

**EXPLANATORY MEMORANDUM TO**  
**THE HOMELESSNESS (SUITABILITY OF ACCOMMODATION) (ENGLAND)**  
**ORDER 2012**

**2012 No. 2601**

**1.** This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Homelessness (Suitability of Accommodation) (England) Order 2012 (“the Order”) sets out matters to be taken into account in determining whether accommodation is suitable for a person and circumstances in which accommodation, for the purpose of a private rented sector offer under section 193(7F) of the Housing Act 1996, is not to be regarded as suitable for a person, by a local housing authority.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 Where an applicant is homeless, eligible for assistance and has a priority need for accommodation, local housing authorities have a duty to secure that accommodation is available for occupation by the applicant, under section 193(2) of the Housing Act 1996 (“the 1996 Act”). This is known as the main homelessness duty.

4.2 The Localism Act 2011 amended the 1996 Act to provide local housing authorities with the power to discharge the main homelessness duty by way of a private rented sector offer under section 193(7AA). Section 193(7F), which is being commenced on the same day as the Order comes into force, requires that the local housing authority must be satisfied that the private rented sector offer accommodation is suitable for the applicant.

4.3 In addition, accommodation secured by a local housing authority, or secured from another person on the advice and assistance of the local housing authority, in the discharge of their housing functions under the 1996 Act must be suitable (section 206(1) of the 1996 Act).

4.4 Under section 210(2) of the 1996 Act the Secretary of State has the power to specify, by order, circumstances in which accommodation is not to be regarded as suitable for a person and matters to be taken into account or disregarded in determining whether accommodation is suitable for a person.

4.5 This Order sets out circumstances in which accommodation is not to be regarded as suitable for the purposes of a private rented sector offer under section 193(7F) of the 1996 Act.

4.6 The Order also specifies matters to be taken into account in determining whether accommodation is suitable for a person. It requires local housing authorities to take into account the location of the accommodation and particular matters to be taken into account.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England only.

## **6. European Convention on Human Rights**

6.1 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 new power that will allow local authorities to end the main homelessness duty with offers of accommodation in the private rented sector without requiring the applicant's agreement was introduced as part of Government's wider social housing reforms. This specific change is about giving local authorities freedom to make better use of good-quality private sector accommodation that can provide suitable accommodation for households accepted as homeless.

7.2 The Government considers that allowing people owed the main homelessness duty to turn down offers of suitable accommodation in the private rented sector and wait for an offer of social housing, as was the case under the Housing Act 1996 before the amendments in the Localism Act 2011, is unfair to other households on the housing waiting list who have to wait longer to access limited social housing stock; and, to the taxpayer who is funding expensive temporary accommodation whilst people owed the main homelessness duty wait for an offer of social housing.

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7.4 Bringing this Order into force will allow us to commence the new powers which will realise estimated savings to Government and local government (in housing benefit expenditure from reduced use of temporary accommodation) of £6bn over a 30 year period.

7.5 During the passage of the Localism Act 2011, members and peers of both Houses of Parliament and homelessness organisations raised concerns about the quality of private rented sector accommodation. Particular issues of damp, cold, mould and the possibility of using rogue landlords were raised. In response to those concerns, the Government decided that additional regulatory safeguards were necessary to prevent the use of poor quality accommodation for households owed the main homelessness duty, given the some homeless households may be vulnerable and offered accommodation over which they have less choice. The circumstances set out in the Order were chosen specifically to address those concerns raised. To determine which factors would be effective in protecting vulnerable tenants yet would not place such a burden on local authorities and landlords that no accommodation would be made available, the Government looked at existing landlord accreditation schemes across the country.

7.6 The Government has considered the common elements of those schemes, looking at how they operated in practice and developed a set of factors such that where one element was lacking it would indicate poor quality accommodation. Particular attention was paid to the physical condition of the building to ensure issues of damp, cold and mould were addressed. Health and safety issues were also considered and elements of fire, gas, electrical and carbon monoxide safety were included. To address concerns around the use of rogue landlords Government have applied the “fit and proper” test that currently applies to Houses of Multiple Occupancy to all accommodation secured under s193(7F). We then consulted on the circumstances in which accommodation is not to be regarded as suitable.

7.7 Concerns were also raised that some local authorities were considering placing homeless households many miles away from the places they previously lived. Government believes it is neither desirable nor fair for local authorities to place families great distances away from their previous home where it is avoidable. Government therefore consulted on whether existing provisions on location and suitability should be strengthened. In order to achieve this policy aim, factors were developed that considered the impact a change in location would have on households. These, for example, included disruption to employment, education and caring responsibilities.

7.8 This Order will help prevent the use of poor quality accommodation for homeless households placed in the private rented sector and also prevent them being placed hundreds of miles away from their previous home when there is available, affordable accommodation nearer to them.

## **8. Consultation outcome**

8.1 The consultation ran from the 31st May to the 26th of July 2012. 808 replies were received. The responses to the consultation were overwhelmingly supportive, both welcoming the standards that will be applied to private rented accommodation used under s193(7F) of the Housing Act 1996 and the strengthening of the existing provisions around suitability of location.

8.2 Of those consultation responses that answered the question about the five elements which were important in determining whether accommodation is to be regarded as not suitable, 88% agreed they were the right ones, and only 4% disagreed. On location, 93% of people responding felt the existing provisions on location needed to be strengthened and 94% agreed with the proposed factors on location which an authority should take into account when determining whether accommodation is suitable.

## **9. Guidance**

9.1 The Department is publishing statutory guidance to accompany the Order.

## **10. Impact**

10.1 There is no detrimental impact on business, charities or voluntary bodies. The ability for authorities to discharge the main homelessness duty by way of a private rented sector offer will create a new rental market for an estimated 18,000 lets per year.

10.2 The impact on the public sector has been set out in the accompanying Impact Assessment

## **11. Regulating small business**

11.1 The Order is a regulatory measure that will be net beneficial for business.

## **12. Monitoring & review**

12.1 The Order will be subject to a Ministerial review after 7 years

## **13. Contact**

John Bentham at the Department of Communities and Local Government (Tel: 03034 44 443752 or email: john.bentham@communities.gsi.gov.uk) can answer any queries regarding the instrument.