

TOOLKIT

# THE RIGHT TO SUITABLE TEMPORARY ACCOMMODATION



March 2022



# 1 INTRODUCTION

- local authorities have a legal duty to provide temporary\* accommodation to a homeless applicant if they have a 'reason to believe' they may be homeless
- with some exceptions, most people are eligible to make a homeless application (please see 'making homeless applications' toolkits for exceptions)
- the legal duty to provide temporary accommodation continues until homeless enquiries are complete and a homeless decision is made
- if the local authority decide they have a duty to secure permanent accommodation, temporary accommodation must be provided until that becomes available
- if a review (appeal) is made against an unintentionally homeless decision, or a decision that the applicant has no local connection, the legal duty to provide temporary accommodation continues during the review (appeal) process
- if a review is made against a decision that the applicant is not homeless, an applicant may need legal advice as to whether temporary accommodation should be provided

\* Temporary accommodation is often referred to as interim, temporary or emergency accommodation. This toolkit makes no distinction between these definitions.

- temporary accommodation must comply with the Unsuitable Accommodation Order. This applies to all homeless households including single homeless applicants and households without children. Local authorities must have regard to the unsuitable accommodation guidance
- the ability to pay should not be a barrier to being offered temporary accommodation
- not providing temporary accommodation because the local authority has pre-judged someone's homeless status prior to enquiries being made is unlawful, for example by not taking an application and providing accommodation because the applicant appears to have no 'local connection' to the area

# 2

## INTERIM DUTY TO ACCOMMODATE

Section 29 of the Housing (Scotland) Act 1987 as amended states that “if the local authority has reason to believe that an applicant may be homeless, they shall secure that accommodation is made available for their occupation.”

This means that local authorities have a duty to provide interim accommodation if they have a reason to believe that person is homeless. **The reason to believe threshold is very low.** The duty to accommodate starts before homeless enquiries are made and pending a decision.

A homeless applicant is entitled to temporary accommodation when:

- the local authority is looking into their situation once a homeless application is received
- the homeless applicant has asked the local authority to review their decision on the application and the applicant is waiting for the outcome of the review. If the review is challenging a decision that the applicant is not homeless, an applicant might need legal advice on whether temporary accommodation should be provided
- the local authority has decided they have a duty to secure a permanent home, and they are waiting to move there

Homeless applicants don't have to accept the offer of temporary accommodation. They may choose to stay with family or friends instead. In this case, the local authority must continue to make homeless enquiries. If the Council have accepted the duty to secure a permanent home, that duty exists whether or not temporary accommodation has been accepted. The council still have the duty to secure a permanent home. If the situation changes, the applicant can ask for temporary accommodation.

If the local authority has decided the applicant is intentionally homeless, it doesn't have to offer the homeless applicant a permanent home. If the applicant has not yet found anywhere else to live, the local authority must provide temporary accommodation for such a period as the local authority considers will give the applicant a reasonable opportunity of obtaining their own accommodation.

## When a local authority does not have to provide temporary accommodation

A local authority does not have to provide temporary accommodation where a homeless applicant is **threatened** with homelessness within two months.

In that case the local authority has a minimum duty to provide advice and assistance to the homeless applicant to secure and keep their current accommodation and prevent homelessness.

# Unintentionally homeless applicants, threatened with homelessness within two months

If the homeless applicant is unintentionally threatened with homelessness, the local authority has a duty to take reasonable steps to secure that the homeless applicant keeps their current accommodation.

If attempts to keep the current accommodation are unsuccessful and the applicant becomes homeless, the local authority then have a duty to secure temporary accommodation whilst they decide on the homeless application.

## Case study one

### PART ONE

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#### Case example

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Alex presents to the local authority explaining he has left his tenancy in another area due to threats of external violence. He explains he has reported this to the police. He has mental health issues and is fearful of staying at his tenancy.

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#### Challenge

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In this case, there is a clear reason to believe that Alex may be homeless due to threats of external violence, mental health issues and his fear of staying at his tenancy.

The local authority should accept his homeless application and provide him with temporary accommodation and then make enquiries.

### **Section 29 Housing (Scotland) Act 1987, as amended**

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## **SCENARIO ONE**

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### **Case example**

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After making enquiries, the local authority issues a decision to Alex that he has no local connection to the area.

Alex seeks a review of that decision under **section 35A of the Housing (Scotland) 1987 Act.**

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### **Challenge**

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In this situation, the local authority has a duty to continue to provide temporary accommodation for Alex whilst the review takes place and a decision is made.

### **Section 29 Housing (Scotland) Act 1987, as amended**

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## **SCENARIO TWO**

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### **Case example**

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The local authority issue Alex with a not homeless decision. Their reason was because they considered that it was reasonable for him to stay at his tenancy in the other area as he was not at risk of harm.

Alex seeks a review of that decision under **section 35A of the 1987 Housing (Scotland) 1987 Act.**

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## Challenge

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As in part two above, the local authority has a duty to provide Alex with temporary accommodation pending a review decision, but only if they have reason to believe an applicant may be homeless.

If the local authority don't have a reason to believe Alex is homeless, they may argue that they do not have to provide Alex with temporary accommodation. It is therefore important that as much relevant information is detailed with the review, together with evidence to support why Alex may be homeless.

Specialist/legal advice should be sought if a local authority refuses to provide temporary accommodation pending a review, such as in this situation.

### **Section 29 Housing (Scotland) Act 1987, as amended**

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# 3

# TEMPORARY ACCOMMODATION CHARGES

Local authorities can make a reasonable charge for temporary accommodation.

The local authority has discretion to decide:

1. whether the homeless applicant must pay a reasonable charge; and if so
2. what that reasonable charge should be

## **S.35(2) Housing (Scotland) Act 1987**

The code of guidance on homelessness states that:

“In deciding what is reasonable, the local authority should take into account what the applicant can afford to pay in the longer term. If an applicant is being asked to pay for accommodation provided by or paid for by the local authority, then the applicant should be informed in advance of the cost of the accommodation. They should be assisted when applying for housing benefit to cover the cost of the accommodation. The local authority should take account of, and advise on, the likely level of housing benefit when considering charges.”

## Chapter 8 para 8.84 Code of Guidance 2019

If the charge for temporary accommodation is unaffordable, the homeless applicant should request that the charge is reviewed considering the affordability and sustainability of the charges based on their income/expenditure.

A local authority adopting a blanket policy, such as charging all homeless persons the full cost or a fixed charge for accommodation or refusing to consider the individual charge in each case, would be subject to legal challenge. In an English case, it was held that a local authority may exercise its discretion by charging a nil or 'peppercorn' rent.

