

SCHEDULE 2

Article 5

Housing payment determination

1. The rent officer must determine whether, in the rent officer's opinion, each of the housing payments payable for the tenancy of the accommodation at the relevant time is reasonable.
2. If the rent officer determines under paragraph 1 that a housing payment is not reasonable, the rent officer must also determine the amount of the housing payment which is reasonable.
3. When making a determination under this Schedule, the rent officer must—
 - (a) have regard to the level of similar payments under tenancies for accommodation which—
 - (i) is let by the same type of landlord;
 - (ii) is in the same local authority area or, where paragraph 4 applies, an adjoining local authority area;
 - (iii) has the same number of bedrooms; and
 - (iv) is in the same reasonable state of repair,as the accommodation in respect of which the determination is being made;
 - (b) exclude—
 - (i) the cost of any care, support or supervision provided to the tenant by the landlord or by someone on the landlord's behalf;
 - (ii) any payments for services performed or facilities (including the use of furniture) provided for, or rights made available to, the tenant which are not service charge payments; and
 - (c) where the accommodation is let at an Affordable Rent, assume that the rent is reasonable.
4. Where the rent officer is not satisfied that the local authority area contains sufficient accommodation to allow a determination of the housing payments which a landlord might reasonably have been expected to charge, the rent officer may have regard to the level of housing payments in one adjoining local authority area or, if the rent officer considers it necessary, more than one adjoining local authority areas.
5. For the purposes of this Schedule—
 - (a) a housing payment is reasonable where it is not higher than the payment which the landlord might reasonably have been expected to obtain for the tenancy at the relevant time;
 - (b) accommodation is let by the same type of landlord where—
 - (i) in a case where the landlord of the accommodation in respect of which the determination is being made is a local authority, the landlord of the other accommodation is also a local authority; and
 - (ii) in a case where the landlord of the accommodation in respect of which the determination is being made is a provider of social housing other than a local authority, the landlord of the other accommodation is also a provider of social housing other than a local authority;
 - (c) accommodation is let at an Affordable Rent where—
 - (i) the rent is regulated under a standard by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008⁽¹⁾ ("the 2008 Act") which requires the initial rent to be set at no more than 80% of the local market rent (including service charges); or

(1) 2008 c.17. Section 194 was amended by S.I. 2010/844 and section 179 of, and Schedule 17 to, the Localism Act 2011 (c.20).

Status: This is the original version (as it was originally made).

- (ii) the accommodation is let by a local authority and, under arrangements between the local authority and the Homes and Communities Agency (as established by section 1 of the 2008 Act), the Greater London Authority or the Secretary of State, the rent payable is set on the same basis as would be the case if the rent were regulated under a standard set by the Regulator of Social Housing under section 194 of the 2008 Act which requires the initial rent to be set at no more than 80% of the local market rent (including service charges).