

Response to consultation

Response to the Scottish Executive consultation on 'Unsuitable Temporary Accommodation for Families with Children' and on the 'Best Interests of Children'

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Shelter

Shelter Scotland welcomes this consultation to determine in regulations accommodation that is unsuitable for homeless families with children. In this response we answer specific questions included in the Scottish Executive consultation paper and follow this by setting out Shelter's proposals for the regulations.

a) Do you agree that this is the priority area at this stage?

Shelter has campaigned for an end to the use of Bed and Breakfast (B&B) accommodation for homeless families with children for over ten years. Our view is that accommodation of this kind is highly inappropriate for children because of the characteristics and nature of bed and breakfast accommodation (see response to question b).

In its landmark report in 2002, The Homelessness Task Force concluded that local authorities should 'reduce the use of bed and breakfast accommodation to a minimum, and... eliminate its use for families'. The report was overwhelmingly endorsed by parliament in March 2002, and has been adopted as policy by the Scottish Executive. In addition, during the passage of the Homelessness etc. (Scotland) Act 2003, the then deputy Minister for Justice stressed that Scottish Executive policy was to end the use of B&B accommodation for families.

In England, regulations have already been passed that have effectively ended the use of B&B accommodation, except in emergency circumstances.

Shelter is pleased that a number of local authorities are working to end the use of B&Bs for families as part of their homelessness strategies, and some local authorities have already placed a blanket ban on the use of B&B accommodation for homeless families. Unfortunately, however, use of this form of accommodation has continued to rise in other local authority areas. The most recent homelessness statistics show that at the end of September 2003, 148 families were living in B&B accommodation and another 94 in hostel accommodation¹.

Shelter believes that practice should follow the policy of the Scottish Executive and the Homelessness Task Force. Regulations of this kind should ensure that no family should be placed in B&B accommodation, except in emergency situations.

Some local authorities are concerned about the impact that regulations could have on supply, and Shelter accepts that supply issues are critical, and has called for a significant increase in funding for affordable housing in Scotland. However, we also believe that homeless families should not have to bear the brunt of the short supply of permanent accommodation in Scotland. The onus is now on local authorities to

¹ Scottish Executive Statistical Bulletin, 2003. Operation Of The Homeless Persons Legislation In Scotland: Quarters Ending 30 June And 30 September 2003
<http://www.scotland.gov.uk/stats/bulletins/00314-11.asp>

take an innovative approach to housing the small number of homeless families currently living in B&B accommodation.

Regulations of this kind will have a minimum impact on local authorities that have already ended B&B use, or who use B&Bs only in emergency circumstances. The regulations will however ensure that the local authorities that regularly use B&Bs will be forced to find other forms of accommodation for families.

b) What are the common characteristics of 'bed and breakfast' type accommodation?

The characteristics of B&Bs arise from the nature of the accommodation. The accommodation was originally intended to be easy-to-access accommodation for short stays. The characteristics listed below are based on the experience of Shelter's support staff, who often work with families living in bed and breakfast accommodation.

Health/hygiene

There are often no facilities for washing/drying clothes. In some establishments, families have to wash all their own bed linen. Some B&B establishments are in a poor state of cleanliness. Sustaining personal hygiene is problematic, as washing facilities may be shared. There are limited facilities available for preparing food - some rooms have as little as a kettle, though some have a toaster or a microwave. Nevertheless, even the better-equipped rooms do not provide adequate facilities for cooking.

Privacy

There is a general lack of privacy for the family, as they generally all share one room. In some cases siblings or parents and children are sharing a bed. There is no space for family members to spend time out from one another. There are no play opportunities for children.

Security/stability

Families can find that belongings go missing, as it is more difficult to maintain security with so many people around. In some establishments there are a number of single people with drug/alcohol problems. There can be violence and theft associated with this, leading to insecurity for families. Giro's can go missing or be wrongly delivered. It can be difficult to maintain contact with support agencies as families may have limited access to a phone.

Finance

Several of the factors mentioned above can have implications for cost. If families are taking washing to a launderette, buying take away food or even taking children out to play, all of these things cost money which families on benefit can little afford.

c) What characteristics would any accommodation have that would make it unsuitable for families with children?

Unlike in England, Scottish legislation does not include a requirement that temporary accommodation be 'suitable', so use of the term 'suitable' in this context could be problematic, and misleading for local authorities.

Shelter proposes that the regulations should set out minimum physical standards which accommodation provided to families should meet. However, there may still be cases in which local authorities provide accommodation according to the regulations, which would still be inappropriate for certain families. This would be in circumstances, where, for example, local authorities were providing accommodation which would require a change of schooling for children, or which would put the safety of the family at risk. These are difficult characteristics to set out in regulations, and Shelter therefore proposes that the following steps be taken:

1. The accommodation set out in the regulations should be called 'proscribed' accommodation rather than 'unsuitable' accommodation, for the sake of legal clarity.
2. Statutory guidance should accompany the regulations that would ensure that section 29 accommodation meets the special needs of the applicant, is reasonable to occupy and is in the best interests of children.

