EXPLANATORY MEMORANDUM TO

THE RENT OFFICERS (HOUSING BENEFIT AND UNIVERSAL CREDIT FUNCTIONS) (AMENDMENT) ORDER 2017

2017 No. 1323

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument provides for certain Local Housing Allowance (LHA) rates to be increased by 3 per cent in certain areas, where higher rent increase are causing issues with affordability for Housing Benefit (HB) and Universal Credit (UC) tenants in the private rented sector. These changes include a 3 per cent increase to the national maximum LHA "caps" which means that any rate currently capped at the maximum and set out in the schedule of rates will be increased by 3 per cent in 2018/19.

2.2 The instrument also amends the date that a new Broad Rental Market Area (BRMA) determination is to take effect following agreement by the Secretary of State.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative resolution procedure consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

LHA Rates

4.1 The method by which Rent Officers determine the LHA rates and when they do this is set out in the Rent Officers (Housing Benefit Functions) Order 1997 (S.I. 1997/1984)1, the Rent Officers (Housing Benefit Functions) Scotland Order 1997 (S.I. 1997/1995)2 and the Rent Officers (Universal Credit Functions) Order 2013 (S.I. 2013/382)3 (collectively referred to as the "Rent Officers Orders").

4.2 The Government took steps to freeze LHA rates through amendments to the Rent Officers Order[4], following the announcement at the Summer Budget 2015[5] that LHA

[1] http://www.legislation.gov.uk/uksi/1997/1984
[2] http://www.legislation.gov.uk/uksi/1997/1995
[3] http://www.legislation.gov.uk/uksi/2013/382
[4] http://www.legislation.gov.uk/uksi/2015/1753
[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443232/50325_Summer_Budget_15_Web_Accessible.pdf

rates would be frozen for four years from April 2016. At the same time, the Government also announced that it would make provision for high rent areas where rates have diverged the most from local rents through "Targeted Affordability Funding" (TAF) and this instrument delivers that commitment.

Broad Rental Market Areas

4.3 Broad Rental Market Areas (BRMAs) are determined in accordance with the Rent Officers (Housing Benefit Functions) Order 1997 (S.I. 1997/1984)[6], the Rent Officers (Housing Benefit Functions) Scotland Order 1997 (S.I.1997/1995)[7] and the Rent Officers (Universal Credit Functions) Order 2013 (S.I. 2013/382)[8]. This instrument amends the date a BRMA determination takes effect so that where the next 1April is within 11 months of the determination being made, the determination will take effect on the following 1 April after that, thus giving claimants (who may be impacted by any changes to LHA rates as a result) at least 11 months advance notice of any changes to the BRMA.

4.4 In UC, the date that the determination takes effect has been changed to the first Monday in the first tax year that commences following the day on which the determination is made. The provisions are otherwise the same.

5. Extent and Territorial Application

5.1 This extent of this instrument is England, Wales, and Scotland.

5.2 The territorial application of this instrument is Great Britain.

5.3 Corresponding provisions will be made for Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

Local Housing Allowance Rates (LHA)

7.1 The LHA scheme was introduced in 2008 as a way of calculating the maximum amount of HB and the housing element of UC payable for tenants in the private rented sector. It applies to the majority of tenants claiming HB and UC in that sector.

7.2 The measure announced in the Summer Budget 2015 to freeze LHA rates for four years was part of a package of reforms to the welfare system to make it fairer for taxpayers who pay for it, while continuing to support the most vulnerable. During the period April 2016 to March 2020, LHA rates will either be frozen at the April 2015 rate or will be set at the 30th percentile of local rents, if this is lower. The 30th percentile is a mathematical value which represents the level of rent where around 3 in 10 properties are available at or below the LHA rate. The 30th percentile of local rents are published each year by Rent Officers alongside the LHA rates.

