

REPORT TO: HOUSING, DUNDEE CONTRACT SERVICES AND
ENVIRONMENT SERVICES COMMITTEE
25 AUGUST, 2008

REPORT ON: REGULATIONS MADE UNDER SECTION 32A OF THE
HOUSING (SCOTLAND) ACT 1987

REPORT BY: DIRECTOR OF HOUSING

REPORT NO.: 381-2008

1. **PURPOSE OF REPORT**

- 1.1. To provide information and seek approval to submit the attached response to the Consultation on Regulations made under section 32A of the Housing (Scotland) Act 1987.

2. **RECOMMENDATIONS**

It is recommended that Committee:

- 2.1. Approve submission of the attached local response At Section 4 of the Regulations made under Section 32A of the Housing (Scotland) Act 1987, consultation paper.
- 2.2. Remit the Director of Housing to submit the response to the Scottish Government within the stipulated timescale.

3. **FINANCIAL IMPLICATIONS**

- 3.1. None.

4. **MAIN TEXT**

Background

- 4.1. A consultation document was issued by the Scottish Government in June 2008. This paper seeks views on specific questions or more general views regarding the proposed new Regulations made under Section 32A of the Housing (Scotland) Act 1987 and guidance required to support these.
- 4.2. Presently, Section 31(2) of the Housing (Scotland) Act 1987 (as amended) requires that households assessed as unintentionally homeless and having a priority need for accommodation be offered permanent accommodation. This is defined in the legislation as accommodation which is:
- secured by a Scottish Secure Tenancy.
 - secured by an Assured Tenancy that is not a Short Assured Tenancy;
- or

- secured by a Short Scottish Secure Tenancy (only where there is a history of anti-social behaviour).

- 4.3. Section 32A of the Housing (Scotland) Act 1987, as inserted by Section 3 of the Housing (Scotland) Act 2001, gives Scottish Ministers the power to prescribe circumstances in which 'permanent' accommodation need not be provided to unintentionally homeless households assessed as having a priority need.
- 4.4. To enable the private rented sector to play a greater role in meeting local housing need, the Government is consulting on amending the Homeless Person Interim Accommodation (Scotland) Regulations 2002, made under Section 32A of the Housing (Scotland) Act 1987.
- 4.5. These new Regulations would allow for greater flexibility where both the local authority and the applicant agree that a tenancy in the Private Sector is suitable. Local authorities will also be able to discharge their duty through the provision of a minimum 12 months Short Assured Tenancy.

Timescales

- 4.6. The deadline for responses to this consultation document is **19 September 2008**. All responses are due to be sent by e-mail on or before this date.
- 4.7. Following the closing date, all responses will be analysed and considered along with any other available evidence to inform the new Regulations.
- 4.8. The Scottish Government aim to issue a report on this consultation process and lay the Regulations in the autumn.

5. **POLICY IMPLICATIONS**

- 5.1. This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management.
- 5.2. Equality impact assessment will be the responsibility of the Scottish Government for any secondary legislation arising from this Consultation paper.

6. **CONSULTATION**

- 6.1. The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Head of Finance and all other Chief Officers have been consulted on this report.
- 6.2. Comments have been sought from all relevant departments and these have been incorporated into this report.

7. **BACKGROUND PAPERS**

- 7.1. Consultation on Regulations made under Section 32A of the Housing (Scotland) Act 1987, the Scottish Government, Housing and Regeneration Directorate, Housing Access and Support Division, June 2008.

**CONSULTATION ON REGULATIONS MADE UNDER SECTION 32A OF THE HOUSING
(SCOTLAND) ACT 1987**

Housing and
Regeneration
Directorate
Housing
Access and
Support
Division

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June 2008

SECTION 1 – PURPOSE OF CONSULTATION

What is this consultation about?

This consultation seeks views on proposed new Regulations made under section 32A of the Housing (Scotland) Act 1987 and guidance required to support these. Issues upon which we invite comments are set out throughout the paper and consultation response form is at Section 4.

Section 32A of the Housing (Scotland) Act 1987 enables Scottish Ministers to define circumstances in which accommodation which is not permanent may be provided for unintentionally homeless households in priority need. The purpose of the proposed changes is to:

- Clarify the purpose of the circumstances currently in statute; and
- Introduce a further set of circumstances which would enable local authorities to discharge their duty to unintentionally homeless persons in priority need through provision of a Short Assured Tenancy (SAT).

Who should respond?

This consultation paper will be of interest to those with responsibility for strategic planning, delivery of and input to homelessness services in each local authority, and local partners working with them. Organisations with an interest in prevention of and tackling homelessness and providing support to homeless households will also have an interest.

Organisations concerned with the private rented housing sector will have an interest in the proposals discussed at paragraph 16 onwards which relate to making greater use of the private rented sector to provide accommodation for homeless households.

Participating in this consultation

We are inviting responses to this consultation by 19 September 2008. Please send your response to:

homelessness@scotland.gsi.gov.uk or

Housing Access and Support Division
Area 1-H (South)
Victoria Quay
EDINBURGH
EH6 6QQ

We would be grateful if you would use the form at Section 4 or clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received. If you are replying electronically it would be helpful if the email header could read 'Regulations under section 32 – consultation response' and also include your name or that of your organisation if you are replying on behalf of an organisation.

