



# Housing (Scotland) Act 2001

## 2001 asp 10

### PART 1 **S**

#### HOMELESSNESS AND ALLOCATION OF HOUSING

#### 1 Homelessness strategies **S**

- (1) Every local authority must, when required to do so by the Scottish Ministers—
  - (a) carry out an assessment of homelessness in its area, and
  - (b) prepare and submit to the Scottish Ministers a strategy for preventing and alleviating homelessness in its area (a “homelessness strategy”).
- (2) A requirement under subsection (1) may make provision as to—
  - (a) the particular matters to be assessed under subsection (1)(a),
  - (b) the time by which the strategy is to be submitted to the Scottish Ministers,
  - (c) the form of the strategy and the matters which it is to include,
  - (d) the period to which the strategy is to relate.
- (3) The Scottish Ministers may issue guidance, either to local authorities generally or to a particular authority, as to the form and content of an assessment and of a homelessness strategy and as to consultation on a proposed strategy.
- (4) Without prejudice to subsections (2) and (3), a homelessness strategy must state how the local authority is to comply with its duty under section 106 so far as relating to the matters included in the strategy.
- (5) A local authority must provide a copy of its homelessness strategy to any person who requests it.
- (6) A local authority—
  - (a) may, from time to time, and
  - (b) must, if required to do so by the Scottish Ministers,review its homelessness strategy and prepare and submit to the Scottish Ministers a revised homelessness strategy.

*Status: Point in time view as at 25/06/2003.*

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#### Commencement Information

- II** S. 1 wholly in force at 1.10.2001, see s. 113(1)(2) and S.S.I. 2001/336, art. 2(2), **Sch. Pt. I** (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## 2 Advice on homelessness etc. **S**

- (1) Every local authority must secure that advice and information about—
- (a) homelessness and the prevention of homelessness, and
  - (b) any services which may assist a homeless person or assist in the prevention of homelessness,
- is available free of charge to any person in the authority’s area.
- (2) The Scottish Ministers may issue guidance, either to local authorities generally or to a particular authority, as to the form and content of such advice and information.

#### Commencement Information

- I2** S. 2 wholly in force at 1.10.2001, see s. 113(1)(2) and S.S.I. 2001/336, art. 2(2), **Sch. Pt. I** (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## 3 Homeless persons and persons threatened with homelessness **S**

- (1) In section 24 (definition of persons threatened with homelessness) of the 1987 Act—
- (a) in subsection (1), for “Scotland, or England or Wales” substitute “ the United Kingdom or elsewhere ”,
  - (b) in subsection (3), after paragraph (d) insert “; or
    - (e) it is not permanent accommodation, in circumstances where, immediately before the commencement of his occupation of it, a local authority had a duty under section 31(2) in relation to him.”,
  - (c) in subsection (4), for “28 days” substitute “ 2 months ”,
  - (d) after subsection (4) insert—
 

“(5) For the purposes of subsection (3)(e), “permanent accommodation” includes accommodation—

    - (a) of which the person is the heritable proprietor,
    - (b) secured by a Scottish secure tenancy,
    - (c) secured by an assured tenancy that is not a short assured tenancy,
    - (d) where paragraph 1 or 2 of schedule 6 to the Housing (Scotland) Act 2001 (asp 10) is satisfied in relation to the person, secured by a short Scottish secure tenancy.”
- (2) In section 29(1) (interim duty to accommodate) of that Act, the words “and have a priority need” are repealed.
- (3) In section 31 (duties to persons found to be homeless) of that Act—
- (a) in subsection (2), after “secure that” insert “ permanent ”,

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- (b) in subsection (3)—
  - (i) for the words from “Where” to “intentionally” substitute “ In any other case ”,
  - (ii) in paragraph (b), for the words from “such” to “circumstances” substitute “ assistance of such type as may be prescribed ”,
- (c) subsection (4) is repealed,
- (d) at the end insert—
  - “(5) For the purposes of subsection (2), “permanent accommodation” includes accommodation—
    - (a) secured by a Scottish secure tenancy,
    - (b) secured by an assured tenancy that is not a short assured tenancy,
    - (c) where paragraph 1 or 2 of schedule 6 to the Housing (Scotland) Act 2001 (asp10) is satisfied in relation to the applicant, secured by a short Scottish secure tenancy.”
- (4) In section 32 (duties to persons found to be threatened with homelessness) of that Act—
  - (a) in subsection (3)—
    - (i) for the words from “Where” to “intentionally” substitute “ In any other case ”,
    - (ii) for the words from “such” to “circumstances” substitute “ assistance of such type as may be prescribed ”,
  - (b) in subsection (5)—
    - (i) after “accommodation” insert “ (a) ”,
    - (ii) at the end insert—
      - “(b) that does not meet any special needs of the applicant and any other person referred to in section 24(2), or
      - (c) that it is not reasonable for the applicant to occupy.”,
  - (c) after subsection (5) insert—
    - “(6) Regulations made by virtue of section 31(3)(b) or subsection (3) above may make different provision for different purposes and different areas.
    - (7) Before making any such regulations, the Scottish Ministers shall consult—
      - (a) such associations representing local authorities, and
      - (b) such other persons,as they think fit on the proposed regulations.
    - (8) In exercising their functions under section 31 or this section in respect of a person falling within section 25(1)(b), the local authority shall have regard to the best interests of the dependent children referred to in that provision.”
- (5) After that section insert—

