

# Final Business and Regulatory Impact Assessment

## **The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020**

### **Purpose and intended effect**

#### **Background**

1.1. The Programme for Government announced by the First Minister on 5 September 2017 set out a new commitment to eradicate rough sleeping, transform the use of temporary accommodation in Scotland and end homelessness. Ministers subsequently established the Homelessness and Rough Sleeping Action Group (HARSAG) to make recommendations on how these transformational changes could be achieved.

1.2 In June 2018, HARSAG completed their work, producing a comprehensive set of recommendations aiming to secure strategic changes at both national and local level which would help support delivery on the front-line. In November 2018, the Scottish Government and COSLA published the Ending Homelessness Together High Level Action Plan which sets out the actions we will take in partnership with others to act on the HARSAG recommendations and realise our shared ambitions to end rough sleeping and homelessness.

1.3 The Programme for Government announced on 3 September 2019 that The Scottish Government will legislate to extend the Unsuitable Accommodation Order to all homeless household this parliamentary year and that it will come into force in this parliamentary term, by May 2021. The extension means that the maximum number of days that local authorities can use unsuitable accommodation for any homeless person is 7 days.

1.4. The Homelessness etc (Scotland) Act 2003 included powers to limit the use of bed and breakfast (B&B) accommodation for families and children. This power was used to introduce the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004, which required local authorities to ensure that homeless households with children and pregnant women are not placed in unsuitable temporary accommodation unless exceptional circumstances apply.

1.5 In 2014, the Homeless Persons (Unsuitable Accommodation) (Scotland) Order limited the time that local authorities could place homeless applicants that were pregnant or a household which includes dependent children in temporary accommodation that was unsuitable for no longer than 14 days, and only where the local authority had no suitable accommodation immediately available. This order replaced the 2004 Order. Unsuitable accommodation is defined in the order as accommodation which does not meet standards relating to physical properties of the accommodation, its proximity to health and education services and its suitability to be used by children. Consequently the use of B&Bs for such households is deemed unreasonable.

1.6 The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017 reduced the maximum time spent in unsuitable accommodation from 14 days to 7 days for the same group i.e. pregnant applicants and households with dependent children, but

there is no definition of unsuitable accommodation for any other groups, and therefore no limit on the time other groups can spend in unsuitable accommodation.

1.7 The definition of what constitutes unsuitable for pregnant applicants and households with dependent children refers to the location of the accommodation, the quality of the accommodation and the facilities that are available there.

A property would be deemed as unsuitable if it was located:

- Out with the area of the local authority;
- Away from facilities and services for the purposes of health and education which would be used by the household members.

A property would also be deemed as unsuitable if it:

- Was not wind and watertight;
- Was unsuitable for occupation by children;
- Lacked adequate toilet and personal washing facilities for the exclusive use of the household;
- Lacked adequate bedrooms for the exclusive use of the household;
- Lacked adequate cooking facilities and use of a living room; or
- Was not usable by the household for 24 hours a day.

There are exemptions where the Unsuitable Accommodation Order does not apply:

- Where the household has become homeless as a result of an emergency, such as flood, fire or disaster; or
- Where the accommodation is for a women's refuge or is local authority supported accommodation which provides services to a household for the purposes of health, child care or family welfare.

The exemptions for refuges and local authority supported accommodation exist to ensure that a barrier does not occur that may prevent a household accessing emergency accommodation when fleeing domestic abuse.

HARSAG recommended that the 7 day restriction of time spent in unsuitable temporary accommodation should be extended to all homeless people.

## **Objective**

As announced in the Programme for Government on 3 September 2019, Scottish Government will legislate to extend the Unsuitable Accommodation Order to all homeless household this parliamentary year and that it will come into force in this parliamentary term, by May 2021. The extension means that the maximum number of days that local authorities can use unsuitable accommodation for any homeless person is 7 days.

The amendment to the Order therefore seeks to further extend the rights of pregnant women and families with children to all groups of homeless households and that if they are housed in this type of accommodation, they can only reside there for a maximum of 7 days.

## **Rationale for Government Intervention**

The changes to the Unsuitable Accommodation Order in 2017 meant that families with children and pregnant women should only stay in accommodation such as B&Bs for a maximum of seven days. The Scottish Government want to go further and ensure no one stays in unsuitable accommodation such as B&Bs for more than 7 days which is why legislation will be introduced to extend the Order to all homeless households by May 2021.

