



# Housing (Scotland) Act 1987

## 1987 CHAPTER 26

### PART II

#### HOMELESS PERSONS

##### *Duties of local authorities with respect to homelessness and threatened homelessness*

#### **28 Inquiry into cases of possible homelessness or threatened homelessness.**

- (1) If a person (“an applicant”) applies to a local authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless or threatened with homelessness.
- (2) If the authority are so satisfied, they shall make any further inquiries necessary to satisfy themselves as to—
  - (a) whether he has a priority need, and
  - (b) whether he became homeless or threatened with homelessness intentionally;and if the authority think fit, they may also make inquiries as to whether he has a local connection with the district of another local authority in Scotland, England or Wales.

#### **Modifications etc. (not altering text)**

- C1** S. 28 extended (26.7.1993) by 1993 c. 23, s. 4(5), **Sch. 1 para. 2** (with **Sch. 1 para. 8**); S.I. 1993/1655, **art. 2**.

#### **29 Interim duty to accommodate in case of apparent priority need.**

- (1) If the local authority have reason to believe that an applicant may be homeless <sup>F1</sup> . . . , they shall secure that accommodation is made available for his occupation

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- [<sup>F2</sup>(a)] pending any decision which they may make as a result of their inquiries under section 28.
- [<sup>F3</sup>(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.]
- [<sup>F4</sup>(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.]
- (2) This duty arises irrespective of any local connection which an applicant may have with the district of another local authority.
- [<sup>F5</sup>(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—
- specify any description of accommodation subject to conditions or exceptions,
  - 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.]

#### Textual Amendments

- F1** Words in s. 29(1) repealed (30.9.2002) by 2001 asp 10, s. 3(2); S.S.I. 2002/321, art. 3, **Sch.** (subject to transitional provisions and savings in arts. 3-5)
- F2** Words in s. 29(1) renumbered as para. (a) (1.4.2002) by virtue of 2001 asp 10, s. 4(1)(a); S.S.I. 2002/168, art. 2, **Sch.** (subject to transitional provisions and savings in art. 3)
- F3** S. 29(1)(b) inserted (1.4.2002) by 2001 asp 10, s. 4(1)(b); S.S.I. 2002/168, art. 2, **Sch.** (subject to transitional provisions and savings in art. 3)
- F4** S. 29(1)(c) inserted (30.1.2004) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 9(1)(a), 14(1); S.S.I. 2003/609, art. 2
- F5** S. 29(3)-(5) inserted (30.1.2004) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 9(1)(b), 14(1); S.S.I. 2003/609, art. 2

#### Modifications etc. (not altering text)

- C2** S. 29(1)(b) restricted (8.1.2003) by 2002 c. 41, s. 54, **Sch. 3 para. 1(1)(f)** (with s. 159); S.I. 2002/2811, art. 2, **Sch.** (with transitional provisions in arts. 3-6)
- S. 29(1)(b) restricted (8.1.2003) by 2002 c. 41, s. 55(4)(a) (with s. 159); S.I. 2002/2811, art. 2, **Sch.** (with transitional provisions in arts. 3-6)

### 30 Notification of decision and reasons.

- On completing their inquiries under section 28, the local authority shall notify the applicant of their decision on the question whether he is homeless or threatened with homelessness.
- If they notify him that their decision is that he is homeless or threatened with homelessness, they shall at the same time notify him of their decision on the question whether he has a priority need.

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- (3) If they notify him that their decision is that he has a priority need, they shall at the same time notify him—
- (a) of their decision on the question whether he became homeless or threatened with homelessness intentionally, and
  - (b) whether they have notified or propose to notify any other local authority under section 33 that his application has been made.
- (4) If they notify him—
- (a) that they are not satisfied—
    - (i) that he is homeless or threatened with homelessness, or
    - (ii) that he has a priority need, or
  - (b) that they are satisfied that he became homeless or threatened with homelessness intentionally, or
  - (c) that they have notified or propose to notify another local authority under section 33 that his application has been made,
- they shall at the same time notify him of their reasons.
- [<sup>F6</sup>(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.]
- (5) The notice required to be given to a person 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.

