

SCHEDULE 2

Regulation 14

Excluded tenancies

[^{F1}1. An excluded tenancy is any tenancy to which any of the following paragraphs applies.

Textual Amendments

F1 Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**

2.—(1) Subject to sub-paragraphs (2) and (3), where a rent officer has made a determination, which relates to the tenancy in question or any other tenancy of the same dwelling this paragraph applies to—

- (a) the tenancy in respect of which that determination was made; and
- (b) any other tenancy of the same dwelling on terms which are substantially the same, other than the term relating to the amount of rent, as those terms were at the time of that determination or, if earlier, at the end of the tenancy.

(2) For the purposes of any claim, notification, request or application under regulation 14(1) (“the later application”), a tenancy shall not be an excluded tenancy by virtue of sub-paragraph (1) by reference to a rent officer’s determination made in consequence of an earlier claim, notification, request or application (“the earlier application”) where—

- (a) the earlier and later applications were made in respect of the same claimant or different claimants; and
- (b) the earlier application was made more than 52 weeks before the later application was made.

(3) Sub-paragraph (1) shall not apply where subsequent to the making of the determination mentioned in that sub-paragraph—

- (a) the number of occupiers of the dwelling has changed and that dwelling is not in a hostel;
- (b) there has been a substantial change in the condition of the dwelling (including the making of improvements) or the terms of the tenancy other than a term relating to rent;
- (c) there has been a rent increase under a term of the tenancy and the term under which that increase was made was either included in the tenancy at the time when the application for that determination was made (or was a term substantially the same as such a term) and that determination was not made under paragraph 1(2), 2(2) or 3(3) of Schedule 1 to the Rent Officers Order;
- (d) in a case where the rent officer has made a determination under paragraph 2(2) of Schedule 1 to the Rent Officers Order (size and rent determinations), but since the date of the application for that determination—
 - (i) a child, who is a member of the household occupying the dwelling, has attained the age of 10 years;
 - (ii) a young person, who is a member of the household occupying that dwelling, has attained the age of 16 years; or
 - (iii) there is a change in the composition of the household occupying the dwelling.

[^{F2}(e) any person mentioned in paragraph 1A(a) of Schedule 2 to the Rent Officers Order becomes or ceases to be a person who requires overnight care where that affects the size criteria, as set out in that Schedule to that Order, applicable in the claimant’s case;]

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[^{F3}(f) the claimant or the claimant’s partner becomes, or ceases to be, a qualifying parent or carer where that affects the size criteria, as set out in Schedule 2 to the Rent Officers Order, applicable in the claimant’s case.]

[^{F4}(g) an occupier becomes or ceases to be a child who cannot share a bedroom [^{F5}or a member of a couple who cannot share a bedroom] where that affects the size criteria, as set out in Schedule 2 to the Rent Officers Order, applicable in the claimant’s case.]

[^{F6}(4) For the purposes of sub-paragraph (3)(d)(iii) it does not amount to a change in the composition of the household where a son, daughter, step-son or step-daughter of the claimant or the claimant’s partner who is the claimant’s non-dependant ceases to occupy the dwelling as their home because they become a member of the armed forces away on operations, or subsequently resumes occupying the dwelling as their home on ceasing to be a member of the armed forces away on operations.]

Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**
- F2** Sch. 2 para. 2(3)(e) substituted (1.4.2017) by [The Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/213\)](#), regs. 1(1), **5(5)(a)**
- F3** Sch. 2 para. 2(3)(f) added (1.4.2013) by [The Housing Benefit \(Amendment\) Regulations 2013 \(S.I. 2013/665\)](#), regs. 1, **3(6)(a)**
- F4** Sch. 2 para. 2(3)(g) added (4.12.2013) by [The Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2013 \(S.I. 2013/2828\)](#), regs. 1, **3(5)**
- F5** Words in Sch. 2 para. 2(3)(g) inserted (1.4.2017) by [The Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/213\)](#), regs. 1(1), **5(5)(b)**
- F6** Sch. 2 para. 2(4) added (1.4.2013) by [The Housing Benefit \(Amendment\) Regulations 2013 \(S.I. 2013/665\)](#), regs. 1, **3(6)(b)**

3.—[^{F7}(1) Subject to [^{F8}sub-paragraphs (1A) and (2)], this paragraph applies where the landlord is—

- (a) a registered housing association;
- (b) a county council, with regard to gypsies’ and travellers’ caravan or mobile home sites and caravans or mobile homes provided on those sites; or
- (c) a housing authority, with regard to caravan or mobile home sites or houseboat moorings, payments in respect of which are to take the form of a rent allowance in accordance with regulation 72A(3).

[^{F9}(1A) In relation to a profit-making registered provider of social housing, sub-paragraph (1) (a) only applies to its social housing (within the meaning of sections 68 to 77 of the Housing and Regeneration Act 2008).]

(2) Sub-paragraph (1) does not apply where the local authority considers that—

- (a) the claimant occupies a dwelling larger than is reasonably required by the claimant and any others who occupy that dwelling (including any non-dependants of the claimant and any person paying rent to the claimant); or
- (b) the rent payable for that dwelling is unreasonably high.

