

# **The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014**

## **Final Business and Regulatory Impact Assessment**

### **1. Title of Proposal**

**The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014**

### **2. Purpose and Intended Effect**

#### **Background**

2.1 The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 replaces existing provision setting out what is unsuitable temporary accommodation for persons who may be homeless. It applies to persons who are pregnant or whose household includes children or a pregnant woman.

2.2 The Minister for Housing & Welfare met with Jim Eadie MSP and Alex Rowley MSP in June 2014 to discuss whether the existing Order (the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004) made clear that accommodation is unsuitable if it is “not wind and watertight” or is otherwise not reasonably fit for human habitation.

2.3 This followed Shelter Scotland’s campaign on minimum standards for temporary accommodation in late 2013. Shelter continued to press for a minimum standard and as the Housing Bill presented an opportunity to raise this again, lobbied MSPs to suggest that an amendment to the existing Order was proposed.

2.4 Jim Eadie proposed an amendment, but agreed to withdraw it having highlighted the potential issue (see 2.18). Following the meeting with Mr Eadie and Mr Rowley, the Minister agreed that the existing Order should be amended to state clearly that accommodation is always unsuitable if it is “not wind and watertight”.

2.5 The existing Order has been redrafted by Scottish Government Legal Directorate and agreed with stakeholders through consultation. Respondents overwhelmingly supported the ‘not wind and watertight’ clarification. This rewording is the only significant new statement contained in the redraft.

2.6 Three out of the eleven respondents included an additional comment in line with Shelter’s original request, that the amendment is expanded to “not wind and watertight and in all other respects not reasonably fit for human habitation”. However, similarly to the existing Order, the “not reasonably fit for human habitation” provision is covered by article 4(b) of the redrafted Order, that accommodation is always unsuitable if it is “not suitable for occupation by children”. There is therefore no need to make further provision in this respect.

## **Objective**

2.7 This policy contributes to the Scottish Government's work on alleviating and tackling homelessness. The policy contributes to the following National Outcomes:

- Our children have the best start in life and are ready to succeed
- We have improved the life chances for children, young people and families at risk.

2.8 The objective fits with the Scottish Government's strategic 'Safer and Stronger Scotland' objective. This helps local communities to flourish, becoming stronger, safer places to live, offering improved opportunities and a better quality of life.

2.9 The Scottish Government's Housing Vision is that 'all people in Scotland live in high quality, sustainable homes that they can afford and that meet their needs'. The amendment of the Order contributes to the intermediate Housing Vision outcomes of 'A Well Functioning Housing System' and 'Homes that Meet People's Needs'.

## **Rationale for Government Intervention**

2.10 Local authorities have a number of duties under homelessness legislation, and section 29(1) of the Housing (Scotland) Act 1987 places a duty on local authorities to provide interim accommodation to certain applicants who present as homeless.

2.11 The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 describes accommodation that may not be used to fulfil this duty for households where the applicant is (a) pregnant, (b) a person whose household includes a pregnant woman; or (c) a person whose household includes dependent children. The Order effectively bans the use of bed and breakfast accommodation for families with children, except in specific circumstances. The power to make an Order specifying unsuitable accommodation was introduced through the Homelessness etc. (Scotland) Act 2003.

2.12 The Scottish Government Code of Guidance on Homelessness 2005 states 'The Homelessness etc. (Scotland) Act 2003 contained a provision which allowed Scottish Ministers to create regulations which would limit the use of bed and breakfast accommodation across Scotland, establishing consistency in this area'.

2.13 However it goes on to state that it is an 'Order on standards which temporary accommodation for households with children and pregnant women must meet. The purpose of this Order is to put an end to the routine use of bed and breakfast accommodation and other unsuitable accommodation for these households'

2.14 Section 9.12 of the Code of Guidance states 'Note that these regulations do not just cover bed and breakfasts, but go wider to cover any temporary accommodation used by local authorities in fulfilling this duty'.

2.15 It notes the physical, proximity and safety standards, that accommodation must: -

- be within the local authority's area. This is to prevent households with children being placed out of area and into accommodation where other clients may pose a risk to children, which the local authority may not be aware of. It also helps to preserve access to support services offered by the local authority;
- provide adequate bedrooms and adequate toilet and personal washing facilities for the exclusive use of the household. Local authorities should use their own Houses of Multiple Occupation (HMO) standards when considering if accommodation meets this standard;
- provide adequate cooking facilities - as above facilities should meet HMO standards. Note that cooking facilities can be shared with other households in the accommodation - subject to what HMO standards define;
- provide the use of a living room (the purpose of this is to allow any children space to play and do homework) - again, as with the cooking facilities, this does not have to be for the exclusive use of the household;
- be usable by the household for 24 hours a day. The purpose of this is to prevent households being locked out of the accommodation for part of the day, as can be common practice in some sorts of temporary accommodation.

