

**2000 No. 3**

**HOUSING SCOTLAND**

**The Rent Officers (Housing Benefit Functions) (Scotland)  
Amendment Order 2000**

<i>Made</i>	- - -	<i>6th January 2000</i>
<i>Laid before Parliament</i>		<i>7th January 2000</i>
<i>Coming into force</i>		<i>3rd April 2000</i>

The Secretary of State for Social Security in exercise of the powers conferred upon him by section 122(1), (2) and (6) of the Housing Act 1996<sup>(a)</sup>, and of all other powers enabling him in that behalf, hereby makes the following Order—

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Rent Officers (Housing Benefit Functions) (Scotland) Amendment Order 2000 and shall come into force on 3rd April 2000.

(2) This Order extends to Scotland only.

**Amendments**

2. The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997<sup>(b)</sup> shall be amended in accordance with the following provisions of this Order.

**Interpretation**

3. In article 2 (interpretation), after the definition of “redetermination” insert—  
““relevant period” means—

- (a) in relation to a determination, the period of five working days (or, where the 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—
  - (i) where the rent officer requests further information under article 5, the date on which he receives the information; and
  - (ii) in any other case, the date on which he receives the application for the determination; and
- (b) in relation to a redetermination, the period of 20 working days beginning with—
  - (i) where the rent officer requests further information under article 5, the date on which he receives the information; and
  - (ii) in any other case, the date on which he receives the application for that redetermination;”.

**Determinations**

4. In article 3(1) (determinations)—

- (a) for “articles 5 and 6”, substitute “article 6”;
- (b) after “the Social Security Administration Act 1992”, insert “or section 122(5) of the Housing Act 1996”<sup>(c)</sup>; and

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<sup>(a)</sup> 1996 c. 52.  
<sup>(b)</sup> S.I. 1997/1995 (S. 144).  
<sup>(c)</sup> 1996 c. 52.

- (c) at the end of sub-paragraph (c), add “within the relevant period or as soon as is practicable after that period”.

### **Redeterminations, substitute determinations and substitute redeterminations**

5. For article 4 (redeterminations), substitute—

#### **“Redeterminations**

4.—(1) Subject to article 6, where the local authority applies to a rent officer for a redetermination of any determination or redetermination in respect of a tenancy of a dwelling the rent officer shall, in accordance with Schedule 3—

- (a) make redeterminations of any effective determinations and any effective redeterminations in respect of that tenancy; and  
(b) give notice within the relevant period or as soon as is practicable after that period.

(2) For the purposes of paragraph (1)—

- (a) “effective determinations” means any determinations made in accordance with Part I of Schedule 1 which have effect at the date of the application for a redetermination of a determination or redetermination; and  
(b) “effective redeterminations” means any redeterminations made in accordance with Schedule 3 which have effect at that date.

(3) A rent officer whose advice is sought as provided for in Schedule 3 shall give that advice.

#### **Substitute determinations and substitute redeterminations**

4A.—(1) Where a local authority applies to a rent officer for a substitute determination, in accordance with regulation 12C of the 1987 Regulations<sup>(a)</sup>, the provisions of this Order shall apply to that substitute determination as they apply to a determination, but as if references to the relevant time were references to the date the application for the original determination was made or, if earlier, the date the tenancy ended.

(2) Where a local authority applies to a rent officer for a substitute redetermination, in accordance with that regulation, the provisions of this Order shall apply to that substitute redetermination as they apply to a redetermination.”.

### **Insufficient information**

6. In article 5 (insufficient information), omit “and article 3(1) or, as the case may be, article 4 shall not apply to the making of that determination or redetermination until he receives that information.”

### **Special cases**

7. In article 7 (special cases), omit paragraphs (3) and (4).

### **Errors**

8. After article 7, insert—

#### **“Errors**

7A. If a rent officer is of the opinion that he has made an error (other than in the application of his professional judgement) in relation to a determination or redetermination, he shall notify the local authority which made the application for that determination or redetermination of the error as soon as practicable after he becomes aware of it.”.

### **Exceptionally high rents**

9. In paragraph 3 of Part I of Schedule 1 (exceptionally high rents), at the end of paragraph (c) of sub-paragraph (2), insert “at the relevant time”.

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(a) Regulation 12C was inserted by S.I. 2000/4.

