

SCHEDULE 1

Regulation 15

To be inserted after Schedule 1 to the principal Regulations

“SCHEDULE 1A

Regulation 10A

Determinations of Rent Payable

Part I

Determinations

Significantly high rents

1.—(1) The Executive shall determine whether, in its opinion, the rent payable under the tenancy of the dwelling at the relevant time is significantly higher than the rent which the landlord might reasonably have been expected to obtain under the tenancy at that time.

(2) If the Executive determines under sub-paragraph (1) that the rent is significantly higher, the Executive shall also determine the rent which the landlord might reasonably have been expected to obtain under the tenancy at the relevant time.

(3) When making a determination under this paragraph, the Executive shall have regard to the level of rent under similar tenancies of similar dwellings in the locality (or as similar as regards tenancy, dwelling and locality as is reasonably practicable) and shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy.

Size and rent

2.—(1) The Executive shall determine whether the dwelling, at the relevant time, exceeds the size criteria for the occupiers.

(2) If the Executive determines that the dwelling exceeds the size criteria, it shall also determine the rent which a landlord might reasonably have been expected to obtain, at the relevant time, for a tenancy which is—

- (a) similar to the tenancy of the dwelling;
- (b) on the same terms other than the term relating to the amount of rent, and
- (c) of a dwelling which is in the same locality as the dwelling, but which—
 - (i) accords with the size criteria for the occupiers;
 - (ii) is in a reasonable state of repair, and
 - (iii) corresponds in other respects, in the Executive’s opinion, as closely as is reasonably practicable to the dwelling.

(3) When making a determination under sub-paragraph (2), the Executive shall have regard to the same matter and make the same assumption as specified in paragraph 1(3), except that in judging the similarity of other tenancies and dwellings the comparison shall be with the tenancy of the second dwelling referred to in sub-paragraph (2) and shall assume that no one who would have been entitled to housing benefit had sought or is seeking that tenancy.

Exceptionally high rents

3.—(1) The Executive shall determine whether, in its opinion, the rent payable for the tenancy of the dwelling at the relevant time is exceptionally high.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (2) In sub-paragraph (1) “rent payable for the tenancy” means—
- (a) where a determination is made under paragraph 2(2) the rent determined under that paragraph;
 - (b) where no determination is so made and a determination is made under paragraph 1(2), the rent determined under that paragraph, and
 - (c) in any other case, the rent payable under the tenancy.

(3) If the Executive determines under sub-paragraph (1) that the rent is exceptionally high, the Executive shall also determine the highest rent, which is not an exceptionally high rent and which a landlord might reasonably have been expected to obtain at the relevant time (on the assumption that no one who would have been entitled to housing benefit had sought or is seeking the tenancy) for an uncontrolled tenancy of a dwelling which—

- (a) is in the same locality as the dwelling;
- (b) has the same number of bedrooms and rooms suitable for living in as the dwelling (or, where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria), and
- (c) is in a reasonable state of repair.

(4) For the purpose of determining whether a rent is an exceptionally high rent under this paragraph, the Executive shall have regard to the levels of rent under uncontrolled tenancies of dwellings which—

- (a) are in the same locality as the dwelling (or in as similar a locality as is reasonably practicable), and
- (b) have the same number of bedrooms and rooms suitable for living in as the dwelling (or, in a case where the dwelling exceeds the size criteria for the occupiers, accord with the size criteria).

Local reference rents

4.—(1) The Executive shall make a determination of a local reference rent in accordance with the formula—

$$R = \frac{H + L}{2}$$

where—

R is the local reference rent;

H is the highest rent, in the Executive’s opinion, —

- (a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an uncontrolled tenancy of a dwelling which meets the criteria in sub-paragraph (2), and
- (b) which is not an exceptionally high rent, and

L is the lowest rent, in the Executive’s opinion, —

- (a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an uncontrolled tenancy of a dwelling which meets the criteria in sub-paragraph (2), and
- (b) which is not an exceptionally low rent.

(2) The criteria are—

- (a) that the dwelling under the uncontrolled tenancy—
 - (i) is in the same locality as the dwelling;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (ii) is in a reasonable state of repair, and
 - (iii) has the same number of bedrooms and rooms suitable for living in as the dwelling (or, in a case where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria), and
- (b) if the tenant does not have the use under the tenancy of the dwelling of more than one bedroom or room suitable for living in—
- (i) that under the uncontrolled tenancy the tenant does not have the use of more than one bedroom or room suitable for living in;
 - (ii) if the rent under the tenancy includes payments for board and attendance and the Executive considers the amount fairly attributable to board and attendance is a substantial part of the rent, that a substantial part of the rent under the uncontrolled tenancy is fairly attributable to board and attendance;
 - (iii) if paragraph (ii) does not apply and the tenant shares a kitchen or toilet with a person other than a member of his household, a non-dependant or a person who pays rent to the tenant, that the uncontrolled tenancy provides for the tenant to share a kitchen or toilet, and
 - (iv) if paragraphs (ii) and (iii) do not apply, that the circumstances described in paragraphs (ii) and (iii) do not apply in relation to the uncontrolled tenancy.
- (3) When ascertaining H and L under sub-paragraph (1), the Executive—
- (a) shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy, and
 - (b) shall exclude the amount of any rent which, in the Executive’s opinion, is fairly attributable to the provision of services which are ineligible to be met by housing benefit.
- (4) In sub-paragraph (2)—
- “bedroom or room suitable for living in” does not include a room which the tenant shares with any person other than—
- (a) a member of his household;
 - (b) non-dependant, or
 - (c) a person who pays rent to the tenant.
- (5) In sub-paragraph (3), “services” means services performed or facilities (including the use of furniture) provided for, or rights made available to, the tenant, but not—
- (a) the provision of meals (including the preparation of meals or provision of unprepared food), or
 - (b) the provision of services to which any service charge for fuel relates.

