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STATUTORY INSTRUMENTS

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**2013 No. 382**

**HOUSING**

**The Rent Officers (Universal Credit Functions) Order 2013**

*Made* - - - - 25th February 2013

*Laid before Parliament* 4th March 2013

*Coming into force* - - 29th April 2013

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 122 of the Housing Act 1996(1).

**Citation and commencement**

1. This Order may be cited as the Rent Officers (Universal Credit Functions) Order 2013 and comes into force on 29th April 2013.

**Interpretation**

2. In this Order—

“Welfare Reform Act” means the Welfare Reform Act 2012(2);

“the Universal Credit Regulations” means the Universal Credit Regulations 2013(3);

“accommodation” 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;

“applicable consumer prices index” in relation to any year means the consumer prices index of annual inflation as at September of that year published by the Office for National Statistics(4);

“assured tenancy”—

(a) in England and Wales, has the same meaning as in Part 1 of the Housing Act 1988(5), except that it includes—

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(1) 1996 c.52. Section 122 was amended by section 271 of, and paragraph 60 of Schedule 7 to, the Local Government Act 2003 (c.26), by sections 40 and 67 of, and paragraph 12 of Schedule 5 and Schedule 8 to, the Welfare Reform Act 2007 (c.5) and by sections 31, 34 and 147 of, and paragraph 36 of Schedule 2, paragraph 13 of Schedule 4 and Schedule 14 to, the Welfare Reform Act 2012 (c.5).

(2) 2012 c.5.

(3) S.I. 2013/376.

(4) The Consumer Prices Index figure is published on the website of the Office for National Statistics ([www.ons.gov.uk](http://www.ons.gov.uk)).

(5) 1988 c.50.

- (i) a tenancy which would be an assured tenancy but for paragraph 2, 8 or 10 of Schedule 1 (tenancies which cannot be assured tenancies) to that Act; and
- (ii) a licence which would be an assured tenancy (within the extended meaning given in this definition) were it a tenancy; and
- (b) in Scotland, has the same meaning as in Part 2 of the Housing (Scotland) Act 1988<sup>(6)</sup>, except that it includes—
  - (i) a tenancy which would be an assured tenancy but for paragraph 7 or 9 of Schedule 4 (tenancies which cannot be assured tenancies) to that Act; and
  - (ii) any other form of occupancy which would be an assured tenancy (within the extended meaning given in this definition) were it a tenancy;

“broad rental market area” has the meaning given in article 3;

“housing payment” means a relevant payment within the meaning of paragraph 3 of Schedule 4 (housing costs element for renters) to the Universal Credit Regulations;

“local authority” means—

- (a) in relation to England, the council of a district or London borough, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in relation to Wales, the council of a county or county borough; and
- (c) in relation to Scotland, a council constituted under section 2 (constitution of councils) of the Local Government etc. (Scotland) Act 1994<sup>(7)</sup>;

“provider of social housing” has the meaning given in paragraph 2 of Schedule 4 to the Universal Credit Regulations;

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

“service charge payments” has the meaning given in paragraph 7 of Schedule 1 (meaning of payments in respect of accommodation) to the Universal Credit Regulations;

“tenancy” includes—

- (a) in England and Wales, a licence to occupy premises; and
- (b) in Scotland, any other right of occupancy,

and references to rent, a tenant, a landlord or any other expression appropriate to a tenancy are to be construed accordingly;

“tenant” includes, where the tenant is a member of a couple within the meaning of section 39 of the Welfare Reform Act, the other member of the couple;

“working day” means any day other than—

- (a) a Saturday or a Sunday;
- (b) Christmas Day or Good Friday; or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(8)</sup> in any part of Great Britain.

<sup>(6)</sup> 1998 c.43.

<sup>(7)</sup> 1994 c.39.

<sup>(8)</sup> 1971 c.80.

