



Department for  
Communities and  
Local Government

# Homelessness (Suitability of Accommodation) (England) Order 2012 - Government's Response to Consultation

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## Background

Where an applicant is homeless through no fault of their own, eligible for assistance and is in priority need, local housing authorities have a duty to secure that accommodation is available for occupation by the applicant. This is known as the main homelessness duty. The Localism Act 2011 amends the Housing Act 1996 (the 1996 Act) to enable local authorities to end the main homelessness duty by arranging an offer of suitable accommodation in the private rented sector, without requiring the applicant's agreement.

The 1996 Act will now include protections to ensure that the accommodation in the private sector will be available for a sufficient period of time to provide certainty for households. The assured shorthold tenancy must be for a minimum fixed term of 12 months and if the applicant becomes unintentionally homeless again within two years of accepting the private rented sector offer, the main homelessness duty will recur - regardless of priority need.

The current homelessness legislation already includes safeguards regarding the accommodation used to end the main homelessness duty and these would apply in cases where the local authority decides to bring the duty to an end with a private sector offer. The accommodation offered would need to be suitable for everyone in the applicant's household. In considering 'suitability' local authorities must consider, for example, whether the accommodation is affordable for the applicant, its size, its condition, its accessibility and also its location. Applicants have the right to ask the authority to review their decision that accommodation is suitable, and if dissatisfied with that decision have the right to appeal to the county court on a point of law.

To consolidate and strengthen these protections, we are bringing forward secondary legislation to ensure that the suitability and location of accommodation are properly considered by Local Authorities when ending the main homelessness duty. The consultation was divided into two parts - the first part considering suitability of accommodation in the private rented sector in relation to physical condition and management standards, the second part on suitability in relation to location.

The consultation ran from the 31 May to 26 July 2012 during which time we received 808 consultation responses.

## **Summary of consultation responses**

Of the 808 consultation responses received, 648 were received as part of a Shelter campaign and were supportive of the proposed changes to the location aspect of the Order. They did not discuss the first part of the Order, that dealing with private rented accommodation condition and management standards.

The other 160 responses generally touched on both aspects of the consultation. After members of the general public (who tended to touch on the location aspect of the consultation only) local authorities made up the largest group responding to the consultation.

Responses were received from:

- local authorities (114)
- lawyers (4)
- landlord organisations (3)
- homelessness organisations (11)
- housing providers and their representatives (13)
- others including non-housing charities and professional bodies(15)

## **General points raised by consultees**

In discussing the draft Order consultees generally recognised the inherent difficulties in making legislation which sufficiently protects homeless households and, at the same time, does not place unnecessary burdens on local authorities - effectively preventing them from using the new powers and helping homeless households access settled accommodation more quickly.

Many consultees also commented on the need for authorities to work with tenants and landlords, building strong and communicative relationships so that both parties understand their responsibilities and problems can be addressed before they escalate.

Replies from lawyers formed a small part of the consultation response but were none the less very helpful, especially in identifying technical drafting issues and highlighting certain areas that we will address in statutory guidance.

## **Part One - Suitability of accommodation used for the purposes of a private rented sector offer to end the main homelessness duty**

To allow a more balanced statistical analysis, the 648 replies prompted by the Shelter campaign will not feature in the numerical analysis of Part One as they focus solely on the location aspect of the proposed Order.

## Answers to the consultation questions

**Question 1:** Do you agree that these five areas (Physical condition of the property, Health and safety matters (e.g. gas, electrical and fire safety), Licensing for Houses in Multiple Occupation, Landlord behaviour; and Elements of good management) should be important in determining whether accommodation is to be regarded as not suitable?

In total 160 replies were received that touched on part one of the consultation and answered questions 1 to 3 (although not always all three).

88% (140) of the replies agreed that the five areas suggested are important in determining whether accommodation is to be regarded as not suitable, with only 4% disagreeing and 8% expressing no strong opinion/not answering.

Of the 114 local authorities who replied almost all (93%) agreed that the five areas should be important in determining whether accommodation is to be regarded as not suitable with only 3% disagreeing and 4% expressing no opinion.

In total 13 housing organisations (registered providers, their representative organisations, tenant organisations and housing service providers) replied to the consultation and 77% felt that the five areas were the right ones, with 15% disagreeing and 8% making no comment or not expressing a strong opinion.

The eleven homelessness charities who replied all agreed that these were the five areas that were important in determining whether accommodation is to be regarded as not suitable. Although a number felt that certain aspects of the Order should go further and that additional elements be included. These are discussed later in this document.

