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## SCHEDULES

### SCHEDULE 11

Section 119.

#### OPTION MORTGAGES: AMENDMENTS OF PART II OF HOUSING SUBSIDIES ACT 1967

- 1 (1) In section 24 (right to opt for subsidy for certain loans in connection with dwellings) at the end of subsection (1) there shall be added the words “and
- (d) the loan is not one to which a direction under subsection (3A) of this section for the time being applies”.
- (2) In paragraph (c) of subsection (3) of that section (declaration by borrower as to use of land, etc.),—
- (a) for the words “and the land” there shall be substituted the words “that the amount of the loan will not exceed the appropriate limit determined under section 24A of this Act and that, before the expiry of the period of 12 months beginning on the date referred to in paragraph (b) of this subsection, the land”; and
- (b) for the words from “being the borrower” to “one of them”, in the second place where those words occur, there shall be substituted the words “or persons in such circumstances that the residence condition in section 24B of this Act is fulfilled”;
- and at the end of that paragraph there shall be added the words “and
- (d) in a case where the specified person or persons named in a declaration under paragraph (c) above is, are or include the borrower or all or any of the joint borrowers, that, if the borrower or, in the case of joint borrowers, any of them is married and is not treated for income tax purposes as living apart from his spouse, the borrower or, as the case may be, each of those joint borrowers and (in either case) his spouse have signed and delivered to the lender a declaration either that there is no existing loan—
- (i) the whole or any part of the interest on which is payable (whether alone or jointly with any other person) by the spouse, and
- (ii) in respect of which an option notice for the time being has effect or in respect of which a claim for relief has been or is to be made under section 75 of the Finance Act 1972 (relief for payment of interest), and
- (iii) which relates to, or was made with a view to the repayment of a previous loan which related to, land used wholly or mainly for the purposes of a dwelling (not being the dwelling to which the declaration under paragraph (c) above relates) which is that spouse's only or main residence or a caravan so used,
- or that such a loan does exist but the spouse intends that, within the period of 12 months beginning on the date referred to in

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paragraph (b) above, the dwelling referred to in sub-paragraph (iii) above will cease to be the spouse's only or main residence”.

(3) At the end of subsection (3) of that section there shall be added the following paragraphs—

- “(viii) the taking effect of a direction under subsection (3A) of this section with respect to the loan ;
- (ix) if subsection (5) of section 24B of this Act applies, the expiry of the period of one month beginning with the date on which the lender receives a notification (or, if he receives more than one notification, the first notification) under that subsection or, if he does not receive such a notification, the date on which the lender first becomes aware that the residence condition is not fulfilled as mentioned in that subsection ;
- (x) if subsection (6) of section 24B of this Act applies and the lender receives a notification in accordance with that subsection, the expiry of the period of twelve months beginning with the date specified in that notification, and if that subsection applies but the lender does not receive such a notification, the expiry of the period of one month beginning with the date on which the lender first becomes aware that the residence condition is not fulfilled as mentioned in that subsection ;
- (xi) if the lender becomes aware that a declaration under paragraph (c) or paragraph (d) of this subsection is false in a material particular, the expiry of the period of one month beginning with the date on which the lender first becomes so aware.”

(4) After subsection (3) of that section there shall be inserted the following subsections:

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“(3A) The Secretary of State may, after consultation with such qualifying lenders or bodies representative of qualifying lenders of any description as may appear to him appropriate, direct that subsidy in accordance with this Part of this Act shall not be available in the case of any loan to which the direction applies, being a loan falling within subsection (3B) below.

(3B) A loan is one in respect of which a direction may be made under subsection (3A) above if the terms of the repayment contract (as originally entered into or as subsequently varied) are such that the amount due from the borrower for any period by way of interest under the repayment contract is less than the total of the interest which accrues in respect of that period, so that part of the interest is treated as an addition to the capital outstanding or is otherwise carried forward.

(3C) In considering whether to make a direction under subsection (3A) above with respect to any loan, the Secretary of State shall follow such principles, and take account of such matters, as he may from time to time decide after the like consultation as is specified in that subsection.

(3D) A direction under subsection (3A) above may be made with respect to a particular loan or loans or any description of loans, and, in so far as the

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direction relates to a loan in respect of which an option notice has already been given, the direction shall specify a date (being a date after the giving of the direction) with effect from which the direction is to take effect with respect to any such loan.

(3E) Any provision of subsection (3A) or subsection (3C) above which imposes on the Secretary of State a duty to consult any persons or bodies appearing to him to be appropriate shall not be taken as implying that further consultation is required by the provision where the Secretary of State is satisfied that there was consultation before the coming into force of that subsection and in his opinion that consultation was sufficient for the purpose”.

(5) In subsection (4) of that section for the words from " conditions specified in subsection (3)(c)" to the end of the subsection there shall be substituted the words " conditions specified in paragraphs (c) and (d) of subsection (3) of this section there are satisfied such other conditions as may be specified in the direction ; and where any such direction has effect in relation to an option notice, the provisions of subsections (5) and (6) of section 24B of this Act shall apply as if the reference therein to the residence condition were a reference to such a condition as may be so specified ".

