

## **POLICY NOTE**

### **THE HOMELESS PERSONS (UNSUITABLE ACCOMMODATION) (SCOTLAND) AMENDMENT (NO. 2) ORDER 2020**

#### **SSI 2020/419**

The above instrument was made in exercise of the powers conferred by section 29(3) and (4) of the Housing (Scotland) Act 1978(1) and all other powers enabling them to do so. The instrument is subject to negative procedure.

The purpose of this Order is to make an amendment to the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014, to rectify issues identified in the drafting of the 2020/139 amendment and in order to provide clarity.

#### **Policy Objectives**

1. The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020/139 was laid on 5 May 2020 and came into immediate effect. It extended the UAO immediately from pregnant women and children to all homeless households meaning that the maximum number of days local authorities can use accommodation such as B&Bs for any homeless person is 7 days.
2. It took forward a PfG commitment where Ministers said this would come into effect this parliamentary term - by May 2021 to ensure people are provided with the highest quality accommodation to support them out of homelessness.
3. The 2014 Order definition of unsuitable was extended and redefined slightly to refer to minimum safety standards, needs to be in the locality of employment and is suitable for children to visit, where household has access to non-resident children. It corrected an anomaly where only local authority owned supported accommodation is exempt by extending the exemption to accommodation owned and operated by 3rd sector organisations.
4. A series of exemptions were created to cater for the fact that it is no longer families that are the focus of the order – shared tenancies, community hosting and rapid access accommodation – accommodation types that are focussed on single people needs and these models are supported by the Scottish Government.
5. During the preparation of supporting guidance for the Order the local authority Working Group identified drafting issues in the 2020/139 Order. Feedback from stakeholders via an informal consultation confirmed the same errors. This legislation will amend those errors and also provide more clarity on the terms used in the Order to support local authorities in their duty to provide temporary accommodation.
6. The changes in legislation will affect local authorities and all people experiencing homelessness and the amendment contributes to the following outcomes within the National Performance Framework which are fundamental to the ambition to end homelessness in Scotland:

- We respect, protect and fulfil human rights and live free from discrimination.
- We tackle poverty by sharing opportunities, wealth and power more equality.
- We live in communities that are inclusive, empowered, resilient and safe.
- We grow up loved, safe and respected so we can realise our full potential.
- We are well educated, skilled and able to contribute to society

7. This Order comes into force on 1 February 2021.

## **Background**

8. Once the 2020/139 Order was laid, a Local Authority Working Group (WG) was set up to:

- take forward preparatory work in advance of the commencement of the permanent changes to the UAO;
- establish what support can be provided to local authorities over the coming months in order to facilitate alternative accommodation options; and
- support the preparation of non-statutory draft guidance to provide clarity around the application of the Order in practice and help to set the parameters that will ensure that in extending the Order to all homeless households that no group is disadvantaged as a result.

9. As the Working Group were developing the supporting guidance for the Unsuitable Accommodation Order, members and wider stakeholders identified issues around the drafting of some of the Articles of the 2020/139 Order and the connection between definitions of suitability of accommodation and when exemptions should apply.

10. Although the draft guidance will help to outline the policy intention, the guidance will also explain how the Order should be interpreted and applied. After consideration, the Working Group felt that the legislation itself needed to be amended and as a direct response to this and other feedback received from wider stakeholders it was agreed that a further SSI should be prepared to remedy the situation.

11. The amendment includes:

- removing references to shared tenancies, community hosting and rapid access accommodation from Article 6(e), and instead places them within a new Article 7A so that Article 5 applies and the accommodation must meet the relevant suitability criteria.
- Adding wording to state that the new models of accommodation are not suitable where the household includes, a pregnant woman; a dependent child; or a person who exercises parental rights in respect of a dependent child who is not part of the household; and where the household has agreed to be placed in the accommodation.
- adding wording to ensure that the physical accessibility and suitability needs of vulnerable people are met.

12. As the coronavirus pandemic continues, the temporary exceptions of the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020/139 were extended for a further 4 months. The SSI 2020/268 was laid in September 2020 and extended the

temporary exceptions until 31 January 2021 to allow certain types of temporary accommodation to ensure that homeless households are allowed access to physical distance and self-isolate where this is required due to the continuing coronavirus pandemic.

13. In addition this order added a modification of the temporary exceptions to permit local authorities to place households in accommodation that would otherwise be deemed as unsuitable where there was a lack of availability of suitable temporary accommodation or settled accommodation, as a result of the indirect impacts of Covid-19 on accommodation supply in the area.

14. As 2020/268 is due to expire on 31 January 2021 it makes sense for this proposed legislation to come into force from 1 February 2021.

### **Consultation**

15. The local authority working group has been overseeing the development of guidance to support the implementation of the original 2020/139 Order and identified that changes to the Order were needed. In addition the Working Group liaised with a wider group of homelessness stakeholders and an informal consultation was also undertaken on the draft guidance and SSI. The resulting feedback has been incorporated to make the appropriate amendments to the Order and the Working Group has been consulted and agreed these changes.

16. Non-statutory guidance has been produced to support this legislation.

### **Impact Assessments**

17. An EQIA, CRWIA and a Fairer Scotland impact assessment have been completed for this policy and to support the draft SSI.

### **Financial Effects**

18. A full Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of the policy is that the benefits justify the costs.

Scottish Government, Directorate  
December 2020