#### Textual Amendments

**F6** S. 30(4A) inserted (1.4.2002) by 2001 asp 10, s. 4(2); S.S.I. 2002/168, art. 2, Sch. (with transitional provisions and savings in art. 3)

#### Modifications etc. (not altering text)

**C3** S. 30 modified (26.7.1993) by 1993 c. 23, s. 4(5), Sch. 1 para. 3(4) (with Sch. 1 para. 8); S.I. 1993/1655, art. 2.

### 31 Duties to persons found to be homeless.

- (1) This section applies where a local authority are satisfied that an applicant is homeless.
- (2) Where they are satisfied that he has a priority need and are not satisfied that he became homeless intentionally, they shall, unless they notify another local authority in accordance with section 33 (referral of application on ground of local connection) secure that [<sup>F7</sup>permanent] accommodation becomes available for his occupation.
- (3) [<sup>F8</sup>In any other case], they shall—
  - (a) secure that accommodation is made available for his occupation for such period as they consider will give him a reasonable opportunity of himself securing accommodation for his occupation; and

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- (b) furnish him with advice and [<sup>F9</sup>assistance of such type as may be prescribed], in any attempts he may make to secure that accommodation becomes available for his occupation.

<sup>F10</sup>(4) .....

[<sup>F11</sup>(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.]

#### Textual Amendments

- F7** Words in s. 31(2) inserted (30.9.2002) by 2001 asp 10, s. 3(3)(a); S.S.I. 2002/321, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)
- F8** Words in s. 31(3) substituted (30.9.2002) by 2001 asp 10, s. 3(3)(b)(i); S.S.I. 2002/321, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)
- F9** Words in s. 31(3)(b) substituted (30.9.2002) by 2001 asp 10, s. 3(3)(b)(ii); S.S.I. 2002/321, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)
- F10** S. 31(4) repealed (30.9.2002) by 2001 asp 10, s. 3(3)(c); S.S.I. 2002/321, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)
- F11** S. 31(5) inserted (30.9.2002) by 2001 asp 10, s. 3(3)(d); S.S.I. 2002/321, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)

## 32 Duties to persons found to be threatened with homelessness.

- (1) This section applies where a local authority are satisfied that an applicant is threatened with homelessness.
- (2) Where they are satisfied that he has a priority need and are not satisfied that he became threatened with homelessness intentionally they shall take reasonable steps to secure that accommodation does not cease to be available for his occupation.
- (3) [<sup>F12</sup>In any other case] they shall furnish him with advice and [<sup>F13</sup>assistance of such type as may be prescribed], in any attempts he may make to secure that accommodation does not cease to be available for his occupation.
- (4) Nothing in subsection (2) shall affect any right of a local authority to secure vacant possession of accommodation, whether by virtue of a contract or of any enactment or rule of law.
- (5) In section 31 and in this section, “accommodation” does not include accommodation
- [<sup>F14</sup>(a)] that is overcrowded within the meaning of section 135 or which may endanger the health of the occupants.
- [<sup>F15</sup>(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.]
- [<sup>F16</sup>(6) Regulations made by virtue of section 31(3)(b) or subsection (3) above may make different provision for different purposes and different areas.

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- (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 [<sup>F17</sup>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] .]

#### Textual Amendments

- F12** Words in s. 32(3) substituted for words and paras. (a)(b) in s. 32(3) (30.9.2002) by 2001 asp 10, s. 3(4)(a)(i); S.S.I. 2002/321, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)
- F13** Words in s. 32(3) substituted (30.9.2002) by 2001 asp 10, s. 3(4)(a)(ii); S.S.I. 2002/321, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)
- F14** Words in s. 32(5) renumbered as para. (a) (1.4.2002) by virtue of 2001 asp 10, s. 3(4)(b)(i); S.S.I. 2002/168, art. 2, Sch. (with transitional provisions and savings in art. 3)
- F15** S. 32(5)(b)(c) inserted (1.4.2002) by 2001 asp 10, s. 3(4)(b)(ii); S.S.I. 2002/168, art. 2, Sch. (with transitional provisions and savings in art. 3)
- F16** S. 32(6)-(8) inserted (30.9.2002) by 2001 asp 10, s. 3(4)(c); S.S.I. 2002/321, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)
- F17** Words in s. 32(8) inserted (30.1.2004) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 9(2), 14(1); S.S.I. 2003/609, art. 2

#### [<sup>F18</sup>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.]

#### Textual Amendments

- F18** S. 32A inserted (30.9.2002) by 2001 asp 10, s. 3(5); S.S.I. 2002/321, art. 2, Sch. (with transitional provisions and savings in art. 3-5)

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### 33 Referral of application to another local authority.