(3) Where the circumstances set out in head (a) or (b) of sub-paragraph (2) exist, the authority must state this in their application for a determination.

(4) In this Schedule “gypsies and travellers” means—

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- (a) persons with a cultural tradition of nomadism or of living in a caravan; and
- (b) all other persons of a nomadic habit of life, whatever their race or origin, including—
 - (i) such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently; and
 - (ii) members of an organised group of travelling show people or circus people (whether or not travelling together as such).]

Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**
- F7** Sch. 2 para. 3 substituted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **3(3)(4)**
- F8** Words in Sch. 2 para. 3(1) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Consequential Provisions\) \(No. 2\) Order 2010 \(S.I. 2010/671\)](#), art. 1(2), **Sch. 1 para. 60** (with Sch. 2); S.I. 2010/862, art. 2
- F9** Sch. 2 para. 3(1A) inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Consequential Provisions\) \(No. 2\) Order 2010 \(S.I. 2010/671\)](#), art. 1(2), **Sch. 1 para. 61** (with Sch. 2); S.I. 2010/862, art. 2

- 4. This paragraph applies to a tenancy entered into before—
 - (a) in Scotland, 2nd January 1989; and
 - (b) in any other case, 15th January 1989.

Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**

- 5. This paragraph applies to a regulated tenancy within the meaning of—
 - (a) in Scotland, the Rent (Scotland) Act 1984; and
 - (b) in any other case, the Rent Act 1977.

Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**

- 6. This paragraph applies to a housing association tenancy which—
 - (a) in Scotland, is a tenancy to which Part 6 of the Rent (Scotland) Act 1984 applies; and
 - (b) in any other case, is a housing association tenancy to which Part 6 of the Rent Act 1977 applies.

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Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**

7. This paragraph applies to a protected occupancy or statutory tenancy within the meaning of the Rent (Agriculture) Act 1976.

Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**

8. This paragraph applies to a tenancy at a low rent within the meaning of Part 1 of the Landlord and Tenant Act 1954 or Schedule 10 to the Local Government and Housing Act 1989.

Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**

9. This paragraph applies to a tenancy of any dwelling which is a bail hostel or probation hostel approved by the Secretary of State under [^{F10}section 13 of the Offender Management Act 2007].

Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**
- F10** Words in Sch. 2 para. 9 substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **7(6)**, (8)

10. This paragraph applies to a tenancy of a housing action trust established under Part 3 of the Housing Act 1988.

Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**

11.—(1) Subject to sub-paragraphs (2) and (3) this paragraph applies to a tenancy—
(a) in respect of a dwelling comprised in land which has been disposed of under section 32 of the Housing Act 1985 or section 12 of the Housing (Scotland) Act 1987;

- (b) in respect of a dwelling comprised in land which has been disposed of with the consent required by section 43 of the Housing Act 1985 or section 12 of the Housing (Scotland) Act 1987;
 - (c) in respect of which the fee simple estate has been acquired, under the right conferred by Chapter 2 of Part 1 of the Housing Act 1996, otherwise than from a housing action trust within the meaning of Part 3 of the Housing Act 1988, or in respect of which the house has been acquired under the right conferred by Part 3 of the Housing (Scotland) Act 1988; or
 - (d) in respect of a dwelling disposed of under the New Towns (Transfer of Housing Stock) Regulations 1990 to a person who is an approved person for the purposes of disposal under those Regulations or in respect of a dwelling disposed of pursuant to powers contained in the New Towns (Scotland) Act 1968 to a housing association.
- (2) This paragraph shall not apply to a tenancy to which sub-paragraph (1) refers if—
- (a) there has been an increase in rent since the disposal or acquisition, as the case may be, occurred; and
 - (b) the local authority stated in the application for determination that—
 - (i) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependant of his and any person paying rent to him); or
 - (ii) the rent payable for that dwelling is unreasonably high.
- (3) Where the disposal or acquisition, as the case may be, took place on or after 7th October 2002, sub-paragraph (2)(b) shall apply to a tenancy to which sub-paragraph (1) refers as if head (i) were omitted.

Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**

12. This paragraph applies to a shared ownership tenancy.

Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**

13. In this Schedule, “rent” shall be construed in accordance with paragraph (8) of regulation 14 (interpretation of “tenancy” and other expressions appropriate to a tenancy) and, subject to that paragraph, has the same meaning—

- (a) in Scotland, as in section 25 of the Housing (Scotland) Act 1988, except that the reference to the house in subsection (3) shall be construed as a reference to the dwelling;
 - (b) in any other case, as in section 14 of the Housing Act 1988, except that the reference to the dwelling-house in subsection (4) shall be construed as a reference to the dwelling,
- and—
- (i) other expressions have the same meanings as in regulation 14(8);
 - (ii) in the case of a determination by a rent officer pursuant to a request for such a determination under regulation 14(1)(e), any reference to a “tenancy” shall be taken

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as a reference to a prospective tenancy and any reference to an “occupier” or any person “occupying” a dwelling shall, in the case of such a determination, be taken to be a reference to a potential occupier or potential occupation of that dwelling.]

Textual Amendments

- F1** Sch. 2 substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by [Housing Benefit \(State Pension Credit\) \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2869\)](#), regs. 1(3), **18**

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