



Glasgow Homelessness Network works to end homelessness in Glasgow, and ensure that outcomes for people affected by homelessness meet their needs, interests and aspirations.

Glasgow Homelessness Network (GHN) brings together a wide range of service users, voluntary organisations and others with an interest in homelessness. GHN is pleased to offer this response to:

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

SEPTEMBER 2008
SCOTTISH GOVERNMENT

1 Executive Summary

GHN warmly welcomes the opportunity to respond to the Scottish Government's Consultation on Regulations made under Section 32a of the Housing (Scotland) Act 1987. The following summarises what we believe to be the key points of our overall response:

- We welcome the approach to widen housing options available to homeless households in Scotland, and particularly recognise the location benefits of private rented sector properties in Glasgow.
- We would suggest that the structure already adopted nationally by Rent Deposit Guarantee Schemes provides a useful and replicable model for the implementation of these Regulations
- The potential impact of Regulation 5 in meeting the 2012 target, will essentially be quite limited and should not be seen as an alternative to ensuring enough affordable housing is available to both prevent and alleviate homelessness
- As the security of tenure is fundamentally inferior than with a Scottish Secure Tenancy, then suspending duty discharge until the first term of the Short Assured Tenancy is complete would provide additional safeguards and 'peace of mind' for new tenants.

- We believe the noted change in terminology from 'interim' to 'transitional' accommodation is a welcome one.
- We would suggest a continuing lack of clarity over the use of general housing stock as transitional accommodation. What is not clear is if a needs assessment can be met with floating support within the general housing stock and a statutory homelessness assessment confers a legal right to permanent accommodation on the homeless household, why is the identified floating support not simply provided within the permanent accommodation owed?
- GHN facilitated consultation with service users, who were asked if they would consent to duty being discharged through a SAT, 8 out of the 13 participants said they would not consent to such an offer. Within this group of 8 the majority reported security of tenure as the main reason for this. Additionally, a brief affordability test was carried out to establish whether after rent costs would people have enough income left to cover other essential outgoings. From the 13 people participating, we found that none of them would pass an initial affordability test.
- GHN would suggest that the affordability assessment would need to cover more than the initial affordability, which will predominantly be based on the household receiving full housing benefit. Any thorough affordability assessment must make a strong attempt to pre-empt positive changes in people's lives, such as taking up learning or employment opportunities throughout the length of the tenancy. This can be done through 'better off in work' or 'better off in learning' calculations. These can be based on the aspirations to enter work or learning that people express.
- GHN would recommend that the PRS option for duty discharge is not considered for those under the age of 25 in receipt of housing benefit and that further efforts are made by the Scottish Government, and all stakeholders, to raise the issue with the Westminster Government of removing the Single Room Rent restrictions from the Housing Benefit regulations.
- Finally, we would like to highlight that people resident in the Private Rented Sector will not normally benefit from the range of community actions and initiatives that those resident in the Social Rented Sector will have. These would include Anti-Social Behaviour Strategies; Management Transfer Policies; Regeneration Agenda & Wider Role activities of Housing Associations. It would be useful to consider this point alongside overall consideration of equitable approaches and security of tenure.

2 General Comments

In order to inform the GHN response to this consultation, wide ranging discussions were held with a variety of relevant stakeholders, including people affected by homelessness in Glasgow. Service user views are of particular importance when considering the potential impact of new pieces of legislation or new regulations as their unique perspective can serve to highlight both their needs and their aspirations and whether the proposals made stand to meet these needs and aspirations.

As such, this response will feed back the specific views of both frontline and management staff within service providers and service users throughout the specific consultation questions.

The main issues considered throughout this paper include:

Housing Options

GHN and members of the network in Glasgow welcome the approach taken by the Scottish Government to widen the housing options available to homeless households and agrees that the Private Rented Sector can play an increased role in alleviating homelessness and preventing repeat homelessness.

Previous work carried out by GHN around important issues such as social networks and employability have highlighted the importance of the location of the accommodation offered to homeless households; and the findings of these pieces of work endorse the Scottish Government view that location may be a highly important factor in what constitutes a suitable offer of accommodation for some homeless households, and it is understood that the only way to access certain areas of Glasgow may be through the Private Rented Sector.

In principle, none of these issues are disputed. Instead, concerns are specific to the implementation of the proposed new regulation under section 32A. These specific concerns will be addressed throughout the relevant consultation questions.