This consultation paper has been distributed to a wide range of stakeholders; a list of those invited to respond is available on request. In addition, we will be organising

meetings with landlord organisations, local authorities, groups representing tenants and other interested parties to discuss the proposals in this document. If you wish to receive information about these meetings please contact Carole Barker-Munro at the address above or by email: carole.barker-munro@scotland.gsi.gov.uk.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultations (SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SE consult complements, but in no way replaces, Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore to be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** at Annex D of this paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential and treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library by 17 October and on the Scottish Government web pages by 24 October. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library and placing them on the website. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to inform the new Regulations. We aim to issue a report on this consultation process and lay the Regulations in the autumn.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Anna Donald
Housing Access & Support Division
1-H (South), Victoria Quay
EDINBURGH, EH6 6QQ

SECTION 2 - BACKGROUND

1. The Scottish Government published the discussion document *'Firm Foundations: The future of housing in Scotland'* in October last year. This set out a vision for the future of housing in Scotland, consisting of four key elements:

- An increased supply of housing across all tenures, all of which is delivered on the basis of higher environmental and design standards.
- More choice of housing that those on lower incomes can afford.
- Housing developments that contribute to the creation of sustainable mixed communities.
- Social housing that provides better value for public expenditure.

2. To help realise this vision, the Government wishes to see the private rented sector (PRS) play a greater role in meeting local housing need. Within *Firm Foundations* the Scottish Government announced that they would consult on amending the Homeless Person Interim Accommodation (Scotland) Regulations 2002,¹ made under section 32A of the Housing (Scotland) Act 1987, to allow local authorities **more flexibility in discharging their homelessness duties, with a view to enabling wider use of the private rented sector where this will meet the needs of homeless households.**

3. A review of the private rented sector was also announced and is currently underway. This is looking in particular at the role of the sector in helping to house low income individuals and families and those who present as homeless.

4. This paper fulfils the commitment to consult on amendments to the 2002 Regulations. This consultation is informed by an internal review process carried out by Scottish Government officials in the last few months and by responses received on the proposals contained in *Firm Foundations*². Broadly, respondents were supportive of plans to make greater use of the private rented sector for homeless households although concerns were raised about security of tenure, housing benefit implications and meeting the support needs of this group. The consultation is also informed by the reports of the Homelessness Monitoring Group³ and the 2012 Homelessness Support Project⁴, published in March this year.

Legislative Context

5. Generally, Scottish homelessness legislation requires that households assessed as unintentionally homeless and having a priority need for accommodation be offered permanent accommodation⁵. This is defined in the legislation as accommodation which is a) secured by a Scottish Secure Tenancy; b) secured by an assured tenancy that is not a short assured tenancy; or c) secured by a short Scottish Secure Tenancy (only where there is a history of anti-social behaviour).⁶

¹ Hereinafter referred to as the 2002 Regulations.

² Firm Foundations: The Future of Housing in Scotland – An Analysis of Responses. Scottish Government Social Research, 2008. <http://www.scotland.gov.uk/Publications/2008/04/02094036/0>

³ Helping Homeless People: Homelessness Monitoring Group Report – March 2008. Scottish Government. <http://www.scotland.gov.uk/Publications/2008/03/27142559/0>

⁴ Towards 2012: Homelessness Support Project. Scottish Government, 2008. <http://www.scotland.gov.uk/Publications/2008/03/27152416/0>

⁵ Section 31(2) of Housing (Scotland) Act 1987 (as amended).

⁶ Section 31(5) of Housing (Scotland) Act 1987 (as amended).

6. However, section 32A of the Housing (Scotland) Act 1987, as inserted by section 3 of the Housing (Scotland) Act 2001, gives Scottish Ministers the power to prescribe circumstances in which 'permanent' accommodation need not be provided to unintentionally homeless households assessed as having a priority need.

7. The 2002 Regulations contain the circumstances as currently prescribed. These are set out at Annex A. As currently construed, the Regulations can only be invoked in a tightly defined set of circumstances. The internal review process found that current usage was limited and the Regulations not widely known or understood. It is thought that the policy intention behind the Regulations remains valid and that greater use could be encouraged through development of guidance and raising of awareness. Accordingly, this paper presents proposals to revise the language used in the 2002 Regulations to clarify the policy intention and the anticipated outcomes for homeless households, and to develop practice guidance.

SECTION 3 - PROPOSALS

8. The purpose of this consultation is to invite comment on:

- Proposed changes to the current circumstances set out in the 2002 Regulations under section 32A. These suggested changes are intended to clarify the purpose of this set of circumstances;
- The introduction of a further set of circumstances enabling local authorities to invoke the Regulations in order to discharge their duty by offering a short assured tenancy;
- Guidance required to support these changes; and
- The name of the proposed new Regulations and the language used within them.

9. The proposed outcome would be to have a new set of Regulations under section 32A which allow for non-permanent accommodation to be provided in two different sets of circumstances:

- To allow for the **provision of transitional accommodation where a housing support assessment has concluded that permanent accommodation would not be sustainable at the current time**. In these circumstances, the expectation is that the local authority will keep the case under review and provide permanent accommodation in the future should that become sustainable for the applicant following the provision of support. The transitional accommodation could be provided by means of an occupancy agreement, a Short Assured Tenancy or an SSST.
- To allow for the local authority to **discharge its duty to a homeless household by ensuring provision of a short assured tenancy in the private rented sector** where this was appropriate. It is presumed that local authorities will use these circumstances to increase the housing supply options available in their area, helping them to find sustainable solutions for homeless people and work towards delivery of the target that all unintentionally homeless people are entitled to settled accommodation by 2012.

