

EXECUTIVE NOTE

THE HOMELESS PERSONS (PROVISION OF NON-PERMANENT ACCOMMODATION) (SCOTLAND) REGULATIONS 2010

SSI 2010/2

The above instrument is made in exercise of the powers conferred by section 32A of the Housing (Scotland) Act 1987. The instrument is subject to negative resolution procedure.

Policy

The purpose of the instrument is to set out in regulations circumstances in which the duty of the local authority to unintentionally homeless households in priority need may be discharged by the offer of accommodation which is not permanent.

Local authorities have statutory duties to people who are homeless or threatened with homelessness. The purpose of these regulations will be to allow increased use of the private rented sector in the provision of suitable and sustainable accommodation for homeless households. The policy is consistent with broader principles of choice for homeless applicants, and enabling local authorities to meet the overall 2012 policy objective of ensuring that all unintentionally homeless have the right to their own home. These regulations will revoke and replace the Homeless Persons Interim Accommodation (Scotland) Regulations 2002.

Consultation

The following bodies have been consulted on a draft of the instrument: CoSLA, ALACHO, all 32 individual local authorities, the Scottish Federation of Housing Associations (SFHA), the Scottish Association of Landlords (SAL), Scottish Council for Single Homeless (SCSH), The Council of Mortgage Lenders (CML), the Scottish Rural and Property Business Association (SRPBA), the Chartered Institute of Housing, the Royal Institute of Chartered Surveyors (RICS), and the Association of Residential Letting Agents,. Responses to the consultation process were also received from the following third sector organisations: Shelter Scotland, Clydebank Women's Aid, West Lothian Women's Aid, Frontline Fife, Scottish Churches Housing Action, Edinburgh Cyrennians, Quarriers, Hamilton Citizens Advice Bureau, Bethany Christian Church, Glasgow Homelessness Network, The Community Housing Advocacy Project, Glasgow Rent Deposit and Support Scheme and the Scottish Social Networks Forum. In addition, there were three individual responses to the consultation process, from Robert Campbell, Susan Carson, and Hal Powson.

Financial effects

The instrument has minimal financial implications for local authorities. More detailed information is given in the attached Regulatory Impact Assessment.

Regulatory Impact Assessment

A Regulatory Impact Assessment has been produced, a copy of which is attached.

Equalities Impact Assessment

Public consultation on the draft instrument sought views on whether particular groups would be specifically affected by the forms and manner of notice proposed. Some respondents made comment on the possible unsuitability of private rented sector accommodation for families with children; however, respondents did identify the need for local authorities' services to be responsive to a full range of needs. Otherwise there were no particular equalities groups likely to be adversely affected by the proposals. Local authorities have duties under equal opportunities legislation and section 106 of the Housing (Scotland) Act 2001 requires local authorities to encourage equal opportunities and the observance of equal opportunity requirements in exercising their housing and homelessness functions.

Scottish Government
December 2009

REGULATORY IMPACT ASSESSMENT

THE HOMELESS PERSONS (PROVISION OF NON-PERMANENT ACCOMMODATION) (SCOTLAND) REGULATIONS 2010

1. Title of proposal

The Homeless Persons (Provision of Non-Permanent Accommodation) (Scotland) Regulations 2010.

2. Purpose and intended effect of proposals

2.1. Objective

The Homeless Persons (Provision of Non-Permanent Accommodation) (Scotland) Regulations 2010 will:

- Revoke and replace the Homeless Persons Interim Accommodation (Scotland) Regulations 2002, so as to clarify the circumstances in which local authorities can offer non-permanent accommodation to unintentionally homeless households in priority need in discharging their statutory duties, where a housing support services assessment has identified that a member of the household requires housing support services; and:
- Introduce a further set of circumstances which would enable local authorities to discharge their statutory duty to unintentionally homeless households in priority need by the provision of a Short Assured Tenancy (SAT).

2.2. Background

Following consultation with a range of internal and external stakeholders on the possibility of greater use of the private rented sector in allowing local authorities to discharge their duty, it is the intention of the Scottish Government to introduce new regulations under section 32A of the Housing (Scotland) Act 1987. The proposed new regulations prescribe circumstances in which accommodation which is not permanent may be provided for unintentionally homeless households in priority need.

Although the Scottish Government acknowledges the benefits of the security of tenure offered by a Scottish Secure Tenancy (SST) in the social rented housing sector, it is further acknowledged that the private rented sector has the capacity to play a more prominent role in enhancing the degree of choice of housing tenure on offer to homeless households, and can provide a greater degree of flexibility to local authorities in their efforts to achieve the Scottish Government's overall stated policy objective of abolishing the priority need test for homeless households by 2012.

