

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 [^{F1}vicinity] (or as similar as regards tenancy, dwelling and [^{F1}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.

[^{F2}(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.]

Textual Amendments

- F1** Word in Sch. 1 para. 1(3) substituted (6.11.2001) by [The Rent Officers \(Housing Benefit Functions\) \(Amendment\) Order 2001 \(S.I. 2001/3561\)](#), arts. 1, **3(2)(a)**
- F2** Sch. 1 para. 1(4) added (6.11.2001) by [The Rent Officers \(Housing Benefit Functions\) \(Amendment\) Order 2001 \(S.I. 2001/3561\)](#), arts. 1, **3(2)(b)**

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 [^{F3}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.

Textual Amendments

F3 Word in Sch. 1 para. 2(c) substituted (6.11.2001) by [The Rent Officers \(Housing Benefit Functions\) \(Amendment\) Order 2001 \(S.I. 2001/3561\)](#), arts. 1, **3(3)**

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;
- (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 [^{F4}at the relevant time].

(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 [^{F5}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.

(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 [^{F6}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).

[^{F7}(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).]

Textual Amendments

- F4** Words in Sch. 1 para. 3(2)(c) inserted (3.4.2000) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **9**
- F5** Word in Sch. 1 para. 3(3)(a) substituted (6.11.2001) by [The Rent Officers \(Housing Benefit Functions\) \(Amendment\) Order 2001 \(S.I. 2001/3561\)](#), arts. 1, **3(4)(a)**
- F6** Word in Sch. 1 para. 3(4)(a) substituted (6.11.2001) by [The Rent Officers \(Housing Benefit Functions\) \(Amendment\) Order 2001 \(S.I. 2001/3561\)](#), arts. 1, **3(4)(a)**
- F7** Sch. 1 para. 3(5) added (6.11.2001) by [The Rent Officers \(Housing Benefit Functions\) \(Amendment\) Order 2001 \(S.I. 2001/3561\)](#), arts. 1, **3(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 [^{F8}broad rental market area (local reference rent)] 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 [^{F9}at the relevant time] of more than one bedroom or room suitable for living in [^{F10}and neither the tenant nor the tenant's partner is a person who requires overnight care]—
- (i) that under the assured tenancy the tenant does not have the use of more than one bedroom or room suitable for living in;

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- (ii) if the rent under the tenancy [^{F11}at the relevant time] 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 [^{F12}kitchen, toilet, bathroom and room suitable for living in] 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 [^{F12}kitchen, toilet, bathroom and room suitable for living in]; 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.

^{F13}(c)

- (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

[^{F14}“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;]

[^{F15}(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 [^{F16}, 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).]

- (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.

[^{F17}(6) For the purposes of this paragraph and paragraph 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.]]

Textual Amendments

- F8** Words in Sch. 1 para. 4(2) substituted (5.1.2009) by [The Rent Officers \(Housing Benefit Functions\) Amendment \(No. 2\) Order 2008 \(S.I. 2008/3156\)](#), arts. 1, **3(3)(a)(i)**
- F9** Words in Sch. 1 para. 4(2)(b) inserted (3.4.2000) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **10(a)(i)**
- F10** Words in Sch. 1 para. 4(2)(b) inserted (1.4.2011) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2010 \(S.I. 2010/2836\)](#), arts. 1(3), **5(3)**
- F11** Words in Sch. 1 para. 4(2)(b)(ii) inserted (3.4.2000) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **10(a)(i)**
- F12** Words in Sch. 1 para. 4(2)(b)(iii) substituted (2.7.2001) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) \(Amendment\) \(No. 2\) Order 2001 \(S.I. 2001/2318\)](#), arts. 1(1), **2(3)**
- F13** Sch. 1 para. 4(3)(c) omitted (1.4.2003 for specified purposes, 7.4.2003 for specified purposes) by virtue of [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2003 \(S.I. 2003/478\)](#), arts. 1(1), **3(2)**
- F14** Words in Sch. 1 para. 4(4) substituted (6.3.2006 for specified purpose, 7.4.08 for all other purposes) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 12(10)(a)** (with regs. 2, 3, Sch. 3, Sch. 4); S.I. 2007/2871, 19(7)(a)
- F15** Words in Sch. 1 para. 4(4) substituted (7.4.2008) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **19(7)(a)** (with arts. 2, 11)
- F16** Words in Sch. 1 para. 4(5) substituted (3.4.2000) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **10(c)** (with art. 16)
- F17** Sch. 1 para. 4(6)(7) substituted for Sch. 1 para. 4(6) (5.1.2009) by [The Rent Officers \(Housing Benefit Functions\) Amendment \(No. 2\) Order 2008 \(S.I. 2008/3156\)](#), arts. 1, **3(3)(a)(ii)**

