

## 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>F1</sup>vicinity] (or as similar as regards tenancy, dwelling and [<sup>F1</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>F2</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.]

#### 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 [<sup>F3</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

**Changes to legislation:** There are currently no known outstanding effects for the *The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997*. (See end of Document for details)

(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 [<sup>F4</sup>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 [<sup>F5</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.

(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>F6</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>F7</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).]

#### 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 [<sup>F8</sup>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 [<sup>F9</sup>at the relevant time] of more than one bedroom or room suitable for living in [<sup>F10</sup>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;

**Changes to legislation:** There are currently no known outstanding effects for the The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997. (See end of Document for details)

- (ii) if the rent under the tenancy [<sup>F11</sup>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 [<sup>F12</sup>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 [<sup>F12</sup>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.

<sup>F13</sup>(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

[<sup>F14</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>F15</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>F16</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).]

- (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.

[<sup>F17</sup>(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 <sup>F18</sup>broad rental market area (local reference rent)] as the dwelling and is in a reasonable state of repair;

**Changes to legislation:** There are currently no known outstanding effects for the *The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997*. (See end of Document for details)

- (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>F19</sup> ...;
  - [<sup>F20</sup>(ia) shares the use of a room suitable for living in]
  - (iii) shares the use of a toilet [<sup>F21</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>F22</sup>(3) and (5)] of paragraph 4 apply when ascertaining H and L under [<sup>F23</sup>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)**

#### [<sup>F24</sup>Claim-related rent]

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

Article 3(1)(b)

## PART II

### ASSUMPTIONS etc.

#### <sup>F29</sup>Ineligible charges and support charges]

<sup>F30</sup>“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 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).]

(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>F34</sup>...

<sup>F34</sup>(b) .....

were not provided or made available.

<sup>F35</sup>For the purposes of paragraphs 1, 2, 3, and 6 of Part 1 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.]

**Changes to legislation:** There are currently no known outstanding effects for the The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997. (See end of Document for details)

(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.]

#### Textual Amendments

- F29** Sch. 1 para. 7 substituted (3.4.2000) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **12** (with art. 16)
- F30** Sch. 1 para. 7(1) substituted (7.4.2008) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **17(2)** (with arts. 2, 11, 17(1))
- F31** Words in Sch. 1 para. 7(1) substituted (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 12(10)(b)(i)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F32** Sch. 1 para. 7(1)(a)(i) 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(3)(a)(i)**
- F33** Sch. 1 para. 7(1)(b) and word 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(3)(a)(ii)**
- F34** Sch. 1 para. 7(2)(b) and word 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(3)(b)**
- F35** Sch. 1 para. 7(3) substituted (7.4.2008) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **16(4)** (with arts. 2, 11, 16(1))
- F36** Words in Sch. 1 para. 7(3) substituted (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 12(10)(b)(ii)(aa)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F37** Words in Sch. 1 para. 7(3) substituted (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), Sch. 2 para. 12(10)(b)(ii), **(bb)** (with regs. 2, 3, Sch. 3, Sch. 4)

#### 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>M1</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>M2</sup>); and

“housing association” has the same meaning as in the Housing Associations Act 1985<sup>M3</sup>.

#### Marginal Citations

- M1** 1993 c.10.  
**M2** 1990 c.40.  
**M3** 1985 c.69; see section 1(1).



Article 3(1)(c)

## PART III

### NOTIFICATIONS OF PART I DETERMINATIONS

#### Notifications

- 9.—<sup>F38</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;
  - (c) <sup>F39</sup>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;]
  - (d) any rent determined by the rent officer under paragraph 4 (local reference rents); and
  - <sup>F41</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).]
- (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>F42</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>F43</sup> ....

<sup>F44</sup>(3) .....

