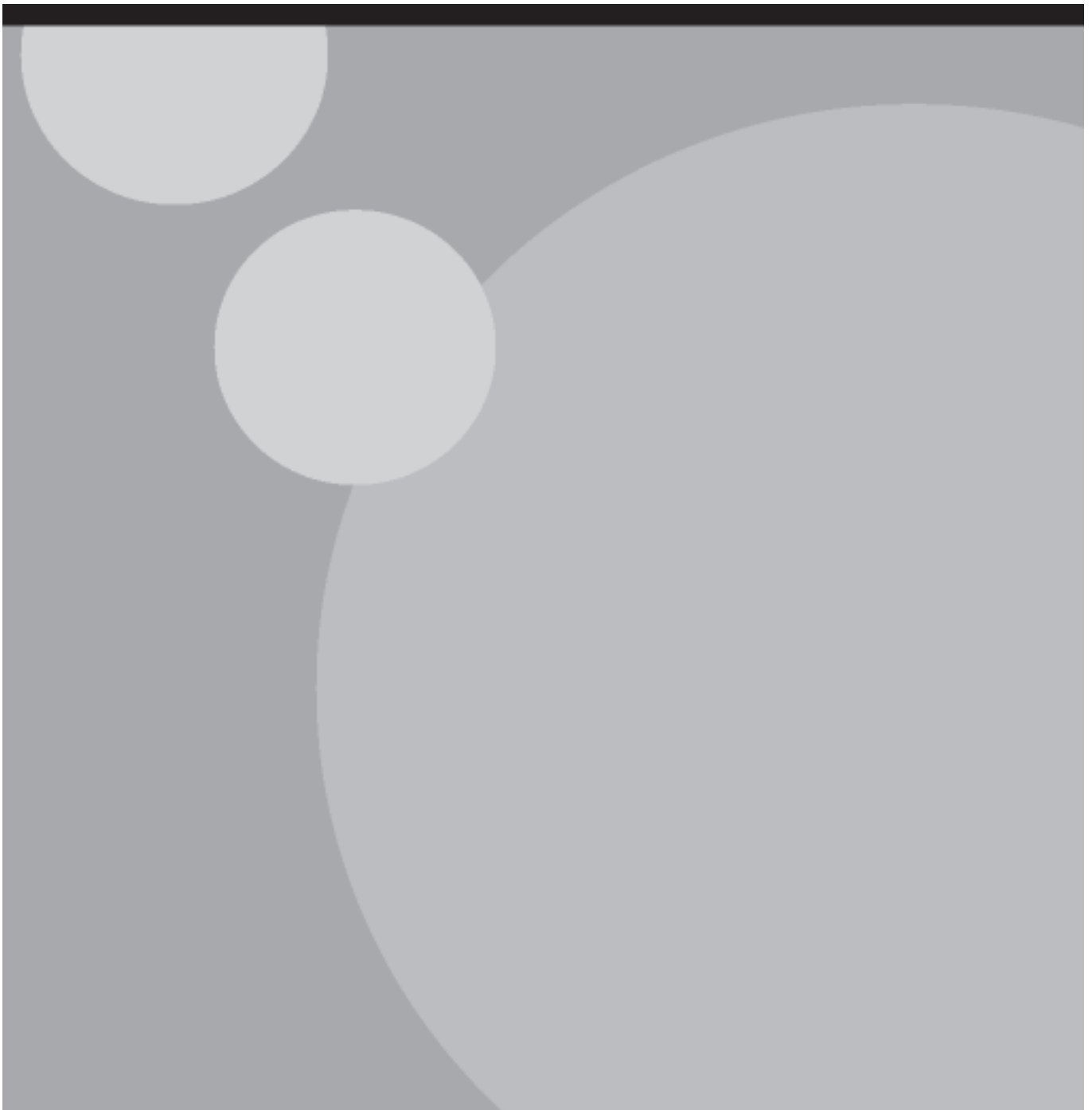




Homelessness (Suitability of Accommodation) (England) Order 2012 – Consultation





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May 2012
Department for Communities and Local Government