10. Draft new Regulations are provided at Annex B; the 2002 Regulations would be revoked.

Changes to the current circumstances (Regulation 4)

11. The proposed amendments to the current circumstances are as set out in draft Regulation 4 at Annex B. The amendments do not involve substantive change to the circumstances currently in force; their purpose is to revise the language used to clarify that local authorities may provide non-permanent accommodation, together with support, in certain circumstances. These circumstances are that an applicant has housing support needs which mean that they would be unlikely to be able to sustain a tenancy at the current time; as such, permanent accommodation would not be appropriate.

12. Regulation 4b refers to the accommodation to be provided in such circumstances to be 'transitional'. This accommodation may be quite specialist in nature and have support or other services available on-site or otherwise linked to the property; alternatively, the accommodation itself may be from general stock but the applicant is receiving specific support services to develop the skills needed to manage a permanent tenancy. The 2002

Regulations refer to this type of accommodation as 'interim'; this phrase is not used in the new draft Regulations as the review process indicated the term was not well understood and was often confused with 'temporary accommodation'. The term 'transitional' supports the purpose of Regulation 4 which is to give local authorities powers to respond to the needs of applicants who would currently be unable to sustain permanent accommodation, recognising that, with time and appropriate support, they may be able to develop the skills to sustain their own tenancy.

13. In common with the 2002 Regulations, Regulation 4 requires that local authorities provide a package of support together with the transitional accommodation. These items are largely unchanged with two exceptions:

- Regulation 4(b)(v) contains a specific requirement for the local authority to give an undertaking to the applicant to provide permanent accommodation when a housing support assessment identifies this would be appropriate. This undertaking was not explicit in the 2002 Regulations.
- References to an end date for the accommodation and support package contained in the 2002 Regulation have not been replicated in the new draft; instead, Regulation 4(b)(iv) states that a review date must be set for a further support assessment to be carried out to assess progress. The purpose of this change is to reinforce the intention that the applicant will move on from the accommodation having gained the skills to maintain their own tenancy and the local authority has a duty to provide permanent accommodation at the appropriate time.

14. An example of a case where a local authority may wish to invoke Regulation 4 is provided below:

A local authority receives a homelessness application from a young man aged 17. He has left the family home following the breakdown of his parents' relationship and has never lived independently. The local authority find him to be unintentionally homeless and in priority need due to his age. A single shared assessment is conducted which finds that he has no independent living skills, no experience in managing budgets or personal financial matters and little awareness of the responsibilities of managing a property. As such, he is unlikely to be able to sustain a permanent tenancy at the present time and requires support to develop independent living skills. In the longer term, the assessment judges that, with the appropriate skills, he will be in a position to maintain his own tenancy. The local authority decides to invoke Regulation 4 to provide transitional accommodation and support to the applicant.

15. Views on the proposed revisions to the circumstances currently set out in the 2002 Regulations are invited. Current use of the 2002 Regulations is limited and it is thought this may be in part due to lack of clarity regarding their purpose and of guidance on their use. Limited guidance is contained in the Scottish Government's Code of Guidance on Homelessness but more detailed coverage is proposed to raise awareness and promote use. Views are sought on development and content of practice guidance on Regulation 4.

Changes to allow local authorities to discharge their duty through a short assured tenancy in the private rented sector (Regulation 5)

16. There are a number of reasons for attempting to facilitate greater use of the private rented sector:

- Analysis of responses to the discussion document *Firm Foundations* revealed broad – but conditional - support for proposals to make greater use of the private rented sector to meet local housing need. This consultation paper discusses in detail the conditions which should be attached to greater use of the sector for homeless households.
- Opening up wider possibilities to use the private rented sector will ensure that homeless households have a greater range of choice of properties and locations in which to resettle. In particular, in some areas it will mean that homeless people can access properties nearer to employment opportunities or social networks than would be possible in the social sector.
- Local authorities already have the ability to discharge their duty to homeless households in the private rented sector through an assured tenancy. However, they find it difficult to achieve this outcome as assured tenancies are very rarely offered and do not appear to be seen as a realistic option by private landlords. Short Assured Tenancies are most common in the PRS and we are therefore proposing that we work with landlords to discharge duty through this route, with certain conditions attached, as set out below.
- Achieving the 2012 target will mean treating all homeless people equally and providing greater entitlements to those households currently assessed as ‘non-priority’ under the legislation. For most authorities this will mean providing more settled solutions for greater numbers of single men, a significant proportion of whom will be young. This ties in with greater use of the private rented sector which contains a mix of property sizes and is particularly popular with younger people.
- Existing schemes such as rent deposit guarantee schemes, lead tenancies and the Cyrenians Flatmates scheme demonstrate that the private rented sector can be a viable option for homeless households. Information on rates of tenancy sustainment where rent deposit guarantee schemes have been used to place homeless households in the private rented sector has not been collected by schemes in a systematic way but a pilot scheme in Highland reported 89% of tenancies created were sustained for over 3 years⁷.
- Local authorities have consistently sought greater flexibility in using the private rented sector to meet the needs of homeless households⁸. This is seen as an important tool in working towards meeting the 2012 target and allowing social housing to be let to a wider range of households in housing need.
- Recent and ongoing work to improve standards in both the management and physical condition of housing in the private rented sector, through, for example, the introduction of Landlord Registration, the Repairing Standard and the launch of Landlord Accreditation Scotland - mean it is a viable option for a range of tenants.