#### Textual Amendments

- F38** Sch. 1 para. 9(1) substituted (3.4.2000) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **13(1)(a)** (with art. 16)
- F39** Sch. 1 para. 9(1)(c) substituted (7.4.2008) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **18(3)(a)** (with arts. 2, 11, 18(1))
- F40** Words in Sch. 1 para. 9(1)(c) substituted (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 12(10)(c)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F41** Sch. 1 para. 9(1)(da) inserted (7.4.2008) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **18(3)(b)** (with arts. 2, 11, 18(1))
- F42** Words in Sch. 1 para. 9(2) substituted (3.4.2000) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **13(1)(b)(i)** (with art. 16)
- F43** Words in Sch. 1 para. 9(2) omitted (3.4.2000) by virtue of [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **13(1)(b)(ii)** (with art. 16)
- F44** Sch. 1 para. 9(3) omitted (3.4.2000) by virtue of [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **13(1)(c)** (with art. 16)

**Changes to legislation:** There are currently no known outstanding effects for the *The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997*. (See end of Document for details)

F45 10. ....

**Textual Amendments**  
F45 Sch. 1 para. 10 omitted (3.4.2000) by virtue of [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **13(2)** (with art. 16)

Article 3(2)(a)

## PART IV

### 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—

- (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;

**Changes to legislation:** There are currently no known outstanding effects for the *The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997*. (See end of Document for details)

- (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>F46</sup>(c) .....
- (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>F47</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).

**Textual Amendments**

**F46** Sch. 1 para. 11(4)(c) and word 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(4)**

**F47** Words in Sch. 1 para. 11(5)(b) substituted (6.3.2006 for specified purposes, 7.4.2008 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)(d)** (with regs. 2, 3, Sch. 3, Sch. 4); (S.I. 2007/2871, art. 19(7)(b))

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)—

- [<sup>F48</sup>(za) a member of a couple who cannot share a bedroom;
- (zb) a member of a couple who can share a bedroom;]
- (a) [<sup>F49</sup>a couple]<sup>F50</sup> ...;

**Changes to legislation:** There are currently no known outstanding effects for the The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997. (See end of Document for details)

- (b) a person who is not a child;
- [<sup>F51</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>F52</sup>but the claimant is only entitled to a bedroom in respect of a child who cannot share a bedroom [<sup>F53</sup>or a member of a couple 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 [<sup>F54</sup>or the member of the couple] were able to share a bedroom.]

#### Textual Amendments

- F48** Sch. 2 para. 1(za)(zb) inserted (1.4.2017) by [The Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/213\)](#), regs. 1(1), **3(2)(a)**
- F49** Words in Sch. 2 para. 1(a) substituted (5.12.2005) by [The Civil Partnership \(Pensions, Social Security and Child Support\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2877\)](#), art. 1, **Sch. 3 para. 30** (with art. 3)
- F50** Words in Sch. 2 para. 1(a) omitted (1.4.2017) by virtue of [The Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/213\)](#), regs. 1(1), **3(2)(b)**
- F51** Sch. 2 para. 1(ba) inserted (4.12.2013) by [The Rent Officers \(Housing Benefit Functions\) Amendment \(No. 2\) Order 2013 \(S.I. 2013/2827\)](#), arts. 1, **3(2)(a)(i)**
- F52** Words in Sch. 2 para. 1 added (4.12.2013) by [The Rent Officers \(Housing Benefit Functions\) Amendment \(No. 2\) Order 2013 \(S.I. 2013/2827\)](#), arts. 1, **3(2)(a)(ii)**
- F53** Words in Sch. 2 para. 1 inserted (1.4.2017) by [The Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/213\)](#), regs. 1(1), **3(2)(c)(i)**
- F54** Words in Sch. 2 para. 1 inserted (1.4.2017) by [The Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/213\)](#), regs. 1(1), **3(2)(c)(ii)**

- [<sup>F55</sup>**1A.** One additional bedroom is allowed where on the application for the determination—
- (a) [<sup>F56</sup>one or more of the following persons is stated as being a person who requires overnight care—
    - (i) the tenant;
    - (ii) the tenant’s partner;
    - (iii) a person (other than the tenant or the tenant’s partner) who occupies the dwelling as their home;
    - (iv) a child or young person in respect of whom the tenant or the tenant’s partner is a qualifying parent or carer; or]
  - (b) the tenant or the tenant’s partner is (or both of them are) stated as being a qualifying parent or carer.]