[6] http://www.legislation.gov.uk/uksi/1997/1984
[7] http://www.legislation.gov.uk/uksi/1997/1995
[8] http://www.legislation.gov.uk/uksi/2013/382

7.3 The Government recognises that the impact of freezing LHA rates will vary across the country, as rents in some areas could increase at different rates. In view of this, the Government committed to making provision for higher rent areas, using 30 per cent of the savings from the LHA freeze to create TAF. In 2017/18 this funding has been used to increase some LHA rates by 3 per cent. On 22 November 2017 the Autumn Budget announced that TAF would be increased by £39 million in 2018/19 and £84 million in 2019/20, therefore basing it on 50 per cent of the savings from the freeze rather than 30 per cent. The TAF will again be used to increase some LHA rates by 3 per cent in areas where there are high rental increases.

7.4 The maximum LHA levels or national "caps"[9] will also receive a 3 per cent increase and the new amounts are set out in the instrument. This means any rates previously at the maximum levels and identified to receive TAF in 2018/19, will be allowed a 3 per cent increase instead of remaining capped. The maximum LHA levels have not been increased since 2015/16.

7.5 In 2018/19 we will be using the TAF to increase 213 LHA rates. The areas impacted and the rates which will receive the increase of 3 per cent in 2018/19 are set out in this instrument. These are those which have diverged the furthest away from the 30th percentile of local rents.

Broad Rental Market Areas (BRMAs)

7.6 BRMAs are geographical areas used for the purposes of setting LHA rates in the private rented sector. Whilst Rent Officers are able to review these areas, any changes to the BRMA boundaries must be referred to the Secretary of State for approval as laid down in the Rent Officers Orders. Currently the Rent Officer Orders stipulate that where the Secretary of State agrees a change to the BRMA it will then take effect from the first day of April following the day on which the determination is made.

7.7 The amendments proposed in the instrument will give claimants at least 11 months advance notice of any changes to the BRMA. This ensures that if there is any adverse impact on claimants as a result of BRMA changes, they have time to adjust to any alterations in their benefit entitlement. Any changes agreed by the Secretary of State will take effect on the first day of April or, if that is less than 11 months from the day on which the determination is made, the first day of April the following year. In UC they will take effect on the "relevant Monday" (the first Monday in the tax year) or where the relevant Monday is within 11 months it will be the next relevant Monday.

Consolidation

7.8 Informal consolidated text of instruments is available to the public free of charge via 'The National Archives' website www.legislation.gov.uk.

8. Consultation outcome

8.1 Amendments to the Rent Officers Orders are exempt from formal referral to the Social Security Advisory Committee; however we have notified the Committee of our plans.

8.2 Rent Officers were consulted about the changes and provided with an opportunity to comment on the draft legislation. Following consultation, they have said they are content with the amendments made.

[9] The LHA national "caps" were introduced in 2011 as one of the reforms to the LHA scheme to limit the amount of HB which could be paid

9. Guidance

9.1 No guidance will be issued by the Department. Rent Officers update their own guidance as they deem appropriate. Local Authority and UC administration will not be directly affected by the amendments to the Rent Officers Orders but the Department will keep them informed of the changes.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector. There are no impacts on Local Authority systems or DWP systems and we will notify the relevant authorities accordingly when the new LHA rates are due to be published. The TAF which will be used to increase certain LHA rates by 3 per cent is drawn from 50 per cent of the savings from the LHA freeze policy for 2018/19.

10.3 An impact assessment has not been prepared for this instrument as it has no impact on the private sector or civil society organisations.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The department continues to monitor any divergences between the LHA rates and local market rents. Rent Officers will publish the 30th percentile of market rents and the new LHA rates on 31 January 2018.

12.2 BRMAs are monitored by Rent Officers on a regular basis who decide whether a review is necessary. Any proposals to amend a BRMA will have to be agreed by the Secretary of State.

13. Contact

13.1 Please contact Kelly Flett at the Department for Work and Pensions, (Telephone: 01253 688044) or email: Kelly.Flett@dwp.gsi.gov.uk if you have any queries regarding this instrument.