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### **“32A Power of the Scottish Ministers to modify application of sections 31 and 32**

- (1) The provisions of—
- (a) section 31(2) so far as requiring that accommodation is to be permanent accommodation (within the meaning of section 31(5)), and
  - (b) section 32(5)(b),
- do not apply in such circumstances as may be prescribed.
- (2) Where—
- (a) accommodation has been provided under section 31(2), and
  - (b) by virtue of subsection (1) above, that accommodation is not permanent accommodation (within the meaning of section 31(5)) or does not meet the special needs of the applicant and any other person referred to in section 24(2),
- section 26 does not apply.”
- (6) In section 34 (duties to persons whose applications are referred)—
- (a) in subsection (2), after “that” in the second and fourth places where it occurs insert “ permanent ”,
  - (b) in subsection (3)(a), after “that” insert “ permanent ”,
  - (c) after subsection (4) insert—
    - “(5) For the purposes of subsection (1), “accommodation” has the meaning given in section 32(5).
    - (6) For the purposes of subsections (2) and (3)(a), “permanent accommodation” has the meaning given in section 31(5) as read with section 32(5).”

#### **Commencement Information**

- I3** [S. 3](#) wholly in force at 30.9.2002; [s. 3](#) not in force at Royal Assent, see [s. 113\(1\)\(2\)](#); [s. 3\(1\)\(a\)\(c\)\(4\)\(b\)](#) in force at 1.4.2002 by [S.S.I. 2002/168](#), [art. 2](#), [Sch.](#) (subject to transitional provisions and savings in [art. 3](#)); [s. 3](#) in force insofar as not already in force at 30.9.2002 by [S.S.I. 2002/321](#), [art. 2](#), [Sch.](#) (subject to transitional provisions and savings in [arts. 3-5](#))

#### **4 Review of decisions S**

- (1) In section 29 (interim duty to accommodate) of the 1987 Act, in subsection (1)—
- (a) after “occupation” insert “ (a) ”,
  - (b) at the end insert—
    - “(b) where the applicant has, under section 35A, requested a review of a decision of the authority, until they have notified him in accordance with section 35B of the decision reached on review.”
- (2) In section 30 (notification of decision and reasons) of that Act, after subsection (4) insert—

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“(4A) They shall also notify him—

- (a) that he may request a review of the decision and of the time within which such a request must be made, and
- (b) of the advice and assistance that is available to him in connection with any such review.”

(3) In section 34 (duties to persons whose applications are referred) of that Act—

(a) after subsection (3) insert—

“(3A) The notifying authority shall also notify him—

- (a) that he may request a review of the determination and of the time within which such a request must be made, and
- (b) of the advice and assistance that is available to him in connection with any such review.”,

(b) in subsection (4), for “subsection (3)” substitute “ this section ”.

(4) After section 35 of that Act insert—

#### **“35A Right to request review of decision**

- (1) Where an applicant requests a review of a decision to which subsection (2) applies, the local authority concerned shall review the decision.
- (2) This subsection applies to the following decisions of a local authority—
  - (a) any decision as to what duty (if any) is owed to the applicant under section 31 or 32,
  - (b) any decision to notify another authority under section 33(1),
  - (c) any determination under section 33(4) or 34(2) as to whether the conditions for referral of an application are satisfied,
  - (d) where accommodation is secured for the applicant under section 31, 32 or 34, any decision as to whether the provision of that accommodation discharges the authority’s duty to the applicant under that section.
- (3) A request for a review shall be made before the end of the period of 21 days beginning with the day on which the applicant is notified of the decision or such longer period as the authority may allow.
- (4) There is no right to request a review of a decision reached on review.

#### **35B Procedure on review**

- (1) A review under section 35A shall be carried out by a person senior to the person who made the decision being reviewed and who had no involvement in the making of that decision.
- (2) The authority, or as the case may be either of the authorities, concerned shall notify the applicant of the decision reached on review.
- (3) If the decision is—
  - (a) to confirm the original decision on any issue against the interests of the applicant, or

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- (b) to confirm a previous decision—
  - (i) to notify another authority under section 33(1), or
  - (ii) that the conditions are met for referral of his case,
 the authority shall also notify him of the reasons for the decision.
- (4) Where subsection (3) applies, notice of the decision shall not be treated as given unless and until that subsection is complied with.
- (5) Any notice required to be given to an applicant under this section shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority’s office for a reasonable period for collection by him or on his behalf.”

