

A consultation on improving Temporary Accommodation Standards

A consultation by the Scottish Government

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Consultation paper

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Introduction

Having somewhere to call home is a basic human right and housing is one of the most important factors in any person's quality of life. Scotland has some of the strongest homelessness rights in the world, but we know that not everyone is able to access those rights and that there are some who still face barriers to support when faced with homelessness. The Scottish Government is committed to ensuring everyone has a safe, warm settled home of their own by building on these strong foundations to go further to prevent, tackle and ultimately end homelessness for good.

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.

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.

This Scottish Government consultation paper invites your views on taking forward the commitment we made in the Action Plan on transforming temporary accommodation by:

1. extending the seven-day restriction on time spent in unsuitable temporary accommodation to all people experiencing homelessness; and
2. introducing a legally enforceable temporary accommodation standards framework.

Section 1 of the consultation paper provides background and context for the proposed changes and sets out the current position around unsuitable accommodation legislation and standards in temporary accommodation.

Sections 2, 3 and 4 detail our proposed changes and include our consultation questions on the extension to the unsuitable accommodation order; introduction of new advisory standards for temporary accommodation and how these should be enforced and monitored.

We would encourage you to respond to any or all of the questions in sections 2 to 4 where you have a contribution to make. However, in responding to this consultation, please do not feel constrained by the questions set.

We have produced questions to support partner organisations to help ensure a wide range of views of those with lived experience of living in temporary accommodation are captured as part of this consultation. The lived experience questions are available at Annex A of this consultation.

The consultation paper contains 6 sections:

Section 1: Background – provides context and an overview of the work of HARSAG on temporary accommodation and what they recommended and sets out the current legislation contained within the Unsuitable Accommodation Order (UAO) and current guidance on Temporary Accommodation (TA) standards.

Section 2: Proposed changes and Consultation Questions on the Unsuitable Accommodation Order.

Section 3: Proposed changes and Consultation Questions on Advisory Temporary Accommodation Standards.

Section 4: Proposed changes and Consultation Questions on Enforceable Temporary Accommodation Standards.

Section 5: How to Respond – contains information on how to respond to the consultation and a copy of the respondent information form.

Section 6: Annexes – contains Annexes referred to throughout the consultation paper.

Section 1: Background

Homelessness has a strong legislative rooting in Scotland. Under the [Housing \(Scotland\) Act 1987](#)¹ a person should be treated as homeless, even if they have accommodation, if it would not be reasonable for them to continue to stay in it.

In April 2003, the Homelessness etc. (Scotland) Act 2003 (“the 2003 Act”) received Royal Assent and legislation was introduced to radically overhaul Scotland’s existing homelessness laws by, in the main, amending the Housing (Scotland) Act 1987 and the Housing (Scotland) Act 2001. The 2003 Act primarily affects how local authorities carry out their homelessness functions, strengthening people’s rights to support when they are facing homelessness. The 2003 Act also improved the housing rights of people experiencing domestic abuse and provided a mechanism for the abolition of priority need which then followed in 2012.

Renewed commitments on preventing, tackling and ending homelessness

In 2017 the Scottish Government established HARSAG to provide recommendations to Scottish Government Ministers on the actions and solutions needed to eradicate rough sleeping and transform the use of temporary accommodation in Scotland.

The work of HARSAG was complemented and informed by the work of the Local Government and Communities Committee of the Scottish Parliament. The [final HARSAG report](#) highlighted the challenges we face and set out 70 recommendations for action needed across national and local government in conjunction with other partners, to eradicate rough sleeping, transform the use of temporary accommodation and end homelessness.

The recommendations were firmly rooted in the views of people with experience of homelessness and rough sleeping. The [Aye We Can](#) report prioritised the views of people with lived experience and ensured that HARSAG’s recommendations were based directly on people’s experiences and priorities.

The Scottish Government accepted all 70 of the recommendations, in principle, and along with recommendations made by the Scottish Parliament’s Local Government and Communities Committee, they have now been translated into the [Ending Homelessness Together High Level Action Plan](#) which was published by Scottish Government and COSLA on 27 November 2018. The Action Plan sets out a five year programme, to be delivered in partnership with local authorities and others, to transform temporary accommodation and end homelessness.

A key overarching strand to the Action Plan was to move to a system of rapid rehousing by default with the aim of preventing homelessness by prioritising settled housing for all. This will result in fewer people needing to spend less time in temporary accommodation. Local authorities have produced 5 year Rapid Rehousing Transition Plans which came into effect on 1 April 2019.

Transforming Temporary Accommodation

As mentioned in the Introduction to the Consultation, one of four key questions addressed by HARSAG was how to transform the use of temporary accommodation in Scotland.