A full consultation process on the detail of the Government's proposed new regulations was carried out in the summer of 2008. Subsequently, a further more focused consultation process was carried out at the request of the Minister for

Housing and Communities in order to achieve a broad shared consensus between the Scottish Government and principal organisations representing local government, private landlord organisations, and the third sector, on the minimum length of SAT that can be offered in the prescribed circumstances. This was concluded satisfactorily in September 2009. The proposed new regulations reflect the agreed position on tenancy length.

This Regulatory Impact Assessment has been prepared to assess the costs and benefits of the proposed new regulations as set out in the Homeless Persons (Provision of Non-permanent Accommodation) (Scotland) Regulations 2010.

2.3. Rationale for government intervention

The proposed regulations provide a strategic fit with two of the key elements contained within the Scottish Government's discussion document '*Firm Foundations: the future of housing in Scotland*' published in October 2007. Specifically:

- An increased supply of housing across all tenures, all of which is delivered on the basis of higher environmental and design standards; and
- More choice of housing that those on low incomes can afford.

Also, within *Firm Foundations* the Scottish Government announced that it would consult on amending the Homeless Persons Interim Accommodation (Scotland) Regulations 2002, made under section 32A of the Housing (Scotland) Act 1987.

The case for reforming the existing regulations on the use of non-permanent accommodation for unintentionally homeless households in priority need is essentially predicated on the need to allow greater use of the private rented sector in the provision of suitable and sustainable housing for homeless households. This will be achieved by allowing an increased element of choice of housing tenure available to homeless households and help to alleviate concerns of local authorities in terms of their capacity to deliver the abolition of the priority need test by 2012 as outlined in the Ministerial Statement to Parliament in December 2005.

3. Consultation

3.1. Public consultation

A draft instrument and accompanying consultation document was distributed widely and detailed responses were received from CoSLA, ALACHO, individual local authorities, the Scottish Association of Landlords (SAL), Scottish Council for Single Homeless (SCSH), The Council of Mortgage Lenders (CML), the Scottish Rural and Property Business Association (SRPBA), the Chartered Institute of Housing, the Royal Institute of Chartered Surveyors, Shelter Scotland and various other third sector organisations with a particular interest in the homelessness field.

3.2. Further consultation

At the direct request of the Minister for Housing and Communities, Shelter Scotland instigated further discussions with CoSLA, ALACHO, SRPBA, SAL, and SCSH on the issue of tenancy length contained in section 5 of the proposed regulations, which

had become a contentious issue amongst some of the consultation respondents. The compromise position reached in these discussions has informed the suggested rewording of the draft regulations as attached. The compromise is that, if the powers contained within the proposed new regulations are used, a local authority cannot discharge duty to a homeless household by offering an initial short assured tenancy for a period of 6 months; but if the landlord and applicant agree that the tenancy can be extended for a further minimum 12 month period following the initial 6 month period then the local authority has discharged its duty at this stage.

4. Options

4.1. Option 1 – Leave current 2002 Regulations in place unamended.

Under the current arrangements, the existing regulations can only be invoked in a tightly defined set of circumstances. It is widely accepted that current usage of the 2002 Regulations is limited and there are indications that the Regulations are not widely known or fully understood.

To leave the existing Regulations in place unamended would retain a limited range of options available to local authorities in making available suitable housing for homeless households when discharging their statutory duty. These existing limitations include:

- The need to ensure that all unintentionally homeless households in priority need must be offered a permanent tenancy as defined in the Housing (Scotland) Act 1987, except in circumstances defined as transitional accommodation in the 2002 Regulations. .
- A lack of flexibility in considering more appropriate options for homeless households for whom a SST may not be the desired outcome at that time.

4.2. Option 2 – Adopt the proposals for new regulations to replace the 2002 regulations – The Homeless Persons (Provision of Non-permanent Accommodation) (Scotland) Regulations 2010

Under the proposed new Regulations, local authorities will be able to consider a broader range of housing options for unintentionally homeless households in priority need. This will include access to housing in the private rented sector under a prescribed set of circumstances designed to protect the interests of landlords and prospective tenants, and lead to more focused personal housing planning for individuals and families, via the increased use of housing support assessments.

The proposed new Regulations will not affect a homeless applicant's statutory right to seek a review of any decision made by a local authority under Section 35 of the Housing (Scotland) Act 2001.

5. Costs and benefits

5.1. Sectors and groups affected

The planned legislative changes will affect local authorities, private sector landlords and their prospective tenants. There may also be an increase in homeless applicants seeking independent legal advice leading to questions on the availability of free independent legal advice in local authority areas.