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Any enquiries regarding this document/publication should be sent to us at:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

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The consultation process and how to respond

Topic of this consultation:	<p>This consultation is in two parts:</p> <ul style="list-style-type: none"> • Part one: Content of a proposed Order that will set out the circumstances in which accommodation used for the purposes of a private rented sector offer to end the main homelessness duty will not be regarded as 'suitable'. • Part two: How best to strengthen requirements in relation to location and suitability when local authorities secure accommodation for the use of households owed duties under homelessness legislation.
Scope of this consultation:	<p>As above.</p> <p>Other elements of 'suitability' that a local authority, must by law consider when discharging the main homelessness duty, will continue to apply and are out of the scope of this consultation.</p>
Geographical scope:	<p>England.</p>
Impact Assessment:	<p>An Impact Assessment and Equalities Impact Assessment covering the impacts of ending the main homelessness duty in the private rented sector have already been published.</p> <p>An Impact Assessment setting out the impacts of the proposed Order that considers the suitability of accommodation used for the purposes of a private rented sector offer to end the main homelessness duty has been published alongside this consultation.</p> <p>An Impact Assessment and Equalities Impact Assessment on strengthening requirements in relation to location and suitability are not required as it will not impose a cost on business, the third sector nor local authorities.</p>

Basic Information

To:	<p>This consultation is aimed primarily at local authorities, landlords and their representative groups and homelessness organisations.</p>
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Body responsible for the consultation:	This consultation is being run by the Homelessness and Support Division within the Department for Communities and Local Government.
Duration:	This consultation will run for eight weeks from 31 May 2012 to 5pm on 26 July 2012.
Enquiries:	For enquiries, please contact the following: john.bentham@communities.gsi.gov.uk 0303 444 3752
How to respond:	By email to: suitabilityorder@communities.gsi.gov.uk Or by post to: John Bentham Department for Communities and Local Government Zone 1/G9, Eland House Bressenden Place London SW1E 5DU
Additional ways to become involved:	Key national interest groups will also be engaged directly during the consultation process.
After the consultation:	A summary of the responses to consultation will be published on the Department's website within three months of the end of the consultation period.
Compliance with the Code of Practice on Consultation:	The consultation period has been set at eight weeks given the specific nature of the issues highlighted, the extensive discussion that has already occurred, the short length of the consultation document and the strength of the case for swift action.

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

Background

1. Where an applicant is homeless through no fault of their own, eligible for assistance and is in priority need¹, local housing authorities have a duty to secure that accommodation is available for occupation by the applicant. This is known as the main homelessness duty. The Localism Act 2011 enables local authorities to end the main homelessness duty by arranging an offer of suitable accommodation in the private rented sector, without requiring the applicant's agreement.
2. These changes to the homelessness legislation will give local authorities freedom to make better use of good-quality private rented sector accommodation that can provide suitable accommodation for households owed the main homelessness duty. They are part of reforms to social housing to ensure that the system is fair; that good, affordable housing is available for those who genuinely need it; and that we get the best from our four million social rented homes. The package of proposed reforms was set out in the 'Local decisions: a fairer future for social housing' consultation document².
3. The Act includes protections to ensure that the accommodation in the private sector will be available for a sufficient period of time to provide certainty for households. The assured shorthold tenancy must be for a minimum fixed term of 12 months and if the applicant becomes unintentionally homeless again within two years of accepting the private rented sector offer, the main homelessness duty will recur regardless of priority need.
4. Local authorities will still be able to end the homelessness duty with an offer of social housing where they decide this is appropriate.
5. The current homelessness legislation already includes safeguards regarding the accommodation used to end the main homelessness duty and these would apply in cases where the local authority decides to bring the duty to an end with a private sector offer. The accommodation offered would need to be suitable for everyone in the applicant's household. In considering 'suitability' local authorities must consider, for example, whether the accommodation is affordable for the applicant, its size, its condition, its accessibility and also its location. Applicants have the right to ask the authority to review their decision that accommodation is suitable, and if dissatisfied with that decision have the right to appeal to the county court on a point of law. To consolidate these

¹ s189 of the Housing Act 1996 and the Homelessness (Priority Need for Accommodation (England) Order 2002 (SI 2002/2051)

² <http://www.communities.gov.uk/documents/housing/pdf/1775577.pdf>

protections we are also consulting on ways to strengthen the location aspect of suitability within part two of this consultation.

