

# Unsuitable Accommodation Order – Draft Guidance – Informal Scottish Government consultation **Shelter Scotland Response**

23 October 2020

## Introduction and background

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal teams. We also campaign to make sure that, one day, no one will ever have to turn to us for help.

Shelter Scotland welcomes the opportunity to contribute to the draft guidance and the draft statutory instrument for the Unsuitable Accommodation Order. The provision of suitable temporary accommodation for homeless households and the ending of the use of bed and breakfast hostels and other such inappropriate accommodation types has been a specific aim of ours going back more than two decades. Such accommodation is invariably higher cost, poorer quality and less likely to help rebuild stability after a period of homelessness. There is no policy argument which contests this. Guidance and good practice material, going back at least as far as the 1980s, has always re-enforced those points, so the persistence in use has always been at odds with such guidance. This is why specific statutory measures were introduced in the 2003 Act and brought into force in 2004 via secondary regulation. The regulations have always been conceived as a progression in which unsuitable accommodation would eventually be phased out across the board. That is also therefore why we strongly welcomed the statement in the September 2019 Programme for Government that an extended Unsuitable Accommodation Order would come into force before the end of the Parliamentary term in May 2021.

At the start of the UK's coronavirus pandemic response, in March 2020, it became quickly apparent that prevailing homelessness arrangements amplified the health risk both to individuals and the public at large. High turnover temporary accommodation, where multiple households, many with additional vulnerabilities, shared common facilities, was even less appropriate in the context of a public health response which sought to minimise social mixing and shared facility use outside of one's own household. That is why we welcomed the acceleration of the existing commitment to extend the Unsuitable Accommodation Order to all homeless households. This was done in early May 2020, albeit with time-limited exemptions and with an acknowledgement that there were drafting weaknesses, which would have to be addressed by further guidance and regulation. That is where we are now.

**An absolutely key point of context is that temporary accommodation use was already heading in the wrong direction before the pandemic.** This is explicitly acknowledged in the recent Ending Homelessness Together updated action plan: *“Temporary accommodation is an important safety net, but it should be high quality, short-term and provide the right support to the people who live there. We had already said in our action plan that the length of time some households spend in temporary accommodation, in bed and breakfasts in particular, was unacceptable. In spite of all efforts, recent homelessness statistics – which cover the pre-pandemic period from 1 April 2019 to 31 March 2020 – show we have a significantly increased number of people in temporary accommodation. We must take bold steps to reverse this trend.”*

**In spite of that statement, there is a risk that the pandemic becomes an alibi for inappropriate use of temporary accommodation in a way which was already an issue before the pandemic.** As the Scottish Government has said, there is no place for rough sleeping, night shelters and poor-quality temporary accommodation, both now and in the long term.

## Further extension of the Order to 31 January 2021

**We opposed and remain opposed to the extension of the exempted period from 30 September to 31 January 2021.** Each additional month in which homeless households are placed in unsuitable accommodation undermines the compelling logic of accelerating the extension in the first place. What was intended, by policy, as a specific set of exemptions for a specific period of adjustment time to allow safe distancing and accommodation for people with symptoms of COVID-19 has become carte blanche for continuation of the status quo.

We accept that Parliament has come to a judgment on that and the time period over which this guidance is considered, will take us increasingly close to 31 January in any case.

**However, there should be no question of any further extension beyond 31 January, as to do so would mean that there had been no acceleration at all and simply bring us back to the same position as announced in the September 2019 Programme for Government.**

To that end we welcome the statement in the updated Ending Homelessness Together Action Plan which confirms, jointly from the Scottish Government and COSLA, that 31 January is when the temporary exemptions end: *“To prevent any backward movement, we have fast-tracked plans to extend the Unsuitable Accommodation Order, which currently prevents pregnant women or families with children from being placed in accommodation such as bed and breakfasts and hotels for more than a week, to include all homeless households. This means that after 31 January 2021, no-one will stay in unsuitable temporary accommodation without access to basic facilities and support for more than seven days.”*

We are further opposed to the additional exemption which has been introduced in September, again until 31 January, whereby authorities can continue to place homeless households (albeit not homeless families with children, if longer than 7 days) in unsuitable accommodation “as a result of the impacts of coronavirus on temporary accommodation supply in the area.” As a matter of principle that introduces a condition of accommodation supply into the duties owed to homeless households which is at odds with the premise of the legislation. In practice it implies a causation which we do not see as evidenced<sup>1</sup> or easily capable of being evidenced and, again, is likely to be used much more broadly to justify accommodation options for people, whether or not they have anything to do with the specific impacts of coronavirus on temporary accommodation.