Homeless households who move into accommodation in the private rented sector and subsequently claim assistance with rent will have their claims processed under the Local Housing Allowance (LHA) arrangements. This involves Housing Benefit entitlement being paid directly to tenants, and may cause some concern for landlords over the question of timeous rent payments. Local authorities will require to have clear working arrangements in place to ensure that available courses of action contained within the LHA arrangements are handled sensitively and where possible help to ensure long term sustainability of private rented sector tenancies.

5.2. Benefits

- Increased availability of sustainable and affordable housing stock to meet the demands of unintentionally homeless households in priority need in the run-up to 2012.
- An increase in the range of properties and locations in which homeless households can choose to resettle, in accordance with their specific needs.
- The success of existing Rent Deposit Guarantee Schemes (RDGS) indicates that the private rented sector can offer a viable option for homeless households. Good practice examples from RDGS can be used to positively inform the development of the private rented sector as a resource for settled accommodation for homeless households.
- Recent and ongoing work to improve standards in both the management and physical condition of housing in the private sector, through, for example, the introduction of Landlord Registration, the Repairing Standards, and the launch of Landlord Accreditation Scotland, provide greater confidence in the viability of the private rented sector as a preferred housing option for a range of tenants.
- Waiting times for re-housing for homeless households should be reduced, thus producing a welcome decrease on length of time spent by homeless households in non-secure emergency and temporary accommodation provided by local authorities in response to their duties under sections 29 and 31 of the Housing (Scotland) Act 1987 as amended.
- Increased flexibility for local authorities in terms of options for discharging their duty to homeless households.

5.3. Costs

- Applicants moving voluntarily to SAT within the private rented sector will not enjoy equal rights of tenure to those re-housed to a SST in the social rented sector.
- Applicants re-housed in the private rented sector will have their tenancies subject to rent-setting procedures more directly driven by commercial considerations. Such arrangements could cause disparity in respect to fixed Broad Market Rental Area arrangements used to calculate levels of LHA and actual rents set by private sector landlords; thus creating an affordability issue for tenants on low incomes as a result of any future rent increases. It is however hoped that the affordability test contained within the new Regulations will at least offer some security for prospective tenants in terms of rent stability at the outset of the tenancy.
- Some local authorities may see an increase in demand for the provision of free advice and assistance, which must be made available by local authorities under section 2 of the Housing (Scotland) Act 2001.
- Some consultation responses noted concerns about the ‘dilution’ of the rights of homeless households by recent legislative changes, and the ongoing commitment of the Scottish Government to provide a settled accommodation option for all unintentionally homeless households by 2012.

6. Competition assessment

There should be no competitive advantage to any particular individual or group of private sector landlords.

7. Enforcement, sanctions and monitoring

The Scottish Government and the Scottish Housing Regulator expect local authorities to adhere to relevant legislation, supporting guidance and best practice, and to consider options for re-housing homeless households with fairness and due consideration for individual household needs.

A local authority which makes an offer of a SAT to a homeless household in order to discharge its duty to the household under relevant legislation must ensure that homeless applicants are provided with an appropriate level of advice and information in order to inform their decision on ‘opt-in’ arrangements. A support needs assessment will also require to have been carried out prior to the duty being discharged in this way.

In order to comply with enforcement criteria contained within the proposed new regulations, local authorities will be required to carry out an affordability test on any SAT offered to homeless applicants. This will ensure that any risks of repeat homelessness to tenants on low incomes are effectively minimised.

There will be no additional sanctions related to this proposal. Existing procedures include a right for homeless applicants to request a review of any decision taken by a

local authority in terms of discharging their duty. Review procedures are governed by section 35 of the Housing (Scotland) Act 2001.

There will be no additional monitoring regimes required to gauge the impact of this proposal, that is, whether it is increasing the access to suitable and sustainable housing for homeless applicants. Using data from quarterly HL1 returns from local authorities, the Scottish Government already monitors numbers of offers of housing made to homeless applicants and the incidences of repeat homelessness presentations. This monitoring regime will continue and will be a key process in determining whether the anticipated increase in access to settled accommodation has been achieved as a result of the introduction of the proposed new regulations. The dialogue with key stakeholders carried out during the consultation process that has helped to inform the proposed regulations will be continued to ensure that the changes are having the desired effect.

8. Implementation and delivery plan.

The proposed new regulations are likely to have a considerable impact on local authorities' considerations when discharging duty to homeless applicants, particularly in areas where there is a significant private rented sector.

We will prepare and publish guidance for local authorities on the greater use of the private rented sector in order to ensure that the proposed new regulations can be utilised effectively and consistently across all local authority areas. To summarise we will:

- Advise local authorities of the new options available to them in terms discharging duty to allow them and publish detailed guidance in consultation with stakeholders to assist in this process; and
- Update information available to prospective tenants and housing advice and information agencies on the proposed new regulations; and

There is no immediate requirement to modify the existing HL1 data recording system; however it will prudent to include in accompanying guidance, a note to local authorities on recording outcomes arrived at via the new proposed regulations in order to best achieve consistency in data collection.

