

1995 No.1643 (S.115)

HOUSING, SCOTLAND

The Rent Officers (Additional Functions) (Scotland)  
Order 1995

<i>Made</i> - - - -	28th June 1995
<i>Laid before Parliament</i>	28th June 1995
<i>Coming into force</i>	2nd January 1996

The Secretary of State, in exercise of the powers conferred upon by section 70(1) and (2) of the Housing (Scotland) Act 1988(a), and shall of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation and commencement**

1. This Order may be cited as the Rent Officers (Additional Functions) (Scotland) Order 1995 and shall come into force on 2nd January 1996.

**Interpretation**

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

“assured tenancy” has the same meaning as in Part II of the Housing (Scotland) Act 1988, except that it includes a tenancy which would be an assured tenancy but for paragraph 9 of Schedule 4 to that Act;

“determination” means a determination made in accordance with Part 1 or Part 4 of Schedule 1 to this Order;

“dwelling” means any residential accommodation whether or not consisting of the whole or part of a building and whether or not comprising separate and self contained premises;

“hostel” has the same meaning as in regulation 12A of the 1987 Regulations(b);

“local authority means—

(a) prior to 1st April 1996, a district or islands council within the meaning of the Local Government (Scotland) Act 1973(c); and

(b) on and after 1st April 1996, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(d);

“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” means any of the periodical payments referred to in regulation 10(1) of the 1987 Regulations(e);

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(a) 1988 c.43.

(b) S.I. 1987/1971; regulation 12A was inserted by S.I. 1990/546.

(c) 1973 c.65.

(d) 1994 c.39.

(e) Amended by S.I. 1988/1971.

**RENT OFFICERS (ADDITIONAL FUNCTIONS) (SCOTLAND)**  
ORDER 1995

## Arts. 2–5

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

“tenancy” includes any other right of occupancy and a prospective tenancy of right of occupancy and references to a tenant, a landlord or any other expression appropriate to a tenancy shall be construed accordingly; and

“the 1987 Regulations” means the Housing Benefit (General) Regulations 1987.

(2) In this Order any reference to a notice or application is to a notice or application in writing and any order by a rent officer may be sent by post, except in a case where the recipient consents either generally or specifically to the notice or application being transmitted by electronic means.

(3) Any reference in this order to a numbered article, paragraph, sub-paragraph or Schedule shall be taken, unless the context otherwise requires, to be a reference to the article or Schedule so numbered in this order or to the paragraph or sub-paragraph so numbered in that article or Schedule, as the case may be.

**Determinations**

**3.**—(1) Subject to sub-paragraph (2) and article 5 where a local authority in accordance with regulations made under section 136(2) or (3) of the Social Security Administration Act 1992(a) applies to a rent officer for determinations in respect of the tenancy of a dwelling, a rent officer shall—

- (a) make the determinations in accordance with Part I of Schedule 1 (determinations);
- (b) comply with Part 2 of Schedule 1 on making the determinations (assumptions etc); and
- (c) give notice in accordance with Part 3 of Schedule 1 (notifications).

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

(3) A rent officer for each registration area (within the meaning of section 43 of the Rent (Scotland) Act 1948(b) on the first working day of each month shall—

- (a) make determinations in accordance with Part 4 of Schedule 1 (indicative rent levels) in the registration area;
- (b) comply with paragraph 7(2) of Schedule 1 (assumptions etc) when making determinations; and
- (c) give to the local authority notice of the determinations relating to its area when they have been made.

**Redeterminations**

**4.** Subject to article 5, if the local authority applies to a rent officer for a redetermination, a rent officer shall make the redetermination and give notice in accordance with Schedule 3 and a rent officer whose advice is sought as provided for in that Schedule shall give that advice.

**Exceptions**

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

(2) No determination shall be made under paragraph 3 or 4 of Schedule 1 if the tenancy is of residential accommodation within the meaning of regulation 7(3) of the 1987 Regulations(c) or in a hostel

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(a) 1992 c.5.

(b) 1984 c.58.

(c) Paragraph (3) was added by S.I. 1990/2564.

**Arts. 5–8**

Ⓔ(3) If the rent officer becomes aware that an application is not one which gives rise to a duty to make a determination under article 3(1) whether by reason of this article or otherwise, the rent officer shall give the local authority notice to that effect.<sup>Ⓕ</sup>

Art. 5(3) inserted by art. 3(a) of S.I. 1995/2361 as from 2.1.96.

