

## SCHEDULE 2

Regulation 14

### Excluded tenancies

1. An excluded tenancy is any tenancy to which any of the following paragraphs applies.
  - 2.—(1) Subject to the following sub-paragraphs, where a rent officer 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) For the purposes of any claim, notification, request or application under regulation 14(1) (“the later application”), a tenancy shall not be an excluded tenancy by virtue of sub-paragraph (1) by reference to a rent officer’s determination made in consequence of an earlier claim, notification, request or application (“the earlier application”) where—
    - (a) the earlier and later applications were made in respect of the same claimant or different claimants; and
    - (b) the earlier application was made more than 52 weeks before the later application was made.
  - (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;
    - (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) there has been a rent increase under a term of the tenancy and the term under which that increase was made was either included in the tenancy at the time when the application for that determination was made (or was a term substantially the same as such a term) and that determination was not made under paragraph 1(2), 2(2) or 3(3) of Schedule 1 to the Rent Officers Order;
    - (d) in a case where the rent officer has made a determination under paragraph 2(2) of Schedule 1 to the Rent Officers Order (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; or
      - (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;
    - (e) the claimant is a young individual, except in a case where the determination mentioned in sub-paragraph (1) was, or was made in conjunction with, a determination of a single room rent pursuant to paragraph 5 of Schedule 1 to the Rent Officers Order on or after 2nd July 2001.
- 3.—(1) This paragraph applies where the landlord is a registered housing association, except in a case where the local authority 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

*Status: This is the original version (as it was originally made).*

- (b) the rent payable for that dwelling is unreasonably high.
- (2) Where the circumstances set out in head (a) or (b) of sub-paragraph (1) above exist, the authority shall so state in their application for a determination.
4. This paragraph applies to a tenancy entered into before—
- (a) in Scotland, 2nd January 1989; and
  - (b) in any other case, 15th January 1989.
5. This paragraph applies to a regulated tenancy within the meaning of—
- (a) in Scotland, the Rent (Scotland) Act 1984(1); and
  - (b) in any other case, the Rent Act 1977(2).
6. This paragraph applies to a housing association tenancy which—
- (a) in Scotland, is a tenancy to which Part 6 of the Rent (Scotland) Act 1984 applies; and
  - (b) in any other case, is a housing association tenancy to which Part 6 of the Rent Act 1977 applies.
7. This paragraph applies to a protected occupancy or statutory tenancy within the meaning of the Rent (Agriculture) Act 1976(3).
8. This paragraph applies to a tenancy at a low rent within the meaning of Part 1 of the Landlord and Tenant Act 1954(4) or Schedule 10 to the Local Government and Housing Act 1989(5).
9. This paragraph applies to a tenancy of any dwelling which is a bail hostel or probation hostel approved by the Secretary of State under section 9(1) of the Criminal Justice and Court Services Act 2000(6).
10. This paragraph applies to a tenancy of a housing action trust established under Part 3 of the Housing Act 1988(7).
- 11.—(1) Subject to sub-paragraphs (2) and (3) this paragraph applies to a tenancy—
- (a) in respect of a dwelling comprised in land which has been disposed of under section 32 of the Housing Act 1985(8) or section 12 of the Housing (Scotland) Act 1987(9);
  - (b) in respect of a dwelling comprised in land which has been disposed of with the consent required by section 43 of the Housing Act 1985(10) or section 12 of the Housing (Scotland) Act 1987;
  - (c) in respect of which the fee simple estate has been acquired, under the right conferred by Chapter 2 of Part 1 of the Housing Act 1996(11), otherwise than from a housing action trust within the meaning of Part 3 of the Housing Act 1988, or in respect of which the house has been acquired under the right conferred by Part 3 of the Housing (Scotland) Act 1988; or

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(1) 1984 c. 58.

(2) 1977 c. 42.

(3) 1976 c. 80.

(4) 1954 c. 56.

(5) 1989 c. 42.

(6) 2000 c. 43.

(7) 1988 c. 50.

(8) 1985 c. 68; section 32 was amended by section 140 of and Schedule 7 to the Housing Act 1988 (c. 50); section 227 of and Schedule 19 to the Housing Act 1996 (c. 52) and S.I. 1997/74.

(9) 1987 c. 26.

(10) 1985 c. 68; section 43 was amended by section 132 and 140 of and Schedule 17 to the Housing Act 1988 (c. 50); section 194 of and Schedule 12 to the Local Government and Housing Act 1989 (c. 42); section 78 of and Schedule 10 to the Environment Act 1995 (c. 25) and section 227 of and Schedule 9 to the Housing Act 1996.

(11) 1996 c. 52.

- (d) in respect of a dwelling disposed of under the New Towns (Transfer of Housing Stock) Regulations 1990<sup>(12)</sup> to a person who is an approved person for the purposes of disposal under those Regulations or in respect of a dwelling disposed of pursuant to powers contained in the New Towns (Scotland) Act 1968<sup>(13)</sup> to a housing association.
- (2) This paragraph shall not apply to a tenancy to which sub-paragraph (1) refers if—
  - (a) there has been an increase in rent since the disposal or acquisition, as the case may be, occurred; and
  - (b) the local authority stated in the application for determination that—
    - (i) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependant of his and any person paying rent to him); or
    - (ii) the rent payable for that dwelling is unreasonably high.
- (3) Where the disposal or acquisition, as the case may be, took place on or after 7th October 2002, sub-paragraph (2)(b) shall apply to a tenancy to which sub-paragraph (1) refers as if head (i) were omitted.

**12.** In this Schedule, “rent” shall be construed in accordance with paragraph (10) of regulation 14 (interpretation of “tenancy” and other expressions appropriate to a tenancy) and, subject to that paragraph, has the same meaning—

- (a) in Scotland, as in section 25 of the Housing (Scotland) Act 1988<sup>(14)</sup>, except that the reference to the house in subsection (3) shall be construed as a reference to the dwelling;
  - (b) in any other case, as in section 14 of the Housing Act 1988<sup>(15)</sup>, except that the reference to the dwelling-house in subsection (4) shall be construed as a reference to the dwelling,
- and—
- (i) other expressions have the same meanings as in regulation 14(10);
  - (ii) in the case of a determination by a rent officer pursuant to a request for such a determination under regulation 14(1)(e), 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.

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<sup>(12)</sup> S.I. 1990/1700; amended by S.I. 1990/2366 and 1991/1281.

<sup>(13)</sup> 1968 c. 16. Relevant amendments are contained in the Enterprise and New Towns (Scotland) Act 1990 (c. 35) section 33.

<sup>(14)</sup> 1988 c. 43; section 25 was amended by S.I. 1993/658.

<sup>(15)</sup> 1988 c. 50; section 14 was amended by section 104 of and Schedule 8 to the Housing Act 1996 (c. 52) and S.I. 1993/651.