of the Housing Benefit Regulations or regulation 95A(4)(b) of the Housing Benefit (State Pension Credit) Regulations is received.◄

<sup>5</sup>Art. 4C(4) substituted by art. 16(2) of S.I. 2007/2871 as from 7.4.08.

*This paragraph continues to be reproduced as it remains in force for certain cases. See art. 16 of S.I. 2007/2871 for details.*

(4) Where an application for a board and attendance determination is treated as if it has been made in accordance with ►<sup>6</sup>regulation 14(1) of the Housing Benefit Regulations or, as the case may be, regulation 14(1) of the Housing Benefit (State Pension Credit) Regulations◄, then, for the purposes of paragraph (a)(ii) of the definition of “relevant period” in article 2(1), it shall be treated

<sup>6</sup>Words substituted in art. 4C(4) by para. 12(6) of Sch. 2 to S.I. 2006/217 as from 6.3.06.

(a) Regulation 114A is inserted by S.I. 2007/2868.

(b) Regulation 95A is inserted by S.I. 2007/2869.

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as having been received on the day on which the determination referred to in paragraph (2) is made.

**Board and attendance redeterminations**

<sup>1</sup>Words substituted in arts. 4D & 4E by art. 15(b) of S.I. 2007/2871 as from 7.4.08.

**4D.**—(1) Subject to article 6, where a <sup>1</sup>local authority applies to a rent officer for a redetermination of a board and attendance determination or board and attendance redetermination, the rent officer shall, in accordance with paragraph (2)—

- (a) make a redetermination of—
  - (i) the board and attendance determination, provided it was made in accordance with article 4C and had effect at the date of the application for it to be redetermined; or
  - (ii) the board and attendance redetermination provided it was made in accordance with head (i), and had effect at the date of the application for it to be redetermined; and
- (b) notify the <sup>1</sup>local authority of the redetermination.

(2) When making a board and attendance redetermination under this article, the rent officer shall seek, and have regard to, the advice of one or two other rent officers in relation to the redetermination.

*These paragraphs continue to be reproduced as they remain in force for certain cases. See art. 15 of S.I. 2007/2871 for details.*

**4D.**—(1) Subject to article 6, where a pathfinder authority applies to a rent officer for a redetermination of a board and attendance determination or board and attendance redetermination, the rent officer shall, in accordance with paragraph (2)—

- (a) make a redetermination of—
  - (i) the board and attendance determination, provided it was made in accordance with article 4C and had effect at the date of the application for it to be redetermined; or
  - (ii) the board and attendance redetermination provided it was made in accordance with head (i), and had effect at the date of the application for it to be redetermined; and
- (b) notify the pathfinder authority of the redetermination.

(2) When making a board and attendance redetermination under this article, the rent officer shall seek, and have regard to, the advice of one or two other rent officers in relation to the redetermination.

(3) A rent officer whose advice is sought in accordance with paragraph (2) shall give that advice.

(4) Article 4C shall apply in relation to a board and attendance redetermination but as if the references to the relevant time were references to the date on which the original application for a board and attendance determination was made, or if earlier, to the date on which the tenancy ended.

**Substitute board and attendance determinations and substitute board and attendance redeterminations**

<sup>2</sup>Words substituted in art. 4E by para. 12(7) & (8) of Sch. 2 of S.I. 2006/217 as from 6.3.06 & by S.I. 2007/2871 as from 7.4.08.

**4E.**—(1) Where a <sup>1</sup>local authority applies to a rent officer for a substitute board and attendance determination in accordance with <sup>2</sup>regulation 17 of the Housing Benefit Regulations or, as the case may be, regulation 17 of the Housing Benefit (State Pension Credit) Regulations, the provisions of this Order shall apply to that substitute board and attendance determination as they apply to a board and attendance determination but as if references to the relevant time were references to the date on which the original application for a board and attendance determination was made or, if earlier, the date on which the tenancy ended.

(2) Where a <sup>1</sup>local authority applies to a rent officer for a substitute board and attendance redetermination in accordance with <sup>2</sup>regulation 17 of the Housing Benefit Regulations or, as the case may be, regulation 17 of the Housing Benefit (State Pension Credit) Regulations, the provisions of this Order shall apply to that substitute board and attendance redetermination as they apply to a board and attendance redetermination.



*These paragraphs continue to be reproduced as they remain in force for certain cases. See art. 15 of S.I. 2007/2871 for details.*

4E.—(1) Where a pathfinder authority applies to a rent officer for a substitute board and attendance determination in accordance with ►<sup>1</sup>regulation 17 of the Housing Benefit Regulations or, as the case may be, regulation 17 of the Housing Benefit (State Pension Credit) Regulations◄, the provisions of this Order shall apply to that substitute board and attendance determination as they apply to a board and attendance determination but as if references to the relevant time were references to the date on which the original application for a board and attendance determination was made or, if earlier, the date on which the tenancy ended.

<sup>1</sup>Words substituted in art. 4E by para. 12(7) & (8) of Sch. 2 of S.I. 2006/217 as from 6.3.06 by S.I. 2007/2871 as from 7.4.08.

(2) Where a pathfinder authority applies to a rent officer for a substitute board and attendance redetermination in accordance with ►<sup>1</sup>regulation 17 of the Housing Benefit Regulations or, as the case may be, regulation 17 of the Housing Benefit (State Pension Credit) Regulations◄, the provisions of this Order shall apply to that substitute board and attendance redetermination as they apply to a board and attendance redetermination◄.

### **Insufficient information**

5. If a rent officer needs further information in order to make a determination under article 3(1) ►<sup>2</sup>, a redetermination under article 4, a board and attendance determination under article 4C or a board and attendance redetermination under article 4D◄, ►<sup>3</sup>where the information supplied under regulation 114A of the Housing Benefit Regulations or regulation 95A of the Housing Benefit (State Pension Credit) Regulations was incomplete or incorrect, he shall serve notice on the local authority requesting it to supply the further information required under regulation 114A or regulation 95A, as the case may be, or to confirm whether the information already supplied is correct and, if it is not, to supply the correct information.◄►<sup>4</sup>◄.

<sup>2</sup>Words substituted in arts. 5 & 6(1) by art. 2 of S.I. 2003/2398 as from the date in Sch. 1 of that S.I.

<sup>3</sup>Words substituted in art. 5 by art. 16(5) of S.I. 2007/2871 as from 7.4.08.

<sup>4</sup>Words omitted by art. 6 of S.I. 2000/3 as from 3.4.00.

*This paragraph continues to be reproduced as it remains in force for certain cases. See art. 16 of S.I. 2007/2871 for details.*

Insufficient information

5. If a rent officer needs further information in order to make a determination under article 3(1) ►<sup>2</sup>, a redetermination under article 4, a board and attendance determination under article 4C or a board and attendance redetermination under article 4D◄, he shall serve notice on the local authority requesting that information ►◄.

