

# **The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (No.2) Order 2020**

**Business and Regulatory Impact Assessment**

December 2020



Scottish Government  
Riaghaltas na h-Alba  
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# Final Business and Regulatory Impact Assessment

## **The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (No.2) Order 2020**

### **Purpose and intended effect**

#### **Background**

1.1. The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020/139 was laid on 5 May 2020 and came into immediate effect. It extended the 2014 UAO immediately from pregnant women and children to all homeless households meaning that the maximum number of days local authorities can use accommodation such as B&Bs for any homeless person is seven days.

1.2. It fulfils a PfG commitment that the order would come into effect this parliamentary term (by May 2021) to ensure people are provided with the highest quality accommodation to support them out of homelessness.

1.3. The definition of unsuitable was extended and redefined slightly and now also refers to minimum safety standards, the need to be in the locality of employment and that accommodation is suitable for children to visit, where the household has access to non-resident children. It also corrected an anomaly that exempted only local authority owned supported accommodation by extending the exemption to accommodation owned and operated by third sector organisations.

1.4. A series of exemptions were created to take account of accommodation models for different needs, including shared tenancies, community hosting and rapid access accommodation.

1.5. During the preparation of supporting guidance for the Order, the local authority working group identified drafting errors in the 2020/139 Order. Feedback from stakeholders via an informal consultation confirmed the same errors. This legislation will amend those errors and also provide more clarity on the terms used in the Order to support local authorities in their duty to provide temporary accommodation.

#### **Objective**

1.6 The amendment to the 2014 Order seeks to amend some of the Articles within the 2020/139 Order laid in May 2020 and to clarify terms and definitions of suitability of accommodation and when exemptions should apply.

#### **Rationale for Government Intervention**

1.7 Once the 2020/139 Order was laid, a local authority working group was set up to:

- take forward preparatory work in advance of the commencement of the permanent changes to the UAO;
- establish what support can be provided to local authorities over the coming months in order to facilitate alternative accommodation options; and

- support the preparation of non-statutory draft guidance to provide clarity around the application of the Order and set the parameters to ensure that that no group is disadvantaged as a result of the extension.

1.8 As the working group was developing the supporting guidance for the Unsuitable Accommodation Order, members and wider stakeholders identified issues around the drafting of some of the Articles of the 2020/139 Order and the connection between definitions of suitability of accommodation and when exemptions should apply.

1.9 Although the supporting guidance will help to outline the policy intention, the guidance will also explain how the Order should be interpreted and applied. After consideration, the working group felt that the legislation itself needed to be amended and as a direct response to this and other feedback received from wider stakeholders it was agreed that a further SSI should be prepared to remedy the situation.

1.10 Based on the drafting errors identified by the local authority working group and the feedback received via the informal consultation on the draft guidance and SSI, the proposed amendments to the Order have been achieved. The working group has been consulted and agreed these changes.

1.11 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 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.

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

## **Consultation**

- **Within Government**

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

1.13 In developing this BRIA we have consulted with colleagues in the Scottish statutory admin team and through the SSI guidance as well as consulting local authorities through a local authority working group.

- **Consultation**

1.14 A local authority working group was created to oversee the development of guidance to support the implementation of the 2020/139 Order. During this process the group identified that changes to the Order were needed to correct drafting errors.

1.15 In addition the working group liaised with a wider group of homelessness stakeholders and an informal consultation was also undertaken on the draft guidance and SSI. The resulting feedback has been incorporated to make the appropriate amendments to the Order and the working group has been consulted and agreed these changes.

1.16 A total of twelve responses to the informal consultation were received: seven from individual local authorities and five from other organisations (Crisis, Shelter, Scottish Women’s Aid, Homeless Network Scotland and Public Health Scotland). It was clear from the responses received that wider stakeholders had identified the same drafting errors as the working group.

1.17 The revisions to the SSI include:

- Removing references to shared tenancies, community hosting and rapid access accommodation from Article 6(e), and instead placing them within a new Article 7A so that Article 5 applies and the accommodation meets the relevant suitability criteria.
- Amending the interpretation of rapid access accommodation of the draft SSI to read “emergency temporary accommodation for rough sleepers, or those at risk of rough sleeping, which consists of a safe, furnished, private lockable bedroom, of a good standard, and which provides support to a person using that accommodation”.
- Adding wording to reflect that the new models of accommodation are not suitable where the household includes:
  - a pregnant woman;
  - a dependent child;
  - or a person who exercises parental rights in respect of a dependent child who is not part of the household; and
  - where the household has agreed to be placed in the accommodation.
- adding wording to ensure that the physical accessibility and suitability needs of vulnerable people are met.

- **Business**

1.18 Through the working group and the informal consultation on the draft supporting guidance and draft SSI, we heard that all stakeholders had agreed that the amendments should be made to ensure that homeless households are placed in suitable accommodation.

1.19 When the extension of the UAO was laid in May, those that said it 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.