Finally, the consequence of the extended exemptions to 31 January is to make the guidance cluttered and more difficult to navigate than it would have otherwise been. **While we support the issuing of the guidance as soon as possible in order to frame practice, we also think the Scottish Government should re-issue the guidance on 1 February 2021 in a de-cluttered form.**

In general terms it is felt that this draft Guidance does not go far enough in providing the necessary clarity that guidance can offer to local authorities. There is reference to helpful case studies which might provide best practice examples, however **we would like the Guidance to go further and recommend for example that local authorities do or refrain from doing x.** For example, in the context of Rapid Access Accommodation, the City of Edinburgh Council case study explains ‘Each service operates with a high tolerance no barring policies to maintain engagement with vulnerable service users’. To ensure consistency across local authority areas, we would suggest that the Guidance requires there to be ‘no barring policies to maintain engagement with vulnerable service users’ or something to that effect.

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<sup>1</sup> While it is possible that some TA suppliers may have reduced supply or turnover during the pandemic it is equally plausible that other options will have opened up due to reduced demand in student or holiday markets, for example.

## Shelter Scotland comments on the new draft SSI

The new draft SSI is the third SSI on Unsuitable Accommodation in 2020. We appreciate that changes have been made due to the drafting anomalies in earlier versions which resulted in time-limited exemptions potentially being applied to groups – i.e. families with children and pregnant women – which had had protection under the regulations up to that point. The new SSI seeks to address that which is welcome. It also clarifies that accommodation occupied by children still needs to be suitable for occupation by children, albeit in a more generic formulation “taking into account the needs of the household;”

The changes introduced in 2020 have included a new reference to “minimum accommodation safety standards” which apply in all situations. There are new provisions on proximity to employment and protections for people who have parental rights to children staying with them. Both of these are welcome.

Much of the focus will be on the new section 7A which introduces three new types of exemption to criteria for suitability – shared tenancies, community hosting and rapid access accommodation. The argument is that these are needed, if the spread of the order is to include single people or other households without children.

We don't seek to contest these new exemptions per se, although it does seem that the inclusion of these three types of (sometimes very niche) accommodation is driven by contemporary practice – to the extent that, in the guidance, it seems to be case studies which are carrying the load rather than actual guidance – and it does beg the question as to what happens to the regulations as accommodation and support models evolve. **The use of case studies, we would therefore argue whilst helpful, does not constitute guidance to local authorities and we believe more clarity is required.**

So, for the time being our comments are as follows:

### 1. Shared tenancy

There are three issues here:

The first is the issue of consent in this specific situation (we have covered general issues further below). We have allowed for the possibility that two unrelated homeless households may appropriately share a tenancy and that this might also be in their interests – for example to prevent social isolation and to build up tenancy or independent living skills – where there are no or low support needs. But this needs to be an active and positive choice by the parties; and for that to be the case they need to be aware of and offered appropriate and suitable alternatives; and given advice.

The second issue is the nature of the agreement. The name “shared tenancy” makes fairly clear that this is a tenancy. The guidance potentially confuses matters by referring to either **tenancy** or **occupancy agreement**. **The guidance should provide greater clarity on the contractual nature of the agreement.**

The third issue is the number of sharers. Five we would argue seems too many. Most of the good practice examples relate to two people sharing. In our view, achieving appropriate matches and securing active consent gets more difficult the higher the number of parties. So, we would argue that the maximum number should be two and not five.

### 2. Community hosting

Of the three additional types of accommodation, community hosting seems the most niche. The guidance makes clear that active consent is required for this to be appropriate, so as for shared tenancy,

and section 7A 4(b) makes clear that consent is required to be placed in this type of temporary accommodation. However, it is one thing to say that this form of accommodation should be permissible in some specific situations, to reflect current practice in a small number of local authorities; it is another to say, as the guidance does: “This type of temporary accommodation is an option that **should** be considered by local authorities now that the UAO will cover all homeless groups.”

We would suggest that the emphasis should be that this is a form of temporary accommodation which **may** be used if the specific conditions are met.

### 3. Rapid access accommodation (RAA)

Rapid access accommodation probably poses the most challenges for adoption within the statutory homelessness framework, partly because it has evolved in parallel to the statutory framework, going back at least to the Rough Sleepers Initiatives from the mid-1990s and sometimes much longer. The Ending Homelessness Together Action Plan and RRTPs seek to improve the quality and consistency of that accommodation and, indeed one of positive aspects of the coronavirus response has been the extent to which people sleeping rough or at risk of sleeping rough have been given accommodation. The statement in the updated action plan that night shelters should be a thing of the past is welcome. Night shelters have however traditionally not fallen within the statutory framework.

*Section 29 of 1987 Act, as amended provides:*

*‘If a local authority have reason to believe that an applicant may be homeless they shall secure that accommodation is made available for his occupation.’*

In other words, the local authority is under a statutory duty to secure accommodation immediately, upon a person presenting as homeless and where interim accommodation is required. In practice, homeless assessments are then undertaken over a course of weeks, and sometimes months, depending on the complexity of the case and the statutory inquiries needing to be undertaken. Given that statutory framework, it is alarming to see the Guidance identify a key element of Rapid Access Accommodation as ‘Direct access to emergency temporary accommodation ...without the need to complete a full homelessness application and assessment in advance.’ Were local authorities refusing to provide temporary accommodation, until such time as homeless applications and assessments were carried out this would be in clear breach of their statutory duties.

