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STATUTORY INSTRUMENTS

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**2007 No. 2871**

**HOUSING**

**The Rent Officers (Housing Benefit Functions) Amendment Order 2007**

*Made - - - - 2nd October 2007*

*Laid before Parliament 8th October 2007*

*Coming into force in accordance with article 1*

The Secretary of State for Work and Pensions, makes the following Order in exercise of the powers conferred by section 122(1) and (6) of the Housing Act 1996<sup>(1)</sup>.

**Citation, commencement and interpretation**

**1.—**(1) This Order may be cited as the Rent Officers (Housing Benefit Functions) Amendment Order 2007.

(2) This article and articles 2 (application of the Rent Officers Order), 3 (amendment of the Rent Officers Order), 11 (application of the Rent Officers (Scotland) Order) and 12 (amendment of the Rent Officers (Scotland) Order) shall come into force on 20th March 2008.

(3) Articles 4 and 13 shall come into force on 20th March immediately after the coming into force of articles 2, 3, 11 and 12.

(4) Articles 5 to 10 and 14 to 19 shall come into force on 7th April 2008.

(5) In this Order—

“local authority” has the same meaning as in the Social Security Administration Act 1992<sup>(2)</sup>;

“the Rent Officers Order” means the Rent Officers (Housing Benefit Functions) Order 1997<sup>(3)</sup>;  
and

“the Rent Officers (Scotland) Order” means Rent Officers (Housing Benefit Functions) (Scotland) Order 1997<sup>(4)</sup>.

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(1) 1996 c. 52. Section 122 was amended by sections 40 and 67 of and Schedule 5, paragraph 12 and Schedule 8 to the Welfare Reform Act 2007 (c. 5).

(2) 1992 c. 5.

(3) S.I. 1997/1984.

(4) S.I. 1997/1995.

## Application of the Rent Officers Order

2. Those provisions of the Rent Officers Order which on 19th March 2008 apply only in relation to the area of a local authority listed in the Schedule, shall apply in the same way to the area of every other local authority in England and Wales.

## Amendment of the Rent Officers Order

3. The Rent Officers Order shall be amended in accordance with the following provisions of this Order.

### Amendments to the Rent Officers Order relating to the local housing allowance coming into force on 20th March 2008

4.—(1) In article 2(5)(interpretation)—

- (a) in the definition of “broad rental market area” after “paragraph 4 of Part 1 of Schedule 3A” insert “or paragraph 4 of Schedule 3B, as the case may be,”;
- (b) in the definition for “broad rental market area determination” after “article 4B(1)” insert “or 4B(1A), as the case may be”;
- (c) in the definition of “local housing allowance determination” after “article 4B(2)” insert “or article 4B(2A), as the case may be”;
- (d) after the definition of “tenancy” add—

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(6).”.

(2) In article 4B(7) (broad rental market area determinations and local housing allowance determinations)—

- (a) in paragraph (1) for “local authority” in the first place in which it occurs substitute “pathfinder authority”;
- (b) after paragraph (1) insert—

“(1A) On 20th March 2008 and so often thereafter as a rent officer considers appropriate, a rent officer shall, in relation to each local authority,—

- (a) determine one or more broad rental market areas which will (during the month which next begins after the determination is made) fall, in whole or in part, within the area of the local authority so that every part of the area of that local authority falls within a broad rental market area and no part of the area of that authority falls within more than one broad rental market area; and

- (b) give to that local authority a notice which—

- (i) specifies the area contained within each broad rental market area as falls, in whole or in part, within the area of that authority, by reference to the postcodes for each such broad rental market area; and
- (ii) identifies such of those postcodes as fall within the area of that authority.”;

- (c) after paragraph (2) insert—

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(5) The definitions of “broad rental market area”, “broad rental market area determination” and “local housing allowance determination” were inserted by [S.I. 2003/2398](#).

(6) [1971 c.80](#).

(7) Article 4B was inserted by [S.I. 2003/2398](#) and amended by [S.I. 2006/217](#).

“(2A) No more than 10 and not less than 8 working days before the end of each month a rent officer shall—

(a) for each broad rental market area determine, in accordance with the provisions of Schedule 3B—

(i) a local housing allowance for each of the categories of dwelling set out in paragraph 1 of Schedule 3B; and

(ii) local housing allowances for such other categories of dwelling of more than five bedrooms as a rent officer believes are likely to be required for the purpose of calculating housing benefit; and

(b) give to each local authority notice of the local housing allowance determination made in accordance with paragraph (a) for each broad rental market area falling within, in whole or in part, the area of that authority.”;

(d) after paragraph (3) insert—

“(3A) Any broad rental market area determination made in accordance with paragraph (1A), or local housing allowance determination made in accordance with paragraph (2A) before 7th April 2008, shall take effect on 7th April 2008 and any subsequent determination shall take effect on the first working day of the month which begins after the day on which the determination is made.”;

(e) after paragraph (5) insert—

“(6) Where a rent officer has made a local housing allowance determination in accordance with paragraph (2A) he shall—

(a) make an approximate monthly allowance determination in relation to that local housing allowance determination; and

(b) give notice of the approximate monthly allowance determination to each authority to which he is required to give notice of the local housing allowance determination when he gives notice of that determination.”.

(3) In article 7A(8) (errors)—

(a) in paragraph (3)—

(i) after “broad rental market area determination” insert “determined in accordance with article 4B(1)”;

(ii) after “local housing allowance determination” insert “determined in accordance with article 4B(2)”;

(b) after paragraph (3) insert—

“(4) 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 broad rental market area determination determined in accordance with article 4B(1A) or a local housing allowance determination determined in accordance with article 4B(2A), he shall notify any local authority to which notification of that determination was sent of the error, and the amended determination, as soon as practicable after he becomes aware of it.”.

(4) After Schedule 3A(9) insert—

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(8) Article 7A was inserted by [S.I. 2000/1](#) and amended by [S.I. 2003/2398](#).

(9) Schedule 3A was inserted by [S.I. 2003/2398](#) and amended by [S.I. 2006/217](#).

## “SCHEDULE 3B

Article 4B

### Broad rental market area determinations and local housing allowance determinations

#### Categories of dwelling

**1.—(1)** The categories of dwelling for which a rent officer is required to determine a local housing allowance in accordance with article 4B(2A)(a)(i) are—

- (a) a dwelling where the tenant has the exclusive use of only one bedroom and where the tenancy provides for him 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) a dwelling where the tenant (together with his partner where he has one) 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) a dwelling where the tenant has the use of only two bedrooms;
- (d) a dwelling where the tenant has the use of only three bedrooms;
- (e) a dwelling where the tenant has the use of only four bedrooms;
- (f) a dwelling where the tenant has the use of only five bedrooms.

(2) In—

- (a) sub-paragraph (1)(b) “partner” has the same meaning as in regulation 2 of the Housing Benefit Regulations or, as the case may be, regulation 2 of the Housing Benefit (State Pension Credit) Regulations;
- (b) sub-paragraph (1)(c) to (f) “bedroom” means a bedroom, except for a bedroom which the tenant shares with any person other than—
  - (i) a member of his household;
  - (ii) a non-dependant of the tenant (within the meaning of regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations); or
  - (iii) a person who pays rent to the tenant.