In general responses from lawyers agreed with five aspects that should make up suitability and that the requirements set out in the draft statutory instrument were the right ones.

**Question 2:** Do you agree with the proposed requirements [of the Suitability Order] as set out in detail [in the consultation document]? Please give details and reasons.

Answers to this question received similar levels of support with 86% of those who answered agreeing the requirements of the Order were the correct ones. In agreeing, however, a number of replies highlighted areas where they felt improvements and changes could be made and these will be discussed in more detail later on. 6% disagreed that the requirements were the right ones and 8% either expressed no strong opinion or did not answer this question.

If we look at how different groups of consultees responded to these questions the pattern of agreement is generally consistent.

87% of local authorities were broadly in agreement with the requirements set out in the proposed Suitability Order; however, a number of the authorities who agreed also felt aspects of the order could be improved. 7% disagreed with the Order's content and 4% made no comment.

**Question 3:** Are there any additional elements that should form part of the Order or any other comments you wish to make?

The consultees highlighted a number of additional elements they felt should form part of the proposed Order. A number of these were already covered in existing legislation and/or guidance. This perhaps suggested that the consultation document did not always explain these existing elements well enough and that additional reference should be made to it in the statutory guidance that will accompany the proposed Order. This will help make sure people understand what the existing suitability requirements cover and that they continue to apply.

Of the most frequently mentioned elements which were not already covered, or those that consultees felt should be strengthened, five stood out. These were ensuring accommodation was free from category 1 hazards, changes to affordability regulations, electrical installation checks, introducing landlord accreditation schemes and preventing letting agents from assessing whether a property is not in a reasonable physical condition.

25% of those replying to this question felt the requirement of 'reasonable physical condition' should be strengthened. They felt that as a minimum the property should be free of any category 1 hazards and many felt a full Household Health and Safety Rating System assessment should be carried out. Concerns were raised that an inadequately trained local authority representative may not spot serious hazards leading to the inadvertent letting of unsuitable properties. 6% of replies stated that letting agents should not be allowed to assess whether the property was in good physical condition. They felt that in some cases letting agents would face a conflict of interest and therefore not make objective judgements.

12% of the replies highlighted the issue of affordability. Whilst many understood that regulations around affordability have existed since 1997<sup>1</sup>, they felt that these should be updated to reflect changes made by welfare reforms. A number of local authorities said that they were experiencing increasing difficulties in sourcing private rented accommodation as a result of these changes and that balancing the suitability of the location of accommodation and its affordability were difficult in areas of high housing pressure.

10% called for electrical installation checks in addition to the requirements set out in the Order. 6% of replies called for the introduction of a national landlord accreditation scheme.

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/1996/3204/contents/made>

## Part Two – Suitability of location of accommodation

The second part of the consultation dealing with location generated a larger response. A significant proportion of the 808 replies focused only on location, including the 648 responses prompted by Shelter's campaign.

**Question 4:** Do you agree that the existing provisions on location and suitability should be strengthened so that homeless households are placed nearer to home wherever possible?

Overall 93% of people responding agreed the existing provisions on location needed to be strengthened. 5% felt that they should not, and the rest either did not answer the question or did not express a clear opinion.

Of the local authorities who replied 57% were in favour of strengthening the existing provisions whilst 33% felt they should not be changed and the remaining 10% either did not answer or did not express a clear opinion.

Those disagreeing tended to do so because they felt any strengthening of the provisions could make it more difficult to use the new section 193(7F) power once it is commenced.

82% homelessness organisation and 92% of housing organisations agreed the provisions should be strengthened with the rest did not express a strong opinion either way.

Few replies touched on the alternative approaches set out in the consultation but where they did they overwhelmingly asserted that the Government's suggested approach was preferable and less onerous on local authorities.

**Question 5:** Do you agree that regulations should specify the factors in relation to location which authorities should take into account when considering the suitability of accommodation?

93% agreed that regulations were needed to specify the factors in relation to location which authorities should take into account when considering suitability of accommodation. 4% disagreed and the rest did not express a strong opinion either way.

62% of local authorities agreed that, should regulations exist, Government should specify these factors, with 31 % disagreeing and 7% not expressing a strong opinion.

Homelessness organisations were more in favour of this approach with 82% agreeing and the remaining 18% not expressing a strong opinion. 92% of housing organisations agreed and the remaining 8% did not express a strong opinion.



**Question 6:** Do you agree that those factors listed above are the ones local authorities should take into account when considering location?

Overall 94% agreed that the factors set out in the consultation document were the ones local authorities should take into account. 3% disagreed and the rest expressed no strong opinion either way/did not answer.

