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STATUTORY INSTRUMENTS

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**2007 No. 2871**

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

**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(1) (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 or a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(2).”.

(2) In article 4B(3) (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—

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(1) The definitions of “broad rental market area”, “broad rental market area determination” and “local housing allowance determination” were inserted by [S.I. 2003/2398](#).  
(2) [1971 c.80](#).  
(3) Article 4B was inserted by [S.I. 2003/2398](#) and amended by [S.I. 2006/217](#).

- (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(4) (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(5) insert—

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

(5) 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—

*Status: This is the original version (as it was originally made).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

- (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.”.