R.(on the application of Yekini) v Southwark LBC [2014] EWHC (Admin)

"If the local authority does not revise the charge or any revision remains unaffordable, legal advice should be sought as soon as possible as to whether there are grounds for a legal challenge by judicial review of the local authority's decision".

A legal challenge by judicial review must be brought to Court within three months of the ground for judicial review arising, in this case running from the date the charges under dispute started to apply. The Court may extend the time limit if it is equitable to do so. In all the circumstances however, legal advice should be sought without delay if unreasonable charges continue to apply.

# 4 UNSUITABLE ACCOMMODATION

## Homeless Persons (Unsuitable Accommodation) Scotland Order of 2014

Temporary accommodation must comply with the [Homeless Persons \(Unsuitable Accommodation\) Scotland Order of 2014](#), as amended (“the UAO”). The UAO sets out types of properties which are deemed unsuitable (subject to some exemptions) for the purpose of fulfilling this duty.

The UAO applies to all homeless households. A homeless household includes single homeless persons and those without children. References to a homeless household throughout this toolkit include all homeless households, not just families and children.

Temporary accommodation must always be suitable for the homeless applicant’s needs.

Temporary accommodation must also comply with physical and location standards.

There are exemptions. This is where local authorities can legally provide unsuitable accommodation for a short period of time, or provide other types of accommodation, which do not comply with these standards.

In addition, local authorities should have regard to:

- the Homeless Persons (Unsuitable Accommodation) (Scotland) Order Guidance
- the advisory standards as set out in Annex A of the Interim Code of Guidance on Homelessness 2019 – page 112 where it details the required physical, location, service and management standards for temporary accommodation

There are also advisory temporary accommodation standards which are not mandatory, compared with the UAO. Some of the advisory standards mirror, or complement, the UAO standards and the local authority must have regard to the guidance on these advisory standards. Therefore, they can be referred to and you can request that local authorities take them into account if there are issues with the temporary accommodation provided.

The advisory standards can be found under 'additional references section'.

# Basic temporary accommodation standards

Article 4 of the Unsuitable Accommodation Order 2014 as amended, states that accommodation will always be unsuitable if it:

- is not wind and watertight
- is not suitable for occupation by a homeless household, considering the needs of the household
- does not meet the minimum accommodation safety standards on health and safety, hygiene, fire, furniture and electrical equipment standards. More information on these standards can be found in Annex A of the Homelessness Code of Guidance

These are referred to as the basic standards in the UAO Guidance and apply to all homeless households including single homeless applicants and those without children.

The exemptions including the [seven day exemption period](#) do not apply to these basic standards. If for example accommodation is not suitable for the needs of the household, the local authority have a duty to provide accommodation which does meet those needs and they cannot rely on the seven day exemption. It will also never be acceptable for a local authority to provide temporary accommodation which is not wind and watertight.

The UAO Guidance states that:

3.4 In assessing whether accommodation is unsuitable for a homeless household, a local authority must take account of the needs of each member of the household, including any protected characteristics, equality considerations or vulnerabilities around psychological informed service delivery and childhood trauma.

3.5 In the case of children, a local authority must be satisfied that overall, the accommodation does not pose significant risk to the safety of children and ensure that the best interests of the child are met.

3.6 Local authorities will need to use their judgment in deciding the possible risk posed by any sort of accommodation, after carrying out a risk assessment that includes involving the applicant and covers equality considerations, the welfare and safety of children to ensure that they are not exposed to trauma triggers, and corporate parenting duties for young adults (including homeless 16 and 17 year olds) which is applicable to the accommodation they are to be offered as well as people associated with the accommodation such as residents and workers.

## Case study two

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### Case example

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- Callum is a recovering drug addict and presents as homeless. He is placed in a temporary furnished flat whilst enquiries are made.
  - The temporary furnished flat is in an area which is notorious for drug misuse. Callum finds drug paraphernalia in the common close and is paranoid he is going to be approached by others who live in the building.
  - Callum is worried that staying there is going to affect him after working so hard to cut drugs out of his life.
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### Challenge

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1. It would appear that the accommodation is not “suitable for occupation by a homeless household taking into account the needs of the household”, given that Callum has addiction issues and is concerned about relapse - **Article 4(b) of the Unsuitable Accommodation Order**
2. Ideally, evidence from his drug support worker that the accommodation is impacting upon his recovery from drug misuse should be gathered.

If this is a notorious area, are there any reports to this effect?  
If it is well known, is there a support worker who can write a letter of support?

Is the reference to paranoia a symptom of mental ill health?  
If there is evidence that the accommodation is impacting on his mental health, this may also demonstrate that the accommodation is not suitable for his needs.

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## Physical and location standards

Article 5 of the UAO sets out the circumstances in which accommodation will be deemed unsuitable. The UAO Guidance refers to these as the physical and location standards.

These standards must always be met, and apply to all homeless households, including single persons or households without children, unless the [exemptions apply](#):

- **Article 6** of the UAO applies in various circumstances including an emergency, the applicant consents to stay in unsuitable accommodation, and where the accommodation provides health, child or welfare services or is for those who have experienced domestic abuse; or
- **Article 7** of the UAO applies – the seven day exemption; or
- **Article 7A** applies – circumstances in which community hosting, rapid access accommodation and shared tenancy accommodation can be provided, where the applicant agrees to be placed in such accommodation

More detail on these exemptions can be found in [section five](#) of this toolkit.

## Accommodation outwith the local authority area

Temporary accommodation provided outwith the local authority area will be unsuitable unless the homeless household agrees to be placed outwith the local authority area.

“UAO Guidance: 3.15 ... in some limited circumstances, with agreement between local authorities and the explicit consent of the homeless household in particular situations, it may be appropriate to provide accommodation in a different local authority area”

## Locality of health and education services

Temporary accommodation must be in the locality of health and education facilities and services which are being used by the homeless household, or to facilities and services which might reasonably be expected to be used by the homeless household.

Being in the locality means that services are reasonably accessible from the accommodation, considering the distance by using public transport or transport provided by a local authority.

If such facilities and services are not reasonably accessible, then the temporary accommodation will be unsuitable.

The UAO guidance states that homeless households should be involved in a discussion on locality and that local authorities should consider a range of factors as best practice:

- local geography (taking account of city / rurality context etc.)
- family history (i.e. previous patterns of work / school travel)
- the locations which the homeless household has identified as areas in which they could be placed

- affordability
- availability of transport including public transport
- accessibility of transport (mobility issues, ability to get four kids on a bus etc.)
- access to health and social care services, including relationships with service providers which are important to maintain for anyone experiencing homelessness

### **Section 3.18 of UAO Guidance**

## **Case study three**

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### **Case example**

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Katarina has lived in Peebles all her life.

