



# Homelessness etc. (Scotland) Act 2003

## 2003 asp 10

### *Homelessness: priority need for accommodation*

#### **1 Amendment of section 25 of the 1987 Act**

(1) Section 25 (persons having priority need for accommodation) of the Housing (Scotland) Act 1987 (c. 26) (“the 1987 Act”) is amended as follows.

(2) In subsection (1)—

(a) for paragraph (c) substitute—

“(c) a person who is vulnerable as a result of—

- (i) old age;
- (ii) mental illness;
- (iii) personality disorder;
- (iv) learning disability;
- (v) physical disability;
- (vi) chronic ill health;
- (vii) having suffered a miscarriage or undergone an abortion;
- (viii) having been discharged from a hospital, a prison or any part of the regular armed forces of the Crown; or
- (ix) other special reason;”

(b) at the end insert—

“(e) a person with whom a person referred to in paragraph (c) or (d) resides or might reasonably be expected to reside;

- (f) a person aged 16 or 17;
- (g) a person aged 18 to 20 who satisfies either of the conditions specified in subsection (1A);
- (h) a person who, by reason of that person’s religion, sexual orientation, race, colour or ethnic or national origins—
  - (i) runs the risk of violence; or
  - (ii) is, or is likely to be, the victim of a course of conduct amounting to harassment;

- (i) a person who runs the risk of domestic abuse (within the meaning of section 33(3)).”
- (3) After that subsection insert—
- “(1A) The conditions referred to in subsection (1)(g) are—
- (a) that, by reason of the circumstances in which the person is living, the person runs the risk of sexual or financial exploitation or involvement in the serious misuse of alcohol, any drug (whether or not a controlled drug within the meaning of the Misuse of Drugs Act 1971 (c. 38)) or any volatile substance;
  - (b) that, at the time when the person ceased to be of school age (within the meaning of section 31 of the Education (Scotland) Act 1980 (c. 44)) or at any subsequent time, the person was looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c. 36)) and the person is no longer being so looked after.
- (1B) In subsection (1)(h), the references to conduct, course of conduct and harassment are to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c. 40).”
- (4) In subsection (2)(b), at the end insert “, (1A) or (1B)”.
- (5) The Homeless Persons (Priority Need) (Scotland) Order 1997 (S.I. 1997/3049) is revoked.

## 2 Abolition of priority need test

- (1) From such day as the Scottish Ministers may by order made by statutory instrument appoint, the question whether an applicant has a priority need is to be left out of account in determining the duties of a local authority under—
- (a) section 31 (duties to persons found to be homeless), and
  - (b) section 32 (duties to persons found to be threatened with homelessness),
- of the 1987 Act.
- (2) The day to be appointed under subsection (1) is the earliest day on which, in the view of the Scottish Ministers, all local authorities can reasonably be expected to perform the duties under sections 31 and 32 of the 1987 Act as modified by that subsection.
- (3) An order under subsection (1) may make—
- (a) such modifications of Part II of the 1987 Act and any other enactment, and
  - (b) such incidental, supplemental, consequential, transitional, transitory or saving provision,
- as the Scottish Ministers think necessary or expedient in consequence or for the purposes of that subsection.
- (4) Except where subsection (5) applies, a statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of it has been laid before, and approved by resolution of, the Parliament.

### **3 Statement on abolition of priority need test**

- (1) The Scottish Ministers must, by 31st December 2005, prepare and publish a statement setting out the measures which they and local authorities have taken, are taking and intend to take for the purpose of ensuring that local authorities can reasonably be expected to perform the duties under sections 31 and 32 of the 1987 Act as modified by section 2(1) of this Act.
- (2) The statement must specify—
  - (a) a target date (which must be no later than 31st December 2012) for the achievement of that purpose, and
  - (b) interim objectives towards the achievement of that purpose.
- (3) Those interim objectives may include proposals to specify, under section 25(2) (a) of the 1987 Act, further descriptions of persons as having a priority need for accommodation.
- (4) The Scottish Ministers—
  - (a) must keep the statement under review,
  - (b) may from time to time modify the statement, and
  - (c) must publish any modified statement.
- (5) In preparing or modifying the statement, the Scottish Ministers must have regard to the homelessness strategies and local housing strategies prepared by local authorities under sections 1 and 89 respectively of the Housing (Scotland) Act 2001 (asp 10) (“the 2001 Act”).
- (6) Before preparing or modifying the statement the Scottish Ministers must consult—
  - (a) such associations representing local authorities, and
  - (b) such other persons,as they think fit.

