

**Shelter's response to the  
Department for Work and  
Pensions Consultation –  
Amendments to the Rent  
Officers (Housing Benefit  
Functions) Order 1997 and the  
Rent Officers (Housing Benefit  
Functions) (Scotland) Order  
1997**

**From the Shelter policy library**

**November 2008**

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**Shelter**

Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people a year. This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 20 advice centres
- Shelter's free advice helpline which runs from 8am-8pm
- Shelter's website which provides advice online
- The Government-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, which are approached by people seeking housing advice
- A number of specialist services promoting innovative solutions to particular homelessness and housing problems. These include Housing Support Services which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who are alleged to have been involved in anti-social behavior. The aim of these services is to sustain tenancies and ensure people live successfully in the community.
- We also campaign for new laws and policies - as well as more investment - to improve the lives of homeless and badly housed people, now and in the future.

## **Introduction**

Shelter welcomes the opportunity to respond to the DWP consultation on amending the Rent Officers (Housing Benefit Functions) Order 1997 and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997. Our response is divided into two sections: the first addresses our wider concerns about broad rental market areas (BRMAs) and localities, and the impact these have on Local Housing Allowance (LHA) and Local Reference Rates (LRR); and the second outlines Shelter's specific comments on the amendments put forward to the Rent Officers Order.

### **1. Wider concerns on BRMAs/localities**

Shelter has concerns regarding the timing of the proposal to amend the definitions of both localities and BRMAs in the Rent Officer Order. The judgement in the case of 'Heffernan v The Rent Service' on 30<sup>th</sup> July this year has highlighted that some of the areas being used to calculate LHA and LRR are being drawn up too widely. We agree with Mr Heffernan's argument against The Rent Service (TRS), that localities are too large an area over which to calculate an appropriate LRR. We are also in agreement with the Lords judgement that localities are little different to BRMAs and therefore these need to be reviewed accordingly. We feel there are two main consequences of the areas being too large. The first concerns affordability, with an increase in the size of the boundaries having resulted in large shortfalls in benefits for some claimants making properties unaffordable. The second relates to mixed communities, with the widening of the boundaries having meant that in some areas claimants have clustered where there are cheaper market rents. This goes against the concept of creating mixed and sustainable communities.

The reasons set out above gives us concern over the current proposals to set out in law a new and largely unified definition of BRMA that will apply in respect of both LHA and LRR cases. We feel it is premature to make these changes now, and the Rent Officer Order should be looked at in a broader context. Shelter believes that a fundamental review of both the BRMAs/localities and the Rent Officer guidance used to set the BRMA/localities should first be carried out before amending the Rent Officer Order.

Since the roll-out of LHA in April 2008, Shelter has been monitoring the impact the new system has had on our clients. Early indications from Shelter case workers is that the new larger boundary areas used to set the rate of LHA have had a negative impact on some claimants. For example, Shelter's North West regional office has reported particular problems with large shortfalls in rent due to the enlargement of the BRMA for claimants in the High Peak area, Derbyshire and the Wirral, Merseyside. Enlarging the boundaries in these areas has lowered the LHA/LRR, so that certain parts of the BRMA have become unaffordable for tenants. We are also aware of information which has been provided to DWP by Citizens Advice<sup>1</sup> which gives specific examples of widespread benefit shortfalls reported by their clients.

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<sup>1</sup> Letter submitted by Liz Phelps on Reform of the Rent Officers Order, 12<sup>th</sup> November 2008

The issue of increased shortfalls for tenants has also been more widely reported. Inside Housing have recently featured an article<sup>2</sup> which has looked at the way housing benefit entitlements have been reduced as a result of The Rent Service's (TRS) comprehensive review of housing benefit localities in 2007. It has been reported that areas such as High Peak and South Lakeland in Derbyshire and Carrick, East Cornwall have been among the most disadvantaged areas so far<sup>3</sup>. The *You and Yours* programme on Radio Four has also featured LHA in relation to affordability problems in Cambridge city centre due to an enlarged boundary area.

