

**CONSULTATION ON REGULATIONS UNDER
SECTION 7 OF THE HOUSING (SCOTLAND)
ACT 2001**

Rights and responsibilities in temporary
accommodation

**Scottish Executive Development Department
December 2004**

CONSULTATION ON REGULATIONS UNDER SECTION 7 OF THE HOUSING SCOTLAND ACT 2001

CONTENTS PAGE	PAGE NO
Introduction	3-4
The primary legislation	5-6
Content of the draft regulations	7 - 16
Specified occupancy regulations	7 - 9
Specified terms regulations	9 - 16
Further terms/guidance required	16
Timing of implementation	16
Responding to this consultation	17
Consultation questionnaire/respondent information form	18 - 26
Scottish Executive Consultation Process	27
Distribution	28
Section 7 of Housing (Scotland) Act 2001	Annex A
Types of occupancy regulations	Annex B
Terms of occupancy regulations	Annex C

INTRODUCTION

1. This consultation paper seeks views on draft regulations under section 7 of the Housing (Scotland) Act 2001 (the 2001 Act). The policy memorandum accompanying the version of the 2001 Act as it was introduced to the Scottish Parliament stated that “at present, homeless people living in hostels have no rights in relation to their accommodation. In order to rectify this, [the Bill] proposes powers for the Scottish Ministers to set out in regulations terms of occupancy for those living in hostels”.

2. During the passage of the Bill, Ministers also agreed to consider the extension of regulations under section 7 to accommodation specifically provided for ex-offenders by organisations such as SACRO. This consultation also proposes that the regulations apply to temporary accommodation provided under the homelessness legislation and to women’s refuges.

3. The underlying purpose of the regulations is to clarify and enshrine in legislation the minimum rights of people living in hostels and other insecure accommodation. This is in line with the Executive’s wider aims of improving the rights of homeless people which are being taken forward in implementing the Housing (Scotland) Act 2001, the Homelessness etc (Scotland) Act 2003 and the recommendations of the Homelessness Task Force¹. In particular the Executive is keen to ensure that the regulations do not inadvertently undercut any rights which residents may already have – at common law for example.

4. The Executive is also keen to ensure that the regulations do not overlook the responsibilities incumbent on people living in insecure accommodation, but recognise these in a context which does not undermine the constructive approach which many providers are taking to working with residents, some of whom are extremely challenging. We recognise the need to allow providers the flexibility to ensure that residents are supported appropriately whilst also fulfilling their responsibilities to safeguard other residents and staff.

5. The Executive also recognises that the role of direct access accommodation, and other forms of temporary accommodation, and the context in which it is being provided has changed quite markedly in Scotland in recent years. In particular, the Rough Sleepers Initiative, and the programme to re-provision the large hostels in Glasgow, have had a major impact. In general this has seen a move towards a more supported environment, with a wide variety of support services working with accommodation providers. The extension of rights to temporary accommodation to all homeless people under the 2001 Act also appears to have had an impact on the number of people living in temporary accommodation and on the level of support needs being identified and requiring to be met.

6. The Executive also notes that the circumstances of residents who may come within the scope of the regulations has the potential to vary widely. For instance some people may stay in a hostel for 1 or 2 nights whilst some others have lived there for years. The level of support required may also differ from person to person and whilst the majority of residents are likely to be single people, some families with children and other household groups may also come within the scope of the regulations.

¹ For more information on the work of the Homelessness Task Force see: <http://www.scotland.gov.uk/library3/society/htff-00.asp>

7. To retain clarity it is proposed that the regulations will apply uniformly to these different circumstances (with the exception of the proposed notice period where the length of stay has an impact – see paragraph 48 for details), but it is recognised that respondents to this consultation may wish to suggest alternative approaches.

8. It is our intention to issue guidance to support providers of accommodation in implementing the new regulations once they are finalised. Suggested coverage for such guidance is referred to throughout this paper, and your views on the form and content of such guidance would also be useful.

THE PRIMARY LEGISLATION

9. As with any piece of subordinate legislation, the parameters of these regulations are set by the primary legislation which gives Ministers the power to make them – in this case section 7 of the 2001 Act.

10. Section 7 gives Ministers the power to make 2 sets of regulations. Under section 7(3) Ministers may specify in regulations terms which are to have effect as terms of an occupancy as between an occupier and an accommodation provider (these regulations are referred to in this paper as the terms of occupancy regulations). This means that the terms of occupancy regulations must be specific and apply to the relationship between an individual occupier and provider – they cannot place general duties on the provider which do not translate to an individual occupancy agreement.

11. Regulations under section 7(1) are to set out the types of occupancies to which the terms will apply (these regulations are referred to in this paper as the types of occupancy regulations).

12. The full text of section 7 of the 2001 Act is attached at **Annex A**. Section 7 states that the regulations must comply with the following requirements:

The types of occupancy regulations under section 7(1) **must not** specify occupancy of accommodation-

- (a) as a heritable proprietor
- (b) secured by:
 - a Scottish secure tenancy or what would be a Scottish secure tenancy but for paragraph 1,2, or 8 of Schedule 1 to the 2001 Act
 - a short Scottish secure tenancy
 - an assured tenancy or what would be an assured tenancy but paragraph 8 of Schedule 4 to the 1988 Act²
 - a short assured tenancy

13. The terms of occupancy regulations under 7(3) **must**:

Include provision for a minimum period of notice to be given by the person providing the accommodation to the occupier before the right of occupancy can be terminated. However the primary legislation is clear that such provision does not prevent the earlier termination of occupancy rights where there is a serious danger to other occupiers or staff of the accommodation.

14. In addition the terms of occupancy regulations **may**:

Make provision for an application to a court by a person whose occupancy is terminated on the ground that there is a serious danger to other occupiers or staff of the accommodation.