¹ See Annex B for Section 24 of the Housing (Scotland) Act 1987 in full

HARSAG's [report on transforming temporary accommodation](#) sought to provide recommendations that would significantly reduce the use of temporary accommodation by reducing overall demand – by preventing homelessness in the first place, and ensuring the supply of housing both for social rent and for private rent is adequate to enable a default to rapid re-housing.

HARSAG went on to say that where temporary accommodation is necessary, it should be of a good standard, well regulated, and time limited – and that people who needed or chose periods in temporary accommodation would be well supported from 'day one' in accessing, using and moving on from temporary accommodation. HARSAG also set out a series of recommendations on funding temporary accommodation with the aim of lowering rent levels for those living there.

Temporary Accommodation in Scotland

In drawing their conclusions on temporary accommodation HARSAG took into consideration evidence from the 'Aye We Can' research and an interim report from Heriot Watt, commissioned by Social Bite on behalf of HARSAG, which set out an analysis of the current use of temporary accommodation across Scotland.

In November 2018, Heriot Watt published the [final report on Temporary Accommodation in Scotland](#) which provided a detailed understanding of the nature, purpose and use of temporary accommodation across Scotland. The report provided in depth analysis from six local authority case studies, assessing local patterns in prevention, temporary accommodation provision, the costs and affordability of living in temporary accommodation and drew on the experiences of people living in this type of accommodation and the impact it has on their lives.

This report found that the quality and suitability of all forms of temporary accommodation varied considerably over local authority areas and suggested that measures should be introduced to ensure that all forms of provision meet standards of good repair, cleanliness, adequate facilities and furnishing and appropriate buildings management.

The report found that the most negative experiences faced by homeless households, was where the temporary accommodation they have been placed in is unsuitable for their needs, for instance, due to health conditions, overcrowding, or because it leaves them far from their friends and family or key services (e.g. schools).

Improving the Standard of Temporary Accommodation

HARSAG recognised that while the overall aim of their temporary accommodation recommendations was to reduce the requirement for temporary accommodation, there is still a need to provide good quality temporary accommodation that acts as a stepping stone, rather than a hindrance, to settled mainstream accommodation.

They outlined their desire to ensure that temporary accommodation in 21st century Scotland is good quality, safe, warm and affordable and were clear that there was a need to improve standards and consistency of temporary accommodation provision.

In order to do so recommendations were made on extending the Unsuitable Accommodation Order and improving temporary accommodation standards.

Unsuitable Accommodation Order

Specifically for unsuitable accommodation, HARSAG made the following recommendation aimed at reducing the amount of time spent in unsuitable accommodation to all people experiencing homelessness.

HARSAG's recommendation 3.15 (Interim Report)

“Extend the 7-day restriction on unsuitable temporary accommodation to all homeless people - Currently, there is a legal limit of seven days for families and pregnant women, but no limit at all for any other groups. A change in the law would require councils to move people into permanent accommodation quickly - or at the very least into more suitable accommodation that, whilst still temporary, is fit to live in.”

Temporary Accommodation Standards

HARSAG made the following recommendation aimed at producing new standards for temporary accommodation to ensure that any time spent in temporary accommodation causes minimal harm and disruption to people's lives and supports them in getting back to a settled home that meets their needs.

HARSAG's recommendation 3.14 (Interim Report)

“Introduce a legally enforceable standards framework for temporary accommodation – The Scottish Government should take the CIH and Shelter Scotland standards as a framework and consult the sector including local authorities, housing providers, third sector partners and those who have experience of temporary accommodation to produce a set of agreed standards covering all types of temporary accommodation.”

In accepting the recommendations made by HARSAG we committed in our Action Plan to consult on extending the seven day restriction on time spent in unsuitable accommodation to all households experiencing homelessness and to consult on its implementation timetable; to work with stakeholder to produce new standards for temporary accommodation, including, providers, commissioners and those with direct personal experience of living in temporary accommodation; and to explore the options for enforcing the new standards and what processes are needed to monitor how the standards are being implemented and maintained.

Unsuitable Accommodation Order legislation

The Homelessness etc (Scotland) Act 2003² included powers to limit the use of bed and breakfast (B&B) accommodation for families and children. This power was used

² See Annex C for Section 9 of the Homelessness etc (Scotland) Act 2003 in full

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.

In 2014, the Homeless Persons (Unsuitable Accommodation) (Scotland) Order³ 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.

The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017⁴ 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.

The definition of what constitutes unsuitable⁵ 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 a household has been offered alternative accommodation but wishes to stay in 'unsuitable' accommodation; or

³ See Annex D for the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 in full

⁴ See Annex E for Article 2 of the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017 in full

⁵ See Annex D for the exact definition of unsuitable accommodation as published in the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014, articles 4, 5 and 6 refer

- 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.