Formal consultation analysis was undertaken and a final report produced. As a result of the consultation the majority of responses expressed a preference for the use of unsuitable accommodation to be limited to a maximum of 7 days for all homeless households.

The change in legislation will affect local authorities and all people experiencing homelessness and the amendment contributes to the following outcomes within the National Performance Framework, which are fundamental to the ambition to end homelessness in Scotland:

- We respect, protect and fulfil human rights and live free from discrimination.
- We tackle poverty by sharing opportunities, wealth and power more equally.
- We live in communities that are inclusive, empowered, resilient and safe.
- We grow up loved, safe and respected so we can realise our full potential.
- We are well educated, skilled and able to contribute to society.

There are no alternatives to regulation including voluntary or self-regulation.

## **Consultation**

- **Within Government**

We have worked closely with colleagues in the Scottish Government Legal Directorate to draft the amendment.

In developing this BRIA we have consulted with colleagues in the Scottish Housing Regulator, Scottish Statutory Admin team and SSI guidance

- **Consultation**

2.2 A consultation ran from 22 May until 14 August 2019. The consultation on Improving Temporary Accommodation Standards sought views on three specific areas which included the impact of the proposed amendment i.e. the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020, extending the 7 day restriction of the time spent in unsuitable temporary accommodation to all people experiencing homelessness.

A total of 387 responses to the consultation was received and included 65 direct responses with 24 from individual local authorities. 31 from organisations and 10 from individuals. 3 of whom had lived experience of homelessness. In addition, Crisis prepared and hosted a shortened version of the consultation on their website which generated a total of 322 responses. 26 of whom were from people with lived experience of homelessness.

See attached annex for list of responders.

- **Business**

2.3. Through the consultation we gained an understanding of the business impact of amending the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014. The small number of stakeholders that indicated that the UAO should not be extended cited that the extension could pose resource implications for local authorities and that housing providers might not be able to cover the costs of upgrading existing stock to meet the requirements.

Every local authority is working to implement its Rapid Rehousing Transition Plan (RRTP),

backed by £24m SG funding over three years. Each RRTP sets out the plans to implement and transition to a rapid rehousing and Housing First approach to redress the local balance of temporary and settled housing options and represents significant culture and systems change in how they respond to homelessness and for the expectations of people affected by it.

## **Options**

**Option 1:** Amend the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 to extend the 7 day restriction of time spent in unsuitable temporary accommodation to all people experiencing homelessness.

**Option 2:** Do not amend the existing Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014.

## **Sectors and groups affected**

3.1 Local authorities and all homeless households.

## **Benefits**

### **Option 1**

3.2 The amendment to the Order will mean that the maximum number of days that local authorities will be able to use unsuitable accommodation, such as B&Bs for **any homeless household** is 7 days. This means that all homeless households will not have to stay in temporary accommodation that is of a poor standard and would be more beneficial for the wellbeing of the household.

## **Costs**

3.3 Some consultation respondents raised concerns about whether the resources needed to make changes around the volume of housing stock or the money needed to make any necessary improvements to temporary accommodation would be available. However, each local authority should have measures and actions within their RRTP that will help to address the changes to the system and culture as we move to a rapid rehousing approach. Scottish Government is providing funding to support local authorities to implement their RRTP plan to make sure that anyone facing homelessness is supported into a permanent, settled home that meets their needs as quickly as possible.

3.4 The £50 million Ending Homelessness Together Fund is to support local authorities and others to ensure homelessness services are more responsive, of a high standard and focussed on prevention. Preventing homelessness in the first place, is just as important as how we collectively respond if and when it does happen. To achieve this shift this means local authorities need to do more to ensure people know where to get help and can access support that meets their needs and puts them back on track. It also means doing more to ensure that housing needs are considered when other circumstances change and making the most to intervene across the range of services and support on offer. It's about building up responsive services which treat everyone with dignity and respect, whatever their needs.

3.5 Achieving a fundamental shift to rapid rehousing, including making Housing First support available to those who need it is a crucial part of preventing and ending homelessness and the Housing First elements of the RRTP's which every local authority is working towards will set the path to ensuring a range of options are available for housing and support for everyone, including those with multiple, complex needs, in the next few years. Preventing people from losing their home will be a priority in the effort to end homelessness and rough sleeping and therefore help to reduce the need to provide temporary accommodation such as B&B's.