### **Exceptions**

6.—(1) No determination ►<sup>2</sup>, redetermination, board and attendance determination or board and attendance redetermination◄ shall be made if the application for it is withdrawn.

(2) No determination shall be made under paragraph 3, 4 or 5 of Part I of Schedule 1 if the tenancy is of residential accommodation, within the meaning of ►<sup>5</sup>regulation 9(4) of the Housing Benefit Regulations or, as the case may be, regulation 9(4) of the Housing Benefit (State Pension Credit) Regulations◄, or in a hostel.

<sup>5</sup>Words substituted in art. 6(2) & (3) by para. 12(7) & (8) of Sch. 2 to S.I. 2006/217 as from 6.3.06 & by S.I. 2007/2781 as from 7.4.08.

(3) No determination shall be made under paragraph 5 of Part I of Schedule 1 unless the local authority states in the application that the claimant is, or may be, a young individual (which has the same meaning as in the ►<sup>5</sup>the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations◄

(4) If the rent officer becomes aware that an application is not one which gives rise to a duty to make a determination ►<sup>6</sup>, redetermination, board and attendance determination or a board and attendance redetermination◄, the rent officer shall give the local authority notice to that effect.

<sup>6</sup>Words substituted in art. 6(4) by art. 2 of S.I. 2003/2398 as from the date in Sch. 1 of that S.I.

### **Special cases**

7.—(1) This Order shall apply as specified in Schedule 4 in relation to—

- (a) mooring charges payable for a houseboat;
- (b) payments in respect of the site on which a caravan or a mobile home stands; or
- (c) payments under a rental purchase agreement.

<sup>1</sup>Words substituted in art. 7(2) by para. 12(a) of Sch. 2 to S.I. 2006/217 as from 6.3.06 & by S.I. 2007/2781 as from 7.4.08.

<sup>2</sup>Sub-paras. (3) & (4) omitted by art. 7 of S.I. 2000/3 as from 3.4.00.

<sup>3</sup>Art. 7A inserted by art. 8 of S.I. 2000/3 as from 3.4.00.

<sup>4</sup>Art. 7A renumbered as 7A(1) & paras. (2) & (3) inserted by art. 2(8) of S.I. 2003/2398 as from the date in Sch. 1 *ibid.*

<sup>5</sup>In art. 7A words substituted in (2) & para. (3) omitted by art. 15(7) as from 7.4.08.

<sup>6</sup>In art. 7A words inserted in (3) and para. (4) inserted by art. 13(3) of S.I. 2007/2871 as from 20.3.08.

(2) Terms used in paragraph (1) have the same meaning in this article and in Schedule 4 as they have in ►<sup>1</sup>regulation 12(1) of the Housing Benefit Regulations or, as the case may be, regulation 12(1) of the Housing Benefit (State Pension Credit) Regulations◄.

►<sup>2</sup>◄

### ►<sup>3</sup>Errors

**7A.** ►<sup>4</sup>—(1)◄ If a rent officer is of the opinion that he has made an error (other than in the application of his professional judgement) in relation to a determination or redetermination, he shall notify the local authority which made the application for that determination or redetermination of the error as soon as practicable after he becomes aware of it.◄

►<sup>4</sup>(2) If a rent officer is of the opinion that he has made an error (other than in the application of his professional judgement) in relation to a board and attendance determination or board and attendance redetermination, he shall notify the ►<sup>5</sup>local authority◄ which made the application for that board and attendance determination or board and attendance redetermination of the error as soon as practicable after he becomes aware of it.

(3) ►<sup>5</sup>◄◄

*These paragraphs continue to be reproduced as they remain in force for certain cases. See art. 15 of S.I. 2007/2871 for details.*

►<sup>4</sup>(2) If a rent officer is of the opinion that he has made an error (other than in the application of his professional judgement) in relation to a board and attendance determination or board and attendance redetermination, he shall notify the pathfinder authority which made the application for that board and attendance determination or board and attendance redetermination of the error as soon as practicable after he becomes aware of it.

(3) If a rent officer is of the opinion that he has made an error (other than in the application of his professional judgement) in relation to a broad rental market area determination ►<sup>6</sup>determined in accordance with article 4B(1)◄ or a local housing allowance determination ►<sup>6</sup>determined in accordance with article 4B(2)◄, he shall notify any pathfinder authority to which notification of that determination was sent of the error, and the amended determination, as soon as practicable after he becomes aware of it.◄

►<sup>6</sup>(4) If a rent officer is of the opinion that he has made an error (other than in the application of his professional judgement) in relation to a broad rental market area determination determined in accordance with article 4B(1A) or a local housing allowance determination determined in accordance with article 4B(2A), he shall notify any local authority to which notification of that determination was sent of the error, and the amended determination, as soon as practicable after he becomes aware of it.◄

[Article 8 amends article 6 of S.I. 1995/1643.]

### Revocations and application

**9.**—(1) Subject to paragraph (2), article 8 of this Order and the Orders specified in Schedule 5 are hereby revoked.

(2) Nothing in articles 2 to 7 has effect in a case where an application for a determination is made before 3rd September 1997 and, in such a case, the Rent Officers (Additional Functions) (Scotland) Order 1995 shall continue to have effect.

15th August 1997

*Malcolm Chisholm*  
Parliamentary Under Secretary of State,  
Scottish Office  
St Andrew's House, Edinburgh

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 ►<sup>1</sup>vicinity◄ (or as similar as regards tenancy, dwelling and ►<sup>1</sup>vicinity◄ 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.

<sup>1</sup>Words in paras. 1(3) & 2(2)(c) substituted & 1(4) inserted by art. 3(2) & (3) of S.I. 2001/3561 as from 6.11.01.

►<sup>1</sup>(4) For the purposes of this paragraph and paragraph 2 “vicinity” means—

- (a) the area immediately surrounding the dwelling; or
- (b) where, for the purposes of sub-paragraph (2)(c) of paragraph 2, there is no dwelling in the area immediately surrounding the dwelling which satisfies the description in heads (i), (ii) and (iii) of that sub-paragraph, the area nearest to the dwelling where there is such a dwelling.◄

**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 ►<sup>1</sup>vicinity◄ 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 ►<sup>1</sup>at the relevant time◀.

<sup>1</sup>Words inserted in art. 3(2)(c) by art. 9 of S.I. 2000/3 as from 3.4.00.

(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 ►<sup>2</sup>neighbourhood◀ 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.

<sup>2</sup>Words in para. 3(3)(a) & (4)(a) substituted & 3(5) inserted by art. 3(4) of S.I. 2001/3561 as from 6.11.01.

