

1989 No. 578 (S.65)

HOUSING, SCOTLAND

The Rent Officers (Additional Functions) (Scotland)
Order 1989

Made - - - - 23rd March 1989

Coming into force 1st April 1989

The Secretary of State, in exercise of the powers conferred on him by section 70 of the Housing (Scotland) Act 1988(a), and of all other powers enabling him in that behalf, hereby makes the following Order, a draft of which has been laid before and approved by a resolution of each House of Parliament:

Citation and commencement

1. This Order may be cited as the Rent Officers (Additional Functions) (Scotland) Order 1989 and shall come into force on 1st April 1989.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“determination” means a determination (including an interim and a further determination) in accordance with Schedule 1 to this Order;

“dwelling” has the same meaning as in the Social Security Act 1986(b);

“excluded tenancy” means a tenancy of a category listed in Schedule 2 to this Order;

“local authority” has the same meaning as it has in the Social Security Act 1986 in relation to Scotland;

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

“rent” has the same meaning as in section 25 of the Housing (Scotland) Act 1988, except that the reference to the house in subsection (3) shall be construed as a reference to the dwelling;

“size criteria” means the standards relating to bedrooms and rooms suitable for living in specified in Schedule 3 to this Order;

“tenancy” includes any other right of occupancy and references to a tenant, a landlord or any other expression appropriate to a tenancy shall be construed accordingly.

(2) In this Order any reference to a notice or application is to a notice or application in writing, and any notice by a rent officer may be sent by post.

Additional Functions

3.—(1) Where, in connection with housing benefit and rent allowance subsidy, a local authority applies to a rent officer for determinations relating to a tenancy of a dwelling, the rent officer shall (subject to article 5) make the determinations and give notice in accordance with Schedule 1 to this Order.

(a) 1988 c.43.

(b) 1986 c.50.

(2) If a rent officer needs further information in order to make a determination, he shall serve notice on the local authority requesting that information and until he receives it paragraph (1) shall not apply to the making of that determination.

4. If, within the period of 10 weeks beginning with the date on which the local authority was given notice of a determination, the local authority applies (in connection with housing benefit and rent allowance subsidy) to a rent officer for a re-determination, a rent officer (subject to article 5) shall make the re-determination and give notice in accordance with Schedule 4 to this Order and a rent officer whose advice is sought as provided for in that Schedule shall give that advice.

5.—(1) No determination or re-determination shall be made if the application for it is withdrawn or relates to an excluded tenancy.

(2) No determination or re-determination shall be made under paragraph 1 of Schedule 1 (or that paragraph as applied by Schedule 4) if the tenancy is an assured tenancy and—

- (a) the rent payable under the tenancy on the date the application for the determination (or, as the case may be, re-determination) was received was an amount determined under section 34 of the Housing (Scotland) Act 1988 or,
- (b) the rent so payable on that date was an amount determined under section 25 of that Act and that rent took effect within the period of 12 months ending with the date the application was received.

St. Andrew's House, Edinburgh
23rd March 1989

James Douglas-Hamilton
Parliamentary Under Secretary of State,
Scottish Office

DETERMINATIONS**Rent Determinations**

1.—(1) The rent officer shall determine whether, in his opinion, the rent payable under the tenancy of the dwelling at the time the application for the determination is made is significantly higher than the rent which the landlord might reasonably be expected to obtain under the tenancy at that time, having 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), but on the assumption that no person who would have been entitled to housing benefit had sought or is seeking the tenancy.

(2) If the rent officer determines under sub-paragraph (1) that the rent is significantly higher, the rent officer shall also determine the rent which the landlord might reasonably be expected to obtain under the tenancy at the time the application for a determination is made, having regard to the same matter and on the same assumption as in sub-paragraph (1).

Size and Rent Determinations

2.—(1) The rent officer shall determine whether the dwelling exceeds the size criteria for its occupiers.

(2) If the rent officer determines that the dwelling exceeds the size criteria, the rent officer shall also determine the rent which a landlord might reasonably be expected to obtain, at the time the application for the determination is made, for a tenancy which is similar to the tenancy of the dwelling, on the same terms (other than the term relating to the amount of rent), and of a dwelling which is in the same locality as the dwelling, but which—

- (a) accords with the size criteria for the occupiers;
- (b) is in a reasonable state of repair; and
- (c) corresponds in other respects, in the rent officer's opinion, as closely as is reasonably practicable to the dwelling.

(3) When making a determination under paragraph 2(2), the rent officer shall have regard to the same matter and make the same assumption as in paragraph 1(1), 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 paragraph 2(2) and the assumption shall be made in relation to that tenancy.

Services Determinations

3.—(1) Where the rent officer makes a determination under paragraph 1(2) or 2(2), he shall also determine whether, in his opinion, any of the rent is fairly attributable to the provision of services which are ineligible to be met by housing benefit and, if so, the amount which in his opinion is so attributable (except where he considers the amount is negligible).

(2) In sub-paragraph (1) "rent" means the rent determined under paragraph 1(2) or 2(2); and "services" means services performed or facilities (including the use of furniture) provided for, or rights made available to, the tenant.