6. Private landlords will benefit from the changes that allow authorities to end the main duty in the private rented sector and will not be required to let to homeless households. If they choose to do so, they will make a market-based decision on whether the benefits of additional tenants outweigh the costs of meeting any additional requirements.

Purpose of the consultation

7. During the passage of the Localism Bill members in both Houses of Parliament and voluntary homelessness organisations raised the issue of the quality of private rented sector accommodation. Government accepted that additional regulatory safeguards were necessary to prevent the use of poor quality accommodation for households owed the main homelessness duty, given that homeless households may be vulnerable and offered accommodation over which they have less choice.
8. Government announced its intention to use its existing powers in the homelessness legislation to set out those circumstances in which accommodation used for a private rented sector offer to end the main homelessness duty is not to be regarded as 'suitable'. Section 210 of the Housing Act 1996 provides that the Secretary of State has the power to specify by Order the circumstances in which accommodation is or is not to be regarded as suitable for a person, and matters to be taken into account or disregarded in determining whether accommodation is suitable for a person.

Scope of the Order

9. The proposed Order as set out in part one of this consultation will apply only to private rented sector offers made to end the main homelessness duty. It will not apply to temporary accommodation nor will it apply to social rented sector accommodation, where there are existing 'suitability' requirements in the homelessness legislation and the statutory Homelessness Code of Guidance³.
10. Other aspects of 'suitability' will continue to apply for homeless households owed the main duty, such as size, condition and affordability, which requires a local authority to consider whether a specific property is suitable for the applicant and their household's individual needs. However as set out below part two of the consultation will consider how best to strengthen the provisions in relation to location and suitability.

³ <http://www.communities.gov.uk/publications/housing/homelessnesscode>

11. This proposed Order focuses specifically on physical and management standards as these were two aspects of private rented sector accommodation where additional protections were deemed necessary and are not covered by the current suitability requirements.
12. The proposed Order combines key aspects of existing legislative requirements on private sector landlords that must be met, with greater requirements in some areas where there is established common practice or particular concerns for homeless households. We are seeking to provide appropriate protection for homeless households while minimising the requirements on local authorities or landlords which could reduce the number of suitable properties.

Aspects of suitability

13. The Homelessness (Suitability of Accommodation) (England) Order 2012 (“the Suitability Order”) will set out the circumstances in which accommodation used for the purposes of a private rented sector offer to end the main homelessness duty is not to be regarded as suitable. It is proposed that these circumstances cover five broad areas:
 - Physical condition of the property
 - Health and safety matters (e.g. gas, electrical and fire safety)
 - Licensing for Houses in Multiple Occupation
 - Landlord behaviour; and
 - Elements of good management

Question 1: Do you agree that these five areas should be important in determining whether accommodation is to be regarded as not suitable?

Physical Condition of the Property

14. Government considers that the properties used for the purposes of a private rented sector offer to discharge the main homelessness duty should be of a reasonable physical condition. This was one of the primary concerns of members of Parliament with issues of damp, mould and cold highlighted in particular.
15. The Housing Health and Safety Rating System is the Government’s approach for evaluating the potential risks to health and safety from any deficiencies identified in dwellings⁴. Local authorities have existing statutory duties under the Rating System to take appropriate enforcement action wherever a property is found to have a Category 1 hazard. The Government considers that when determining the suitability of accommodation secured under the homelessness legislation, local authorities should as a minimum, ensure that the accommodation is free of Category 1 hazards.