**We are concerned to read in the case studies that the average length of stay in rapid access accommodation is 28-50 days.**

Do the newly named Overnight Welcome Centres in Edinburgh and Glasgow constitute Rapid Access Accommodation? Winter Night Shelters, as they previously were, did not fall within the definition of statutory accommodation under Section 29 of 1987 Act as amended. **Clarity on whether the Overnight Welcome Centres, operated by charities, constitute statutory interim accommodation would be welcome.**

Should it be the case that Overnight Welcome Centres, as operated by charities, constitute Rapid Access Accommodation we would want to raise our concerns regarding the implications for those persons who are not eligible for assistance and who ordinarily have depended on support from these charities, to have somewhere to spend the night. We would suggest that the Guidance makes it clear that Overnight Welcome Centres can be **‘included’** in the definition of Rapid Access Accommodation. Use of the word **‘inclusion’** would leave open the possibility of charities offering assistance to those who are otherwise ineligible or not wanting to make homeless applications.

More specifically, we argue that the SSI needs to be more explicit about minimum requirements of Rapid Access Accommodation:

- The guidance makes clear that there must be a private lockable bedroom, the regulations simply refer to a bed and a safe space. The distinction can be significant as to the accommodation model.
- The guidance refers to embedding a “no wrong door” approach and the case study cites “high tolerance no barring policies to maintain engagement with vulnerable service users.” It would be useful for the regulations to be clear that open access is a key aspect of Rapid Access Accommodation.
- The accommodation model has evolved as an immediate response to rough sleeping and generally seen as a short stay option. The guidance says that “people are allowed to stay for as long as they need to stabilise their situation and receive the support they need to help them to move on to alternative temporary or settled accommodation.” On the face of it “as long as they need” is person-centred, but the case study example cites stays of up to 50 days, which seems to us rather longer than is consistent with a rapid access model. **The provision of support and accommodation should not be so inextricably linked, that a service user should fear loss of support if moving on to other accommodation sooner than 50 days.** Furthermore, to link the length of stay in interim accommodation to the person’s ability to stabilise their situation and move on to alternative temporary or settled accommodation, does not seem to have any lawful basis. Section 29 requires that accommodation is secured (a) pending a decision; (b) pending a decision on review; and (C) pending an offer of permanent accommodation, where the individual is entitled to one.

#### 4. Consent

The consent of the applicant to arrangements that would otherwise breach the terms of the order appears a number of times: for example, in agreeing to a location of temporary accommodation which otherwise would not be seen as appropriate; and also in relation to the three new types of temporary accommodation cited. In our view, this is an area of practice, which is very difficult to get right. To that end, we welcome both the requirement for agreement in Article 7A(4)(b) and the additional guidance: that “the applicant must have been offered suitable accommodation by the local authority - there must have been a genuine choice made available to the applicant. In addition, this must be an informed and uncoerced decision by the applicant, it must be subject to regular review, and the applicant must have had access to independent housing advice before making the decision.” These are important safeguards to ensure that the applicant is exercising choice and that the use of Temporary Shared Accommodation, Community Hosting and Rapid Access Accommodation are not substitutes for other types of temporary homeless accommodation which the local authority may not have but should acquire. We recommend that use of the consent condition is reflected in monitoring and review.

## Compliance and regulation

As the Scottish Government has acknowledged compliance with the Unsuitable Accommodation Order was already an issue before the pandemic and before the extension of the order. In 2019/20 almost half of councils breached the order a total of 500 times, of which three quarters were from one authority, Edinburgh.

This means that neither the pandemic nor the extension of the order can be used to explain continuing use of unsuitable accommodation. The persistence of use, in breach of legal rights, is because the

housing system and temporary accommodation rights have failed to develop sufficiently to match those rights. With the progressive realisation of rights, comes additional costs. Unless additional resources are provided to local authorities, and compliance is effectively monitored and enforced, these rights will at best become impractical and ineffective, and at worst, be removed from the legal framework, which would be a regressive step.

More attention must be paid to compliance. The impact of progressive regulations and expansive guidance is diluted if councils can routinely breach those regulations without having to meaningfully account for that. So, it would be helpful for the Scottish Government to outline how the regulator will support and ensure compliance with the new regulations and guidance.

## Funding, resources and policy

While it is right to ensure that there is a focus on compliance it is equally right to ensure that councils have the resources and tools to deliver. The Scottish Ministers have the power to require Local Authorities to assess and review their assessment of homeless need. Assessing need and having regard to any protected characteristics of homeless applicants in that assessment is a fundamental step in ensuring local authorities are able to comply and in turn ensuring that these rights are both practical and effective. The use of all forms of temporary accommodation is inextricably linked to the flow of move-on settled accommodation. That is why we are calling for a building programme of at least **37,100 new socially rented homes** over the next Parliamentary term to reduce housing need, as well as ensuring empty homes are brought back into use and that homeless applicants are given priority for lettings, through RRTPs. Further, we support the provision of additional funding for and a clearer framework of funding for temporary accommodation, linked to higher standards and incentivising suitable accommodation.

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