

Shelter Scotland: The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (Coronavirus) Order 2020 (SSI 2020/268)

Shelter Scotland would like to comment on The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (Coronavirus) Order 2020 (SSI 2020/268), which has been submitted to the Delegated Powers and Law Reform Committee for scrutiny on 8th September 2020.

We have significant concerns about the policy intention and the drafting of the Unsuitable Accommodation Order and SSI, and we are therefore calling for the SSI to be annulled.

In May 2020, we welcomed the Scottish Government's commitment to extending the right to suitable temporary accommodation to all homeless households, where previously it had only applied to households containing children and pregnant women. We also welcomed the Housing Minister's statement: "We will work with local authorities to overcome any barriers they face as we move to a new way of dealing with homelessness."

The new Unsuitable Accommodation Order (UAO) included some coronavirus related exemptions, authorising Local Authorities to continue using unsuitable accommodation where a member of the household had coronavirus symptoms and required to isolate, or where accommodation was to allow 2-metre social distancing; these exceptions are in place until the end of September 2020. Shelter Scotland does not agree with the use of B&Bs and hotels as emergency accommodation, as they are not suitable, however due to the severe lack of suitable temporary accommodation in some areas, this type of accommodation was allowed as an interim measure.

We were fully expecting the protections in the order to apply to all homeless households as of October 2020. We expected that, come October, local authorities who were struggling to meet their legal duty, would have the required support from Scottish Government to house homeless people in suitable and safe temporary accommodation.

We are therefore very concerned that the Scottish Government laid a new SSI for the UAO on 1 September, which reneges on that original commitment in May from the Scottish Government. This SSI seeks to not only extend the original Covid-19 exemptions, but also includes a new exemption, which effectively takes us back to pre-May 2020. We also have additional concerns regarding the original drafting in the UAO submitted in May - section (g) for example being very unclear, with no reference to pregnant women and families with children.

Providing suitable temporary accommodation is not a new problem for some local authorities, who have consistently failed in their legal duty to prioritise housing need and therefore ensure the provision of safe suitable temporary accommodation.

Supply of temporary accommodation has therefore been limited in some areas since before the coronavirus pandemic, however, homeless households' rights have never before been contingent on this.

Being placed in unsuitable temporary accommodation can have a significant impact on people's mental and physical health and wellbeing, and we would argue that in the current situation we should be ensuring that people's rights are strengthened. Shelter Scotland regularly relies on the Unsuitable Accommodation Order to enforce households' rights to suitable accommodation, and the inclusion of supply issues in homelessness legislation would directly undermine our ability to do this. The inclusion of supply issues, with no time limit, in secondary legislation places the resources of local authorities above the rights of homeless individuals. Homeless people will lose out.

Provisions (h) and (i) in the SSI therefore set a very dangerous precedent that, in times of crisis, the adequate response is to limit rather than strengthen the rights of already vulnerable people. We are therefore calling for this SSI to be annulled. In May Scottish Government offered to support local authorities in overcoming any barriers. Instead of supporting local authorities, the proposed SSI seeks to preserve the status quo- limiting the rights of persons to suitable temporary homeless accommodation, arguably at a time when suitable accommodation is critical to public health.

A pandemic emergency requires people's rights to be strengthened, and instead of this SSI, local authorities should be required to show evidence of need, with the Scottish Government providing the resources, so that local authorities can comply with their legal duties and ensure households are in safe and suitable temporary accommodation.

Drafting issues with the UAO and SSI

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In addition to our concerns about the policy intention of the SSI, we are also concerned about the provisions in the UAO and the drafting of the SSI. **Should the SSI not be annulled which would be our strong preference, we would like to ensure that the draft is changed before being introduced.**

Comments regarding draft SSI and UAO

Amendments to Article 6 (made by Article 3(3) of this Order)

The excluded category of temp described in **para (f)** is not clear as to whether or not a household with children and/or pregnant woman could fall within its scope. Accommodation under (f) is limited to cases where a member of the household has both: symptoms of coronavirus and a requirement to isolate. This could require a household with children or pregnant woman being placed in unsuitable accommodation for more than 7 days.