⁴<http://www.communities.gov.uk/publications/housing/hhsrsoperatingguidance>

16. Nonetheless we recognise that there are difficulties with making legislation that would prevent local authorities from using properties with Category 1 (or any other) hazards. A full Rating System inspection by an environmental health officer is costly and may not be appropriate in all cases. Also, there may be difficulties inspecting accommodation that is out of a local authority's district and is therefore reliant on another authority taking enforcement action under the provisions in the Housing Act 2004.
17. We believe that local authorities are better placed to make decisions about the suitability of an individual property, within a broader protection on physical conditions. We are, therefore, proposing that the Order requires local authorities to be of the view that the property is of a reasonable physical condition in determining whether it is suitable. This will require local authorities to ensure that they are satisfied with the physical condition of the property, while allowing sufficient flexibility to meet locally set requirements, such as those in landlord accreditation schemes.
18. In order to assess whether accommodation is in a reasonable physical condition, we would expect that a local authority officer, or a person acting on behalf of the authority such as a letting agent, would visit the property. In doing so they should take account of the property's general condition and state of repair, such as signs of damp, mould, loose or cracked windows. Existing aspects of suitability such as space and arrangement set out in statutory guidance will continue to apply. Local authorities may wish to introduce additional requirements in order to satisfy themselves or to fit with locally set standards, such as on repairs and facilities, or requiring an inspection by a qualified person, but this will not be a requirement of the Order.

Health and Safety Matters

19. There are a number of specific health and safety requirements set out in law that private sector landlords must already meet to ensure the safety of tenants. We consider that if private rented sector properties do not meet existing requirements for gas, electrical and fire safety they should not be considered suitable. Given the vulnerability of some households owed the main homelessness duty we are also proposing that where landlords have not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation, it will not be regarded as suitable..
20. In terms of gas safety, by law, landlords are required to ensure that a gas safety check has been carried out annually by a Gas Safe registered engineer, and provide a copy of the record to their tenant. The proposed Order will set out that if the property does not have a current gas safety record it will not be considered suitable. Local authorities will need to be satisfied that such a record exists, for example, by asking to see the original certificate.
21. In terms of electrical safety, existing legislation requires that landlords ensure that all electrical equipment in the property is safe. The proposed Order will

require local authorities to be of the view that any electrical equipment provided meets the requirements of the Electrical Equipment (Safety) Regulations 1994. For example, when visiting the property, the local authority may check that appliances and the associated wiring have no obvious signs of damage, are being used in accordance with manufacturer's operational limits, and that Portable Appliance Testing has been carried out on any appliances. Local authorities will be free to introduce additional requirements, such as requiring an electrical installation check by a qualified electrician, but this will not be a requirement of the Order.

22. Existing legislation for fire safety requires that any items of furniture and furnishings provided by the landlord must comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended). Common best practice⁵ also recommends the provision of smoke alarms, electrical sockets are not overloaded and that people plan their escape routes in the event of a fire. We expect local authorities to take into account such existing common practice in order to provide reasonable protection for homeless households. We are therefore proposing that the Order requires local authorities to be of the view that the landlord has taken reasonable fire safety precautions with the accommodation and any furnishings supplied. Local authorities will be free to introduce additional requirements, such as requiring a fire risk assessment in order to comply with Local Government Regulation guidance for local authorities, but this will not be a requirement of the Order.
23. Additionally, we are proposing that the Order requires local authorities to be of the view that the landlord has taken reasonable precautions to prevent the possibility of carbon monoxide poisoning. Tenants in the private rented sector are at a higher risk of carbon monoxide poisoning than home owners⁶. Some homeless households may be at risk because of their potential vulnerability and reduced ability to challenge the landlord if they suspect a faulty appliance. We expect that the installation of a carbon monoxide alarm would constitute reasonable precautions to prevent the possibility of carbon monoxide poisoning, in addition to the annual gas safety inspection which requires gas appliances to be checked.
24. Landlords and local authorities will continue to be required to comply with all other legislation for private rented sector properties.

Houses in Multiple Occupation

25. There are additional health and safety requirements for privately rented Houses in Multiple Occupation. These requirements are elements of the licensing regime for Houses of Multiple Occupancy under Part 2 of the Housing Act 2004. The licence imposes conditions on certain Houses of Multiple Occupation in order to ensure that standards are decent, for example under the licensing regime, landlords of licensed Houses of Multiple

⁵http://www.direct.gov.uk/en/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_074034.pdf

⁶ Gas Safety Trust Carbon Monoxide Trends Report – 1996 to 2010

Occupancy are required to install working smoke alarms as a mandatory condition of their licence.