(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 ►<sup>2</sup>neighbourhood◀ 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 of criteria).

►<sup>2</sup>(5) For the purposes of this paragraph and paragraph 4(6) “neighbourhood” means—

(a) where the dwelling is in a town or city, the part of that town or city where the dwelling is located which is a distinct area of residential accommodation; or

(b) where the dwelling is not in a town or city, the area surrounding the dwelling which is a distinct area of residential accommodation and where there are dwellings satisfying the description in sub-paragraph (4)(b).◀

**Local reference rents**

4.—(1) The rent officer shall make a determination of a local 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.

(2) The criteria are—

(a) that the dwelling under the assured tenancy—

(i) is in the same ►<sup>3</sup>broad rental market area (local reference rent)◀ as the dwelling;

(ii) is in a reasonable state of repair; and

<sup>3</sup>Words substituted in para. 4(2)(a)(i) by art. 3(3)(a)(i) of S.I. 2008/3156 as from 5.1.09.

- (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 <sup>1</sup>at the relevant time <sup>2</sup>of more than one bedroom or room suitable for living in <sup>2</sup>and neither the tenant nor the tenant's partner is a person who requires overnight care <sup>2</sup>—
- (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 <sup>1</sup>at the relevant time <sup>2</sup>includes payments for board and attendance and the rent officer considers that 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 <sup>3</sup>kitchen, toilet, bathroom and room suitable for living in <sup>2</sup> 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 <sup>2</sup>kitchen, toilet, bathroom and room suitable for living in <sup>2</sup>; 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) When 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 <sup>4</sup>.
- (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
- <sup>5</sup>“non-dependant” means a non-dependant of the tenant within the meaning of regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations; <sup>6</sup>
- (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 <sup>6</sup>, in the case of a tenancy where a substantial part of the rent under the tenancy is fairly attributable to board and attendance, the provision of meals (including the preparation of meals or provision of unprepared food). <sup>6</sup>
- <sup>7</sup>(6) For the purposes of this paragraph and paragraphs 5 “broad rental market area (local reference rent)” means the area within which a tenant of the dwelling could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of the distance of travel, by public and private transport, to and from those facilities and services.
- (7) A broad rental market area (local reference rent) must contain—
- (a) residential premises of a variety of types, including such premises held on a variety of tenures; and
- (b) sufficient privately rented residential premises, to ensure that, in the rent officer's opinion, the local reference rents for tenancies in the area are representative of the rents that a landlord might reasonably be expected to obtain in that area. <sup>6</sup>

<sup>1</sup>Words inserted in para. 4(2)(b) by art. 10(a) of S.I. 2000/3 as from 3.4.00.

<sup>2</sup>Words inserted in Sch. 1, para. 4(2)(b) by art. 5(3) of S.I. 2010/2836 as from 1.4.11.

<sup>3</sup>Words substituted by art. 2 of S.I. 2001/2318 as from 2.7.01.

<sup>4</sup>Word “and” and para. (c) omitted from para. 4(3) by art. 3 of S.I. 2003/478 as from 7.4.03 (where rent is payable at intervals of a whole number of weeks) or 1.4.03 in any other case.

<sup>5</sup>Defn. of “non-dependant” in para. 4(4) substituted by para. 12(10)(a) of Sch. 2 to S.I. 2006/217 as from 6.3.06 & by S.I. 2007/2871 as from 6.4.08.

<sup>6</sup>Words substituted by art. 10(c) of S.I. 2000/3 as from 3.4.00.

<sup>7</sup>Sub-para. (6) substituted by art 3(3) (a)(ii) of S.I. 2008/3156 as from 5.1.09.

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## 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 reasonable 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.

(2) The criteria are—

(a) that the dwelling under the assured tenancy is in the same <sup>1</sup>broad rental market area (local reference rent) <sup>2</sup> 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 <sup>2</sup>;

<sup>2</sup>(iia) shares the use of a room suitable for living in;

(iii) shares the use of a toilet <sup>2</sup> and bathroom; 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 <sup>3</sup>(3) and (5) of paragraph 4 apply when ascertaining H and L under <sup>3</sup>this paragraph as if the reference in those sub-paragraphs to H and L were to H and L under this paragraph.

**<sup>4</sup>Claim-related rent**

6.—<sup>5</sup>(1) In this paragraph, and in paragraph 9, “claim-related rent” means the claim-related rent determined by the rent officer in accordance with paragraph (2A).<sup>4</sup>

<sup>5</sup>(2A) The rent officer shall determine that the claim-related rent is—

(a) where he makes a determination under sub-paragraph (2) of paragraph 1, sub-paragraph (2) of paragraph 2 and sub-paragraph (3) of paragraph 3, the lowest of the three rents determined under those sub-paragraphs;

(b) where he makes a determination under only two of the sub-paragraphs referred to in paragraph (a), the lower of the two rents determined under those sub-paragraphs;

(c) where he makes a determination under only one of the sub-paragraphs referred to in paragraph (a), the rent determined under that sub-paragraph;

(d) where he does not make a determination under any of the sub-paragraphs referred to in sub-paragraph (a), the rent payable under the tenancy of the dwelling at the relevant time.<sup>4</sup>

(2) <sup>5</sup>

(3) <sup>5</sup> the rent officer shall also determine the total amount of ineligible charges as defined in paragraph 7, which he has not included in the claim-related rent because of the assumptions made in accordance with that paragraph.<sup>4</sup>

<sup>1</sup>Words substituted in para. 5(2)(a) by art. 3(3)(b) of S.I. 2008/3156 as from 5.1.09.

<sup>2</sup>Words deleted and inserted in para. 5(2)(b) by art. 4 of S.I. 2001/1326 as from 2.7.01.

<sup>3</sup>Words inserted and deleted in Sch. 1 art. 5(3) by reg. 6(a) and (b) of S.I. 2005/236 as from 13.03.05.

<sup>4</sup>Para. 6 substituted by art. 11 of S.I. 2000/3 as from 3.4.00.

<sup>5</sup>In para. 6; (1) substituted; (2A) inserted; (2) omitted & words omitted in (3) by art. 18(2) of S.I. 2007/2871 as from 7.4.08.

*These paragraphs continue to be reproduced as they remain in force for certain cases. See art 6 of S.I. 2007/2871 for details.*

►<sup>1</sup>Claim-related rent

6.—(1) In this paragraph, and in paragraph 9 below, “claim-related rent” means—

- (a) where the rent officer makes a determination under sub-paragraph (2) of paragraph 1, sub-paragraph (2) of paragraph 2 and sub-paragraph (3) of paragraph 3, the lowest of the three rents determined under those sub-paragraphs;
- (b) where the rent officer makes a determination under only two of the sub-paragraphs referred to in paragraph (a) above, the lower of the two rents determined under those sub-paragraphs;
- (c) where the rent officer makes a determination under only one of the sub-paragraphs referred to in paragraph (a) above, the rent determined under that sub-paragraph;
- (d) where the rent officer does not make a determination under any of the sub-paragraphs referred to in paragraph (a) above, the rent payable under the tenancy of the dwelling at the relevant time.