- (1) If a local authority—
- (a) are satisfied that an applicant is homeless and has a priority need, and are not satisfied that he became homeless intentionally, but
  - (b) are of opinion that the conditions are satisfied for referral of his application to another local authority,
- they may notify that other local authority in Scotland, England or Wales of the fact that his application has been made and that they are of that opinion.
- (2) The conditions of referral of an application to another local authority are—
- (a) that neither the applicant nor any person who might reasonably be expected to reside with him has a local connection with the district of the authority to whom his application was made,
  - (b) that the applicant or a person who might reasonably be expected to reside with him has a local connection with that other local authority's district, and
  - (c) that neither that applicant nor any person who might reasonably be expected to reside with him will run the risk of domestic [<sup>F19</sup>abuse] in that other local authority's district.
- (3) For the purposes of this section a person runs the risk of domestic [<sup>F20</sup>abuse] —
- (a) if he runs the risk of [<sup>F21</sup>abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14))] from a person with whom, but for the risk of [<sup>F20</sup>abuse], he might reasonably be expected to reside, or from a person with whom he formerly resided, <sup>F22</sup>...
  - <sup>F22</sup>(b) .....
- (4) The question whether the conditions for referral of an application are satisfied shall be determined by agreement between the notifying authority and the notified authority, or in default of agreement, in accordance with such arrangements as the Secretary of State may direct by order made by statutory instrument.
- (5) An order may direct that the arrangements shall be—
- (a) those agreed by any relevant authorities or association of relevant authorities, or
  - (b) in default of such agreement, such arrangements as appear to the Secretary of State to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as he thinks appropriate.
- (6) No order shall be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

#### Textual Amendments

- F19** Word in s. 33(2)(c) substituted (30.1.2004) by [Homelessness etc. \(Scotland\) Act 2003 \(asp 10\)](#), **ss. 10(3)(a)**, 14(1); S.S.I. 2003/609, art. 2
- F20** Word in s. 33(3) substituted (30.1.2004) by [Homelessness etc. \(Scotland\) Act 2003 \(asp 10\)](#), **ss. 10(3)(b)(i)**, 14(1); S.S.I. 2003/609, art. 2
- F21** Words in s. 33(3) substituted (30.1.2004) by [Homelessness etc. \(Scotland\) Act 2003 \(asp 10\)](#), **ss. 10(3)(b)(ii)**, 14(1); S.S.I. 2003/609, art. 2
- F22** S. 33(3)(b) and word repealed (30.1.2004) by [Homelessness etc. \(Scotland\) Act 2003 \(asp 10\)](#), **ss. 10(3)(b)(iii)**, 14(1); S.S.I. 2003/609, art. 2

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### 34 Duties to persons whose applications are referred.

- (1) Where, in accordance with section 33(1), a local authority notify another authority of an application, the notifying authority shall secure that accommodation is available for occupation by the applicant until it is determined whether the conditions for referral of his application to the other authority are satisfied.
  - (2) If it is determined that the conditions for referral are satisfied, the notified authority shall secure that [<sup>F23</sup>permanent] accommodation becomes available for occupation by the applicant; if it is determined that the conditions are not satisfied, the notifying authority shall secure that [<sup>F23</sup>permanent] accommodation becomes available for occupation by him.
  - (3) When the matter has been determined, the notifying authority shall notify the applicant—
    - (a) whether they or the notified authority are the authority whose duty it is to secure that [<sup>F23</sup>permanent] accommodation becomes available for his occupation, and
    - (b) of the reasons why the authority subject to that duty are subject to it.
- [<sup>F24</sup>(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.]
- (4) The notice required to be given to a person under [<sup>F25</sup>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.
- [<sup>F26</sup>(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).]

