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[by e mail]

Dear Colleagues,

**Consultation on amendments to the Rent Officers (Housing Benefit Functions) Order 1997 and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997**

1. I am writing to consult you on draft amendment to the Rent Officers (Housing Benefit Functions) Order 1997 and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997. These amendments will provide greater clarity and certainty to the way that rental market areas are determined and are required as a consequence of the recent House of Lords judgement in the Heffernan case. The proposed changes to The Rent Officer Orders are necessary to ensure the continued delivery of the Department's policy objectives for Local Reference Rent (LRR) and Local Housing Allowance (LHA) schemes.
2. The House of Lords delivered its judgment in the case of Heffernan v The Rent Service on 30<sup>th</sup> July 2008. The judgment fundamentally changes the way that localities are determined by rent officers. The House of Lords decision requires that a locality should comprise the least number of neighbourhoods that could satisfy the provisions of the Rent Officers Order. Applying the principles of the judgement to localities and Broad Rental Market Area (BRMA) on a national basis would not be appropriate.
3. Therefore, we are taking steps to amend the definitions of both localities and BRMA in The Rent Officers Order to address the ambiguity introduced as a result of the House of Lords Judgement. We are proposing to amend the Order to clarify exactly how areas of reasonable benefits levels are defined and to strengthen the definitions to ensure that these areas accurately reflect our policy intention. Therefore we are proposing to make the following changes:
  - a new and largely unified definition of BRMA that will apply in respect of both LHA and LRR cases;
  - the amended definitions of the areas will be generally similar except that the LRR definition is centred on the tenant and the LHA one is generic;
  - the definition will allow areas to be drawn relatively broadly, and
  - we have removed the requirement that an area should be made up of 2 or more neighbourhoods or district areas of residential accommodation.
4. It is important to note that these changes are intended to simplify and clarify the areas that LRRs and LHA rates apply in the short term only. It is not our intention, at this stage, to make changes to the Order as a result of any policy change. Rather,

we need to ensure we have a stable basis for the setting of BRMAs in the short term. This will enable rent officers to continue with their rolling programme of reviewing locality boundaries.

### **Working days issue**

5. We also propose to make one minor administrative amendment to the Order. This merely clarifies that LHA rates are effective from the first *working* day of the month rather than the first *calendar* day of the month. This reflects the way the scheme is currently operating.

### **Consultation**

6. Attached to this email we have provided a draft of the Rent Officers (Housing Benefit Functions) (Amendment) order 2008. It explains what the “broad rental market area” means and I would be grateful for any comments on this draft order by 28<sup>th</sup> November 2008.
7. We propose that these amendments will come into force from 6<sup>th</sup> January 2008.

If you have any queries please do not hesitate to contact me.

Yours sincerely,

Kish Nathwani  
Housing Benefit Strategy Division