### **Local reference rents**

- 10.** In paragraph 4 of Part I of Schedule 1 (local reference rents)–
- (a) in paragraph (b) of sub-paragraph (2), insert “at the relevant time”–
    - (i) after “of the dwelling”; and
    - (ii) in sub-paragraph (ii), after “under the tenancy”; and
  - (b) at the end of sub-paragraph (3), insert–
    - “; and
    - (c) shall exclude the amount of any rent which, in the rent officer’s opinion, is fairly attributable to the provision of any services specified in sub-paragraphs (a) to (e) of paragraph (1ZA) of regulation 12A of the 1987 Regulations<sup>(a)</sup> (requirement to refer to rent officers) and which is not excluded by virtue of paragraph (b) above”;
  - (c) in sub-paragraph (5), for the words after “but not” substitute–
    - “, in the case of a tenancy where a substantial part of the rent under the tenancy is fairly attributable to board and attendance, the provision of meals (including the preparation of meals or provision of unprepared food).”.

### **Claim-related rent**

- 11.** For paragraph 6 of Part I of Schedule 1 (services), substitute–

#### **“Claim-related rent**

- 6.—**(1) In this paragraph, and in paragraph 9 below, “claim-related rent” means–
- (a) where the rent officer makes a determination under sub-paragraph (2) of paragraph 1, sub-paragraph (2) of paragraph 2 and sub-paragraph (3) of paragraph 3, the lowest of the three rents determined under those sub-paragraphs;
  - (b) where the rent officer makes a determination under only two of the sub-paragraphs referred to in paragraph (a) above, the lower of the two rents determined under those sub-paragraphs;
  - (c) where the rent officer makes a determination under only one of the sub-paragraphs referred to in paragraph (a) above, the rent determined under that sub-paragraph;
  - (d) where the rent officer does not make a determination under any of the sub-paragraphs referred to in paragraph (a) above, the rent payable under the tenancy of the dwelling at the relevant time.
- (2) Where a rent officer makes any determinations under paragraphs 1, 2 or 3, he shall also determine which rent is the claim-related rent.
- (3) Where the dwelling is not in a hostel, the rent officer shall also determine the total amount of ineligible charges as defined in paragraph 7, which he has not included in the claim-related rent because of the assumptions made in accordance with that paragraph.”.

### **Assumptions etc.**

- 12.** For paragraph 7 of Part II of Schedule 1 (medical, nursing and other care services), substitute–

#### **“Ineligible charges and support charges**

- 7.—**(1) For the purposes of this paragraph–
- (a) “ineligible charges” means service charges which are ineligible to be met by housing benefit by virtue of regulation 10(3) (rent) of and Schedule 1 (ineligible service charges) to the 1987 Regulations except–
    - (i) any support charges; and
    - (ii) in the case of a tenancy where the rent includes payments for board and attendance, and the rent officer considers that a substantial part of the rent

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<sup>(a)</sup> Regulation 12A was inserted by S.I. 1990/546 and paragraph (1ZA) was inserted into regulation 12A by S.I. 1999/2734.

under the tenancy is fairly attributable to board and attendance, charges specified in paragraph 1(a)(i) of Schedule 1 to the 1987 Regulations (charges for meals)(a); and

(b) “support charges” means any charges specified under paragraph (1ZA) of regulation 12A of the 1987 Regulations (requirement to refer to rent officers).

(2) When making a determination under paragraph 1, 2, or 3 of this Schedule, the rent officer shall assume that—

(a) the items to which the ineligible charges relate; and

(b) the items to which the support charges relate,

were not provided or made available.

(3) For the purposes of paragraphs 1, 2, 3 and 6 of this Schedule, the rent officer shall assume that the rent payable under the tenancy at the relevant time is—

(a) where an amount is notified to the rent officer under regulation 12A(7A)(b) of the 1987 Regulations(b) in respect of that tenancy, that notified amount less the total of any ineligible charges included in that amount; or

(b) in any other case, the amount stated under regulation 12A(1A) of the 1987 Regulations(c) less the total of any ineligible charges included in that stated amount.

(4) The total of any ineligible charges, referred to in sub-paragraph (3), shall be the total of the amounts (excluding any amount which he considers is negligible) of any charges included in the notified amount or the stated amount, as the case may be which, in the rent officer’s opinion, are at the relevant time fairly attributable to any items to which ineligible charges relate.”.