Standards in Temporary Accommodation – Current Guidance and Legislation

In exercising their statutory duties, local authorities across Scotland utilise a diverse portfolio of temporary accommodation beyond bed and breakfast accommodation including local authority, housing association and private rented sector housing stock and hostels. The majority of people who are homeless are housed on a temporary basis in the social rented sector.

Across all these different types of accommodation there already exists a wide variety of legislation that cater for physical standards of accommodation which are largely tenure specific. These include the [Tolerable Standard](#) which applies to all property, the [Scottish Housing Quality Standard](#) which applies to social rented sector properties, [HMO Licencing](#) for B&B and hostels and the [Repairing Standard](#) in the private rented sector.

The Scottish Government, published a Code of Guidance⁶ on Homelessness in 2005, which purpose was to help guide local authorities in their duties to homeless and potentially homeless people and under Part II of the Housing (Scotland) Act 1987 (as amended by the 2001 and 2003 Acts) sets out the powers and duties of local authorities dealing with applications from people seeking help on the grounds that they are homeless or threatened with homelessness.

The Code of Guidance on Homelessness also included guidance on the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 (now replaced by the 2014 Order) which included some standards which temporary accommodation for households with children and pregnant women must meet and which are explained above.

In 2011, Shelter Scotland and Chartered Institute of Housing Scotland (CIH Scotland) published [Guidance on Standards for Temporary Accommodation](#) which contains a list of standards that went beyond just physical, proximity and safety standards and had been developed in consultation with housing and homelessness professionals from a range of organisations who provided or managed temporary accommodation as well as input from people who had stayed in temporary accommodation.

Although this guidance is not statutory, it was intended as a good practice for temporary accommodation providers and to complement the work of the Scottish Housing Regulator.

HARSAG believes that better standards could be achieved through the introduction of legal mechanisms to improve practice and recommends this via secondary legislation and statutory guidance.

⁶ The Code of Guidance on Homelessness is currently under review and will be updated in due course

This consultation provides you with an opportunity to share your views on the plans to:

- extend the definition of unsuitable accommodation to all households experiencing homelessness and its implementation timetable;
- limit the maximum time a person can be required to spend in unsuitable accommodation to 7 days for all households (subject to the current exemptions);
- introduce new standards for all types of temporary accommodation; and
- enforce and monitor the new standards when introduced.

The proposed changes are set out in **Sections 2, 3 and 4** of this consultation.

Section 2: Proposed Changes and Questions on the Unsuitable Accommodation Order (UAO)

HARSAG recommended the following actions on unsuitable accommodation:

1. Extend the 7 day restriction of time spent in unsuitable temporary accommodation to all people experiencing homelessness.
2. Develop a timetable for the implementation of the extension.

As mentioned in Section 1 of this consultation, local authorities under the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017 have a duty to ensure that homeless pregnant applicants and households with dependent children do not stay in unsuitable temporary accommodation for longer than 7 days, and only where they do not have suitable accommodation to offer.

In January 2019, the latest [homelessness statistics](#)⁷ showed that on 30 September 2018 there had been a 3% decrease in the number of households in temporary accommodation containing children or a pregnant member compared to the same date one year previously. However, the data also showed that there had been a 4% increase in the number of children in temporary accommodation over the same period.

In addition to these changes in the number of children staying in all temporary accommodation, during the period from April to September 2018 there were 345 reported breaches of the Unsuitable Accommodation Order, in comparison to 165 during the same period in 2017.

While it is recognised that a contributory factor to the increase may have been the introduction of the 2017 Amendment Order, which shortened the maximum number of days that local authorities can use unsuitable accommodation for families with children or pregnant women from 14 to 7 days, that does not mean that this should be a tolerable situation.

However, it is clear that in considering an extension of the Unsuitable Accommodation Order to all homeless households, we need to be aware that further changes to legislation may have a further impact on a local authority's ability to comply and lead to further breaches.

Taking this into account, we wish to consider whether an incremental introduction of the extension would help local authorities manage the transition by realigning their provision, adjusting their Rapid Rehousing Transition Plans and avoiding further breaches of the Order.

One way of doing this would be to extend the order to groups of homeless people within the Order, in the same way that families with children and pregnant women are currently prioritised. Examples of groups of homeless people could be defined by age (e.g. younger or older people), by previous accommodation (e.g. prison, armed services) or experience (e.g. fleeing domestic violence).

⁷ See Annex F for the statistics published January 2019 for breaches of the Unsuitable Accommodation Order for Scottish local authorities until 30 September 2018

Definition

We also want to consider whether the current definition of ‘unsuitable accommodation’ as set out in Section 1 would be fit for purpose when extending the Unsuitable Accommodation Order beyond families with children and pregnant women. Other groups that might be affected by the Order may deem accommodation suitable that would be unsuitable for those currently covered by the legislation.