Administering Regulation 5

There was a common agreement across stakeholders in Glasgow that for the proposals set out under Regulation 5 to be effective, the structure set out to administer them would be of crucial importance. Firstly, this structure would play a central role in promoting the security of tenure for homeless households consenting to duty being discharged through a SAT while it would also be essential in engaging with local private landlords, ensuring the safety

and quality of properties and matching up prospective tenants with properties.

It was noted that such a structure already exists across the country in the form of rent deposit guarantee schemes, of which the evaluation of their impact has been positive. These organisations, whether sitting directly within local authorities or funded by local authorities, have already engaged with private landlords in their areas willing to let their properties to homeless households. They have established strong working practices in terms of ensuring the safety and quality of properties as well as working links with benefits agencies in local areas and support providers and other relevant stakeholders.

It was agreed by members of the network in Glasgow that the structure already evidenced through rent deposit guarantee schemes could act as a replicate model to successfully and safely implement the proposals contained within Regulation 5.

Potential Impact and Usage of Regulation 5

The broad consensus reached through wide consultation in Glasgow was that the potential impact of Regulation 5, in terms of meeting the 2012 target, will essentially be quite limited and it was strongly reiterated by member organisations that these proposals should not be seen as an alternative to ensuring enough affordable housing is available to both prevent and alleviate homelessness across the country.

The potential impact of the regulations was felt to be quite restricted particularly in relation to affordability and support issues, which will be discussed more fully in the response to the specific questions set out in the consultation paper.

3 Specific Consultation Questions

Q1 Do you have any views on the language and terminology used in the draft Regulations and on their name?

In terms of Regulation 4, the confusion between the current interim accommodation regulations under Section 32 and the interim duty to accommodate while a homelessness assessment is carried out is easily understood. Therefore, a change in terminology to 'transitional' accommodation is a welcome one.

Regulation 4

Q2 Do you support the proposed changes to this Regulation? Are any further amendments required to clarify its purpose?

There was general support for the proposed change to this Regulation amongst the homelessness network in Glasgow, although it was agreed that absolute clarity should always be provided to ensure that cases closed when households are placed in transitional accommodation are re-opened and permanent accommodation is provided when appropriate

Q3 Do you agree that good practice guidance on the use of Regulation 4 should be developed?

Yes

Q4 Do you have any suggestions regarding content of the guidance?

The content of the guidance, first and foremost, should provide clarity on the use of the regulation. While the Scottish Government notes that this current regulation is not widely used, other than recording and monitoring issues, the premise of providing accommodation with support for those not ready for a permanent tenancy can be easily identified in current practice in Glasgow. For the most part, this accommodation is provided through residential supported accommodation provided by the voluntary sector. Where appropriate need is identified, the use of such accommodation types to build up the skills required for people to sustain their permanent tenancies represents good practice.

However, a lack of clarity arises over the use of general housing stock as transitional accommodation, as referred to in the regulation. What is not clear is if a needs assessment can be met with floating support within the general housing stock and a statutory homelessness assessment confers a legal right to permanent accommodation on the homeless household, why is the identified floating support not simply provided within the permanent accommodation owed? The day-to-day reality for a household under such circumstances would not be greatly altered by the tenancy type so it is unclear why, even in the interim, full security would not be afforded to the household.

It is essential that any guidance makes clear to local authority staff why it would be good practice to use the transitional accommodation regulations for households whose support needs can be met under the circumstances outlined above, rather than within a permanent tenancy, bearing in mind that these existing regulations are designed to promote the best interests of the homeless household regardless of the current accommodation circumstances that have prompted the plans for regulation 5. Care has to be taken to ensure that the use of this regulation is solely driven by a thorough assessment of need rather than other issues such as difficulties assessing permanent accommodation.

It may also be useful for guidance to pre-empt the potential scenario of a transitional tenancy ending and there not yet being suitable permanent

accommodation available; giving consideration to further interim steps have to be put in place to ensure appropriate accommodation is available for the household. Unless proper monitoring of progress within a transitional housing arrangement under Regulation 4 is carried out, situations where the household is ready to move on but accommodation is not available are not difficult to foresee.

Regulation 5

Q5 Do you support the proposals to enable local authorities to discharge duty using a SAT?

In principle, GHN supports the moves by the Scottish Government to increase the housing options available to people affected by homelessness through further use of the Private Rented Sector. However, through our wide consultation process in Glasgow, concern was raised about the security of tenure that a Short Assured Tenancy offers people. This concern was shared both by service users and service providers.

Q6 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)?