15. Section 7 also provides that an occupier and provider can agree terms of occupancy additional to those specified in the regulations, although these will have no effect to the extent to which there are inconsistent with any specified term. It also states that a person

² The Housing (Scotland) Act 1988

providing accommodation who fails, without reasonable excuse, to comply with a specified term is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

CONTENT OF THE DRAFT REGULATIONS

16. The actual form of the draft regulations is set out in Annexes B (the types of occupancy regulations) and C (the terms of occupancy regulations). This section explains their content, sets out possible areas for accompanying guidance to explore and states the questions which we would like you to consider. These questions are repeated as part of the consultation questionnaire at page 18 onwards.

Types of occupancy regulations - content

17. The types of occupancy regulations currently state that the following types of occupancy will be covered:

- Occupancy arising from a duty of a local authority to make available accommodation in terms of certain sections of the **homelessness legislation**.
- Occupancy for a term of less than 6 months where this is for a **person subject to supervision** under section 27 of the Social Work (Scotland) Act 1968
- Occupancy in a **hostel** – a hostel is defined as (a) in relation to a building provided or converted before 3rd January 1962, a building in which is provided, for persons generally or for any class or classes of persons, residential accommodation (otherwise than in separate and self-contained houses) and board, and(b) in relation to a building provided or converted on or after that date, a building in which is provided for persons generally or for any class or classes of persons, residential accommodation (otherwise than in houses) and either board or common facilities for the preparation of adequate food to the needs of those persons, or both.

This definition is the one used in the 2001 Act.

- Occupancy in a **women's refuge** – a women's refuge is defined as a house managed by a voluntary organisation and used wholly or principally for the temporary accommodation of persons who have left their homes as a result of physical violence or mental abuse; or threats of such violence or abuse, from a person to whom they are/were married/cohabiting.

18. If an occupancy does not come within the categories set out in paragraph 17 above, it **does not** come within the scope of the regulations as currently drafted. In addition, the regulations as drafted state that even where an occupancy does meet the criteria set out in paragraph 17, the following types of occupancy are **exempted**:

18A. Occupancy of accommodation-

(a) as a heritable proprietor

(b) secured by-

- a Scottish secure tenancy or what would be a Scottish secure tenancy but for paragraph 1,2, or 8 of Schedule 1 to the 2001 Act
- a short Scottish secure tenancy
- an assured tenancy or what would be an assured tenancy but paragraph 8 of Schedule 4 to the 1988 Act
- a short assured tenancy

As is set out in paragraph 2 of this paper, section 7 of the 2001 Act states that these types of occupancy cannot be covered in the regulations. Summarising, paragraphs 1,2 and 8 of Schedule 1 of the 2001 Act cover tenancies which would be Scottish Secure Tenancies but for the fact that the premises are occupied under a contract of **employment**; are **police and fire** accommodation; are let together with **agricultural** land exceeding 2 acres; consist of or include premises used as a shop or office for **business, trade** or **professional** purposes, or are premises **licensed** for the sale of excisable liquor. Paragraph 8 of Schedule 4 of the 1998 Act covers **holiday** lets.

18B Occupancy secured by what would be a Scottish secure tenancy but for paragraph 3 of Schedule 1 to the 2001 Act; Occupancy secured by what would be an assured tenancy but for paragraph 7 of Schedule 4 to the 1998 Act (this covers **student lettings**).

18C Occupancy secured by a **lease** (the intention here is to ensure that the regulations do not undercut current rights which residents may have at common law).

18D Occupancy in accommodation occupied by a **religious order** whose principal occupation is prayer, contemplation, education or the relief of suffering

18E Occupation in accommodation provided by the Secretary of State for Defence for **armed forces personnel**

18F **Prison** accommodation

18G Occupancy in accommodation which is provided as part of a **care home** service; **school care** accommodation service; independent **health care** service; **secure accommodation** service (the definition of these services is as under the Regulation of Care (Scotland) Act 2001). These services are subject to regulation and inspection by the Scottish Commission for the Regulation of Care, as against the National Care Services.

18H Occupancy which is **not the person's main and only residence** (This is to ensure that a stay in a hotel/Bed and Breakfast for business purposes, for example, does not come within the scope of the regulations).

Types of occupancy regulations - guidance

19. Guidance relating to the implementation of the regulations may cover illustrative examples of the types of occupancy/accommodation which are covered, and those which are exempt. It will also emphasise that accommodation providers should aim to maximise security of tenure wherever possible.

20. It should be noted that as currently drafted the regulations are not intended to apply to people staying in hotels or B&B accommodation for business purposes or as part of a holiday – however, if people have been placed in this type of accommodation by a local authority discharging its duty under the homelessness legislation then their occupancy will be covered by these regulations. It should also be noted that people living in a separate self contained houses will not come within the scope of the regulations *unless* the occupancy has come about as a result of a local authority discharging its duty under the homelessness legislation; the house comes within the definition of a women's refuge; or the person is under supervision

in terms of section 27 of the Social Work (Scotland) Act 1968 and the occupancy is for less than 6 months.

21. As currently drafted, the regulations apply to all providers equally – no distinction is drawn between the statutory, voluntary and private sectors.

Types of occupancy regulations – questions

22. The questions which we would like you to consider in relation to the type of occupancy regulations are as follows:

- Q1 Are the types of occupancy covered appropriate?
- Q2 Are the types of occupancy which are excluded appropriate? In particular is it appropriate to exclude leases and care services regulated by the Scottish Commission for the Regulation of Care?
- Q3 Should certain classes of provider be excluded (for instance private sector/voluntary organisations)?
- Q4 Are there any particular areas where definitions or application could be clarified in guidance?