Ⓔ(4) No determination shall be made under paragraph 4A in Schedule 1 unless the local authority states in the application that the claimant is, or may be—

Art. 5(4) inserted by art. 3 of S.I. 1996/975 where determination applied for on or after 7.10.96.

Ⓔ(a)<sup>Ⓖ</sup> a young individual (which has the same meaning as in the 1987 Regulations)<sup>(a)</sup>.<sup>Ⓔ</sup>;  
or

Sub-para. letter (a) and sub-para. (b) inserted in art. 5(4) by art. 2 of S.I. 1997/1003 as from 6.10.97.

(b) a single claimant (which has the same meaning as in the 1987 Regulations) to whom paragraph (3C) of regulation 11 of those Regulations <sup>(b)</sup> applies.<sup>ⒻⒼ</sup>

**Special cases**

6.—(1) This Order shall apply as specified in Schedule 4 in relation to—

- (a) mooring charges payable for a houseboat;
- (b) payment in respect of the site on which a caravan or a mobile home stands; or
- (c) payments under a rental purchase agreement.

(2) Terms used in paragraph (1) have the same meaning in this article and in Schedule 4 as they have in regulation 10(1) of the 1987 Regulations<sup>(c)</sup>.

**Revocations**

7. Subject to article 8 of the Rent Officers (Additional Functions) (Scotland) Order 1990<sup>(d)</sup>, the Rent Officers (Additional Functions) (Scotland) Amendment Order 1991<sup>(e)</sup>, the Rent Officers (Additional Functions) (Scotland) Amendment Order 1993<sup>(f)</sup>, the Rent Officers (Additional Functions) (Scotland) Amendment Order 1994<sup>(g)</sup> <sup>ⒺⒻ</sup> the Rent Officers (Additional Functions) (Scotland) Amendment No. 2 Order 1994<sup>(h)</sup> <sup>Ⓔ</sup> and article 2 of the Rent Officers (Additional Functions) (Scotland) Amendment Order 1995<sup>Ⓕ</sup> are hereby revoked.

Word “and” deleted and words inserted in art. 7 by art. 3(b) of S.I. 1995/2361 as from 2.1.96.

**Application**

8. This Order does not have effect in a case where an application for a determination is made before the date this Order comes into force.

St. Andrew’s House, Edinburgh  
28th June 1995

*James Douglas-Hamilton*  
Parliamentary Under Secretary of State,  
Scottish Office

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(a) See regulation 2(1) of S.I. 1987/1971, amended by S.I. 1996/965.  
(b) Regulation 11(3C) was inserted by S.I. 1997/852.  
(c) Amended by S.I. 1988/1971.  
(d) S.I. 1990/396, amended by S.I. 1991/533, 1993/646, 1994/582 and 1994/3108.  
(e) S.I. 1991/533.  
(f) S.I. 1993/646.  
(g) S.I. 1994/582.  
(h) S.I. 1994/3108.

## SCHEDULE 1

Article 3(1)

## PART 1

Article 3(1)(a)

## DETERMINATIONS

**Significantly high rents**

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.

(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.

(3) When making a determination under this paragraph, the rent officer shall have 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, and shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy.

**Size and rent**

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—

- (a) similar to the tenancy of the dwelling;
- (b) on the same terms other than the term relating to the amount of rent; and
- (c) of a dwelling which is in the same locality as the dwelling, but which—
  - (i) accords with the size criteria for the occupiers;
  - (ii) is in a reasonable state of repair; and
  - (iii) 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 sub-paragraph (2), the rent officer shall have regard to the same matter and make the same assumption as specified in paragraph 1(3), 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 sub-paragraph (2) and shall assume that no one who would have been entitled to housing benefit had sought or is seeking that tenancy.

**Exceptionally high rents**

3.—(1) The rent officer shall determine whether, in his opinion, the rent payable for the tenancy of the dwelling at the relevant time is exceptionally high.

(2) In sub-paragraph (1) “rent payable for the tenancy” means—

- (a) where a determination is made under sub-paragraph (2) of paragraph 2, the rent determined under that sub-paragraph;
- (b) where no determination is so made and a determination is made under sub-paragraph (2) of paragraph 1, the rent determined under that sub-paragraph; and
- (c) in any other case, the rent payable under the tenancy.