Throughout the GHN consultation process it was agreed that security of tenure, affordability and support needs were the three key concerns about further use of the Private Rented Sector to house homeless households; and it was these issues that were raised in our response to the Firm Foundations consultation. As such, GHN and members of the network in Glasgow are pleased to see these concerns reflected in the current proposals.

However, there a number of issues about the assessment and implementation of the proposed criteria that still need to be addressed.

- Minimum tenancy period of 12 months

Stakeholders in Glasgow were clear that a 12 month tenancy does not constitute security for households that have experienced the insecurity and trauma associated with homelessness; particularly when a tenancy can come to an end after the 12 month period regardless of whether the tenant has broken any of the rules of the tenancy agreement.

The response was unambiguous that Regulation 5 should not be implemented if only a 12 month minimum tenancy period is on offer.

There was wide ranging support for the Shelter proposal of an initial 6 month tenancy period to be followed by a more secure tenancy period if it is working out for both tenant and landlord. Under these proposals duty would

be discharged only at the end of the initial 6 month period and if either party decides not to move forward with the tenancy then a duty of permanent accommodation will still be owed to the household by the local authority.

An alternative suggestion was made by a member of the homelessness network in Glasgow noting that it would be possible to work within the original proposal of a 12 month tenancy but with duty being discharged at the end of this period rather than the beginning. Such an approach would have similar positive benefits to the Shelter proposal highlighted above in that it allows time for tenants to assess for themselves how affordable the tenancy is and that they are happy in the property before duty is discharged.

When service users were asked if they would be happy, based on their own personal experience of homelessness, to give consent to duty being discharged through a SAT 8 out of the 13 participants said they would not consent to such an offer. Within this group of 8 the majority reported security of tenure as the main reason for this. The point that the 12 month tenancy period was a minimum period was fully explained and discussed, but it still remained that many of the participating service users identified that this insecurity, whether real or perceived, would simply cause them further worry about becoming homeless again; and that this would have an impact on issues such as mental health and affect their ability to settle into their community and respond effectively to the support they are receiving.

Of the 5 who indicated that they would be willing to accept duty discharge through a SAT, only 2 gave a clear and positive indication that they felt this would lead to the best outcomes for them based on their own personal circumstances; while the remaining 3 felt that either no other offer would be made to them or that they had been homeless for too long and would take the first offer they received, regardless of whether it was in their best interests.

- Affordability

The affordability issue was seen to be a major stumbling block by stakeholders for the implementation of regulation 5. The private rented sector is more expensive than the social rented sector and it was agreed by all stakeholders that any landlords willing to let their properties to homeless households must agree to accept the Local Housing Allowance rates set for their area.

We know from research carried out in Glasgow in 2006 that only 8% of people experiencing homelessness were currently in employment. With this in mind, we then know that the majority of people experiencing homelessness in the city have their rent costs covered by housing benefit and are often in receipt of other benefits depending on their circumstances. This means that any rent level higher than the Local Housing Allowance rate

for the area is not going to be affordable for the majority of people, even in the immediate period.

Through the service user consultation event hosted by GHN on this issue, a brief affordability test was carried out to establish whether after rent costs people have enough income left to cover other essential outgoings. From the 13 people participating, we found that none of them would pass even an initial affordability test.

The second issue that needs to be considered, however, is how affordable the tenancy will be over the medium and longer term. The GHN research referred to previously very importantly asked people about their aspirations to work in the future. From this we found that 68% wanted to work in the future and 67% expressed an aspiration to take up learning or training opportunities in the future; all of which will have an impact on housing benefit entitlement and, most likely making private rented accommodation unaffordable.

As such, the affordability assessment as envisaged as a part of this process needs to cover more than the initial affordability, which will most likely be based on the household receiving full housing benefit. Any thorough affordability assessment must make a strong attempt to pre-empt positive changes in people's lives, such as taking up learning or employment opportunities throughout the length of the tenancy. This can be done through 'better off in work' or 'better off in learning' calculations. These can be based on the aspirations to enter work or learning that people express. If there is currently no official mechanism for people to be asked about their aspirations as part of the employability pathway then they will have to be developed to ensure the accuracy of affordability calculations. This would give a much fuller picture of the real affordability of a tenancy in the private rented sector.

In addition, local authorities will need to be given a definite baseline figure against which to assess individual cases. This figure will need to reflect a minimum amount of money (on a weekly or monthly basis) that allows people to live a healthy and sustainable life; which includes being able to afford healthy eating options for the households and money to take part in leisure or community activities that can promote social networks and other well-being issues such as positive mental health. When setting such a minimum income level, all Scottish Government policy agendas should be taken into account.