Terms of occupancy regulations

23. The terms of occupancy regulations specify terms which will apply between occupiers and providers in relations to the occupancies set out above. **Please refer to Annex C for the detailed wording of the regulations.** This section explains their content, sets out possible areas for accompanying guidance to explore and states the questions which we would like you to consider. However this section does not replicate the wording of the regulations precisely.

24. It should be noted that the terms of occupancy regulations contain terms which will be included in occupancy agreements – it is therefore important that these terms are transferable across the different situations in which they will apply. As is noted at paragraph 10 above it should also be noted that the terms are to have effect as between the provider and an individual occupier – it is not competent for the regulations to impose more general duties on a provider.

REGULATION 4

Regulation 4: Written agreement: content

25. The provider shall provide an appropriate form of written agreement no later than 24 hours after the commencement of the occupancy. This shall set out the specified terms and any additional terms agreed between the provider and occupier in relation to the occupancy.

Regulation 4: Written agreement: guidance

26. Guidance relating to the regulations may cover the types of additional terms which providers and occupiers may wish to consider, and may also set out a model occupancy agreement. This is likely to include guidance as to the incorporation of accommodation ‘rules’ within occupancy agreements, and ensuring that both provider and occupier are clear

as to the consequences of breaching a term of the agreement. Guidance may also cover the most appropriate way to ensure that illiterate residents are aware of their rights.

Regulation 4: Written agreement: questions

27. The questions we would like you to consider in relation to Regulation 4 are:

Q5. Is this regulation appropriate?

Q6. Could the regulations themselves cater for illiterate occupiers?

Q7. What guidance would be useful in relation to this term? Do you have any examples of good practice which would be a good foundation for guidance?

REGULATIONS 5 AND 6

Regulations 5 and 6: Information/advice: content

28. The occupier may seek independent advice from any person providing advocacy, information and legal services. The provider shall respond, in so far as reasonable, to any request from the occupier for information or explanation.

Regulations 5 and 6: Information/advice: guidance

29. Guidance relating to the regulations may cover the types of advocacy, information and legal services which the occupier may wish to access, the role of the accommodation provider in assisting this access for a wide variety of occupiers and good practice in relation to co-location/signposting of services.

Regulations 5 and 6: Information/advice: questions

30. The questions we would like you to consider in relation to Regulations 5 and 6 are:

Q8. Are these regulations appropriate?

Q9. Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

REGULATION 7

Regulation 7: Personal possessions: content

31. The occupier shall be responsible for his/her personal possessions.

Regulation 7: Personal possessions: guidance

32. Guidance relating to the regulations may cover the advice which accommodation providers, and other service providers, may wish to offer to occupiers in relation to insurance and safeguarding their possession against theft or destruction. It may also cover steps providers may wish to take to ensure that occupiers are able to access secure storage if necessary.

Regulation 7: Personal possessions: questions

33. The questions we would like you to consider in relation to Regulation 7 are:

Q10 Is this regulation appropriate?

Q11 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

REGULATION 8

Regulation 8: condition of accommodation: content

34. Provider to ensure that accommodation is wind and water tight and otherwise fit for human habitation at commencement of occupancy and thereafter.

Regulation 8: condition of accommodation: guidance

35. Guidance is likely to cover the specific actions required in order for a provider to ensure this term is met.

Regulation 8: condition of accommodation: questions

36. The questions we would like you to consider in relation to Regulation 8 are:

Q12 Is this regulation appropriate?

Q13 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

REGULATIONS 9, 10 AND 11

Regulations 9,10 and 11: Conduct of occupier: content

37. The occupier shall not use, or let anyone else use, the accommodation for illegal/immoral purposes. The occupier shall not, in or at the locality of the accommodation, act in such a way as to result in a serious danger to other occupiers or staff of the accommodation. Furthermore the occupier shall not, in or near the accommodation, act in a way which is detrimental to the health, or likely to seriously endanger the safety, of any person, or in a way which is likely to cause alarm, distress, nuisance or annoyance to any person.

Regulations 9,10 and 11: Conduct of occupier: guidance

38. Guidance relating to the regulations may cover illustrative examples of types of actions which may be taken to constitute a serious danger and/or which meet any of the other definitions. Guidance may also cover action which providers of accommodation, and other service providers, may wish to take in response to a breach of these terms. It should be noted that as currently drafted the regulations do not establish a link between such a breach and the provision of support, any sanction or other consequence. However this may be an area which could be agreed between the provider and occupier as an additional term of occupancy.

Regulations 9,10 and 11: Conduct of occupier: questions

39. The questions we would like you to consider in relation to Regulations 9,10 and 11 are:

Q14 Are these regulations appropriate? Is there a better way to strike a balance between expecting certain standards of behaviour whilst recognising that some people living in circumstances covered by the regulations will have challenging behaviour which requires to be constructively managed?

Q15 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

REGULATION 12

Regulation 12: Conduct of provider: content

40. The provider shall not act as to unreasonably prevent or restrict the occupier receiving mail, receiving visitors, accessing the telephone or accessing their personal possessions.

Regulation 12: Conduct of provider: Guidance

41. Guidance relating to the regulations may cover illustrative circumstances in which a provider may *reasonably* act to restrict the occupier's access to mail, visitors, phone calls or personal possession. It is likely that this will include consideration of the type and scale of accommodation and the general characteristics of the clientele. Guidance may also cover good practice in relation to receiving visitors for example.

42. The Executive is aware that there is some concern regarding the ability of providers to safeguard the security of occupiers whilst allowing visitors and it has been suggested that making provision for a visitors policy which is subject to review would be more appropriate than a general responsibility not to unreasonably prevent or restrict access to visitors. However it should be noted that the regulations only apply to individual occupancy agreements – therefore providers could have the responsibility to notify the occupier of any visitors policy but the regulations could not impose a general duty to develop such a policy.

