

POLICY NOTE

THE HOMELESS PERSONS (UNSUITABLE ACCOMMODATION) (SCOTLAND) AMENDMENT ORDER 2020

SSI 2020/139

The above instrument was made in exercise of the powers conferred by section 29(3) and (4) of the Housing (Scotland) Act 1978(1) and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

The purpose of this instrument is to ensure that accommodation is provided for people to help them to self-isolate and adhere to social distancing guidelines in direct response to the Covid-19 outbreak and to extend the 2014 Unsuitable Accommodation Order from families with children and pregnant women to all homeless households.

Policy Objectives

1. The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 (“the 2014 Order”) prescribes accommodation which may not be used to fulfil the duty on local authorities to provide interim accommodation under section 29(1) of the Housing (Scotland) Act 1987 in relation to applicants that are pregnant. Accommodation is unsuitable in all circumstances if it is not wind and watertight or not suitable for occupation by children. Article 5 of the 2014 Order sets out the conditions any one of which if met would also make accommodation unsuitable e.g. it is accommodation within which the household does not have the use of adequate cooking facilities and the use of a living room. Article 7 of the 2014 Order provides two particular circumstances where such accommodation may be used and the time limit was limited to 14 days. The time limit does not apply in the circumstances set out in article 6 of the 2014 Order.
2. The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017 (“the 2017 Order”) amended article 7(2) of the 2014 Order and reduced the time limit from 14 days to 7 days. The aim was to minimise the amount of time families with pregnant women and children should spend in unsuitable temporary accommodation unless there are exceptional circumstances.
3. This instrument amends who the Order applies to in article 3 of the 2014 Order and extends from families with children and pregnant women to all homeless applicants. The aim is to minimise the amount of time all homeless households should spend in unsuitable temporary accommodation to a maximum of 7 days, unless there are exceptional circumstances.
4. This instrument also creates a temporary exemption to the Order until 30 September 2020 which allows local authorities to provide accommodation which would otherwise breach the Order but as a direct response to Covid-19 permits the use of that accommodation

where it would be the best option for people to self-isolate and adhere to social distancing guidelines.

5. The changes 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 equality.
- 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

6. This Order comes into force on 6 May 2020.

Background

7. 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.

8. 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 the Convention of Scottish Local Authorities (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.

9. As part of the Ending Homelessness Together Debate held on 29 November 2018, Ministers agreed to an amendment put forward by Graham Simpson MSP and supported by other parliamentary parties which ‘urges the Scottish Government to announce legislation in its next Programme for Government to limit the time that a person has to spend in unsuitable temporary accommodation to no more than seven days’.

10. The Programme for Government (PfG) announced on 3 September 2019 that the Scottish Government will legislate to extend the Unsuitable Accommodation Order to all homeless households this parliamentary year and that it would come into force in this parliamentary term.

11. When the Coronavirus (Scotland) Bill, was introduced in the Scottish Parliament on 31 March, Andy Wightman put forward an amendment to the UAO which sought to end the use of shared temporary accommodation for all homeless people until 30 September 2020.

12. Ministers agreed to work with members to see what Scottish Government (SG) could do to improve the UAO and this amendment to the Order has now been prepared which seeks to meet the intention of the majority of Mr Wightman’s proposed amendment by ensuring

that all homeless households are provided with accommodation which ensures that they can self-isolate if needed and adhere to social distancing guidelines on a temporary basis. In addition this instrument will give effect to include the permanent changes set out in the PfG commitments.

13. Responding to the Coronavirus emergency has meant that services have had to adjust and adapt and hundreds of people previously sleeping rough or in unsuitable Bed and Breakfast accommodation (B&Bs) are now being supported in hotels, short term lets and other temporary accommodation. Covid-19 has forced faster progress on key fronts and this has only been achieved rapidly due to the most remarkable cross-sector response during this crisis.

14. It is important not only to protect the progress that has been made, but to ensure there is no backwards movement in local and national efforts to tackle homelessness in the aftermath of the pandemic. This means we need to develop the right framework containing appropriate measures and processes to facilitate delivery of homeless services post Covid-19.