It was noted previously in this consultation response that it was anticipated that the impact of this regulation may be relatively small – although potentially the best outcome for some individual homeless households – and this is further shown when consideration is given to the Single Room Rent restrictions for those under 25 in receipt of Housing Benefit. There was consensus amongst the stakeholders consulted by GHN that, in reality, this

restriction rules out the option of duty discharge through the provision of a SAT, for people affected by homelessness under the age of 25.

It is recognised that there are some schemes, such as the Edinburgh Cyrenians scheme highlighted in the consultation paper, that have managed to achieve success in this area, but this has been through very intensive, well funded work that would need to be replicated across all Local Authority areas. Also, since this particular scheme is not limited to working with people assessed as homeless, it is difficult to see this model working with the same level of success when replicated within a statutory homelessness setting.

Therefore, GHN and members of the network would recommend that this option for duty discharge is not considered for those under the age of 25 in receipt of housing benefit and that further efforts are made by the Scottish Government, and all stakeholders, to raise the issue with the Westminster Government of removing the Single Room Rent restrictions from the Housing Benefit regulations. This is the only way to ensure that all housing options for the prevention and alleviation of homelessness are available to all regardless of age.

- Support Needs

Stakeholders participating in the GHN consultation strongly welcome the explicit commitment contained within these proposed regulations to the provision of appropriate support to those homeless households requiring it when an offer of duty discharge through a SAT is taken up. However, it is worth noting that this commitment is not explicitly in place when a tenancy is taken up with a Local Authority or Registered Social Landlord and that the enactment of these regulations could lead to social landlords looking for the same commitment from the Scottish Government.

While welcoming the commitment to support provision, it was generally agreed that the use of a SAT would not be a suitable option for homeless households with multiple and complex needs. At most, it would be an appropriate option for those requiring 'accommodation only' or whose support needs are minimal and can be met through outreach housing support. This comes back to the understanding that the security attached to housing circumstances will mostly have a positive impact on a person's wellbeing and their interaction and engagement with support providers and their subsequent progress. This progress is ultimately made more difficult if there is a further worry about losing another tenancy and having to move on again in 12 months.

- Informed Consent

The importance of the homeless household being able to give informed consent to having duty discharged through a SAT is recognised by all

stakeholders involved in the GHN consultation process. The main issues raised fell around two main areas; firstly, should accessing independent advice be compulsory before consent is given and secondly, the format the advice provision should take.

In terms of making independent advice compulsory, it was agreed that this would be very difficult to do, but that there was concern that people would give their consent to this form of duty discharge because they had been waiting for a considerable period of time for permanent accommodation and they felt they might not receive any other offer – and this was the case for approximately 23% of those attending our service user consultation. It is worth noting that official statistics for Glasgow in 2006/07 show that the average case duration for unintentionally homeless households in priority need was 23.6 weeks, or approximately 6 months. And with this being an average figure, we know that there are households waiting longer than this for duty discharge.

In such cases, the households involved may be making decisions out of fear and would most likely not have given ample consideration to all of the available options and may not have a full understanding of the legal definition of duty discharge and that this minimum 12 month SAT would now form the equivalent of the permanent accommodation they are entitled to under homelessness legislation. With this in mind, the referral mechanism to independent advice has to be given serious consideration.

With this in mind, members of the homelessness network in Glasgow would then like to make two main recommendations about steps to ensure that household consent is informed:

1. The sign-posting role should reflect the Active Information and Signposting definition of Type I A&I within the Homepoint standards; meaning that local authority staff should make a referral to a recognised independent housing advice agency. Following this, before consent is given, procedures should be in place to allow the Local Authority to check if the independent advice was taken up, and if not, follow up with further discussions with the household and possibly even another referral. Obviously, there may be cases where the homeless household does not need further advice and are fully aware of all the options available to them and their implications, but local authority staff should satisfy themselves that they are clear about what giving their consent means in reality. But in most cases, all attempts should be made to ensure that the household accesses independent housing advice.
2. The form of the advice offered is also crucial and it is felt that a move from the terminology of independent advice to neutral advice, provided through an independent counselling type approach, would be very useful. The decision to accept a

discharge of duty through a SAT, which fundamentally provides the household with less legal security than their current statutory entitlement, would be more fully informed if space was provided for a decision to be reached following a series of priority setting exercises where all members of the household are supported to weigh up the pros and cons of all their housing options, including potentially competing issues such as security of tenure, location, size and type of property, affordability and future aspirations; allowing the decision reached to be fully owned and understood by the homeless household.