43. The Executive is sympathetic to the concerns which have been expressed – however its current view is that these concerns can be met by the current draft which refers to unreasonable restrictions – if the provider can demonstrate that restricting visitors is reasonable then this is permissible within the scope of the regulations.

Regulation 12: Conduct of provider: questions

44. The questions we would like you to consider in relation to Regulation 12 are:

Q16 Is this regulation appropriate? Are there certain types of accommodation for which it should not apply?

Q17 Would a better approach be to ensure that every provider has to notify each occupier of its visitors policy, if it has one, and to cover in guidance what such a policy might incorporate?

- Q18 In what circumstance could a provider act reasonably to restrict access by visitors, or to mail, calls or personal possessions?
- Q19 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance (in particular in relation to receiving visitors)?

REGULATION 13

Regulation 13: Entry: content

45. The provider may enter the accommodation immediately with the consent of the occupier or where the provider has reasonable cause to believe that there is serious danger of damage to the accommodation or that the occupier is using the accommodation for illegal or immoral purposes or acting in such a way as to result in a serious danger to themselves or any other person. In any other case 24 hours notice is required.

Regulation 13: Entry: guidance

46. Guidance relating to the regulations may cover methods of obtaining consent, good practice relating to regular access to rooms in a hostel environment and illustrative examples of where immediate entry may be permitted without consent.

Regulation 13: Entry: questions

47. The questions we would like you to consider in relation to Regulations 13 are:

Q20: Is this regulation appropriate?

Q21: Should exemptions be considered for certain types/size of accommodation which may require to carry out daily room checks for health and safety purposes or should this be dealt with in guidance?

Q22: Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

REGULATION 14

Regulation 14: Termination of occupancy: content

48. The provider must, in normal circumstances, give a minimum period of notice before terminating occupancy rights. The current draft of the regulations proposes that this period should be linked to the length of stay. Therefore, if the occupier has been in occupancy for more than 14 days the period of notice must not be less than 5 days; if the occupier has been in occupancy for more than 28 days the period of notice must not be less than 7 days; if they have been in occupancy for more than 3 months the period of notice must not be less than 14 days; if they have been in occupancy for more than 6 months the period of notice must not be less than 28 days. Where the occupancy has lasted 14 days or less the minimum period of notice is 72 hours.

49. However, where the provider has reasonable cause to believe that the occupier represents a serious danger to other occupiers or staff of the accommodation, occupancy rights can be terminated without providing the minimum period of notice.

50. It is noted that some providers may prefer the minimum notice period to be linked to the behaviour of the occupant – however the Executive’s current view is that a subjective test would not lead to greater clarity for the occupant. It should be noted that these regulations only set a minimum period – it is open to occupiers and providers to agree a longer time period if appropriate. The regulations as currently drafted do not link the termination of occupancy rights to the other specified terms or the behaviour of the occupier – such linkage could be agreed as an additional term of occupancy, as long as the minimum period is observed.

51. The provision in the regulations for earlier termination reflects the fact that section 7 of the 2001 Act states that the provision of a minimum period of notice does not prevent the earlier termination of occupancy rights in circumstances where there is a serious danger to occupiers or staff of the accommodation.

Regulation 14: Termination of occupancy: guidance

52. Guidance relating to the regulations may cover illustrative examples of linkages between conduct and termination of occupancy. It is also likely to set out good practice in relation to housing management and support issues (both in terms of providing support to individuals and in terms of good practice in group settings – e.g. regular residents’ meetings, ensuring residents’ views taking into account in accommodation management). The guidance is also likely to reflect the fact that accommodation providers should be working in partnership with other service providers in their area, through the local homelessness strategy and other mechanisms, to ensure that appropriate provision is in place for people whose occupancy rights have been terminated.

53. The guidance will also stress that the earlier termination of occupancy rights should only take place in extreme circumstances and should be avoided if at all possible. As stated above, the guidance may also cover illustrative examples of types of actions which may be taken to constitute a serious danger.

Regulation 14: Termination of occupancy: questions

54. The questions we would like you to consider in relation to Regulation 14 are:

Q23 Is this regulation appropriate?

Q24 Do you feel the sliding scale approach to periods of notice is too complex?

Q25 Are the time periods appropriate?

Q26 Would a more subjective test be better? If so, how should this apply?

Q27 Should the regulations set grounds for termination as well as a minimum period of notice – if so what should these be?

Q28 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

REGULATION 15

Regulation 15: Application to court: content

55. The occupier may appeal to the sheriff court in circumstances where their occupancy has been terminated without the minimum period of notice having been given on the grounds that they represented a serious danger to staff or other occupiers. If the sheriff finds that the provider did not have reasonable cause to believe the occupier represented a serious danger the sheriff may make such an order as is considered reasonable in the circumstances. The sheriff's decision is final.

Regulation 15: Application to court: guidance

56. Guidance relating to the regulations may cover alternative review mechanisms which accommodation providers may wish to put in place, in order that a court action is not the only method of review of a decision to terminate occupancy rights on serious danger grounds.

Regulation 15: Application to court: questions

57. The questions we would like you to consider in relation to Regulation 15 are:

Q29 Is this regulation appropriate?

Q30 Should the regulation be specific as to the action the court should take?

Q31 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

Regulation 16: Notification: content

58. This regulation clarifies that giving notice under the regulations means giving or delivering something in person, sent by post in a prepaid registered letter or by recorded delivery, or sent in some other manner which the sender considers likely to cause it to be delivered on the same or next day.

Regulation 16: Notification: guidance

59. Guidance relating to the regulations may cover the interpretation of 'other manner' of notification. This is likely to include corroborated delivery to a room in a hostel where this is the person's last known address.

Regulation 16: Notification: questions

60. The questions we would like you to consider in relation to Regulation 16 are:

Q32 Is this regulation appropriate?