She applies as homeless and is provided with temporary accommodation in Jedburgh.

This is around two hours away by public transport.

Katarina lives alone. Her GP is registered in Peebles.

She suffers from asthma and is prescribed inhalers and medication. Her asthma is generally under control.

### **Challenge**

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In this case, the local authority decide that Katarina can make use of the GP practice in Jedburgh and considering the rural area and lack of housing it is reasonable for Katarina to be expected to register with a local GP.

Unless there was a compelling reason why Katarina must access her GP practice in Peebles, there is unlikely to be a legal challenge to the suitability of this accommodation.

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## Case study four

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### Case example

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Louise is a lone parent of three children aged, 4, 7 and 13.

She has applied as homeless following a relationship breakdown with her partner.

She is provided with a temporary furnished flat which is on the other side of the city to where she used to stay.

The journey to take her four year old to nursery and her seven year old to primary school, involves two bus journeys and takes an hour.

Nursery starts and ends at different times to primary school, as well as secondary school.

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### Challenge

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In this case, it would appear that Louise's temporary accommodation breaches the Unsuitable Accommodation order in relation to the locality of education services.

It would also appear that the accommodation is not "suitable for occupation by a homeless household taking into account the needs of the household" – **Article 4 of the Unsuitable Accommodation Order.**

Evidence should be sought and provided to the local authority where available. For example, if there are letters from the school/nursery about the impact on the children's education/wellbeing or any medical evidence showing the impact of the unsuitable accommodation on Louise or her children.

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# Locality of place of employment

Temporary accommodation must be in the locality of the place of employment of members of the homeless household.

The accommodation will be unsuitable if the place of employment is not reasonably accessible from the accommodation considering the distance by using public transport, or transport provided by a local authority.

Factors which should be considered include affordability, work patterns and availability of transport including public transport, and accessibility issues.

## Physical standards

### **Bathroom facilities – exclusive use**

Temporary accommodation must contain adequate toilet and personal washing facilities for the exclusive use of the household.

This means that B&B and hostel type accommodation will generally be unsuitable accommodation on this ground, unless there is both a toilet and shower or bath available for the exclusive use of the homeless household.

### **Cooking facilities and living room – can be shared**

Temporary accommodation must have the use of adequate and accessible cooking facilities and the use of a living room.

This often means that B&B, hostel and hotel accommodation will be unsuitable accommodation.

Note that there is no requirement that cooking facilities and a living room be for the exclusive use of the household.

If a household has particular needs which require the exclusive use of a living room or cooking facilities, the accommodation may be unsuitable under the '[basic standards](#)' (suitable for the needs of the household).

## Adequate bedrooms

Temporary accommodation must contain adequate and accessible bedrooms for the exclusive use of the household.

Although the [overcrowding standard](#) allows for the living room to be used as a bedroom, there is an argument that 'adequate bedrooms' means that a living room should not be taken into account when determining whether accommodation is suitable.

## Case study five

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### Case example

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Joy has three children

- A son aged 15
- Two daughters aged 13 and 4

Her son sleeps in one bedroom.

Her eldest daughter sleeps in another bedroom.

Joy sleeps in the living room with her younger daughter.

According to the overcrowding standards:

**Room standard:** two persons of opposite sexes who are not living together must not sleep in same room (children under ten are left out of account)

**Space standard:** three rooms can house five people (children over one and under ten are half unit) - see also floor area of rooms.

Living room counts as a bedroom.

The accommodation would not breach the overcrowding standards.

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## Challenge

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There is an argument that a two bedroom flat does not constitute suitable accommodation as there are inadequate bedrooms.

The guidance refers to the use of a living room to allow children to play/do homework. There is a young child of pre-school age. The son will be studying for exams.

There are considerations of privacy and space.

Health issues, if there are any, may also be a consideration.

There is therefore a potential challenge to the suitability of accommodation under **Article 5(b) of the UAO**

There may also be an argument that the accommodation is not "suitable for occupation by a homeless household taking into account the needs of the household"

**Article 4(b) of the Unsuitable Accommodation Order.**

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## 24 hour access

Accommodation is unsuitable if it is not useable 24 hours a day.

This means that there should not be any period where the accommodation cannot be accessed, nor should there be any curfew.

## Non-resident children

Accommodation which is not suitable for visitation by a non-resident child and the household member has parental rights will be unsuitable accommodation.

The UAO guidance states:

“3.27 ... It is therefore relevant to consider individual circumstances such as existing shared care, access arrangements and whether the child is allowed to stay overnight.”



# 5 UNSUITABLE ACCOMMODATION EXEMPTIONS

The UA0 of 2014 as amended provides for exemptions to both location and physical standards in situations where:

- the applicant made the application outside office hours, or
- the local authority did not have suitable accommodation available

The maximum amount of time the local authority should provide unsuitable accommodation that does not comply with the physical or location standards is seven days.

The basic standards must always be met, and the seven day exemption does not apply. The basic standards include that the accommodation must meet the needs of the homeless household.

There are other circumstances where accommodation that does not meet the location or physical standards will not be deemed 'unsuitable'. That is where:

- the applicant is homeless or threatened with homelessness as the result of an emergency such as fire or flood
- the local authority makes suitable accommodation available, but the applicant wishes to stay in unsuitable accommodation
- the accommodation is a domestic abuse refuge
- the accommodation provides support services for health, childcare or welfare - for example, supported accommodation or addiction services

There is no time limit as to how long the accommodation may be provided for in these circumstances. However, the 'basic standards' must still be met, including that the accommodation must meet the needs of the homeless household.

**Important:** There are currently no temporary exemptions related to the coronavirus outbreak.  
**March 2022**

## Other unsuitable accommodation exemptions

Article 7A of the UA0 makes provisions for specific types of accommodation to be suitable, provided the homeless household consents to being placed in such accommodation.

If consent is not provided, then these types of accommodation will be deemed to be unsuitable where they do not comply with the basic, location and physical standards outlined in the UA0.

Homeless applicants should be advised of their rights to temporary accommodation, including the various types of temporary accommodation the local authority can make available. Where an applicant is told that there is nothing available except shared tenancy or rapid access accommodation, this cannot be taken as 'consent' to being placed in such accommodation.