As part of this approach, the details of the affordability assessment carried out by the Local Authority should be available to the household to allow them to fully consider the tenancy affordability if benefit entitlements change due to entering learning or employment.

Overall, the 'neutral' advice process should be as empowering as possible for the household where they are supported, and given adequate time, to reach a decision of their own based on all relevant information and their own individual priorities.

In addition, it is also important to note that implementing an approach such as the one advocated by Shelter would allow for even more informed consent based on actual experience of 6 months in the private rented tenancy, which is stronger again than simply basing a decision on theoretical implications.

Q7 Should any additional circumstances be prescribed?

No additional circumstances were identified through the GHN consultation as it was agreed that the focus should be on amendments to the prescribed circumstances already proposed in order to make them as suitable and sustainable as possible.

Q8 Do you support the proposed approach on property quality and management? If not, please give details of your concerns.

It is recognised that many positive initiatives to drive up standards within the Private Rented Sector have been put in place in recent years that will, in the future, ensure that quality standards are met. However, it is still early days in terms of evaluating their impact and concerns still remain that the sector is still not quite ready to take on additional responsibilities for housing homeless households.

However, it is also understood that that is not a good enough reason to refrain from making further use of the PRS. Until we are in a better position to evidence the increase in standards within the sector it would appear remiss if these regulations did not make reference to the National Core

Standards and Good Practice Guide for private landlords. Since these standards have already been developed through the work of Communities Scotland, it would be good practice to ask for landlords making their properties available to house homeless households to meet the standards set out in this document.

Q9 Do you agree that good practice guidance on use of Regulation 5 should be developed?

Yes.

Q10 Do you support the suggested coverage of the guidance outlined in this paper? Do you have any further suggestions regarding the content of guidance?

Several issues have already been raised throughout this response about the content of guidance, including the level of detail required for the affordability assessment and how the role of the local authority in referring people to independent advice.

General

Q11 Do you feel the proposals promote equality? If not, please give details of your concerns.

No specific equality issues were raised by stakeholders in Glasgow, with a general consensus that any such issues would be addressed by ensuring an individual, person centred approach.

Q12 Do you have any suggestions about how to evaluate the impact of the Regulations?

Monitoring and evaluating the impact of section 32 regulations is of the utmost importance.

In terms of Regulation 4, strong monitoring has to be in place as to the numbers being housed in 'transitional' accommodation, the type of accommodation they are placed in, the length of time spent in transitional accommodation, and whether the duty of permanent accommodation was discharged. Local authorities and the Scottish Government need to monitor, on a regular basis, the move from transitional to permanent accommodation in order to ensure that the final discharge of duty is not lost.

To monitor the implementation of Regulation 5 local authorities must use their internal IT systems to record both the duty discharge into a SAT as well as the outcomes for the household in terms of whether the initial SAT period is continued, whether the household leave the tenancy before the end of the period and why, and whether the household become homeless again.

To make this effective, the engagement with the tenants will most likely need to be carried out by the department/organisation required to implement these regulations, with a similar role to rent deposit guarantee schemes. This will supplement the local authority statistics in terms of placements into the PRS and further homelessness cases resulting from it.

All of this information has to be readily available and analysed on a regular basis both at a national and local level.

5 Conclusion

Overall, GHN and members of the network recognise that the Private Rented Sector can play a bigger role in preventing and alleviating homelessness in Glasgow. However, based on the current Scottish Government proposals, several key issues still need to be highlighted:

- A 12 month minimum tenancy length is not enough for a discharge of duty from homelessness as it does not constitute security of tenure;
- Affordability issues, both in the immediate and longer term, will potentially rule out a large number of homeless households receiving Housing Benefit who have aspirations to work;
- A strong implementation structure will be necessary to ensure the proposals can be used by frontline services, and this will include responsibility for engaging private landlords, ensuring they meet all safety and quality standards, finding suitable properties for homeless households and monitoring tenancy retention. It is worth considering building this upon the current rent deposit guarantee schemes that exist across Scotland.
- Overall, the impact of regulation 5 could be relatively small in terms of meeting the 2012 target, and while opening up previously difficult to access housing options is a positive move, the focus of the Scottish Government should remain on ensuring the delivery of enough affordable housing in Scotland to both prevent and alleviate homelessness.

If you would like to discuss this consultation response further please contact Claire Frew at GHN on 0141 276 4825 or email claire@ghn.org.uk