SCHEDULES

SCHEDULE 2

Section 26

FURTHER PROVISION ABOUT SOCIAL HOUSING RENTS

PART 1

PROVISION ABOUT LEVELS OF RENTS

Tenancy of existing social housing

1 (1) This paragraph applies in relation to a tenant of social housing in England if—
- (a) the tenancy begins after the beginning of 8 July 2015, and
- (b) the accommodation was social housing during the period starting with the beginning of 8 July 2015 and ending with the beginning of the tenancy.

(2) This paragraph does not apply if paragraph 3 applies.

(3) The registered provider must secure that the maximum amount of rent payable to the registered provider by the tenant in respect of—
- (a) the first relevant year, where the tenancy begins before or at the beginning of the first relevant year,
- (b) the part of the relevant year falling after the beginning of the tenancy, where the tenancy begins after the beginning of the first relevant year and not at the beginning of a later relevant year,
- (c) the following relevant year, where the tenancy begins as described in paragraph (b), or
- (d) the relevant year, other than the first relevant year, at the beginning of which the tenancy begins,

is no more than would be payable if the tenant were paying rent at the higher of the social rent rate and the assumed rent rate in respect of that relevant year or that part of a relevant year.

(4) The social rent rate, in relation to the rent payable by a tenant of social housing in respect of the first or a subsequent relevant year, is the rate found by—
- (a) determining what would have been the rate of formula rent for that social housing at the beginning of 8 July 2015,
- (b) determining the rate of that rent when expressed by reference to a period of 12 months (if necessary), and
- (c) at the beginning of each relevant year (up to and including the relevant year in question), making a 1% reduction in the rate.

(5) The assumed rent rate, in relation to the rent payable by a tenant of social housing in respect of the first or a subsequent relevant year, is the rate found by—
- (a) determining the rate of the rent that—

(i) was payable at the beginning of 8 July 2015 by the person who was the tenant of that social housing, in a case where 8 July 2015 is the relevant day,

(ii) was payable at the beginning of the relevant day by the person who was the tenant of that social housing, in a case where the relevant day falls after 8 July 2015 and the person who was the tenant at the beginning of 8 July 2015 continued as tenant until at least that later time,

(iii) is likely to have been payable at the beginning of the relevant day by the person who was the tenant at the beginning of 8 July 2015 if the person's tenancy had continued until at least that later time, in a case where the relevant day falls after 8 July 2015 and the person who was the tenant at the beginning of 8 July 2015 ceased to be the tenant before that later time, or

(iv) is likely to have been payable at the beginning of the relevant day by a tenant of that social housing, in a case where there was no tenant at that time and sub-paragraph (iii) does not apply,

(b) determining the rate of that rent when expressed by reference to a period of 12 months (if necessary), and

(c) at the beginning of each relevant year (up to and including the relevant year in question), making a 1% reduction in the rate.

(6) If—

(a) the tenancy comes to an end after part of a relevant year to which sub-paragraph (3) applies has elapsed, or

(b) sub-paragraph (3)(a), (b), (c) or (d) ceases to apply in relation to the tenancy after part of the relevant year in question has elapsed,

sub-paragraph (3) has effect in relation to the part of the relevant year falling before that time with a proportionate reduction in the maximum amount of rent payable to the registered provider by the tenant.

(7) The Secretary of State may by regulations define "formula rent" and may, in particular, provide that it is a rent set in accordance with a method specified in the regulations.

(8) Regulations under sub-paragraph (7) may, in particular, make provision by reference to—

(a) the standard published in January 2015 by the regulator under section 194(2A) of the Housing and Regeneration Act 2008 (the powers of the regulator to set standards relating to levels of rent),

(b) *Rent Standard Guidance* published in January 2015 by the regulator, or

(c) *Guidance on Rents for Social Housing* published in May 2014 by the Secretary of State.

Tenancy of new social housing

2 (1) This paragraph applies in relation to a tenant of social housing in England if—

(a) the tenancy begins after the beginning of 8 July 2015, and

(b) paragraph 1(1)(b) is not satisfied as regards the accommodation.

(2) This paragraph does not apply if paragraph 3 applies.