Interim and Further Determinations

4. If notice of a determination under paragraph 1 or 3 is not given to the local authority within the 5 day period mentioned in paragraph 5(a) solely because the rent officer intends to arrange an inspection of the dwelling before making such a determination, the rent officer shall make an interim determination and a further determination.

Notifications

5. The rent officer shall give notice to the local authority of a determination—

- (a) except in the case of a further determination, within the period of 5 working days beginning with the date on which the rent officer received the application or, where the rent officer requests further information under article 3(2), with the date on which he received the information, or as soon as practicable after that period.
- (b) in the case of a further determination within the period of 20 working days beginning with the date on which notice of the interim determination was given to the local authority, or as soon as practicable after that period.

6.—(1) If the rent officer becomes aware that the tenancy is an excluded tenancy, the rent officer shall give the local authority notice that it is such a tenancy.

(2) If the rent officer is precluded by article 5(2) from making a determination or a re-determination under paragraph 1 (or that paragraph as applied by Schedule 4), the rent officer shall give the local authority notice of the rent determined by the rent assessment committee.

EXCLUDED TENANCIES

1. A tenancy for which a rent officer has made a determination (other than an interim determination) within the 12 months ending on the date the rent officer received the application for a new determination (or a tenancy of the same dwelling on terms which are substantially the same, other than the term relating to the amount of rent, as the terms of that tenancy were at the time of the determination) unless since the earlier application for a determination was made –

- (a) the number of occupiers of the dwelling has changed;
- (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); or
- (c) there has been a rent increase under a term of the tenancy which was in effect when the earlier application for the determination was made (and that determination was not made under paragraph 1(2) or 2(2) of Schedule 1 and any re-determination of that determination under Schedule 4 was not made under either of those sub-paragraphs as applied by Schedule 4), or under a term substantially the same as such a term.

2. An assured tenancy where the landlord is a registered housing association within the meaning of the Housing Associations Act 1985(a), unless the local authority states in the application for determinations that the circumstances in regulation 11(2)(a) or (c) of the Housing Benefit (General) Regulations 1987(b) exist.

3. A tenancy entered into before the relevant date where there is, current on that date, a benefit period (within the meaning of regulation 66 of the Housing Benefit (General) Regulations 1987) relating to a claim for housing benefit in relation to the tenancy–

- (a) unless and until a change of circumstances takes effect (within the meaning of regulation 68 of those Regulations) provided it takes effect after 16th April 1989, or
- (b) until the benefit period ends (or if it ends before 17th April 1989, the next benefit period ends).

4. A tenancy entered into before 2nd January 1989.

5. A regulated tenancy within the meaning of the Rent (Scotland) Act 1984(c).

6. A tenancy to which Part VI of that Act applies.

7. In paragraph 3 “relevant date” means

- (a) except where (b) applies 1st April 1989;
- (b) in the case of a tenancy where one of the occupiers of the dwelling immediately before 10th April 1989 is in receipt of income support under the Social Security Act 1986 and whose applicable amount immediately before that date is calculated in accordance with regulation 20 or 71(1)(b) of, or paragraph 17 of Schedule 7 to the Income Support (General) Regulations 1987(d), 10th April 1989.

(a) 1985 c.69.

(b) S.I. 1987/1971; relevant amending instrument is S.I. 1989/416.

(c) 1984 c.58.

(d) S.I. 1987/1967; relevant amending instruments are S.I. 1988/663 and 1445.

SIZE CRITERIA

1. One bedroom shall be allowed for each of the following categories of occupiers (and each occupier shall come within only the first category for which he is eligible)–

- (a) a married couple or an unmarried couple (within the meaning of Part II of the Social Security Act 1986),
- (b) an adult,
- (c) two children of the same sex,
- (d) two children who are less than ten years old,
- (e) a child.

2. The number of rooms (excluding any allowed as a bedroom under paragraph 1) suitable for living in allowed are–

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

RE-DETERMINATIONS

1. Schedules 1 to 3 (except paragraph 4 of Schedule 1) shall apply in relation to a re-determination as they apply to a determination, subject to the following:
 - (a) references in Schedule 1 to the time of an application for a determination shall be references to the time of the application for the original determination; and
 - (b) for sub-paragraphs (a) and (b) of paragraph 5 of Schedule 1 there shall be substituted "within the period of 20 working days beginning with the date of receipt of the application for a re-determination, or as soon as is reasonably practicable after that period."

2. The rent officer making the re-determination shall seek and have regard to the advice of one or two other rent officers in relation to the re-determination.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers functions on rent officers in connection with housing benefit and rent allowance subsidy. Article 3 provides that where a local authority applies to a rent officer for determinations relating to a tenancy or other right of occupancy of a dwelling, the rent officer must make the determinations (and give notice to the local authority) in accordance with Schedule 1 to the Order. The determinations relate to the level of rent, the size of the dwelling and rent attributable to the provision of services. Article 4 provides for a rent officer, with the advice of one or two other rent officers, to make a re-determination if a local authority applies for one.

Article 5 prevents determinations and re-determinations being made if the tenancy is one of those described in Schedule 2 to the Order or if the application is withdrawn and certain determinations and re-determinations cannot be made if the tenancy is an assured tenancy and the circumstances are those described in article 5(2).

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