(6) After subsection (5) of that section there shall be inserted the following subsection:—

“(5A) In the case of an option notice to which a direction under subsection (5) of this section applies, paragraph (c) of subsection (3) of this section shall have effect as if for the words from " before the expiry " to " to be occupied " there were substituted the words " the land in question is being and will continue to be used wholly or partly for the purposes of a dwelling occupied”.

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After section 24 there shall be inserted the following sections:—

**“24A The appropriate limit for loans.**

(1) In relation to a loan in respect of which an option notice has been signed (in this section referred to as " the relevant loan ") the appropriate limit referred to in paragraph (c) of subsection (3) of section 24 of this Act is £25,000 reduced by the amount or, as the case may require, the aggregate amount outstanding by way of capital on the date referred to in paragraph (b) of that subsection in respect of every loan—

- (a) the whole or any part of the interest on which is payable (whether alone or jointly with any other person) by the borrower who signed the declaration under the said paragraph (c) or, in the case of joint borrowers, by any of the borrowers who signed that declaration or, where that borrower or any of those joint borrowers is married and is not treated for income tax purposes as living apart from his spouse, that spouse; and
- (b) which falls to be taken into account by virtue of subsection (2) below and is not to be disregarded by virtue of subsection (4) below.

(2) Subject to subsections (3) and (4) below, a loan falls to be taken into account under subsection (1) above if—

- (a) it is a loan in respect of which an option notice for the time being has effect; or
- (b) it is a loan to which Part I of Schedule 9 to the Finance Act 1972 (loans for purchase or improvement of land on which interest is

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eligible for relief in full) for the time being applies (either in respect of the whole loan or subject to any limit of amount), and the land or caravan referred to in that Part is not used in such circumstances that it falls within paragraph 4(1)(b) of Schedule 1 to the Finance Act 1974 (commercial lettings).

- (3) Without prejudice to section 34(2) of this Act, the reference in subsection (2)(b) above to Schedule 9 to the Finance Act 1972 is a reference to that Schedule either as amended by Schedule 1 to the Finance Act 1974 (restrictions on relief for interest) or (if interest on the loan is excepted from section 19(3) of that Act) as originally enacted ; and in the case of a loan to which the said Schedule 9 applies as originally enacted, the reference in subsection (2)(b) above to the use of land or a caravan in circumstances falling within paragraph 4(1)(b) of the said Schedule 1 shall be construed as a reference to use which would fall within that paragraph if that Schedule applied in relation to interest on the loan in question.
- (4) Notwithstanding anything in subsection (2) above, a loan (in this subsection referred to as a " previous loan ") which falls within paragraph (a) or paragraph (b) of that subsection shall be disregarded in determining the appropriate limit in relation to the relevant loan if—
  - (a) the relevant loan is made with a view to the repayment by means of the relevant loan of the amount outstanding on the previous loan ; or
  - (b) the previous loan is an existing loan which is specified in a declaration made for the purpose of satisfying, in relation to the relevant loan, the condition in section 24(3)(d) of this Act; or
  - (c) the previous loan was in connection with the only or main residence of a person who is, or is a qualifying relative of, the borrower or any of the joint borrowers under the relevant loan and the relevant loan is made for or in connection with any one or more of the purposes specified in section 24(1)(b) of this Act in such circumstances that the dwelling referred to in that section is to be used instead as that person's only or main residence.
- (5) In any case where the option notice in respect of the relevant loan is one to which a direction under section 24(5) of this Act applies, the preceding provisions of this section shall have effect subject to such modifications as may be prescribed.

#### **24B The residence condition.**

- (1) For the purposes of this Part of this Act, the residence condition is fulfilled with respect to a dwelling to which a declaration under section 24(3)(c) of this Act relates if and so long as—
  - (a) the dwelling is occupied wholly or partly as his only or main residence by the borrower himself or, in the case of joint borrowers, by each of them ; or
  - (b) at any time when the borrower or any joint borrower does not occupy the dwelling as mentioned in paragraph (a) above, the dwelling is so occupied by a qualifying relative of his.
- (2) For the purposes of this Part of this Act a person is a qualifying relative of a borrower (or a joint borrower) if he or she is—