### **Broad rental market area determinations**

3.—(1) Broad rental market area determinations taking effect on 29th April 2013 are determined in accordance with paragraph (7) and all other broad rental market area determinations are determined in accordance with paragraphs (2) to (6).

(2) A rent officer must, at such times as the rent officer considers appropriate and if the Secretary of State agrees—

- (a) determine one or more broad rental market areas; and
- (b) in respect of that broad rental market area, or those broad rental market areas, give to the Secretary of State a notice which identifies the local authority areas and the postcodes contained within the broad rental market area (or each of them).

(3) A broad rental market area is an area within which a person could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of the distance of travel, by public and private transport, to and from those facilities and services.

(4) A broad rental market area must contain—

- (a) residential premises of a variety of types, including such premises held on a variety of tenures; and
- (b) sufficient privately rented residential premises to ensure that, in the rent officer's opinion, the local housing allowance for the categories of accommodation in the area for which the rent officer is required to determine a local housing allowance is representative of the rents that a landlord might reasonably be expected to obtain in that area.

(5) Every part of Great Britain must fall within a broad rental market area and a broad rental market area must not overlap with another broad rental market area.

(6) Any broad rental market area determination made in accordance with paragraph (2) is to take effect—

- (a) on the day the determination is made for the purpose of enabling a rent officer to determine a local housing allowance for that area; and
- (b) for all other purposes on the next 1st April following the day on which the determination is made.

(7) For broad rental market area determinations that take effect on 29th April 2013, a rent officer must use the broad rental market area determinations determined in accordance with article 4B of, and Schedule 3B to, the Rent Officers (Housing Benefit Functions) Order 1997<sup>(9)</sup> or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997<sup>(10)</sup> that apply on 29th April 2013.

### **Local housing allowance determinations**

4.—(1) Local housing allowance determinations taking effect on 29th April 2013 are determined in accordance with paragraph (4) and all other local housing allowance determinations are determined in accordance with paragraphs (2) and (3).

(2) No more than 20 working days after the applicable consumer prices index is published, a rent officer must—

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(9) S.I. 1997/1984. Article 4B was inserted by S.I. 2003/2398 and amended by S.I. 2006/217, 2007/2871, 2008/587, 2010/2836 and 2012/646. Schedule 3B was inserted by S.I. 2007/2871 and amended by S.I. 2008/3156, 2009/2459, 2010/2836 and 2012/646.

(10) S.I. 1997/1995. Article 4B was inserted by S.I. 2003/2398 and amended by S.I. 2006/217, 2007/2871, 2008/587, 2010/2836 and 2012/646. Schedule 3B was inserted by S.I. 2007/2871 and amended by S.I. 2008/3156, 2009/2459, 2010/2836 and 2012/646.

- (a) for each broad rental market area determine, in accordance with Schedule 1, a local housing allowance for each of the categories of accommodation set out in paragraph 1 of Schedule 1; and
  - (b) notify the Secretary of State of the local housing allowance determination made in accordance with sub-paragraph (a) for each broad rental market area.
- (3) Any local housing allowance determination made in accordance with paragraph (1) is to take effect on the next 1st April following the day on which the determination is made.
- (4) For local housing allowance determinations that take effect on 29th April 2013, a rent officer must use—
- (a) the broad rental market area determinations referred to in article 3(7); and
  - (b) the approximate monthly local housing allowance determinations notified to local authorities in accordance with article 4B(6) of the Rent Officers (Housing Benefit Functions) Order 1997 or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 that apply on 29th April 2013.

### **Housing payment determination**

5. Where a rent officer receives a request from the Secretary of State for a determination in respect of housing payments for accommodation let by a provider of social housing, the rent officer must—
- (a) determine in accordance with Schedule 2 whether each of the housing payments specified by the Secretary of State in that request is reasonable for that accommodation; and
  - (b) where the rent officer determines that a housing payment is not reasonable, determine in accordance with Schedule 2 the amount that is reasonable for the accommodation and notify the Secretary of State of that amount.