## **Community hosting**

- where homeless households stay for a short period of time in a spare bedroom in the home of a community volunteer
- generally aimed at young people with low support needs
- community hosting will still be suitable even where the homeless applicant does not have exclusive access to its own toilet and washing facilities and where it is not usable by the household 24 hours a day

## **Rapid access accommodation**

- rapid access accommodation offers emergency temporary accommodation. It is for rough sleepers or those at risk of rough sleeping
- it must contain a furnished bedroom which is safe, private and lockable and be of a good standard
- on-site homelessness assessments and support assessment must be provided to the homeless applicant as well as access to ongoing support including specialist support services

- will not be in breach of the order even where there are shared toilet and washing facilities

## Shared tenancy accommodation

Shared tenancy accommodation, which is usually small scale, is suitable but only where:

- there are no more than five people in the accommodation
- the accommodation is to a good standard
- all residents agree to share the accommodation on a temporary basis pending settled accommodation
- each resident has a private and lockable bedroom

Shared tenancy accommodation will not be in breach of the UAO even where there are shared toilet and washing facilities.

UAO Guidance states:

“4.24 Applicants need to agree that they are prepared to share small scale temporary accommodation, such as a temporary furnished flat, before they are placed there. In addition applicants should be involved in the decision process of who they will share the accommodation with, and there needs to be discussion about the placement being appropriate for that individual, based not only on support needs but also with regards to gender, age, and other protected characteristics”

Community hosting, rapid access and shared tenancy accommodation are always unsuitable for:

- pregnant women
- children
- a person with parental rights of a child who is not part of the household

**Article 7A(4) Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014, SSI 2014/243 as amended**

# 6

## LENGTH OF TIME IN TEMPORARY ACCOMMODATION

The length of time a homeless household will be accommodated in temporary accommodation will depend on the outcome of the application.

When a homeless application is taken, the local authority has a duty to provide temporary accommodation whilst they make enquiries and pending a decision. They should aim to make homeless enquiries and reach a decision as to whether someone is eligible for permanent accommodation within 28 days. This may not always be possible. Therefore, homeless applicants may need to stay in temporary accommodation for longer.

Temporary accommodation must always comply with the basic standards. Local authorities can place someone in accommodation that is otherwise unsuitable (e.g. it does not meet the physical or locality standards) but for no more than seven days. There are exceptions to this which are covered in the 'Unsuitable Accommodation' section.

A household may be moved between temporary accommodation.

For 2020-2021, the average total time spent in temporary accommodation across Scotland was 199 days. This varies from local authority to local authority area.

## After a homeless decision has been reached

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### Decision

### Outcome

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Local authority decide they have a duty to secure permanent accommodation

The homeless applicant should be provided with temporary accommodation until permanent accommodation is secured. This may take some time, depending on the availability of suitable housing in the area and the needs of the homeless household.

If the homeless applicant leaves temporary accommodation before the local authority has found permanent accommodation for them, the local authority will still have a duty to secure permanent accommodation if it has already decided to do so. The homeless applicant should keep in touch with the local authority.

**IMPORTANT** - A local authority should not subsequently find a homeless applicant intentionally homeless because they have left temporary accommodation. For example, they may leave because of harassment or wish to stay with friends or family.

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Homeless applicant is found to be not homeless

The local authority has no duty to provide temporary accommodation. However, the applicant may be able to secure temporary accommodation pending review.

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Local authority decides that a homeless applicant is intentionally homeless

If the local authority decide that a homeless applicant is intentionally homeless, the homeless applicant should be provided with temporary accommodation long enough as the local authority consider will give them a reasonable opportunity to find somewhere else to stay.

The local authority does not have a duty to secure that alternative accommodation, but they do have a duty to provide advice and assistance to the applicant in their attempts to find alternative accommodation.

The local authority should consider the circumstances of the homeless applicant and the availability of accommodation in the area when deciding on how long an applicant can continue to stay in temporary accommodation.

**See paras 8.33 – 8.37 of the Code of Guidance on Homelessness 2019**

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Local authority  
decide homeless  
applicant has no  
local connection

If the local authority decides that a homeless applicant is unintentionally homeless but does not have a local connection to the area, they may refer them to another local authority where they do have a local connection.

The presenting local authority should continue to make temporary accommodation available until the new local authority accepts the referral after which the new local authority should provide temporary accommodation pending permanent accommodation being secured by them.

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# 7 RIGHTS OF HOMELESS HOUSEHOLDS IN TEMPORARY ACCOMMODATION

Homeless households in temporary accommodation have rights. The rights they have will depend on the type of tenancy or occupancy they have.

In most cases, homeless applicants will be common law tenants. Homeless applicants may be given an occupancy agreement. Although such an agreement may be called an 'Occupancy Agreement' a tenancy may have been created in law depending on the type of accommodation and the wording of the agreement. Advice should be sought if there is a question as to whether a tenancy has been created and the homeless applicant's rights.

The Advisory management standards, Code of Guidance on Homelessness, Chapter 12, page 114 states that local authorities should ensure that:

- a written occupancy agreement has been issued and explained to the household which includes an agreed minimum amount of notice (at least 24 hours) that a landlord must give before accessing the person's property/unit and under what circumstances they would give such notice
- information on any house rules has been provided, including what is antisocial behaviour and how it will be dealt with. Be aware that temporary accommodation should be available for use by the household 24 hours per day
- information on the Repairs procedure has been provided
- the household is provided with, or can access, all relevant information applicable to the household's requirements whilst in temporary accommodation. This information must be made available in different formats
- information on the notice period to end an occupancy agreement has been given, including the right to appeal and how to do this
- procedures are in place to ensure there is minimum disruption to the household when moving in and out of the accommodation and made aware of any support available to help with the move
- procedures are in place to protect personal possessions and provide support, advice and information on storage where necessary

- that occupants are involved in all discussions surrounding their needs including relocation and changes to occupancy agreements
- that staffing levels match those required to meet the services of the household and all staff have been appropriately trained to understand the needs of the household
- that households are made aware of the local authority's Complaints procedure and how to access it
- that households are provided with a rent statement of charges and how they are paid

If a homeless applicant decides to leave temporary accommodation before the local authority finds permanent accommodation for them, they should not subsequently be found intentionally homeless. The local authority duty to find the household permanent accommodation continues. The homeless applicant should keep in touch with the local authority.

# 8

## BRINGING THE TEMPORARY ACCOMMODATION DUTY TO AN END

If a homeless applicant or someone in the household has broken a condition of the tenancy or occupancy agreement or the requirements of the accommodation provider, local authorities or the provider may ask the person to leave or issue a decision stating that duty has been discharged. Depending on the type of accommodation the applicant is in and the type of agreement in law, a court order may be required to evict them.