(3) If the rent officer determines under sub-paragraph (1) that the rent is

exceptionally high, the rent officer shall also determine the highest rent, which is not an exceptionally high rent and which a landlord might reasonably have been expected to obtain at the relevant time on the assumption that no one who would have been entitled to housing benefit had sought or is seeking the tenancy, for an assured tenancy of a dwelling which—

- (a) is in the same locality as the dwelling;
- (b) has the same number of bedrooms and rooms suitable for living in as the dwelling or, where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria; and
- (c) is in a reasonable state of repair.

(4) For the purpose of determining whether a rent is an exceptionally high rent under this paragraph, the rent officer shall have regard to the levels of rent under assured tenancies of dwellings which—

- (a) are in the same locality as the dwelling or in as similar a locality as is reasonably practicable; and
- (b) have the same number of bedrooms and rooms suitable for living in as the dwelling or, in a case where the dwelling exceeds the size criteria for the occupiers, accord with the size criteria.

**Local reference rents**

4.—(1) The rent officer shall make a determination of a local reference rent in accordance with the formula—

$$R = \frac{H+L}{2}$$

where—

- (a) R is the local reference rent;
- (b) H is the highest rent in the rent officer's opinion—
  - (i) which a landlord might reasonably have been expected to obtain at the relevant time for an assured tenancy of a dwelling which meets the criteria in sub-paragraph (2); and
  - (ii) which is not an exceptionally high rent; and
- (c) L is the lowest rent in the rent officer's opinion—
  - (i) which a landlord might reasonably have been expected to obtain at the relevant time for an assured tenancy of a dwelling which meets the criteria in sub-paragraph (2); and
  - (ii) which is not an exceptionally low rent.

(2) The criteria are—

- (a) that the dwelling under the assured tenancy—
  - (i) is in the same locality as the dwelling;
  - (ii) is in a reasonable state of repair; and
  - (iii) has the same number of bedrooms and rooms suitable for living in as the dwelling or, in a case where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria; and
- (b) if the tenant does not have the use <sup>E</sup>under the tenancy of the dwelling<sup>F</sup> of more than one bedroom or room suitable for living in—
  - <sup>E</sup>(ia) that under the assured tenancy the tenant does not have the use of more than one bedroom or room suitable for living in;<sup>F</sup>
  - (i) if the rent under the tenancy includes payments for board and attendance and the rent officer considers the amount fairly attributable to board and attendance is a substantial part of the rent, that a substantial part of the rent under the assured tenancy is fairly attributable to board and attendance;

Words inserted in para. 4(2)(b) by art. 2(a)(i) of S.I. 1995/3185 as from 2.1.96.

Para. 4(2)(b)(ia) inserted by art. 2(a)(ii) of S.I. 1995/3185 as from 2.1.96.

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Words substituted in para. 4(2)(b)(ii) by art. 2(a)(iii) of S.I. 1995/3185 as from 2.1.96.

(ii) if sub-paragraph (i) does not apply and the tenant shares a kitchen or toilet <sup>E</sup>with a person other than a member of the tenant's household, a non-dependant or a person who pays rent to the tenant<sup>F</sup>, that the assured tenancy provides for a tenant to share a kitchen or toilet; and

(iii) if sub-paragraphs (i) and (ii) do not apply, that the circumstances described in sub-paragraphs (i) and (ii) do not apply in relation to the assured tenancy.

(3) When ascertaining H and L under sub-paragraph (1), the rent officer—

(a) shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and

(b) shall exclude the amount of any rent which, in the rent officer's opinion, is fairly attributable to the provision of services which are ineligible to be met by housing benefit.

Para. 4(3A) inserted by art. 2(b) of S.I. 1995/3185 as from 2.1.96.

<sup>E</sup>(3A) In sub-paragraph (2)(b)—

“bedroom or room suitable for living in” does not include a room which the tenant shares with any person other than—

(a) a member of the tenant's household;

(b) a non-dependant (as defined in this sub-paragraph); or

(c) a person who pays rent to the tenant; and

“non-dependant” means a non-dependant of the tenant within the meaning of regulation 3 of the 1987 Regulations.<sup>F</sup>

(4) In sub-paragraph (3), “services” means services performed or facilities (including the use of furniture) provided for, or rights made available to, the tenant but not—

(a) the provision of meals (including the preparation of meals or provision of unprepared food); or

(b) the provision of services to which any service charge for fuel relates.