#### Commencement Information

- I4** S. 4 wholly in force at 1.4.2002, see s. 113(1)(2) and S.S.I. 2002/168, art. 2, Sch. (subject to transitional provisions and savings in art. 3)

## 5 Duty of registered social landlord to provide accommodation **S**

- (1) Where a local authority has a duty under section 31(2) (duty to persons found to be homeless) of the 1987 Act in relation to a homeless person, it may request a registered social landlord which holds houses for housing purposes in its area to provide accommodation for the person.
- (2) In deciding whether to make such a request, the local authority must have regard to the availability of appropriate accommodation in its area.
- (3) A registered social landlord must, within a reasonable period, comply with such a request unless it has a good reason for not doing so.
- (4) A registered social landlord complies with such a request only if it provides for the person concerned accommodation—
  - (a) where paragraph 1 or 2 of schedule 6 is satisfied, secured by a short Scottish secure tenancy,
  - (b) in that or any other case, secured by a Scottish secure tenancy.
- (5) Subsection (4) does not apply where such a request is expressly for the provision of accommodation not secured as mentioned in that subsection.
- (6) A registered social landlord which holds housing for housing purposes in a local authority’s area must comply with any reasonable request for information in relation to that housing made to it by the authority in connection with the exercise of the authority’s functions under this section.
- (7) The Scottish Ministers may issue guidance as to what constitutes—
  - (a) for the purposes of subsection (3)—
    - (i) a reasonable period,
    - (ii) a good reason,
  - (b) for the purposes of subsection (6), a reasonable request.
- (8) Before issuing any such guidance, the Scottish Ministers must consult—
  - (a) such associations representing local authorities,

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- (b) such associations representing registered social landlords, and
  - (c) such other persons,
- as they think fit.

#### Commencement Information

**I5** Ss. 5-7 wholly in force at 30.9.2002, see s. 113(1)(2) and S.S.I. 2002/321, **art. 2** (subject to transitional provisions and savings in arts. 3-5)

## 6 Duty of registered social landlord: further provision **S**

- (1) Where—
- (a) a registered social landlord does not, within a reasonable period, comply with a request made by a local authority under section 5,
  - (b) the local authority considers, having regard to any guidance issued under subsection (7) of that section, that the landlord had no good reason for not complying with the request, and
  - (c) the local authority and the landlord are unable, within such period as the Scottish Ministers may specify by order, to reach agreement as to whether there is such a good reason,
- the local authority and the landlord must appoint an arbiter to determine the issue.
- (2) In determining for the purposes of subsection (1)(a) what is a reasonable period, regard must be had to any guidance issued under section 5(7).
- (3) If there is no agreement as to who is to be appointed as arbiter, the Scottish Ministers must, on the request of the local authority, appoint an arbiter.
- (4) The cost of any arbitration under this section is to be shared equally between the local authority and the landlord unless the arbiter determines otherwise.
- (5) The Scottish Ministers may issue guidance as to—
- (a) the period within which an arbiter is to be appointed under subsection (1),
  - (b) the procedure for appointing an arbiter under that subsection,
  - (c) the remuneration and other expenses which may be paid to an arbiter appointed under subsection (1) or (3), and any other expenses which may be paid in respect of arbitration,
  - (d) the procedure to be followed at arbitration,
  - (e) the maximum length of time of the arbitration procedure.
- (6) Any determination of an arbiter by virtue of this section is final.

#### Commencement Information

**I6** Ss. 5-7 wholly in force at 30.9.2002, see s. 113(1)(2) and S.S.I. 2002/321, **art. 2** (subject to transitional provisions and savings in arts. 3-5)

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## 7 **Persons living in hostel and other short-term accommodation** S

- (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.

### Commencement Information

**I7** Ss. 5-7 wholly in force at 30.9.2002, see s. 113(1)(2) and S.S.I. 2002/321, **art. 2** (subject to transitional provisions and savings in **arts. 3-5**)



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## 8 Common housing registers **S**

- (1) A local authority must, when required to do so by the Scottish Ministers, prepare and submit to the Scottish Ministers proposals for establishing and maintaining a list of applicants for housing to be kept jointly by or on behalf of any two or more housing providers in connection with the allocation of housing held by them for housing purposes.
- (2) In subsection (1), “housing providers” means the local authority, any other local authority and any registered social landlord.
- (3) The Scottish Ministers may by regulations make provision as to establishing and maintaining such a list.
- (4) Such regulations may, in particular, make provision as to—
  - (a) the time by which proposals under subsection (1) are to be submitted to the Scottish Ministers,
  - (b) the form of such proposals and the matters which they are to include,
  - (c) consultation on such proposals,
  - (d) the procedure for approval of such proposals by the Scottish Ministers,
  - (e) the procedure for implementing such proposals .
- (5) Where the Scottish Ministers approve proposals by virtue of this section, the local authority must ensure that a list of applicants for housing is established and maintained in accordance with the proposals as so approved.
- (6) A registered social landlord which holds housing for housing purposes must comply with any reasonable request made to it by a local authority in connection with the exercise of the authority’s functions under this section.

