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STATUTORY INSTRUMENTS

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**1991 No. 533 (S.42)**

**HOUSING, SCOTLAND**

**The Rent Officers (Additional Functions)  
(Scotland) Amendment Order 1991**

<i>Made</i>	- - - -	<i>7th March 1991</i>
<i>Laid before Parliament</i>		<i>11th March 1991</i>
<i>Coming into force</i>	- -	<i>1st April 1991</i>

The Secretary of State, in exercise of the powers conferred on him by section 70 of the Housing (Scotland) Act 1988<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Order:

**1.** This Order may be cited as the Rent Officers (Additional Functions)(Scotland)Amendment Order 1991 and shall come into force on 1st April 1991.

**2.—(1)** The Rent Officers (Additional Functions) (Scotland) Order 1990<sup>(2)</sup> is amended in accordance with the following paragraphs of this article.

(2) For sub-paragraphs (a) and (b) of article 5(2) (circumstances in which no determination or re-determination shall be made there is substituted the following:—

- “(a) (i) a determination under section 34 of the Housing (Scotland) Act 1988 has taken effect in relation to the tenancy; or
- (ii) within the period of 12 months ending with the date on which the application for a determination (or, as the case may be a re-determination) was received, a determination under section 25 or 34 of that Act took effect (or would have taken effect but for the agreement of the landlord and tenant) in relation to the tenancy or a tenancy of the same dwelling on terms which were substantially the same (disregarding the terms relating to the amount of rent) as the terms of tenancy were on that date; or
- (iii) within the period mentioned in sub-paragraph (ii) an application was made under section 34 of that Act in relation to such a tenancy as is referred to in that sub-paragraph and a determination was precluded by sub-section (3)(b) of that section; and

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<sup>(1)</sup> 1988 c. 43.

<sup>(2)</sup> S.I. 1990/396.

(b) in respect of the circumstances described in sub-paragraphs (a)(ii) and (iii) there has been no substantial change in the condition of the dwelling (including the making of improvements) or in the terms of the tenancy, other than relating to the amount of the rent, within the period mentioned in sub-paragraph (a)(ii).”.

(3) At the end of paragraph 3(2) of Schedule 1 there are inserted the words “or the provision of services to which any service charge for fuel relates”.

(4) At the end of paragraph 7(2) of Schedule 1 there are inserted the words “or, where the rent assessment committee has not made a determination, the rent payable under the tenancy when the application to the rent assessment committee was made”.

**3.—**(1) The amendments made by this Order do not have effect in a case where an application is made for a re-determination in relation to a determination made before this Order came into force.

(2) In paragraph (1), “re-determination” and “determination” have the same meaning as in the Rent Officers (Additional Functions) (Scotland) Order 1990.

St. Andrew’s House,  
Edinburgh  
7th March 1991

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

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Rent Officers (Additional Functions) (Scotland) Order 1990 (“the 1990 Order”). The 1990 Order conferred functions on rent officers in connection with housing benefit and rent allowance subsidy and is amended in connection with circumstances where those functions are not to be exercised.

The 1990 Order provides that where a local authority, as required by Regulations under section 30(2B) of the Social Security Act 1986 (c. 50) applies to a rent officer he must make a determination (or a re-determination if appropriate) as to the amount of rent, size of dwelling and the proportion of rent attributable to the provision of services. Article 5 of the 1990 Order specifies circumstances in which a determination or re-determination cannot be made.

Article 2(2) of this Order amends article 5(2) of the 1990 Order to extend the circumstances in which a determination or re-determination of rent cannot be made so that they now cannot be made if there has been a recent determination under sections 25 or 34 of the Housing (Scotland) Act 1988 in relation to a similar tenancy or if a determination under section 34 is precluded by sub-section (3) (b) of that section; in addition it no longer matters that the rent is different from the rent determined under sections 25 or 34.

Paragraph 3 of Schedule 1 to the 1990 Order provides for cases where the rent officer must determine if rent is attributable to the provision of services. Article 2(3) of this Order amends the definition of “services” in paragraph 3(2) to exclude services relating to fuel. Article 2(4) of this Order amends paragraph 7 of Schedule I to the 1990 Order to require the rent officer additionally to notify the local authority of the level of rent where the rent assessment committee is precluded from making a determination under section 34 of the 1988 Act because the rent is not significantly higher than the market rent.

Article 3 of this Order provides that the amendments do not apply to an application for a re-determination relating to a determination made before this Order comes into force.