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

**2.—(1)** Subject to paragraph 3 (anomalous local housing allowances), the rent officer must determine a local housing allowance for each category of dwelling in paragraph 1 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 rents which, in the rent officer’s opinion, are payable at the date of the determination for a dwelling 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 dwelling specified in paragraph 1 are—

- (a) that the dwelling let under the assured tenancy is in the broad rental market area for which the local housing allowance for that category of dwelling is being determined;
  - (b) that the dwelling is in a reasonable state of repair; and
  - (c) that 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 dwelling in relation to which the list of rents is being compiled.
- (6) Where rent is payable other than weekly the rent officer must use the figure which would be payable if the rent were to be payable weekly by—
- (a) multiplying the rent by an appropriate figure to obtain the rent for a year;
  - (b) dividing the total in (a) by 365; and
  - (c) multiplying the total in (b) by 7.
- (7) When compiling the list of rents for each category of dwelling, the rent officer must—
- (a) assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and
  - (b) exclude the amount of any rent which, in the rent officer's opinion, is fairly attributable to the provision of services performed for, or facilities (including the use of furniture) provided for, or rights made available to, the tenant which are ineligible to be met by housing benefit.
- (8) When compiling the list of rents, the rent officer may include rents in other similar areas in which he believes a comparable market exists where he is not satisfied that the broad rental market area contains a sufficient number of dwellings that accord with the relevant category of dwelling set out in paragraph 1 to enable him to make a local housing allowance determination.
- (9) The local housing allowance for each category of dwelling specified in paragraph 1 is the amount of the median rent in the list of rents for that category of dwelling.
- (10) The median rent is determined as follows—

- (a) where there is an even number of rents on the list, the formula is—

$$\frac{\text{the amount of the rent at } P + \text{the amount of the rent at } P+1}{2} = \text{the local housing allowance}$$

where P is the position on the list defined by dividing the number of rents on the list by 2 and P1 is the following position on the list.

- (b) where there is an odd number of rents on the list, the formula is—

$$\frac{\text{the number of rents on the list} + 1}{2} = L$$

where L is the position on the list in which the rent used to identify the local housing allowance lies.

(11) Where the median rent is not a whole number of pence, the rent 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.

### **Anomalous local housing allowances**

#### **3.—(1) Where—**

- (a) the rent officer has determined the local housing allowance for each of the categories of dwelling in paragraph 1(1) in accordance with the preceding paragraphs of this Schedule; and
  - (b) the local housing allowance for a category of dwelling in paragraph 1(1)(b) to (f) is lower than the local housing allowance for any of the categories of dwelling which precede it,
- that local housing allowance shall be the same as the highest local housing allowance which precedes it.

(2) Where—

- (a) the rent officer has determined a local housing allowance following an application made under article 4B(4); and
- (b) that local housing allowance is lower than the local housing allowance for the category of dwelling in paragraph 1(1)(f),

that local housing allowance shall be the same as the local housing allowance for the category of dwelling in paragraph 1(1)(f).

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

4. In this Schedule “broad rental market area” means an area—

- (a) comprising two or more distinct areas of residential accommodation, each distinct area of residential accommodation adjoining at least one other in the area;
- (b) 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 facilities and services of the same type and similar standard; and
- (c) containing residential premises of a variety of types, and including such premises held on a variety of tenancies.”.

#### **Amendments to the Rent Officers Order relating to the local housing allowance coming into force on 7th April 2008**

5.—(1) In article 3(2)(a)(10) (determinations) omit “, except for a local authority which is a pathfinder authority,”.

(2) In article 4B(6)(11) (broad rental market area determinations and local housing allowance determinations) after “paragraph (2A)” insert “, (4) or (4A)”.

#### **Amendments to the Rent Officers Order relating to the local housing allowance coming into force on 7th April 2008 save for certain purposes**

6.—(1) This article shall not apply where—

- (a) a board and attendance determination, board and attendance redetermination, substitute board and attendance determination or substitute board and attendance redetermination is to be made and the application for the board and attendance determination or original board and attendance determination was made by virtue of regulation 13A(6) of the Housing Benefit Regulations 2006(12) or, as the case may be, regulation 13A(6) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(13) as in force immediately before 7th April 2008;
- (b) a local housing allowance determination is to be made and the application was made by virtue of regulation 13A(4) or (5) of the Housing Benefit Regulations 2006 or, as the case may be, regulation 13A(4) or (5) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force immediately before 7th April 2008; or

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(10) Article 3(2)(a) was amended by [S.I. 2003/2398](#).

(11) Paragraph (6) of article 4B is inserted by article 4(2)(e) of this Order.

(12) [S.I. 2006/213](#). Regulation 13A was inserted into the Regulations, as they applied to pathfinder authorities, by regulation 122 of and Schedule 10 to those Regulations.

(13) [S.I. 2006/214](#). Regulation 13A was inserted into the Regulations, as they applied to pathfinder authorities, by regulation 103 of and Schedule 9 to those Regulations.

- (c) an error in relation to a broad rental market area determination, local housing allowance determination, board and attendance determination or a board and attendance redetermination is to be corrected and the original determination was made in accordance with the Rent Officers Order as in force immediately before 7th April 2008.
- (2) For the purpose of sub-paragraph (1)(c) “original determination” means the broad rental market area determination, local housing allowance determination, board and attendance determination or board and attendance redetermination to which the correction of an error relates.
- (3) In article 2(**14**)—
- (a) for the definition of “broad rental market area” substitute—
- ““broad rental market area” has the meaning specified in paragraph 4 of Schedule 3B;”;
- (b) for the definition of “broad rental market area determination” substitute—
- ““broad rental market area determination” means a determination made in accordance with article 4B(1A);”;
- (c) for the definition of “local housing allowance determination” substitute—
- ““local housing allowance determination” means a determination made in accordance with article 4B(2A);”;
- (d) omit the definition of “pathfinder authority”.
- (e) for the definition of “relevant date” substitute—
- ““relevant date” means the date specified by a local authority in an application for a local housing allowance determination made in accordance with regulation 13D(7) (a)(**15**) of the Housing Benefit Regulations or, as the case may be, regulation 13D(7) (a)(**16**) of the Housing Benefit (State Pension Credit) Regulations;”.
- (4) In article 4B (broad rental market area determinations and local housing allowance determinations)—
- (a) omit paragraphs (1), (2) and (3);
- (b) for paragraph (4) substitute—
- “(4) Where a local authority makes an application in accordance with regulation 13D(7) (a) of the Housing Benefit Regulations or, as the case may be, regulation 13D(7)(a) of the Housing Benefit (State Pension Credit) Regulations, a rent officer shall determine, in accordance with the provisions of Schedule 3B and as soon as is reasonably practicable, the local housing allowance for that category of dwelling at the relevant date, for each broad rental market area falling within, in whole or in part, the area of the local authority that made the application, at the relevant date.
- (4A) Where a local authority makes an application in accordance with regulation 13D(8) of the Housing Benefit Regulations or, as the case may be, regulation 13D(8) of the Housing Benefit (State Pension Credit) Regulations, a rent officer shall determine in accordance with the provisions of Schedule 3B and as soon as is reasonably practicable, the local housing allowance for that category of dwelling for each broad rental market area falling within, in whole or in part, the areas of the local authority.”.
- (c) in paragraph (5)—
- (i) in sub-paragraph (a) for “pathfinder authority” substitute “local authority”;

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(14) The definitions of “broad rental market area”, “broad rental market area determination” and “local housing allowance determination” are amended by article 4(1) of this Order. The definition of “pathfinder authority” was inserted by [S.I. 2003/2398](#). The definition of “relevant date” was inserted by [S.I. 2003/2398](#) and substituted by [S.I. 2006/217](#).

