

HOMELESSNESS ETC. (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTENTIONAL HOMELESSNESS

Section 4: Inquiries as to intentional homelessness

7. Section 28(2) of the 1987 Act currently requires local authorities to investigate whether a person applying to them for accommodation has a priority need and whether the person became homeless or threatened with homelessness intentionally. Section 24 of the 1987 Act defines when a person is homeless or threatened with homelessness, and section 26 defines when a person becomes homeless or threatened with homelessness intentionally. *Subsection (1)* of this section gives local authorities a discretion as to whether to investigate intentionality, in place of the current duty under section 28(2)(b).
8. *Subsection (2)* makes a consequential change to section 30(3)(a) of the 1987 Act, in order to ensure that the local authority is not under a duty to notify the applicant of their findings as to intentionality where they have not carried out an investigation.

Section 5: Accommodation for intentionally homeless people with priority need

9. This section sets out the provision to be made for households who are assessed as being intentionally homeless. *Subsection (1)* amends section 24(3) of the 1987 Act to ensure that people who are owed a duty under section 31(2A) and 31(2B)(a) of the 1987 Act are to be treated as being homeless if they are not provided with the accommodation to which they are entitled under those provisions. *Subsection (2)* amends section 31 of the 1987 Act to specify the accommodation and support to be provided to an applicant in priority need and intentionally homeless. This subsection refers to the new paragraph 5A of schedule 6 to the 2001 Act, inserted by *subsection (5)*, and requires local authorities to secure a short Scottish secure tenancy is available to an applicant by virtue of that new paragraph (a “5A short SST”). This duty does not apply if the applicant has previously been a tenant in a 5A short SST which has been terminated within the preceding 12 months, or if the applicant or a person who will reside with him has been evicted on anti-social behaviour grounds in the last 3 years or is subject to an anti-social behaviour order (although a local authority is given discretion under subsection (2B)(a) to offer a further 5A short SST if it thinks fit).
10. Section 31(2B)(b), inserted by *subsection (2)*, deals with the situation where a 5A short SST is not offered. In that case, the local authority is required to secure accommodation within the scope of regulations under section 7 of the 2001 Act for hostels and other short term accommodation and to provide, or to ensure the provision of, housing support services in terms of section 91(8) of the 2001 Act.
11. *Subsection (3)* amends section 36 of the 1987 Act to ensure that when a local authority secures accommodation under the 5A short SST, or secures accommodation where such a 5A short SST is not offered, then the local authority duty under section 36 of the 1987 Act to take reasonable steps to prevent or mitigate loss or damage of an applicant’s moveable property will apply. *Subsection (4)* amends section 5 of the 2001 Act to ensure that an RSL’s duty to provide accommodation extends to include accommodation for priority need applicants who are intentionally homeless.

12. *Subsection (5)* introduces the new paragraph 5A of schedule 6 to the 2001 Act. This extends the grounds on which a short Scottish secure tenancy may be granted, allowing this to take place when the local authority has a duty under section 31(2A) or (2B) (a) of the 1987 Act (i.e. where the local authority is satisfied the applicant has a priority need and became homeless intentionally). The local authority's duty is to secure that accommodation becomes available, so the landlord in a tenancy under the new paragraph 5A may be a body other than the local authority (e.g. an RSL). *Subsection (5)* also makes clear that the tenancy should be for a minimum of one year and should be temporary.

Section 6: Intentionally homeless persons: short Scottish secure tenancies

13. This section makes provision for the changed duties to an applicant who has a priority need for housing but is also found to be intentionally homeless. *Subsection (1)* modifies the application of paragraph 16 of schedule 2 to the 2001 Act as it relates to the 5A short SST to ensure that where repossession takes place under section 16(2)(b) or (c) of that Act the other suitable accommodation to be provided by the landlord must be accommodation secured by a further 5A short SST.
14. *Subsection (2)* inserts new subsections (7A), (7B) and (7C) into section 34 of the 2001 Act to set out the duties of the local authority, the landlord where that is not the local authority, and the tenant, that attach to the provision of a 5A short SST. Under new subsection (7A), the local authority must provide or ensure the provision of such housing support services as it considers appropriate with a view to enabling the tenancy to convert to a SST. The subsection also places a duty on the landlord to provide information to the authority on the operation of the tenancy and support services provided. Under new subsection (7C), the local authority, landlord and tenant must periodically review the tenant's compliance with the tenancy obligations and the obligations in relation to housing support services which will be set out in the tenancy agreement (new subsection (7B)). *Subsection (3)* gives Ministers powers to issue guidance on support services to be provided and on the procedures to be taken on review and any action to be taken. *Subsection (4)* provides for the automatic conversion of a 5A short SST to a SST after 12 months if the landlord has not served a notice for repossession.