

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

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Shelter
Scotland

Introduction

Shelter Scotland welcomes the opportunity to respond to this consultation which proposes to redraft the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 ('the 2004 Order') and introduce a requirement which specifically references physical standards. We have long been campaigning for improvements to the standard of temporary accommodation in which homeless households are placed.¹

Shelter Scotland has called on the Scottish Government to take a twin approach to improve standards in temporary accommodation. We would like to see:

- Officially endorsed guidance on standards in temporary accommodation, building on guidance previously issued by Shelter Scotland and the Chartered Institute in Housing.² A common minimum standard would apply to all types of temporary accommodation in Scotland.
- The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 extended to include the physical condition of the property which would make it unsuitable for families with children, or pregnant women. This change would enable families and pregnant women to challenge the temporary accommodation offered to them if it failed to meet this minimum standard.

This consultation gives us the opportunity to address the second of these objectives and make sure that protections from poor conditions are as strong as they possibly can be for expectant mothers and households with children.

¹Shelter Scotland, Temporary accommodation standards: campaign briefing, November 2013

http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/temporary_accommodation_standards_campaign_briefing

²Shelter Scotland and the Chartered Institute of Housing in Scotland, 'Temporary accommodation guidance', 2010

http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/temporary_accommodation_guidance

Responses to the consultation questions

Question 1: Shelter Scotland's preferred policy option

Shelter Scotland agrees with Option 1 that the Scottish Government should amend The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 to include reference to accommodation being unsuitable if it is not 'wind and watertight'.

In our view this also needs to include: **'and in all other respects reasonably fit for human habitation'**³ to give pregnant mothers and homeless families the protection they need from poor conditions in temporary accommodation. This would ensure that vulnerable households are protected – not just from accommodation which is in a poor state of disrepair in terms of its external structure – but also from accommodation with internal fixtures and fittings which are unsafe and make the property unfit for human habitation. We have seen multiple examples of poor conditions in internal housing which have made temporary accommodation unsuitable for children. These have included cases of chronic internal dampness, holes in walls, unsafe electrical wiring, inadequate heating and unsanitary conditions in toilets and bathrooms.

Case study: a female client with children was placed in temporary accommodation by a Scottish local authority in a block of flats. The front door of the flat had been broken into previously and could be opened if pushed hard enough. In addition the external door to the building was not secure and the walls of the flat were damp.

The local authority would not be able to house a family with young children in this kind of temporary accommodation if the 2004 Order was extended to exclude properties which are not 'wind and watertight and in all other respects reasonably fit for human habitation'.

Extending the wording of the redrafted Order is therefore essential to prevent households with children, and expectant mothers, from being placed in properties which fail both the 'wind and watertight' test, but also the 'reasonably fit for human habitation test'. This test is already well-established in law; a strong body of case law from our courts exists on this issue and the standard is well-understood by practitioners.

³ As it appears in s.13(1) of the Housing (Scotland) Act 2006 which applies the 'repairing standard' to private rented housing.

Why is this change necessary?

Homeless households have little, or no, choice over the type, quality and location of temporary accommodation they are offered and have to accept. Local authorities put considerable resources into the provision of temporary accommodation in Scotland, and this is why the focus must be on the role that this type of accommodation plays in delivering positive outcomes for homeless people.

From our work with service users we have seen examples of vulnerable households being placed in unsuitable accommodation – much of which is in poor condition. The provision of good quality temporary accommodation is a key part of the ongoing delivery of the 2012 commitment as it is the first step away from homelessness into more secure housing.⁴ This is why protection from poor conditions is key for the **10,281 households** – in which there are **4,156 children** – who currently live in temporary accommodation in Scotland.⁵

Evidence shows that poor housing conditions negatively impact on children's physical and mental health and their educational attainment, for example:

- Homeless children are two to three times more likely to be absent from school than other children due to the disruption caused by moving to, and between, temporary accommodation.⁶
- Homeless children are three to four times more likely to have mental health problems than other children.⁷
- Ninety per cent of respondents to a Shelter survey said their children had suffered through living in temporary accommodation. The longer families had lived in temporary accommodation, the more likely they were to attribute their worsening health to their accommodation.⁸

Given the evidence on the long-term cost that the provision of poor temporary accommodation places on education, social work and health services – particularly in relation to children – protections should be in place to make sure that expectant mothers

⁴ The 2012 commitment removed the test of 'priority need' from Scotland's homelessness assessment, meaning anyone found to be unintentionally homeless has the right to permanent accommodation.

⁵ Scottish Government, Homelessness Statistics, March 2014

⁶ (Vostanis P, Grattan E, Cumella S, Winchester C (1997) Psychosocial functioning of homeless children Journal of the American Academy of Child and Adolescent Psychiatry, 36 (7), 881-889; Vostanis P and Cumella S (1999) Homeless children: problems and needs)

⁷ British Medical Association, 'Housing and Health: building for the future', 2003

⁸ Shelter Temporary Accommodation Survey, as quoted in 'Sick and Tired', Shelter, 2004

and families with children are not placed in temporary accommodation which is in poor condition. This protection should cover properties which are not 'wind and watertight and in all other respects reasonably fit for human habitation'.