(15) Regulation 13D is inserted by regulation 7 of [S.I. 2007/2868](#).

(16) Regulation 13D is inserted by regulation 7 of [S.I. 2007/2869](#).

- (ii) in sub-paragraph (b) after “relevant date falls” insert “, except that no such determination can have effect before 7th April 2008”;
- (iii) in sub-paragraph (c) after “sub-paragraph (a)” insert “, except that no such determination can have effect before 7th April 2008”.
- (5) For article 4C(1) and (2)(17) (board and attendance determinations and notifications) substitute—
  - “4C.—(1) Where a relevant authority makes an application to a rent officer in accordance with regulation 13D(10) of the Housing Benefit Regulations or, as the case may be, regulation 13D(10) of the Housing Benefit (State Pension Credit) Regulations, a rent officer shall determine whether or not a substantial part of the rent under the tenancy at the relevant time is fairly attributable to board and attendance.
  - (2) Where a rent officer determines that a substantial part of the rent under the tenancy at the relevant time is fairly attributable to board and attendance, he shall—
    - (a) notify the relevant authority accordingly; and
    - (b) treat the application as if it had been made in accordance with regulation 14(1) of the Housing Benefit Regulations or, as the case may be regulation 14(1) of the Housing Benefit (State Pension Credit) Regulations.”.
- (6) In articles 4D (board and attendance redeterminations) and 4E(18) (substitute board and attendance determinations and substitute board and attendance redeterminations) for “pathfinder authority” in both places in which it occurs substitute “local authority”.
- (7) In article 7A (errors)—
  - (a) in paragraph (2) for “pathfinder authority” substitute “local authority”;
  - (b) omit paragraph (3).
- (8) Omit Schedule 3A.

**Amendments to the Rent Officers Order relating to information sharing coming into force on 7th April 2008 save for certain purposes**

7.—(1) This article shall not apply where information is provided to the rent officer by virtue of regulation 14 or 114 of the Housing Benefit Regulations 2006 or, as the case may be, regulation 14 or 95 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force immediately before 7th April 2008.

- (2) For Article 4C(4) (board and attendance determinations and notifications) substitute—

“(4) Where an application for a board and attendance determination is treated as if it had been made in accordance with regulation 14(1) of the Housing Benefit Regulations or, as the case may be, regulation 14(1) of the Housing Benefit (State Pension Credit) Regulations, then, for the purposes of paragraph (a)(ii) of the definition of “relevant period” in article 2(1), it shall be treated as having been received on the day on which the further information provided in accordance with regulation 114A(4)(19) of the Housing Benefit Regulations or regulation 95A(4)(20) of the Housing Benefit (State Pension Credit) Regulations is received.”.

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(17) Article 4C was inserted by [S.I. 2003/2398](#) and amended by [S.I. 2006/217](#).

(18) Articles 4D and 4E were inserted by [S.I. 2003/2398](#). Article 4E was amended by [S.I. 2006/217](#).

(19) Regulation 114A is inserted by [S.I. 2007/2868](#).

(20) Regulation 95A is inserted by [S.I. 2007/2869](#).



(3) In article 5(21) (insufficient information) for “, he shall serve notice on the local authority requesting that information” substitute “where the information supplied under regulation 114A of the Housing Benefit Regulations or regulation 95A of the Housing Benefit (State Pension Credit) Regulations was incomplete or incorrect, he shall serve notice on the local authority requesting it to supply the further information required under regulation 114A or regulation 95A, as the case may be, or to confirm whether the information already supplied is correct and, if it is not, to supply the correct information”.

(4) For paragraph 7(3)(22) of Part 2 of Schedule 1 substitute—

“(3) For the purposes of paragraphs 1, 2, 3, and 6 of Part 1 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 114A(4)(b) of the Housing Benefit Regulations or, as the case may be, regulations 95A(4)(b) of the Housing Benefit (State Pension Credit) Regulations 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 total amount stated under regulation 114A(3)(d) of the Housing Benefit Regulations or, as the case may be regulation 95A(3)(d) of the Housing Benefit (State Pension Credit) Regulations less the total of any ineligible charges included in that stated amount.”.

**Amendments to the Rent Officers Order relating to ineligible service charges coming into force on 7th April 2008 save for certain purposes**

8.—(1) This article shall not apply where the rent officer is required to make a determination under paragraphs 1, 2, 3, or 6 of Part 1 of Schedule 1 to the Rent Officers Order by virtue of—

(a) an application made under—

- (i) regulation 14 of the Housing Benefit Regulations 2006 as in force before the substitution of regulation 14 by virtue of regulation 8 of the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007(23); or
- (ii) regulation 14 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force before the substitution of regulation 14 by virtue of regulation 8 of the Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007(24); or

(b) an application for a redetermination, substitute determination or substitute redetermination relating to a determination to which sub-paragraph (a) applies made under regulation 15, 16 or 17 of the Regulations referred to in sub-paragraph (a)(i) or (ii).

(2) For paragraph 7(1) (ineligible charges and support charges) of Part 2 of Schedule 1 substitute—

“(1) “ineligible charges” means service charges which are ineligible to be met by housing benefit by virtue of regulation 12B(2)(25) (rent) of and Schedule 1 (ineligible service charges) to the Housing Benefit Regulations or, as the case may be, regulation 12B(2)(26) of and Schedule 1 to the Housing Benefit (State Pension Credit) Regulations except in the case of a tenancy where the rent includes payments for board and attendance, and the rent

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(21) Article 5 was amended by [S.I. 2000/1](#) and [2006/217](#).

(22) Paragraph 7 of Schedule 1 was substituted by [S.I. 2000/1](#). Sub-paragraph (1)(a) was substituted by [S.I. 2006/217](#) and sub-paragraph (1)(b) was amended by [S.I. 2003/2398](#). Sub-paragraph (3) was amended by [S.I. 2006/217](#).

(23) [S.I. 2007/2868](#).

(24) [S.I. 2007/2869](#).

(25) Regulation 12B is inserted by regulation 5 of [S.I. 2007/2868](#).

(26) Regulation 12B is inserted by regulation 5 of [S.I. 2007/2868](#).

officer considers that a substantial part of the rent under the tenancy is fairly attributable to board and attendance, charges specified in paragraph 1(a)(i) of Schedule 1 to the Housing Benefit Regulations or, as the case may be, in paragraph 1(a)(i) of Schedule 1 to the Housing Benefit (State Pension Credit) Regulations (charges for meals).”.

**Amendments to the Rent Officers Order relating to claim-related rent coming into force on 7th April 2008 save for certain purposes**

9.—(1) This article shall not apply where the rent officer has made a determination under paragraphs 1, 2, 3, 4 or 5 of Part 1 of Schedule 1 to the Rent Officers Order and that determination was made in relation to—

- (a) an application under—
  - (i) regulation 14 of the Housing Benefit Regulations 2006 as in force before the substitution of regulation 14 by virtue of regulation 8 of the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007; or
  - (ii) regulation 14 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force before the substitution of regulation 14 by virtue of regulation 8 of the Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007; or
- (b) an application for a redetermination, substitute determination or substitute redetermination relating to a determination to which sub-paragraph (a) applies made under regulation 15, 16 or 17 of the Regulations referred to in sub-paragraph (a)(i) or (ii).