Sometimes the homeless applicant will be given the right to review or appeal the decision of the local authority discharging duty. There is no statutory right to a review of the decision to terminate temporary accommodation.

The decision must be based on evidence that the homeless applicant (or member of the household) has persistently and unequivocally refused to observe the local authority's reasonable requirements in relation to occupation of the accommodation. For example, a local authority may decide that it has 'discharged its duty' to provide temporary accommodation due to persistent antisocial and criminal conduct. e.g. A local authority warns an individual who is

found to possess illicit drugs contrary to the rules of the accommodation provider. They warn that they may discharge duty should there be a re-occurrence. The same individual is then later found to be offering drugs to other residents. The local authority may decide in that case that there has been persistent and unequivocal refusal to observe their reasonable requirements.

Before making a challenge, this checklist may be helpful:

- was the accommodation suitable for the homeless household in the first place and if not, why not? (UAO - see [unsuitable temporary accommodation](#) section. In particular, did the accommodation meet the applicant's needs?)
- did the local authority assess the household's needs prior to offering the temporary accommodation? For example, mental health issues, addiction or alcohol dependency
- is the behaviour linked to the person's medical condition(s)?
- is the behaviour a consequence of a disability under the Equality Act 2010 such as a mental health issue and can this be evidenced?
- are the allegations disputed and is there evidence to support the person's position?
- do the allegations demonstrate a 'persistent and unequivocal refusal'? If so, have any circumstances changed for example, is the person now engaging with support which will address their behaviour?
- was the household given warnings and the right to appeal the decision?

- what are the consequences for the household for example, where are they staying now and how is this affecting any particular needs they may have?

Some accommodation providers have a curfew. This would be unsuitable accommodation and therefore curfews are not 'reasonable requirements'. A decision to 'discharge duty' to provide temporary accommodation on the basis that curfews have not been complied with is therefore challengeable.

## Case study six

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### Case example

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Jason is asked to leave supported accommodation due to:

- allegations of drug use – the police allegedly found Class A drugs
- threatening behaviour to other residents
- a knife was found in his room
- extorting money

The local authority state there is no other accommodation options available to him because of his behaviours.

Jason denies most of the allegations. He suffers from poor mental health. He appeals the decision to terminate his temporary accommodation, but the appeal is unsuccessful.

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## Challenge

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In this case, there are three issues to consider in determining if there is a legal challenge:

- has the local authority ‘performed’ their duty under section 29 of the Housing (Scotland) Act 1987, as amended?
- has there been a persistent and unequivocal refusal to observe reasonable rules?
- does he have a disability under the Equality Act 2010?

The checklist in this section will be helpful.

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# 9

# LEGAL CHALLENGES AND TEMPLATE LETTERS

## Legal Challenges

You may need to challenge a local authority because:

- the temporary accommodation they have offered or provided is unsuitable

The exact approach to take will depend on whether the accommodation is unsuitable due to:

- the accommodation being in breach of the Unsuitable Accommodation Order 2014
- the accommodation does not meet the needs of a disabled member of the household and is in breach of the Equality Act 2010
- in breach of another Act for example where accommodation is overcrowded or below the tolerable standard, or

- the accommodation does not meet the Advisory Standards

## Template Letters

You may find these template letters useful:

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[Template Letter 1](#) Unsuitable accommodation – B&B/ hostel/hotel accommodation – applies to all homeless applicants

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[Template Letter 2](#) Unsuitable accommodation – unsuitable for visitation by non-resident children

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[Template Letter 3](#) Unsuitable accommodation – locality

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[Template Letter 4](#) Unsuitable accommodation – does not meet the needs of the household

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### Template Letter 1

**Unsuitable accommodation –B&B/hostel/hotel accommodation – applies to all homeless applicants.**

Where accommodated in B&B/hotel/hostel accommodation for more than seven days of the application.

**Provided** that accommodation does not have (1) a toilet and bath/shower for the applicant’s exclusive use; or (2) at least shared use of a living room; or (3) at least shared adequate cooking facilities.

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[X] has contacted our organisation for assistance with their current homeless situation.

They are currently in temporary accommodation at [where].

[The homeless household comprises: [provide detail where more than just the applicant]]

This accommodation is unsuitable accommodation because: [delete those which do not apply]

- it does not have adequate toilet and personal washing facilities for the exclusive use of the household
- [x] does not have the use of a living room
- [x] does not have the use of adequate cooking facilities
- is not useable 24 hours a day (i.e. there is a curfew, or the applicant must be out of their room for part of the day)

[x] has been accommodated in unsuitable accommodation for more than seven days. They have been in their current accommodation since [date].

Please can you urgently confirm by close of business today that suitable temporary accommodation will now be provided from tonight onwards. If suitable accommodation is not available from tonight, please provide the reasons for this, what steps the local authority are taking to secure suitable temporary accommodation and an indication of the timescales for this being provided.

If I do not hear from you, or there is no satisfactory information regarding what steps the local authority is taking and the timescales for suitable accommodation being provided, I will advise [X] to seek further advice on their rights which might include legal advice from a solicitor.

## Template Letter 2

### **Unsuitable accommodation – unsuitable for visitation by non-resident children**

Where a member of the homeless household has parental rights and responsibilities, and the temporary accommodation is not suitable for visitation by their children.

Where such accommodation has been for more than seven days of the application.

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[ x ] has contacted our organisation for assistance with their current homeless situation.

They are currently in temporary accommodation at [where].

[The homeless household comprises: [provide detail where more than just the applicant]]

[x] has parental rights and responsibilities of their child/ children: [detail names and ages]

[x] has a shared care/access arrangement/agreement for access and visitation [provide as much detail as possible as to the nature of the agreement including frequency and whether this includes the children staying overnight. NB there does not need to be a court order formalising any access/residence]

[enclose any evidence of the arrangement if available, e.g. if there is a court order (although this is not necessary to request suitable accommodation), letter confirming the agreement]

The accommodation at [x] is not suitable for visitation by a child because [provide reasons, e.g. the nature of the accommodation]

Please can you confirm that suitable temporary accommodation will now be provided from tonight onwards. If suitable accommodation is not available from tonight, please provide the reasons for this, what steps the local authority are taking to secure suitable temporary accommodation and an indication of the timescales for this being provided.

If I do not hear from you, or there is no satisfactory information regarding what steps the local authority is taking and the timescales for suitable accommodation being provided, I will advise [X] to seek further advice on their rights which might include legal advice from a solicitor.

## Template Letter 3

### **Unsuitable accommodation – locality**

Where such accommodation has been for more than seven days of the application

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[ x ] has contacted our organisation for assistance with their current homeless situation.