Consideration should be given as to whether you believe that any of the individual elements set out in Section 1 referring to the location, quality and facilities that make accommodation ‘unsuitable’ should be amended for other persons, or for particular groups of other persons.

In addition, we also want to gather views on whether the current exemptions for refuges and supported accommodation should still apply⁸, and whether or not an extension to all homeless households would mean that any other exemptions would be needed.

Compliance

Currently, the Scottish Housing Regulator (SHR) uses Scottish Government statistics on the number of breaches, along with a number of other statistics, to carry out an annual risk assessment. Thereafter, the SHR may engage with landlords about reported breaches. In addition, Scottish Ministers write to and meet with the local authorities that have been in breach of the Order to discuss the circumstances around the breaches and to discuss the plans in place to ensure that unsuitable accommodation is not used going forward.

We want to consider whether additional sanctions could be introduced in addition to the measures undertaken by SHR and Scottish Ministers to ensure that local authorities comply with the extended Order. It is typical in legislation for sanctions to be of a financial nature and in this case would likely take the form of a fine for local authorities who breach the Order. However, we would also welcome suggestions of alternative sanctions or incentives that may ensure compliance and whether there could be enhanced responsibilities for the Scottish Housing Regulator, either by utilising their existing powers or by amending their statutory functions or powers.

At the moment the SHR has the power to make enquiries, require information, meet and discuss breaches with local authorities, set performance improvement targets, require a performance improvement plan, serve an enforcement notice and appoint a manager. It does not currently have a direct enforcement role.

We are keen to understand the impact that additional sanctions would have and to what extent this would assist with the aim of ensuring that the legislation is complied with.

⁸ s6(c) and (d) Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014

The following questions are seeking your view on some of the proposals presented above:

1. Scottish Ministers have used their powers under the Homelessness etc. (Scotland) Act 2003 to limit the use unsuitable temporary accommodation for families and children to a maximum of 7 days via The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017. HARSAG has recommended that this restriction be extended to all people experiencing homelessness. Do you think we should:

OPTION A - Extend the restriction to all homeless people from an agreed date.

OPTION B - Extend the restriction to all homeless people but introduced incrementally over a period of time.

OPTION C - Not extend the restriction to all homeless people.

2. If the consensus for extension is option A what date would you suggest as the legal date for implementation?

3. If the consensus for extension is option B:

- What types of experiences, circumstances or characteristics would you prioritise in the incremental extension?
- Would you prefer a consistent national approach to the transition or for local authorities to take forward based on their own local circumstances?
- By what date do you consider it would be reasonable for all homeless households to be covered by the extended Order?

4. In your opinion is option A or B the best way to avoid an increase in the number of breaches of the Order? Please explain your answer.

5. Please tell us about positive impacts that extending the restriction to all homeless people may have.

6. Please tell us about any negative implications that may result from us extending the restriction to all homeless people.

7. Do you believe the current definition of unsuitable accommodation set in 2004 as set out in legislation (Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014), which focusses on the location of the accommodation and the facilities the accommodation offers, is still the most appropriate or are there any factors you would like to see changed? Please explain.

8. In extending the Order do you think the same definition should apply to all homeless households as it currently does to families with children and pregnant women? If not, please provide an explanation of how you feel the definition should be amended to take account of the extension.

9. The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 contains exemptions for certain types of refuges and supported accommodation. With the extension of the Order to all homeless households, should these exemptions still apply and do you think any other exemptions should be considered?

10. We have already outlined that some local authorities have breached the current UAO, so that may mean it is likely that some local authorities will face challenges in meeting the extension of the UAO to all homeless households. We are interested to hear your views on whether additional measures should be introduced to help ensure local authorities do not continue to breach the UAO.

- What additional support should be in place for local authorities to minimise the number of breaches of the Order?
- Would sanctions provide an appropriate mechanism to encourage compliance?
- If so, what sanction would you consider to be an appropriate one?

11. The performance of local authorities against their obligation to comply with the UAO will continue to be monitored, including any extension if introduced, by the Scottish Housing Regulator (SHR) as part of its role in assessing performance on discharging of their statutory duties.

Would you like to see the SHR gain any enhanced responsibilities in order to effectively monitor and assess the implementation of the extended Order?

Please explain your answer.

Section 3: Proposed Changes and Questions on Advisory Temporary Accommodation (TA) standards

HARSAG recommended the following actions on temporary accommodation standards:

1. Build on existing standards work, co-produce new standards for temporary accommodation with stakeholders.
2. Work with the Scottish Housing Regulator to explore options for enforcing new standards.
3. Review relevant data collections to ensure that the new standards can be monitored and their impact assessed.