(2) In paragraph 6(27) of Part 1 of Schedule 1—

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

“(1) In this paragraph, and in paragraph 9, “claim-related rent” means the claim-related rent determined by the rent officer in accordance with paragraph (2A).”;

(b) after sub-paragraph (1) insert—

“(2A) The rent officer shall determine that the claim-related rent is—

- (a) where he 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 he makes a determination under only two of the sub-paragraphs referred to in paragraph (a), the lower of the two rents determined under those sub-paragraphs;
- (c) where he makes a determination under only one of the sub-paragraphs referred to in paragraph (a), the rent determined under that sub-paragraph;
- (d) where he does not make a determination under any of the sub-paragraphs referred to in sub-paragraph (a), the rent payable under the tenancy of the dwelling at the relevant time.”.

(c) omit sub-paragraph (2); and

(d) in sub-paragraph (3) omit “Where the dwelling is not in a hostel,”.

(3) In paragraph 9(1)(28) of Part 3 of Schedule 1—

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

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(27) Paragraph 6 of Schedule 1 was substituted by [S.I. 2000/1](#).

(28) Paragraph 9(1) of Schedule 1 was amended by [S.I. 2006/217](#).

- “(c) where that claim-related rent includes an amount which would be ineligible for housing benefit under paragraph 1(a)(i) of Schedule 1 to the Housing Benefit Regulations or, as the case may be, paragraph 1(a)(i) of Schedule 1 to the Housing Benefit (State Pension Credit) Regulations (charges for meals), the inclusion of an ineligible amount in respect of meals;”;
- (b) after sub-paragraph (1)(d) insert—
  - “(da) where any rent determined under paragraph 4 includes an amount which would be ineligible for housing benefit under the provisions referred to in sub-paragraph (c), the inclusion of an ineligible amount in respect of meals; and”.

### **Amendments to the Rent Officers Order which remake amendments made by the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006**

#### **10.—(1) In article 2(29) (interpretation)—**

- (a) for the definition of “hostel” substitute—
  - ““hostel” has the same meaning as in regulation 2(1) of the Housing Benefit Regulations or, as the case may be, regulation 2(1) of the Housing Benefit (State Pension Credit) Regulations;”;
- (b) after that definition insert—
  - ““the Housing Benefit Regulations” means the Housing Benefit Regulations 2006;
  - “the Housing Benefit (State Pension Credit) Regulations” means the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006;”;
- (c) for the definition of “rent” substitute—
  - ““rent” means any of the periodical payments referred to in regulation 12(1) of the Housing Benefit Regulations or, as the case may be, regulation 12(1) of the Housing Benefit (State Pension Credit) Regulations;”;
- (d) omit the definition of the “1987 Regulations”.

(2) In article 3A(30) (transitional arrangements for determination of single room rents with effect from 2nd July 2001), for “regulation 12A of the 1987 Regulations” substitute “regulation 14 of the Housing Benefit Regulations or, as the case may be, regulation 14 of the Housing Benefit (State Pension Credit) Regulations”.

(3) In article 4A(31) (substitute determinations and substitute redeterminations), for “regulation 12C of the 1987 Regulations” substitute “regulation 17 of the Housing Benefit Regulations or, as the case may be, regulation 17 of the Housing Benefit (State Pension Credit) Regulations”.

(4) In article 4E(32) (substitute board and attendance determinations and substitute board and attendance redeterminations), wherever “regulation 12C of the 1987 Regulations” occurs, substitute “regulation 17 of the Housing Benefit Regulations or, as the case may be, regulation 17 of the Housing Benefit (State Pension Credit) Regulations”.

#### **(5) In article 6(33) (exceptions)—**

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- (29) The definitions of “hostel” and “rent” were substituted by [S.I. 2006/217](#) and the definitions of “Housing Benefit Regulations” and “Housing Benefit (State Pension Credit) Regulations” were inserted by [S.I. 2006/217](#).
  - (30) Article 3A was inserted by [S.I. 2001/1325](#) and amended by [S.I. 2001/2317](#) and [2006/217](#).
  - (31) Article 4A was substituted by [S.I. 2000/1](#) and amended by [S.I. 2006/217](#).
  - (32) Article 4E was inserted by [S.I. 2003/2398](#) and amended by [S.I. 2006/217](#).
  - (33) Article 6 was amended by [S.I. 2003/2398](#) and [2006/217](#).

- (a) in paragraph (2) for “regulation 7(3) of the 1987 Regulations” substitute “regulation 9(4) of the Housing Benefit Regulations or, as the case may be, regulation 9(4) of the Housing Benefit (State Pension Credit) Regulations”; and
  - (b) in paragraph (3), for “the 1987 Regulations” substitute “the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations”.
- (6) In article 7(34) (special cases), for “regulation 10(1) of the 1987 Regulations” substitute “regulation 12(1) of the Housing Benefit Regulations or, as the case may be, regulation 12(1) of the Housing Benefit (State Pension Credit) Regulations”.
- (7) In Schedule 1(35)—
- (a) in Part 1, in paragraph 4(4) (local reference rents), for the definition of “non-dependant” substitute—
 

““non-dependant” means a non-dependant of the tenant within the meaning of regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations;”;
  - (b) in Part 4, in paragraph 11(5)(b) (indicative rent levels), for “regulation 3 of the 1987 Regulations” substitute “regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations”.
- (8) In Schedule 3A (categories of dwelling)(36), in Part 1, in paragraph 1(2)(b), for “regulation 3 of the 1987 Regulations” substitute “regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations.”.

### **Application of the Rent Officers (Scotland) Order**

**11.** Those provisions of the Rent Officers (Scotland) Order which on 19th March 2008 apply only in relation to the areas of the local authority of Argyll and Bute and the local authority of Edinburgh, shall apply in the same way to the area of every other local authority in Scotland.

### **Amendments to the Rent Officers (Scotland) Order**

**12.** The Rent Officers (Scotland) Order shall be amended in accordance with the following provisions of this Order.

### **Amendments to the Rent Officers (Scotland) Order relating to the local housing allowance coming into force on 20th March 2008**

- 13.—**(1) In article 2(37) (interpretation)—
- (a) in the definition of “broad rental market area” after “paragraph 4 of Part 1 of Schedule 3A” insert “or paragraph 4 of Schedule 3B, as the case may be,”;
  - (b) in the definition for “broad rental market area determination” after “article 4B(1)” insert “or 4B(1A), as the case may be”;
  - (c) in the definition of “local housing allowance determination” after “article 4B(2)” insert “or article 4B(2A), as the case may be”;
  - (d) after the definition of “tenancy” add—

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(34) Article 7 was amended by [S.I. 2000/1](#) and [2006/217](#).

(35) Paragraphs 4(4) and 11(5)(b) of Schedule 1 were amended by [S.I. 2006/217](#).

(36) Schedule 3A was inserted by [S.I. 2003/2398](#) and amended by [S.I. 2006/217](#).

(37) The definitions of “broad rental market area”, “broad rental market area determination” and “local housing allowance determination” were inserted by [S.I. 2003/2398](#).