(2) Where a rent officer makes any determinations under paragraphs 1, 2 or 3, he shall also determine which rent is the claim-related rent.

(3) Where the dwelling is not in a hostel, the rent officer shall also determine the total amount of ineligible charges as defined in paragraph 7, which he has not included in the claim-related rent because of the assumptions made in accordance with that paragraph.◀

<sup>1</sup>Para. 6 substituted by art. 11 of S.I. 2000/3 as from 3.4.00.

## PART II

Article 3(1)(b)

### ASSUMPTIONS ETC.

►<sup>2</sup>Ineligible charges and support charges

7.—►<sup>3</sup>(1) “ineligible charges” means service charges which are ineligible to be met by housing benefit by virtue of regulation 12B(2) (rent) of and Schedule 1 (ineligible service charges) to the Housing Benefit Regulations or, as the case may be, regulation 12B(2) of and Schedule 1 to the Housing Benefit (State Pension Credit) Regulations except in the case of a tenancy where the rent includes payments for board and attendance, and the rent officer considers that a substantial part of the rent under the tenancy is fairly attributable to board and attendance, charges specified in paragraph 1(a)(i) of Schedule 1 to the Housing Benefit (State Pension Credit) Regulations (charges for meals).◀

<sup>2</sup>Para. 7 substituted by art. 12 of S.I. 2000/3 as from 3.4.00.

<sup>3</sup>Para. 7(1) substituted by art. 17(2) of S.I. 2007/2871 as from 7.4.08.

*This paragraph continues to be reproduced as it remains in force for certain cases. See art. 17 of S.I. 2007/2871 for details.*

7.—(1) For the purposes of this paragraph—

- (a) ►<sup>4</sup>“ineligible charges” means service charges which are ineligible to be met by housing benefit by virtue of regulation 12(3) (rent) of and Schedule 1 (ineligible service charges) to the Housing Benefit Regulations or, as the case may be, of the Housing Benefit (State Pension Credit) Regulations except in the case of a tenancy where the rent includes payments for board and attendance, and the rent officer considers that a substantial part of the rent under the tenancy is fairly attributable to board and attendance, charges specified in paragraph 1(a)(i) of Schedule 1 to the Housing Benefit Regulations or, as the case may be, in paragraph 1(a)(i) of Schedule 1 to the Housing Benefit (State Pension Credit) Regulations (charges for meals).◀

<sup>4</sup>In para. 7, defn. of “ineligible charges” substituted in sub-para. (1) by para. 12(10)(b) of Sch. 2 to S.I. 2006/217 as from 6.3.06.

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(2) When making a determination under paragraph 1, 2, or 3 of this Schedule, the rent officer shall assume that—

- (a) the items to which the ineligible charges relate; <sup>1</sup> were not provided or made available.

<sup>2</sup>(3) For the purposes of paragraphs 1, 2, 3 and 6 of Part I of this Schedule, the rent officer shall assume that the rent payable under the tenancy at the relevant time is—

- (a) where an amount is notified to the rent officer under regulation 114A(4)(b) of the Housing Benefit Regulations or, as the case may be, regulations 95A(4)(b) of the Housing Benefit (State Pension Credit) Regulations in respect of that tenancy, that notified amount less the total of any ineligible charges included in that amount; or
- (b) in any other case, the total amount stated under regulation 114A(3)(d) of the Housing Benefit Regulations or, as the case may be, regulation 95A(3)(d) of the Housing Benefit (State Pension Credit) Regulations less the total of any ineligible charges included in that stated amount. <sup>4</sup>

*These paragraphs continue to be reproduced as they remain in force for certain cases. See art. 16 of S.I. 2007/2871 for details.*

(3) For the purposes of paragraphs 1, 2, 3 and 6 of this Schedule, the rent officer shall assume that the rent payable under the tenancy at the relevant time is—

- (a) where an amount is notified to the rent officer under <sup>3</sup>regulation 14(9)(b) of the Housing Benefit Regulations or, as the case may be, regulation 14(8)(b) of the Housing Benefit (State Pension Credit) Regulations <sup>4</sup> in respect of that tenancy, that notified amount less the total of any ineligible charges included in that amount; or
- (b) in any other case, the amount stated under <sup>3</sup>14(2) of the Housing Benefit Regulations or, as the case may be, regulation 14(2) of the Housing Benefit (State Pension Credit) Regulations <sup>4</sup> less the total of any ineligible charges included in that stated amount.

(4) The total of any ineligible charges, referred to in sub-paragraph (3), shall be the total of the amounts (excluding any amount which he considers is negligible) of any charges included in the notified amount or the stated amount, as the case may be which, in the rent officer's opinion, are at the relevant time fairly attributable to any items to which ineligible charges relate. <sup>4</sup>

**Housing associations etc.**

**8.—**(1) In a case where the local authority states in the application that the landlord is a housing association or a charity, the rent officer shall assume that the landlord is not such a body.

(2) The rent officer shall not take into account the rent under any tenancy where the landlord is a housing association or where the landlord is a charity and the dwelling is provided by the landlord in the pursuit of its charitable purposes.

(3) In this paragraph—

“charity” has the same meaning as in the Charities Act 1993<sup>(a)</sup> except that it includes a Scottish charity (which has the same meaning as in section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(b)</sup>; and

“housing association” has the same meaning as in the Housing Associations Act 1985<sup>(c)</sup>

<sup>1</sup>Word “and” and sub-para. (b) omitted from para. 7(2) by art. 3 of S.I. 2003/478 as from 7.4.03 (where rent is payable at intervals of a whole number of weeks) or 1.4.03 in all other cases.

<sup>2</sup>Para. 7(3) substituted by art. 16(4) of S.I. 2007/2871 as from 7.4.08.

<sup>3</sup>Words in sub-para. (3) substituted by para. 12(10)(b) of Sch. 2 to S.I. 2006/217 as from 6.3.06.

(a) 1993 c. 10.  
(b) 1990 c. 40.  
(c) 1985 c. 69.