26. Under the changes to the homelessness legislation in the Localism Act, the homelessness duty can only be ended in the private rented sector using an Assured Shorthold Tenancy. It is a matter for local authorities to be satisfied that what is being offered is an Assured Shorthold Tenancy when they are making a private rented sector offer to discharge the main homelessness duty. If this is in accommodation which falls within the requirements of the Houses of Multiple Occupancy licensing regime, then the Order will require that the accommodation is not to be regarded as suitable if it is not licensed. This will include Houses of Multiple Occupancy covered by mandatory licensing as well as any that are subject to discretionary additional Houses of Multiple Occupancy licensing schemes. The local authority will be able to check this relatively easily through their own register of licensed Houses of Multiple Occupancy. This does not mean that all those Houses of Multiple Occupancy that are not already licensed will need to be licensed in order to be used to end the main homelessness duty.

Landlord Behaviour

27. Concerns have also been raised that homeless households may be placed in accommodation owned by 'rogue landlords' who have illegally evicted or harassed tenants. Tenant harassment and illegal eviction are a criminal offence, and someone who is harassed or illegally evicted can claim damages through the civil court. Local authorities already have the power to start legal proceedings for offences of harassment and illegal eviction⁷.
28. Nonetheless, the Government recognises that existing local authority powers largely rely on tenants making a complaint. Former homeless households may, in some circumstances, be concerned about reporting their landlord to the local authority and may be less able to move to an alternative property. Therefore the Government proposes to introduce additional protection by requiring a similar test to the current 'fit and proper' person requirements for landlords of Houses of Multiple Occupation. This will apply only to those landlords who choose to let their property to households owed the main homelessness duty by way of the private rented sector offer. The Order will require local authorities to be of the view that the landlord is a fit and proper person to act in the capacity of landlord.
29. This means that local authorities will be required to consider any convictions in relation to landlord and tenant law, fraud or other dishonesty, violence or drugs as well as any discrimination and/or sexual offences. Most local authorities currently do this for Houses in Multiple Occupation by requiring the landlord to self-certify that they do not have any relevant convictions. Many authorities also check their own records for any prosecutions for offences of harassment and illegal eviction brought by the local authority. Local

⁷ <http://www.communities.gov.uk/documents/housing/pdf/138298.pdf>

authorities may require the landlord to carry out a Criminal Records Bureau check to satisfy themselves that the landlord meets the fit and proper person test, but they must have good grounds for doing so.

Elements of Good Management

30. There are additional requirements in law or established practice that are designed to provide tenants with information about the property and/or their and the landlord's responsibilities. We consider that these are elements of good management that will indicate whether or not the property is suitable.
31. By law, landlords are required to provide prospective tenants with an Energy Performance Certificate for the property. The Government considers that the presence of an Energy Performance Certificate provides an indication of good management practice. Energy efficiency may also be an important issue for low income households. The Order will require the property to have a valid Energy Performance Certificate. If the landlord is unable to produce a valid Energy Performance Certificate, the accommodation should not to be regarded as suitable. Local authorities will need to satisfy themselves that a certificate exists, for example, by asking to see a copy.
32. Although there is no requirement in law for landlords to provide a written tenancy agreement, we consider that it is important that homeless households are provided with a clear statement of the rent and other charges, their obligations and those of the landlord. Accommodation will not be suitable unless the landlord provides a written tenancy agreement to be used for the purpose of the private rented sector offer, which the local authority considers to be adequate. It is expected that the local authority should review the tenancy agreement to ensure that it clearly sets out the tenant's obligations and the responsibilities of the landlord, but does not contain unreasonable additional charges, for example, professional steam cleaning, that is unlikely to be affordable for a homeless household.
33. We have considered whether it should be a requirement, in relation to suitability, that the homeless household's deposit should be placed in a tenancy deposit protection scheme. The law requires landlords to pay a tenant's deposit into a scheme within a fixed period of the tenancy commencing. Given the statutory timeframes a local authority would not be able to satisfy itself that this had occurred before the tenancy had commenced and, therefore, this could not be included in an Order that sets out pre-tenancy checks. We, therefore, do not intend to regulate on this issue but propose to recommend in statutory guidance that local authorities remind the landlord of their requirements in relation to the tenancy deposit protection scheme.