“working day” means any day other than a Saturday, a Sunday or a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(38).”.

(2) In article 4B(39) (broad rental market area determinations and local housing allowance determinations)—

(a) in paragraph (1) for “local authority” in the first place in which it occurs substitute “pathfinder authority”;

(b) after paragraph (1) insert—

“(1A) On 20th March 2008 and so often thereafter as a rent officer considers appropriate, a rent officer shall, in relation to each local authority,—

(a) determine one or more broad rental market areas which will (during the month which next begins after the determination is made) fall, in whole or in part, within the area of the local authority so that every part of the area of that local authority falls within a broad rental market area and no part of the area of that authority falls within more than one broad rental market area; and

(b) give to that local authority a notice which—

(i) specifies the area contained within each broad rental market area as falls, in whole or in part, within the area of that authority, by reference to the postcodes for each such broad rental market area; and

(ii) identifies such of those postcodes as fall within the area of that authority.”;

(c) after paragraph (2) insert—

“(2A) No more than 10 and not less than 8 working days before the end of each month a rent officer shall—

(a) for each broad rental market area determine, in accordance with the provisions of Schedule 3B—

(i) a local housing allowance for each of the categories of dwelling set out in paragraph 1 of Schedule 3B; and

(ii) local housing allowances for such other categories of dwelling of more than five bedrooms as a rent officer believes are likely to be required for the purpose of calculating housing benefit; and

(b) give to each local authority notice of the local housing allowance determination made in accordance with paragraph (a) for each broad rental market area falling within, in whole or in part, the area of that authority.”;

(d) after paragraph (3) insert—

“(3A) Any broad rental market area determination made in accordance with paragraph (1A), or local housing allowance determination made in accordance with paragraph (2A) before 7th April 2008, shall take effect on 7th April 2008 and any subsequent determination shall take effect on the first working day of the month which begins after the day on which the determination is made.”;

(e) after paragraph (5) insert—

“(6) Where a rent officer has made a local housing allowance determination in accordance with paragraph (2A) he shall—

(a) make an approximate monthly allowance determination in relation to that local housing allowance determination; and

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(38) 1971 c.80.

(39) Article 4B was inserted by S.I. 2003/2398 and amended by S.I. 2006/217.

- (b) give notice of the approximate monthly allowance determination to each authority to which he is required to give notice of the local housing allowance determination when he gives notice of that determination.”.
- (3) In article 7A(**40**) (errors)—
  - (a) in paragraph (3)—
    - (i) after “broad rental market area determination” insert “determined in accordance with article 4B(1)”;
    - (ii) after “local housing allowance determination” insert “determined in accordance with article 4B(2)”;
  - (b) after paragraph (3) insert—
 

“(4) 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 broad rental market area determination determined in accordance with article 4B(1A) or a local housing allowance determination determined in accordance with article 4B(2A), he shall notify any local authority to which notification of that determination was sent of the error, and the amended determination, as soon as practicable after he becomes aware of it.”.
- (4) After Schedule 3A(**41**) insert—

“SCHEDULE 3B

Article 4B

Broad rental market area determinations and local housing allowance determinations

**Categories of dwelling**

- 1.—**(1) The categories of dwelling for which a rent officer is required to determine a local housing allowance in accordance with article 4B(2A)(a)(i) are—
- (a) a dwelling where the tenant has the exclusive use of only one bedroom and where the tenancy provides for him 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) a dwelling where the tenant (together with his partner where he has one) 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) a dwelling where the tenant has the use of only two bedrooms;
  - (d) a dwelling where the tenant has the use of only three bedrooms;
  - (e) a dwelling where the tenant has the use of only four bedrooms;
  - (f) a dwelling where the tenant has the use of only five bedrooms.
- (2) In—
- (a) sub-paragraph (1)(b) “partner” has the same meaning as in regulation 2 of the Housing Benefit Regulations or, as the case may be, regulation 2 of the Housing Benefit (State Pension Credit) Regulations;

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(40) Article 7A was inserted by [S.I. 2000/3](#) and amended by [S.I. 2003/2398](#).

(41) Schedule 3A was inserted by [S.I. 2003/2398](#) and amended by [S.I. 2006/217](#).

- (b) sub-paragraph (1)(c) to (f) “bedroom” means a bedroom, except for a bedroom which the tenant shares with any person other than—
  - (i) a member of his household;
  - (ii) a non-dependant of the tenant (within the meaning of regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations); or
  - (iii) a person who pays rent to the tenant.

### **Local housing allowance for category of dwelling in paragraph 1**

2.—(1) Subject to paragraph 3 (anomalous local housing allowances), the rent officer must determine a local housing allowance for each category of dwelling in paragraph 1 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 rents which, in the rent officer’s opinion, are payable at the date of the determination for a dwelling 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 dwelling specified in paragraph 1 are—

- (a) that the dwelling let under the assured tenancy is in the broad rental market area for which the local housing allowance for that category of dwelling is being determined;
- (b) that the dwelling is in a reasonable state of repair; and
- (c) that 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 dwelling in relation to which the list of rents is being compiled.

(6) Where rent is payable other than weekly the rent officer must use the figure which would be payable if the rent were to be payable weekly by—

- (a) multiplying the rent by an appropriate figure to obtain the rent for a year;
- (b) dividing the total in (a) by 365; and
- (c) multiplying the total in (b) by 7.

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

- (a) assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and
- (b) exclude the amount of any rent which, in the rent officer’s opinion, is fairly attributable to the provision of services performed for, or facilities (including the use of furniture) provided for, or rights made available to, the tenant which are ineligible to be met by housing benefit.

(8) When compiling the list of rents, the rent officer may include rents in other similar areas in which he believes a comparable market exists where he is not satisfied that the broad rental market area contains a sufficient number of dwellings that accord with the relevant category of dwelling set out in paragraph 1 to enable him to make a local housing allowance determination.

(9) The local housing allowance for each category of dwelling specified in paragraph 1 is the amount of the median rent in the list of rents for that category of dwelling.

(10) The median rent is determined as follows—

- (a) where there is an even number of rents on the list, the formula is—



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

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

where P is the position on the list defined by dividing the number of rents on the list by 2 and P1 is the following position on the list.

- (b) where there is an odd number of rents on the list, the formula is—

$$\frac{\text{the number of rents on the list} + 1}{2} = L$$

where L is the position on the list in which the rent used to identify the local housing allowance lies.

(11) Where the median rent is not a whole number of pence, the rent 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.

### **Anomalous local housing allowances**

#### **3.—(1) Where—**

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

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

#### **(2) Where—**

- (a) the rent officer has determined a local housing allowance following an application made under article 4B(4); and
- (b) that local housing allowance is lower than the local housing allowance for the category of dwelling in paragraph 1(1)(f),

that local housing allowance shall be the same as the local housing allowance for the category of dwelling in paragraph 1(1)(f).

### **Broad rental market area**

#### **4. In this Schedule “broad rental market area” means an area—**

- (a) comprising two or more distinct areas of residential accommodation, each distinct area of residential accommodation adjoining at least one other in the area;
- (b) 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 facilities and services of the same type and similar standard; and
- (c) containing residential premises of a variety of types, and including such premises held on a variety of tenancies.”.

### **Amendments to the Rent Officers (Scotland) Order relating the to local housing allowance coming into force on 7th April 2008**

**14.—(1)** In article 3(2)(a)(42) (determinations) omit “except in relation to the area of a local authority which is a pathfinder authority”.



