

HOMELESSNESS ETC. (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT: BACKGROUND AND OVERVIEW

3. The Homelessness etc. (Scotland) Act 2003 takes forward the proposals for legislative change incorporated in the final report of the Homelessness Task Force. The Act amends existing homelessness legislation, contained in the Housing (Scotland) Act 1987 (c.26) (“the 1987 Act”) and the Housing (Scotland) Act 2001 (asp 10) (“the 2001 Act”), and makes changes to repossession proceedings for houses let on assured tenancies, as currently set out in the Housing (Scotland) Act 1988 (c.43). The Act primarily affects local authorities in the carrying out of their homelessness functions. There are also implications for non-local authority landlords and security holders in respect of the provisions relating to repossession of property and for registered social landlords (“RSLs”) in assisting local authorities in complying with their new duties.

HOMELESSNESS: PRIORITY NEED FOR ACCOMMODATION

Section 1: Amendment of section 25 of the 1987 Act

4. This section amends section 25 of the 1987 Act to widen the definition of persons having a priority need for accommodation. The amended version of section 25(1)(c) substituted by *subsection (2)(a)* includes within the definition those vulnerable as a result of: old age; mental illness; personality disorder; learning or physical disability; chronic ill health; having suffered a miscarriage or undergone an abortion; having been discharged from a hospital, a prison, or the armed forces; or other special reason. *Subsection (2)(b)* adds further paragraphs to section 25(1) to cover 16 and 17 year olds; certain young people between the ages of 18 and 20; a person who runs the risk of violence or is likely to be the victim of harassment because of their religion, sexual orientation, race, colour, or ethnic or national origins; and a person who runs the risk of domestic abuse. It also ensures in most circumstances that those residing with someone who is defined as having a priority need for accommodation are themselves within the definition. *Subsection (3)* sets out the circumstances in which a person aged 18 to 20 is defined as having a priority need. *Subsection (4)* amends section 25(2)(b) of the 1987 Act to ensure that the Scottish Ministers can amend or repeal the additional subsections of section 25 inserted by subsection (4) in the same manner as existing subsections. *Subsection (5)* revokes the Homeless Persons (Priority Need) (Scotland) Order 1997

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(S.I. 1997/3049) as its terms are now incorporated into the 1987 Act by the amendments made by subsections (2)(b) and (3).

Section 2: Abolition of priority need test

5. This section sets out the process to be followed to provide for the eventual abolition of the priority need test. *Subsections (1) and (2)* allow the Scottish Ministers to abolish the test as soon as they are satisfied that local authorities will be able to carry out their duties in relation to homeless people without distinguishing between applicants on the basis of priority need. *Subsections (3), (4) and (5)* define the necessary powers and set out the procedures to be followed in the process of abolition.

Section 3: Statement on abolition of priority need test

6. This section requires the Scottish Ministers to publish a statement setting out an action plan for the abolition of the priority need test. Under *subsection (1)* the statement must be published by 31st December 2005 and must cover past, current and future action by Ministers and local authorities which contributes towards allowing local authorities to perform their homelessness duties without distinguishing between applicants on the basis of priority need. *Subsection (2)* requires that the statement include a target date, not later than 31st December 2012, for achieving the removal of priority need and also requires the statement to incorporate interim objectives which may, under *subsection (3)*, include proposals to expand the definition in section 25 of the 1987 Act of those having a priority need for accommodation. *Subsection (4)* requires Ministers to keep the statement under review and allows for modification; *subsection (5)* requires Ministers to have regard to local housing and homelessness strategies prepared under the 2001 Act in the initial preparation of the statement and when modifying it; and *subsection (6)* deals with the consultation arrangements.

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.

LOCAL CONNECTION

Section 7: Application of section 27 of the 1987 Act to refugees

15. Section 27 of the 1987 Act sets out the meaning of "local connection" for the purposes of Part II of that Act. One element of the definition is that applicant is, or was, "normally resident" in the area "and his residence in it is or was of his own choice". Circumstances

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in which residence is not of the applicant's own choice are listed at section 27(2) of the 1987 Act – section 7 adds to the current list to include circumstances where the applicant was resident in accommodation provided in pursuance of the Immigration and Asylum Act 1999.

RESTRICTION OF POWER OF REFERRAL

Section 8: Power to modify section 33 of the 1987 Act

16. This section inserts sections 33A and 33B into the 1987 Act, giving the Scottish Ministers the power to restrict the operation of section 33 of that Act, which allows referral of a homeless applicant to another local authority in certain circumstances. Section 33A allows Ministers to prescribe that the power of a local authority to refer an applicant to another authority is not to be exercisable by, or in relation to, such local authorities as are specified in an order. This enables Ministers both to restrict a specified local authority from making referrals and/or other local authorities making referrals to it. An order under section 33A will not affect the operation of other provisions (e.g. section 34 of the 1987 Act) relating to cases where a referral has taken place prior to section 33 being disapplied. Section 33B requires Ministers to make a statement on the circumstances in which the power will be exercised and the criteria which will be used. This statement must be consulted on before being made or modified.