1.20 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 local authorities respond to homelessness.

1.21 The local authorities that have already adopted the new models of temporary accommodation state that these new types of accommodation are beneficial to the wellbeing of homeless households and are also helpful for those local authorities facing temporary accommodation supply issues in their area.

## **Options**

**Option 1:** Amend the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020 (2020/139) to address drafting errors and provide further clarity to local authorities to ensure that homeless households are placed in suitable temporary accommodation.

**Option 2:** Do not amend the existing Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020 which could mean that homeless households could be placed in unsuitable accommodation and for more than seven days.

### **Sectors and groups affected**

1.22 Local authorities and all homeless households.

### **Benefits**

#### **Option 1**

1.23 The amendment to the Order will mean that there is complete clarity on where Article 5 must apply to the new models of accommodation and ensure that the accommodation is suitable and means that no homeless households will have to stay in temporary accommodation that is of a poor standard.

1.24 The amendment will ensure that local authorities do not place a household that includes a pregnant woman; a dependent child; or a person who exercises parental rights in respect of a dependent child who is not part of the household, in accommodation used for community hosting, rapid access and shared tenancy. In addition all homeless households will need to have agreed to be placed in these types accommodation and local authorities will need to ensure that the physical accessibility and suitability needs of vulnerable people are met.

### **Costs**

1.25 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. The Scottish Government is providing funding to support local authorities to implement their RRTP plans to make sure that anyone facing homelessness is supported into a permanent, settled home that meets their needs as quickly as possible.

1.26 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 from happening in the first place is the best way to end homelessness. To achieve this shift, local authorities need to do more to signpost people to the right help and support. It also means ensuring that housing needs are considered when other circumstances change and having responsive services and treating people with dignity and respect, whatever their needs.

1.27 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. The Housing First elements of the RRTPs will ensure a range of options are available to all, 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 will help to reduce the need for temporary accommodation such as B&Bs.

1.28 We published a new set of advisory standards within the updated code of guidance on homelessness on 7 November 2019. The standards cover four 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; that temporary accommodation is of good quality, safe, warm, affordable; and that standards are consistent across all local authority areas.

## **Option 2**

1.29 If the order was to remain unchanged then local authorities could place homeless households in unsuitable temporary accommodation as the way the Order is written, Article 5 of the 2014 Order does not apply to the new models of accommodation introduced (community hosting, rapid access and shared tenancy). This could mean that households could be placed in accommodation that is outwith the area of the local authority, or is not near to health and education services.

1.30 It also means that local authorities may not ensure that the physical accessibility and suitability needs of vulnerable people are met and could place pregnant women and families with children into unsuitable accommodation.

## **Costs**

1.31 The cost to local authorities to accommodate homeless households in unsuitable accommodation including B&Bs is expensive as well as being detrimental to the wellbeing of the household. The clarity on the new models of accommodation would mean that local authorities can introduce this as an option to homeless households as suitable temporary accommodation and at a less costly method for local authorities. With homeless numbers remaining at a high level, Option 2 could result in local authorities continuing to accommodate homeless households in unsuitable and costly temporary accommodation.

## **Other Options**

1.32 Other than Option 1 there is no other option that is viable. It would be difficult to get buy-in to voluntary regulation from all 32 local authorities as well as being costly to set up and difficult to police.

1.33 There is existing legislation in place, i.e.:

- (i) the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014; and
- (ii) the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020 (2020/139) laid in May 2020.

Although the 2020/139 amended the 2014 Order, drafting errors were subsequently identified. This proposed amendment is necessary to ensure that local authorities DO NOT place homeless households in unsuitable accommodation.

## **Scottish Firms Impact Test**

1.34 We engaged with local authorities through the local authority working group and other wider stakeholders to gain an understanding of the business impact of amending the Order. All involved agreed that the amendments need to be made, although some respondents expressed fears that housing providers will not be able to cover the costs of upgrading stock to meet requirements. Others reflected 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 employment or training opportunities; result in lower costs for homeless households who find the unsuitable accommodation rents unaffordable; and end an over-reliance by local authorities on unsuitable accommodation.

## **Competition Assessment**

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

1.36 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 seven days.

#### **Digital Impact Test**

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

#### **Legal Aid Impact Test**

1.37 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**

1.38 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**

1.39 The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (No.2) Order 2020 will be laid in the Scottish Parliament on December 2020 and will come into force on 31 January 2021.

- **Post-implementation review**

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

**Summary and recommendation**

1.41 Option 1 is being recommended to ensure that no homeless household will have to stay in unsuitable temporary accommodation.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	All homeless households would benefit socially if they are not placed in unsuitable temporary accommodation for more than seven days. This amendment will ensure that local authorities consider and meet the physical accessibility and suitability needs of vulnerable people.	



**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: 8 December 2020**

**Signed:**

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

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

**DD Better Homes Division**

**Date: 8 December 2020**

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