## Notifications

13.—(1) In paragraph 9 of Part III of Schedule 1 (notifications)—

(a) for sub-paragraph (1), substitute—

“(1) Subject to sub-paragraph (2), the rent officer shall give notice to the local authority of—

(a) the claim-related rent determined under Part I;

(b) where the dwelling is not in a hostel, the total amount of ineligible charges determined under paragraph 6(3) in relation to that claim-related rent;

(c) whether that claim-related rent includes an amount which would be ineligible for housing benefit under paragraph 1(a)(i) of Schedule 1 to the 1987 Regulations (charges for meals);

(d) any rent determined by the rent officer under paragraph 4 (local reference rents); and

(e) any rent determined by the rent officer under paragraph 5 (single room rents).”;

(b) in sub-paragraph (2)—

(i) for “rent payable for the tenancy”, substitute “claim-related rent”; and

(ii) omit “(and sub-paragraph (1) shall apply to such a notice as it applies to determinations)”; and

(c) omit sub-paragraph (3).

(2) In Part III of Schedule 1, omit paragraph 10.

## Indicative rent levels

14. At the end of sub-paragraph (4) of paragraph 11 of Part IV of Schedule 1 (indicative rent levels), insert—

“; and

(c) shall exclude the amount of any rent which, in the rent officer’s opinion, is fairly attributable to the provision of any services specified in sub-paragraphs (a) to (e) of

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(a) Paragraph 1(a)(i) was amended by S.I. 1988/1444.

(b) Regulation 12A(7A) is inserted by S.I. 2000/4.

(c) Regulation 12A(1A) was inserted by S.I. 1995/2868 and is amended by S.I. 2000/4.

paragraph (1ZA) of regulation 12A of the 1987 Regulations and which is not excluded by virtue of paragraph (b) above.”.

### **Redeterminations**

**15.** In Schedule 3 (redeterminations), for paragraph 1, substitute—

“**1.** Schedules 1 and 2 shall apply in relation to a redetermination as they apply to a determination, but as if references in those Schedules to the relevant time were references to the date the application for the original determination was made or, if earlier, the date the tenancy ended.”.

### **Application**

**16.** The amendments made by articles 7, 10(b) and (c) and 11 to 14 do not have effect in a case where—

- (a) an application for a determination or redetermination is made before 3rd April 2000; or
- (b) an application for a redetermination is made on or after 3rd April 2000 in respect of a tenancy and the application for the original determination in respect of that tenancy was made before 3rd April 2000.

Signed by authority of the Secretary of State for Social Security.

6th January 2000

*Angela Eagle*  
Parliamentary Under-Secretary of State,  
Department of Social Security

## EXPLANATORY NOTE

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

This Order amends the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 (“the 1997 Order”) which confers functions on rent officers, in connection with housing benefit and rent allowance subsidy, and requires them to make determinations and redeterminations in respect of tenancies and licences of dwellings.

A new definition of “relevant period”, in relation to determinations and redeterminations, is inserted in article 2 of the 1997 Order (*article 3*).

*Articles 4 and 5* make amendments to the provisions for determinations and redeterminations. Where an application for a redetermination is made, the rent officer must redetermine any effective determinations or redeterminations in respect of the tenancy.

*Article 5* also makes provision for substitute determinations and substitute redeterminations where an application contained an error or the rent officer made an error. Where the rent officer becomes aware of an error he has made, he must notify the local authority as soon as practicable (*article 8*).

A new paragraph 6 of Schedule 1 to the 1997 Order requires the rent officer to determine the claim-related rent. Where the dwelling is not in a hostel, the rent officer must also determine the total amount of ineligible charges excluded from the claim-related rent because of the assumptions in paragraph 7 of Schedule 1. He must notify this and the claim-related rent to the local authority as well as any local reference rent and single room rent (*articles 11 and 13*).

When making determinations the rent officer must exclude service charges (except certain meal charges) that are ineligible for housing benefit, and certain other service charges for claimants in supported accommodation (*articles 10, 12 and 14*).

The Order makes other minor and drafting amendments.

The amendments made by articles 7, 10(b) and (c) and 11 to 14 do not apply to an application made before 3rd April 2000 or an application for a redetermination where the application for the original determination was made before 3rd April 2000.

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