Q33 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

FURTHER TERMS/GUIDANCE REQUIRED

61. We would be interested to know if you feel that there are further terms which should be incorporated into the regulations. It would be helpful if you can be as specific as possible in suggesting additional terms, and bear in mind that this must be applicable at the level of an individual occupancy agreement, rather than imposing general duties on providers of accommodation.

62. We would also be interested in your views as to any additional guidance which is required in order to allow providers to implement the regulations effectively.

TIMING OF IMPLEMENTATION

63. The Executive would also welcome views on the timing of implementation. In particular, it would be useful to have your views as to the time period required for providers to ensure that they can implement the regulations effectively (i.e. the time needed between the regulations being finalised and passed by Parliament and the date for them coming into force). It would also be useful to have your views as to who the regulations should apply – i.e. should they apply only to new occupancies or also to those which are already ongoing?

RESPONDING TO THIS CONSULTATION PAPER

We are inviting written responses to this consultation paper by 15 April 2005. **Please send your response to:**

homelessness@scotland.gov.uk

or

Robin Bate

Homelessness Team

Area 1 H (Bridge)

Victoria Quay

EDINBURGH

EH6 6QQ

If you have any queries contact Anna Donald on 0131 244 0933.

A consultation questionnaire is set out over the next few pages. It would be useful if you are able to respond using this questionnaire – if you require an electronic version please contact Robin Bate (robin.bate@scotland.gsi.gov.uk). If you are completing the questionnaire electronically the test boxes will expand to fit the length of response. If you are completing it in hard copy please mark clearly which question you are responding to on any additional sheets of paper.

We would be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to (using the consultation questionnaire if appropriate) as this will aid our analysis of the responses received.

This consultation, and all other SE consultation exercises, can be viewed online 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 Executive now has an email alert system for [SE consultations](#) ([SEconsult](#)). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new [SE consultations](#) (including web links). [SEconsult](#) complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all [SE consultations](#) activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Access to consultation responses

We will make all responses available to the public in the Scottish Executive Library by 30 May 2005 and on the [Scottish Executive consultation](#) web pages by the same day, unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library or placed on the website.

CONSULTATION/QUESTIONNAIRE/RESPONDENT INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name:

Postal Address:

Consultation title:

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

- (a) an individual (go to 2a/b)
(b) **on behalf of** a group or organisation (go to 2c)

2a. INDIVIDUALS:

Do you agree to your response being made available to the public (in SE library and/or on SE website)?

- Yes (go to 2b below)
No, not at all

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

2c ON BEHALF OF GROUPS OR ORGANISATIONS:

Your name and address as respondees *will be* made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

- Yes
No


SHARING RESPONSES/FUTURE ENGAGEMENT

3. We will share your response internally with other SE 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 Executive to contact you again in the future in relation to this consultation response?

- Yes
No

Specified Occupancy Regulations

- Q1 Are the types of occupancy covered appropriate?
- Q2 Are the types of occupancy which are excluded appropriate? In particular is it appropriate to exclude leases and care services regulated by the Scottish Commission for the Regulation of Care?
- Q3 Should certain classes of provider be excluded (for instance private sector/voluntary organisations)
- Q4 Are there any particular areas where definitions or application could be clarified in guidance?



TERMS OF OCCUPANCY REGULATIONS

64. In responding to this consultation it would be very helpful if you were able to make specific drafting comments/amendments where possible, in relation to the terms. It should be noted that the terms set out in the regulations are to be incorporated in occupancy agreements (with only small textual amendments such as numbering). Therefore comments on terms should relate where possible to the relationship between the provider and an individual occupier, rather than more generally in relation to housing management for example (this type of issue can of course be picked up in guidance).

Regulation 4 – Written Agreement

- Q5. Is this regulation appropriate?
- Q6. Could the regulations themselves cater for illiterate occupiers?
- Q7. What guidance would be useful in relation to this term? Do you have any examples of good practice which would be a good foundation for guidance?

Regulations 5 and 6 – Information/advice

- Q8. Are these regulations appropriate?
- Q9. Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

Regulation 7 – Personal possessions

Q10 Is this regulation appropriate?

Q11 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

Regulation 8: condition of accommodation

Q12 Is this regulation appropriate?

Q13 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

Regulations 9, 10 and 11– Conduct of occupier

- Q14 Are these regulations appropriate? Is there a better way to strike a balance between expecting certain standards of behaviour whilst recognising that some people living in circumstances covered by the regulations will have challenging behaviour which requires to be constructively managed?
- Q15 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

Regulation 12 – Conduct of provider

- Q16 Is this regulation appropriate? Are there certain types of accommodation for which it should not apply?
- Q17 Would a better approach be to ensure that every provider has to notify each occupier of its visitors policy, if it has one, and to cover in guidance what such a policy might incorporate?
- Q18 In what circumstance could a provider act reasonably to restrict access by visitors, mail, calls or personal possessions?
- Q19 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance (in particular in relation to receiving visitors)?

Regulation 13 – Entry

- Q20 Is this regulation appropriate?
- Q21 Should exemptions be considered for certain types/size of accommodation which may require to carry out daily room checks for health and safety purposes or should this be dealt with in guidance?
- Q22 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

Regulation 14 – Termination of occupancy

- Q23 Is this regulation appropriate?
- Q24 Do you feel the sliding scale approach to periods of notice is too complex?
- Q25 Are the time periods appropriate?
- Q26 Would a more subjective test be better? If so, how should this apply?
- Q27 Should the regulations set grounds for termination as well as a minimum period of notice – if so what should these be?
- Q28 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?

Regulation 15 – application to court

Q29 Is this regulation appropriate?

Q30 Should the regulation be specific as to the action the court should take?