2.16 Section 9.18 states 'If the accommodation does not meet these standards then it is unsuitable accommodation in terms of the Order.' The Order allows for some exceptions but does not allow accommodation to be provided which poses significant risk – the "safety standard".

### **Minister for Housing & Welfare – meeting with Jim Eadie MSP and Alex Rowley MSP to discuss proposed amendment**

2.17 Jim Eadie tabled an amendment to the Housing (Scotland) Bill in Scottish Parliament to require an Order providing for unsuitable accommodation to include a definition of "family commitments" and state that accommodation is unsuitable if it is "not wind and watertight" and is not in all other respects reasonably fit for human habitation. This followed Shelter Scotland's campaign on minimum standards for temporary accommodation in late 2013. Shelter continued to press for a minimum standard and as the Housing Bill presented an opportunity to raise this again, lobbied MSPs in order that an amendment was proposed.

2.18 The Minister for Housing & Welfare set out the following arguments in asking Mr Eadie to withdraw his amendment to the Housing (Scotland) Bill:

- The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 already sets out a definition of family commitments therefore that part of the amendment is already covered;

- The Order requires that accommodation provided for children and pregnant women should be suitable for occupation by children and it is difficult to see how it could be suitable and NOT wind and watertight or otherwise reasonably fit for human habitation; and
- The Code of Guidance on Homelessness provides statutory guidance to local authorities on areas covered by the unsuitable accommodation order. This sets out that local authorities should use their HMO standards when considering if accommodation meets the standard and that the accommodation does not pose significant risk (the safety standard). Exceptions are allowed to some of the parts of the order, but not the safety standard.

2.19 The Minister met with Jim Eadie and Alex Rowley in June 2014 to discuss the amendment. Following the meeting, the Minister agreed that the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 should be amended to state clearly that accommodation is unsuitable if it is “not wind and watertight”.

2.20 Following this meeting, the existing Order has been redrafted by Scottish Government Legal Directorate and agreed with stakeholders through consultation. The ‘wind and watertight’ clarification is the only new provision contained in the redraft.

### **3. Consultation**

#### **Within Government**

3.1 We have worked closely with colleagues in the Scottish Government Legal Directorate to redraft the existing Order including the amendment. In developing this BRIA we have consulted with colleagues in the Better Regulations team and have liaised with the Strategy, Legislation and Mainstreaming team as part of the Equalities Impact Assessment.

#### **Stakeholder Consultation**

3.2 A consultation with key stakeholders commenced on 25 June and ran until 9 July. A total of 11 responses were received. Responses were received from ALACHO, Children in Scotland, COSLA, Glasgow Homelessness Network, Homeless Action Scotland, Scottish Churches Housing Action, Shelter Scotland, Wheatley Group, Falkirk Council, Highland Council and South Lanarkshire Council.

#### **3.3 Key Messages from Consultation**

- Stakeholders were overwhelmingly supportive of the ‘not wind and watertight’ clarification.
- Most temporary accommodation provided by local authorities and other agencies is of a high standard, however this amendment should further strengthen legislative protection with little or no cost or resource impact on local authorities.

- Amendment will ensure a level of consistency for the provision of temporary accommodation for pregnant women and households containing dependent children across local authorities.
- Three organisations included an additional comment in line with Shelter’s original request that this be expanded to “not wind and watertight and in all other respects not reasonably fit for human habitation”. However, we are not proceeding with the “not reasonably fit for human habitation” part of the amendment. This is covered, similarly to the existing Order, by the provision in article 4(b) of the 2014 Order, that accommodation is unsuitable if it is “not suitable for occupation by children”.

3.4 On the basis of the consultation analysis, we recommend the implementation of Option 1 (see paragraph 4.2 below), to replace the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 with an Order stating more clearly that accommodation is unsuitable if it is “not wind and watertight”.

### **Business**

3.5 Through the consultation, we gained an understanding of the business impact of amending The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004. Respondents felt that the amendment would provide additional accountability by local authorities where applicants need to challenge the suitability of an offer of temporary accommodation. No other significant business impacts were identified.

## **4. Options**

4.1 When commenced, the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 will strengthen the ability of homeless households containing children and pregnant women to challenge the provision of unsuitable accommodation.

4.2 There are 2 options available, to take this policy forward:

**Option 1:** Replace The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 with an Order that makes express reference to accommodation requiring to be ‘wind and watertight’ and with other rewording as agreed with stakeholders.

**Option 2:** Do not replace or amend the existing Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004

**OPTION 1: Replace The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 with an Order that makes express reference to accommodation requiring to be ‘wind and watertight’ and with other rewording as agreed with stakeholders.**

### **Sectors and groups affected**

4.3 Local authorities and homeless households where the applicant is (a) pregnant; (b) a person whose household includes a pregnant woman; or (c) a person whose household includes dependent children.

### **Benefits**

4.4 The purpose of the consultation was to seek views on whether the 'wind and watertight' amendment and other rewording of the Order should be implemented, and to seek proposals on other changes to the Order. Respondents were asked to provide an explanation for their proposals, and to identify any impact.

