STATUTORY INSTRUMENTS

# 1990 No. 428

# HOUSING, ENGLAND AND WALES

## The Rent Officers (Additional Functions) Order 1990

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| *Made - - - -* | *5th March 1990* |
| *Laid before Parliament* | *12th March 1990* |
| *Coming into force* | *2nd April 1990* |

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 of the Housing Act 1988(a), 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 1990 and shall come into force on 2nd April 1990.

**Interpretation**

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

"child" means a person under the age of 16;

"determination" means a determination (including an interim and a further determination) made in accordance with Schedule 1 to this Order;

"dwelling" has the same meaning as in the Social Security Act 1986(b);

"local authority" has the same meaning as it has in the Social Security Act 1986 in relation to England and 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" has the same meaning as in section 14 of the Housing Act 1988, except that the reference to the dwelling-house in subsection (4) shall be construed as a reference to the dwelling;

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

"tenancy" includes "licence" and references to a tenant, a landlord or any other expression appropriate to a tenancy shall be construed accordingly.

(2) In this Order any reference to a notice or application is to a notice or application in writing.

(a) 1988 c.50; section 121 was amended by section 110(3) of the Local Government and Housing Act 1989 (c.42).
(b) 1986 c.50.

**Additional Functions**

**3.**—(1) Where, in connection with housing benefit and rent allowance subsidy, a local authority applies to a rent officer for determinations relating to a tenancy of a dwelling (and is required by regulations made under section 30 (2B) or (2C)(**a**) of the Social Security Act 1986 to make that application) the rent officer shall (subject to article 5) make the determinations and give notice in accordance with Schedule 1 to this Order.

(2) If a rent officer needs further information in order to make a determination, he shall serve notice on the local authority requesting that information and until he receives it paragraph (1) shall not apply to the making of that determination.

**4.** If, within the period of 10 weeks beginning with the date on which the local authority was given notice of a determination, the local authority applies (in connection with housing benefit and rent allowance subsidy) to a rent officer for a redetermination, a rent officer shall (subject to article 5) make the redetermination and give notice in accordance with Schedule 3 to this Order and a rent officer whose advice is sought as provided for in that Schedule shall give that advice.

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

(2) No determination or redetermination shall be made under paragraph 1 of Schedule 1 (or that paragraph as applied by Schedule 3) if the tenancy is an assured tenancy or an assured agricultural occupancy and—

(a) the rent payable under the tenancy on the date the application for the determination (or, as the case may be, redetermination) was received was an amount determined under section 22 of the Housing Act 1988, or

(b) the rent so payable on that date was an amount determined under section 14 of that Act and that rent took effect within the period of 12 months ending with the date the application was received.

**Revocation**

**6.** The Rent Officers (Additional Functions) Order 1989(**b**) and the Rent Officers (Additional Functions) (Amendment) Order 1989(**c**) are hereby revoked.

*Chris Patten*
5th March 1990 — Secretary of State for the Environment

*Peter Walker*
1st March 1990 — Secretary of State for Wales

(**a**) Inserted by section 15 of the Social Security Act 1989 (c.24).
(**b**) S.I. 1989/590.
(**c**) S.I. 1989/1430.

# SCHEDULE 1

## DETERMINATIONS

**Rent determinations**

**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, having 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), but on the assumption that no one who would have been entitled to housing benefit had sought or is seeking the tenancy.

(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, having regard to the same matter and on the same assumption as in sub-paragraph (1).

**Size and rent determinations**

**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 similar to the tenancy of the dwelling, on the same terms (other than the term relating to the amount of rent) and of a dwelling which is in the same locality as the dwelling, but which—

(a) accords with the size criteria for the occupiers,

(b) is in a reasonable state of repair, and

(c) 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 paragraph 2(2), the rent officer shall have regard to the same matter and make the same assumption as in paragraph 1(1), 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 paragraph 2(2) and the assumption shall be made in relation to that tenancy.