### Commencement Information

**18** S. 8 wholly in force at 1.4.2002, see s. 113(1)(2) and S.S.I. 2002/168, art. 2, Sch. (subject to transitional provisions and savings in art. 3)

## 9 Housing lists **S**

For section 19 (admission to housing list) of the 1987 Act substitute—

### “19 Admission to housing list

- (1) An applicant for housing held by a local authority or a registered social landlord is entitled to be admitted to a housing list unless the applicant is under 16 years of age.
- (2) In this section, “housing list” means a list of applicants for housing which is kept by any housing provider or jointly by or on behalf of any two or more housing providers in connection with the allocation of housing held by it or them for housing purposes.
- (3) In subsection (2), “housing provider” means any local authority or any registered social landlord.”

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#### Commencement Information

- 19** S. 9 wholly in force at 1.4.2002, see s. 113(1)(2) and S.S.I. 2002/168, art. 2, Sch. (subject to transitional provisions and savings in art. 3)

## 10 Allocation of housing **S**

- (1) Section 20 (persons to have priority on housing list and allocation of housing) of the 1987 Act is amended as follows.
- (2) In subsection (1)—
- (a) after “authority” insert “ and a registered social landlord ”,
  - (b) for paragraph (b) substitute—
    - “(b) to homeless persons and persons threatened with homelessness (within the meaning of Part II).”
- (3) In subsection (2)—
- (a) for “local authority” in the first place where it occurs substitute “ such ”,
  - (b) after “authority” in the second place where it occurs insert “ and a registered social landlord ”,
  - (c) in paragraph (a), for sub-paragraph (iii) substitute—
    - “(iii) any liability (for payment of rent or otherwise) of the applicant which is attributable to the applicant’s tenancy of a house but which is no longer outstanding; or
    - (iv) any such liability which is outstanding but in respect of which subsection (2A) is satisfied; or
    - (v) any outstanding liability of the applicant or of any person who it is proposed will reside with the applicant which is not attributable to the tenancy of a house; or
    - (vi) except to the extent permitted by subsection (2B), the age of the applicant provided that the applicant has attained the age of 16 years; or
    - (vii) the income of the applicant and his family; or
    - (viii) whether, or to what value, the applicant or any of his family owns or has owned (or any of them own or have owned) heritable or moveable property;”
  - (d) after paragraph (a) insert—
    - “(aa) shall take no account of whether an applicant is resident in their area if the applicant—
      - (i) is employed, or has been offered employment, in the area; or
      - (ii) wishes to move into the area and they are satisfied that his purpose in doing so is to seek employment; or
      - (iii) wishes to move into the area to be near a relative or carer; or
      - (iv) has special social or medical reasons for requiring to be housed within the area; or

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- (v) is subject to conduct amounting to harassment (“conduct” and “harassment” being construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40)) and wishes to move into the area; or
- (vi) runs the risk of domestic violence (within the meaning of section 33(3)) and wishes to move into the area; and”.

(4) After subsection (2) insert—

“(2A) This subsection is satisfied in respect of an outstanding liability where—

- (a) the amount of the outstanding liability is not more than one twelfth of the annual amount payable (or which was payable) by the applicant to the landlord in respect of the tenancy in question; or
- (b) the applicant—
  - (i) has agreed with the landlord an arrangement for paying the outstanding liability;
  - (ii) has made payments in accordance with that arrangement for at least three months; and
  - (iii) is continuing to make such payments.

(2B) A local authority and a registered social landlord may take into account the age of applicants in the allocation of—

- (a) houses which have been designed or substantially adapted for occupation by persons of a particular age group;
- (b) houses to persons who are or are to be in receipt of housing support services (within the meaning of section 91 of the Housing (Scotland) Act 2001 (asp 10)) for persons of a particular age group.”

(5) After subsection (3) insert—

“(4) In the application of this section to registered social landlords, any reference to their area means the local authority area or areas, or the part of that area or those areas, in which the registered social landlord holds houses for housing purposes.”

#### **Commencement Information**

**I10** S. 10 wholly in force at 1.4.2002, see s. 113(1)(2) and S.S.I. 2002/168, art. 2, Sch. (subject to transitional provisions and savings in art. 3)

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