(3) If the tenancy begins before or at the beginning of the first relevant year, the registered provider must secure that the maximum amount of rent payable to the registered provider by the tenant in respect of the first relevant year is the amount that would be payable by the tenant if the social rent rate applied during that relevant year.

(4) If the tenancy begins after the beginning of the first relevant year, the registered provider must secure that—

(a) the maximum amount of rent payable to the registered provider by the tenant in respect of the part of the relevant year falling after the tenancy begins, where the tenancy begins after part of a relevant year has elapsed,

(b) the maximum amount of rent payable to the registered provider by the tenant in respect of the following relevant year, where the tenancy begins as described in paragraph (a), or

(c) the maximum amount of rent payable to the registered provider by the tenant in respect of the relevant year, where the tenancy begins at the beginning of a relevant year,

is the amount that would be payable if the social rent rate applied during that period.

(5) If—

(a) the tenancy comes to an end after part of a relevant year to which sub-paragraph (3) or (4) applies has elapsed, or

(b) sub-paragraph (3) or (4)(a), (b) or (c) ceases to apply in relation to the tenancy after part of the relevant year in question has elapsed,

sub-paragraph (3) or (4) has effect in relation to the part of the relevant year falling before that time with a proportionate reduction in the maximum amount of rent payable to the registered provider by the tenant.

Tenancy of affordable rent housing

3 (1) This paragraph applies in relation to a tenant of social housing in England if—

(a) the tenancy begins after the beginning of 8 July 2015, and

(b) the accommodation is affordable rent housing (see paragraph 4).

(2) If the tenancy begins before or at the beginning of the first relevant year, the registered provider must secure that the maximum amount of rent payable to the registered provider by the tenant in respect of the first relevant year is the higher of—

(a) the amount found by—

(i) determining the rate of the market rent for that social housing when the tenancy begins, and

(ii) determining the amount that is 80% of the amount that would be payable in respect of a year if that rate had applied during the year, and

(b) the amount that would be payable in respect of the first relevant year if the tenant were paying rent at the social rent rate.

(3) If the tenancy begins after the beginning of the first relevant year, the registered provider must secure that—

(a) the maximum amount of rent payable to the registered provider by the tenant in respect of the part of the relevant year falling after the tenancy begins, where the tenancy begins after part of a relevant year has elapsed, or

(b) the maximum amount of rent payable to the registered provider by the tenant in respect of the relevant year, where the tenancy begins at the beginning of a relevant year,

is the higher of the amounts described in sub-paragraph (4).

(4) The amounts referred to in sub-paragraph (3) are—

(a) the amount found by—

(i) determining the rate of the market rent for that social housing when the tenancy begins,

(ii) determining the amount that is 80% of the amount that would be payable in respect of a year if that rate had applied during the year, and

(iii) (if necessary) reducing that amount in proportion to the part of that relevant year that elapsed before the tenancy begins, and

(b) the amount that would be payable in respect of the period in question if the tenant were paying rent at the social rent rate.

(5) If the tenancy begins after the beginning of the first relevant year and not at the beginning of the second or third relevant year, the registered provider must secure that the maximum amount of rent payable to the registered provider by the tenant in respect of the relevant year following the one in which the tenancy begins is the higher of—

(a) the amount that would be found under sub-paragraph (4)(a) if sub-paragraph (4)(a)(iii) were disregarded, and

(b) the amount that would be found under sub-paragraph (4)(b) if the period in question were the whole of the relevant year in which the tenancy begins,

reduced by 1%.

(6) If—

(a) the tenancy comes to an end after part of a relevant year to which sub-paragraph (2), (3) or (5) applies has elapsed, or

(b) sub-paragraph (2), (3) or (5) ceases to apply in relation to the tenancy after part of the relevant year in question has elapsed,

sub-paragraph (2), (3) or (5) has effect in relation to the part of the relevant year falling before that time with a proportionate reduction in the maximum amount of rent payable to the registered provider by the tenant.

(7) The market rent is to be determined using a RICS valuation method.

4 (1) This paragraph has effect for the purposes of paragraph 3.

(2) Affordable rent housing is accommodation identified by regulations made by the Secretary of State as accommodation that may be let as social housing at an affordable rent.