Summary of requirements

34. We propose that accommodation used for the purposes of a private rented sector offer to end the main homelessness duty is not to be regarded as suitable when:

- the local housing authority are of the view the accommodation is not in a reasonable physical condition
- the local housing authority are of the view that any electrical equipment provided does not meet with the identified Electrical Equipment (Safety) Regulations
- the local housing authority are of the view that the landlord has not taken reasonable fire safety precautions with the accommodation and any furnishings supplied
- the local housing authority are of the view the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning
- the local housing authority are of the view the landlord is not a fit and proper person to act in the capacity of landlord
- a House of Multiple Occupation is subject to mandatory or discretionary licensing and it is not licensed
- the property does not have a valid Energy Performance Certificate
- the property does not have a current gas safety record
- the landlord has not provided the local housing authority with a written tenancy agreement which the local housing authority considers to be adequate.

Question 2: Do you agree with the proposed requirements as set out in detail above? Please give details and reasons.

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

Impact assessment

35. An Impact Assessment setting out the impacts of the proposed Order that sets out those circumstances in which accommodation used for the purposes of a private rented sector offer to end the main homelessness duty will not be regarded as 'suitable' has been published alongside this consultation. This should be read in conjunction with the Impact Assessment⁸ and Equalities Impact Assessment⁹ that cover the impacts of ending the main homelessness duty in the private rented sector. We have not prepared a separate Equalities

⁸ Localism Bill: a fairer future for social housing Impact Assessment

<http://www.communities.gov.uk/documents/localgovernment/pdf/1829768.pdf>

⁹ Localism Bill: Discharging the main homelessness duty - Equality Impact Assessment

<http://www.communities.gov.uk/documents/localgovernment/pdf/1830049.pdf>

Impact Assessment for the proposed Order given that it supplements the power set out in the Localism Act, and will impact in the same way on the same groups.

36. The Suitability Order Impact Assessment asks a number of additional questions and we would welcome your views on them.

Implementation and Timing

37. We intend that the Order will come into force in 2012 alongside commencement of the measures in the Localism Act that will enable local authorities to end the main homelessness duty in the private rented sector, without requiring the applicant's agreement. After five to seven years in operation a review of the Order will be carried out. A clause to this effect will be added to the statutory instrument.

Part Two – Location of accommodation

Background

38. During the passage of the Localism Act we undertook to remain vigilant to any issues that arose around suitability of location. It has come to light that some local authorities are seeking accommodation for households owed the main homelessness duty far outside their own district. Government is willing to explore whether protections around location of accommodation need to be strengthened and how this might be done. We expect that any measures adopted following this consultation process would apply to any accommodation offered by authorities in discharge of their duties under Part VII of the Housing Act 1996, including temporary accommodation, private rented sector offers and social housing.
39. Homeless households may not always be able to stay in their previous neighbourhoods. However the Government considers that it is not acceptable for local authorities to make compulsory placements automatically hundreds of miles away, without having proper regard for the disruption this may cause to those households. Section 208(1) of the Housing Act 1996 provides that local authorities must in discharging their housing functions in relation to homelessness secure accommodation within their own district so far as reasonably practicable. The current legal framework is set out in the box.
40. Naturally some applicants may wish to move outside of their previous district for a variety of reasons. Some may simply be attracted to a fresh start, or have a good expectation of employment, or a family connection, in a new place. Others may be at risk of domestic or other violence in the district and need to be accommodated elsewhere to reduce the risk of further contact with the perpetrator(s), or be ex-offenders or drug/alcohol users who would benefit from being accommodated outside the district to help break links with previous contacts which could exert a negative influence. The Government therefore believes that local authorities should be taking into account the individual circumstances of the household and minimising disruption to family life as much as possible.