Shelter's research team has been carrying out preliminary analysis of BRMAs to identify the number and location of properties that are affordable and accessible to LHA claimants. This research provides a snapshot of the rental markets in two BRMAs<sup>4</sup> in London in November 2008. Using property websites, the research has collated information on advertised rents and policies on letting to HB claimants for around 500 one-bedroom homes in the Outer North East London BRMA, and a similar number of rooms and bedsits in the Inner North and West London BRMA. This data was then compared to the LHA rates paid, and the results for different localities and groups of localities within the BRMA have been separated out (Appendix 1 explains in more detail the methodology used and accompanying analysis). With access to TRS's database a similar process could be carried out for BRMAs across the country.

Shelter's analysis of the BRMAs of Outer North East London, and North and West London demonstrates the way that suitable accommodation within the LHA rate clusters in certain locations of the BRMA. Tables 1 and 2 show that properties within the LHA rate are over represented in areas with cheaper market rents (see Appendix 1). In our sample, in the locality of Dagenham and Rainham in Outer North East London BRMA, 57 per cent of all adverts are affordable and accessible to LHA claimants. In comparison, in the locality of Woodford and Wanstead, in the same BRMA, this figure is only 11 per cent. These findings suggest that the application and practice of LHA does not align to DWP's policy intention that the LHA should provide choice and fairness, and does not support wider Government policy to create sustainable and mixed communities.

Shelter does not support the proposed amendment. However, if the amendment is progressed we feel that the current draft would pose a number of practical difficulties. The next section suggest ways this can be tackled.

## **2. Rent Officers (Housing Benefit Functions) Amendment (No. 2) order 2008**

Shelter has concerns with the proposed definition of a BRMA outlined in the draft amendment. Firstly, in defining a BRMA, by omitting the reference in the existing legislation to "two or more neighbourhoods, including the neighbourhood where the dwelling is situated, each neighbourhood adjoining at least one

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<sup>2</sup> Brandon, S., *Areas of concern*, Inside Housing. 14<sup>th</sup> November 2008

<sup>3</sup> *ibid*

<sup>4</sup> Outer North East London and North and West London

other in the area”<sup>5</sup>, the definition removes the reference point by which to define the BRMA and consequently it loses its meaning. The focal point of the definition is now “the area within which a tenant of the dwelling could reasonably be expected to live...”, but this is a meaningless construct when divorced from any geographical limitation. As it stands, it could mean an area comprising several boroughs covering a very large expanse, both urban and rural; or it could mean part of a densely populated urban borough. In our view, the present form of the draft Order creates a vacuum of uncertainty. The rent officer would be able to interpret the Order in a variety of ways which could be to the disadvantage of the tenants and would inevitably leave decisions open to challenge by judicial review.

Secondly, the broad definition of a BRMA that has been drawn up, gives no context in which the rent officer can apply the HERBS (Health, Education, Recreation, Banking and Shopping) test. Thus, for example, if it is to be applied to a property within a specific urban area, there would be no reason to specify a BRMA that is wider than the immediate location of facilities and services within that town, or, at most, the entire conurbation. But if one then looks at a property situated in a village some miles outside the town, which depends on hospitals and banks in the urban area, the BRMA so far as that property is concerned would be a much larger area. We feel that the definition proposed in the amendment is too flexible and Appendix 2 shows an alternative suggested wording of the definition of a BRMA for the amendment.

## Conclusion

Overall, Shelter feels that the amendment to the Rent Officers Order is being proposed too early. We recommend that a more extensive review of the guidance used by Rent Officers to determine BRMAs and a review of the BRMAs themselves should be carried out. The evidence put forward in our response demonstrates there are clearly ‘losers’ within the current LHA system. To meet the Government’s policy of choice and fairness in HB and its wider ambition to promote mixed communities Shelter believes that the outcome of the Heffernan judgement and the implications for BRMAs should first be addressed before amending the Rent Officers Order.