(3) Regulations under sub-paragraph (2) may, in particular, make provision for identifying accommodation that may be let as social housing at an affordable rent by reference to an agreement or arrangement relating to the provision of social housing by a registered provider.

(4) Regulations made by virtue of sub-paragraph (3) may, for example, make provision by reference to—

(a) an agreement relating to the exercise of a power under section 5 or 19 of the Housing and Regeneration Act 2008 (powers of the Homes and Communities Agency as regards the provision of housing or other land and financial assistance);

(b) an agreement relating to the exercise of a power under section 30 or 34 of the Greater London Authority Act 1999 (general and subsidiary powers of the Greater London Authority);

(c) an agreement between a local authority and the Secretary of State under section 11(6) of the Local Government Act 2003 (agreement about capital receipts payable to the Secretary of State);

(d) an arrangement between a local authority and the Homes and Communities Agency, the Greater London Authority or the Secretary of State under which rents for social housing may be set on a particular basis.

(5) Regulations under sub-paragraph (2) may define "affordable rent" and may, in particular, provide that it is a rent set in accordance with a method specified, or of a description specified, in the regulations.

(6) The methods that may be specified in the regulations include, but are not limited to, methods that provide for a maximum level of rent when accommodation is initially let to be a certain percentage of market rent in certain cases or circumstances.

(7) A reference to an amount of market rent includes a reference to an amount payable by way of service charge.

(8) "RICS valuation method" means a method for determining market rent that complies with standards for valuation published from time to time by the Royal Institution of Chartered Surveyors.

PART 2

EXCEPTIONS AND EXEMPTIONS

Exceptions

5 (1) Part 1 does not apply in relation to a tenant of social housing if—

(a) the accommodation is low cost home ownership accommodation;

(b) the accommodation is both low cost rental accommodation and low cost home ownership accommodation (see section 71 of the Housing and Regeneration Act 2008).

(2) Part 1 does not apply in relation to social housing of a registered provider if, where the registered provider's interest in the property that consists of or includes the social housing is subject to a mortgage—

(a) the mortgagee is in possession of the interest in the property or the part of the property that includes the social housing, in the exercise of the mortgagee's powers to enforce the mortgage,

(b) a receiver has been appointed in relation to the interest in the property or the part of the property that includes the social housing by—

(i) the mortgagee, in the exercise of the mortgagee's powers to enforce the mortgage, or

(ii) the court, in connection with enforcing the mortgage,

and that appointment is in force, or

(c) a person has been appointed by the mortgagee, in the exercise of the mortgagee's powers to enforce the mortgage (including, in the case of a floating charge which relates to the interest in the property, the power under paragraph 14 of Schedule B1 to the Insolvency Act 1986), to exercise powers that include a power to sell or otherwise dispose of the interest in the property or the part of the property that includes the social housing and that appointment is in force.

(3) If—

(a) a registered provider's interest in property that consists of or includes social housing was made subject to a mortgage, and

(b) the interest in the property, or the interest in the part that includes the social housing, is sold or otherwise disposed of after the coming into force of Part 1 by—

(i) the mortgagee, in the exercise of the mortgagee's powers to enforce the mortgage,

(ii) a receiver appointed by the mortgagee or by the court as described in sub-paragraph (2)(b), or

(iii) a person appointed by the mortgagee as described in sub-paragraph (2)(c),

Part 1 ceases to apply in relation to that social housing at the time of that sale or other disposal.

(4) In sub-paragraphs (2) and (3)—

"mortgage" includes a charge or other security;

"mortgagee" includes a person who is entitled to take steps to enforce a charge or other security.

(5) The Secretary of State may by regulations provide for Part 1 not to apply in cases prescribed by the regulations.

(6) Regulations under sub-paragraph (5) may in particular make provision about—

(a) tenants of a description prescribed by the regulations;

(b) tenancies of a description prescribed by the regulations;

(c) accommodation of a description prescribed by the regulations;

(d) accommodation which satisfies conditions prescribed by the regulations, including conditions relating to the funding of its building or refurbishment;

(e) events of a description prescribed by the regulations.

(7) Regulations made by virtue of sub-paragraph (6)(a) may include provision about tenants whose income exceeds, or whose household's incomes exceed, an amount prescribed by the regulations during a period prescribed by the regulations.