The Current Framework

Primary legislation (Housing Act 1996) provides as follows:

208 Discharge of functions: out-of-area placements

(1) *So far as reasonably practicable a local housing authority shall in discharging their housing functions under this Part secure that accommodation is available for the occupation of the applicant in their district.*

(2) *If they secure that accommodation is available for the occupation of the applicant outside their district, they shall give notice to the local housing authority in whose district the accommodation is situated.*

The Homelessness Code of Guidance for Local Authorities says:

17.41. *The location of the accommodation will be relevant to suitability and the suitability of the location for all the members of the household will have to be considered. Where, for example, applicants are in paid employment account will need to be taken of their need to reach their normal workplace from the accommodation secured. The Secretary of State recommends that local authorities take into account the need to minimise disruption to the education of young people, particularly at critical points in time such as close to taking GCSE examinations. Housing authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities, and, wherever possible, secure accommodation that is as close as possible to where they were previously living, so they can retain established links with schools, doctors, social workers and other key services and support essential to the well-being of the household.*

41. The Government is considering whether the existing provisions should be strengthened to ensure that homeless households are granted further protection. The provisions identified as part of this consultation process will need to apply to temporary accommodation, private rented sector offers and also social housing. Possible options are set out below.

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

The Government's preferred approach

42. As set out above the Homelessness Code of Guidance lists a number of different factors in relation to the location of accommodation which a local authority must have regard to when making decisions about the suitability of accommodation. The weight given by authorities to location, and, specifically, these factors could be strengthened by specifying them in secondary

legislation. This is the preferred approach as it will help ensure that the location needs of a household against their ability to afford suitable accommodation can be balanced while still taking into account the specific circumstances of an applicant and his or her household. Regulations could require that in considering the suitability of accommodation the local authority must take into account location and in particular:

- distance of the accommodation from the applicant's previous home;
- disruption to the employment, caring responsibilities, or education of members of the household;
- access to amenities such as transport, shops and other necessary facilities; and
- established links with schools, doctors, social workers and other key services and support essential to the well-being of the household.

Alternative approach

43. An alternative approach could be to require local authorities, when using accommodation that is out of borough, to use accommodation in the nearest practicable district. While this approach is simple to understand, however it could have some unintended consequences as it does not take account of each household's individual circumstances.
44. It is also important, where moves out of district take place, that proper procedures are observed between the placing and receiving authority for the benefit of the household who is moving and the local authority where they are being moved. For example it is important to ensure that households have the best opportunity to make a smooth transition between schools and other services they may need in the new district, and that competition between placing authorities and host authorities for private sector accommodation does not lead to a waste of public money. The Interborough Accommodation Agreement already in operation within London may serve as a useful example of how this could be achieved for moves outside of London.

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

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

Implementation and timing

45. The implementation date for any measures that strengthen the existing provisions on location will depend on which measures are identified as the most appropriate through the consultation.

Summary of Consultation questions

Question 1: Do you agree that these five areas should be important in determining whether accommodation is to be regarded as not suitable?

Question 2: Do you agree with the proposed requirements as set out in detail above? Please give details and reasons.

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

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

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

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

In addition the Impact Assessment published alongside this consultation document contains a number of detailed questions to gather views and evidence on the various costs and benefits.

Consultation criteria

This document and consultation process have been planned to adhere to the code of practice on consultation issued by the Department for Business, Enterprise and Regulatory Reform (now known as the Department for Business, Innovation and Skills) and is in line with the seven consultation criteria, which are:

- formal consultation should take place at a stage when there is scope to influence the policy outcome
- consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible (please see page 6)
- consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
- consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach
- keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained
- consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
- officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged

unless specifically requested. Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about how we can improve the process, please contact:

DCLG Consultation Co-ordinator

Zone 6/H10 Eland House

London SW1E 5DU

email: consultationcoordinator@communities.gsi.gov.uk

Annex A: Draft Homelessness (Suitability of Accommodation) (England) Order 2012

DRAFT STATUTORY INSTRUMENTS

2012 No.

HOUSING, ENGLAND

Homelessness (Suitability of Accommodation) (England) Order 2012

<i>Made</i> - - - -	xxxx
<i>Laid before Parliament</i>	xxxx
<i>Coming into force</i> --	xxxx

The Secretary of State in exercise of the powers conferred by section 210(2)(a) of the Housing Act 1996⁽¹⁰⁾, makes the following Order:

Citation, commencement and application

1.—(1) This Order may be cited as the Homelessness (Suitability of Accommodation) (England) Order 2012 and comes into force on [xxxx] 2012.