⁷ *Deposit Guarantee Schemes in Scotland: A sustainable housing option 2008*. Crisis, 2008.

⁸ *Towards 2012: Homelessness Support Project*; Scottish Government, 2008. *Homelessness Monitoring Group Report 2008*; Scottish Government 2008. This request is also being made via the draft Single Outcome Agreements currently being discussed between individual local authorities and the Scottish Government.

17. The proposed new set of circumstances is as set out at Regulation 5 at Annex B. These allow for 'non-permanent' accommodation to be provided where:

A short assured tenancy with a minimum 12 month tenancy period is available to the applicant

18. We are proposing that landlords work with local authorities to provide tenancy agreements for applicants which allow for a minimum tenancy period of 12 months. This is to provide greater security of tenure than the usual minimum period for a SAT which is 6 months. Short Assured Tenancies are provided for by the Housing (Scotland) Act 1988. Our proposal to extend the minimum period of the tenancy does not alter any of those provisions, and, following the expiry of the minimum period, the tenancy would be available for renewal by the landlord and the tenant as normal and according to the provisions of the Housing (Scotland) Act 1988.

The tenancy is affordable for the household

19. Local authorities already have a responsibility when discharging their duties to homeless households to consider whether tenancies offered are affordable for the individual applicant household. This responsibility would apply to discharge of duty using a SAT and encourage authorities to consider carefully the suitability of this option generally, and a particular tenancy specifically, for an applicant. In addition, the requirement that affordability be considered when invoking Regulation 5 will help ensure that – as far as possible – the risks of work disincentives or rent arrears are mitigated.

20. Not all homeless households will be in receipt of housing benefit; however, it is expected that local authorities and landlords will need to work together to consider the implications of Local Housing Allowance, which replaced housing benefit in the private rented sector from April this year. Such considerations may include affordability, in terms of the market rent the landlord would normally charge compared to the Local Housing Allowance for the area, the time taken to administer Local Housing Allowance by the local authority and whether direct payment of benefit to the tenant is appropriate for the applicant.

21. It is proposed that the guidance accompanying Regulation 5 discuss the issues local authorities might wish to consider in reaching a view on whether the tenancy is likely to be affordable. These include employability and the risk of rent arrears. Views are invited on the guidance practitioners would find helpful in assessing tenancy affordability.

A housing support services assessment has been carried out and concluded that a) there are no tenancy support needs; or b) any tenancy support needs identified can be met within the accommodation provided under the tenancy and a package of support is in place to meet those needs

The support to meet the support needs of the household is available

22. These clauses are intended to ensure that the applicant's support needs are identified and met to mitigate the risk of tenancy failure and repeat homelessness. They are also intended to provide reassurance to landlords that the applicant is receiving any help required to enable them to be a responsible tenant. It is intended that the accompanying guidance discuss the types of tenancy support which could be considered, for example, money advice, help with budgeting, independent living skills and how the support is provided.

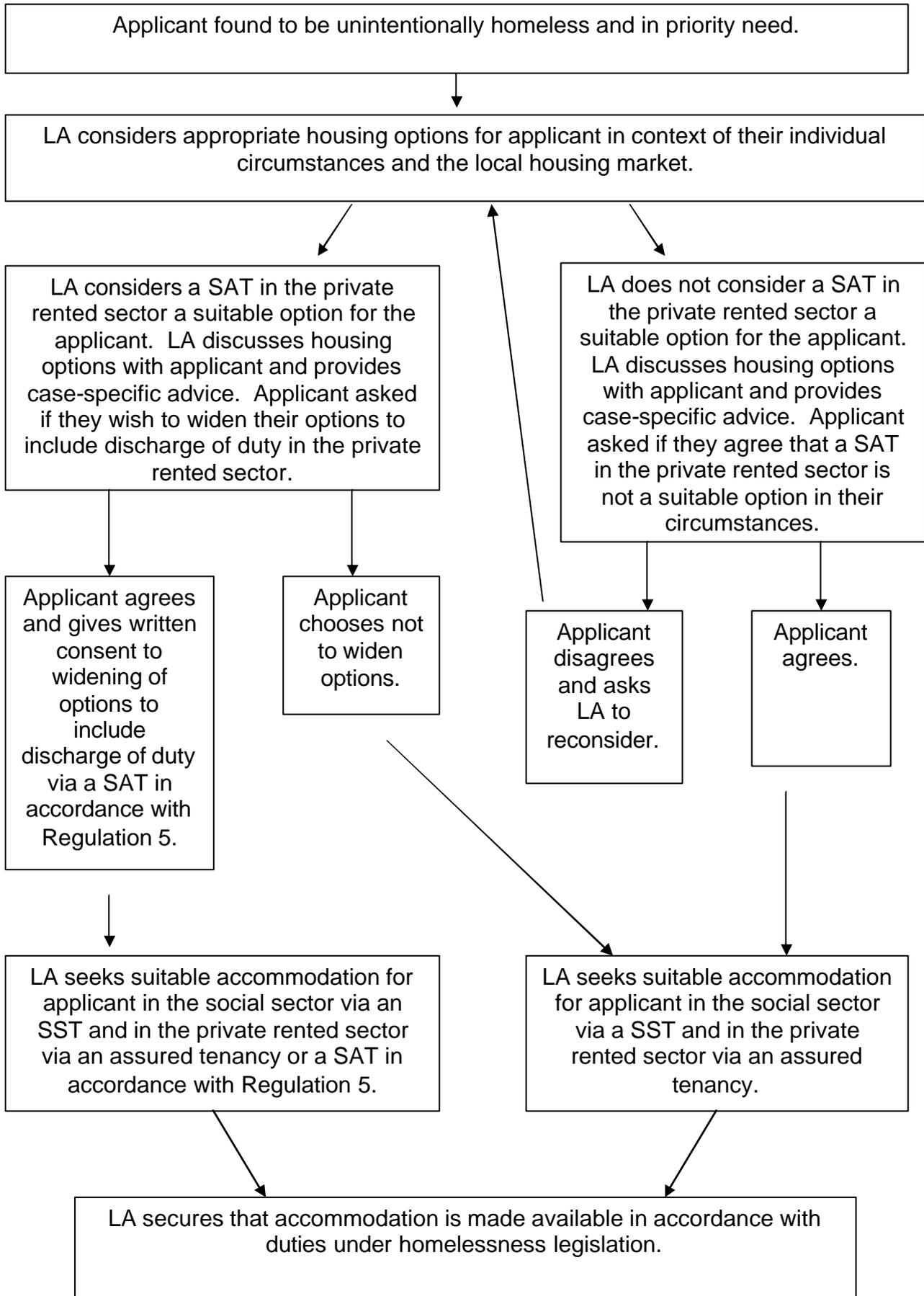
23. The clause emphasises that discharge of duty via a SAT will only be an appropriate and sustainable outcome in certain cases and authorities should consider the individual circumstances of applicants to determine the most appropriate housing solution.