Services

- 5.—(1) Where the dwelling is not in a hostel and the Executive makes a determination under—
- (a) paragraph 1(1) (where no determination is to be made under paragraph 1(2), 2(2) or 3(3));
 - (b) paragraph 1(2) (where no determination is to be made under paragraph 2(2) or 3(3));
 - (c) paragraph 2(2) (where no determination is to be made under paragraph 3(3)), or
 - (d) paragraph 3(3),

it shall also determine whether, in its opinion, any of the rent at the relevant time is fairly attributable to the provision of services which are ineligible to be met by housing benefit and, if so, the amount which in its opinion is so attributable (except where it considers the amount is negligible).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) In sub-paragraph (1)—

“rent”, in relation to a determination under paragraph 1(2), 2(2) or 3(3), means (as the case may be) the rent determined under paragraph 1(2), 2(2) or 3(3) and, in relation to a determination under paragraph 1(1), means the rent payable under the tenancy at the relevant time, and “services” has the meaning given in paragraph 4(5).

Part II

Assumptions, etc

Medical, nursing and other care services

6. Where the rent includes any of the charges specified in paragraph 1(*d*), (*e*) or (*f*) of Part I of Schedule 1, the Executive shall assume that—

- (a) the items to which the charges relate were not to be provided or made available, and
- (b) the rent payable under the tenancy at the relevant time is such amount as is specified in the application as the rent which would have been payable under the tenancy at that time if those items were not to be provided or made available.

Housing associations etc.

7.—(1) Where the landlord is a housing association or a charity, the Executive shall assume that the landlord is not such a body.

(2) The Executive shall not take into account the rent under any tenancy where the landlord is a housing association or where the landlord is a charity and the dwelling is provided by the landlord in the pursuit of its charitable purposes.

(3) In this paragraph—

“charity” has the same meaning as in the Charities Act 1964(1).

Part III

Indicative Rent Levels

8.—(1) The Executive shall determine the indicative rent level for each category described in sub-paragraph (3) in accordance with the following formula—

$$I = \frac{H + 3L}{4}$$

where—

I is the indicative rent level;

H is the highest rent, in the Executive’s opinion—

- (a) which a landlord might reasonably be expected to obtain at the time the determination is being made for an uncontrolled tenancy of a dwelling meeting the criteria in sub-paragraph (2), and
- (b) which is not an exceptionally high rent, and

(1) 1964 c. 33 (N.I.)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- L is the lowest rent, in the Executive’s opinion—
- (a) which a landlord might reasonably be expected to obtain at the time the determination is being made for an uncontrolled tenancy of a dwelling meeting the criteria in sub-paragraph (2), and
 - (b) which is not an exceptionally low rent.
- (2) The criteria are that—
- (a) the dwelling is in a reasonable state of repair, and
 - (b) the dwelling and tenancy accord with the category to which the determination relates.
- (3) The categories for the purposes of this paragraph are—
- (a) a dwelling where the tenant does not have use of more than one room and where a substantial part of the rent under the tenancy is fairly attributable to board and attendance;
 - (b) a dwelling where the tenant does not have use of more than one room, the tenancy provides for him to share a kitchen or toilet and head (a) does not apply;
 - (c) a dwelling where the tenant does not have use of more than one room and where heads (a) and (b) do not apply;
 - (d) a dwelling where the tenant does not have use of more than two rooms and where none of heads (a) to (c) applies;
 - (e) a dwelling where the tenant does not have use of more than three rooms and where none of heads (a) to (d) applies;
 - (f) a dwelling where the tenant does not have use of more than four rooms and where none of heads (a) to (e) applies;
 - (g) a dwelling where the tenant does not have use of more than five rooms and where none of heads (a) to (f) applies, and
 - (h) a dwelling where the tenant does not have use of more than six rooms and where none of heads (a) to (g) applies.
- (4) When ascertaining H and L under sub-paragraph (1), the Executive—
- (a) shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy, and
 - (b) shall exclude the amount of any rent which, in the Executive’s opinion, is fairly attributable to the provision of services which are ineligible to be met by housing benefit.
- (5) In this paragraph—
- “room” means a bedroom or room suitable for living in and in heads (a), (b) and (c) of sub-paragraph (3) does not include a room which the tenant shares with any person other than—
- (a) a member of his household;
 - (b) a non-dependant of the tenant, or
 - (c) a person who pays rent to the tenant.
- “services” has the meaning given in paragraph 4(5).