70% of local authorities felt these were the correct factors to take into account should regulation on location exist, with 23% disagreeing. Of those that disagreed, a number felt that taking these factors into account would restrict the pool of private rented accommodation they could make use of. Homelessness organisations were fully supportive of the factors and 92% of housing organisations agreed they were the right ones.

## Government's response

Government welcomed the helpful and informative consultation replies and thanks individuals and organisations for taking the time to consider the proposals.

The Localism Act will give local authorities the power to end the main homelessness duty with offers of accommodation in the private rented sector, without requiring the agreement of the person owed the duty. The proposed regulation, which will sit alongside the new power, will help prevent the use of poor quality or inappropriate accommodation. It will also help ensure that local authorities take a number of matters into account when considering placing households in a location away from that of their previous home.

**The power to end the main homelessness duty with offers of accommodation in the private rented sector is not a requirement – local authorities will still be able to end the homelessness duty with an offer of social housing where they decide this is appropriate. Some may choose not to exercise their new power at all.**

Given the overwhelmingly positive support from respondents on the physical condition and management elements of the Order we have not made any substantive changes to this element.

While responses on the location element of the Order were more mixed they were also largely positive and we have taken a decision to include the suitability of location element in the Order. We have carefully considered responses in drafting these regulations and feel the Order now before Parliament strikes the right balance between the protecting the individual and allowing local authorities the freedoms they need to effectively use the Localism Act power and better manage their housing stock.

We feel, however, that many of the wider issues raised in responses were pertinent and we will use the statutory guidance accompanying the Order to address these where appropriate.

For example, the Government believes that it is more appropriate for local authorities to make a decision on whether or not to set up a landlord accreditation scheme than to impose a one size fits all requirement. Indeed, local authorities will be able to set their own additional standards. They can, if they wish, include different elements of electrical safety in such a scheme or carry out property inspections as standard.

We will also use the guidance to remind local authorities of their existing duties and responsibilities in securing housing for homeless households.

## **Response to most commonly raised concerns**

### Category 1 Hazards

The Secretary of State recommends that any accommodation secured under the homelessness legislation should be free of Category 1 hazards. Determining the presence of this type of hazard will not always require a full Household Health and Safety Ratings System inspection carried out by an environmental health officer – as was helpfully pointed out in a number of the replies. Local authorities must be satisfied that the person carrying out any assessment will correctly determine the accommodation is suitable as the local authority will be responsible for the additional costs incurred through additional staff time (reviews, securing different accommodation or taking enforcement action) and further disruption faced by the household if unsuitable accommodation is secured.

Therefore we do not intend to require through the Order that the properties be free of category 1 hazards, as section 3 of the Housing Act 2004 already places an obligation on a local housing authority to keep the housing conditions in their area under review, with a view to identifying any action that may need to be taken by them under the relevant legislation. Section 4 of the 2004 Act provides that an authority must, where appropriate, arrange for an inspection of residential premises in its district with a view to determining whether any category 1 or 2 hazard exists on those premises.

### Affordability

A number of respondents raised the issue of the affordability of accommodation in which households may be placed. The draft Order makes no change to the current provisions on affordability, which are detailed in the Homelessness (Suitability of Accommodation) Order 1996 and in the statutory Homelessness Code of Guidance for local authorities. This framework provides that a Local Authority must consider whether accommodation is affordable for a household.

For some households dependent on state benefits, the Government's measures to restore fairness to the welfare system will mean that not all neighbourhoods are affordable. In these cases Local Authorities are required

to consider the individual circumstances of the household to identify suitable accommodation for them.

#### Existing provision on location goes far enough

A number of local authorities felt the current provisions on location did not need to be strengthened - given the existing legislation on out of borough placements in section 208(1) of the Housing Act 1996, which requires authorities to place homelessness households in their own district where possible. However, Government has made it clear that it is neither acceptable nor fair for local authorities to place households many miles away from their previous home where it is avoidable. Given the vulnerability of this group it is essential that local authorities take into account the potential disruption such a move could have on the household. This Order will strengthen existing legislation in that it states the specific matters local authorities must take into account when considering the suitability of accommodation. This Order does not prevent or prohibit out of borough placements where they are unavoidable nor where they are the choice of the applicant. Some households will wish to leave their current district as such a move can have a positive effect for those escaping violence or those seeking to move to take advantage of employment opportunities.

## **Next Steps**

The Order comes into force **on 9<sup>th</sup> November**, alongside the commencement of the Localism Act sections 148 and 149.

If local authorities would like advice or support on arranging their housing options in light of these changes we would recommend they contact their relevant specialist homelessness adviser.