(8) Regulations made by virtue of sub-paragraph (6)(e) may include provision about periods during a tenancy when the rent payable is temporarily reduced or waived.

Exemptions

6 (1) The regulator may issue a direction mentioned in sub-paragraph (2) in respect of a private registered provider if—

(a) the condition in sub-paragraph (4) or (5) is satisfied, and

(b) the Secretary of State consents.

(2) The directions are—

(a) a direction that Part 1 does not apply in relation to a private registered provider specified in the direction;

(b) a direction that Part 1 is to have effect in relation to a private registered provider specified in the direction as if a reference in Part 1 to the social rent rate were a reference to that rate increased by the percentage specified in the direction;

(c) a direction that Part 1 is to have effect in relation to a private registered provider specified in the direction as if paragraph 1(4)(c) or (5)(c)—

(i) were omitted,

(ii) required the lesser reduction specified in the direction, or

(iii) required the increase specified in the direction;

(d) a direction that Part 1 is to have effect in relation to a private registered provider specified in the direction as if—

(i) in paragraph 3(5), "reduced by 1%" were omitted,

(ii) paragraph 3(5) required the lesser reduction specified in the direction, or

(iii) paragraph 3(5) required the increase specified in the direction.

(3) The regulator may specify in a direction—

(a) the period during which it is to have effect, and

(b) the social housing in relation to which it is to have effect.

(4) The condition in this sub-paragraph is that the regulator considers that complying with Part 1 would jeopardise the financial viability of the private registered provider.

(5) The condition in this sub-paragraph is that the circumstances of the private registered provider satisfy requirements prescribed in regulations made by the Secretary of State.

(6) The regulator may publish a document about the measures that the regulator considers could be taken by a private registered provider to comply with Part 1 and to avoid jeopardising its financial viability.

(7) The Secretary of State may issue a direction mentioned in sub-paragraph (8) in respect of a local authority if the condition in sub-paragraph (10) or (11) is satisfied.

(8) The directions are—

(a) a direction that Part 1 does not apply in relation to a local authority specified in the direction;

(b) a direction that Part 1 is to have effect in relation to a local authority specified in the direction as if a reference in Part 1 to the social rent rate were a reference to that rate increased by the percentage specified in the direction;

(c) a direction that Part 1 is to have effect in relation to a local authority specified in the direction as if paragraph 1(4)(c) or (5)(c)—

(i) were omitted,

(ii) required the lesser reduction specified in the direction, or

(iii) required the increase specified in the direction;

(d) a direction that Part 1 is to have effect in relation to a local authority specified in the direction as if—

(i) in paragraph 3(5), "reduced by 1%" were omitted,

(ii) paragraph 3(5) required the lesser reduction specified in the direction, or

(iii) paragraph 3(5) required the increase specified in the direction.

(9) The Secretary of State may specify in a direction—

(a) the period during which it is to have effect, and

(b) the social housing in relation to which it is to have effect.

(10) The condition in this sub-paragraph is that the Secretary of State considers that the local authority would be unable to avoid serious financial difficulties if it were to comply with Part 1.

(11) The condition in this sub-paragraph is that the circumstances of the local authority satisfy requirements prescribed in regulations by the Secretary of State.

(12) The Secretary of State may publish a document about the measures that the Secretary of State considers could be taken by a local authority in order to comply with Part 1 and to avoid serious financial difficulties.

PART 3

GENERAL

Regulations

7 (1) Regulations under this Schedule must be made by statutory instrument.

(2) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of either House of Parliament.

Guidance

8 (1) The Secretary of State may issue guidance about determining, for the purposes of paragraph 1(5)(a)(iii) or (iv), what rate of rent is likely to have been payable by a tenant of particular social housing at a particular time.

(2) Registered providers must have regard to guidance issued under sub-paragraph (1).

Interpretation

9 (1) In this Schedule "the relevant day", in relation to social housing, means—

(a) 8 July 2015, or

(b) if the Secretary of State consents to the use of a different day ("the permitted review day") in the case of that social housing, the permitted review day.

(2) A consent given for the purposes of sub-paragraph (1) may be a consent given for a particular case or for a description of cases.