<sup>E</sup>Single room rents

Para. 4(A) inserted by art. 4 of S.I. 1996/975 where determination applied for on or after 7.10.96.

**4A.**—(1) The rent officer shall determine a single room rent in accordance with the following formula:—

$$S = \frac{H + L}{2}$$

where—

(a) S is the single room rent;

(b) H is the highest rent which, in the rent officer's opinion—

(i) a landlord might reasonably have been expected to obtain, at the relevant time, for an assured tenancy of a dwelling which meets the criteria in sub-paragraph (2); and

(ii) is not an exceptionally high rent; and

(c) L is the lowest rent which, in the rent officer's opinion—

(i) a landlord might reasonably have been expected to obtain, at the relevant time, for an assured tenancy of a dwelling which meets the criteria in sub-paragraph (2); and

(ii) is not an exceptionally low rent.

- (2) The criteria are—
- (a) that the dwelling under the assured tenancy is in the same locality as the dwelling and is in a reasonable state of repair;
  - (b) that, under the assured tenancy, the tenant—
    - (i) has the exclusive use of one bedroom;
    - (ii) does not have the use of any other bedroom or room suitable for living in;
    - (iii) shares the use of a toilet; and
    - (iv) shares a kitchen or has no use of a kitchen; and
  - (c) that the rent does not include any payment for board and attendance.

(3) Sub-paragraphs (3) and (4) of paragraph 4 apply when ascertaining H and L under this paragraph as if the reference in those sub-paragraphs to H and L were to H and L under this paragraph.<sup>F</sup>

### Services

5.—(1) Where the dwelling is not in a hostel and the rent officer makes a determination under—

- (a) paragraph 1(1) where no determination is to be made under paragraph 1(2), 2(2) or 3(3);
- (b) paragraph 1(2) where no determination is to be made under paragraph 2(2) or 3(3);
- (c) paragraph 2(2) where no determination is to be made under paragraph 3(3); or
- (d) paragraph 3(3),

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), 2(2) or 3(3), means as the case may be the rent determined under paragraph 1(2), 2(2) or 3(3) and, in relation to a determination under paragraph 1(1), means the rent payable under the tenancy at the relevant time; and “services” has the meaning given in paragraph 4(4).

## PART 2

Article 3(1)(b)

### ASSUMPTIONS ETC

### Medical, nursing and other care services

6.—Where the rent includes any of the charges specified in paragraph 1(d), (e) or (f) of Part I of Schedule 1 to the 1987 Regulations, the rent officer 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.

## Sch. 1

## Housing associations and charities

7.—(1) Where the landlord is a housing association or a charity, the rent officer shall assume that the landlord is not such a body.

Words substituted in para. 7(2) by art. 2(c) of S.I. 1995/3185 as from 2.1.96.

(2) The rent officer shall not take into account the rent under any tenancy where the landlord is a housing association or ~~E~~where the landlord is a charity and the dwelling is provided by the landlord in the pursuit of its charitable purposes.~~F~~

(3) In this paragraph—

(a) “charity” comprises—

(i) a charity with the same meaning as in the Charities Act 1993(a); and

(ii) a Scottish charity as defined in section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(b); and

(b) “housing association” has the same meaning as in the Housing Associations Act 1985(c).

## PART 3

Article 3(1)(c)

## NOTIFICATION OF PART I DETERMINATIONS

## Notifications

8.—(1) Subject to sub-paragraph (2), the rent officer shall give notice to the local authority of determinations made under Part I within the relevant period.

Para. 8(2) substituted by art. 5 of S.I. 1996/975 where determination applied for on or after 7.10.96.

~~E~~(2) If the rent officer determines a rent under—

(a) paragraph 4 (local reference rents); or

(b) paragraph 4A (single room rents);

which is equal to or more than the rent payable for the tenancy, the rent officer shall give notice to the local authority of this in place of giving notice of the determination made under paragraph 4 or, as the case may be, paragraph 4A and sub-paragraphs (1) and (3) shall apply to such a notice as they apply to determinations.~~F~~

*For cases where an application is applied for before 7.10.96, para. 8(2), as it stood before it was replaced w.e.f. 7.10.96 by new para. 8(2) in consequence of art. 5 of S.I. 1996/975, is reproduced below:-*

(2) If the local reference rent determined under paragraph 4 is equal to or more than the rent payable for the tenancy, the rent officer shall give notice to the local authority of this in place of giving notice of the determination made under that paragraph and sub-paragraphs (1) and (3) of the paragraph shall apply to such a notice as they apply to determinations.