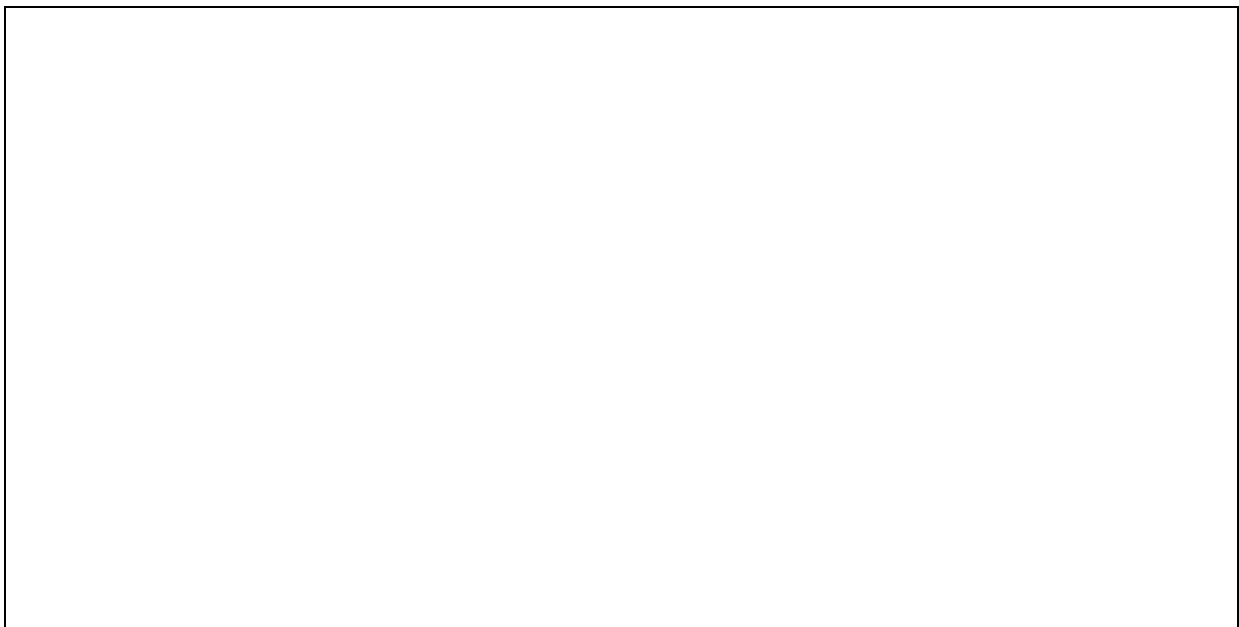
Q31 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?



Regulation 16 – Notification

Q32 Is this regulation appropriate?

Q33 Are there particular points which should be picked up in guidance? Do you have any examples of good practice which would be a good foundation for guidance?



Further terms required

Q34 Are there areas which should be covered by the regulations which are currently omitted? If so what are these and how should a term be worded?

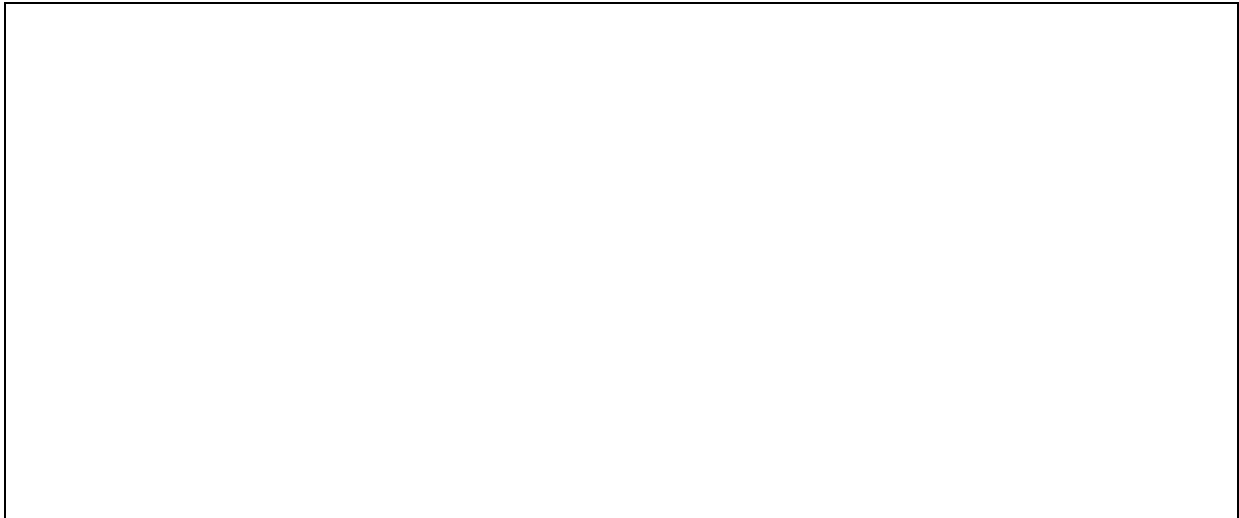
Development of guidance

Q35 Is there a need for further guidance on any of the areas covered by the regulations, or on areas linked to the provision of accommodation in these circumstances which are not covered by the regulations?

Q 36 Do you know of any good practice which would be a useful foundation for such guidance?

Timing of implementation

- Q37 What timescale is required between finalising the content of the regulations and actual implementation?
- Q38 Should the regulations apply to all occupants under a specified occupancy or only those whose occupancy began following the coming into force of the regulations?



The Scottish Executive Consultation Process

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive 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.

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. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, [Scottish Executive 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 area of consultation, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses³. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. 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

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

Name: Laura Dolan

Address: Homelessness Team, Area 1 H(Bridge), Victoria Quay, Edinburgh, EH6 6QQ

E-mail: laura.dolan@scotland.gsi.gov.uk

³ <http://www.scotland.gov.uk/consultations>

DISTRIBUTION

This paper has been sent to the following organisations (* denotes e-mail distribution). If you would like a full version of this list please contact Robin Bate on 0131 244 7374.