They are currently in temporary accommodation at [where].

The homeless household comprises: [provide detail where more than just the applicant]]

This accommodation is unsuitable because it is not [delete as appropriate]

reasonably accessible to the facilities and services used by the homeless household in *relation to health and education*.

This type of challenge will be fact sensitive. Consider some of the following questions and provide detail accordingly.

### **Schools/nursery etc**

Are there multiple journeys required?

How long does the journey take door to door considering public transport, waiting times etc?

Does school/nursery start and end at different times?

Are there accessibility issues?

Does the size of the family make this difficult?

### **Healthcare**

What services are accessed by the household members, and how frequently.

Is it important that existing relationships are maintained with healthcare professionals, if so, why?

### **Employment**

Is the accommodation within the locality of employment?

How does this affect any issues with school/nursery transport where relevant?

**Affordability** – taking the above into account, how affordable is public transport – detail the client’s financial position and the impact.

**Areas** – detail the areas the client would be willing to be accommodated in, and why this would be more suitable.

Please can you confirm that it is accepted the accommodation is unsuitable given the issues with its locality. Please confirm that suitable accommodation will be provided and the timescales for this being provided.

If I do not hear from you, or there is no satisfactory information regarding what steps the local authority is taking and the timescales for suitable accommodation being provided, I will advise [X] to seek further advice on their rights.

## Template Letter 4

### **Unsuitable accommodation – does not meet the needs of the household**

Applies to all homeless applicants and in all circumstances if the accommodation does not meet the needs of the homeless household it is unsuitable.

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[ x ] has contacted our organisation for assistance with their current homeless situation.

They are currently in temporary accommodation at [where].

The homeless household comprises: [provide detail where more than just the applicant]

This accommodation is unsuitable because it is not suitable for the household considering their needs.

I would be grateful if you could confirm whether you have assessed the needs of this household and provide a copy of this assessment.

In any event, I would request that you reassess the suitability of the current accommodation.

- detail the needs of all members of the household
- is there a disability / health issue – detail these and why the current accommodation is not suitable?
- is the accommodation having a detrimental impact on health and wellbeing?
- can medical evidence be obtained in relation to disability/ health/wellbeing? If so enclose and refer to this

Please can you confirm that suitable temporary accommodation will now be provided from tonight onwards. If suitable accommodation is not available from tonight, please provide the reasons for this, what steps the local authority are taking to secure suitable temporary accommodation and an indication of the timescales for this being provided.

If I do not hear from you, or there is no satisfactory information regarding what steps the local authority is taking and the timescales for suitable accommodation being provided, I will advise [X] to seek further advice on their rights which might include legal advice from a solicitor.



# 10

## ADDITIONAL REFERENCES

### Other legislative accommodation standards

The Unsuitable Accommodation Order contains the basic, location and physical standards for temporary homeless accommodation. However, if there are issues with the temporary accommodation provided, existing legislation can also be referenced to ensure that local authorities take this legislation into account.

- a) Temporary accommodation must not be statutorily overcrowded (Housing (Scotland) Act 1987)
- b) Temporary accommodation must meet the tolerable standard (Housing (Scotland) Act 1987)
- c) Temporary accommodation must meet the needs of an applicant who has a protected characteristic under the Equality Act 2010

## a) Temporary accommodation must not be statutory overcrowded

Part VII of the 1987 Housing (Scotland) Act defines overcrowding. In assessing whether accommodation is statutorily overcrowded, local authorities should consider the room standard and the space standard.

The room standard is based on the number and sex of people who must sleep in one room. Accommodation will not meet the room standard where two people of the opposite sex must sleep in the same room. The exceptions to this rule are:

- cohabiting or married couples who can live in the same room without causing overcrowding
- children under the age of ten who are completely ignored in the calculation

**'Room'** is defined as being available for 'sleeping accommodation'. But this would only be the case if the room is of a type normally used as a bedroom or a living room. However, the standard does not limit the number of people of the same sex who can live in the same room (but see the space standard).

### **The Space Standard**

The space standard is based on the number of people who may sleep in a dwelling of a particular size. The number of people depends on the size of the room, the number of living rooms and bedrooms and the age of the occupants. There are two ways of calculating the space standard which you can see in the tables below. Both methods should be applied.

The method that gives the lower figure for the number of persons entitled to occupy will be the statutory limit.

### **METHOD ONE**

<b>Number of rooms</b>	<b>Number of people</b>
1	2
2	3
3	5
4	7.5
5+	2 per room

### **METHOD TWO**

<b>Floor area or room (sq. feet)</b>	<b>Number of people</b>
110	2
90-109	1.5
70-89	1
50-69	0.5

For both the assessments:

- children under one year old are not counted
- children under ten years old but not under one count as a half
- rooms under 50 square feet are not included

- a room is counted if it is available as sleeping accommodation

Even where temporary accommodation is not overcrowded in law, there may be an argument that accommodation is unsuitable if it does not have adequate bedrooms.

## **b) Temporary accommodation must meet the tolerable standard**

Temporary accommodation must meet the tolerable standard. A house will not meet the tolerable standard if fails to fulfil one or more of the criteria below:

- be structurally stable: this provision is mainly aimed at problems of subsidence
- be substantially free from rising or penetrating damp (it is important to note the use of the term 'substantially free', not 'completely free', and to note also that the standard does not extend to condensation dampness, although that may be covered by the next point)
- have satisfactory provision for natural and artificial lighting, for ventilation and for heating. Adequate natural lighting under good weather conditions should be available in rooms intended for sleeping, sitting or eating meals. A test for this is whether normal domestic activities can be undertaken without the aid of artificial light. Ventilation is thought to mean that fresh air can circulate easily to all rooms
- have satisfactory thermal insulation

- have an adequate piped supply of wholesome water available within the house. The water supply is for domestic use
- have a sink provided with a satisfactory supply of both hot and cold water within the house
- have a water closet, or waterless closet, available for the exclusive use of the occupants of the house and suitably located within the house. The toilet should be accessible to occupants without compromising their privacy and should be adequately lit and ventilated
- have a fixed bath or shower and a wash-hand basin, all of which must have a satisfactory supply of hot and cold water and be suitably located in the house
- have an effective system for the drainage and disposal of foul and surface water. Factors considered are the capacity of the system, susceptibility to leakages or blockages and whether foul air from sewage can enter the building
- have a supply of electricity, where electricity is supplied to the property, that complies with the relevant requirements in relation to electrical installation for that supply and is adequate and safe to use
- have satisfactory facilities for the cooking of food within the house. This does not necessarily mean that a cooker is installed, but as a minimum that there is the means of installing a gas or electric appliance

- have satisfactory access to all external doors and outbuildings. If there is no adequate means of access to a house, then there may be a breach of the landlord's repairing obligation
- satisfactory equipment installed for detecting fire, and for giving warning of fire or suspected fire and
- satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration that is hazardous to health

### **Section 86 of the Housing (Scotland) Act 1987**

### **c) Temporary accommodation must meet the needs of an applicant who has a protected characteristic under the Equality Act 2010**

Temporary accommodation provided by the local authority to a homeless household is unsuitable accommodation if it is not suitable for occupation by the household taking into account the needs of the household. **Article 4(b) of the UAO**

Where someone has a protected characteristic under the Equality Act 2010, the local authority must have due regard to take steps to meet the needs of those who share that protected characteristic that is different from the needs of persons who do not share it.

