

SCHEDULE 5

Article 8

RENT OFFICERS' DETERMINATIONS

Calculation of the appropriate amount

1. The appropriate amount—
 - (a) in a case to which paragraph (2), (4) or (5) of article 8 applies, shall be calculated in accordance with paragraph 2, 3 or 4 as appropriate;
 - (b) in a case to which paragraph (3) of that article applies, shall be calculated in accordance with paragraph 8.

Rent officer's reasonable market rent determination

2. Subject to paragraph 7, where the rent officer determines a reasonable market rent, and does not make a determination under paragraph 2 of Schedule 1 of the Rent Officers Order, and the amount of eligible rent does not exceed the reasonable market rent less ineligible amounts, the appropriate amount in respect of the period beginning with the relevant date and ending with the termination date shall be 97 per cent. of that part of the housing benefit qualifying expenditure attributable to the reasonable market rent less ineligible amounts.

3. Subject to paragraph 7, where the rent officer determines a reasonable market rent, and does not make a determination under paragraph 2 of Schedule 1 of the Rent Officers Order, and the amount of eligible rent exceeds the reasonable market rent less ineligible amounts, the appropriate amount in respect of the period beginning with the relevant date and ending with the termination date shall be—

- (a) where the allowance granted is the same as or is less than the excess—
 - (i) except where paragraph 6 applies, nil per cent. of the housing benefit qualifying expenditure attributable to such allowance,
 - (ii) where paragraph 6 applies, 50 per cent. of the housing benefit qualifying expenditure attributable to such allowance;
- (b) where the allowance granted is greater than the excess—
 - (i) except where paragraph 6 applies, nil per cent. of the housing benefit qualifying expenditure which is equal to the excess,
 - (ii) where paragraph 6 applies, 50 per cent. of the housing benefit qualifying expenditure which is equal to the excess,

and in either case 97 per cent. of the housing benefit qualifying expenditure which remains after deducting the excess.

Rent officer's reasonable market rent and size determination

4.—(1) Subject to paragraphs 5 and 7, where the rent officer makes a determination under paragraph 2 of Schedule 1 of the Rent Officers Order that the dwelling exceeds the size criteria for its occupiers and he determines a reasonable market rent for that dwelling and a comparable rent for suitably sized accommodation, the appropriate amount in respect of the period beginning on the relevant date and ending on the termination date shall be the appropriate amounts determined in accordance with the relevant sub-paragraphs of this paragraph.

(2) For the period of 13 weeks beginning on the relevant date or, if shorter, for the period beginning on that date and ending on the termination date, if the amount of the eligible rent does not exceed the reasonable market rent less ineligible amounts, the appropriate amount shall be 97 per

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cent. of that part of the housing benefit qualifying expenditure attributable to the reasonable market rent less ineligible amounts.

(3) For the period of 13 weeks beginning on the relevant date or, if shorter, for the period beginning on that date and ending on the termination date, if the amount of the eligible rent exceeds the reasonable market rent less ineligible amounts the appropriate amount shall be—

- (a) where the allowance granted is the same as or is less than the excess—
 - (i) except where paragraph 6 applies, nil per cent. of the housing benefit qualifying expenditure attributable to such an allowance,
 - (ii) where paragraph 6 applies, 50 per cent. of the housing benefit qualifying expenditure attributable to such allowance;
- (b) where the allowance granted is greater than the excess—
 - (i) except where paragraph 6 applies, nil per cent. of the housing benefit qualifying expenditure which is equal to the excess,
 - (ii) where paragraph 6 applies, 50 per cent. of the housing benefit qualifying expenditure which is equal to the excess,and in either case 97 per cent. of the housing benefit qualifying expenditure which remains after deducting the excess.

(4) For the period after the end of that 13 week period, if the amount of the eligible rent does not exceed the comparable rent for suitably sized accommodation less ineligible amounts, the appropriate amount shall be 97 per cent. of that part of the housing benefit qualifying expenditure attributable to the comparable market rent for suitably sized accommodation less ineligible amounts.

(5) For the period after the end of that 13 week period, if the amount of the eligible rent exceeds the comparable rent for suitably sized accommodation less ineligible amounts, the appropriate amount shall be—

- (a) where the allowance granted is the same as or is less than the excess—
 - (i) except where paragraph 6 applies, nil per cent. of the housing benefit qualifying expenditure attributable to such allowance,
 - (ii) where paragraph 6 applies, 50 per cent. of the housing benefit qualifying expenditure attributable to such allowance;
- (b) where the allowance granted is greater than the excess—
 - (i) except where paragraph 6 applies, nil per cent. of the housing benefit qualifying expenditure which is equal to the excess,
 - (ii) where paragraph 6 applies, 50 per cent. of the housing benefit qualifying expenditure which is equal to the excess,and in either case 97 per cent. of the housing benefit qualifying expenditure which remains after deducting the excess.