This would ensure that local authorities look to the regulations to find out what is inappropriate in terms of physical standards, and use guidance to consider whether the accommodation that meets these physical standards is also appropriate for homeless families.

d) How might the Order differentiate between accommodations of varying quality or standard so that accommodation which might be acceptable is not excluded from the range of options open to a local authority?

There are varying kinds of accommodation across Scotland. These regulations should not restrict the provision of decent accommodation across Scotland. The best way to ensure that that all forms of temporary accommodation used by local authorities is appropriate is to expect accommodation to meet a set of basic physical standards. Shelter believes that the standards we have proposed are broad enough

to allow many providers of decent accommodation continue to accommodate homeless families.

e) Should the Order cover all unsuitable accommodation regardless of whether it is owned and run in the private, public or voluntary sectors?

In this instance, Shelter believes that the regulations should only cover private sector accommodation.

f) Are there any types of accommodation that should be considered unsuitable for families with children in all circumstances?

g) In what circumstances might it be acceptable for the local authority to offer bed and breakfast type accommodation for use by families with children?

Shelter has always considered bed and breakfast accommodation to be inappropriate for homeless families, in any circumstances. It is never *acceptable* for a family to be placed in B&B accommodation. However, given the nature of homelessness, and the need for accommodation at very short notice, very short spells in B&B accommodation in emergencies could be deemed appropriate.

There are only two exceptions in which a family should be placed in accommodation that does not meet the physical standards set out in the regulations we have proposed, i.e. is 'non-proscribed'. The first is immediately following presentation to the local authority. Given the nature of homelessness, some families present to local authorities at short notice, or at evenings or weekends. In these circumstances, Shelter believes that B&B accommodation could be appropriate for a very short period. For this reason Shelter believes that families should not stay in B&B accommodation for more than seven days.

The second circumstance is where the family has been

1. made a reasonable offer of 'non-proscribed' accommodation, and
2. has been made aware of the availability of free, independent advocacy in the local area,

but decides to refuse that 'non-proscribed' accommodation, and stay in B&B accommodation. This would allow for flexibility on the very rare occasion where a family would prefer to stay in B&B accommodation rather than accept a form of accommodation which would require moving to another area away from schools, family etc.

h) How should we define such circumstances, for example an 'emergency'?

i) What time period, if any, should apply to such circumstances?

Shelter's proposals for the regulations avoid setting out a definition of an emergency. Section 29(1)(a) covers accommodation following presentation by a household and pending assessment. In our proposals families can only be placed in 'non-proscribed' accommodation for up to seven days in section 29(1)(a) accommodation.

There is a need to be prescriptive here. If we allow for the regulations to place families in B&Bs under section 29(1)(a) without stating for how long, then families will still be there for long periods, and the regulations will not have the effect intended. This would also create a perverse incentive on local authorities to delay assessment, which was a concern for a number of MSPs and Scottish Executive officials when the Homelessness etc. (Scotland) Act 2003 was being passed.

j) Should there be different exceptions based on, for example, the age of the child/children concerned?

These regulations should apply to all children, as defined under the Children (Scotland) Act 1995.

k) Should any or all exceptions require the agreement of the household concerned?

Shelter's proposals allow for the family to agree to stay in B&B accommodation offered under section 29(1)(b) and 29(1)(c) of the Housing (Scotland) Act 1987. However, the regulations proposed by Shelter state clearly how this exception would work.

1. The local authority must make a reasonable offer of 'non-proscribed' accommodation to the household.
2. The household must be informed of the availability of free, independent advocacy in the area.

Guidance accompanying the regulations should state clearly that this exception is to ensure flexibility for families living in B&Bs, and is not an opportunity for local authorities to continue to use B&B accommodation. Families should not be coerced in any way to agree to stay in B&B accommodation.

Shelter proposes that regulations determining unsuitable accommodation for homeless families with children should go as follows:

The Homelessness (Temporary Accommodation) Order 2004

Citation, commencement and application

1. This Order:

(1) may be cited as the Homelessness (Temporary Accommodation) Order 2004 and shall come into force on [date] 2004

(2) applies in relation to the duty of local authorities in Scotland to make temporary accommodation available for applicants in terms of section 29 of the Housing (Scotland) Act 1987.