#### *Intentional homelessness*

### **4 Inquiries as to intentional homelessness**

- (1) In section 28(2) (further inquiries in cases of homelessness or threatened homelessness) of the 1987 Act, for the words from “shall” to “(b)” substitute—
  - “(a) shall make any further inquiries necessary to satisfy themselves as to whether he has a priority need, and
  - (b) may, if they think fit, make any further inquiries necessary to satisfy themselves as to”.
- (2) In section 30(3)(a) (notification of decision on intentional homelessness) of that Act, at the beginning insert “where they have made inquiries under section 28(2)(b),”.

### **5 Accommodation for intentionally homeless persons with priority need**

- (1) In section 24 (definition of homelessness) of the 1987 Act, in subsection (3), after paragraph (e) insert “; or
- (f) it is not accommodation secured by—

- (i) a short Scottish secure tenancy granted in pursuance of paragraph 5A of schedule 6 to the Housing (Scotland) Act 2001 (asp 10), or
  - (ii) a Scottish secure tenancy,

in circumstances where, immediately before his occupation of it, a local authority had a duty under section 31(2A) or (2B)(a) in relation to him.”
- (2) In section 31 (duties to persons found to be homeless) of that Act, after subsection (2) insert—
  - “(2A) Where—
    - (a) they are satisfied that he has a priority need and that he became homeless intentionally; and
    - (b) he does not fall within subsection (2C),

they shall secure that accommodation secured by a short Scottish secure tenancy granted in pursuance of paragraph 5A of schedule 6 to the Housing (Scotland) Act 2001 (asp 10) becomes available for his occupation.
  - (2B) Where they are satisfied as mentioned in subsection (2A)(a) and he falls within subsection (2C), they shall—
    - (a) if (but only if) they think fit, secure that accommodation secured by a short Scottish secure tenancy of the type referred to in subsection (2A) becomes available for his occupation;
    - (b) in any other case—
      - (i) secure that accommodation becomes available for his occupation on a basis to which section 7 (persons living in hostel and other short-term accommodation) of the Housing (Scotland) Act 2001 (asp 10) applies; and
      - (ii) provide, or ensure the provision of, such housing support services (within the meaning of section 91(8) of that Act) as they consider appropriate with a view to securing that he becomes entitled to accommodation in pursuance of paragraph (a) of this subsection,

until either he becomes entitled to accommodation in pursuance of subsection (2A) or paragraph (a) of this subsection or he himself secures accommodation for his occupation.
  - (2C) An applicant falls within this subsection if—
    - (a) he has been the tenant in a short Scottish secure tenancy granted in pursuance of paragraph 5A of schedule 6 to the Housing (Scotland) Act 2001 (asp 10) which was, within the preceding 12 months, terminated by an order under section 16(2)(a) or 36 of that Act,
    - (b) an order for recovery of possession has, within the preceding 3 years, been made against the applicant, or a person who it is proposed will reside with him, in proceedings under any of the enactments mentioned in paragraph 1(a) to (f) of schedule 6 to that Act on the ground specified in relation to the enactment in question, or
    - (c) the applicant, or a person who it is proposed will reside with him, is subject to an anti-social behaviour order under section 19 of the Crime and Disorder Act 1998 (c. 37).”