LOCAL AUTHORITIES

CoSLA*
Chief Executives*
Directors of Housing*
Directors of Social Work*
RSI Contacts*
Homeless Strategy Contacts*
Legal Departments

2. HOUSING ASSOCIATIONS

3. HEALTH

NHS Health and Homelessness lead officers*

4. JUSTICE

Prison Governors
Police Chief Constables
SACRO
APEX
Families Outside

5. EXECUTIVE ADVISORY GROUPS, TASK FORCES ETC

Homelessness Monitoring Group*

6. VOLUNTARY ORGANISATIONS AND OTHERS

Voluntary organisations and Associations – including Women’s Aid groups
Non Departmental Public Bodies and Public Authorities

7. PARLIAMENT

Scottish Political Parties
Scottish MEP’s
Clerk of the Communities Committee
Scottish Parliament Information Centre

8. SCOTTISH EXECUTIVE*

9. COMMUNITIES SCOTLAND*

10. UNITED KINGDOM COPYRIGHT LIBRARIES

ANNEX A: TEXT OF SECTION 7 OF HOUSING (SCOTLAND) ACT 2001

7. Persons living in hostel and other short-term accommodation

(1) This section applies to the occupancy of residential accommodation, or of any description of residential accommodation, on such basis as may be specified in regulations made by the Scottish Ministers.

(2) Such regulations must not specify occupancy of accommodation-

(a) as heritable proprietor,

(b) secured by-

(i) a Scottish secure tenancy or what would be a Scottish secure tenancy but for paragraph 1, 2 or 8 of schedule 1,

(ii) a short Scottish secure tenancy,

(iii) an assured tenancy or what would be an assured tenancy but for paragraph 8 of Schedule 4 to the 1988 Act,

(iv) a short assured tenancy.

(3) The Scottish Ministers may specify by regulations terms which are to have effect as terms of an occupancy to which this section applies as between the occupier and the person providing the accommodation; and any agreement between those persons has no effect so far as it is inconsistent with any such term.

(4) Regulations under subsection (3) must include provision for a minimum period of notice to be given by the person providing the accommodation to the occupier before the right of occupancy can be terminated; but such provision does not prevent the earlier termination of occupancy rights where there is a serious danger to other occupiers or staff of the accommodation.

(5) Regulations under subsection (3) may also make provision for an application to the court by a person whose occupancy is terminated on the ground that there is a serious danger to other occupiers or staff of the accommodation.

(6) Subsection (3) does not prevent the occupier and the person providing the accommodation from agreeing terms of the occupancy additional to those specified in the regulations.

(7) A person providing such accommodation who fails, without reasonable excuse, to comply with a term specified under subsection (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) Before making any regulations under subsection (3), the Scottish Ministers must consult-

(a) such associations representing local authorities,

(b) such associations representing registered social landlords, and

(c) such other persons,

as they think fit on the proposed regulations.

SCOTTISH STATUTORY INSTRUMENTS

2005 No.

HOUSING

The Specified Occupancy of Residential Accommodation (Scotland)
Regulations 2005

<i>Made</i> - - - -	2005
<i>Laid before the Scottish Parliament</i>	2005
<i>Coming into force</i> - -	2005

The Scottish Ministers, in exercise of the powers conferred on them by sections 7(1) and 109(2) of the Housing (Scotland) Act 2001⁽⁴⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Specified Occupancy of Residential Accommodation (Scotland) Regulations 2005 and shall come into force on []2005.

Interpretation

2. In these Regulations—

“the 1987 Act” means the Housing (Scotland) Act 1987⁽⁵⁾;

“the 1988 Act” means the Housing (Scotland) Act 1988⁽⁶⁾;

“the 2001 Act” means the Housing (Scotland) Act 2001;

“assured tenancy” has the same meaning as in Part II of the 1988 Act;

“hostel” has the meaning assigned to it by section 111 of the 2001 Act;

“prison” includes a remand centre provided under paragraph (a) of subsection (1) of section 19 of the Prisons (Scotland) Act 1989⁽⁷⁾ and a young offenders institution provided under paragraph (b) of that subsection;

“short assured tenancy” has the same meaning as in Part II of the 1988 Act;

“women’s refuge” means a house managed by a voluntary organisation and used wholly or principally for the temporary accommodation of persons who have left their homes as a result of—

- (a) physical violence or mental abuse; or
- (b) threats of such violence or abuse,

⁽⁴⁾ 2001 asp 10.

⁽⁵⁾ 1987 c.26.

⁽⁶⁾ 1988 c.43.

⁽⁷⁾ 1989 c.45.

from a person to whom they are or were married or with whom they are or were co-habiting.

Specified occupancy of residential accommodation

3.—(1) The descriptions of occupancy of residential accommodation specified in paragraph 2 of this regulation are hereby specified for the purposes of section 7 of the 2001 Act save where such occupancy is specified in regulation 4.

- (2) (a) occupancy arising from fulfilment of a duty by a local authority to make available accommodation in terms of sections 29, 31(2), 31(2B)(b)(i), 31(3), 34(1) or 34(2) of the 1987 Act;
- (b) occupancy for a term of less than 6 months to a person—
- (i) who is under supervision in pursuance of the functions of a local authority under paragraph (b)(i), (ii) or (vi) of subsection (1) of section 27 (supervision and care of persons on probation, released from prison etc.) of the Social Work (Scotland) Act 1968⁽⁸⁾, or
 - (ii) who has requested, in accordance with paragraph (c) of that subsection, the provision of advice, guidance or assistance by a local authority in pursuance of the authority's functions under that paragraph;
- (c) occupancy in a hostel;
- (d) occupancy in a women's refuge.