Modification where determination is made as to size

5.—(1) Subject to paragraph 7, where the rent officer had made a determination under paragraph 2 of Schedule 1 to the Rent Officers (Additional Functions) Order 1989(1) or, as the case may be, paragraph 2 of Schedule 1 to the Rent Officers (Additional Functions) (Scotland) Order 1989(2) before paragraph (1) of article 2 of the Amendment Order came into force and it is probable that had the amendment been in force at the time of the determination the rent officer would either—

(1) [S.I. 1989/590](#); relevant amending instrument is [S.I. 1989/1430](#).

(2) [S.I. 1989/578](#); relevant amending instrument is [S.I. 1989/1446](#).

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(a) not have made the determination that the dwelling exceeded the size criteria; or
(b) have determined a higher comparable rent for suitably sized accommodation,
the appropriate amount in respect of the period beginning on the relevant date shall be calculated in accordance with sub-paragraphs (2) or (3), as the case may be, unless it is impracticable for an authority to calculate its subsidy otherwise than by reference to the determination actually made by the rent officer.

(2) In a case to which paragraph 5(1)(a) applies, if the amount of the eligible rent exceeds the reasonable market rent less ineligible amount, the appropriate amount shall be—

- (a) where the allowance granted is the same as or is less than the excess—
 - (i) except where paragraph 6 applies, nil per cent. of the housing benefit qualifying expenditure attributable to such allowance,
 - (ii) where paragraph 6 applies, 50 per cent. of the housing benefit qualifying expenditure attributable to such allowance;
- (b) where the allowance granted is greater than the excess—
 - (i) except where paragraph 6 applies, nil per cent. of the housing benefit qualifying expenditure which is equal to the excess,
 - (ii) where paragraph 6 applies, 50 per cent. of the housing benefit qualifying expenditure which is equal to the excess,and in either case 97 per cent. of the housing benefit qualifying expenditure which remains after deducting the excess.

(3) In a case to which paragraph 5(1)(b) applies, the comparable rent for suitably sized accommodation shall be increased by an amount determined in accordance with the formula—

$$\frac{B}{A} \times (C - D),$$

and if the amount of the eligible rent exceeds the comparable rent for suitably sized accommodation so increased, less ineligible amounts, the appropriate amount shall be—

- (a) where the allowance granted is the same as or is less than the excess—
 - (i) except where paragraph 6 applies, nil per cent. of the housing benefit qualifying expenditure to such allowance,
 - (ii) where paragraph 6 applies, 50 per cent. of the housing benefit qualifying expenditure attributable to such allowance;
 - (b) where the allowance granted is greater than the excess—
 - (i) except where paragraph 6 applies, nil per cent. of the housing benefit qualifying expenditure which is equal to the excess,
 - (ii) where paragraph 6 applies, 50 per cent. of the housing benefit qualifying expenditure which is equal to the excess,and in either case 97 per cent. of the housing benefit qualifying expenditure which remains after deducting the excess,
- (4) In sub-paragraph (3) of this paragraph—

“A” means the number equal to the number of rooms in excess of the size criteria which the rent officer has determined as suitable;

“B” means the number equal to the number of rooms in excess of the size criteria which it is probable the rent officer would have determined as suitable had the amendment been in force;

“C” means the reasonable market rent; and

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“D” means, but for this paragraph, the comparable rent for suitably sized accommodation; and
“the Amendment Order” means the Rent Officers (Additional Functions) (Amendment) Order 1989(3) or, as the case may be, the Rent Officers (Additional Functions) (Scotland) Amendment Order 1989(4).

6. This paragraph applies where an authority has not considered it appropriate to treat a persons eligible rent as reduced under regulation 11 or 12 of the Regulations (restrictions on unreasonable rents or on rent increases).

Modification where rent is inclusive of domestic rates

7. Where—

- (a) before 1st April 1990 the rent officer had determined a reasonable market or a comparable rent for suitably sized accommodation, as the case may be; and
- (b) an amount was deducted from the eligible rent under regulation 10(3)(a) and (6) of the Housing Benefit Regulations as in force immediately before 1st April 1990 in respect of domestic rates, the reasonable market rent or, as the case may be, the comparable rent for suitably sized accommodation used as the basis of the calculation in paragraphs 2, 3, 4 and 5 of this Schedule, as the case may be, shall be increased by an amount equivalent to the amounts so deducted from the eligible rent in respect of domestic rates in respect of the period beginning on the relevant date and ending on the termination date.