This is part of the Public Sector Equality Duty.

Protected characteristics under the Equality Act 2010 are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

For example, a local authority must take steps to meet the needs of someone with a disability. This may require the local authority to treat the person more favourably than a person without a disability. This could be a mental disability or a physical disability.

If a person has needs arising from a protected characteristic, the public sector equality duty can complement the homeless legislation.

For example, in relation to suitable accommodation, case law has stated that local authorities should:

- recognise where an applicant has a disability
- focus on specific aspects of any impairments to the extent that are relevant to the suitability of accommodation
- focus on any disadvantages the applicant might suffer when compared to a person without those impairments
- focus on the accommodation needs arising from those impairments and the extent the accommodation meets those needs
- recognise if the applicant's particular needs might require them to be treated more favourably than a person without a disability
- to review the suitability of the accommodation paying due regard to these matters

The above may also apply if adapted to meet other characteristics protected under the Equality Act 2010.

Temporary accommodation provided to someone who has a protected characteristic under the Equality Act 2010 might be open to challenge if it does not meet that person's needs.



# Advisory Accommodation Standards

The advisory standards for temporary accommodation, which are detailed in Annex A of the Code of Guidance on Homelessness, provide a set of advisory standards for local authorities to apply to their temporary accommodation.

The advisory standards are not mandatory, compared with the UAO. Some of the advisory standards mirror, or complement, the UAO standards. The local authority does have to have regard to the guidance. Therefore, they can be referred to and you can request local authorities take them into account if there are issues with the temporary accommodation provided.

## **Extract:** Annex A: Advisory Standards for Temporary Accommodation

This guidance provides a set of advisory standards to be applied by local authorities to their temporary accommodation and to any temporary accommodation provided from other providers. These standards relate to all types of temporary accommodation including bed and breakfast, to ensure that the quality of temporary accommodation is of good standard and meets the needs of the household.

Local authorities across Scotland utilise a diverse portfolio of temporary accommodation beyond bed and breakfast accommodation including local authority, housing association and private rented stock as well as hostels. Most 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 Licensing for B&B and hostels
- the Repairing Standard in the private rented sector

## Physical standards

The following details the physical standards that should apply where appropriate across all tenures to ensure that temporary accommodation is an adequate, safe and secure space for the household. The temporary accommodation should:

- be accessible and able to meet the needs of any disabled person within the household
- comply with relevant housing quality standards including health and safety, hygiene, fire, furniture and electrical equipment legislation and regulations
- provide units that are secure with individual locks, so people feel that their belongings are safe
- provide a facility to secure personal mail, where appropriate

- have sufficient bedroom space to meet the needs of the household in line with the overcrowding and HMO standards
- have adequate communal living space which includes, for example, space for children to play or do homework
- have adequate toilet and personal washing facilities for the exclusive use of the household
- have access to on site laundry facilities
- have access to adequate cooking facilities for the needs of the household
- have a suitable standard and minimum level of furniture to meet the household's needs, where relevant
- have a good standard of cleanliness
- have a sufficient and affordable heating system at an acceptable efficiency rating in line with those published in the Energy Efficiency Standard for Social Housing and those for Private Rented Property
- be accessible 24 hours a day with no curfews
- include a household assessment to consider whether the temporary accommodation being offered is affordable by the household
- allow access to digital technologies (e.g. via Wi-Fi), where possible, so households can access online facilities e.g. welfare benefits, choice based letting systems

- have the means to support people to maintain relationships with their pets
- have provision to allow visitors, including provision for visits from children, where possible

## **Location standards**

When considering offering a household temporary accommodation it is important to discuss with the household the location of the property and its proximity to services and local amenities

- accommodation provided should be located so that the main essential services used by a household can be reached by foot, by public transport or by transport provided by a local authority. Services to include education/school/nursery, supermarket or convenience store, doctors, dentists, support or other health providers and advice agencies (where applicable)
- the location of the property should also consider the needs of all household members in terms of reasonable access to place of employment and formal or informal support networks
- cultural or religious need should also be identified and met through the location of accommodation where possible
- the location of the accommodation also needs to consider the social and economic needs of the household

- an assessment of personal safety of the household, specifically households fleeing domestic abuse, predominately women, and whether the temporary accommodation being offered is in an area that is close to the perpetrator's family and/or is too far from children's school, social network etc

## Service standards

For some families a stay in temporary accommodation can be long term as they wait for a suitable permanent property to become available. It is crucial that households receive a consistent standard of service delivery in order to sustain their temporary accommodation and facilitate a move into settled accommodation.

Service delivery standards include providing:

- services identified by an assessment of the needs of all household members, followed up with referrals and support to engage with the relevant housing, health, education, social care services and independent advice services
- support to access different types of accommodation especially where households are fleeing domestic abuse and the accommodation is used by mixed sex and/or only has male or female staff
- support to access flexible and ongoing needs led support, specifically where households have multiple and complex needs

- support to access the necessary information of the appropriate services including counselling, addictions, mental health, medical, dental, optical and money/welfare advice to signpost the household to relevant and available support
- psychologically Informed Environments, where appropriate, and if required, ensuring staff have been trained in trauma informed care to ensure person-centred needs are met
- regular reviews of household's needs on a case by case basis, agreed by the household, and considering any change in circumstances
- regular and sustained home visits by allocated officers to identify any unmet needs of the household and
- ongoing communication with the household with easy access to Housing Officers to discuss issues, ensuring that any information provided is available in different formats and an interpreter is provided where necessary

## **Management standards**

The following standards will ensure that a resident is aware of their rights and responsibilities during their stay in temporary accommodation, including any procedures that they need to follow.