15. Laying legislation now that includes both temporary changes in response to Covid-19 and permanent changes to give effect to the commitments made in PfG, is necessary to put in place the correct structures to aid recovery and exit planning and support our ongoing ambitions to improve the standard of temporary accommodation and ensure people stay there for less time.

16. The changes that have been included in the legislation have immediate effect and therefore, after the 30 September, when the temporary Covid-19 exemption comes to an end, the Unsuitable Accommodation Order will extend to all homeless households and placements in unsuitable accommodation for more than 7 days, such as B&Bs will constitute a breach of the Order.

Consultation on Improving Temporary Accommodation Standards

17. There is no statutory requirement to consult on this instrument, however, the Scottish Government consulted with stakeholders from 22 May until 14 August 2019 via the Consultation on Improving Temporary Accommodation Standards. The consultation sought views on three specific areas which included the impact of the proposed amendment to the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2014, extending the 7 day restriction of time spent in unsuitable temporary accommodation to all people experiencing homelessness.

18. Scottish Government officials undertook pre-consultation stakeholder engagement and drafted the main consultation supported by a separate series of questions for people who have experience of temporary accommodation either directly or by working with people living there. We shared the draft consultation with key stakeholders and invited them to provide comments on the substantive content of the document. In particular we sought views on whether the draft consultation questions were pitched at the correct level to obtain meaningful responses. The stakeholders involved include the Chartered Institute for Housing Scotland (CIH), COSLA, the Association of Local Authority Chief Housing Officers (ALACHO), Crisis, GHN (now known as Homeless Network Scotland (HNS)), Shelter, Scottish Women's Aid, Simon Community and the Scottish Housing Regulator as well as internal colleagues. As a result of the feedback received, we refined the consultation.

19. A total of 387 responses to the consultation were 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.

Unsuitable Accommodation Order extension

20. Formal analysis of the consultation was undertaken and a final report produced and published on 10 January 2020. It is clear from the consultation responses and engagement with stakeholders that:

- The UAO should be extended to **all homeless households**. This means that maximum number of days that local authorities will be able to use unsuitable accommodation for any homeless person is 7 days.
- Additions should be included within the definition of what constitutes unsuitable accommodation at Article 5 (2014 Amendment), and this includes:
 - Does not meet minimum accommodation safety standards.
 - Is not within reasonable distance of the household's employment taking into account the distance of travel by public transport.
 - Is not suitable for children to visit, where the household has access to non-resident children.
- The exemption for supported accommodation where it was owned by the local authority needs to be amended. Given that a wide range of supported accommodation is owned and operated by third sector organisations and amendment to the Order will allow local authorities to use supported accommodation that is not owned by them but is providing valuable services to support those who live there.
- As the UAO will be extended to all homeless households there are varying needs from accommodation for each type of household group. Single individuals or adult households have different needs to those with children and the accommodation offered could be more flexible and essentially meet the specific needs of the household whether that be as an individual or a family. Therefore:
 - Additional types and models of temporary accommodation will be added to the Order that can be considered suitable for adoption by local authorities such as Shared Tenancy¹, Community Hosting² and Rapid Access³.

21. In response to Covid-19:

- The UAO will be amended to allow for the use of hotel and B&B accommodation where that would be the best option for people to self-isolate and adhere to social distancing guidelines until 30 September 2020, commensurate with other emergency coronavirus legislation.

¹ Shared tenancies are arrangements where local authority homeless applicants agree to share temporary accommodation with other applicants while waiting for permanent settled accommodation.

² Community hosting provides accommodation in a volunteer's home

³ Rapid access provides a direct route for rough sleepers to be supported from the streets by 3rd sector organisations, without requiring an application to the LA in advance of being placed there.

22. Non-statutory guidance will be produced to support the introduction of this legislation.

Impact Assessments

23. An EQIA, CRWIA and a Fairer Scotland impact assessment have been completed for this policy and to support the draft SSI.

Financial Effects

24. A full Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of the policy is that the benefits justify the costs.

Scottish Government, Directorate
May 2020