HOMELESS PERSONS: ACCOMMODATION

Section 9: Suitability of accommodation for homeless persons

17. *Subsection (1)* amends section 29 of the 1987 Act to require local authorities to provide interim accommodation to a household whom they have assessed as homeless until such a point as they have discharged their duty to secure accommodation under section 31 of that Act. It also gives Ministers the powers to specify, by statutory instrument, accommodation which cannot be provided as such interim accommodation, but allows for this to be subject to conditions or exceptions. *Subsection (2)* amends section 32(8) of the 1987 Act in order to make clear that accommodation provided, in pursuance of section 31 or 32 of that Act, for a person in priority need who has dependent children must be suitable for occupation by such children.

PERSONS AT RISK OF DOMESTIC ABUSE

Section 10: Persons at risk of domestic abuse

18. This section makes amendments to sections 20, 24 and 33 of the 1987 Act to replace references to domestic violence with references to domestic abuse. This enables consistency with the wording in section 25 and extends the references to include behaviour other than physical violence.

NOTICES TO LOCAL AUTHORITIES

Section 11: Notice to local authorities of proceedings for possession and enforcement of standard securities.

19. This section places a duty on landlords to notify the local authority when raising proceedings for possession of a dwelling house, unless the landlord is the local authority or is already required to notify the local authority under any other enactment. The schedule to the Act makes modifications to enactments for that purpose and also imposes a similar duty on creditors taking steps to enforce standard securities. *Subsection (3)* allows Ministers to prescribe in regulations the form of the notice and how it is to be given; the regulations will, under *subsection (6)*, be subject to negative procedure. *Subsection (7)* extends the guidance powers of Ministers under section 79

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of the 2001 Act to include guidance on the action to be taken by local authorities as a result of notification.

ASSURED TENANCIES: RECOVERY OF POSSESSION

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

20. **Section 12** amends section 18 of the Housing (Scotland) Act 1988 to allow the sheriff discretion not to make an order for possession under Ground 8 of Schedule 5 to that Act in circumstances where the rent arrears are a consequence of a delay or failure in the payment of housing benefit. It also directs the sheriff to have regard to delay or failure in payment of housing benefit when considering whether it is reasonable to make an order for possession under Ground 11 or 12 of Schedule 5. References to delay or failure in a payment do not include circumstances where this is a result of any act or omission of the tenant.

GENERAL

Section 14: Commencement and short title

21. *Subsections (1) to (3)* allow the Scottish Ministers to set different dates to commence different provisions of the Act, and to make appropriate transitional, transitory and saving provisions.

PARLIAMENTARY HISTORY OF HOMELESSNESS ETC. (SCOTLAND) ACT 2003

The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports were published and the references to those Reports.

Proceedings and Reports	Reference
Introduction	
16 September 2002	SP Bill 63(Session 1)
Stage 1	
(a) <i>Social Justice Committee</i>	
18 th meeting, 2002	30 October 2002, cols 3152-3167
19 th meeting 2002	6 November 2002, cols 3206-3242
20 th meeting 2002	13 November 2002, cols 3243-3286
21 st meeting 2002	20 November 2002, cols 3287-3308

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22 nd meeting 2002	4 December 2002, cols 3314-3336
23 rd meeting 2002	11 December 2002, minutes
11 th Report 2002 (11 December 2002): Stage 1 Report on the Homelessness etc. (Scotland) Bill	SP Paper 716 – Volume 1 Report SP Paper 716 – Volume 2 Evidence
((b) <i>Finance Committee</i>)	
21 st meeting 2002	5 November 2002, cols 2300-2320
23 rd meeting 2002	19 November 2002, col 2404 & minutes
((c) <i>Subordinate Legislation Committee</i>)	
33 rd meeting 2002	26 November 2002, cols 1107-1108
34 th meeting 2002	3rd December 2002, col 1115
((d) <i>Local Government Committee</i>)	
23 rd meeting 2002	24 September 2002, col 3249 & minutes
((e) <i>Consideration by Parliament</i>)	
18 December 2002	Cols 16452-16509
Stage 2	
Social Justice Committee	
1 st meeting 2003	15 January 2003, cols 3338-3368
Bill (as amended at Stage 2)	SP Bill 63A
Stage 3	

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(a) <i>Subordinate Legislation Committee</i>	
7 th meeting	18 February 2003, cols 1223-1224
8 th meeting	25 February 2003, col 1243
20th Report 2003 (3 March 2003) Report on Homelessness etc. (Scotland) Bill as amended at Stage 2: Delegated Powers Scrutiny	SP Paper 808
((b) <i>Consideration by Parliament</i>	
5 March 2003	Cols 19028-19041 & 19055
Royal Assent- 9 April 2003	