(2) In article 4B(6)(43) (broad rental market area determinations and local housing allowance determinations) after “paragraph (2A)” insert “, (4) or (4A)”.

**Amendments to the Rent Officers (Scotland) Order relating to the local housing allowance coming into force on 7th April 2008 save for certain purposes**

15.—(1) This article shall not apply where—

- (a) a board and attendance determination, board and attendance redetermination, substitute board and attendance determination or substitute board and attendance redetermination is to be made and the application for the board and attendance determination or original board and attendance determination was made by virtue of regulation 13A(6) of the Housing Benefit Regulations 2006(44) or, as the case may be, regulation 13A(6) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(45) as in force immediately before 7th April 2008;
- (b) a local housing allowance determination is to be made and the application was made by virtue of regulation 13A(4) or (5) of the Housing Benefit Regulations 2006 or, as the case may be, regulation 13A(4) or (5) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force immediately before 7th April 2008; or
- (c) an error in relation to a broad rental market area determination, local housing allowance determination, board and attendance determination or a board and attendance redetermination is to be corrected and the original determination was made in accordance with the Rent Officers (Scotland) Order as in force immediately before 7th April 2008.

(2) For the purpose of sub-paragraph (1)(c) “original determination” means the broad rental market area determination, local housing allowance determination, board and attendance determination or board and attendance redetermination to which the correction of an error relates.

(3) In article 2(46)—

- (a) for the definition of “broad rental market area” substitute—  
““broad rental market area” has the meaning specified in paragraph 4 of Schedule 3B;”;
- (b) for the definition of “broad rental market area determination” substitute—  
““broad rental market area determination” means a determination made in accordance with article 4B(1A);”;
- (c) for the definition of “local housing allowance determination” substitute—  
““local housing allowance determination” means a determination made in accordance with article 4B(2A);”;
- (d) omit the definition of “pathfinder authority”.
- (e) for the definition of “relevant date” substitute—  
““relevant date” means the date specified by a local authority in an application for a local housing allowance determination made in accordance with regulation 13D(7)

(43) Paragraph (6) of article 4B is inserted by article 13(2)(e) of this Order.

(44) S.I. 2006/213. Regulation 13A was inserted into the Regulations, as they applied to pathfinder authorities, by regulation 122 of and Schedule 10 to those Regulations.

(45) S.I. 2006/214. Regulation 13A was inserted into the Regulations, as they applied to pathfinder authorities, by regulation 103 of and Schedule 9 to those Regulations.

(46) The definitions of “broad rental market area”, “broad rental market area determination” and “local housing allowance determination” are amended by article 13(1) of this Order. The definition of “pathfinder authority” was inserted by S.I. 2003/2398. The definition of “relevant date” was inserted by S.I. 2003/2398 and substituted by S.I. 2006/217.

(a)(47) of the Housing Benefit Regulations or, as the case may be, regulation 13D(7) (a)(48) of the Housing Benefit (State Pension Credit) Regulations;”.

(4) In article 4B (broad rental market area determinations and local housing allowance determinations)—

(a) omit paragraphs (1), (2) and (3);

(b) for paragraph (4) substitute—

“(4) Where a local authority makes an application in accordance with regulation 13D(7) (a) of the Housing Benefit Regulations or, as the case may be, regulation 13D(7)(a) of the Housing Benefit (State Pension Credit) Regulations, a rent officer shall determine, in accordance with the provisions of Schedule 3B and as soon as is reasonably practicable, the local housing allowance for that category of dwelling at the relevant date, for each broad rental market area falling within, in whole or in part, the area of the local authority that made the application, at the relevant date.

(4A) Where a local authority makes an application in accordance with regulation 13D(8) of the Housing Benefit Regulations or, as the case may be, regulation 13D(8) of the Housing Benefit (State Pension Credit) Regulations, a rent officer shall determine in accordance with the provisions of Schedule 3B and as soon as is reasonably practicable, the local housing allowance for that category of dwelling for each broad rental market area falling within, in whole or in part, the areas of the local authority.”.

(c) in paragraph (5)—

(i) in sub-paragraph (a) for “pathfinder authority” substitute “local authority”;

(ii) in sub-paragraph (b) after “relevant date falls” insert “, except that no such determination can have effect before 7th April 2008”;

(iii) in sub-paragraph (c) after “sub-paragraph (a)” insert “, except that no such determination can have effect before 7th April 2008”.

(5) For article 4C(1) and (2)(49) (board and attendance determinations and notifications) substitute—

“4C.—(1) Where a relevant authority makes an application to a rent officer in accordance with regulation 13D(10) of the Housing Benefit Regulations or, as the case may be, regulation 13D(10) of the Housing Benefit (State Pension Credit) Regulations, a rent officer shall determine whether or not a substantial part of the rent under the tenancy at the relevant time is fairly attributable to board and attendance.

(2) Where a rent officer determines that a substantial part of the rent under the tenancy at the relevant time is fairly attributable to board and attendance, he shall—

(a) notify the relevant authority accordingly; and

(b) treat the application as if it had been made in accordance with regulation 14(1) of the Housing Benefit Regulations or, as the case may be regulation 14(1) of the Housing Benefit (State Pension Credit) Regulations.”.

(6) In articles 4D (board and attendance redeterminations) and 4E(50) (substitute board and attendance determinations and substitute board and attendance redeterminations) for “pathfinder authority” in both places in which it occurs substitute “local authority”.

(7) In article 7A (errors)—

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(47) Regulation 13D is inserted by [S.I. 2007/2868](#).

(48) Regulation 13D is inserted by [S.I. 2007/2869](#).

(49) Article 4C was inserted by [S.I. 2003/2398](#) and amended by [S.I. 2006/217](#).

(50) Articles 4D and 4E were inserted by [S.I. 2003/2398](#). Article 4E was amended by [S.I. 2006/217](#).

- (a) in paragraph (2) for “pathfinder authority” substitute “local authority”;
- (b) omit paragraph (3).
- (8) Omit Schedule 3A.

#### **Amendments to the Rent Officers (Scotland) Order relating to information sharing coming into force on 7th April 2008**

16.—(1) This article shall not apply where information is provided to the rent officer by virtue of regulation 14 or 114 of the Housing Benefit Regulations 2006 or, as the case may be, regulation 14 or 95 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force immediately before 7th April 2008.

- (2) For Article 4C(4) (board and attendance determinations and notifications) substitute—

“(4) Where an application for a board and attendance determination is treated as if it had been made in accordance with regulation 14(1) of the Housing Benefit Regulations or, as the case may be, regulation 14(1) of the Housing Benefit (State Pension Credit) Regulations, then, for the purposes of paragraph (a)(ii) of the definition of “relevant period” in article 2(1), it shall be treated as having been received on the day on which the further information provided in accordance with regulation 114A(4)(51) of the Housing Benefit Regulations or regulation 95A(4)(52) of the Housing Benefit (State Pension Credit) Regulations is received.”.

(3) In article 5(53) (insufficient information) for “, he shall serve notice on the local authority requesting that information” substitute “where the information supplied under regulation 114A of the Housing Benefit Regulations or regulation 95A of the Housing Benefit (State Pension Credit) Regulations was incomplete or incorrect, he shall serve notice on the local authority requesting it to supply the further information required under regulation 114A or regulation 95A, as the case may be, or to confirm whether the information already supplied is correct and, if it is not, to supply the correct information”.