### **Redeterminations**

6.—(1) Where a rent officer has made a determination under article 3, 4 or 5 (“the determination”) and paragraph (2) applies, a rent officer must make a further determination (“a redetermination”) and notify the Secretary of State of the redetermination.

- (2) This paragraph applies where—
- (a) the determination was made under article 3 or 4 and the rent officer considers that there is an error in relation to that determination; or
  - (b) the determination was made under article 5 and—
    - (i) the Secretary of State requests that the rent officer makes a redetermination;
    - (ii) the Secretary of State informs the rent officer that the information supplied when requesting the determination was incorrect or incomplete; or
    - (iii) the rent officer considers that there is an error in relation to the determination.

(3) Where a rent officer makes a redetermination the rent officer must do so in accordance with the provisions of this Order that applied to the determination and use the same information that was used for the determination except that, where the information used was incorrect or incomplete, the rent officer must use the correct or complete information.

(4) Where a rent officer makes a redetermination by virtue of paragraph (2)(b)(i), the rent officer must have regard to the advice of at least one other rent officer in relation to that redetermination.

### **Information**

7. Where a rent officer considers that the information supplied by the Secretary of State or a landlord under regulation 40 (information to be provided to rent officers) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013<sup>(11)</sup> is incomplete or incorrect, the rent officer must—

- (a) notify the Secretary of State or the landlord of that fact; and
- (b) request that the Secretary of State or the landlord supplies the further information or to confirm whether, in their opinion, the information already supplied is correct and, if they agree that it is not, to supply the correct information.

### **Means of giving notice**

8. Any notice given by a rent officer under this Order may be given in writing or by electronic means unless the Secretary of State requests that notice is given in writing only.

Signed by authority of the Secretary of State for Work and Pensions.

25th February 2013

*Freud*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions

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<sup>(11)</sup> S.I. 2013/380.

## SCHEDULE 1

Article 4

### Local housing allowance determinations

#### Categories of accommodation

1. The categories of accommodation for which a rent officer is required to determine a local housing allowance in accordance with article 4 are—

- (a) accommodation where the tenant has the exclusive use of only one bedroom and where the tenancy provides for the tenant to share the use of one or more of—
  - (i) a kitchen;
  - (ii) a bathroom;
  - (iii) a toilet; or
  - (iv) a room suitable for living in;
- (b) accommodation where the tenant has the exclusive use of only one bedroom and exclusive use of a kitchen, a bathroom, a toilet and a room suitable for living in;
- (c) accommodation where the tenant has the use of only two bedrooms;
- (d) accommodation where the tenant has the use of only three bedrooms;
- (e) accommodation where the tenant has the use of only four bedrooms.

#### Local housing allowance for category of accommodation in paragraph 1

2.—(1) Subject to paragraph 5 (anomalous local housing allowances), a rent officer must determine a local housing allowance for each category of accommodation in paragraph 1 in accordance with the following sub-paragraphs.

(2) Subject to sub-paragraph (3), the local housing allowance for a category of accommodation is—

- (a) the rent at the 30th percentile determined in accordance with paragraph 3 where that does not exceed the amount determined in accordance with paragraph 4; or
- (b) in any other case, the amount determined in accordance with paragraph 4.

(3) Where the local housing allowance would otherwise not be a whole number of pence, it must be rounded to the nearest whole penny by disregarding any amount less than half a penny and treating any amount of half a penny or more as a whole penny.

#### Rent at the 30th percentile

3.—(1) The rent officer must determine the rent at the 30th percentile in accordance with the following sub-paragraphs.

(2) The rent officer must compile a list of rents.

(3) A list of rents means a list in ascending order of the monthly rents which, in the rent officer's opinion, are payable at the date of the determination for accommodation let under an assured tenancy which meets the criteria specified in sub-paragraph (5).

(4) The list must include any rents which are of the same amount.

