
STATUTORY INSTRUMENTS

1995 No. 1642

HOUSING, ENGLAND AND WALES

The Rent Officers (Additional Functions) Order 1995

Made - - - - - *28th June 1995*
Laid before Parliament *29th June 1995*
Coming into force - - - *2nd January 1996*

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred upon them by section 121(1) and (2) of the Housing Act 1988(1), and of all other powers enabling them in that behalf, hereby make the following Order.

Citation and commencement

1. This Order may be cited as the Rent Officers (Additional Functions) Order 1995 and shall come into force on.

Interpretation

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

“assured tenancy” has the same meaning as in Part I of the Housing Act 1988, except that it includes a tenancy which would be an assured tenancy but for paragraph 2 or 10 of Schedule 1 to that Act and a licence which would be an assured tenancy (within the extended meaning given in this definition) were it a tenancy;

“child” means a person under the age of 16;

“determination” means a determination made in accordance with Part 1 or Part 4 of Schedule 1 to this Order;

“dwelling” 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;

“hostel” has the same meaning as in regulation 12A of the Housing Benefit (General) Regulations 1987(2);

(1) 1988 c. 50; section 121(1) was amended by section 110(3) of the Local Government and Housing Act 1989 (c. 42).
(2) S.I.1987/1971; regulation 12A was inserted by S.I. 1990/546 and amended by S.I. 1993/317.

“local authority” has the same meaning as in the Social Security Administration Act 1992(3) in relation to England and in relation to Wales;

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

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

“rent” means any of the periodical payments referred to in regulation 10(1) of the Housing Benefit (General) Regulations 1987(4);

“size criteria” means the standards relating to bedrooms and rooms suitable for living in specified in Schedule 2 to this Order;

“tenancy” includes—

- (a) a licence; and
- (b) a prospective tenancy or licence; and

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

“the 1987 Regulations” means the Housing Benefit (General) Regulations 1987.

(2) In this Order any reference to a notice or application is to a notice or application in writing, except in a case where the recipient consents (whether generally or specifically) to the notice or application being transmitted by electronic means.

Determinations

3.—(1) Subject to sub-paragraph (2) and article 5, where a local authority, in accordance with regulations made under section 136(2) or (3) of the Social Security Administration Act 1992, applies to a rent officer for determinations in respect of a tenancy of a dwelling, a rent officer shall—

- (a) make the determinations in accordance with Part 1 of Schedule 1 (determinations);
- (b) comply with Part 2 of Schedule 1 when making the determinations (assumptions etc.); and
- (c) give notice in accordance with Part 3 of Schedule 1 (notifications).

(2) If a rent officer needs further information in order to make a determination under paragraph (1) shall not apply to the making of that determination.

(3) A rent officer for each registration area (within the meaning of section 63 of the Rent Act 1977(5)), on the first working day of each month, shall—

- (a) make determinations in accordance with Part 4 of Schedule 1 (indicative rent levels) in relation to the area of each local authority within the registration area;
- (b) comply with paragraph 7(2) of Part 2 of Schedule 1 (assumptions etc.) when making the determinations; and
- (c) give to the local authority notice of the determinations relating to its area when they have been made.

(3) 1992 c. 5.

(4) Regulation 10 has been amended by S.I. 1988/1971 and S.I. 1993/317.

(5) 1977 c. 42; amended by paragraph 13(1) of Schedule 8 to the Local Government Act 1985 (c. 51) and paragraph 3(2) of Schedule 8 to the Local Government (Wales) Act 1994 (c. 19).

Redeterminations

4. Subject to article 5, if the local authority applies to a rent officer for a redetermination, a rent officer shall make the redetermination and give notice in accordance with Schedule 3 and a rent officer whose advice is sought as provided for in that Schedule shall give that advice.

Exceptions

5.—(1) No determination or redetermination shall be made if the application for it is withdrawn.

(2) No determination shall be made under paragraph 3 or 4 of Schedule 1 if the tenancy is of residential accommodation, within the meaning of regulation 7(3) of the 1987 Regulations(6), or in a hostel.

Special cases

6.—(1) This Order shall apply as specified in Schedule 4 in relation to—

- (a) mooring charges payable for a houseboat;
- (b) payments in respect of the site on which a caravan or a mobile home stands; or
- (c) payments under a rental purchase agreement.

(2) Terms used in paragraph (1) have the same meaning in this article and in Schedule 4 as they have in regulation 10(1) of the 1987 Regulations(7).