- (3) In section 36(2) (protection of property of homeless persons and persons threatened with homelessness) of that Act, after “31(2)” insert “, (2A) or (2B)”.
- (4) In section 5 (duty of registered social landlord to provide accommodation) of the 2001 Act—
- (a) in subsection (1), after “31(2)” insert “, (2A) or (2B)”,
  - (b) in subsection (4), after “request” insert “made for the purposes of section 31(2) of the 1987 Act”,
  - (c) after subsection (5) insert—  

“(5A) A registered social landlord complies with such a request made for the purposes of section 31(2A) or (2B)(a) of the 1987 Act only if it provides for the person concerned accommodation secured by a short Scottish secure tenancy granted in pursuance of paragraph 5A of schedule 6.”
- (5) In schedule 6 (grounds for granting short Scottish secure tenancy) to that Act, after paragraph 5 insert—

*“Accommodation for intentionally homeless persons with priority need*

- 5A The house is to be let expressly on a temporary basis, for a period of not less than a year, to a person in fulfilment of a duty imposed on a local authority by section 31(2A) or (2B)(a) of the 1987 Act.”

## **6 Intentionally homeless persons: short Scottish secure tenancies**

- (1) In section 34 (short Scottish secure tenancies) of the 2001 Act, after subsection (6) insert—
- “(6A) Where a tenancy is a short Scottish secure tenancy by virtue of paragraph 5A of schedule 6, paragraph 16 of schedule 2 applies with the substitution for sub-paragraph (a) of the following—
- “(a) it consists of premises which are to be let by the landlord as a separate dwelling under a short Scottish secure tenancy granted in pursuance of paragraph 5A of schedule 6.””
- (2) After subsection (7) of that section insert—
- “(7A) Where a tenancy is a short Scottish secure tenancy by virtue of paragraph 5A of schedule 6—
- (a) the local authority for the area must provide, or ensure the provision of, such housing support services as it considers appropriate with a view to enabling the conversion of the tenancy to a Scottish secure tenancy by virtue of section 37, and
  - (b) the landlord (if not that authority) must provide the local authority with such information as the authority may reasonably seek in relation to the operation of the tenancy and the housing support services provided in pursuance of paragraph (a).
- (7B) The rights and obligations of the tenant in relation to housing support services to be provided in pursuance of subsection (7A)(a) must be included in the tenancy agreement.

- (7C) The local authority, the landlord (if not that authority) and the tenant must from time to time jointly review the extent to which the tenant is complying with the obligations referred to in subsection (7B) and the tenant's obligations under the tenancy agreement."
- (3) In subsection (8) of that section—
- (a) after "to" insert—  
    “(a)”,
  - (b) at the end insert “or (7A), and  
    (b) the procedure to be followed in relation to reviews under subsection (7C) and the action to be taken following such reviews.”
- (4) In section 37(1)(a) (conversion to Scottish secure tenancy) of that Act, for the words “or 2” substitute “, 2 or 5A”.

*Local connection***7 Application of section 27 of the 1987 Act to refugees**

In section 27(2)(a) (circumstances in which residence in a district is not of a person's own choice) of the 1987 Act, after sub-paragraph (ii) insert “or

- (iii) was resident in accommodation provided in pursuance of section 95 (provision of support for asylum-seekers and dependants) of the Immigration and Asylum Act 1999 (c. 33),”.

*Restriction of power of referral***8 Power to modify section 33 of the 1987 Act**

After section 33 (referral of application to another local authority) of the 1987 Act insert—

**“33A Power to modify section 33**

- (1) The Scottish Ministers may by order made by statutory instrument provide that, for so long as the order is in force, the power of a local authority under subsection (1) of section 33 to notify another local authority of the matters referred to in that subsection—
  - (a) shall not be exercisable by such local authorities or such descriptions of local authority as are specified in the order, or shall be exercisable by such local authorities or descriptions of local authority as are specified in the order only in such circumstances, or with such modifications, as are specified in the order;
  - (b) shall not be exercisable in relation to such local authorities or such descriptions of local authority as are specified in the order, or shall be exercisable in relation to such local authorities or descriptions of local authority as are specified in the order only in such circumstances, or with such modifications, as are specified in the order.