In line with the HARSAG recommendation we propose to build on existing work and consult and work with stakeholders to produce new standards that are applicable to all types of temporary accommodation. We will work with the Scottish Housing Regulator to explore options for enforcing new standards and how these can be implemented and monitored.

This will be a two stage process. In Phase 1 we will create Scottish Government advisory standards which we propose to base on the adopted and updated [Guidance on Standards for Temporary Accommodation](#) published by CIH Scotland and Shelter Scotland in 2011.

In Phase 2 we will work with stakeholders to produce a standards framework that can apply across all types of temporary accommodation in order to ensure a consistent quality and level of service provision. We will also look at how the proposed framework of standards can be enforced and consider whether legislation is required and we will talk more about Phase 2 in Section 4.

Phase 1 - Advisory Standards

The [Code of Guidance](#) on Homelessness is currently under review with a refresh planned to be published later in the year. We are therefore proposing to incorporate these advisory standards within the refreshed Code of Guidance, which provides guidance to local authorities in exercising their statutory homelessness duties.

The CIH Scotland and Shelter Scotland guidance incorporates a wide range of different types of standards. A summary is included here with the full detail contained within pages 7-12 of the [full document](#).

Physical standards

- The accommodation should be a sufficient safe and secure space.
- Is suitable for any disability requirements.
- Is clean.
- Meets the appropriate energy efficiency standards.
- Has adequate access to on site cooking and washing facilities, and private bathroom for each household.
- Households are given notice when landlord needs to access the room.

- Has adequate communal living space which includes, for example, space for children to play or do homework.
- Has a suitable standard of furniture to meet the households needs.

Suitability standards

- Accommodation must be suitable for the specific needs of the individual applicant, and of his or her household.
- Accommodation must also be affordable.

Location and network standards

- The accommodation should be located close enough to services (supermarket, doctors etc.) so that they can be reasonably reached by foot or public transport, and to support networks and places of work.
- It should meet cultural or religious needs as well as social and economic needs.

Service standards

- An assessment of need should be carried out and referrals to appropriate agencies made, with periodical reviews.
- Flexible and needs-led support should be provided and there are regular visits by allocated officers, all underpinned by good quality communication with the household.

Management standards

- There should be procedures in place in regards to moving in and out of the accommodation and how possessions will be protected.
- Residents should have the opportunity to be involved in discussions regarding their stay and their needs. There should be sufficient numbers of trained staff to realise these standards and understand the needs of the people using temporary accommodation.
- Tenants should be provided with a written occupancy agreement, details of any accommodation rules and repairs and complaints procedures.
- In light of changes to social security with the introduction of Universal Credit, a rent statement of charges and how they are paid should also be a requirement.

The following questions in this section are seeking your view on some of the proposals mentioned above:

1. HARSAG recommended that we build on the existing standards and to work with stakeholders to produce new standards for temporary accommodation to ensure a consistent standard of provision across the country. As a first step in this process we are looking to adopt and update the standards contained within the guidance⁹

⁹ CIH/Shelter guidance on standards for temporary accommodation in full:

published by CIH Scotland and Shelter Scotland to produce an advisory standards framework for all types of temporary accommodation.

Please confirm whether you agree that the existing CIH Scotland/Shelter Scotland standards provide an appropriate basis for a Scottish Government advisory standards framework. If not, please explain your answer.

2. A summary of the standards that we propose to include in the advisory framework is shown earlier in this section with further detail contained with the CIH Scotland/Shelter guidance. Do you think these standards are still relevant and fit for purpose and explain your answer?

3. Please tell us whether there are any additional standards that you consider should be added to this framework and explain your reasons.

4. On page 15 of this document we suggest that it would be appropriate for the agreed new standards for temporary accommodation to be included in the refreshed Code of Guidance on Homelessness which is due to be published later this year.

Please tell us if you:

- Agree that it would be appropriate to include new standards for temporary accommodation within the refreshed Code of Guidance and explain your answer;
- Think that the new standards should also be published elsewhere and explain your answer.

5. Do you have suggestions on how local authorities could/should be supported or encouraged to adopt the new standards for temporary accommodation?

6. Page 9 of this consultation advises that there are already a number of other legislative standards relating to housing, that can apply to some or all types of temporary accommodation. Do you agree that a reference to these other legislative and regulatory mechanisms is made within the new set of accommodation standards? Please explain your answer.

Section 4: Consultation Questions on Enforceable Temporary Accommodation (TA) standards

Phase 2 - Enforceable Standards

In Section 3 we mentioned that a two stage process will be required to improve TA standards with Phase 1 producing a set of new advisory TA standards. For Phase 2 we want to consider how we develop these advisory standards into a TA standards framework and ensure it is implemented by all local authorities to guarantee that all temporary accommodation throughout Scotland is of a consistently high quality.