(5) The criteria for including an assured tenancy on the list of rents in relation to each category of accommodation specified in paragraph 1 are that—

- (a) the accommodation let under the assured tenancy is in the broad rental market area for which the local housing allowance for that category of accommodation is being determined;
- (b) the accommodation is in a reasonable state of repair; and
- (c) the assured tenancy permits the tenant to use exclusively or share the use of, as the case may be, the same number and type of rooms as the category of accommodation in relation to which the list of rents is being compiled.

(6) Sub-paragraph (7) applies where the rent officer is not satisfied that the list of rents in respect of any category of accommodation would contain sufficient rents payable at the date of the determination for accommodation in the broad rental market area to enable a local housing allowance to be determined which is representative of the rents that a landlord might reasonably be expected to obtain in that area.

(7) In a case where this sub-paragraph applies, the rent officer may add to the list rents for accommodation in the same category in other areas in which a comparable market exists.

(8) Where rent is payable other than monthly the rent officer must use the figure which would be payable if the rent were to be payable monthly by calculating the rent for a year and dividing the total by 12.

(9) When compiling the list of rents for each category of accommodation, the rent officer must—

- (a) assume that no-one had sought or is seeking the tenancy who would have been entitled to housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992<sup>(12)</sup> or universal credit under Part 1 of the Welfare Reform Act; and
- (b) exclude the amount of any rent which, in the rent officer's opinion, is fairly attributable to the provision of services performed or facilities (including the use of furniture) provided for, or rights made available to, the tenant and which would not be classed as service charge payments.

(10) The rent at the 30th percentile in the list of rents ("R") is determined as follows—

- (a) where the number of rents on the list is a multiple of 10, the formula is—

$$R = \frac{\text{the amount of the rent at P} + \text{the amount of the rent at P1}}{2}$$

where—

- (i) P is the position on the list found by multiplying the number of rents on the list by 3 and dividing by 10; and
  - (ii) P1 is the following position on the list;
- (b) where the number of rents on the list is not a multiple of 10, the formula is—

$$R = \text{the amount of the rent at P2}$$

where P2 is the position on the list found by multiplying the number of rents on the list by 3 and dividing by 10 and rounding the result upwards to the nearest whole number.

#### **Amount determined by reference to the consumer prices index**

4.—(1) The amount to be determined by the rent officer for the purposes of sub-paragraph (2) is as follows—

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(12) 1992 c.4.

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

- (a) where the applicable consumer prices index is a positive number, the local housing allowance last determined for that category of accommodation multiplied by the factor “M”; or
  - (b) where the applicable consumer prices index is a negative number or zero, the local housing allowance last determined for that category of accommodation.
- (2) In this paragraph the factor “M” is determined as follows—
- $$M = 1 + (\text{CPI}/100)$$

where “CPI” is the applicable consumer prices index in relation to the year in which the determination is made.

### **Anomalous local housing allowances**

5. Where—
- (a) the rent officer has determined the local housing allowance for each of the categories of accommodation in paragraph 1 in accordance with the preceding paragraphs of this Schedule; and
  - (b) the local housing allowance for a category of accommodation in paragraph 1(b) to (e) is lower than the local housing allowance for any of the categories of accommodation which precede it,

that local housing allowance is to be the same as the highest local housing allowance which precedes it.

## SCHEDULE 2

Article 5

### Housing payment determination

1. The rent officer must determine whether, in the rent officer’s opinion, each of the housing payments payable for the tenancy of the accommodation at the relevant time is reasonable.
2. If the rent officer determines under paragraph 1 that a housing payment is not reasonable, the rent officer must also determine the amount of the housing payment which is reasonable.
3. When making a determination under this Schedule, the rent officer must—
  - (a) have regard to the level of similar payments under tenancies for accommodation which—
    - (i) is let by the same type of landlord;
    - (ii) is in the same local authority area or, where paragraph 4 applies, an adjoining local authority area;
    - (iii) has the same number of bedrooms; and
    - (iv) is in the same reasonable state of repair,as the accommodation in respect of which the determination is being made;
  - (b) exclude—
    - (i) the cost of any care, support or supervision provided to the tenant by the landlord or by someone on the landlord’s behalf;
    - (ii) any payments for services performed or facilities (including the use of furniture) provided for, or rights made available to, the tenant which are not service charge payments; and



(c) where the accommodation is let at an Affordable Rent, assume that the rent is reasonable.