## PART III

Article 3(1)(c)

### NOTIFICATIONS OF PART 1 DETERMINATIONS

#### Notifications

9.—<sup>1</sup>(1) Subject to sub-paragraph (2), the rent officer shall give notice to the local authority of—

- (a) the claim-related rent determined under Part I;
- (b) where the dwelling is not in a hostel, the total amount of ineligible charges determined under paragraph 6(3) in relation to that claim-related rent;
- ▶<sup>2</sup>(c) where that claim-related rent includes an amount which would be ineligible for housing benefit under paragraph 1(a)(i) of Schedule 1 to the Housing Benefit Regulations or, as the case may be, paragraph 1(a)(i) of Schedule 1 to the Housing Benefit (State Pension Credit) Regulations (charges for meals) the inclusion of an ineligible amount in respect of meals;◀

<sup>1</sup>Sub-para. (1) substituted by art. 13(1)(a) of S.I. 2000/3 as from 3.4.00.

<sup>2</sup>In para. 9(1); (c) substituted & (da) inserted by art. 18(3) of S.I. 2007/2871 as from 7.4.08.

*This paragraph continues to be reproduced as it remains in force for certain cases. See art 6 of S.I. 2007/2871 for details.*

- (c) whether that claim-related rent includes an amount which would be ineligible for housing benefit under ▶<sup>3</sup>paragraph 1(a)(i) of Schedule 1 to the Housing Benefit Regulations or, as the case may be, paragraph 1(a)(i) of Schedule 1 to the Housing Benefit (State Pension Credit) Regulations◀ (charges for meals);
- (d) any rent determined by the rent officer under paragraph 4 (local reference rents); and
- ▶<sup>2</sup>(da) where any rent determined under paragraph 4 includes an amount which would be ineligible for housing benefit under the provisions referred to in sub-paragraph (c), the inclusion of an ineligible amount in respect of meals; and◀
- (e) any rent determined by the rent officer under paragraph 5 (single room rents).◀

<sup>3</sup>Words substituted in para. 9(1)(c) by para. 12(10)(c) of Sch. 2 to S.I. 2005/217 as from 6.3.06.

- (2) If the rent officer determines a rent under—
  - (a) paragraph 4 (local reference rents); or
  - (b) paragraph 5 (single room rents),

which is equal to or more than the ▶<sup>4</sup>claim-related rent◀, the rent officer shall give notice to the local authority of this in place of giving notice of the determination made under paragraph 4 or, as the case may be, paragraph 5 ▶<sup>4</sup>◀.

<sup>4</sup>Words substituted & omitted in para. 9(2) by art. 13(1)(b) of S.I. 2000/3 as from 3.4.00.

▶<sup>5</sup>◀

<sup>5</sup>Sub-para. (3) omitted by art. 13(1)(c) of S.I. 2000/3 as from 3.4.00.

10. ▶<sup>6</sup>◀

<sup>6</sup>Para. 10 omitted by art. 13(2) of S.I. 2000/3 as from 3.4.00.

## PART IV

Article 3(2)(a)

### INDICATIVE RENT LEVELS

11.—(1) The rent officer shall determine the indicative rent level for each category described in sub-paragraph (3) in accordance with the following formula—

$$I = \frac{H + 3L}{4}$$

where

- I is the indicative rent level;
- H is the highest rent, in the rent officer's opinion—

**Sch. 1**

(a) which a landlord might reasonably be expected to obtain at the time the determination is being made for an assured tenancy of a dwelling meeting 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 be expected to obtain at the time the determination is being made for an assured tenancy of a dwelling meeting the criteria in sub-paragraph (2); and

(b) which is not an exceptionally low rent.

(2) The criteria are that-

(a) the dwelling is in the area of the local authority;

(b) the dwelling is in a reasonable state of repair; and

(c) the dwelling and tenancy accord with the category to which the determination relates.

(3) The categories for the purposes of this paragraph are-

(a) a dwelling where the tenant does not have use of more than one room where a substantial part of the rent under the tenancy is fairly attributable to board and attendance;

(b) a dwelling where the tenant does not have use of more than one room, the tenancy provides for him to share a kitchen or toilet and paragraph (a) does not apply;

(c) a dwelling where the tenant does not have use of more than one room and where paragraphs (a) and (b) do not apply;

(d) a dwelling where the tenant does not have use of more than two rooms and where none of paragraphs (a) to (c) applies;

(e) a dwelling where the tenant does not have use of more than three rooms and where none of paragraphs (a) to (d) applies;

(f) a dwelling where the tenant does not have use of more than four rooms and where none of paragraphs (a) to (e) applies;

(g) a dwelling where the tenant does not have use of more than five rooms and where none of paragraphs (a) to (f) applies; and

(h) a dwelling where the tenant does not have use of more than six rooms and where none of paragraphs (a) to (g) applies.

(4) When 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 ►<sup>1</sup>◀

<sup>1</sup>Word "and" and sub-para (c) omitted from para. 11(4) by art. 3 of S.I. 2003/478 as from 7.4.03 (if rent is payable at intervals of a whole number of weeks) or 1.4.03 in all other cases.

<sup>2</sup>Words substituted in para. 11(5)(b) by para. 12(1)(d) of Sch. 2 to S.I. 2006/217 as from 6.3.06 & by S.I. 2007/2871 as from 7.4.08.

(5) In this paragraph-

"room" means a bedroom or room suitable for living in and in paragraphs (a), (b) and (c) of sub-paragraph (3) does not include a room which the tenant shares with any person other than-

(a) a member of his household;

(b) a non-dependant of the tenant (within the meaning of ►<sup>2</sup>regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations◀); or

(c) a person who pays rent to the tenant;

"services" has the meaning given by paragraph 4(5).

SCHEDULE 2

Article 2

SIZE CRITERIA

1. One bedroom or room suitable for living in shall be allowed for each of the following categories of occupier (and each occupier shall come within only the first category for which he is eligible)–

- (a) ►<sup>1</sup>a couple◄ (within the meaning of Part VII of the Social Security Contributions and Benefits Act 1992(a);
- (b) a person who is not a child;
- <sup>2</sup>(ba) a child who cannot share a bedroom;◄
- (c) two children of the same sex;
- (d) two children who are less than ten years old;
- (e) a child.

<sup>1</sup>Words substituted in para. 1(a) by para. 30 of Sch. 3 to S.I. 2005/2877 as from 5.12.05.  
<sup>2</sup>Para. 1(ba), words in para. 1 inserted & para. 3 substituted by art. 3(2)(a) & (b) of S.I. 2013/2827 as from 1.12.13.

►<sup>2</sup>but the claimant is only entitled to a bedroom in respect of a child who cannot share a bedroom if there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child were able share a bedroom.◄

►<sup>3</sup>1A. One additional bedroom is allowed where on the application for the determination–

- (a) the tenant or the tenant’s partner is (or both of them are) stated as being a person who requires overnight care; or
- (b) the tenant or the tenant’s partner is (or both of them are) stated as being a qualifying parent or carer.