#### Textual Amendments

- F55** Sch. 2 para. 1A-para. 1B substituted for Sch. 2 para. 1A (1.4.2013) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2013 \(S.I. 2013/666\)](#), arts. 1, **3(2)(a)**
- F56** Sch. 2 para. 1A(a) substituted (1.4.2017) by [The Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/213\)](#), regs. 1(1), **3(3)**

[<sup>F55</sup>**1B.** Two additional bedrooms are allowed where sub-paragraphs (a) and (b) of paragraph 1A both apply.]

**Textual Amendments**

**F55** Sch. 2 para. 1A-para. 1B substituted for Sch. 2 para. 1A (1.4.2013) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2013 \(S.I. 2013/666\)](#), arts. 1, **3(2)(a)**

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>F57</sup>**3.** In this Schedule “child who cannot share a bedroom” [<sup>F58</sup>, “couple”, “member of a couple who cannot share a bedroom”]” and “qualifying parent or carer” have the meaning given by regulation 2(1) of the Housing Benefit Regulations [<sup>F59</sup>and reference to a member of a couple who can share a bedroom is to be construed in accordance with regulation 2(6) of those Regulations].]

**Textual Amendments**

**F57** Sch. 2 para. 3 substituted (4.12.2013) by [The Rent Officers \(Housing Benefit Functions\) Amendment \(No. 2\) Order 2013 \(S.I. 2013/2827\)](#), arts. 1, **3(2)(b)**

**F58** Words in Sch. 2 para. 3 inserted (1.4.2017) by [The Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/213\)](#), regs. 1(1), **3(4)(a)**

**F59** Words in Sch. 2 para. 3 inserted (1.4.2017) by [The Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/213\)](#), regs. 1(1), **3(4)(b)**

SCHEDULE 3

Article 4

REDETERMINATIONS

[<sup>F60</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.]

**Textual Amendments**

**F60** Sch. 3 para. 1 substituted (3.4.2000) by [The Rent Officers \(Housing Benefit Functions\) \(Scotland\) Amendment Order 2000 \(S.I. 2000/3\)](#), arts. 1(1), **15**

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>F61</sup>SCHEDULE 3A

Articles 2(2) and 4B

## PART I

**Textual Amendments**

**F61** Sch. 3A inserted (24.9.2003) by *The Rent Officers (Housing Benefit Functions) (Local Housing Allowance) Amendment Order 2003* (S.I. 2003/2398), arts. 1(1), 3(10), **Sch. 2**

**Categories of dwelling**

1.—[<sup>F62</sup>(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—

- (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>F63</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.]

**Textual Amendments**

**F62** Sch. 3A omitted (7.4.2008 for specified purposes) by virtue of *The Rent Officers (Housing Benefit Functions) Amendment Order 2007* (S.I. 2007/2871), arts. 1(4), **15(8)** (with arts. 2, 11, 15(1)(2))

**F63** Words in Sch. 3A para. 1(2)(b) substituted (6.3.2006 for specified purposes, 7.4.2008 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(11)** (with regs. 2, 3, Sch. 3, Sch. 4); (S.I. 2007/2871, art. 19(8))

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

2.—[<sup>F62</sup>(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—

$$A=H+L2$$

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.]

**Changes to legislation:** There are currently no known outstanding effects for the *The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997*. (See end of Document for details)

#### Textual Amendments

**F62** Sch. 3A omitted (7.4.2008 for specified purposes) by virtue of [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **15(8)** (with arts. 2, 11, 15(1)(2))

#### Formula for local housing allowance for other categories of dwelling

3.—<sup>F62</sup>(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—

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)”.]