4. Where the rent officer is not satisfied that the local authority area contains sufficient accommodation to allow a determination of the housing payments which a landlord might reasonably have been expected to charge, the rent officer may have regard to the level of housing payments in one adjoining local authority area or, if the rent officer considers it necessary, more than one adjoining local authority areas.

5. For the purposes of this Schedule—

- (a) a housing payment is reasonable where it is not higher than the payment which the landlord might reasonably have been expected to obtain for the tenancy at the relevant time;
- (b) accommodation is let by the same type of landlord where—
  - (i) in a case where the landlord of the accommodation in respect of which the determination is being made is a local authority, the landlord of the other accommodation is also a local authority; and
  - (ii) in a case where the landlord of the accommodation in respect of which the determination is being made is a provider of social housing other than a local authority, the landlord of the other accommodation is also a provider of social housing other than a local authority;
- (c) accommodation is let at an Affordable Rent where—
  - (i) the rent is regulated under a standard by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008(13) (“the 2008 Act”) which requires the initial rent to be set at no more than 80% of the local market rent (including service charges); or
  - (ii) the accommodation is let by a local authority and, under arrangements between the local authority and the Homes and Communities Agency (as established by section 1 of the 2008 Act), the Greater London Authority or the Secretary of State, the rent payable is set on the same basis as would be the case if the rent were regulated under a standard set by the Regulator of Social Housing under section 194 of the 2008 Act which requires the initial rent to be set at no more than 80% of the local market rent (including service charges).

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## EXPLANATORY NOTE

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

This Order confers functions on rent officers in connection with universal credit.

Articles 3 and 4 confer functions relating to the determination of local housing allowances, which will be used in calculating the amount of a person’s housing costs for universal credit where the landlord is not a registered provider of social housing, registered social landlord or local authority.

Article 3 requires that the rent officer determines broad rental market areas. These are broad geographical areas containing sufficient properties to enable the rent officer to determine local housing allowances for various categories of dwelling. When setting areas the rent officer must have

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(13) 2008 c.17. Section 194 was amended by S.I. 2010/844 and section 179 of, and Schedule 17 to, the Localism Act 2011 (c.20).

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

regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping and take account of the distance of travel by public and private transport to and from those facilities and services.

Article 4 requires that the rent officer determines local housing allowances each year for each broad rental market area. Schedule 1 sets out the method of calculating the local housing allowance. This will be the lower of the rent at the 30th percentile of available rents or the previous year's rate up-rated by reference to the Consumer Prices Index for September.

Articles 3 and 4 also make transitional provision to establish broad rental market areas and local housing allowances from 29th April 2013 until 1st April 2014. These will be the broad rental market areas and local housing allowances determined for housing benefit purposes and will form the basis of local housing allowance determinations for subsequent years.

Article 5 applies where the Secretary of State has requested that the rent officer determines whether payments in respect of accommodation in the social rented sector are reasonable. The rent officer must determine the level of reasonable payments in accordance with Schedule 2. The rent officer must consider both rent and service charge payments and take into account the level of those payments in similar properties in the local authority area.

Article 6 makes provision for redeterminations of broad rental market area determinations and local housing allowance determinations where the rent officer has made an error. It also makes provision for redeterminations of housing payment determinations where the rent officer made an error, used inaccurate information, or where the Secretary of State has requested a redetermination.

Article 7 makes provision for circumstances where the rent officer under this Order has received incomplete or inaccurate information.

Article 8 makes provision for any notice given by a rent officer to be given by electronic means, unless the Secretary of State requests that it is given in writing.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.