<sup>3</sup>Para. 1A substituted by art. 3(2)(a) of S.I. 2013/666 as from 1.4.13.

1B. Two additional bedrooms are allowed where sub-paragraphs (a) and (b) of paragraph 1A both apply.◄

2. The number of rooms (excluding any allowed under paragraph 1) suitable for living in allowed are–

- (a) if there are less than four occupiers, one;
- (b) if there are more than three and less than seven occupiers, two; and
- (c) in any other case, three.

►<sup>3</sup>3. In this Schedule “child who cannot share a bedroom” and “qualifying parent or carer” have the meaning given by regulation 2(1) of the Housing Benefit Regulations.◄

SCHEDULE 3

Article 4

REDETERMINATIONS

►<sup>4</sup>1. Schedules 1 and 2 shall apply in relation to a redetermination as they apply to a determination, but as if references in those Schedules to the relevant time were references to the date the application for the original determination was made or, if earlier, the date the tenancy ended.◄

<sup>4</sup>Para. 1 substituted by art. 15 of S.I. 2000/3 as from 3.4.00.

2. The rent officer making the redetermination shall seek and have regard to the advice of one or two other rent officers in relation to the redetermination.

►<sup>5</sup>◄

*This schedule continues to be reproduced as it remains in force for certain cases. See art. 15 of S.I. 2007/2871 for details.*

<sup>5</sup>Sch. 3A omitted by art. 15(8) of S.I. 2007/2871 as from 7.4.08.

►<sup>6</sup>SCHEDULE 3A

Articles 2(2) and 4B

PART I

Categories of dwelling

1.—(1) The categories of dwelling for which a rent officer is required to determine a local housing allowance in accordance with article 4B(2)(a)(i) are–

<sup>6</sup>Words inserted in Sch. 3 by Schedule 2 of S.I. 2003/2398 and will come into force in relation to the area of local authority specified in Schedule 1 to this order on the date specified in that Schedule.

(a) 1992 c. 4.

## Sch. 3A

- (a) a dwelling where the tenant has the exclusive use of only one bedroom and where the tenancy provides for him to—
  - (i) share the use of a kitchen, a bathroom and toilet and a room suitable for living in;
  - (ii) have the exclusive use of a kitchen or facilities for cooking and share the use of a bathroom and toilet and a room suitable for living in; or
  - (iii) have the exclusive use of a bathroom and toilet and share the use of a kitchen and a room suitable for living in;
- (b) a dwelling where the tenant has the use of only two rooms;
- (c) a dwelling where the tenant has the use of only three rooms;
- (d) a dwelling where the tenant has the use of only four rooms;
- (e) a dwelling where the tenant has the use of only five rooms;
- (f) a dwelling where the tenant has the use of only six rooms.

(2) In sub-paragraph (1)(b) to (f) of this paragraph and in paragraph 3 “room” means a bedroom or room suitable for living in, except for a room which the tenant shares with any person other than—

- (a) a member of his household;
- (b) a non-dependant of the tenant (within the meaning of ►<sup>1</sup>regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations◄); or
- (c) a person who pays rent to the tenant.

<sup>1</sup>Words substituted in para. 1(2)(b) by para. 12(11) of Sch. 2 to S.I. 2006/217 as from 6.3.06 & by S.I. 2007/2871 as from 7.4.08.

Formula for local housing allowance for category of dwelling in paragraph 1(1)(a)

2.—(1) The rent officer shall determine a local housing allowance for the category of dwelling in paragraph 1(1)(a) in accordance with the following formula—

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

where—

A is the local housing allowance;

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

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

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

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

(2) The criteria are—

- (a) that the dwelling under the assured tenancy—
  - (i) is in the broad rental market area for which the local housing allowance is being determined; and
  - (ii) is in a reasonable state of repair;
- (b) that under the assured tenancy, the tenant has the exclusive use of only one bedroom and the tenancy provides for him to—
  - (i) share the use of a kitchen, a bathroom and toilet and a room suitable for living in;
  - (ii) have the exclusive use of a kitchen or facilities for cooking and share the use of a bathroom and toilet and a room suitable for living in; or

- (iii) have the exclusive use of a bathroom and toilet and share the use of a kitchen and a room suitable for living in; and
  - (c) that the rent does not include any payment for board and attendance.
- (3) When ascertaining H and L under sub-paragraph (1) the rent officer shall—
- (a) assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and
  - (b) exclude the amount of any rent which, in the rent officer's opinion, is fairly attributable to the provision of services performed for, or facilities (including the use of furniture) provided for, or rights made available to, the tenant which are ineligible to be met by housing benefit.
- (4) When ascertaining H and L under sub-paragraph (1) the rent officer may, where he is not satisfied that—
- (a) the broad rental market area contains a sufficient number of dwellings that accord with the category of dwelling set out in paragraph 1(1)(a) to enable him to make a local housing allowance determination; or
  - (b) he has sufficient other information about the market in the broad rental market area to enable him to make a local housing allowance determination,

take account of rents in other similar areas in which he believes a comparable market exists.

Formula for local housing allowance for other categories of dwelling

3.—(1) For categories of dwelling other than the category of dwelling in paragraph 1(1)(a), the rent officer shall determine a local housing allowance in accordance with the formula—

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

where—

B is the local housing allowance;

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

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

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

- (a) a landlord might reasonably have been expected to obtain, at the date of the determination, for an assured tenancy of a dwelling which meets the criteria specified in sub-paragraph (2); and
  - (b) is not an exceptionally low rent.
- (2) The criteria are that the dwelling under the assured tenancy—
- (a) is in the broad rental market area for which the local housing allowance is being determined;
  - (b) is in a reasonable state of repair; and
  - (c) has the same number of rooms as the category of dwelling in respect of which the local housing allowance is being determined.

(3) Sub-paragraphs (3) and (4) of paragraph 2 apply when ascertaining H and L under this paragraph as if the reference in those sub-paragraphs to H and L were to H and L under this paragraph, except that "in respect of which the local housing allowance is being determined" shall be substituted for "set out in paragraph 1(1)(a)".

Broad rental market area

4. In this Schedule "broad rental market area" means an area—

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- (a) comprising two or more distinct areas of residential accommodation, each distinct area of residential accommodation adjoining at least one other in the area;
- (b) within which a person could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of the distance of travel, by public and private transport, to and from facilities and services of the same type and similar standard; and
- (c) containing residential premises of a variety of types, and including such premises held on a variety of tenancies.