#### Textual Amendments

**F62** Sch. 3A omitted (7.4.2008 for specified purposes) by virtue of [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **15(8)** (with arts. 2, 11, 15(1)(2))

#### Broad rental market area

4. <sup>F62</sup>In this Schedule “broad rental market area” means an area—

- (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,



**Changes to legislation:** There are currently no known outstanding effects for the *The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997*. (See end of Document for details)

- 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) Local authority</i>	<i>olumn (2) Date</i>
[ <sup>F64</sup> Argyll and Bute]	[ <sup>F64</sup> 30th May 2005]
[ <sup>F64</sup> Edinburgh]	[ <sup>F64</sup> 9th February 2004]]]

### Textual Amendments

- F62** Sch. 3A omitted (7.4.2008 for specified purposes) by virtue of [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(4), **15(8)** (with arts. 2, 11, 15(1)(2))
- F64** Words in Sch. 3A Pt. 2 substituted (13.3.2005) by [The Rent Officers \(Housing Benefit Functions\) \(Local Housing Allowance\) Amendment Order 2005 \(S.I. 2005/236\)](#), arts. 1(2), **5(2)(b)**

## [<sup>F65</sup>SCHEDULE 3B

Article 4B

### Broad rental market area determinations and local housing allowance determinations

### Textual Amendments

- F65** Sch. 3B inserted (20.3.2008) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2007 \(S.I. 2007/2871\)](#), arts. 1(3), **13(4)** (with arts. 2, 11)

### Modifications etc. (not altering text)

- C1** Sch. 3B modified (28.1.2021) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Modification\) Order 2020 \(S.I. 2020/1519\)](#), arts. 1, **3**
- C2** Sch. 3B modified (31.1.2022) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment and Modification\) Order 2021 \(S.I. 2021/1380\)](#), arts. 1(1), **6**
- C3** Sch. 3B modified (31.1.2023) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Modification\) Order 2023 \(S.I. 2023/6\)](#), arts. 1(1), **3**

### 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 [<sup>F66</sup>article 4B(2A)(a)] are—

- (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;

**Changes to legislation:** There are currently no known outstanding effects for the *The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997*. (See end of Document for details)

- (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;

<sup>F67</sup>(f) . . . . .

(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 (State Pension Credit) Regulations;
- (b) sub-paragraph (1)(c) [<sup>F68</sup>to (e)] “bedroom” means a bedroom, except for a bedroom which the tenant shares with any person other than—
  - (i) a member of his 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.

**Textual Amendments**

**F66** Word in Sch. 3B para. 1(1) substituted (2.4.2012) by [The Rent Officers \(Housing Benefit Functions\) \(Amendment\) Order 2012 \(S.I. 2012/646\)](#), arts. 1, **3(4)(a)**

**F67** Sch. 3B para. 1(1)(f) omitted (18.3.2011) by virtue of [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2010 \(S.I. 2010/2836\)](#), arts. 1(2), **4(3)(a)(i)**

**F68** Words in Sch. 3B para. 1(2)(b) substituted (18.3.2011) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2010 \(S.I. 2010/2836\)](#), arts. 1(2), **4(3)(a)(ii)**

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

<sup>F69</sup>2.—(1) Subject to [<sup>F70</sup>paragraphs] 3 (anomalous local housing allowances) [<sup>F71</sup>and 3A (minimum local housing allowance)], the rent officer must determine a local housing allowance for each category of dwelling in paragraph 1 as follows.

<sup>F72</sup>(2) The local housing allowance for any category of dwelling is the lower of—

- (a) the rent at the 30th percentile determined in accordance with sub-paragraphs (4) to (8); and
- (b) for a category of dwelling listed in column 1 of the following table, the amount listed in column 2 of that table (maximum local housing allowance)—

<i>1. Category of dwelling as specified in paragraph 1</i>	<i>2. Maximum local housing allowance for that category of dwelling</i>
paragraph 1(1)(a) (one bedroom, shared accommodation)	[ <sup>F73</sup> £331.39]
Paragraph 1(1)(b) (one bedroom, exclusive use)	[ <sup>F74</sup> £331.39]
Paragraph 1(1)(c) (two bedrooms)	[ <sup>F75</sup> £412.86]
Paragraph 1(1)(d) (three bedrooms)	[ <sup>F76</sup> £497.10]

Paragraph 1(1)(e) (four bedrooms) [<sup>F77</sup>£704.22 ]]

---

- <sup>F78</sup>(2A) .....
- <sup>F78</sup>(2B) .....
- <sup>F79</sup>(2C) .....
- <sup>F78</sup>(3) .....
- <sup>F78</sup>(3A) .....