Revocations

7. Subject to article 8, the Rent Officers (Additional Functions) Order 1990(8), the Rent Officers (Additional Functions) (Amendment) Order 1991(9), the Rent Officers (Additional Functions) (Amendment) Order 1993(10), the Rent Officers (Additional Functions) Order 1994(11) and the Rent Officers (Additional Functions) (Amendment No. 2) Order 1994(12) are hereby revoked.

Application

8. This Order does not have effect in a case where an application for a determination is made before the date this Order comes into force.

Signed by authority of the Secretary of State

28th June 1995

David Curry
Minister of State,
Department of the Environment

(6) Paragraph (3) was added by S.I. 1990/2564.

(7) Amended by S.I. 1988/1971.

(8) S.I. 1990/428.

(9) S.I. 1991/426.

(10) S.I. 1993/652.

(11) S.I. 1994/568.

(12) S.I. 1994/3040.

SCHEDULE 1

Article 3(1)

Article 3(1)(a)

PART 1
DETERMINATIONS

Significantly high rents

1.—(1) The rent officer shall determine whether, in his opinion, the rent payable under the tenancy of the dwelling at the relevant time is significantly higher than the rent which the landlord might reasonably have been expected to obtain under the tenancy at that time.

(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 have been expected to obtain under the tenancy at the relevant time.

(3) When making a determination under this paragraph, the rent officer shall have 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) and shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy.

Size and rent

2.—(1) The rent officer shall determine whether the dwelling, at the relevant time, exceeds the size criteria for the 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 have been expected to obtain, at the relevant time, for a tenancy which is—

- (a) similar to the tenancy of the dwelling;
- (b) on the same terms other than the term relating to the amount of rent; and
- (c) of a dwelling which is in the same locality as the dwelling, but which—
 - (i) accords with the size criteria for the occupiers;
 - (ii) is in a reasonable state of repair; and
 - (iii) 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 sub-paragraph (2), the rent officer shall have regard to the same matter and make the same assumption as specified in paragraph 1(3), 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 sub-paragraph (2) and shall assume that no one who would have been entitled to housing benefit had sought or is seeking that tenancy.

Exceptionally high rents

3.—(1) The rent officer shall determine whether, in his opinion, the rent payable for the tenancy of the dwelling at the relevant time is exceptionally high.

(2) In sub-paragraph (1) “rent payable for 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 determines under sub-paragraph (1) that the rent is exceptionally high, the rent officer shall also determine the highest rent, which is not exceptionally high rent and which a landlord might reasonably have been expected to obtain at the relevant time (on the assumption that no one who would have been entitled to housing benefit had sought or is seeking the tenancy) for an assured tenancy of a dwelling which—

(a) is in the same locality as the dwelling;

(b) has the same number of bedrooms and rooms suitable for living in as the dwelling (or, where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria); and

(c) is in a reasonable state of repair.

(4) For the purpose of determining whether a rent is an exceptionally high rent under this paragraph, the rent officer shall have regard to the levels of rent under assured tenancies of dwellings which—

(a) are in the same locality as the dwelling (or in as similar a locality as is reasonably practicable); and

(b) have the same number of bedrooms and rooms suitable for living in as the dwelling (or, in a case where the dwelling exceeds the size criteria for the occupiers, accord with the size criteria).

Local reference rents

4.—(1) The rent officer shall make a determination of a local reference rent in accordance with the formula—

$$R = \frac{H + L}{2}$$

where—

R is the local reference rent;

H is the highest rent, in the rent officer's opinion,—

(a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an assured tenancy of a dwelling which meets the criteria in sub-paragraph (2); and

(b) which is not an exceptionally low rent; and

L is the lowest rent, in the rent officer's opinion,—

(a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an assured tenancy of a dwelling which meets the criteria in sub-paragraph (2); and

(b) which is not an exceptionally low rent.

(2) The criteria are—

(a) that the dwelling under the assured tenancy—

(i) is in the same locality as the dwelling;

(ii) is in a reasonable state of repair; and

(iii) has the same number of bedrooms and rooms suitable for living in as the dwelling (or, in a case where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria); and