The applicant has consented in writing that: (a) they have received housing advice from the local authority and been signposted/had access to further sources of independent housing advice; (b) they understand that accepting a short assured tenancy offered under this regulation equates to discharge of the local authority's duty under homelessness legislation; and (c) they consent to discharge of duty through invoking this Regulation

24. The aim of this clause is to ensure that the applicant makes an informed decision about whether they wish an outcome in the private rented sector via a SAT to be considered by the local authority. It is suggested that a sample form be developed for inclusion in guidance accompanying the revised Regulations.

25. It is intended that applicants would 'opt in' to the widening of their housing options by discharge of duty via a SAT by giving written consent. Applicants who chose not to 'opt in' would continue to be owed a duty of permanent accommodation via the usual outcomes of a SST in the social sector or an assured tenancy in the private rented sector. Where an applicant chose to 'opt in', the local authority would seek to identify suitable accommodation offers from both the private rented and the social sectors. Their duty could be discharged through a reasonable offer of a SAT under Regulation 5 where that offer meets the legal requirements set out in homelessness legislation⁹. Local authorities would also have the option to discharge duty through a SST or an assured tenancy. The flow chart below illustrates the proposed operation of Regulation 5.

⁹ These include section 32(5) of the Housing (Scotland) Act 1987 (as amended) which states that local authorities cannot fulfil their accommodation duties to homeless households through accommodation which is overcrowded, may endanger the health of the occupants, does not meet any special needs of the household or is not reasonable for them to occupy; and section 32(8) of the Act (as amended) which states that any accommodation provided must be suitable for occupation by any children in the household so far as is consistent with their best interests.



26. An example of a case where a local authority may wish to invoke the Regulation is provided below:

A local authority receives a homelessness application from a 35 year old woman with 2 dependent children. The applicant became homeless when her landlord sold the property she was renting; the applicant is currently staying with her mother in the local area. The local authority find the applicant to be unintentionally homeless and in priority need. At a housing options interview, the applicant indicates a strong preference to stay in the local area as her children attend school there, she works nearby and it is near her mother's home. The local authority considers that, in the context of the local housing market and the applicant's circumstances, discharge of duty via a SAT in the private rented sector is a suitable option for the applicant. The local authority provide case-specific housing advice to the applicant and ask her if she wishes to extend her housing options to include a SAT. The applicant agrees and gives written consent for the authority to extend their search for suitable accommodation offers to include a SAT in the private rented sector in accordance with Regulation 5.

27. Views are invited on the proposed circumstances in which local authorities would be able to discharge duty with a SAT.

Considerations

28. Respondents to the discussion document *Firm Foundations* indicated that greater use of the private rented sector to discharge duty to homeless household should be conditional on ensuring that the housing is well-managed, in reasonable condition, affordable and offers security of tenure. The proposed circumstances set out in Regulation 5 are intended to address concerns about affordability and security of tenure. It is not considered necessary to include specific provisions in the legislation to address concerns about property condition and management for the reasons set out below.

Property condition and management

29. As noted previously, local authorities already have powers to discharge duty to homeless households in the private rented sector by means of an assured tenancy. However, assured tenancies are offered infrequently by landlords and the purpose of the new Regulations is to widen access to the sector.