**PART II**

	<i>Column (1)</i> <i>Local authority</i>	<i>Column (2)</i> <i>Date</i>
<sup>1</sup> Words substituted in Part II of Sch. 3A by para. 5(2)(b) of S.I. 2005/236 as from 13.03.05	▶ <sup>1</sup> Argyll and Bute	30th May 2005
	<sup>1</sup> Edinburgh	9th February 2004◀◀

<sup>2</sup>Sch. 3B inserted by art. 13(4) of S.I. 2007/2871 as from 20.3.08.

**▶<sup>2</sup>SCHEDULE 3B**

Article 4B

**BROAD RENTAL MARKET AREA DETERMINATIONS AND LOCAL HOUSING ALLOWANCE DETERMINATIONS**

**Categories of dwelling**

**1.**—(1) The categories of dwelling for which a rent officer is required to determine a local housing allowance in accordance with ▶<sup>3</sup>article 4B(2A)(a)◀ are—

<sup>3</sup>Words in Sch. 3B 1(1) substituted & sub-para. (1A) inserted in 3B 2(1) by art. 3(4) of S.I. 2012/646 as from 2.4.12.

- (a) a dwelling where the tenant has the exclusive use of only one bedroom and where the tenancy provides for him to share the use of one or more of—
  - (i) a kitchen;
  - (ii) a bathroom;
  - (iii) a toilet; or
  - (iv) a room suitable for living in;
- (b) a dwelling where the tenant (together with his partner where he has one) has the exclusive use of only one bedroom and exclusive use of a kitchen, a bathroom, a toilet and a room suitable for living in;
- (c) a dwelling where the tenant has the use of only two bedrooms;
- (d) a dwelling where the tenant has the use of only three bedrooms;
- (e) a dwelling where the tenant has the use of only four bedrooms;
- (f) ▶<sup>4</sup>◀

<sup>4</sup>Sch. 3B, para. 1(1)(f) deleted & words in para. 1(2)(b) substituted by art. 4(3)(a)(i) & (ii) of S.I. 2010/2836 as from 18.3.11.

(2) In—

- (a) sub-paragraph (1)(b) “partner” has the same meaning as in regulation 2 of the Housing Benefit Regulations or, as the case may be, regulation 2 of the Housing Benefit (Share Pension Credit) Regulations;
- (b) sub-paragraph (1)(c) ▶<sup>4</sup>to (e)◀ “bedroom” means a bedroom, except for a bedroom which the tenant shares with any person other than—
  - (i) a member of the household;
  - (ii) a non-dependant of the tenant (within the meaning of regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations); or
  - (iii) a person who pays rent to the tenant.

► **Local housing allowance for category of dwelling in paragraph 1**

<sup>1</sup>Para. 2 to Sch. 3B substituted by art. 3(2) of S.I. 2013/2978 as from 13.1.14.

2.—(1) Subject to paragraph 3 (anomalous local housing allowances)(a), the rent officer must determine a local housing allowance for each category of dwelling in paragraph 1 as follows.

(2) For the broad rental market areas listed in column 1 of the table in paragraph 6 the local housing allowance is—

- (a) for a category of dwelling listed in column 2 in relation to that broad rental market area, either—
  - (i) the rate last determined increased by 4 per cent; or
  - (ii) the maximum local housing allowance for that category of dwelling listed in column (2) of the table in sub-paragraph (9) where that is lower than or equal to the rate last determined increased by 4 per cent.
- (b) for any category of dwelling not listed in column 2 of the table in paragraph 6 in relation to that broad rental market area, either—
  - (i) the rent at the 30th percentile determined in accordance with sub-paragraphs (4) to (8); or
  - (ii) the rate last determined for that category of dwelling increased by 1 per cent. where that is lower than or equal to the rent at the 30th percentile determined in accordance with sub-paragraphs (4) to (8).

(3) For all other broad rental market areas the local housing allowance for a category of dwelling is either—

- (a) the rent at the 30th percentile determined in accordance with sub-paragraphs (4) to (8); or
- (b) the rate last determined for that category of dwelling increased by 1 per cent. where that is lower than or equal to the rent at the 30th percentile determined in accordance with sub-paragraphs (4) to (8).

(4) The rent officer must compile a list of rents in ascending order of the rents which, in the rent officer's opinion, are payable—

- (a) for a dwelling let under an assured tenancy for each category of dwelling specified in paragraph 1; and
- (b) in the 12 month period ending on the 30th day of the September preceding the date of the determination.

(5) In compiling the list of rents, the rent officer must—

- (a) include within it the rent of an assured tenancy in relation to each category of dwelling if—
  - (i) the dwelling let under the assured tenancy is in the broad rental market area for which the local housing allowance for that category of dwelling is being determined;
  - (ii) the dwelling is in a reasonable state of repair; and
  - (iii) the assured tenancy permits the tenant to use exclusively or share the use of, as the case may be, the same number and type of rooms as the category of dwelling in relation to which the list is being compiled;
- (b) include within it any rents which are of the same amount;
- (c) where rent is payable other than weekly, use the figure which would be payable if the rent were to be payable weekly by—
  - (i) multiplying the rent by an appropriate figure to obtain the rent for a year;
  - (ii) dividing the total in (i) by 365; and
  - (iii) multiplying the total in (ii) by 7;

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(a) Paragraph 3 was inserted by S.I. 2007/2871 and amended by S.I. 2010/2386.

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- (d) assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and
- (e) exclude the amount of any rent which, in the rent officer's opinion, is fairly attributable to the provision of services performed for, or facilities (including the use of furniture) provided for, or rights made available to, the tenant which are ineligible to be met by housing benefit.

(6) Sub-paragraph (7) applies where the rent officer is not satisfied that the list of rents in respect of any category of dwelling would contain sufficient rents, payable in the 12 month period ending on the 30th day of the September preceding the date of the determination for dwellings in the broad rental market area, to enable a local housing allowance to be determined which is representative of the rents that a landlord might reasonably be expected to obtain in that area.

(7) In a case where this sub-paragraph applies the rent officer may add to the list rents for dwellings in the same category in other areas in which a comparable market exists.

(8) The rent officer must use the list of rents to determine the rent at the 30th percentile in the list ("R") by—

- (a) where the number of rents on the list is a multiple of 10, applying the formula—

$$R = \frac{\text{the amount of the rent at P} + \text{the amount of the rent at P1}}{2}$$

Where—

- (i) P is the position on the list found by multiplying the number of rents on the list by 3 and dividing by 10; and
- (ii) P1 is the following position on the list;
- (b) where the number of rents on the list is not a multiple of 10, applying the formula—

$$R = \text{the amount of the rent at P2}$$

Where—

P2 is the position on the list found by multiplying the number of rents on the list by 3 and dividing by 10 and rounding the result upwards to the nearest whole number.

(9) The maximum local housing allowance for each category of dwelling specified in the paragraph of this Schedule listed in column (1) is the amount specified for that category of dwelling in column (2).