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

- (b) if the tenant does not have the use of more than one bedroom or room suitable for living in—
 - (i) if the rent under the tenancy includes payments for board and attendance and the rent officer considers the amount fairly attributable to board and attendance is a substantial part of the rent, that a substantial part of the rent under the assured tenancy is fairly attributable to board and attendance;
 - (ii) if sub-paragraph (i) does not apply and the tenant shares a kitchen or toilet (otherwise than with a member of his household), that the assured tenancy provides for the tenant to share a kitchen or toilet; and
 - (iii) if sub-paragraphs (i) and (ii) do not apply, that the circumstances described in sub-paragraphs (i) and (ii) do not apply in relation to the assured tenancy.
- (3) When ascertaining H and L under sub-paragraph (1), the rent officer:
 - (a) shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and
 - (b) shall exclude the amount of any rent which, in the rent officer's opinion, is fairly attributable to the provision of services which are ineligible to be met by housing benefit.
- (4) In sub-paragraph (3), "services" means services performed or facilities (including the use of furniture) provided for, or rights made available to, the tenant, but not—
 - (a) the provision of meals (including the preparation of meals or provision of unprepared food); or
 - (b) the provision of services to which any service charge for fuel relates.

Services

- 5.—(1) Where the dwelling is not in a hostel and the rent officer makes a determination under—
- (a) paragraph 1(1) (where no determination is to be made under paragraph 1(2), 2(2) or 3(3));
 - (b) paragraph 1(2) (where no determination is to be made under paragraph 2(2) or 3(3));
 - (c) paragraph 2(2) (where no determination is to be made under paragraph 3(3)); or
 - (d) paragraph 3(3);

he shall also determine whether, in his opinion, any of the rent at the relevant time 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", in relation to a determination under paragraph 1(2), 2(2) or 3(3), means (as the case may be) the rent determined under paragraph 1(2), 2(2) or 3(3) and, in relation to a determination under paragraph 1(1), means the rent payable under the tenancy at the relevant time; and

"services" has the meaning given in paragraph 4(4).

Article 3(1)(b)

PART 2

ASSUMPTIONS etc.

Medical, nursing and other care services

6. Where the rent includes any of the charges specified in paragraph 1(d), (e) or (f) of Part I of Schedule 1 to the 1987 Regulations, the rent officer shall assume that—

(a) the items to which the charges relate were not to be provided or made available; and

(b) the rent payable under the tenancy at the relevant time is such amount as is specified in the application as the rent which would have been payable under the tenancy at that time if those items were not to be provided or made available.

Housing associations etc.

7.—(1) Where the landlord is a housing association or a charity, the rent officer shall assume that the landlord is not such a body.

(2) The rent officer shall not take into account the rent under any tenancy where the landlord is a housing association or a charity.

(3) In this paragraph—

“charity” has the same meaning as in the Charities Act 1993(13), except that it includes a Scottish charity (which has the same meaning as in section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(14)); and

“housing association” has the same meaning as in the Housing Associations Act 1985(15).
Article 3(1)(c)

PART 3

NOTIFICATIONS OF PART I DETERMINATIONS

Notifications

8.—(1) Subject to sub-paragraph (2), the rent officer shall give notice to the local authority of determinations made under Part 1 within the relevant period.

(2) If the local reference rent determined under paragraph 4 is kequal to or more than the rent payable for the tenancy, the rent officer shall give notice to the local authority of this in place of giving notice of the determination made under that paragraph (and sub-paragraphs (1) and (3) shall apply to such a notice as they apply to determinations).

(3) In this paragraph—

(a) “relevant period” means the period of 5 working days (or, where a determination does not relate to a prospective tenancy and the rent officer intends to inspect the dwelling before making the determination, 25 working days) beginning with—

(a) where the rent officer requests further information under article 3(2), the date on which he received the information; and

(b) in any other case, the date on which he received the application;

(13) 1993 c. 10.

(14) 1990 c. 40.

(15) 1985 c. 69; see section 1(1).

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

or as soon as practicable after that period; and

“rent payable for the tenancy” has the same meaning as in paragraph 3(1).

Article 3(3)

PART 4

INDICATIVE RENT LEVELS

9.—(1) The rent officer shall determine the indicative rent level for each category described in sub-paragraph (3) in accordance with the following formula—

$$I = \frac{H + 3L}{4}$$

where—

I is the indicative rent level;

H is the highest rent, in the rent officer’s opinion,—

(a) which a landlord might reasonably be expected to obtain at the time the determination is being made for an assured tenancy of a dwelling meeting the criteria in sub-paragraph (2); and

(b) which is not an exceptionally low rent.

(2) The criteria are that—

(a) the dwelling is in the area of the local authority;

(b) the dwelling is in a reasonable state of repair; and

(c) the dwelling and tenancy accord with the category to which the determination relates.