30. A number of policy initiatives have been introduced in recent years to help improve management standards and the quality of accommodation in the private rented sector, and to provide protection for tenants:

- Section 32(5) of the Housing (Scotland) Act 1987 (as amended by the Housing (Scotland) Act 2001) states that local authorities cannot fulfil their accommodation duties to homeless households through accommodation which is overcrowded, may endanger the health of its occupants, does not meet any special needs of the applicant (or household) or is not reasonable for them to occupy. This provision applies to accommodation sourced from both the social and the private rented sectors.
- The Repairing Standard, introduced via the Housing (Scotland) Act 2006 sets minimum standards of repair which tenants in the private rented sector can expect.

Tenants also have the right to complain to the Private Rented Housing Panel if they have given reasonable notice to their landlord that repairs are needed but these have not been carried out.

- Landlord Registration ensures that all landlords are assessed by their local authority as 'fit and proper' to let property under provisions contained in the Antisocial Behaviour etc. (Scotland) Act 2004. The aim of the scheme is to improve standards in private rented housing through the introduction of minimum legal requirements. The scheme has also increased engagement between local authorities and the private rented sector, making the sector more visible and accountable.
- The creation of the new national landlord accreditation scheme – Landlord Accreditation Scotland – presents an opportunity to introduce further safeguards for tenants in relation to the management and quality of private rented accommodation. Some respondents to *Firm Foundations* suggested that membership of an accreditation scheme be linked to local authority discharge of duty through use of a SAT in the private rented sector. The national scheme is in its infancy at present and we do not think it appropriate to include membership of it, or a local accreditation scheme, as a circumstance which must be met in order that Regulation 5 be invoked. However, we wish to explore during the consultation process how to promote good practice in the use of the private rented sector for homeless households and how, in making greater use of their flexibility in discharging duty, local authorities can support and benefit from initiatives to improve standards.

31. It is proposed that guidance accompanying Regulation 5 contain advice to local authorities on how they might best adopt procedures and local policies to ensure that the legal framework on property condition and housing management operate to its best advantage. This could include options such as property inspection by the local authority or an appointed agent.

32. Views are invited on the suggested measures to address concerns about the quality and management of private rented sector accommodation which could be used to discharge duty through a SAT.

Use of Regulation 5

33. Discharge of duty through a SAT in the private rented sector will not be appropriate for all homeless households. It is intended that local authorities use the powers contained in Regulation 5 to seek housing options in the PRS where this is an appropriate and sustainable outcome for the individual concerned. There may be certain household types or profiles which are better suited to discharge of duty in this way. However, it is suggested that local authorities consider the circumstances of each case individually to determine the most appropriate housing option and that it would not be appropriate for Regulation 5 to be invoked automatically on grounds of household type. Furthermore, local authorities are best able to determine the most appropriate use of the Regulations in the context of the local housing market and having access to all the relevant information about the circumstances of the applicant. For these reasons, it is proposed that Regulation 5 does not include circumstances covering household type. Views on this approach are welcomed.

Repeat Homelessness

34. Section 32A of the 1987 Act provides that, when accommodation is secured under the circumstances of the Regulations, section 26 of the Act (definition of intentionality) does not apply. This provision is contained in primary legislation and as such does not form part of this consultation. However, it is relevant context in which local authorities should consider the suitability of applicants for discharge of duty under the Regulations; it is in both the local authorities' and the applicants' interest that the outcome sought is appropriate and sustainable.

Equalities

35. The Scottish Government, and other public bodies including local authorities, have a statutory duty to equality impact assess new and existing policies on grounds of race, gender and disability. Scottish Ministers have also made a commitment that the Scottish Government will also equality impact assess policies on grounds of sexual orientation, age and religion or belief. Furthermore, local authorities have a range of duties under relevant equal opportunities legislation, including the encouragement of equal opportunities and the observance of equal opportunity requirements in the exercise of the functions given under the Housing (Scotland) Act 2001.

36. We wish to be clear about the potential impact on equality groups of introducing additional flexibility for local authorities in discharging their accommodation duties to homeless households. For example, there may be considerations around the suitability of certain property types prevalent in the private rented sector for some disabled applicants. The requirement to 'opt in' through giving written consent and having received housing advice may raise issues for applicants who have literacy problems or whose first language is not English. We will seek to explore the impact of our proposals with equality groups as part of this consultation but would welcome views and comments from all respondents.

Monitoring & evaluation

37. It is important that any changes to the homelessness policy and legislative framework can be monitored and evaluated. Using the HL1 data collection system, local authorities can currently record discharge of duty through the 2002 Regulations and also the type of accommodation accepted by the applicant. Additional guidance on use of the HL1 would be required to clarify how outcomes under the new Regulations should be recorded in order for the changes to be monitored and impact to be assessed.

38. In addition, there may be a case for an evaluation to assess the impact of the legislative changes on local authorities' capacity to meet the 2012 target. We will also want to monitor the impact on the achievement of sustainable housing outcomes for homeless people and wider impacts on the supply of private rented accommodation for other tenants who traditionally seek accommodation in the sector, including students, migrant workers and young professionals. Views on the suggested approach to monitoring and evaluation are invited.

Guidance

39. As discussed throughout this paper it is proposed that practice guidance be developed in association with local authorities and other partners to facilitate best use of the Regulations. The guidance would be informed by the review of the private rented sector currently ongoing in order that authorities are able to maximise the additional

flexibility offered by invoking Regulation 5. Suggested content is noted throughout this paper and comments and additions would be welcome.

SECTION 4 – CONSULTATION RESPONSE

Name of individual/organisation: *Dundee City Council*

Language

Q.1 Do you have any views on the language and terminology used in the draft Regulations and on their name?