Para. 8(2A) inserted by art. 3(c) of S.I. 1995/2361 as from 2.1.96.

~~E~~(2A) Where the rent officer has made a determination under paragraph 3(3) of the highest rent for an assured tenancy and the rent payable under the tenancy includes a payment which is ineligible for housing benefit under paragraph 1(a)(i) or 4 of Schedule 1 to the 1987 Regulations (charges for meals or fuel), the rent officer when giving notice of his determination to the local authority shall also state in the notice whether the rent determined by him—

(a) includes a payment which would be ineligible for housing benefit under paragraph 1(a)(i) of Schedule 1 to the 1987 Regulations; or

(b) includes a payment which would be ineligible for housing benefit under paragraph 4 of that Schedule; or

(c) includes both these payments.~~F~~

(a) 1993 c.10.

(b) 1990 c.40.

(c) 1985 c.69; see section 1(1).

(3) In this paragraph—

“relevant period” means the period of 5 working days or, where a determination does not relate to a prospective tenancy and the rent officer intends to inspect the dwelling before making the determination, 25 working days beginning with—

- (a) where the rent officer requests further information under article 3(2), the date on which he received the information; and
- (b) in any other case, the date on which he received the application;

or as soon as practicable after that period; and

“rent payable for the tenancy” has the same meaning as in paragraph 3(1).

**PART 4**

Article 3(3)

INDICATIVE RENT LEVELS

9.—(1) The rent officer shall determine the indicative rent level for each category described in sub-paragraph (3) in accordance with the following formula—

$$I = \frac{H + 3L}{4}$$

where—

- (a) I is the inductive rent level;
- (b) H is the highest rent in the rent officer’s opinion—
  - (i) which a landlord might reasonably be expected to obtain at the time the determination is being made for an assured tenancy of a dwelling meeting the criteria in sub-paragraph (2); and
  - (ii) which is not an exceptionally high rent; and
- (c) L is the lowest rent in the rent officer’s opinion—
  - (i) which a landlord might reasonably be expected to obtain at the time the determination is being made for an assured tenancy of a dwelling meeting the criteria in sub-paragraph (2); and
  - (ii) which is not an exceptionally low rent.

(2) The criteria are that—

- (a) the dwelling is in the area of the local authority;
- (b) the dwelling is in a reasonable state of repair; and
- (c) the dwelling and tenancy accord with the category to which the determination relates.

(3) The categories for the purpose of this paragraph are—

- (a) a dwelling where the tenant does not have use of more than one room and where a substantial part of the rent under the tenancy is fairly attributable to board and attendance;
- (b) a dwelling where the tenant does not have use of more than one room, the tenancy provides for him to share a kitchen or toilet and paragraph (a) does not apply;
- (c) a dwelling where the tenant does not have use of more than one room and where paragraphs (a) and (b) do not apply;
- (d) a dwelling where the tenant does not have use of more than two rooms and where none of paragraphs (a) to (c) applies;
- (e) a dwelling where the tenant does not have use of more than three rooms and where none of paragraphs (a) to (d) applies;

Words inserted in para. 9(3)(d) to (h) respectively by art. 2(d)(i) to (v) of S.I. 1995/3185 as from 2.1.96.

## Schs. 1–3

Ref. “(f)” substituted for “(e)” in para. 9(3)(g) by art 6. of S.I. 1996/975 as from 7.10.96.

Words inserted in defn. of “room” in para. 9(5) by art. 2(d)(vi) of S.I. 1995/3185 as from 2.1.96.