Occupancy of residential accommodation not specified

4.—(1) The descriptions of occupancy of residential accommodation specified in regulation 3 exclude occupancy of residential accommodation in terms of paragraph 2 of this regulation.

- (2) (a) as heritable proprietor;
- (b) secured by a lease;
- (c) secured by—
- (i) a Scottish secure tenancy or what would be a Scottish secure tenancy but for paragraphs 1, 2, 3 or 8 of schedule 1 to the 2001 Act;
 - (ii) a short Scottish secure tenancy;
 - (iii) an assured tenancy or what would be an assured tenancy but for paragraphs 7 or 8 of Schedule 4 to the 1988 Act;
 - (iv) a short assured tenancy;
- (d) occupied by a religious order whose principal occupation is prayer, contemplation, education or the relief of suffering;
- (e) which is provided as part of—
- (i) a care home service (as defined in subsection (3) of section 2 of the Regulation of Care (Scotland) Act 2001⁽⁹⁾);
 - (ii) a school care accommodation service (as defined in subsection (4) of that section);
 - (iii) an independent health care service (as defined in subsection (5) of that section);
 - (iv) a secure accommodation service (as defined in subsection (9) of that section);
registered under that Act;
- (f) not as the occupier's only or main residence;

⁽⁸⁾ 1968 c.49.

⁽⁹⁾ 2001 asp 8.

- (g) provided by the Secretary of State for Defence, as heritable proprietor, for armed forces personnel;
- (h) where the residential accommodation constitutes, or forms part of, a prison.

Terms of occupancy

3. The terms of occupancy set out in regulations 4 to 15 are specified as terms of an occupancy which have effect as between the occupier and the provider as regards any occupancy commenced on or after the coming into force of these Regulations, and are the specified terms of occupancy.

Written Agreement

4. The provider shall no later than 24 hours after the commencement of the occupancy of the accommodation provide the occupier with a written record in an appropriate form for the occupier including Braille, translation or large print setting out–

- (a) the specified terms of occupancy set out in regulations 5 to 15; and
- (b) any additional terms of occupancy.

Information

5. The occupier may seek independent advice from any person providing advocacy, information and legal services in relation to the specified terms of occupancy and the additional terms of occupancy.

6. The provider shall respond, in so far as reasonable, to any request for information or explanation from the occupier in relation to the specified terms of occupancy and the additional term of occupancy.

7. The occupier shall be responsible for that occupier's personal possessions.

Condition of Accommodation

8. The provider shall ensure that the accommodation is, both on the commencement of the occupancy and throughout the occupancy, wind and water tight and in all other respects reasonably fit for human habitation.

Use of Accommodation

9. The occupier shall not use, or permit any other person to use the accommodation for illegal or immoral purposes.

Conduct of Occupier

10. The occupier shall not act or pursue a course of conduct in or at the locality of the accommodation which results in a serious danger to other occupiers or staff of the accommodation.

11. The occupier shall not act or pursue a course of conduct or permit or encourage any other person to act or pursue a course of conduct in or at the locality of the accommodation which–

- (a) is detrimental to the health or likely to seriously endanger the safety of any person; or
- (b) causes or is likely to cause alarm, distress, nuisance or annoyance to any person.

Conduct of Provider

12. The provider shall not act or permit or encourage any person to act so as to unreasonably prevent or restrict the occupier–

- (a) receiving mail addressed to the occupier at the accommodation;
- (b) receiving visitors;
- (c) accessing a telephone which is available at the accommodation for the use of occupiers; or
- (d) accessing that occupier's personal possessions.

Entry

13. In the absence of consent of the occupier, the provider, or a person authorised by the provider, may obtain entry to the accommodation—

- (a) on 24 hours notice to the occupier; or
- (b) immediately where the provider has reasonable cause to believe—
 - (i) there is a serious danger to the occupier or any other person in the accommodation;
 - (ii) there is a serious danger of damage to the accommodation; or
 - (iii) the occupier has used, or permitted any other person to use the accommodation for illegal or immoral purposes.

Termination of occupancy

14.—(1) Save where the circumstances in paragraph (2) apply, the minimum period of notice to be given by the provider to the occupier before the right of occupancy can be terminated shall be—

- (a) not less than 28 days where the occupier has been in occupancy of the accommodation for a period exceeding 6 months;
- (b) not less than 14 days where the occupier has been in occupancy of the accommodation for a period exceeding 3 months;
- (c) not less than 7 days where the occupier has been in occupancy of the accommodation for a period exceeding 28 days;
- (d) not less than 5 days where the occupier has been in occupancy of the accommodation for a period exceeding 14 days.

and 72 hours in all other circumstances.

(2) Where the provider has reasonable cause to believe that the occupier is in breach of the term of occupancy set out in regulation 10, the provider may terminate the occupancy without any minimum period of notice detailed in paragraph (1) having been given.

Application to court

15.—(1) In the event that the provider has terminated the occupancy in terms of paragraph (2) of regulation 14 the occupier may appeal against that termination by summary application to the sheriff.

(2) If the sheriff is satisfied that the provider did not have reasonable cause to believe that the occupier was in breach of the term of occupancy set out in regulation 10 the sheriff may make such order as it considers reasonable in all the circumstances.

(3) The decision of the sheriff on an appeal under this regulation 15 shall be final.

Notification

16. In these Regulations any references to giving “notice” and “notified” means that a person has received a communication in writing which is—

- (a) given or delivered to that person;
- (b) sent by post in a prepaid registered letter or by the recorded delivery service to that person at that person’s usual or last known place of abode; or
- (c) sent to that person in some other manner including electronic means which the sender considers likely to cause it to be delivered on the same or next day.