**Shelter Policy Unit**  
**November 2008**

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<sup>5</sup> Paragraph 4 (6) (a) of Schedule 1 of the Rent Officers (Housing Benefit Functions) Order 1997

## Appendix 1: Shelter's LHA Research Outline

### Background

Shelter will be carrying out research to monitor the impact of Local Housing Allowance throughout 2009. This will take the form of a number of mini-reports, with the first of these on the topic of BRMAs and affordability, planned for publication in January. These reports will be available to DWP as part of their evidence gathering initiative for the two-year review of LHA. The evidence that follows is taken from the start of this work, on two BRMAs in London: Outer North East London, and North and West London.

### Summary

The two BRMAs studied contain a wide variation in rents. In some localities in the BRMA over half of properties are advertised at amounts within that paid by Local Housing Allowance, in others the proportion is less than a fifth. These localities tended to be clustered together, meaning that it would be extremely difficult for LHA claimants to find homes in large parts of the BRMA.

### Method

This research provides a snapshot of the rental markets in two BRMAs in November 2008. It shows the size of the potential market for LHA claimants, but does not explore accessibility to those properties in any detail – previous research<sup>6</sup> suggests less than a third of property adverts that do not appear to bar benefit claimants in their advert, do operate a bar, once contacted by telephone.

Using popular property websites<sup>7</sup> Shelter's research team has input the advertised rent and any policies on letting to HB claimants for around 500 one-bedroom homes in the Outer North East London BRMA and a similar number of rooms and bedsits in the Inner North and West London BRMA. This data was then compared to the LHA rates paid, and the results for different localities and groups of localities within the BRMA were split out. The tables that follow show the results of this analysis. The maps that accompany this analysis show, in pictorial form, the variations in affordability for LHA claimants in the BRMAs studied.

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<sup>6</sup> Reynolds, L., *The path to Success*, Shelter 2006

<sup>7</sup> Mainly Gumtree.com and Propertyfinder.co.uk – market leading property letting sites.

## Analysis of the BRMAs<sup>8</sup>

**Table 1: 1-bedroom properties in Outer North East London BRMA**

Locality	Total supply	Total supply without explicit 'No DSS' policy	Of which rent at or below LHA (%)	% of all adverts that are accessible to claimants and within the LHA rate
1) Chingford & Loughton	53	50	10 (20%)	19%
2) Woodford & Wanstead	105	92	12 (13%)	11%
3) Ilford & Barkingside	173	145	40 (28%)	23%
4) Barking	56	47	8 (17%)	14%
5) Romford & Chadwell Heath	42	38	24 (63%)	57%
6) Dagenham & Rainham	54	47	31 (66%)	57%
<b>TOTAL</b>	<b>483</b>	<b>419</b>	<b>125 (30%)</b>	<b>26%</b>

**Table 2: Rooms & Bedsits Inner North and West London BRMA**

Locality (ies)	Total supply	Total supply without explicit 'No DSS' policy	Of which rent at or below LHA (%)	% of all adverts that are accessible to claimants and within the LHA rate
1) Acton	85	72	45 (63%)	53%
2) Willesden & Harlesden	46	35	21 (60%)	46%
3) Kensal & Kilburn	54	40	14 (35%)	26%
4) Cricklewood & Dollis Hill	48	39	27 (69%)	56%
5) Hampstead & Highgate	77	60	17 (28%)	22%
6) Golders Green & Brent Cross	45	40	21 (53%)	47%
7) Holloway, Archway, Kentish Town & Tufnell Park	99	79	46 (58%)	46%
8) Finsbury Park & Highbury	30	28	19 (68%)	63%
9) Islington & Canonbury	34	28	6 (21%)	18%
<b>TOTAL</b>	<b>518</b>	<b>421</b>	<b>216 (51%)</b>	<b>42%</b>

<sup>8</sup> This data is also presented in map format, to be sent in post.