Interpretation

2. In this Order –

'applicant with family commitments' means an applicant –

- (a) who is pregnant;
- (b) with whom a pregnant woman resides or might reasonably be expected to reside; or
- (c) with whom dependent children reside or might reasonably be expected to reside;

'proscribed accommodation' means accommodation –

- (a) which is not separate and self-contained premises; or
- (b) in which either of the following amenities is shared by more than one household –
 - (i) a toilet;
 - (ii) personal washing facilities, or
- (c) in which cooking facilities are shared by more than one household, unless the accommodation forms part of a House in Multiple Occupation in terms of Part VIII of the Housing (Scotland) Act 1987, and the accommodation has been licensed as House in Multiple Occupation in terms of the Civic Government (Scotland) Act 1982 and the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000.

Accommodation proscribed where there is a family commitment

3. Subject to the exceptions contained in article 4, accommodation for an applicant with family commitments is not to be regarded as accommodation under section 29 of the Housing (Scotland) Act 1987 where it is proscribed accommodation.

Exceptions

4. (1) Article 3 does not apply
(a) where accommodation is provided under section 29(1)(a), and

- (b)
 - (i) the applicant occupies proscribed accommodation for a period, or a total of periods, which does not exceed seven days, or
 - (ii) the local authority has made a reasonable written offer of accommodation to the applicant, which accommodation is not proscribed accommodation, and the applicant has refused said offer.

The regulations above provide a definition of 'proscribed accommodation' on the basis of physical characteristics. Accommodation offered to families (except in those stated exceptional circumstances) should be separate and self contained, and should provide a separate toilet and personal washing facilities. The regulations are not prescriptive about what personal washing facilities should consist of, allowing for flexibility. The regulations proposed require that the household must have access to cooking facilities and these must meet HMO standards.

The regulations above provide for instances in which accommodation that is not proscribed can be used. It can be used in situations of emergency, for no longer than seven days. Accommodation that is not proscribed can also be provided with the agreement of the applicant. However, in this instance, a reasonable offer of accommodation that is not proscribed must have been made, and the household must have been informed of the availability of free independent advocacy in the area. This exception would allow for the extremely rare situation in which a family prefers to stay in a B&B rather than be moved to a form of accommodation in another area.

It is important that these regulations are accompanied by statutory guidance. As stated earlier, even if a landlord provides accommodation that meets the physical standards set out in the regulations, a child could still be at risk given the nature of B&B accommodation.

These regulations serve a number of purposes. Firstly, rather than provide a definition of B&B accommodation, as has been done in England, Shelter Scotland believes the regulations would serve a wider purpose in this format, as they would end the use of all forms of inappropriate accommodation for families.

Shelter proposes that the Homelessness Monitoring Group monitor how the regulations work in practice.

p) What is meant by 'best interests'? How might the term be defined in guidance?

The 2001 Act placed a duty on local authorities to have regard to the best interests of children when allocating accommodation under section 31 of the 1987 Act. This was intended to work alongside other similar provisions in the act. These provisions, such as meeting the 'special needs of the applicant', and provision accommodation that is 'reasonable' are all expected to protect an applicant from being placed in inappropriate accommodation.

For this reason, Shelter Scotland believes that the boundaries of each of these categories should be clearly understood by practitioners in order to ensure their effectiveness. The current problem with 'the best interests' is that practitioners are unsure how to interpret the provision, and how it is intended to work alongside, for example, the provision relating to the special needs of the applicant. Shelter believes that a short, prescriptive set of guidelines is required.

A definition of the best interests of children should relate to the support, care and educational arrangements of the child(ren) in question. Issues related to health should come under the provision of 'special needs' or 'danger to health' and issues relating to, for example, overcrowding or dampness should be dealt with by the provision relating to what is 'reasonable'.

So, for example, local authorities considering the best interests of children should take into account,

- whether the allocation of property would disrupt childcare arrangements
- whether the allocation would result in a change of schooling or nursery provision for the child, and whether this would be to the detriment of the child
- whether the allocation would disrupt nursery provision or schooling
- whether the allocation would distance the child from forms of family support, for example in cases of joint or shared care arrangements etc.

q) Are there common issues that should apply to ALL children regardless of individual circumstances such as age or health?

r) What individual circumstances should be taken into account?

The principal should apply to all children irrespective of age or health.

s) What actions should the local authority take to meet the duty?

First and foremost, the local authority must make a judgment on what the best interests of the child would be. The housing department of the local authority should have primary responsibility for carry out an inter-agency assessment, which should include obtaining information from relevant third parties such as Head Teachers, social workers, doctors etc.

The local authority, on the basis of a robust assessment, should have a clear view of what is in the child's best interests. In allocating accommodation it should have regard to these best interests. Best interests can only be overridden in circumstances

it is not possible to meet them, and the local authority can fully demonstrate why this is not possible.

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