(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;
- (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—

$$R = \text{the amount of the rent at P} + \text{the amount of the rent at P12}$$

**Changes to legislation:** There are currently no known outstanding effects for the *The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997*. (See end of Document for details)

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—

Where— R = the amount of the rent at P2

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.

<sup>F80</sup>(9) .....

(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.]

**Textual Amendments**

- F69** Sch. 3B para. 2 substituted (13.1.2014) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Local Housing Allowance Amendments\) Order 2013 \(S.I. 2013/2978\)](#), arts. 1, **3(2)**
- F70** Word in Sch. 3B para. 2(1) substituted (31.1.2024) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2024 \(S.I. 2024/11\)](#), arts. 1(1), **3(2)(a)(i)**
- F71** Words in Sch. 3B para. 2(1) inserted (31.1.2024) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2024 \(S.I. 2024/11\)](#), arts. 1(1), **3(2)(a)(ii)**
- F72** Sch. 3B para. 2(2) substituted (30.3.2020) by [The Social Security \(Coronavirus\) \(Further Measures\) Regulations 2020 \(S.I. 2020/371\)](#), regs. 1(1), **4(2)(b)**
- F73** Sum in Sch. 3B para. 2(2)(b) table substituted (31.1.2024) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2024 \(S.I. 2024/11\)](#), arts. 1(1), **3(2)(b)(i)**
- F74** Sum in Sch. 3B para. 2(2)(b) table substituted (31.1.2024) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2024 \(S.I. 2024/11\)](#), arts. 1(1), **3(2)(b)(ii)**
- F75** Sum in Sch. 3B para. 2(2)(b) table substituted (31.1.2024) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2024 \(S.I. 2024/11\)](#), arts. 1(1), **3(2)(b)(iii)**
- F76** Sum in Sch. 3B para. 2(2)(b) table substituted (31.1.2024) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2024 \(S.I. 2024/11\)](#), arts. 1(1), **3(2)(b)(iv)**
- F77** Sum in Sch. 3B para. 2(2)(b) table substituted (31.1.2024) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2024 \(S.I. 2024/11\)](#), arts. 1(1), **3(2)(b)(v)**
- F78** Sch. 3B para. 2(2) substituted for Sch. 3B paras. 2(2A), (2B), (3) and (3A) (30.1.2020) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2020 \(S.I. 2020/27\)](#), arts. 1, **3(3)(a)**
- F79** Sch. 3B para. 2(2C) omitted (25.1.2019) by virtue of [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2018 \(S.I. 2018/1332\)](#), arts. 1, **3(2)(c)**
- F80** Sch. 3B para. 2(9) omitted (2.11.2015) by virtue of [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Local Housing Allowance Amendments\) Order 2015 \(S.I. 2015/1753\)](#), **art. 3(2)(a)**, reg. 1

**Anomalous local housing allowances**

3.—(1) [<sup>F81</sup>Subject to paragraph 3A, where—]

**Changes to legislation:** There are currently no known outstanding effects for the *The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997*. (See end of Document for details)

- (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>F82</sup>to (e)] is lower than the local housing allowance for any of the categories of dwelling which precede it,

that local housing allowance [<sup>F83</sup>is to] be the same as the highest local housing allowance which precedes it.

<sup>F84</sup>(2) .....