## Appendix 2: Shelter's suggested re-wording of the Rent Officers Order amendment 2008

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### STATUTORY INSTRUMENTS

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**2008 No.**

## **HOUSING**

### **Rent Officers (Housing Benefit Functions) Amendment (No. 2) Order 2008**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 122(1) and (6) of the Housing Act 1996<sup>(9)</sup>.

#### **Citation and commencement**

1. This Order may be cited as the Rent Officers (Housing Benefit Functions) Amendment (No. 2) Order 2008 and shall come into force on [ ].

#### **Amendment of the Rent Officers (Housing Benefit Functions) Order 1997**

2. —(1) The Rent Officers (Housing Benefit Functions) Order 1997<sup>(10)</sup> shall be amended as follows.
  - a. In article 4B(3A)<sup>(11)</sup> (broad rental market area determinations and local housing allowance determinations) omit “working”.
  - b. In Schedule 1—
    - i. in paragraph 4<sup>(12)</sup> (local reference rents)—
      1. in sub-paragraph (2) for “locality” substitute “broad rental market area (local reference rent)”;
      2. for sub-paragraph (6) substitute—

“(6) For the purposes of this paragraph and paragraph 5 “broad rental market area (local reference rent)” means the **smallest** area within which a tenant of the dwelling could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and

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<sup>(9)</sup> 1996 c.52. Section 122 was amended by sections 40 and 67 of, and Schedule 5, paragraph 12 and Schedule 8 to, the Welfare Reform Act 2007 (c.5).

<sup>(10)</sup> S.I. 1997/1984.

<sup>(11)</sup> Article 4B was inserted by S.I. 2003/2398 and paragraph (3A) was inserted by S.I. 2007/2871.

<sup>(12)</sup> The relevant amending instrument is S.I. 2001/3561.

shopping, taking account of the distance of travel, by public and private transport, to and from those facilities and services.”; and

OR

“(6) For the purposes of this paragraph and paragraph 5 “broad rental market area (local reference rent)” means the area within which a tenant of the dwelling **could reasonably be perceived as living** 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 those facilities and services.”; and

3. after sub-paragraph (6), insert—

“(7) A broad rental market (local reference rent) area must contain—

- (a) residential premises of a variety of types, including such premises held on a variety of tenures; and
- (a) sufficient privately rented residential premises, to ensure that, in the rent officer’s opinion, the local reference rents for tenancies in the area are representative of the rents that a landlord might reasonably be expected to obtain in that area.”; and
- ii. in paragraph 5 (single room rents) in sub-paragraph (2), for “locality” substitute “broad rental market area (local reference rent)”.
- c. In Schedule 3B<sup>(13)</sup> (broad rental market area determinations and local housing allowance determinations)—
- i. for paragraph 4, substitute—

“4. In this Schedule “broad rental market area” means the **smallest** area 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 those facilities and services.”; or

“4. In this Schedule “broad rental market area” means the an area within which a person could reasonably be expected to live **being perceived as living** 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 those facilities and services.”;

-and

ii. after paragraph 4 insert—

“5. A broad rental market area must contain—

- (a) residential premises of a variety of types, including such premises held on a variety of tenures; and
- (b) sufficient privately rented residential premises to ensure that, in the rent officer’s opinion, the local housing allowance for the categories of dwelling in the area for which the rent officer is required to determine a local housing allowance is representative of the rents that a landlord might reasonably be expected to obtain in that area.”.

### **Amendment of the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997**

3. —(2) The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997<sup>(14)</sup> shall be amended as follows.
- a. In article 4B(3A)<sup>(15)</sup> (broad rental market area determinations and local housing allowance determinations) omit “working”.

<sup>(13)</sup> Schedule 3B was inserted by S.I. 2007/2871.  
<sup>(14)</sup> S.I. 1997/1995.