Failure to apply for a rent officer determination

8. For any period in respect of which article 8(3) applies, the appropriate amount shall be nil per cent. of so much of the housing benefit qualifying expenditure as is attributable to any allowances granted.

Relevant date

9. For the purposes of this Schedule—

- (a) in a case where a claim for rent allowance is made on or after 1st April 1990, the relevant date is the date on which entitlement to benefit commences;
- (b) in a case where—
 - (i) on 1st April 1990 there is current on that date a claim for an allowance in relation to the dwelling; and
 - (ii) there is also current on that date a rent officer’s determination in relation to the dwelling, the relevant date is 1st April 1990; and for the purposes of this head, a rent officer’s determination includes a determination, interim determination, further determination or re-determination made under the Rent Officers (Additional Functions) Order 1989(5), save that where a determination made under paragraph 2 of Schedule 1 to the Rent Officers (Additional Functions) Order 1989 had not taken effect by 31 March 1990, the relevant date will be 13 weeks after the relevant date determined under the Housing Benefit (Subsidy) Order 1990(6);
- (c) in a case where—
 - (i) during the relevant year there has been a relevant change relating to a rent allowance within the meaning of regulation 12A(8) of the Housing Benefit Regulations; and

(3) S.I. 1989/1430.

(4) S.I. 1989/1446.

(5) S.I. 1989/590; amended by S.I. 1989/1430.

(6) S.I. 1990/785. See Schedule 4, paragraph 3.

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- (ii) by virtue of regulation 12A of the Housing Benefit Regulations (requirement to refer to rent officer) an application for a determination in respect of that dwelling is required;

the relevant date is the date on which the relevant change of circumstances takes effect for the purposes of regulation 68 of the Housing Benefit Regulations (date on which change of circumstances is to take effect) or, if the relevant change of circumstances does not affect entitlement to an allowance, the Monday following the date on which the relevant change occurred;

- (d) in a case where—

- (i) the dwelling is in a hostel; and
- (ii) by virtue of regulation 12A(2)(a) of the Housing Benefit Regulations (requirement to refer rent officers) an application for a determination in respect of that dwelling is not required; and
- (iii) there was current, on 9th October 1989, a benefit period relating to a claim for an allowance in accordance with sub-paragraph 7(f)(iii) of Schedule 4 to the Housing Benefit (Subsidy) Order 1990 (Rent Officers' Determinations); and
- (iv) during the period beginning with 9th October 1989 and ending on 31st March 1990 there has been neither a relevant change of circumstances nor the start of a new benefit period; and
- (v) there is current on 1st April 1990, a benefit period beginning before 9th October 1989 relating to a claim for an allowance in relation to the dwelling,

the relevant date is the date (on or after 1st April 1990) on which any change of circumstances takes effect for the purposes of regulation 68 of the Housing Benefit Regulations⁽⁷⁾ (date on which change of circumstances is to take effect) or the date on which the benefit period subsequent to the benefit period current on 1st April 1990, begins, whichever is the earlier;

- (e) in a case where—

- (i) immediately before 10th April 1989 one of the occupiers of the dwelling was in receipt of income support under the Act and his applicable amount fell to be calculated in accordance with regulation 20 (applicable amounts for persons in board and lodging accommodation and hostels) or regulation 71(1)(b) (applicable amounts in urgent cases) of, or paragraph 17 of Schedule 7 (persons from abroad) to, the Income Support (General) Regulations 1987⁽⁸⁾, as then in force; and
- (ii) during the period beginning with 17th April 1989 and ending on 31st March 1990 there has neither been a relevant change of circumstances nor the start of a new benefit period; and
- (iii) there is, on 1st April 1990, a benefit period beginning before 9th October 1989 relating to a claim for an allowance in relation to the dwelling,

the relevant date is the date on which any change of circumstances takes effect for the purposes of regulation 68 of the Housing Benefit Regulations (date on which change of circumstances is to take effect) or the date on which the benefit period subsequent to the benefit period current on 1st April 1990, begins, whichever is the earlier;

- (f) in a case where—

⁽⁷⁾ Regulation 68 was amended by Part 1 of Schedule 2 to [S.I. 1990/546](#).

⁽⁸⁾ [S.I. 1987/1967](#).