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 ^{F18} broad rental market area (local reference rent)] as the dwelling and is in a reasonable state of repair;

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- (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^{F19} ...;
 - [^{F20}(ia) shares the use of a room suitable for living in]
 - (iii) shares the use of a toilet [^{F21}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 [^{F22}(3) and (5)] of paragraph 4 apply when ascertaining H and L under [^{F23}this paragraph] as if the reference in those sub-paragraphs to H and L were to H and L under this paragraph.

Textual Amendments

- F18** Words in Sch. 1 para. 5(2) substituted (5.1.2009) by [The Rent Officers \(Housing Benefit Functions\) Amendment \(No. 2\) Order 2008 \(S.I. 2008/3156\)](#), arts. 1, **3(3)(b)**
- F19** Words in Sch. 1 para. 5(2)(b)(ii) deleted (2.7.2001) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) \(Amendment\) Order 2001 \(S.I. 2001/1326\)](#), arts. 1(1), **4(a)**
- F20** Sch. 1 para. 5(2)(b)(ia) inserted (2.7.2001) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) \(Amendment\) Order 2001 \(S.I. 2001/1326\)](#), arts. 1(1), **4(b)**
- F21** Words in Sch. 1 para. 5(2)(b)(iii) inserted (2.7.2001) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) \(Amendment\) Order 2001 \(S.I. 2001/1326\)](#), arts. 1(1), **4(c)**
- F22** Words in Sch. 1 para. 5(3) substituted (13.3.2005) by [The Rent Officers \(Housing Benefit Functions\) \(Local Housing Allowance\) Amendment Order 2005 \(S.I. 2005/236\)](#), arts. 1(2), **6(a)**
- F23** Words in Sch. 1 para. 5(3) substituted (13.3.2005) by [The Rent Officers \(Housing Benefit Functions\) \(Local Housing Allowance\) Amendment Order 2005 \(S.I. 2005/236\)](#), arts. 1(2), **6(b)**

[^{F24}Claim-related rent]

[^{F25}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).]

- [^{F26}(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.]
- (2) [^{F27}Where a rent officer makes any determinations under paragraphs 1, 2 or 3, he shall also determine which rent is the claim-related rent.]

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(3) [^{F28}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.]

Textual Amendments

- F24** Sch. 1 para. 6 substituted (3.4.2000) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **11** (with art. 16)
- F25** Sch. 1 para. 6(1) substituted (7.4.2008) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **18(2)(a)** (with arts. 2, 11, 18(1))
- F26** Sch. 1 para. 6(2A) inserted (7.4.2008) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **18(2)(b)** (with arts. 2, 11, 18(1))
- F27** Sch. 1 para. 6(2) omitted (7.4.2008) by virtue of [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **18(2)(c)** (with arts. 2, 11, 18(1))
- F28** Words in Sch. 1 para. 6(3) omitted (7.4.2008) by virtue of [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **18(2)(d)** (with arts. 2, 11, 18(1))

Changes to legislation:

There are currently no known outstanding effects for the The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997, PART I.