**Services determinations**

**3.**—(1) Where the rent officer makes a determination under paragraph 1(2), 2(2) or (where no determination is to be made under paragraph 1(2)) paragraph 1(1) and the dwelling is not in a hostel (within the meaning of regulation 12A of the Housing Benefit (General) Regulations 1987), 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) or 2(2), means the rent determined under paragraph 1(2) or 2(2) and, in relation to a determination under paragraph 1(1), means the rent payable under the tenancy at the relevant time; and "services" means services performed or facilities (including the use of furniture) provided for, or rights made available to, the tenant, but not the provision of meals (including the preparation of meals or provision of unprepared food).

**Medical, nursing and other care services**

**4.** Where the rent includes any of the charges specified in sub-paragraph (d), (e) or (f) of paragraph 1 of Part I of Schedule 1 to the Housing Benefit (General) Regulations 1987, the rent officer, when making a determination, 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.

**Interim and further determinations**

**5.** If notice of a determination under paragraph 1 or 3 is not given to the local authority within the 5 day period mentioned in paragraph 6(a) solely because the rent officer intends to arrange an inspection of the dwelling before making such a determination, the rent officer shall make both an interim determination and a further determination.

**Notifications**

**6.** The rent officer shall give notice to the local authority of a determination—

(a) except in the case of a further determination, within the period of 5 working days beginning with the date on which the rent officer received the application or, where the rent officer requests further information under article 3(2), with the date on which he received the information, or as soon as practicable after that period, and

(b) in the case of a further determination, within the period of 20 working days beginning with the date on which notice of the interim determination was given to the local authority, or as soon as practicable after that period.

**7.**—(1) If the rent officer becomes aware that the application is not one to which article 3(1) applies, the rent officer shall give the local authority notice to that effect.

(2) If the rent officer is precluded by article 5(2) from making a determination or a redetermination under paragraph 1 (or that paragraph as applied by Schedule 3), the rent officer shall give the local authority notice of the rent determined by the rent assessment committee.

## SCHEDULE 2

## SIZE CRITERIA

**1.** One bedroom 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 II of the Social Security Act 1986),

(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 as a bedroom 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,

(c) in any other case, three.

## SCHEDULE 3

## REDETERMINATIONS

**1.** Schedules 1 and 2 (except paragraph 5 of Schedule 1) shall apply in relation to a redetermination as they apply to a determination, subject to the following—

(a) references in Schedule 1 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 sub-paragraphs (a) and (b) of paragraph 6 of Schedule 1 there shall be substituted " within 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.

## EXPLANATORY NOTE

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

This Order revokes and re-enacts with minor modifications the Rent Officers (Additional Functions) Order 1989, as amended by the Rent Officers (Additional Functions) (Amendment) Order 1989, which conferred functions on rent officers in connection with housing benefit and rent allowance subsidy.

Article 3 provides that where a local authority applies (and is required, by regulations made under section 30(2B) or (2C) of the Social Security Act 1986, to apply) to a rent officer for determinations relating to a tenancy or licence of a dwelling, the rent officer must make the determinations and give notice to the local authority in accordance with Schedule 1 to the Order. The determinations relate to the level of rent, the size of the dwelling and rent attributable to the provision of services. Article 4 provides for a rent officer, with the advice of one or two other rent officers, to make a redetermination if a local authority applies for one.

The modifications include a requirement for a rent officer to make a determination under paragraph 3 of Schedule 1 to the Order (about rent attributable to services) where he makes a determination under paragraph 1(1) of that Schedule, so long as he does not also make a determination under paragraph 1(2) of that Schedule. Also, the Order no longer lists tenancies and licences for which determinations cannot be made, but, as mentioned above, applications for determinations can only be made when required by regulations made under the Social Security Act 1986. The Order also introduces, in paragraph 4 of that Schedule, assumptions rent officers must make relating to medical and certain other services.