- b. In Schedule 1—
- i. in paragraph 4<sup>(16)</sup> (local reference rents)—
  - 1. in sub-paragraph (2) for “locality” substitute “broad rental market area (local reference rent)”;
  - 2. for sub-paragraph (6) substitute—

“(6) For the purposes of this paragraph and paragraph 5 “broad rental market area (local reference rent)” means the smallest area within which a tenant of the dwelling 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 those facilities and services.”;

OR

“(6) For the purposes of this paragraph and paragraph 5 “broad rental market area (local reference rent)” means the area within which a tenant of the dwelling could reasonably be expected to be perceived as living 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 those facilities and services.”; and

and

- 3. after sub-paragraph (6), insert—
- “(7) A broad rental market (local reference rent) area must contain—
- (a) residential premises of a variety of types, including such premises held on a variety of tenures; and
  - (a) sufficient privately rented residential premises, to ensure that, in the rent officer’s opinion, the local reference rents for tenancies in the area are representative of the rents that a landlord might reasonably be expected to obtain in that area.”; and
- ii. in paragraph 5 (single room rents) in sub-paragraph (2), for “locality” substitute “broad rental market area (local reference rent)”.
- c. In Schedule 3B<sup>(17)</sup> (broad rental market area determinations and local housing allowance determinations)—
  - i. for paragraph 4, substitute—

“4. In this Schedule “broad rental market area” means the smallest area 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 those facilities and services.”;

“4. In this Schedule “broad rental market area” means the area within which a person could reasonably be expected to be perceived as living 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 those facilities and services.”; and

- ii. after paragraph 4 insert—

“5. A broad rental market area must contain—

- (a) residential premises of a variety of types, including such premises held on a variety of tenures; and
- (b) sufficient privately rented residential premises to ensure that, in the rent officer’s opinion, the local housing allowance for the categories of dwelling in the area for which the rent officer is required

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<sup>(15)</sup> Article 4B was inserted by S.I. 2003/2398 and paragraph (3A) was inserted by S.I. 2007/2871.  
<sup>(16)</sup> The relevant amending instrument is S.I. 2001/3561.  
<sup>(17)</sup> Schedule 3B was inserted by S.I. 2007/2871.

to determine a local housing allowance is representative of the rents that a landlord might reasonably be expected to obtain in that area.”.

#### **Amendment of the Rent Officers (Housing Benefit Functions) Amendment Order 2008**

4. —(3) The Rent Officers (Housing Benefit Functions) Amendment Order 2008<sup>(18)</sup> shall be amended as follows.

a. In article 2 (amendment of the Rent Officers (Housing Benefit Functions) Amendment Order 2007), paragraphs (2) and (4) are omitted.

Signed by authority of the Secretary of State for Work and Pensions

*Name*

Parliamentary Under Secretary of State,  
Department for Work and Pensions

Date

#### **EXPLANATORY NOTE**

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

This Order amends the Rent Officers (Housing Benefit Functions) Order 1997, the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 and the Rent Officers (Housing Benefit Functions) Amendment Order 2008.

Article 2 amends the Rent Officers (Housing Benefit Functions) Order 1997. Paragraph (1) amends article 4A(3B) to clarify that the local housing allowance determination takes effect on the first day of the month.

Paragraph (2) amends Schedule 1. In paragraph 4, it substitutes for the definition of “locality” a new definition of “broad rental market area (local reference rent)”. It also makes amendments to paragraphs 4 and 5 to replace references to “locality” with “broad rental market area (local reference rent)”.

Paragraph (3) substitutes a new definition of “broad rental market area” in Schedule 3B that is in similar terms to the new definition of “broad rental market area (local reference rent)” in Schedule 1.

Article 3 makes equivalent amendments to the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997.

Article 4 amends the Rent Officers (Housing Benefit Functions) Amendment Order 2008. This contained an amendment to article 4A(3B) of the Rent Officers (Housing Benefit Functions) Order 1997 and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 which had an erroneous coming into force date. That amendment is now contained in articles 2 and 3 of this Order.

A full impact assessment has not been published for this instrument as it has no impact on the private or voluntary sectors.

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<sup>(18)</sup> S.I. 2008/587.