3.6 In addition we published a new set of advisory standards within the updated Code of Guidance on Homelessness that was published on 7 November. The standards cover 4 main areas that should be considered by local authorities: Physical, Location, Service and Management and are aimed at ensuring that any time spent in temporary accommodation causes minimal harm by making sure that temporary accommodation is of good quality, safe, warm, affordable and there is a consistency of standards across all local authority areas.

### **Option 2**

3.7 If the order was to remain unchanged then only pregnant women and families with children would be required to stay in B&B accommodation for a maximum of 7 days and all other homeless households would have no restriction set to the number of days that they could be staying in accommodation that is not of a good standard and classed as unsuitable. Statistics show that certain household groups in some local authority areas can be in unsuitable accommodation for up to 24 months.

### **Costs**

3.8 The cost to local authorities to accommodate homeless households in B&Bs is expensive and therefore Option 2 would mean that this practice would carry on and with Homeless numbers remaining at a high level this will mean that the cost for local authorities to accommodate homeless households in often unsuitable temporary accommodation will continue.

### **Other Options**

3.9 Other than Option 1 there is no other option that is viable, including voluntary regulation as this would be difficult to get buy-in from and implement by all 32 local authorities as well as proving to be costly to set up and difficult to police.

4.0 Given that there is existing legislation in place i.e. the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014, it makes sense to amend this legislation and extend the 7 day restriction of time spent in unsuitable temporary accommodation to all people experiencing homelessness.

### **Scottish Firms Impact Test**

4.1 Through the consultation process, we engaged with local authorities and other key partner organisations to gain an understanding of the business impact of amending the UAO legislation to extend this to all homeless and identified the associated costs to do this. Some respondents expressed fears that housing providers will not be able to cover the costs of upgrading stock to meet requirements. Other reflections included that the change in legislation would help to prevent the social isolation experienced by people in unsuitable

temporary accommodation; and support families to maintain important relationships, for example enabling single fathers to spend time with their children. It was also suggested that the extension would increase the likelihood of homeless households sustaining or engaging with employment or training opportunities; lower costs for homeless households who find the unsuitable accommodation rents unaffordable; and end an over-reliance by local authorities on B&B accommodation.

It is B&B owners who will be most affected by this change, most of whom are small businesses. While these businesses are not solely reliant on the income generated by providing accommodation to homeless people, this change has the potential to affect their turnover as local authorities look to provide alternative accommodation.

### **Competition Assessment**

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

4.3 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.

- **Will the measure directly or indirectly limit the number or range of suppliers?**

No

- **Will the measure limit the ability of suppliers to compete?**

No

- **Will the measure limit suppliers' incentives to compete vigorously?**

No

- **Will the measure limit the choices and information available to consumers?**

No

### **Test run of business forms**

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

### **Consumer Assessment**

This policy and its impact will mean that all homeless households will have equal rights. This policy means that all homeless households should not stay in unsuitable temporary accommodation for more than 7 days.

### **Digital Impact Test**

This change to policy will not have an impact on advances in digital technology or its future delivery.

### **Legal Aid Impact Test**

5.1 Colleagues from Access to Justice team have confirmed that they do not foresee this legislation to amend the UAO being an impact on the legal aid fund.

### **Enforcement, sanctions and monitoring**

6.1 Local authorities are required to report breaches of the Unsuitable Accommodation Order to the Scottish Government through their statistical returns, which will be monitored by the Scottish Housing Regulator and investigated accordingly.

### **Implementation and delivery plan**

7.1 The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020 will be laid in the Scottish Parliament on 5 May 2020 and will come into force on 6 May 2020.

- **Post-implementation review**

7.2 Scottish Government Legal Directorate has confirmed that there is no statutory requirement to review the operation of the Order.

### **Summary and recommendation**

8.1 Option 1 is being recommended as

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	The social benefit would be to all homeless households who would have a restriction on the maximum number of days that they can stay in unsuitable accommodation such as bed and breakfast accommodation. At the moment the only group that has a restriction of no more than 7 days is for pregnant women or families with dependent children.	

**Declaration and publication**

- Sign-off for Final BRIAs:

I have read the Business and Regulatory 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:**



**Minister for Local Government, Housing and Planning**

**Date: 4 May 2020**

**Signed:**

**Janine Kellett, Unit Head, Homelessness, Better Homes Division**

**On behalf of Catriona MacKean, DD Better Home Division**

**DD Better Homes Division**

**Date: 4 May 2020**

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