
STATUTORY INSTRUMENTS

1994 No. 582 (S. 25)

HOUSING, SCOTLAND

**The Rent Officers (Additional Functions)
(Scotland) Amendment Order 1994**

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| <i>Made</i> | - - - - | <i>3rd March 1994</i> |
| <i>Laid before Parliament</i> | | <i>11th March 1994</i> |
| <i>Coming into force</i> | - - | <i>1st April 1994</i> |

The Secretary of State, in exercise of the powers conferred upon him by section 70 of the Housing (Scotland) Act 1988⁽¹⁾, and sections 113 and 114 of the Local Government Finance Act 1992⁽²⁾, and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Rent Officers (Additional Functions) (Scotland) Amendment Order 1994 and shall come into force on 1st April 1994.

Amendment of Rent Officers (Additional Functions) (Scotland) Order 1990

2. The Rent Officers (Additional Functions) (Scotland) Order 1990⁽³⁾ is amended as follows:—

(a) for paragraph (3) of article 5⁽⁴⁾ substitute—

“(3) No determination shall be made under paragraph 2A of Schedule 1 to this Order if the tenancy is of residential accommodation (within the meaning of regulation 7(3) of the Housing Benefit (General) Regulations 1987)⁽⁵⁾ or of a hostel (within the meaning of regulation 12A of those Regulations)⁽⁶⁾.”; and

(b) in Schedule 1—

(i) insert after paragraph 2—

(1) 1988 c. 43.

(2) 1992 c. 14.

(3) S.I.1990/396, amended by S.I. 1991/533 and 1993/646.

(4) Paragraph (3) was inserted by S.I. 1993/646.

(5) S.I. 1987/1971: regulation 7(3) was inserted by the Housing Benefit (General) Amendment No.3 Regulations 1990 (S.I. 1990/2564).

(6) Regulation 12A was inserted by the Housing Benefit (General) Amendment Regulations 1990 (S.I. 1990/546) and amended by the Housing Benefit (General) Amendment Regulations 1993 (S.I. 1993/317).

“2A.—(1) The rent officer shall determine whether, in his opinion, the rent payable under the tenancy of the dwelling at the relevant time is exceptionally high having regard to the levels of rent under assured tenancies in the registration area in which the dwelling is situated.

(2) In sub-paragraph (1)—

“registration area” has the same meaning as in Part V of the Rent (Scotland) Act 1984(7); and

“rent payable under the tenancy” means—

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

(3) If the rent officer—

- (a) determines under sub-paragraph (1) that the rent is exceptionally high, and
- (b) is satisfied that, for the purpose of making comparisons, there is a sufficient number of dwellings in the same locality—
 - (i) which have the same number of bedrooms and other rooms suitable for living in as the dwelling, (or, in a case where the dwelling does not accord with the size criteria for the occupiers, the same number of such bedrooms and other rooms as do so accord),
 - (ii) which are in a reasonable state of repair, and
 - (iii) which are let on assured tenancies at rents which are not exceptionally high rents,

the rent officer shall also determine the highest rent (which is not an exceptionally high rent) for a tenancy of such a dwelling which a landlord might reasonably have been expected to obtain at the relevant time (on the same assumption as in paragraph 1(1)).

(4) When considering for the purposes of sub-paragraph (3) whether a rent is an exceptionally high rent, the rent officer shall have regard to the same matter as in sub-paragraph (1).

(5) In this paragraph “assured tenancy” has the same meaning as in the Housing (Scotland) Act 1988 except that it includes a tenancy which would be an assured tenancy but for section 12(2) of, as read with paragraph 9 of Schedule 4 to, that Act and a licence which would be an assured tenancy (within the extended meaning given by this paragraph) were it not a licence.”;

(ii) in paragraph 3(1) for “paragraph 1(2), 2(2) or (where no determination is to be made under paragraph 1(2)) paragraph 1(1)” substitute—

“(a) paragraph 1(1) (where no determination is to be made under paragraph 1(2), 2(2) or 2A(3)),

- (b) paragraph 1(2) (where no determination is to be made under paragraph 2(2) or 2A(3)),
- (c) paragraph 2(2) (where no determination is to be made under paragraph 2A(3)), or
- (d) paragraph 2A(3)”;
- (iii) in paragraph 3(2) for “a determination under paragraph 1(2) or 2(2) means the rent determined under paragraph 1(2) or 2(2)” substitute “a determination under paragraph 1(2), 2(2) or 2A(3) means the rent determined under paragraph 1(2), 2(2) or 2A(3)”; and
- (iv) in paragraph 5 for “paragraph 1 or 3” substitute “paragraph 1, 2A or 3”.
- (c) In paragraph 1(a) of Schedule 2 for “(within the meaning of Part II of the Social Security Act 1986)” substitute—
 - “(within the meaning of Part VII of the Social Security Contributions and Benefits Act 1992)(8)

Amendment of Rent Officers (Additional Functions) (Scotland) Amendment Order 1993

3. Paragraph (3) of article 2 of the Rent Officers (Additional Functions) (Scotland) Amendment Order 1993(9) is hereby revoked.

Transitional provision

4. The amendments made by this Order do not have effect in a case where—
- (a) an application is made for a determination before the date this Order comes into force, or
 - (b) an application is made for a re-determination where the determination was made before this Order comes into force.

St Andrew’s House,
Edinburgh
3rd March 1994

James Douglas Hamilton

(8) 1992 c. 4.
(9) S.I. 1993/646.

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Rent Officers (Additional Functions) (Scotland) Order 1990 which conferred functions on rent officers in connection with housing benefit and rent allowance subsidy.

The main amendment is in article 2(b)(i) of the Order and requires rent officers, if applied to by a local authority, to make determinations and redeterminations about whether the rent payable under a tenancy or licence of a dwelling is exceptionally high. Exceptions to the requirement are described in the substitution made by article 2(a) for paragraph (3) of article 5 in the 1990 Order (which dealt with council tax). The Order also makes consequential amendments and a transitional provision and removes a spent provision in the Rent Officers (Additional Functions) (Scotland) Amendment Order 1993.