HARSAG believed that better standards could be achieved through the introduction of legal mechanisms to ensure that all temporary accommodation used by local authorities in exercising their statutory duties reaches a certain standard. It recommended achieving this through secondary legislation, either through the powers conferred on Ministers through Section 7 of the Housing (Scotland) Act 2011 or by creating further regulations under Section 29 of the Housing (Scotland) Act 1987.

As outlined in Section 1 local authorities across Scotland use a wide range of different types of temporary accommodation utilising different tenure types when providing homeless households with temporary accommodation. The standard of all accommodation in Scotland is covered by a variety of different pieces of legislation and regulation which govern the physical and safety standards of the accommodation itself and the service and management standards associated with the support provided to those that live there.

However, existing legislation and regulation does not provide a comprehensive set of standards across temporary accommodation. Taking into account HARSAG's views and recommendations we are proposing that a standards framework cover and point to existing legislative and regulatory mechanisms that set accommodation standards, while filling in the gaps to ensure that standards in temporary furnished flats in the private and social rented sector, hostels, B&Bs and refuges are of a consistent, high quality.

In order to ensure compliance with existing and new legislation of standards in temporary accommodation we would like to consider a range of measures that could support enforcement of standards. As part of the development of the new framework we will work in partnership with the Scottish Housing Regulator (SHR) to ensure that, as part of their role in assessing the performance of local authorities discharging their statutory duties, that they can support the monitoring and assessment of performance in meeting existing and new legislative standards across temporary accommodation.

We also plan to set up a Working Group next year who will help to produce a new standards framework, identify the legislative changes needed and advise on how these could be regulated and enforced.

At this stage our priority is developing and refining the advisory standards in Phase 1 but we are seeking your initial views on how this legislative framework will be shaped and developed.

1. HARSAG recommended we work with the Scottish Housing Regulator to explore options for enforcing new TA standards. In order to enforce standards it is likely this will need to be achieved through the introduction of legislation. We propose that rather than trying to create legislation that seeks to set a uniform standard across all types and tenures of temporary accommodation, that we develop a standards framework that recognises the existing legislation and regulation and seeks to fill in the gaps, utilising appropriate legislative mechanisms.

Do you agree with this approach? Please explain your answer.

2. We want to better understand how local authorities currently monitor the standard of temporary accommodation that is used to place homeless households.

Please can you tell us what sort of processes and procedures are in place to:

- assess the standards of these types of property;
- address issues where standards are not being met;
- monitor ongoing issues.

3. It is possible that some local authorities may not be able to meet new standards on temporary accommodation when introduced. Do you think that there should be sanctions, such as penalties or fines applied to those local authorities failing to meet the new standards? Please explain your answer.

4. Please tell us about any other approaches or options that you consider are appropriate to implement to ensure that local authorities adhere to new temporary accommodation standards.

5. In line with the HARSAG recommendation, we also envisage a role for the Scottish Housing Regulator (SHR) in monitoring and assessing performance in meeting new standards.

Do you agree that it would be appropriate for SHR to take on this role utilising their current powers or by extending their current powers? Please explain your answer.

6. In establishing up a Working Group to take forward the production of a new standards framework we will set terms of reference which will define their purpose, aims and objectives. In setting the remit of the group, what do you think the Group need to take into account as they develop a new standards framework for temporary accommodation?

Section 5: Responding to this Consultation

We are inviting responses to this consultation by Wednesday 14 August 2019.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at [<https://consult.gov.scot/housing-services-policy-unit/a-consultation-on-temporary-accommodation-standard>]. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of Wednesday 14 August 2019.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form and send to:

Myra Quinn

Scottish Government
Homelessness Team
5 Atlantic Quay
150 Broomielaw
Glasgow
G2 8LU

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or Myra Quinn at [Homelessness Mailbox](#)

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Consultation on improving Temporary Accommodation Standards

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

Section 6: Annexes

ANNEX A

Lived Experience Questions on Temporary Accommodation Standards

We are interested to hear about your experience of living in temporary accommodation and/or working with people living in temporary accommodation. We are also interested in what you think about our plans to improve temporary accommodation.

Please answer any of the following questions that are applicable to you:

About your experiences

1. When you first became homeless were you given access to temporary accommodation immediately by your council if you required it?
2. What type of temporary accommodation were you placed in? (B&B, hostel, furnished flat etc)
3. What do you need from temporary accommodation to make it suitable for you?
4. How many different temporary accommodations were you placed in? Why was this the case? What impact did this have on you?