9. Post-implementation review

The reforms included in proposed new regulations will impact on local authorities, private landlords, and unintentionally homeless households seeking settled accommodation. Once the regulations are in place, those applicants moving into a SAT as their preferred option of settled accommodation will only do so after being fully appraised of their rights in respect of 'opting-in' to the process, and having had access to adequate information and advice on the advantages and disadvantages of accepting a SAT as settled accommodation.

Applicants in these circumstances will also be subject to a housing support assessment that will determine their ongoing needs, which will be key in ensuring that the best available option of settled accommodation is secured on their behalf.

It will also be incumbent on local authorities to carry out a robust affordability test on any SAT offered to ensure where possible there are no implications to applicants that discourage them from seeking employment or training opportunities. The accompanying guidance on the proposed new regulations should specifically outline how such affordability considerations should be addressed in a consistent manner.

Through ongoing dialogue with local authorities and the SHR, we will monitor the impact of the Regulations to ensure that they have achieved their purpose, which is to encourage greater use of the private rented sector in providing affordable settled accommodation for homeless households, whilst safeguarding the statutory rights of homeless applicants.

The proposed new regulations will have a minimal impact on central government expenditure, but there may be a minor financial impact on local authorities in terms of possible increase in provision of independent advice and information services available within their area, should demand for such services increase following the introduction of the proposed new regulations. This will chiefly affect local authorities' budget provision to their homelessness services. However, this may be offset over a period of time in the reduction in requirement of temporary accommodation, should the new regulations produced the desired outcomes. There may also be some financial impact in terms of any increased investment in RDGS, should local authorities see this as a particular preferred option in increasing access to the private rented sector.

In order to carry out an informed review of the impact of the new regulations, it is the intention of the Scottish Government to undertake an analysis of the greater use of the private rented sector as illustrated within the first half-yearly homelessness statistics figures which include the operation of the new regulations; and to provide a summary of the use of the new regulations as a result for general consumption. Following the first full year of the new regulations being in place, the Scottish Government will co-ordinate a more general and over-arching review of the impact of the new regulations, and disseminate practice issues which may assist in updating guidance.

10. Summary costs and benefits table

The nature of the new regulations mean that it is not possible to provide any detailed forecast on the anticipated uptake of the amended powers for local authorities contained within. Uptake is likely to vary according to regional variations of tenure types, and the availability of private rented stock within any given local authority area. The regulations will increase the options available to local authorities in discharging their duties to unintentionally homeless households in priority need and would increase the choice of housing tenures available to homeless households in obtaining settled accommodation that best meets their individual needs.

	Total benefit: Homelessness policy development, increased choice and flexibility.	Total cost: Administrative and perceived homelessness policy impact
1	If implemented, we envisage that the	Homeless applicants moving

	new regulations will positively develop homelessness policy and assist the Scottish Government in achieving its overall policy objective of abolishing the priority need test by 2012.	voluntarily into a SAT in the private rented sector will not enjoy the same security of tenure and length of tenancy as those offered a SST in the social rented sector.
2	Additionally, this will help local authorities and social landlords fulfil their statutory duty to house those on their waiting lists outwith homelessness provision and increase re-let capacity.	Additional housing information and advice services may have to be provided by local authorities in some areas if demand is increased due to advice impact on 'opting-in' arrangements.
3	The new regulations will also extend choice available to homeless applicants in respect of availability of tenure and geographical spread of settled accommodation.	Concerns about the dilution of the rights of homeless households to access secure permanent accommodation as prescribed in the current legislative framework

The Scottish Government considers that the proposals in option 2 command a broad consensus of support amongst key stakeholders, and in conjunction with planned guidance, will provide the basis for a consistency of approach by local authorities in utilising the new regulations for the benefit of homeless applicants.

Local Authorities

Currently, under the HL1 statistical return, local authorities routinely submit homelessness performance data to the Scottish Government on a quarterly basis. Performance data is also submitted to Audit Scotland and to the SHR as part of the inspection submissions. The introduction of the proposed new regulations will not involve a requirement to provide additional data. This development can be accommodated under existing HL1 reporting arrangements. However, as noted elsewhere, the accompanying guidance should provide clear directions to local authorities on recording in order to ensure a consistency of approach in data collection.

Every effort will be made to streamline the future collection of data from social landlords by the SHR, the Scottish Government and other scrutiny bodies.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed.....

Date.....

ALEX NEIL
Minister for Housing and Communities