- (2) An order under this section may—
  - (a) provide for this Part to apply with such modifications, and
  - (b) make such transitional, transitory or saving provision,as the Scottish Ministers think necessary or expedient in consequence of the order.
- (3) A statutory instrument containing an order under this section is, if made without a draft having been laid before, and approved by a resolution of, the Scottish Parliament, subject to annulment in pursuance of a resolution of the Scottish Parliament.

### **33B Statement on exercise of power to modify section 33**

- (1) The Scottish Ministers must, before the expiry of the period of 12 months beginning with the coming into force of this section, prepare and publish a statement setting out the circumstances in which, and the general criteria by reference to which, the power under section 33A is to be exercised.
- (2) The Scottish Ministers—
  - (a) must keep the statement under review;
  - (b) may from time to time modify the statement; and
  - (c) must publish any modified statement.
- (3) Before preparing or modifying the statement, the Scottish Ministers must consult—
  - (a) such associations representing local authorities; and
  - (b) such other persons,as they think fit.”

### *Homeless persons: accommodation*

## **9 Suitability of accommodation for homeless persons**

- (1) In section 29 (interim duty to accommodate) of the 1987 Act—
  - (a) in subsection (1), after paragraph (b) insert—
    - “(c) where, by virtue of a decision referred to in paragraph (a) or (b), the authority have a duty under section 31 to secure that accommodation of a particular description becomes available for the applicant’s occupation, until such accommodation becomes available.”,
  - (b) after subsection (2) insert—
    - “(3) In subsection (1), “accommodation”, in the first place where the expression occurs, does not include accommodation of such description as the Scottish Ministers may, by order made by statutory instrument, specify.
  - (4) Such an order may—
    - (a) specify any description of accommodation subject to conditions or exceptions,

- (b) make different provision for different purposes and different areas.
- (5) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”
- (2) In section 32(8) (duty to have regard to best interests of dependent children) of the 1987 Act, at the end insert “and shall, without prejudice to subsection (5) above and section 41, ensure that accommodation provided for such a person’s occupation is suitable for occupation by such children, so far as consistent with their best interests”.

*Persons at risk of domestic abuse*

**10 Persons at risk of domestic abuse**

- (1) In section 20(2)(aa)(vi) of the 1987 Act (which provides that no account is to be taken, in the allocation of housing, of whether the applicant is resident in the area of a local authority or registered social landlord if the applicant runs the risk of domestic violence), for “violence” substitute “abuse”.
- (2) In section 24(3) of that Act (circumstances in which a person with accommodation is homeless)—
  - (a) in paragraph (b), for the words from “violence”, in the first place where it occurs, to the end substitute “abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14))”,
  - (b) in paragraph (bb), for sub-paragraphs (i) and (ii) substitute “abuse (within the meaning of that Act)”.
- (3) In section 33 of that Act (referral of applications from homeless persons to another local authority)—
  - (a) in subsection (2)(c), for “violence” substitute “abuse”,
  - (b) in subsection (3)—
    - (i) for “violence” in the first and third places where it occurs substitute “abuse”,
    - (ii) for “violence” in the second place where it occurs substitute “abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14))”,
    - (iii) paragraph (b) and the word “or” immediately preceding it are repealed.

*Notices to local authorities*

**11 Notice to local authorities of proceedings for possession and enforcement of standard securities**

- (1) Where a landlord raises proceedings for possession of a dwellinghouse, the landlord must give notice of the raising of the proceedings to the local authority in whose area the dwellinghouse is situated, unless the landlord—
  - (a) is the local authority, or
  - (b) is required to give such notice to the local authority under any other enactment.