Unsuitable Accommodation

5. We are making changes to the Unsuitable Accommodation Order so no-one has to stay in 'unsuitable' accommodation for more than 7 days. What does unsuitable mean for you?
6. Legally, suitable accommodation currently means that you:-
 - Are housed where people in your household can access schools and medical services in the local area
 - Have adequate bedrooms for members of your household
 - Have exclusive use of toilet and washing facilities for members of your household
 - Have access to your own or shared cooking facilities and use of a living room
 - Can stay in the accommodation at all times, with no curfew and are allowed visitorsIs there anything else you would add to the above list or take away?
7. In your experience how common is it to stay in unsuitable accommodation like this?
 - A) Very common
 - B) Quite common
 - C) Not common
8. What types of accommodation are more likely to be unsuitable?
 - A) Bed and Breakfast
 - B) Hostel
 - C) Furnished Flat

9. Would you change the description of suitable accommodation in any way?
10. Currently the Unsuitable Accommodation Order means that local authorities must not house families and pregnant women in unsuitable accommodation for more than 7 days. Do you think that this should be changed so that everyone is covered by the Unsuitable Accommodation Order?

Standards in Temporary Accommodation

11. We want to improve the standards in temporary accommodation across Scotland.
Thinking about your experience(s) of living in temporary accommodation, what types of things would make/have made your stay more positive or pleasant?
12. How would you compare the standard of temporary accommodation with the standards of any permanent accommodation that you have experienced?
13. How easy was it to raise any issues or problems about the standard of your accommodation and get things fixed?
 - A) Very easy
 - B) Quite easy
 - C) Not easy
14. Would having a set of Scottish Government standards for temporary accommodation help you raise any problems you face with your accommodation?
15. Do you think councils should be penalised (for example, through a fine) if the accommodation they provide does not meet these standards?
16. As a first stage, we want to put the standards into a refreshed Code of Guidance, which local authorities are expected to follow. These will be known as Advisory Standards and will allow us to do something quickly. The second stage will be to introduce Enforceable Standards but this will be a longer process as we need to consider all of the existing legislation that covers permanent housing standards to make sure that temporary accommodation meets all of these.
Do you have any comments about this approach?
17. We propose that standards cover the following areas:
 - **Physical:** safe and secure, access to proper cooking, washing facilities, suitable for disabled people, clean, enough living space etc.
 - **Suitability:** affordable and meets your needs.
 - **Located near services:** schools, medical facilities
 - **Support:** you can get the support you need from a range of services
 - **Management:** your possessions are protected, you have a written occupancy agreement, you are involved in discussions about your stay and there are processes for moving in and out, you get a rent statement
 Do these cover the right areas to improve standards in temporary accommodation? Is there anything missing?

18. We will set up a Working Group to develop the new standards framework for temporary accommodation. Is there anything you think this group should do or take into account as they do this?

Section 24 of Housing (Scotland) Act 1987

24 Homeless persons and persons threatened with homelessness.

- (1) A person is homeless if he has no accommodation in the United Kingdom or elsewhere.
- (2) A person is to be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which the local authority consider it reasonable for that person to reside with him —
 - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or
 - (b) has a right or permission, or an implied right or permission to occupy, or in England and Wales has an express or implied licence to occupy, or
 - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession.
- (2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.
- (2B) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the area of the local authority to whom he has applied for accommodation or for assistance in obtaining accommodation.
- (3) A person is also homeless if he has accommodation but—
 - (a) he cannot secure entry to it, or
 - (b) it is probable that occupation of it will lead to abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14), or
 - (bb) it is probable that occupation of it will lead to abuse (within the meaning of that Act); from some other person who previously resided with that person, whether in that accommodation or elsewhere; or
 - (c) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it; or
 - (d) it is overcrowded within the meaning of section 135 and may endanger the health of the occupants; or
 - (e) it is not permanent accommodation, in circumstances where, immediately before the commencement of his occupation of it, a local authority had a duty under section 31(2) in relation to him.
- (4) A person is threatened with homelessness if it is likely that he will become homeless within 2 months.
- (5) For the purposes of subsection (3)(e), “permanent accommodation” includes accommodation—

- (a) of which the person is the heritable proprietor,
- (b) secured by a Scottish secure tenancy,
- (c) secured by an assured tenancy that is not a short assured tenancy,
- (d) where paragraph 1 or 2 of schedule 6 to the Housing (Scotland) Act 2001 (asp 10) is satisfied in relation to the person, secured by a short Scottish secure tenancy,
- (e) secured by a private residential tenancy.

Section 9 of the Homelessness etc. (Scotland) Act 2003

9. - Suitability of accommodation for homeless persons

(1) In section 29 (interim duty to accommodate) of the 1987 Act—

(a) in subsection (1), after paragraph (b) insert—

“(c) where, by virtue of a decision referred to in paragraph (a) or (b), the authority have a duty under section 31 to secure that accommodation of a particular description becomes available for the applicant’s occupation, until such accommodation becomes available.”,

(b) after subsection (2) insert—

“(3) In subsection (1), “accommodation”, in the first place where the expression occurs, does not include accommodation of such description as the Scottish Ministers may, by order made by statutory instrument, specify.

