

**2004 No. 489**

**HOUSING**

**The Homeless Persons (Unsuitable Accommodation) (Scotland)  
Order 2004**

*Made* - - - - - *10th November 2004*

*Laid before the Scottish Parliament* *10th November 2004*

*Coming into force* - - - *6th December 2004*

The Scottish Ministers, in exercise of the powers conferred by section 29(3) and (4) of the Housing (Scotland) Act 1987(a) and of all other powers enabling them in that behalf, hereby make the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 and shall come into force on 6th December 2004.

(2) In this Order—

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

“relevant local authority area” means the area of the local authority who are exercising functions under section 29 of the 1987 Act in respect of the applicant;

“voluntary organisation” means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority; and

“women’s refuge” means accommodation managed by a voluntary organisation and used wholly or principally for the temporary accommodation of persons who have left their homes as a result of—

(a) physical violence or mental abuse; or

(b) threats of violence or abuse,

from persons to whom they are or were married or with whom they are or were co-habiting.

**Unsuitable Accommodation**

2.—(1) Subject to the exceptions contained in article 3, for the purposes of section 29(1) of the 1987 Act “accommodation”, in the first place where the expression occurs, does not include accommodation which is unsuitable accommodation where an applicant is an applicant with family commitments.

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(a) 1987 c.26; section 29(3) and (4) was inserted by section 9 of the Homelessness etc. (Scotland) Act 2003 (asp 10), section 9(1)(b).

- (2) For the purposes of paragraph (1)–
- (a) “applicant with family commitments” means an applicant–
    - (i) who is pregnant;
    - (ii) with whom a pregnant woman resides or might reasonably be expected to reside; or
    - (iii) with whom dependent children reside or might reasonably be expected to reside; and
  - (b) “unsuitable accommodation” means accommodation which does not meet the descriptions specified in paragraphs (3)(a) to (c).
- (3) –
- (a) Accommodation–
    - (i) which is within the relevant local authority area;
    - (ii) in which there are adequate toilet and personal washing facilities for the exclusive use of the household;
    - (iii) in which there are adequate bedrooms for the exclusive use of the household;
    - (iv) in which the household has the use of adequate cooking facilities;
    - (v) in which the household has the use of a living room; and
    - (vi) which is usable by the household 24 hours a day;
  - (b) accommodation which has facilities and services for the purposes of health and education in the locality of the accommodation which–
    - (i) are being used, or might reasonably be expected to be used, by the applicant; and
    - (ii) are accessible from the accommodation, taking account of the distance of travel, by public transport or transport provided by a local authority; or
  - (c) accommodation which is suitable for occupation by children.

### **Exceptions**

**3.—**(1) Accommodation will not be unsuitable accommodation where it meets the description specified in article 2(3)(c) but does not meet one or both of the descriptions specified in article 2(3)(a) and (b) if any of the circumstances described in paragraph (3) apply.

(2) Where either of the circumstances described in paragraphs (3)(d) or (e) apply and no circumstances as described in paragraphs (3)(a) to (c) apply then the applicant may only occupy such accommodation for a period, or total of periods, which does not exceed 14 days.

- (3) Those circumstances are–
- (a) where a local authority has reason to believe that an applicant may be homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster;
  - (b) where a local authority makes available accommodation which meets all of the descriptions specified in article 2(3) and the applicant expresses a wish to be placed in accommodation which meets the description specified in article 2(3)(c) but does not meet one or both of the descriptions specified in article 2(3)(a) and (b);
  - (c) where the accommodation is either–
    - (i) a women’s refuge; or
    - (ii) accommodation owned by a local authority in which services are provided to a household for the purposes of health, child care or family welfare;
  - (d) where the applicant applies to a local authority for accommodation, or for assistance in obtaining accommodation, outwith normal business hours; or

- (e) where there is no other accommodation suitable for occupation by an applicant with family commitments available to a local authority.

St Andrew's House,  
Edinburgh  
10th November 2004

*MALCOLM CHISHOLM*  
A member of the Scottish Executive

## EXPLANATORY NOTE

*(This note is not part of the Order)*

Section 29(1) of the Housing (Scotland) Act 1987 places a duty upon local authorities to provide interim accommodation in specified circumstances where an applicant presents as homeless.

Section 29(3) of the Housing (Scotland) Act 1987 (as inserted by section 9 of the Homelessness etc. (Scotland) Act 2003) gives the Scottish Ministers the power to make an order describing accommodation that may not be used to fulfil this duty.

Article 2 of this Order provides that, subject to the exceptions contained in article 3, “accommodation” for the purposes of section 29(1) does not include unsuitable accommodation where an applicant is an applicant with family commitments. Unsuitable accommodation is defined at article 2(2)(b) as accommodation which does not meet the descriptions specified in paragraphs (3)(a) to (c).

Article 3 specifies exceptions to the description of unsuitable accommodation.

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