- (f) a dwelling where the tenant does not have use of more than four rooms <sup>£</sup>and where none of paragraphs (a) to (e) applies<sup>£</sup>;
  - (g) a dwelling where the tenant does not have use of more than five rooms <sup>£</sup>and where none of paragraphs (a) to <sup>£</sup>(f)<sup>£</sup> applies;<sup>£</sup> and
  - (h) a dwelling where the tenant does not have use of more than six rooms <sup>£</sup>and where none of paragraphs (a) to (g) applies<sup>£</sup>.
- (4) When ascertaining H and L under sub-paragraph (1), the rent officer–
- (i) shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and
  - (ii) shall exclude the amount of any rent which, in the rent officer’s opinion, is fairly attributable to the provision of services which are ineligible to be met by housing benefit.
- (5) In this paragraph–
- “room” means a bedroom or room suitable for living in <sup>£</sup>and in paragraphs (a), (b) and (c) of sub-paragraph (3) does not include a room which the tenant shares with any person other than–
- (a) a member of the tenant’s household;
  - (b) a non-dependant of the tenant within the meaning of regulation 3 of the 1987 Regulations; or
  - (c) a person who pays rent to the tenant;<sup>£</sup> and
- “services” has the meaning given by paragraph 4(4).

## SCHEDULE 2

Article 2

## SIZE CRITERIA

- 1.—(1) One bedroom or room suitable for living in 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 VII of the Social Security Contributions and Benefits Act 1992<sup>(a)</sup>);
  - (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) In sub-paragraph (1) “child” means a person under the age of 16.
2. The number of rooms excluding any allowed 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; and
  - (c) in any other case, three.

## SCHEDULE 3

Article 4

## REDETERMINATIONS

Words inserted into para. (1) of Sch. 3 by art. 3 of S.I. 1997/1003 as from 14.4.97.

1. <sup>£</sup> Article 3(2) and <sup>£</sup>Schedules 1 and 2 shall apply in relation to a redetermination as the apply to a determination, subject to the following–
- (a) references 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 the definition of relevant period in paragraph 8(3) of Schedule 1

(a) 1992 c.4.

there shall be substituted—

“relevant period” means 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 determination.

## SCHEDULE 4

Article 6

### SPECIAL CASES

#### Houseboats

1. Where an application for a determination relates in whole or in part to mooring charges for a houseboat, this Order applies in relation to that application or, as the case may be, to that part which relates to those charges, with the following modifications—

- (a) references to a tenancy, a tenancy of a dwelling or an assured tenancy are references to an agreement under which those mooring charges are payable and references to a landlord and a tenant shall be construed accordingly; and
- (b) no determination shall be made under paragraph 2 of Schedule 1 (size criteria) and references to the dwelling exceeding the size criteria shall not apply.

#### Mobile homes

2. Where an application for a determination relates in whole or in part to payments in respect of the site on which a caravan or a mobile home stands, this Order applies in relation to that application or, as the case may be, to that part which relates to those payments, with the following modifications—

- (a) references to a tenancy, a tenancy of a dwelling or an assured tenancy are references to an agreement under which those payments are payable and references to a landlord and a tenant shall be construed accordingly; and
- (b) no determination shall be made under paragraph 2 of Schedule 1 (size criteria) and references to the dwelling exceeding the size criteria shall not apply.

#### Rental purchase agreements

3. Where an application for a determination relates to a rental purchase agreement, the agreement is to be treated as if it were a tenancy.

### EXPLANATORY NOTE

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

This Order revokes and re-enacts with modifications the Rent Officers (Additional Functions) (Scotland) Order 1990 which conferred functions on rent officers in connection with housing benefit and rent allowance subsidy and required rent officers to make determinations and redeterminations relating to a tenancy of a dwelling. The Order adds requirements for rent officers to make determinations for prospective tenancies and rights of occupancy (article 2), to determine local reference rents (paragraph 4 of Schedule 1) and to determine indicative rent levels (Part 4 of Schedule 1). It removes the requirement from rent officers to make interim determinations.

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The other principal modifications are changes to the definition of rent (article 2(1)), the matters to which rent officers must have regard in determinations for exceptionally high rents (paragraph 3 of Schedule 1), and the size criteria (Schedule 2); the addition of an assumption that the landlord is not a housing association or a charity (paragraph 7 of Schedule 1), the removal of an exclusion for certain assured tenancies and agricultural occupancies with rents determined by a rent assessment committee; and the addition of provisions for determinations relating to mooring charges for houseboats, pitch fees for caravans and payments under rental purchase agreements (article 6 and Schedule 4).

Article 8 stops the Order affecting applications for determinations made before the Order comes into force.