<i>(1) Paragraph of this Schedule defining the category of dwelling</i>	<i>(2) Maximum local housing allowance for that category of dwelling</i>
paragraph 1(1)(a) (one bedroom, shared accommodation)	£258.06
paragraph 1(1)(b) (one bedroom, exclusive use)	£258.06
paragraph 1(1)(c) (two bedrooms)	£299.34
paragraph 1(1)(d) (three bedrooms)	£350.95
paragraph 1(1)(e) (four bedrooms)	£412.89

(10) Where the local housing allowance would otherwise not be a whole number of pence, it must be rounded to the nearest whole penny by disregarding any amount less than half a penny and treating any amount of half a penny or more as a whole penny. ◀



**Anomalous local housing allowances**

3.—(1) Where—

- (a) the rent officer has determined the local housing allowance for each of the categories of dwelling in paragraph 1(1) in accordance with the preceding paragraphs of this Schedule; and
- (b) the local housing allowance for a category of dwelling in paragraph 1(1)(b) ►<sup>1</sup>to (e)◀ is lower than the local housing allowance for any of the categories of dwelling which precede it,

<sup>1</sup>Sch. 3B para. 3(1)(b) substituted & (3)(2) deleted by art. 4(3)(b)(iii) & (c)(i)-(ii) of S.I. 2010/2836 as from 18.3.11.

that local housing allowance shall be the same as the highest local housing allowance which precedes it.

(2) ►<sup>1</sup>◀

**Broad rental market area**

►<sup>2</sup>4. In this Schedule “broad rental market area” means an area within which a person could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of the distance of travel, by public and private transport, to and from facilities and services.

<sup>2</sup>Para. 4 substituted in Sch. 3B by art. 3(4)(b) of S.I. 2008/3156 as from 5.1.09.

5. A broad rental market area must contain—

- (a) residential premises of a variety of types, including such premises held on a variety of tenures; and
- (b) sufficient privately rented residential premises to ensure that, in the rent officer’s opinion, the local housing allowance for the categories of dwelling in the area for which the rent officer is required to determine a local housing allowance is representative of the rents that a landlord might reasonably be expected to obtain in that area.◀

►<sup>3</sup>6. The table referred to in paragraph 2(2) of this Schedule is below.

<sup>3</sup>Para. 6 to Sch. 3B inserted by art. 3(3) of S.I. 2013/2978 as from 13.1.14.

<i>(1) Broad rental market area</i>	<i>(2) Paragraph of this Schedule defining the category of dwelling</i>
Aberdeen and Shire	paragraph 1(1)(a) (one bedroom, shared accommodation) paragraph 1(1)(c) (two bedrooms) paragraph 1(1)(d) (three bedrooms) paragraph 1(1)(e) (four bedrooms)
Argyll and Bute	paragraph 1(1)(b) (one bedroom, exclusive use)
Fife	paragraph 1(1)(a) (one bedroom, shared accommodation)
Forth Valley	paragraph 1(1)(e) (four bedrooms)
Greater Glasgow	paragraph 1(1)(a) (one bedroom, shared accommodation)
Scottish Borders	paragraph 1(1)(a) (one bedroom, shared accommodation).◀

**SCHEDULE 4**

Article 7

**SPECIAL CASES**

**Houseboats**

1. Where an application for a determination or a redetermination relates in whole or in part to mooring charges for a houseboat, this Order applies in relation to that application (or, as the case may be, to that part which relates to those charges) with the following modifications—

- (a) references to a tenancy, a tenancy of a dwelling or an assured tenancy are references to an agreement under which those charges are payable (and references to a landlord and a tenant shall be construed accordingly); and
- (b) no determination shall be made under paragraph 2 of Part I of Schedule 1 (size criteria) and references to the dwelling exceeding the size criteria shall not apply.

**Mobile homes**

2. Where an application for a determination or redetermination relates in whole or in part to payments in respect of the site on which a caravan or a mobile home stands, this Order applies in relation to that application (or, as the case may be, that part which relates to those payments) with the following modifications—

- (a) references to a tenancy, a tenancy of a dwelling or an assured tenancy are references to an agreement under which those payments are payable (and references to a landlord and a tenant shall be construed accordingly); and
- (b) no determination shall be made under paragraph 2 of Part I of Schedule 1 (size criteria) and references to the dwelling exceeding the size criteria shall not apply.

**Rental purchase agreements**

3. Where an application for a determination or a redetermination relates to a rental purchase agreement, the agreement is to be treated as if it were a tenancy.

**SCHEDULE 5**

Article 9

**REVOCATIONS**

<i>Order revoked</i>	<i>Reference</i>
The Rent Officers (Additional Functions) (Scotland) Order 1995	S.I. 1995/1643
The Rent Officers (Additional Functions) (Scotland) Amendment Order 1995	S I. 1995/2361
The Rent Officers (Additional Functions) (Scotland) Amendment (No. 2) Order 1995	S.I. 1995/3185
The Rent Officers (Additional Functions) (Scotland) Amendment Order 1996	S.I. 1996/975
The Rent Officers (Additional Functions) (Scotland) Amendment Order 1997	S.I. 1996/975

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order revokes and re-enacts with modifications the Rent Officers (Additional Functions) (Scotland) Order 1995 (“the 1995 Order”) and revokes the Orders which amended it. It confers functions on rent officers in connection with housing benefit and rent allowance subsidy and requires rent officers to make determinations and determinations relating to a tenancy of a dwelling.

The main modifications relate to single room rent determinations under paragraph 5 of Part I of Schedule 1, which are required where the housing benefit claimant is a young individual. By an amendment (which is not yet in force) made to the 1995 Order by the Rent Officers (Additional Functions) (Scotland) Amendment Order 1997, such determinations would also have been required for single claimants as defined in that 1997 Order. This Order reverses the prospective amendment so that determinations will continue to be required only for young individuals. This Order also changes a criterion in paragraph 5(2)(b)(iv) of Part I of Schedule 1 which is relevant for determining single room rents and provides, in article 6(2), that single room rent determinations are no longer required for the accommodation specified in that provision (hostels, registered homes, etc.).

The other modifications include a requirement for rent officers to make additional assumptions, when making a determination or redetermination, and give additional information to local authorities in the cases specified in article 7(3) and (4) (general counselling or other support services: supported accommodation).

Article 8 of this Order also amends the 1995 Order by adding a requirement relating to supported accommodation similar to that in article 7(3) and (4).

Article 8 comes into force on 18th August 1997 whilst the rest of the Order comes into force on 3rd September 1997. Neither the amendment in article 8 nor the substantive provisions in the rest of the Order have effect relative to applications for determinations made before the respective commencement dates of those provisions.