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- (a) the borrower's spouse and is living apart from the borrower;
  - (b) the borrower's former spouse ;
  - (c) the mother of either the borrower or his spouse and is widowed or living apart from her husband or, in consequence of dissolution or annulment of marriage, is a single woman; or
  - (d) such a relative of the borrower or his spouse as is specified in subsection (3) below and is either over the age of 65 or incapacitated by infirmity from maintaining himself, in whole or in part.
- (3) The relatives referred to in subsection (2)(d) above are—
- (a) a parent or grandparent;
  - (b) a brother or sister who is over the age of 16; and
  - (c) a child or grandchild (in either case whether legitimate, adopted or illegitimate) who is over the age of 16.
- (4) A person shall be treated for the purposes of this section as living apart from his or her spouse if he or she would be so treated for income tax purposes.
- (5) If, after the delivery of a declaration under paragraph (c) of subsection (3) of section 24 of this Act (other than a declaration delivered in respect of an option notice to which a direction under subsection (5) of that section applies), the residence condition is not, within the period of 12 months specified in that paragraph, fulfilled with respect to the dwelling concerned, then, within the period of one month beginning on the day following the expiry of that period of 12 months, the borrower or, in the case of joint borrowers, each of them shall notify the lender in writing to that effect.
- (6) If, at any time after—
- (a) the delivery of a declaration under paragraph (c) of section 24(3) of this Act, and
  - (b) the residence condition has been fulfilled with respect to the dwelling concerned,
- the residence condition ceases to be so fulfilled, then, within the period of one month beginning on the date on which that condition first ceased to be so fulfilled, the borrower or, in the case of joint borrowers, each of them shall notify the lender in writing of the date on which the condition ceased, and of the fact that it has ceased, to be so fulfilled.
- (7) Any person who knowingly fails to notify the lender as required by subsection (5) or subsection (6) above shall, on conviction on indictment, be liable to imprisonment for a term not exceeding 2 years”.
- 3 (1) In section 26 (extension of right to opt for subsidy to certain other cases) in subsection (2)(b) after the words " this section " there shall be inserted the words " and to such modifications as may be prescribed ".
- (2) After subsection (4) of that section there shall be inserted the following subsection:—
- “(4A) In relation to a case where a self-build society, within the meaning of Part I of the Housing Act 1974, which is for the time being approved for the purposes of section 341A of the Income and Corporation Taxes Act 1970 borrows or has borrowed from a qualifying lender on the security of a freehold or leasehold estate of that society in Great Britain, the Secretary of State shall by regulations provide that this Part of this Act shall have effect

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with such adaptations and modifications of the provisions thereof (other than section 24(2)(b) and (c)), appearing to him to be appropriate or expedient, and subject to such special conditions appearing to him to be necessary or expedient, as may be prescribed by the regulations ; and in relation to such a society, the said section 24(2)(b) shall have effect as if—

- (a) the reference therein to the Income Tax Acts included a reference to the Corporation Tax Acts ; and
- (b) in sub-paragraph (ii) thereof, for the reference to income tax there were substituted a reference to corporation tax.”

4 In subsection (1) of section 27 (qualifying lenders) at the end of paragraph (e) there shall be inserted the following paragraph:—

“(f) the Housing Corporation”;

and the words from " and for the purposes " to the end of the subsection shall be omitted.

5 (1) In paragraph (a) of subsection (1) of section 28 (calculation of the aggregate amount which, apart from Part II of the Housing Subsidies Act 1967, would have become due from the borrower) after the words " the aggregate sum which " there shall be inserted the words " taking account of subsection (1A) of this section but otherwise ".

(2) After subsection (1) of that section there shall be inserted the following subsection:—

“(1A) In any case where, under the terms of a repayment contract (as originally entered into or as subsequently varied) the amount due from the borrower for any period by way of interest under the repayment contract is less than the total of the interest which accrues in respect of that period so that part of the interest is treated as an addition to the capital outstanding or is otherwise carried forward then, for the purpose of determining the aggregate amount of the subsidy in respect of the loan, there shall be treated as becoming due from the borrower in any period the whole of the interest which accrues in that period.”

6 After section 28 there shall be inserted the following section:—

**“28A Recovery of subsidy in certain cases.**

- (1) If a declaration under paragraph (c) or paragraph (d) of subsection (3) of section 24 of this Act is false in a material particular, the Secretary of State may recover from the borrower or, as the case may be, jointly and severally from the borrowers an amount equal to the total of the payments received by the lender by virtue of subsection (2)(a)(ii) of that section in relation to the loan in respect of which the declaration was made.
- (2) If, in a case where subsection (5) of section 24B of this Act applies, the lender does not receive a notification under that subsection, the Secretary of State may recover from the borrower or, as the case may be, jointly and severally from the borrowers, an amount equal to the total of the payments received by the lender as mentioned in subsection (1) above after the expiry of the period of 2 months beginning on the day following the expiry of the period of 12 months specified in the said subsection (5).
- (3) If, in a case where subsection (6) of section 24B of this Act applies, the lender does not receive a notification under that subsection, the Secretary of State may recover from the borrower or, as the case may be, jointly and severally

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from the borrowers, an amount equal to the total of the payments received by the lender as mentioned in subsection (1) above after the expiry of the period of 2 months beginning with the date on which the condition specified in the said subsection (6) first ceased to be fulfilled.”

7 At the end of section 32(1) (interpretation) there shall be inserted the following definition:—

“‘prescribed’ means prescribed by regulations made by statutory instrument by the Secretary of State ; and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament”.