- (4) For paragraph 7(3)(54) of Part 2 of Schedule 1 substitute—

“(3) For the purposes of paragraphs 1, 2, 3, and 6 of Part 1 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 114A(4)(b) of the Housing Benefit Regulations or, as the case may be, regulations 95A(4)(b) of the Housing Benefit (State Pension Credit) Regulations 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 total amount stated under regulation 114A(3)(d) of the Housing Benefit Regulations or, as the case may be regulation 95A(3)(d) of the Housing Benefit (State Pension Credit) Regulations less the total of any ineligible charges included in that stated amount.”.

#### **Amendments to the Rent Officers (Scotland) Order relating to ineligible service charges coming into force on 7th April 2008 save for certain purposes**

17.—(1) This article shall not apply where the rent officer is required to make a determination under paragraphs 1, 2, 3, or 6 of Part 1 of Schedule 1 to the Rent Officers (Scotland) Order by virtue of—

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(51) Regulation 114A is inserted by [S.I. 2007/2868](#).

(52) Regulation 95A is inserted by [S.I. 2007/2869](#).

(53) Article 5 was amended by [S.I. 2000/3](#) and [2006/217](#).

(54) Paragraph 7 of Schedule 1 was substituted by [S.I. 2000/3](#). Sub-paragraph (1)(a) was substituted by [S.I. 2006/217](#) and sub-paragraph (1)(b) was amended by [S.I. 2003/2398](#). Sub-paragraph (3) was amended by [S.I. 2006/217](#).

- (a) an application made under—
    - (i) regulation 14 of the Housing Benefit Regulations 2006 as in force before the substitution of regulation 14 by virtue of regulation 8 of the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007<sup>(55)</sup>; or
    - (ii) regulation 14 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force before the substitution of regulation 14 by virtue of regulation 8 of the Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007<sup>(56)</sup>; or
  - (b) an application for a redetermination, substitute determination or substitute redetermination relating to a determination to which sub-paragraph (a) applies made under regulation 15, 16 or 17 of the Regulations referred to in sub-paragraph (a)(i) or (ii).
- (2) For paragraph 7(1) (ineligible charges and support charges) of Part 2 of Schedule 1 substitute—
- “(1) “ineligible charges” means service charges which are ineligible to be met by housing benefit by virtue of regulation 12B(2) (rent) of and Schedule 1 (ineligible service charges) to the Housing Benefit Regulations or, as the case may be, regulation 12B(2) of and Schedule 1 to the Housing Benefit (State Pension Credit) Regulations except 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 under the tenancy is fairly attributable to board and attendance, charges specified in paragraph 1(a)(i) of Schedule 1 to the Housing Benefit Regulations or, as the case may be, in paragraph 1(a)(i) of Schedule 1 to the Housing Benefit (State Pension Credit) Regulations (charges for meals).”.

**Amendments to the Rent Officers (Scotland) Order relating to claim-related rent coming into force on 7th April 2008 save for certain purposes**

**18.—**(1) This article shall not apply where the rent officer has made a determination under paragraphs 1, 2, 3, 4 or 5 of Part 1 of Schedule 1 to the Rent Officers (Scotland) Order and that determination was made in relation to—

- (a) an application under—
    - (i) regulation 14 of the Housing Benefit Regulations 2006 as in force before the substitution of regulation 14 by virtue of regulation 8 of the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007; or
    - (ii) regulation 14 of the as in force before the substitution of regulation 14 by virtue of regulation 8 of the Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007; or
  - (b) an application for a redetermination, substitute determination or substitute redetermination relating to a determination to which sub-paragraph (a) applies made under regulation 15, 16 or 17 of the Regulations referred to in sub-paragraph (a)(i) or (ii).
- (2) In paragraph 6<sup>(57)</sup> of Part 1 of Schedule 1—
- (a) for sub-paragraph (1) substitute—
 

“(1) In this paragraph, and in paragraph 9, “claim-related rent” means the claim-related rent determined by the rent officer in accordance with paragraph (2A).”;
  - (b) after sub-paragraph (1) insert—

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<sup>(55)</sup> [S.I. 2007/2868](#).

<sup>(56)</sup> [S.I. 2007/2869](#).

<sup>(57)</sup> Paragraph 6 of Schedule 1 was substituted by [S.I. 2000/3](#).

- “(2A) The rent officer shall determine that the claim-related rent is—
- (a) where he 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 he makes a determination under only two of the sub-paragraphs referred to in paragraph (a), the lower of the two rents determined under those sub-paragraphs;
  - (c) where he makes a determination under only one of the sub-paragraphs referred to in paragraph (a), the rent determined under that sub-paragraph;
  - (d) where he does not make a determination under any of the sub-paragraphs referred to in sub-paragraph (a), the rent payable under the tenancy of the dwelling at the relevant time.”.
- (c) omit sub-paragraph (2); and
- (d) in sub-paragraph (3) omit “Where the dwelling is not in a hostel,”.
- (3) In paragraph 9(1)(58) of Part 3 of Schedule 1—
- (a) for sub-paragraph (1)(c) substitute—

“(c) where that claim-related rent includes an amount which would be ineligible for housing benefit under paragraph 1(a)(i) of Schedule 1 to the Housing Benefit Regulations or, as the case may be, paragraph 1(a)(i) of Schedule 1 to the Housing Benefit (State Pension Credit) Regulations (charges for meals), the inclusion of an ineligible amount in respect of meals;”;
  - (b) after sub-paragraph (1)(d) insert—

“(da) where any rent determined under paragraph 4 includes an amount which would be ineligible for housing benefit under the provisions referred to in sub-paragraph (c), the inclusion of an ineligible amount in respect of meals; and”.

#### **Amendments to the Rent Officers (Scotland) Order which remake amendments made by the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006**

- 19.—(1) In article 2(59) (interpretation)—
- (a) for the definition of “hostel” substitute—

““hostel” has the same meaning as in regulation 2(1) of the Housing Benefit Regulations or, as the case may be, regulation 2(1) of the Housing Benefit (State Pension Credit) Regulations;”;
  - (b) after that definition insert—

““the Housing Benefit Regulations” means the Housing Benefit Regulations 2006;  
“the Housing Benefit (State Pension Credit) Regulations” means the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006;”;
  - (c) for the definition of “rent” substitute—

““rent” means any of the periodical payments referred to in regulation 12(1) of the Housing Benefit Regulations or, as the case may be, regulation 12(1) of the Housing Benefit (State Pension Credit) Regulations;”;

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(58) Paragraph 9(1) of Schedule 1 was amended by [S.I. 2006/217](#).

(59) The definitions of “hostel” and “rent” were substituted by [S.I. 2006/217](#) and the definitions of “Housing Benefit Regulations” and “Housing Benefit (State Pension Credit) Regulations” were inserted by [S.I. 2006/217](#).