Providing a household with relevant information at the time of moving in or relocating to alternative temporary accommodation, as well as supporting the household to understand the information can help to ensure the best possible outcome for the household.

This includes ensuring:

- a written occupancy agreement is in place and has been explained to the household which includes an agreed minimum amount of notice (at least 24 hours) that a landlord must give before accessing a person's property/unit and under what circumstances they would give such notice
- information on any house rules has been provided, including an appropriate set of procedures to demonstrate that anti-social behaviour will not be tolerated especially in shared accommodation such as B&B's
- information on the Repairs procedure has been provided
- the household is provided with or can access all relevant information applicable to the household's requirements whilst in temporary accommodation and this information is available in different formats
- information on the Notice period to end an occupancy agreement, including the right to appeal is provided
- procedures are in place to ensure there is minimum disruption to the household when moving in and out of the accommodation and they are made aware of any support available to help with the move
- procedures are in place to protect personal possessions and provide support, advice and information on storage where necessary
- that residents are involved in all discussions surrounding their needs including relocation and changes to occupancy agreements

- that staffing levels match those required to meet the services of the household and all staff have been appropriately trained to understand the needs of the household
- that households are made aware of the local authority's complaints procedure and how to access it and
- that households are provided with a rent statement of charges and how they are paid, considering the introduction of Universal Credit

It is recommended that the advisory standards in this annex should be available in leaflet format in every individual local authority housing and homelessness office as well as publishing the standards on the local authority website.

The leaflet should be included in any information pack that the household receive when they move into temporary accommodation and it should be explained by staff that check the household into the accommodation.

It should also be distributed amongst organisations that provide independent housing advice for display in their waiting rooms in the local authority area and should be made available for publishing on public advice websites such as Citizen's Advice Scotland and Shelter Scotland.



# Legislation

## **Housing (Scotland) Act 1987, as amended (law is stated as at 18 March 2022)**

### **Section 29 - Interim duty to accommodate**

- (1) If the local authority have reason to believe that an applicant may be homeless, they shall secure that accommodation is made available for his occupation—
  - (a) pending any decision which they may make as a result of their inquiries under section 28;
  - (b) where the applicant has, under section 35A, requested a review of a decision of the authority, until they have notified him in accordance with section 35B of the decision reached on review;
  - (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.
- (2) This duty arises irrespective of any local connection which an applicant may have with the district of another local authority.
- (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.

## **The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014, as amended (law is stated as at 18 March 2022)**

### **Article 1 - Citation and commencement**

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

### **Article 2 - Interpretation**

In this Order—

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

“community hosting” means the provision of a spare room and other support by a member of the community to a homeless household in crisis for a short period of time;

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

“minimum accommodation safety standards” includes standards specified in an enactment for accommodation in relation to health and safety, hygiene, fire, furniture and electrical equipment;

“rapid access accommodation” means emergency temporary accommodation for rough sleepers, or those at risk of rough sleeping, which—

(a) contains a bedroom which is—

- (i) safe, private and lockable;
- (ii) furnished; and
- (iii) of a good standard; and

(b) provides support to a person using that accommodation to—

- (i) access benefits or other services through provision of on-site homelessness and support assessments; and
- (ii) access ongoing support services, including specialist support services; and

“shared tenancy accommodation” means accommodation which—

(a) is shared by no more than 5 people;

(b) is of a good standard;

- (c) is provided to residents who agree to share accommodation on a temporary basis pending placement in settled accommodation; and
- (d) in which each resident has a private and lockable bedroom.

### **Article 3 – Application of this Order**

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).

### **Article 4 – Unsuitable accommodation**

In all circumstances, accommodation is unsuitable if it is—

- (a) not wind and watertight;
- (b) not suitable for occupation by a homeless household, taking into account the needs of the household; or
- (c) not meeting minimum accommodation safety standards.

### **Article 5**

Unless any of the circumstances in article 6 apply, accommodation is also unsuitable if it—

- (a) is both—
  - (i) outwith the area of the local authority which is subject to the duty to accommodate under section 29 of the 1987 Act; and
  - (ii) accommodation in which the household has not agreed to be placed;

- (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 which meet the accessibility needs of the household;
- (d) lacks adequate and accessible bedrooms for the exclusive use of the household;
- (e) is accommodation within which the household does not have the use of adequate and accessible cooking facilities and the use of a living room;
- (f) is not usable by the household for 24 hours a day ;
- (g) is not in the locality of the place of employment of a member of the household, taking into account the distance of travel by public transport or transport provided by a local authority; or
- (h) is not suitable for visitation by a child who is not a member of the household and in respect of whom a member of the household has parental rights.

## **Article 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 local authority has secured that the accommodation has been made available and services relating to health, child care or family welfare are provided to persons accommodated there.

## **Article 7 – Temporary accommodation**

- (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 7 days in total in respect of that person's application.

### **Article 7A – Additional exemptions from Article 5**

- (1) Where paragraph (4) applies, accommodation in the form of community hosting is not unsuitable by virtue of article 5 despite that accommodation—
- (a) lacking adequate toilet and personal washing facilities for the exclusive use of the household; or
  - (b) not being usable by the household for 24 hours a day.
- (2) Where paragraph (4) applies, rapid access accommodation is not unsuitable by virtue of article 5 despite lacking adequate toilet and personal washing facilities for the exclusive use of the household.
- (3) Where paragraph (4) applies, accommodation which is shared tenancy accommodation is not unsuitable by virtue of article 5 despite lacking adequate toilet and personal washing facilities for the exclusive use of the household.

(4) This paragraph applies where—

(a) a household does not include either—

(i) a pregnant woman;

(ii) a dependent child; or

(iii) a person who exercises parental rights in respect of a dependent child who is not part of the household; and

(b) the household has agreed to be placed in the accommodation referred to in paragraph (1), (2) or (3).

### **Article 8 – Revocation**

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



# Useful links

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[Making an application toolkit](#)

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[Part VII of the 1987 Housing \(Scotland\) Act](#)

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[Common law tenancies](#)

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The [advisory standards](#) for temporary accommodation, Annex A of the Code of Guidance on Homelessness, provides a set of advisory standards for local authorities to apply to their temporary accommodation

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[Tolerable Standard](#) which applies to all property

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[Scottish Housing Quality Standard](#) which applies to social rented sector properties

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[HMO Licensing](#) for B&B and hostels

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[Repairing Standard](#) in the private rented sector

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HMO standards

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Overcrowding definition

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Energy Efficiency Standards for Social Housing

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Energy Efficiency Standards for Private Rented Property

**We exist to defend the right to a safe home  
and fight the devastating impact the housing  
emergency has on people and society.**



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