(3) The categories for the purposes of this paragraph are—

(a) a dwelling where the tenant does not have use of more than one room where a substantial part of the rent under the tenancy is fairly attributable to board and attendance;

(b) a dwelling where the tenant does not have use of more than one room, the tenancy provides for him to share a kitchen or toilet and paragraph (a) does not apply;

(c) a dwelling where the tenant does not have use of more than one room where paragraphs (a) and (b) do not apply;

(d) a dwelling where the tenant does not have use of more than two rooms;

(e) a dwelling where the tenant does not have use of more than three rooms;

(f) a dwelling where the tenant does not have use of more than four rooms;

(g) a dwelling where the tenant does not have use of more than five rooms; and

(h) a dwelling where the tenant does not have use of more than six rooms.

(4) When ascertaining H and L under sub-paragraph (1), the rent officer—

(a) shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and

(b) shall exclude the amount of any rent which, in the rent officer’s opinion, is fairly attributable to the provision of services which are ineligible to be met by housing benefit.

(5) In this paragraph—

“room” means a bedroom suitable for living in; and

“services” has the meaning given by paragraph 4(4).

SCHEDULE 2

Article 2

SIZE CRITERIA

1. One bedroom or room suitable for living in shall be allowed for each of the following categories of occupier (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 VII of the Social Security Contributions and Benefits Act 1992⁽¹⁶⁾);

(b) a person who is not a child;

(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 under paragraph 1) suitable for living in allowed are—

(a) if there are less than four occupiers, one;

(b) if there are more than three and less than seven occupiers, two; and

(c) in any other case, three.

SCHEDULE 3

Article 4

REDETERMINATIONS

1. Schedules 1 and 2 shall apply in relation to a redetermination as they apply to a determination, subject to the following—

(a) references to the relevant time shall be references to the time the original application for the determination is made or, if earlier, the tenancy ends; and

(b) for the definition of relevant period in paragraph 8(3) of Schedule 1 there shall be substituted—

““relevant period” means the period of 20 working days beginning with the date of receipt of the application for a redetermination, or as soon as is reasonably practicable after that period.”.

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

SCHEDULE 4

Article 6

SPECIAL CASES

Houseboats

1. Where an application for a determination relates in whole or in part to mooring charges for a houseboat, this Order applies in relation to that application (or, as the case may be, to that part which relates to those charges) with the following modifications—

(16) 1992 c. 4. .sdef heb

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

(a) references to a tenancy, a tenancy of a dwelling or an assured tenancy are references to an agreement under which those charges are payable (and references to a landlord and a tenant shall be construed accordingly); and

(b) no determination shall be made under paragraph 2 of Schedule 1 (size criteria) and references to the dwelling exceeding the size criteria shall not apply.

Mobile homes

2. Where an application for a determination relates in whole or in part to payments in respect of the site on which a caravan or a mobile home stands, this Order applies in relation to that application (or, as the case may be, that part which relates to those payments) with the following modifications—

(a) references to a tenancy, a tenancy of a dwelling or an assured tenancy are references to an agreement under which those payments are payable (and references to a landlord and a tenant shall be construed accordingly); and

(b) no determination shall be made under paragraph 2 of Schedule 1 (size criteria) and references to the dwelling exceeding the size criteria shall not apply.

Rental purchase agreements

3. Where an application for a determination relates to a rental purchase agreement, the agreement is to be treated as if it were a tenancy.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes and re-enacts with modifications the Rent Officers (Additional Functions) Order 1990, which conferred functions on rent officers in connection with housing benefit and rent allowance subsidy and required rent officers to make determinations and redeterminations relating to a tenancy or licence of a dwelling. The Order adds requirements for rent officers to make determinations for prospective tenancies and licences (article 2), to determine local reference rents (paragraph 4 of Schedule 1) and to determine indicative rent levels (Part 4 of Schedule 1). It removes the requirement for rent officers to make interim determinations.

The other principal modifications are to the definition of rent (article 2(1)), the matters to which rent officers must have regard in determinations for exceptionally high rents (paragraph 3 of Schedule 1), the size criteria (Schedule 2), the addition of an assumption that the landlord is not a housing association or a charity (paragraphs 6 and 7 of Schedule 1), the removal of an exclusion for certain assured tenancies and agricultural occupancies with rents determined by a rent assessment committee, the addition of provisions for determinations relating to mooring charges for houseboats, pitch fees for caravans and payments under rental purchase agreements (article 6 and Schedule 4).

Article 8 stops the Order affecting applications for determinations made before the Order comes into force.