The excluded category of temp described in **para (g)** is not clear as to whether or not a household with children and/or pregnant children might fall within its scope. Read literally, there is nothing which would prohibit a local authority from accommodating a family under this provision. Unlike (f) there is no requirement for any member of the household to be showing symptoms and requiring to self-isolate. The circularity of the provision is that it allows for unsuitable temporary accommodation to be provided to ensure social distancing between the household and those out with, yet such accommodation may be bed and breakfast, hostel or hotel accommodation with shared facilities where social distancing may be challenging. The provision is also so widely drafted that it could arguably be used to accommodate a family who are otherwise homeless (e.g. fleeing domestic violence) To remove any doubt as to whether a family could be accommodated under this provision, the following proposal is made:

(g)the accommodation is required to provide temporary accommodation to ensure that a distance of 2 metres can be maintained between a member of the household and a person who is not a member of the household in order to prevent the spread of coronavirus, and the household does not include a dependent child or a pregnant woman

Para (h) to all intents and purposes disapplies the order to homeless households where there are no pregnant women or children and where the local authority's supply of temporary homeless accommodation has been impacted by coronavirus. It is not clear whether local authorities will be expected to evidence how their temporary homeless accommodation has been impacted by coronavirus, if challenged. Pressures on supply of temporary homeless accommodation are not new, and pre-date Covid 19.

Article 7 of the 2014 Order prior has always provided for the exception: where a local authority has no suitable accommodation available, then unsuitable temporary accommodation can be provided restricted to a period of 7 days (previously 14 days prior to October 2, 2017). Households not including children or pregnant woman did not originally fall within the scope of the 2014 Order. This provision detailed in Art. 6(h)(i) effectively disapplies the Order for the same category of persons who were not protected by it, pre-May 2020- single and joint applicants.

Para (i) again intends to put households with families and pregnant woman back to the position that they would have been in before May 2020. The Order pre amendment in May allowed a local authority to provide unsuitable accommodation, where they had no suitable accommodation available to give (Article 7,1(b)) subject to them providing suitable accommodation after no more than 7 days (Article 7(2)).

The effects of the proposed Amendments to Article 6 (insertion of (f), (g), (h) and (i)) to the list of excluded categories, effectively seek to completely reverse the impact of the Amendments made in May:-

- The proposed amendments mean that single applicant households will not be entitled to suitable accommodation- so long as a local authority can rely on either (g) or (h), both widely drafted provisions which will prove difficult to challenge in law.
- The proposed amendments mean that households with children and/or pregnant woman will be entitled to suitable accommodation; or where there is none, their time in unsuitable accommodation will be capped at 7 days.

Given that this is the intention of the Order as proposed, from a drafting perspective, we would suggest that it is more straightforward to amend Article 3 of the 2014 Order (whilst the relevant article of the proposed 2020 Order No 268 is in force), to include the following after the words '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.

And to not have to insert paragraphs (f)-(i) in the list of excluded categories in Article 6.

If the amendments as presented were to stand, the points made in relation to (f) and (g) remain a concern - the provisions are not sufficiently clear as to whether households with children and pregnant woman fall within their remit- and if so, whether there is any time restriction.

The new provisions (h) and (i) would go further than the exception contained in Article 7 which acknowledges that the demand for suitable temporary accommodation may be such that a local authority requires a short period in order to secure that accommodation is made available. The exemption to the right to suitable temporary accommodation is balanced by the short period of time upon which unsuitable accommodation may be provided. There is clarity in the existing law that leaves a homeless applicant in no doubt as to what their rights are to suitable accommodation and leaves a local authority in no doubt that they must secure suitable accommodation within a specified timescale. The consequence of this is that

local authorities must reasonably plan for the demand for suitable temporary accommodation.

The risk of the proposed amendments is that it enables local authorities to plead resources to justify the indefinite use of unsuitable temporary homeless accommodation. This is a significant regression on suitable accommodation rights which have existed in some form since December 2004. **Express reference to the impact of coronavirus on the supply of temporary homeless accommodation in secondary legislation, will in practice make it very difficult for homeless applicants to assert a legal right to suitable temporary accommodation.**