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- (i) the dwelling is an assured tenancy by virtue of the Housing Act 1988⁽⁹⁾ granted on or after 15th January 1989 but before 1st April 1989, or an assured tenancy by virtue of the Housing (Scotland) Act 1988⁽¹⁰⁾ granted on or after 2nd January 1989 but before 1st April 1989, as the case may be, and
- (ii) there was, current on 1st April 1989, a benefit period relating to a claim for an allowance in relation to the dwelling; and
- (iii) during the period beginning with 1st April 1989 and ending on 31st March 1990 there has neither been a relevant change of circumstances nor the start of a new benefit period; and
- (iv) there is, current on 1st April 1990, a benefit period relating to a claim for an allowance in relation to the dwelling,

the relevant date is the date on which a relevant change of circumstances takes effect for the purposes of regulation 68 of the Housing Benefit Regulations (date on which change of circumstances is to take effect) or the date on which the benefit period subsequent to the benefit period current on 1st April 1990 begins, whichever is the earlier;

- (g) in a case where—
 - (i) the tenancy is not an excluded tenancy within the meaning of Schedule 1A to the Housing Benefit Regulations (excluded tenancies); and
 - (ii) by virtue of regulation 12A of the Housing Benefit Regulations (requirement to refer to rent officers) an application for a determination in respect of that dwelling is not required; but nevertheless
 - (iii) the authority applies for a rent officer's determination in respect of that dwelling;

the relevant date is the Monday following the date on or after 1st April 1990 on which the authority applied to the rent officer for the determination;
- (h) in a case where a rent officer makes both an interim determination and a further determination in accordance with paragraph 5 of Schedule 1 to the Rent Officers Order, the relevant date is—
 - (i) if the reasonable market rent determined under the further determination is lower than the amount determined under the interim determination, the date determined under the foregoing sub-paragraphs of this paragraph as appropriate;
 - (ii) if the reasonable market rent determined under the further determination is lower than the amount determined under the interim determination, the Monday following the date on which the further determination is made by the rent officer;
- (i) in a case where the rent officer has made a re-determination under paragraph 1 of Schedule 3 to the Rent Officers Order, the relevant date is—
 - (i) if the reasonable market rent or, as the case may be, comparable rent for suitably sized accommodation determined under the re-determination is higher than or equal to the amount determined under the original determination, the date determined under the foregoing sub-paragraphs of this paragraph as appropriate;
 - (ii) if the reasonable market rent or, as the case may be, comparable rent for suitably sized accommodation determined under the re-determination is lower than the amount determined under the original determination, the Monday following the date on which the re-determination is made by the rent officer.

⁽⁹⁾ 1988 c. 50.

⁽¹⁰⁾ 1988 c. 43.

Termination date

10. For the purposes of this Schedule “termination date” means—

- (a) 31st March 1991; or
- (b) where the rent officer’s determination replaces a determination made in relation to the same dwelling, the relevant date of the new determination by the rent officer in relation to the same dwelling as defined by paragraphs 9(a) or (g) of this Schedule; or
- (c) the date on which the allowance ceases to be paid in respect of the tenancy,

whichever is earlier.

Apportionment

11. For the purposes of this Schedule where more than one person is liable to make payments in respect of a dwelling the “comparable rent for suitably sized accommodation” or “reasonable market rent” shall be apportioned on the same basis as such payments are apportioned under regulation 10(5) of the Housing Benefit Regulations (rent).

Interpretation

12. In this Schedule, unless the context otherwise requires—

“comparable rent for suitably sized accommodation” means the rent determined by a rent officer under paragraph 2(2) of Schedule 1 to the Rent Officers Order;

“ineligible amounts” means—

- (a) any amount which the rent officer determines under paragraph 3 of Schedule 1 to the Rent Officers Order is attributable to the provision of services ineligible to be met by housing benefit, except to the extent that it relates to fuel charges, plus the amount in respect of such charges ineligible to be met under Part II of Schedule 1 to the Housing Benefit Regulations (payments in respect of fuel charges);
- (b) for a period beginning on or after 5th September 1989, in England and Wales, and 6th September 1989, in Scotland, any amount in respect of amounts ineligible to be met by housing benefit under paragraph 1A of Schedule 1 to the Housing Benefit Regulations
- (c) where the dwelling is a hostel within the meaning of regulation 12A of the Regulations (requirement to refer to rent officers), for the period beginning on or after 9th October 1989, any amount ineligible to be met by housing benefit under paragraph 1 of Schedule 1 to the Housing Benefit Regulations (ineligible service charges), other than under subparagraphs (d) to (f) of that paragraph,

“reasonable market rent” means the rent determined by a rent officer under paragraph 1 of Schedule 1 to the Rent Officers Order;

and other expressions have the same meanings as in the Rent Officers Order.