Question 2: the likely impact of amending the Order

Amending the Order to make housing which is not 'wind and watertight and in all other respects reasonably fit for human habitation' will have the effect of enabling our caseworkers and those from other agencies to challenge placements into temporary accommodation where that accommodation is of poor quality and is in poor condition. This will give our service users the necessary legal footing on which to challenge such placements, and encourage higher standards of accommodation across all temporary accommodation in Scotland.

Most temporary accommodation provided by local authorities and other agencies is of a high standard – partly due to the success of the 2004 Order as demonstrated by the drop in breaches of the Order since it was introduced⁹ – and this addition will further strengthen this legislative protection. Given the rising standards since 2004, local authorities are well-placed to meet this new requirement which protects children from poor physical conditions in temporary accommodation.

The requirement 'wind and watertight and in all other respects reasonably fit for human habitation' is not a difficult standard to reach, and will address the small number of properties in which children and pregnant women are housed where problems relating to conditions persist. It is a small legislative change with the potential to make a big difference to homeless families with children who find themselves unable to challenge poor conditions in temporary accommodation, and cost implications for service providers should be minimal.

Question 3: the likely impact of redrafting the Order

This is a small change to the Order and is likely to have a positive impact on the service users Shelter Scotland supports. The redrafted Order will be circulated with our advisers and legal team, this will give them an additional tool to address poor conditions in temporary accommodation for families with children.

⁹ Scottish Government, Operation of the Homeless Persons legislation in Scotland: 2013-14, <http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/RefTables>

Question 4: competition between firms

Shelter Scotland is not aware of issues that will arise in terms of competition between firms; the cost of meeting the requirement of the Order should be small.

Question 5: other matters relating to the amending and redrafting of the Order which Scottish Ministers should consider

Shelter Scotland sees this amendment to the 2004 Order as a stepping stone towards higher standards in temporary accommodation for all homeless households.

Good practice standards for all homeless households placed in temporary accommodation

In 2011 we jointly published voluntary guidance on best practice in providing temporary accommodation with the Chartered Institute of Housing in Scotland.¹⁰ The next step is for the Scottish Government to work with stakeholders to produce specific guidance on standards which is then officially endorsed. This would be produced by an expert advisory group, building upon the guidance issued in 2011 and set out a minimum standard that all temporary accommodation should reach. This should be used by local authorities alongside the Code of Guidance on Homelessness¹¹ and be made available on the Scottish Government's website. The Scottish Government's endorsement would send a clear signal that minimum standards relating the quality of temporary accommodation should be a priority for service providers, and is particularly important at a time when the UK government's programme of welfare reform is threatening to undermine the quality of the temporary accommodation provided by local authorities.

We are aware that through the joint Scottish Government and Cosla Homelessness Prevention Advisory Group (HPAG) and subsidiary groups, that work has been carried out to produce costing models for local authorities based on existing expenditure on temporary accommodation. As yet, this work has not looked at standards and conditions which it could potentially do.

¹⁰ Shelter Scotland and the Chartered Institute of Housing in Scotland, 'Temporary accommodation guidance', 2010

http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/temporary_accommodation_guidance

¹¹ Scottish Government, Code of Guidance on Homelessness, 2005

<http://www.scotland.gov.uk/Publications/2005/05/31133334/33366>

Long term change

The key intervention which would radically improve current homeless prevention measures is to increase the supply of quality socially rented and affordable housing in Scotland. The number of people living in temporary accommodation can be reduced via effective pre-crisis interventions delivered through partnerships between a range of public services and housing providers. This can be achieved in a number of ways:

- **Preventing homelessness wherever possible:** this could be through tenancy sustainment, targeted mediation, measures to reduce evictions in both public and private rented sectors, and reducing mortgage repossessions. Improvements in all of these areas will help ensure fewer people need temporary accommodation in the first place.
- **Preventing unnecessary delays in the homeless application process:** local authorities need to examine their administrative systems to ensure that delays in the homeless application process are avoided.

This should be undertaken alongside increasing the supply of socially rented homes, there are currently 155,100 households on local authority waiting lists across Scotland¹² and 36,457 homeless applications were made in 2013-14.¹³ With households feeling the impact of welfare reforms and coming under pressure from increases in the cost of living, which have risen higher than wages in recent years, the supply of affordable housing is key. The Scottish Government should commit to working towards a target of building at least 10,000 socially rented homes per year to keep up with demand. Meeting this target will mean that homeless households who are in temporary accommodation will be able to move into a permanent home more quickly than at present.

Question 6: Equalities Impact Assessment

The redrafted Order will have a positive impact on homeless pregnant women, protecting them from being placed in temporary accommodation which is in a poor condition. The same positive impact will be felt by homeless families with children. We are not aware of any other equalities-related issues as a result of this legislative change.

¹² Scottish Government, Operation of the Homeless Persons legislation in Scotland: 2013-14, <http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/RefTables>

¹³ Scottish Government, Housing Statistics for Scotland - Housing lists, August 2013 <http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/HousingLists>

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