- (2) The schedule to this Act (which makes modifications of enactments for the purpose of requiring that local authorities are given notice of certain proceedings for possession of houses and of steps taken to enforce certain standard securities) has effect.
- (3) The Scottish Ministers may by regulations made by statutory instrument prescribe—
  - (a) the forms of notices to be given under subsection (1) and under the enactments specified in subsection (5) (which are the enactments modified by the schedule to this Act), and
  - (b) the manner in which such notices are to be given.
- (4) Such regulations may make different provision in relation to different such notices.
- (5) The enactments referred to in subsection (3)(a) are—
  - (a) section 19B(1) (notice to local authority of calling-up of standard security) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35),
  - (b) section 24(3)(c) (notice to local authority of application to court for remedies on default of standard security) of that Act,
  - (c) section 12A(1) (notice to local authority of proceedings for possession of dwelling-house let on protected tenancy or subject to statutory tenancy) of the Rent (Scotland) Act 1984 (c. 58),
  - (d) section 19A(1) (notice to local authority of proceedings for possession of house let on assured tenancy) of the Housing (Scotland) Act 1988 (c. 43),
  - (e) section 14(5A) (notice to local authority of proceedings for possession of house let on Scottish secure tenancy) of the 2001 Act,
  - (f) section 36(6A) (notice to local authority of proceedings for possession of house let on short Scottish secure tenancy) of that Act,
  - (g) section 4(4)(c) (notice to local authority of proceedings to eject proprietor in personal occupancy) of the Mortgage Rights (Scotland) Act 2001 (asp 11).
- (6) A statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of the Parliament.
- (7) In section 79 (issue of guidance by the Scottish Ministers) of the 2001 Act, in subsection (2), after paragraph (b) insert—
  - “(ba) the action which should be taken by local authorities on receipt of notices under—
    - (i) subsection (1) of section 11 of the Homelessness etc. (Scotland) Act 2003 (asp 10),
    - (ii) the enactments specified in subsection (5) of that section.”.
- (8) In subsection (1)—

“dwellinghouse” means any building, or part of a building, which is occupied or intended to be occupied as a separate dwelling, and in particular includes a flat,

“proceedings for possession” means any proceedings in which decree of removing or warrant of ejection or other like order is sought.
- (9) This section binds the Crown.

*Assured tenancies: recovery of possession*

**12 Assured tenancies: recovery of possession for non-payment of rent**

- (1) Section 18 (orders for possession) of the Housing (Scotland) Act 1988 (c. 43) is amended as follows.
- (2) In subsection (3), for “subsection (6)” substitute “subsections (3A) and (6)”.
- (3) After that subsection, insert—
  - “(3A) If the sheriff is satisfied—
    - (a) that Ground 8 in Part I of Schedule 5 to this Act is established; and
    - (b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit,he shall not make an order for possession unless he considers it reasonable to do so.”
- (4) After subsection (4) insert—
  - “(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the sheriff shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the sheriff in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit.”
- (5) At the end insert—
  - “(8) In subsections (3A) and (4A) above—
    - (a) “relevant housing benefit” means—
      - (i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or
      - (ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;
    - (b) references to delay or failure in the payment of relevant housing benefit do not include such delay or failure so far as referable to any act or omission of the tenant.”
- (6) In section 20 (extended discretion of court in possession claims) of that Act, in subsection (6), at the end insert “except Ground 8 in a case where the sheriff is satisfied as mentioned in section 18(3A) above”.

*General*

**13 Interpretation**

- (1) In this Act—
  - “the 1987 Act” means the Housing (Scotland) Act 1987 (c. 26),
  - “the 2001 Act” means the Housing (Scotland) Act 2001 (asp 10).

- (2) Except where the context otherwise requires, any word or expression used in section 2 or 3 of this Act and in Part II of the 1987 Act has the same meaning in that section as it has for the purposes of that Part.

#### **14 Commencement and short title**

- (1) Except for section 13 and this section, the provisions of this Act come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) Different days may be appointed under this section for different purposes.
- (3) An order under this section may contain such transitional, transitory and saving provision as the Scottish Ministers think necessary or expedient in connection with the provisions brought into force by the order.
- (4) This Act may be cited as the Homelessness etc. (Scotland) Act 2003.