EXPLANATORY MEMORANDUM TO

THE RENT OFFICERS (HOUSING BENEFIT FUNCTIONS) AMENDMENT ORDER 2009

2009 No. 2459

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 makes an amendment to the Rent Officers (Housing Benefit Functions) Order 1997 and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997. The amendment has the effect of restoring a provision which was unintentionally removed from the Orders by the Rent Officers (Housing Benefit Functions) Amendment (No.2) Order 2008. The provision relates to the way in which rent officers determine Local Housing Allowance rates for Housing Benefit.

3. Matters of special interest to the Joint Committee

3.1 None

4. Legislative Context

4.1 This Order amends the Rent Officers (Housing Benefit Functions) Order 1997 and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 ('The Order'). These Orders make provision for rent officers to determine Local Reference Rents and Local Housing Allowance rates which are used to calculate Housing Benefit. The purpose of the amending order is to correct an error which was introduced from 5 January 2009 by the Rent Officers (Housing Benefit Functions) Amendment (No.2) Order 2008.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain except that article [2] applies to England and Wales and article [3] applies to Scotland.

6. European Convention on Human Rights

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***

7.1 The Order sets out the functions of rent officers in the three national rent services in relation to the calculation of Housing Benefit for people who have an assured or an assured shorthold tenancy agreement with a private landlord. For Housing Benefit claims made on or after 7 April 2008 by these people, entitlement is calculated by reference to the Local Housing Allowance rates determined by the rent officer for the Broad Rental Market Area in which the property is situated. The Order provides for Local Housing Allowance rates to be set each month for six specified categories of dwelling in the Broad Rental Market Area as follows: one room with shared facilities, one bedroom in a self contained dwelling and dwellings with two, three, four or five bedrooms. Rent officers collect market evidence of rents in these areas and then set rates for each category of dwelling. Local Housing Allowance rates are set at the median level of rents collected and the rates are published monthly so that prospective tenants can know in advance the maximum level of rent which will be met by Housing Benefit.

7.2 The Rent Officers (Housing Benefit Functions) Amendment (No.2) Order 2008 which came into effect from 5th January 2009 clarified the way in which rent officers construct Broad Rental Market Areas. The amendment order also inadvertently removed a provision which enabled rent officers to include rents from other comparable areas when compiling a list of rents for each category of dwelling. This 'extrapolation' provision was used when the rent officer was not satisfied that the Broad Rental Market Area contained a sufficient number of dwellings to enable them to determine a Local Housing Allowance rate. It was not the Department's intention to remove this provision but unfortunately the amendment order laid before Parliament had that effect.

7.3 The Order requires each Broad Rental Market Area to contain sufficient privately rented premises to ensure that in the rent officer's opinion the Local Housing Allowance rates they set for each category of dwelling are representative of the rents that a landlord should be reasonably expected to obtain in the area. It should therefore not normally be the case that a rent officer needs to draw on evidence from outside the area. However, some areas contain very few single rooms with shared facilities and, in others, five bedroom properties are scarce. In these cases, the extrapolation provision which has been removed would enable rent officers to use data from other, similar areas, to arrive at a Local Housing Allowance rate if, in any month, they have no, or very little, data or there are simply no dwellings in the relevant category.

7.4 The extrapolation provision would be needed rarely and sustained use would indicate that a review of the Broad Rental Market Area boundaries

should be considered. However, we believe it essential to restore the provision to the Order to provide statutory cover for occasions when the rent officer is temporarily unable to determine a Local Housing Allowance rate or needs to carry out a review of the area boundaries if the lack of evidence is likely to be long term.

7.5 This Order restores the provision although it is drafted slight differently from its original form to make it consistent with the definition of the Broad Rental Market Area.

- ***Consolidation***

7.6 There are no plans to carry out a consolidation exercise. The Rent Officers Orders set out the way rent officers carry out their functions in relation to Housing Benefit and there is no critical requirement to consolidate the statutory basis for their activities. Consolidated versions of the Orders will be made available on the Departmental website (The Law Volumes - DWP) in due course.

8. Consultation outcome

8.1 This is a technical change which will affect the way rent officers operate in a very small number of cases. Moreover, it restores a provision that operated satisfactorily in the past, with minor modifications. We have consulted upon the necessity for restoring this provision with rent officers who support the change but we do not consider it necessary to consult more widely. There is no statutory requirement to consult on the Order.

9. Guidance

9.1 Comprehensive guidance on the application of the Rent Officers Order is provided by the national rent services.

10. Impact

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

10.2 The impact on the public sector is negligible.

10.3 A full Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Work and Pensions officials and rent officers in the three national rent services will monitor the Order and will meet regularly for discussions.

13. Contact

Olly Akanwo at the Department for Work and Pensions, Housing Benefit Strategy Division Tel: 0207 449 5319 or email: Olapeju.Akanwo@dwp.gsi.gov.uk can answer any queries regarding this Instrument.