(2) This Order applies in relation to England only.

Circumstances in which accommodation is not to be regarded as suitable

2. For the purposes of a private rented sector offer under section 193(7F) of the Housing Act 1996 accommodation shall not be regarded as suitable where—

- (a) the local housing authority are of the view the accommodation is not in a reasonable physical condition; or
- (b) the local housing authority are of the view that any electrical equipment supplied with the accommodation does not meet the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994⁽¹¹⁾; or

⁽¹⁰⁾ 1996 c.52
⁽¹¹⁾ SI 1994/3260

- (c) the local housing authority are of the view the landlord has not taken reasonable fire safety precautions with the accommodation and any furnishings supplied with it; or
- (d) the local housing authority are of the view the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation; or
- (e) the local housing authority are of the view the landlord is not a fit and proper person to act in the capacity of landlord, having considered if the person has:
 - (i) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003⁽¹²⁾ (offences attracting notification requirements);
 - (ii) practised unlawful discrimination on grounds of sex, race, age, disability, marriage or civil partnership, pregnancy or maternity, religion or belief, sexual orientation, gender identity or gender reassignment in, or in connection with, the carrying out of any business;
 - (iii) contravened any provision of the law relating to housing or of landlord or tenant law; or,
 - (iv) acted otherwise than in accordance with any applicable code of practice for the management of a house in multiple occupation, approved under section 233 of the Housing Act 2004⁽¹³⁾;
- (f) it is a house in multiple occupation subject to licensing under section 55 of the Housing Act 2004 and is not licensed; or
- (g) it is a house in multiple occupation subject to additional licensing under section 56 of the Housing Act 2004 and is not licensed; or
- (h) the property does not have a valid Energy Performance Certificate; or
- (i) the property does not have a current gas safety record in accordance with regulation 36 of the Gas Safety (Installation and Use) Regulations 1998⁽¹⁴⁾; or
- (j) the landlord has not provided to the local housing authority a written tenancy agreement, which the landlord proposes to use for the purposes of a private rented sector offer, and which the local housing authority considers to be adequate.

	<i>Name</i>
Address	Parliamentary Under Secretary of State
Date	Department

(¹²) 2003 c.42
 (¹³) 2004 c.34
 (¹⁴) SI 1998/2451

EXPLANATORY NOTE

(This note is not part of the Order)

Under Part 7 of the Housing Act 1996 an applicant who is eligible for assistance, in priority need and unintentionally homeless is owed the main homelessness duty (section 193(2)) to secure that accommodation is made available for occupation by the applicant.

Section 193 of the Housing Act 1996 was amended by the Localism Act 2011 to include a power for local housing authorities to discharge the main homelessness duty by way of a private rented sector offer (section 193(7AA)). A private rented sector offer is an offer of an assured shorthold tenancy by a private landlord which is made, with the approval of the authority, in pursuance of arrangements by the authority with the landlord with a view to bringing the authority's homelessness duty to an end. The assured shorthold tenancy offered is a fixed term tenancy for a period of at least 12 months.

Section 193(7F) requires that a local housing authority is satisfied that the private rented sector offer accommodation is suitable.

The Secretary of State has the power to specify, by order, circumstances in which accommodation is or is not to be regarded as suitable for a person (section 210(2)).

Article 2 sets out circumstances where accommodation which is being provided to an applicant for the purpose of a private rented sector offer under section 193(7F) is not to be regarded as suitable.

An impact assessment has been prepared in respect of this Order. It has been deposited in the Library of each House of Parliament and is available from the Department for Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DU or email john.bentham@communities.gsi.gov.uk