Yes/No *NO*

Comments: *Name and Information contained in the draft regulations is clear and unambiguous.*

Regulation 4

Q.2 Do you support the proposed changes to this Regulation? Are any further amendments required to clarify its purpose?

Yes/No *YES*

Comments: *Adds clarity to the use of "Interim" accommodation by change of name to transitional.*

Q.3 Do you agree that good practice guidance on use of Regulation 4 should be developed?

Yes/No *Yes*

Q.4 Do you have any suggestions regarding content of the guidance?

Yes/No *Yes*

Comments (questions 3 & 4):

Guidance is required as to when case is closed on HL1. Length of stay in temporary accommodation is currently distorted as often it is in the interest of client to stay longer in a resettlement setting. We need to monitor the length of stay in direct access and resettlement as 2 different measures through the HL1. Examples of longer stay units are Dundee Families Project, Mental Health Project at Seagate etc where clients do take longer to be able to gain the necessary life skills to sustain an independent tenancy. A common recording mechanism for all local authorities and the voluntary sector would be helpful.

Regulation 5

Q.5 Do you support the proposals to enable local authorities to discharge duty using a SAT?

Yes/No Yes

Comments: *Within the parameters set it allows more flexibility and choice for applicant.*

Q.6 Do you support the 4 prescribed circumstances which must apply in order that Regulation can be invoked (minimum tenancy period of 12 months; affordability; provision of support for applicant; and applicant gives informed consent)?

Yes/No YES

Comments: *Some guidance on the definition of affordability would be useful as would guidance on accessing affordability in individual cases. Affordability for those in employment may well differ from those who are workless and assessment staff would welcome guidance on advising service users on differing levels as to the appropriateness of accepting housing in the private sector.*

Currently the law gives the landlords the right to create a Short Assured Tenancy for a minimum period of six months. Landlords tend to favour this approach and where a tenancy has been successful they then allow the tenancy to continue. Applicants would be more likely to accept a tenancy in the private sector if this timescale was increased to twelve months.

Legal provision could ensure that Short Assured Tenancies were to be created for a twelve month period and consideration is required here.

Q.7 Should any additional circumstances be prescribed?

Yes/No YES

Comments: *Where required applicants must be able to access a rent deposit scheme to enable access to private rented sector.*

All lets must be within the local Housing Allowance guidelines to ensure affordability and clients are not caught within the cycle of poverty.

Q.8 Do you support the proposed approach on property quality and management? If not, please give details of your concerns.

Yes/No YES

Comments: *Fully detailed in the paper*

Q.9 Do you agree that good practice guidance on use of Regulation 5 should be developed?

Yes/No Yes

Q.10 Do you support the suggested coverage of the guidance outlined in this paper? Do you have any further suggestions regarding the content of guidance?

Yes/No YES

Comments (questions 9 & 10) :

Guidance should be specific and give examples of good practice i.e. as in consultation document. It should detail exactly how this should be treated for HL1 purposes, e.g. when is case actually closed, type of tenancies to be used. Guidance could also recommend support and monitoring mechanisms.

Good Practice Example

Currently Dundee Homefinder Service assist both non priority and Priority Need Applicants to obtain Private Sector Housing. The reason for this is that it offers applicants a wider choice of house types and localities. This is an option that applicants may use albeit that it currently does not currently discharge our duty. Applicants are accepted where they already have a support package in place, however all other applicants who access this scheme and require a bond are given a minimum of 6 weeks tenancy support. If during this period the assessment shows that the client would benefit from Housing Support then a referral is put in place to one of the mainstream tenancy support teams.

All accommodation is inspected by Homefinders prior to let to ensure standards are met. Those accepting housing are given advice and assistance re Housing Benefit, Furnishings, Utilities etc. Ongoing support is available for those requiring further assistance. Follow up visits are carried out on a quarterly basis for the first year of the tenancy to ensure that the landlord/tenant relationship is working effectively. All private sector tenancies must work within the current guidelines of the Local Housing Allowance otherwise they are deemed as unaffordable. The scheme links with other agencies such as Financial inclusion, Energy advice and Discovery Credit Union.

If more people are housed through the private sector consideration will require to be given as to how clients are prioritised. Is it to be needs led? How do we operate waiting lists and who gets priority? Does the private landlord have the right to ask for nominations and decide who they are taking? Guidance would be very welcome in this area.

General

Q.11 Do you feel the proposals promote equality? If not, please give details of your concerns.

Yes/No *YES*

Comments: *NONE*

Q.12 Do you have any suggestions about how to evaluate the impact of the Regulations?

Yes/No *Yes*

Comments: *Evaluation of the projects should be carried out by the use of the HL1 information as this should ensure all local authorities are measuring the same outcomes. By measuring the length of stay in temporary accommodation separate from those in transitional accommodation it may assist to evaluate the effectiveness of various transitional projects and good practice would result.*

Annex A - Existing circumstances set out in SSI 2002/412

a) a housing support services assessment for an applicant has concluded that the applicant or any other person residing with that applicant requires housing support services which cannot reasonably be provided within permanent accommodation; and
(b) as a result of that housing support services assessment, the local authority is providing an applicant or any person residing with that applicant with interim accommodation together with housing support services in connection with that interim accommodation which include-

(i) all services required in terms of the housing support services assessment;

(ii) access to independent advocacy and information services in connection with the services mentioned in sub-paragraph (i) above;

(iii) a timetable, agreed with the applicant, for the provision of the interim accommodation and housing support services;

(iv) an end or review date for the provision of services and interim accommodation, which date shall not be later than a date six months from the date on which the interim accommodation was first provided;

(v) a written record of the housing support services assessment, the services that are to be provided and the timetable in (iii); and

(vi) a mechanism to monitor the use of interim accommodation and the long term outcomes for each applicant.