4.5 Respondents were overwhelmingly supportive of Option 1, and the most common reasons for choosing this option were:

- that it further protects the rights of households experiencing homelessness to be offered suitable temporary accommodation, and
- that it provides clarity for local authority homelessness teams and ensures that suitable temporary accommodation is sourced for applicants.

### **Costs**

4.6 Local authorities currently demonstrate good practice in providing suitable accommodation for homeless applicants and respondents felt that there would be little or no likely impact on costs.

## **OPTION 2: Do not replace or amend the existing Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004**

### **Sectors and groups affected**

4.7 Local authorities and homeless households where the applicant is (a) pregnant; (b) a person whose household includes a pregnant woman; or (c) a person whose household includes dependent children.

### **Benefits**

4.8 This option would not require any further legislative changes to the duties on local authorities regarding the provision of unsuitable accommodation.

4.9 Consultation respondents were asked to identify their preferred option, provide an explanation for their proposals, and identify any impacts. However, no respondents supported this option.

### **Costs**

4.10 No cost implications for this option.

## **5. Scottish Firms Impact Test**

5.1 As part of the consultation process, we engaged with local authorities and other key partner organisations to gain an understanding the business impact of replacing or amending The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 and identifying costs associated with this. Respondents identified no or little impact on their organisations and its stakeholders in terms of cost or resources. Respondents pointed out that it would give an added layer of protection to potentially vulnerable households, and that it would be cost neutral compared to the costs of moving families to other temporary accommodation/ supporting families to make legal challenges over the suitability of accommodation

- **Competition Assessment**

We have applied the Competition and Markets Authority (CMA) Competition Filter questions and find there will be no impact on competition.

### **CMA Competition Filter questions**

Does the policy:

**1. Directly limit the number or range of suppliers?**

No.

**2. Indirectly limit the number or range of suppliers?**

No.

**3. Limit the ability of suppliers to compete?**

No.

**4. Reduce suppliers' incentives to compete vigorously?**

No.

Using the CMA Competition Filter questions we have concluded that the proposals will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

One consultation respondent felt that there would be an impact on competition. This was on the basis that some suppliers could not meet the basic repairing standard or would not have the sufficient repairing arrangements in place to meet the minimum standards for the supply of temporary accommodation. However, the respondent noted that local authorities would be unlikely to engage in any contractual arrangements with providers that could not meet these standards.

- **Test Run of Business Forms**

No new business forms are expected to be introduced as a result of the amendment.

## **6. Legal Aid Impact Test**

6.1 The Scottish Government Legal Services Access to Justice team has indicated that it is unlikely there will be any cost implications for the Legal Aid Fund

## **7. Enforcement, sanctions and monitoring**

7.1 Where a local authority fails to comply with the Order it is in breach of its duty not to provide unsuitable accommodation. In such an instance, a homeless applicant can seek a court order to have the authority provide suitable accommodation.

7.2 The Scottish Government collects information on homelessness applications, assessments, and outcomes. For each quarter from June 2005, local authorities have reported on the number of households at the end of the quarter who were in unsuitable temporary accommodation, and the number where the accommodation provided to the household was in breach of the Unsuitable Accommodation Order. There were no breaches of the Order in the latest published statistics - at 31 March 2014.

## **Implementation and delivery plan**

8.1 The Minister tasked officials to commence the process of replacing the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004. This requires the 2014 Order to be made and to follow due Parliamentary process. It is envisaged that the 2014 Order will come into force before the end of 2014.

- **Post-implementation review**

8.2 Scottish Government Legal Directorate has confirmed that there is no statutory requirement to review the operation of the Order, and in any event the 2014 Order clarifies existing requirements, rather than making changes to them.

## **Summary and recommendation**

9.1 We recommend the implementation of Option 1, to replace The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 with an Order that makes express reference to accommodation requiring to be 'wind and watertight' and with other rewording as agreed with stakeholders.



• **Summary costs and benefits table**

<b>Option</b>	<b>Benefits</b>	<b>Costs</b>
1	<p>Through the replacement of the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004, local authorities would be more clearly required to ensure that temporary accommodation for households where the applicant is (a) pregnant, (b) a person whose household includes a pregnant women; or (c) a person whose household includes dependent children cannot be provided if it is not “wind and watertight”.</p> <p>Most temporary accommodation provided by local authorities and other agencies is of a high standard. Breaches of the Order have significantly reduced over time. This amendment will further strengthen this legislative protection.</p>	<p>Local authorities are well-placed to meet this amendment and are unlikely to incur any additional costs.</p>
2	<p>Most temporary accommodation provided by local authorities and other agencies is of a high standard. Breaches of the Order have significantly reduced over time.</p>	<p>There are no associated costs in retaining the existing Order.</p>

**Declaration and publication**

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: M. J Burgess

Date: 14 August 2014

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