(4) Such an order may—

- (a) specify any description of accommodation subject to conditions or exceptions,
- (b) make different provision for different purposes and different areas.

(5) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”

(2) In section 32(8) (duty to have regard to best interests of dependent children) of the 1987 Act, at the end insert “and shall, without prejudice to subsection (5) above and section 41, ensure that accommodation provided for such a person’s occupation is suitable for occupation by such children, so far as consistent with their best interests”.

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

Citation and commencement

1. This Order may be cited as the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 and comes into force on 21st November 2014.

Interpretation

2. In this Order—

“the 1987 Act” means the Housing (Scotland) Act 1987; and

“household” means the applicant and any person who resides, or might reasonably be expected to reside, with the applicant.

Application of this Order

3. This Order applies to accommodation provided to an applicant under section 29 of the 1987 Act (interim duty to accommodate an applicant who may be homeless), but only where the applicant is—
 - (a) pregnant;
 - (b) a person whose household includes a pregnant woman; or
 - (c) a person whose household includes dependent children.

Unsuitable accommodation

4. In all circumstances, accommodation is unsuitable if it is—
 - (a) not wind and watertight; or
 - (b) not suitable for occupation by children.
5. Unless any of the circumstances in article 6 apply, accommodation is also unsuitable if it—
 - (a) is outwith the area of the local authority which is subject to the duty to accommodate under section 29 of the 1987 Act;
 - (b) is not in the locality of facilities and services for the purposes of health and education which are being used, or might reasonably be expected to be used, by members of the household, unless those facilities are reasonably accessible from the accommodation, taking into account the distance of travel by public transport or transport provided by a local authority;
 - (c) lacks within the accommodation adequate toilet and personal washing facilities for the exclusive use of the household;
 - (d) lacks adequate bedrooms for the exclusive use of the household;
 - (e) is accommodation within which the household does not have the use of adequate cooking facilities and the use of a living room; or
 - (f) is not usable by the household for 24 hours a day.

6. Article 5 does not apply where—

(a) the local authority believes that the applicant may be homeless or threatened with homelessness as a result of an emergency, such as flood, fire or other disaster;

(b) the local authority has offered the applicant accommodation that meets the requirements of article 5, but the applicant wishes to be accommodated in other accommodation that does not meet those requirements;

(c) the accommodation is used wholly or mainly to provide temporary accommodation to persons who have left their homes as a result of domestic abuse and is managed by an organisation which—

(i) is not a public authority or a local authority; and

(ii) does not trade for profit; or

(d) the accommodation is owned by a local authority and services relating to health, child care or family welfare are provided to persons accommodated there.

Temporary accommodation

7.—(1) Paragraph (2) applies where—

(a) an applicant who is a person referred to in article 3 seeks accommodation from the local authority, or assistance in obtaining accommodation, outwith normal business hours; or

(b) the local authority has no accommodation suitable for such an applicant.

(2) The local authority may provide that applicant with accommodation which does not meet the requirements of article 5, but (unless article 6 disapplies article 5) for no longer than 14 days in total in respect of that person's application.

Revocation

8. The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004(2) is revoked.

**Article 2 in the Homeless Persons (Unsuitable Accommodation) (Scotland)
Amendment Order 2017**

**Amendment of the Homeless Persons (Unsuitable Accommodation) (Scotland)
Order 2014**

2. — (1) The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014(2) is amended as follows.
 - (2) In article 7(2) (temporary accommodation) for “14” substitute “7”.

Statistics on Homelessness in Scotland,
Breaches of Unsuitable Accommodation Order,
Update to 30 September 2018 by local authority

	Quarter temporary accommodation was exited						Total (ALL)
	2017			2018			
	April- June	July - Sept	Oct- Dec	Jan - March	April- June	July - Sept	
Edinburgh	60	75	75	65	165	95	540
West Lothian	5	<4	40	20	10	40	120
Highland	<4	0	<4	5	10	5	25
East Dunbartonshire	10	0	10	5	<4	0	20
Midlothian	<4	0	<4	<4	5	5	15
Glasgow City	<4	<4	<4	<4	<4	<4	10
Stirling	0	<4	0	<4	<4	<4	10
Aberdeen City	5	0	0	0	0	0	5
Fife	<4	<4	0	<4	<4	0	5
Clackmannanshire	0	0	<4	0	0	<4	<4
Total	80	85	130	105	195	150	750

Statistical Report in full is available [here](#)



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