Annex B

 SCOTTISH STATUTORY INSTRUMENTS

2008 No.**HOUSING**
**The Homeless Persons (Provision of Non-permanent Accommodation)
(Scotland) Regulations 2008**

<i>Made</i> - - - -	2008
<i>Laid before the Scottish Parliament</i>	2008
<i>Coming into force</i> - -	2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 32A(1) of the Housing (Scotland) Act 1987⁽¹⁰⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Homeless Persons (Provision of Non-permanent Accommodation) (Scotland) Regulations 2008 and shall come into force on 2008.

Interpretation

2. In this Order—

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

“accommodation” has the same meaning as in sections 31 and 32 of the 1987 Act;

“applicant” has the same meaning as in section 28(1) of the 1987 Act;

“transitional accommodation” means accommodation that is not permanent accommodation within the meaning of section 31(5) of the 1987 Act;

“housing support services” has the same meaning as in section 91(8) of the Housing (Scotland) Act 2001⁽¹¹⁾;

“housing support services assessment” means a decision by a local authority in any question as to whether an applicant or any person residing with that applicant should be provided with housing support services;

“short assured tenancy” has the meaning given in section 32 of the Housing (Scotland) Act 1988⁽¹²⁾.

Prescribed circumstances where non-permanent accommodation can be provided

3. The circumstances specified in regulation 4 and 5 are prescribed as circumstances in which section 31(2) of the 1987 Act, so far as requiring that accommodation is to be permanent accommodation within the meaning of section 31(5) of that Act, does not apply.

⁽¹⁰⁾ 1987 c.26; section 32A was inserted by section 3(5) of the Housing (Scotland) Act 2001 (asp 10). See section 338 of the Housing (Scotland) Act 1987 for the definition of “prescribed”. The function of the Secretary of State to prescribe by Regulations was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

⁽¹¹⁾ 2001 asp 10.

⁽¹²⁾ 1988 c.43.

4. The circumstances are–

- (a) a housing support services assessment for an applicant has concluded that the applicant or any other person residing with that applicant currently requires a level of housing support services which makes permanent accommodation inappropriate; and
- (b) as a result of that housing support services assessment, the local authority is providing an applicant and any person residing with that applicant with transitional accommodation together with–
 - (i) all services required in terms of the housing support services assessment and a record of the services to be provided;
 - (ii) access to independent advocacy and information services in connection with the services mentioned in sub-paragraph (i);
 - (iii) a timetable, agreed with the applicant, for the provision of the transitional accommodation and housing support services and a record of the timetable;
 - (iv) a review date for the provision of services and transitional accommodation, which date shall not be later than a date six months from the date on which the transitional accommodation was first provided;
 - (v) an undertaking to provide permanent accommodation when a housing support services assessment identifies that this would be appropriate; and
 - (vi) a mechanism to monitor the use of transitional accommodation and the long term outcomes for each applicant.

5. The circumstances are–

- (a) a short assured tenancy of a minimum duration of 12 months is available to the applicant;
- (b) in the view of the local authority, the tenancy available can be afforded by the applicant;
- (c) a housing support services assessment for the applicant has concluded that any support needs of the household to which the applicant belongs can be met within the accommodation provided under the tenancy that is available;
- (d) the support to meet the support needs of the household is available; and
- (e) the applicant, after having been given housing advice by the local authority and access to independent advocacy and information services, has consented in writing to the discharge of the duty under section 31(2) by the provision of accommodation that is not permanent.

Revocation

- 6. The Homeless Persons Interim Accommodation (Scotland) Regulations 2002⁽¹³⁾ are revoked.**

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh

2008

⁽¹³⁾ 412/2002.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the circumstances in which local authorities can provide non-permanent accommodation to homeless applicants who otherwise would be entitled to permanent accommodation in terms of section 31 of the Housing (Scotland) Act 1987.

Regulations 4 and 5 set out 2 sets of prescribed circumstances. The first is where a housing support services assessment has identified that an applicant for housing or a person living with the applicant requires housing support services which it is not appropriate to provide within permanent accommodation. The second is where a short assured tenancy can be made available to the applicant, and various conditions in respect of the tenancy and the applicant are fulfilled.

Previous regulations made under section 32A of the 1987 Act are revoked.

Annex C – The Scottish Government Consultation Process

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government website enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government Library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at <http://www.scotland.gov.uk/consultations>.

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- Indicate the need for policy development or review
- Inform the development of a particular policy
- Help decisions to be made between alternative policy proposals
- Be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex D – Respondent Information Form

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

Email address:

1. Are you responding: (please tick one box)

- (a) as an individual go to Q2a/b and then Q4
 (b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

2a. Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?

- Yes (go to 2b below)
 No, not at all We will treat your response as confidential

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- Yes, make my response, name and address all available
 Yes, make my response available, but not my name or address
 Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3. The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

- Yes
 No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

- Yes
 No