- (d) omit the definition of the “1987 Regulations”.
- (2) In article 3A(**60**) (transitional arrangements for determination of single room rents with effect from 2nd July 2001), for “regulation 12A of the 1987 Regulations” substitute “regulation 14 of the Housing Benefit Regulations or, as the case may be, regulation 14 of the Housing Benefit (State Pension Credit) Regulations”.
- (3) In article 4A(**61**) (substitute determinations and substitute redeterminations), for “regulation 12C of the 1987 Regulations” substitute “regulation 17 of the Housing Benefit Regulations or, as the case may be, regulation 17 of the Housing Benefit (State Pension Credit) Regulations”.
- (4) In article 4E(**62**) (substitute board and attendance determinations and substitute board and attendance redeterminations), wherever “regulation 12C of the 1987 Regulations” occurs, substitute “regulation 17 of the Housing Benefit Regulations or, as the case may be, regulation 17 of the Housing Benefit (State Pension Credit) Regulations”.
- (5) In article 6(**63**) (exceptions)—
- in paragraph (2) for “regulation 7(3) of the 1987 Regulations” substitute “regulation 9(4) of the Housing Benefit Regulations or, as the case may be, regulation 9(4) of the Housing Benefit (State Pension Credit) Regulations”; and
  - in paragraph (3), for “the 1987 Regulations”, substitute “the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations”.
- (6) In article 7(**64**) (special cases), for “regulation 10(1) of the 1987 Regulations” substitute “regulation 12(1) of the Housing Benefit Regulations or, as the case may be, regulation 12(1) of the Housing Benefit (State Pension Credit) Regulations”.
- (7) In Schedule 1(**65**)—
- in Part 1, in paragraph 4(4) (local reference rents), for the definition of “non-dependant” substitute—  
““non-dependant” means a non-dependant of the tenant within the meaning of regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations;”;
  - in Part 4, in paragraph 11(5)(b) (indicative rent levels), for “regulation 3 of the 1987 Regulations” substitute “regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations”.
- (8) In Schedule 3A(**66**) (categories of dwelling), in Part 1, in paragraph 1(2)(b), for “regulation 3 of the 1987 Regulations” substitute “regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations.”.

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(60) Article 3A was inserted by [S.I. 2001/1326](#) and amended by [S.I. 2001/2318](#) and [2006/217](#).

(61) Article 4A was substituted by [S.I. 2000/3](#) and amended by [S.I. 2006/217](#).

(62) Article 4E was inserted by [S.I. 2003/2398](#) and amended by [S.I. 2006/217](#).

(63) Article 6 was amended by [S.I. 2003/2398](#) and [2006/217](#).

(64) Article 7 was amended by [S.I. 2000/3](#) and [2006/217](#).

(65) Paragraphs 4(4) and 11(5)(b) of Schedule 1 were amended by [S.I. 2006/217](#).

(66) Schedule 3A was inserted by [S.I. 2003/2398](#) and amended by [S.I. 2006/217](#).

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

2nd October 2007

*James Plaskitt*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions



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## SCHEDULE

Article 2

### Listed authorities

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Blackpool  
 Brighton and Hove  
 Conwy  
 Coventry  
 East Riding of Yorkshire  
 Guildford  
 Leeds  
 Lewisham  
 North East Lincolnshire  
 Norwich  
 Pembrokeshire  
 St Helens  
 Salford  
 South Norfolk  
 Teignbridge  
 Wandsworth

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## EXPLANATORY NOTE

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

This Order amends the Rent Officers (Housing Benefit Functions) Order 1997 (“the Rent Officers Order”) and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 which confer functions on rent officers in connection with housing benefit and rent allowance subsidy.

This Order, together with the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 and the Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (referred to collectively in this note as “the Regulations”) and the Housing Benefit (Local Housing Allowance, Miscellaneous and Consequential) Amendment Regulations 2007 ([S.I. 2007/2870](#)), provides for the national rollout of a modified version of the local housing allowance arrangements. These are a way of determining housing costs eligible to met by housing benefit using local housing allowances determined by rent officers. The local housing allowance arrangements (“the pathfinder regime”) have operated in the areas of 18 local authorities (“pathfinder authorities”).

Article 2 applies the pathfinder regime provisions of the Rent Officers Order to all local authorities.



Article 4 amends article 4B by inserting paragraphs (1A), which requires rent officers to make broad rental market determinations for the national rollout of the local housing allowance, (2A) which requires rent officers to make local housing allowance determinations for the national rollout of the local housing allowance and (3A) which sets the date on which the determinations take effect. These provisions will come into force in advance of the national rollout of the provisions relating to the local housing allowance in the Regulations and will exist alongside the provisions relating to the pathfinder authorities. This is so that the determinations needed for the national rollout of the local housing allowance are made in advance of rollout day.

It also inserts Schedule 3B which makes provision in relation to the determination of broad rental market determinations and local housing allowance determinations for the national rollout of the provisions relating to the local housing allowance. This will exist alongside Schedule 3A which makes provision in relation to those determinations for pathfinder authorities.

It also amends the definitions of “broad rental market area”, “broad rental market area determinations” and “local housing allowance determinations” to refer to both the national rollout and existing pathfinder relating to broad rental market area determinations and local housing allowance determinations and makes consequential amendments to article 7A, which provides for the correction of errors in determinations. Article 3(2)(a) amends paragraph (1) of article 4B to ensure that rent officers will not be required to make pathfinder broad rental market area determinations in relation to non-pathfinder authorities.

Article 5 makes consequential amendments to articles 3 and 4B to reflect amendments to the Regulations.

Article 6 makes the amendments required to remove the remaining elements of the pathfinder regime, except where those elements are required for the correction of errors in relation to broad rental market area determinations, local housing allowance determinations, board and attendance determinations and board and attendance redeterminations where the original determination was made under the pathfinder regime. There is an exception where a local housing allowance determination is to be made under the pathfinder regime in cases where no local housing allowance determination exists for the relevant size of dwelling. There is a further exception which relates to board and attendance determinations, board and attendance redeterminations, substitute board and attendance determinations and substitute board and attendance redeterminations where the original determination was made, or should be made, under the pathfinder regime.

Article 7 makes amendments which are consequential upon the amendment of the Regulations relating to the provision of information to rent officers. It also amends the date on which an application for a rent officer determination under regulation 14(1) of the Regulations is treated as made where a rent officer has determined that a substantial part of the rent under the tenancy is fairly attributable to board and attendance. It also makes express provision in relation to incorrect information.

Article 8 makes amendments to paragraph 7 of Part 2 of Schedule 1. The amendments will not apply to cases where the rent officer is required to make a determination under paragraphs 1, 2, 3 or 6 of Part 1 of Schedule 1 in relation to a determination applied for under regulation 14 of the Regulations as it was in force immediately before the coming into force of the amendments relating to the rollout of the local housing allowance.

Article 9 makes amendments to paragraphs 6 and 9 of Parts 1 and 3 of Schedule 1. The amendments will not apply to determinations that were made under paragraphs 1 to 5 of Part 1 of Schedule 1 in relation to a determination applied for under regulation 14 of the Regulations as it was in force immediately before the coming into force of the amendments relating to the national rollout of the local housing allowance.

Article 10 remakes amendments to the Order that were made in the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 and updates references to the Housing Benefit Regulations 2006. (The main power under which these amendments were originally made will be

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repealed when the power used to provide for the national rollout of the local housing allowance arrangements is commenced and therefore the amendments made using that power will cease to have effect.)

Articles 11 to 19 make equivalent amendments in the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997.

A full regulatory impact assessment has not been published for this instrument as it has no direct impact on the costs of businesses, charities and the voluntary sector.