#### Textual Amendments

- F23** Words in s. 34(2)(3)(a) inserted (30.9.2002) by 2001 asp 10, s. 3(6)(a)(b); S.S.I. 2002/321, art. 2, Sch. (subject to transitional provisions and savings in arts. 3-5)
- F24** S. 34(3A) inserted (1.4.2002) by 2001 asp 10, s. 4(3)(a); S.S.I. 2002/168, art. 2, Sch. (with transitional provisions and savings in art. 3)
- F25** Words in s. 34(4) substituted (1.4.2002) by 2001 asp 10, s. 4(3)(b); S.S.I. 2002/168, art. 2, Sch. (with transitional provisions and savings in art. 3)
- F26** S. 34(5)(6) inserted (30.9.2002) by 2001 asp 10, s. 3(6)(c); S.S.I. 2002/321, art. 2, Sch. (subject to transitional provisions and savings in arts. 3-5)

### 35 Supplementary provisions.

- (1) A local authority may perform any duty under section 31 or 34 (duties to persons found to be homeless to secure that accommodation becomes available for the occupation of a person)—

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- (a) by making available accommodation held by them under Part I (provision of housing) or under any other enactment,
  - (b) by securing that he obtains accommodation from some other person, or
  - (c) by giving him such advice and assistance as will secure that he obtains accommodation from some other person.
- (2) Without prejudice to section 210(1), a local authority may require a person to whom they were subject to a duty under section 29, 31 or 34 (interim duty to accommodate pending inquiries and duties to persons found to be homeless)—
- (a) to pay such reasonable charges as they may determine in respect of accommodation which they secure for his occupation (either by making it available themselves or otherwise), or
  - (b) to pay such reasonable amount as they may determine in respect of sums payable by them for accommodation made available by another person.

### [<sup>F27</sup>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.]

#### Textual Amendments

**F27** S. 35A inserted (1.4.2002) by 2001 asp 10, s. 4(4); S.S.I. 2002/168, art. 2, Sch. (with transitional provisions and savings in art. 3)

### <sup>F28</sup>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—



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- (a) to confirm the original decision on any issue against the interests of the applicant, or
  - (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.

#### Textual Amendments

**F28** S. 35B inserted (1.4.2002) by 2001 asp 10, s. 4(4); S.S.I. 2002/168, art. 2, Sch. (with transitional provisions and savings in art. 3)

### 36 Protection of property of homeless persons and persons threatened with homelessness.

- (1) This section applies where a local authority have reason to believe that an applicant is homeless or threatened with homelessness (or, in the case of an applicant to whom they owe a duty under section 29 (interim duty to accommodate pending inquiries), that he may be homeless) and that—
- (a) there is a danger of loss of, or damage to, any moveable property of his by reason of his inability to protect it or deal with it, and
  - (b) no other suitable arrangements have been or are being made.
- (2) If the authority have become subject to a duty towards the applicant under section 29, 31(2) or (3)(a), 32(2) or 34 (duty to accommodate during inquiries and duties to persons found to be homeless or threatened with homelessness), then, whether or not they are still subject to such a duty, they shall take reasonable steps to prevent the loss of the moveable property or prevent or mitigate damage to it; and if they have not become subject to such a duty, they may take any steps they consider reasonable for that purpose.
- (3) The authority may for the purposes of this section—
- (a) enter, at all reasonable times, any premises which are the usual place of residence of the applicant or which were his last usual place of residence, and
  - (b) deal with any moveable property of his in any way which is reasonably necessary, in particular by storing it or arranging for its storage.
- (4) The authority may decline to take action under this section except upon such conditions as they consider appropriate in the particular case, which may include conditions as to—
- (a) the making and recovery by the authority of reasonable charges for the action taken, or
  - (b) the disposal by the authority, in such circumstances as may be specified, of moveable property in relation to which they have taken action.

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- (5) When in the authority's opinion there is no longer any reason to believe that there is a danger of loss of or damage to a person's moveable property by reason of his inability to protect it or deal with it, the authority shall cease to have any duty or power to take action under this section; but property stored by virtue of their having taken such action may be kept in store and any conditions upon which it was taken into store shall continue to have effect, with any necessary modifications.
- (6) Where the authority—
- (a) cease to be subject to a duty to take action under this section in respect of an applicant's moveable property, or
  - (b) cease to have power to take such action, having previously taken such action, they shall notify the applicant of that fact and of the reason why they are of opinion that there is no longer any reason to believe that there is a danger of loss of or damage to his moveable property by reason of his inability to protect it or deal with it.
- (7) The notification shall be given to the applicant—
- (a) by delivering it to him, or
  - (b) by leaving it, or sending it to him, at his last known address.
- (8) References in this section to moveable property of the applicant include moveable property of any person who might reasonably be expected to reside with him.

**Status:**

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**Changes to legislation:**

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