Part IV

Size Criteria

9. One bedroom or room suitable for living in shall be allowed for each of the following categories of occupier (and each occupier shall come within only the first category for which he is eligible)—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) a married couple or an unmarried couple;
- (b) a person who is not a child;
- (c) two children of the same sex;
- (d) two children who are less than ten years old;
- (e) a child.

10. The number of rooms (excluding any allowed under paragraph 9) suitable for living in allowed are—

- (a) if there are less than four occupiers, one;
- (b) if there are more than three and less than seven occupiers, two, and
- (c) in any other case, three.

Part V

Special Cases

Houseboats

11. Where a determination relates in whole or in part to mooring charges for a houseboat, this Schedule applies in relation to that determination (or, as the case may be, to that part which relates to those charges) with the following modifications—

- (a) references to a tenancy, a tenancy of a dwelling or an uncontrolled tenancy are references to an agreement under which those charges are payable (and references to a landlord and a tenant shall be construed accordingly), and
- (b) no determination shall be made under paragraph 2 of Part I (size criteria) and references to the dwelling exceeding the size criteria shall not apply.

Mobile homes

12. Where a determination relates in whole or in part to payments in respect of the site on which a caravan or a mobile home stands, this Schedule applies in relation to that determination (or, as the case may be, that part which relates to those payments) with the following modifications—

- (a) references to a tenancy, a tenancy of a dwelling or an uncontrolled tenancy are references to an agreement under which those payments are payable (and references to a landlord and a tenant shall be construed accordingly), and
- (b) no determination shall be made under paragraph 2 of Part I (size criteria) and references to the dwelling exceeding the size criteria shall not apply.

Rental purchase agreements

13. Where a determination relates to a rental purchase agreement, the agreement is to be treated as if it were a tenancy.

Interpretation

14. In this Schedule—

“uncontrolled tenancy” means a tenancy which is not a protected or statutory tenancy within the meaning of the Rent (Northern Ireland) Order 1978(2) or a secure tenancy within the meaning of Article 25 of the Housing (Northern Ireland) Order 1983(3);

“determination” means a determination made in accordance with Part I or Part III of this Schedule;

“dwelling” means any residential accommodation whether or not consisting of the whole or part of a building and whether or not comprising separate and self-contained premises;

“hostel” has the same meaning as in regulation 12A;

“occupier” means a person (whether or not identified by name) who is stated to occupy the dwelling;

“relevant time” means the time the application for the determination is made or, if earlier, the tenancy ends;

“size criteria” means the standards relating to bedrooms and rooms suitable for living in specified in this Schedule;

“tenancy” includes—

- (a) a licence, and
- (b) a prospective tenancy or licence, and

references to a tenant, a landlord or any other expression appropriate to a tenancy shall be construed accordingly.”

SCHEDULE 2

Regulation 15

To be inserted after Schedule 1A to the principal Regulations

“SCHEDULE 1B

Regulation 10A(3)(b) & 12A(2)(b)

Excluded Tenancies

1. An excluded tenancy is any tenancy to which any of the following paragraphs apply.
- 2.—(1) Subject to sub-paragraphs (2) and (3), where the Executive 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) Sub-paragraph (1) shall not apply unless the determination mentioned in that sub-paragraph is made within the period of 12 months ending on the date on which the Executive received the claim in question.
- (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;

(2) S.I.1978/1050 (N.I. 20)

(3) S.I. 1983/1118 (N.I. 15)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (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) in a case where the Executive has made a determination for the purposes of paragraph 2 of Part I of Schedule 1A (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.
3. This paragraph applies where the landlord is a registered housing association, except in a case where the Executive consider that—
- (a) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependants of his and any person paying rent to him), or
 - (b) the rent payable for that dwelling is unreasonably high.
4. This paragraph applies to a tenancy which is a protected or statutory tenancy within the meaning of the Rent (Northern Ireland) Order 1978⁽⁴⁾.
5. This paragraph applies to a housing association tenancy which is a housing association tenancy to which Article 3 of the Housing (Northern Ireland) Order 1992⁽⁵⁾ applies.
- 6.—(1) Subject to sub-paragraph (2) this paragraph applies to a tenancy in respect of a dwelling comprised in land which has been disposed of under Article 88 of the Housing (Northern Ireland) Order 1981⁽⁶⁾.
- (2) This paragraph shall not apply to a tenancy to which sub-paragraph (1) refers if there has been an increase in rent since the disposal occurred.
7. In this Schedule expressions have the same meaning as in regulation 12A(5) and, in the case of a determination under regulation 12A(1), any reference to a “tenancy” shall be taken 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.”

(4) S.I. 1978/1050 (N.I. 20)
(5) S.I. 1992/1725 (N.I. 15)
(6) S.I. 1981/156 (N.I. 3)