**Textual Amendments**

- F81** Words in Sch. 3B para. 3(1) substituted (31.1.2024) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2024 \(S.I. 2024/11\)](#), arts. 1(1), **3(3)(a)**
- F82** Words in Sch. 3B para. 3(1)(b) substituted (18.3.2011) by [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2010 \(S.I. 2010/2836\)](#), arts. 1(2), **4(3)(c)(i)**
- F83** Words in Sch. 3B para. 3(1) substituted (31.1.2024) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2024 \(S.I. 2024/11\)](#), arts. 1(1), **3(3)(b)**
- F84** Sch. 3B para. 3(2) omitted (18.3.2011) by virtue of [The Rent Officers \(Housing Benefit Functions\) Amendment Order 2010 \(S.I. 2010/2836\)](#), arts. 1(2), **4(3)(c)(ii)**

**[<sup>F85</sup>Minimum local housing allowance**

3A. 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 paragraph 2 and, where relevant, paragraph 3 (anomalous local housing allowances); and
- (b) the local housing allowance as so determined for a category of dwelling is lower than the local housing allowance determined for that category of dwelling on 31st March 2020,

that local housing allowance is to be the same as the local housing allowance determined for that category of dwelling on 31st March 2020.]

**Textual Amendments**

- F85** Sch. 3B para. 3A and cross-heading inserted (31.1.2024) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2024 \(S.I. 2024/11\)](#), arts. 1(1), **3(4)**

**[<sup>F85</sup>Broad rental market area**

[<sup>F86</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 those facilities and services.

**Textual Amendments**

- F85** Sch. 3B para. 3A and cross-heading inserted (31.1.2024) by [The Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment\) Order 2024 \(S.I. 2024/11\)](#), arts. 1(1), **3(4)**

**Changes to legislation:** There are currently no known outstanding effects for the The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997. (See end of Document for details)

**F86** Sch. 3B paras. 4-5 substituted for Sch. 3B para. 4 (5.1.2009) by The Rent Officers (Housing Benefit Functions) Amendment (No. 2) Order 2008 (S.I. 2008/3156), arts. 1, **3(4)(b)**

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.]]

**Textual Amendments**

**F85** Sch. 3B para. 3A and cross-heading inserted (31.1.2024) by The Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2024 (S.I. 2024/11), arts. 1(1), **3(4)**

**F86** Sch. 3B paras. 4-5 substituted for Sch. 3B para. 4 (5.1.2009) by The Rent Officers (Housing Benefit Functions) Amendment (No. 2) Order 2008 (S.I. 2008/3156), arts. 1, **3(4)(b)**

<sup>F87</sup>5A. ....

**Textual Amendments**

**F85** Sch. 3B para. 3A and cross-heading inserted (31.1.2024) by The Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2024 (S.I. 2024/11), arts. 1(1), **3(4)**

**F87** Sch. 3B para. 5A omitted (30.1.2020) by virtue of The Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2020 (S.I. 2020/27), arts. 1, **3(3)(b)**

<sup>F88</sup>6. ....]

**Textual Amendments**

**F85** Sch. 3B para. 3A and cross-heading inserted (31.1.2024) by The Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2024 (S.I. 2024/11), arts. 1(1), **3(4)**

**F88** Sch. 3B para. 6 omitted (2.11.2015) by virtue of The Rent Officers (Housing Benefit and Universal Credit Functions) (Local Housing Allowance Amendments) Order 2015 (S.I. 2015/1753), **art. 3(2)(c)**, reg. 1

**Textual Amendments**

**F85** Sch. 3B para. 3A and cross-heading inserted (31.1.2024) by The Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2024 (S.I. 2024/11), arts. 1(1), **3(4)**

**F86** Sch. 3B paras. 4-5 substituted for Sch. 3B para. 4 (5.1.2009) by The Rent Officers (Housing Benefit Functions) Amendment (No. 2) Order 2008 (S.I. 2008/3156), arts. 1, **3(4)(b)**

**F87** Sch. 3B para. 5A omitted (30.1.2020) by virtue of The Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2020 (S.I. 2020/27), arts. 1, **3(3)(b)**

**F88** Sch. 3B para. 6 omitted (2.11.2015) by virtue of The Rent Officers (Housing Benefit and Universal Credit Functions) (Local Housing Allowance Amendments) Order 2015 (S.I. 2015/1753), **art. 3(2)(c)**, reg. 1

## 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. 1997/1003

---

**Changes to legislation:**

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