



# Housing (Scotland) Act 1987

## 1987 CHAPTER 26

### PART II

#### HOMELESS PERSONS

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

- C1** Pt. II (ss. 24-43) excluded (26.7.1993) by 1993 c. 23, s. 4(1)(5), **Sch. 1 para. 8**; S.I. 1993/1655, **art. 2**.  
Pt. II (ss. 24-43) modified (26.7.1993) by 1993 c. 23, s. 4(5), **Sch. 1 para. 4**, (with Sch. 1 para. 8); S.I. 1993/1655, **art. 2**.
- C2** Pt. II (ss. 24-43) restricted (19.8.1996) by 1996 c. 49, **s. 9**; S.I. 1996/2127, art. 2, **Sch. Pt. I**

##### *Main definitions*

#### **24 Homeless persons and persons threatened with homelessness.**

- (1) A person is homeless if he has no accommodation in [<sup>F1</sup>the United Kingdom or elsewhere].
- (2) A person is to be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which the local authority consider it reasonable for that person to reside with him—
- is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or
  - has a right or permission, or an implied right or permission to occupy, or in England and Wales has an express or implied licence to occupy, or
  - occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession.

[<sup>F2</sup>(2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

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- (2B) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the area of the local authority to whom he has applied for accommodation or for assistance in obtaining accommodation.]
- (3) A person is also homeless if he has accommodation but—
- (a) he cannot secure entry to it, or
  - (b) it is probable that occupation of it will lead to [<sup>F3</sup>abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14)),] or
  - [<sup>F2</sup>(bb) it is probable that occupation of it will lead to [<sup>F4</sup>abuse (within the meaning of that Act)] from some other person who previously resided with that person, whether in that accommodation or elsewhere, or]
  - (c) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it; or
  - (d) it is overcrowded within the meaning of section 135 and may endanger the health of the occupants [<sup>F5</sup>; 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.]
- (4) A person is threatened with homelessness if it is likely that he will become homeless within [<sup>F6</sup>2 months].
- [<sup>F7</sup>(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.
- [<sup>F8</sup>(e) secured by a private residential tenancy.]]

#### Textual Amendments

- F1** Words in s. 24(1) substituted (1.4.2002) by 2001 asp 10, s. 3(1)(a); S.S.I. 2002/168, art. 2, Sch. (with transitional provisions and savings in art. 3)
- F2** S. 24(2A)(2B), 24(3)(bb) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 65(2)
- F3** Words in s. 24(3)(b) substituted (30.1.2004) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 10(2)(a), 14(1); S.S.I. 2003/609, art. 2
- F4** Words in s. 24(3)(bb) substituted for s. 24(3)(bb)(i)(ii) (30.1.2004) by Homelessness etc. (Scotland) Act 2003 (asp 10), ss. 10(2)(b), 14(1); S.S.I. 2003/609, art. 2
- F5** S. 24(3)(e) and preceding word “or” inserted (30.9.2002) by 2001 asp 10, s. 3(1)(b); S.S.I. 2002/321, art. 2, Sch. (subject to transitional provisions and savings in arts. 3-5)
- F6** Words in s. 24(4) substituted (1.4.2002) by 2001 asp 10, s. 3(1)(c); S.S.I. 2002/168, art. 2, Sch. (with transitional provisions and savings in art. 3)
- F7** S. 24(5) inserted (30.9.2002) by 2001 asp 10, s. 3(1)(d); S.S.I. 2002/321, art. 2, Sch. (subject to transitional provisions and savings in arts. 3-5)

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**F8** S. 24(5)(e) inserted (1.12.2017) by Private Housing (Tenancies) (Scotland) Act 2016 (asp 19), s. 79(2), sch. 4 para. 4(3); S.S.I. 2017/346, reg. 2, sch.

**F9** **25 Priority need for accommodation.**

.....

**Textual Amendments**

**F9** S. 25 omitted (31.12.2012) by virtue of The Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012 (S.S.I. 2012/330), arts. 2, 4

**26 Becoming homeless intentionally.**

- (1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.
- (2) A person becomes threatened with homelessness intentionally if he deliberately does or fails to do anything the likely result of which is that he will be forced to leave accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.
- (3) For the purposes of subsection (1) or (2) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.
- (4) Regard may be had, in determining for the purpose of subsections (1) and (2) whether it would have been reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local authority to whom he applied for accommodation or for assistance in obtaining accommodation.

**27 Meaning of “local connection”.**

- (1) Any reference in this Part to a person having a local connection with a district is a reference to his having a connection with that district—
  - (a) because he is, or in the past was, normally resident in it and his residence in it is or was of his own choice; or
  - (b) because he is employed in it, or
  - (c) because of family associations, or
  - (d) because of any special circumstances.
- (2) Residence in a district is not of a person’s own choice for the purposes of subsection (1) if he became resident in it—
  - (a) because he or any person who might reasonably be expected to reside with him—
    - <sup>F10</sup>(i) .....
    - (ii) was detained under the authority of any Act of Parliament, [<sup>F11</sup>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),]

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- (b) in such other circumstances as the Secretary of State may by order specify.
- (3) A person is not employed in a district for the purposes of subsection (1)—
- <sup>F12</sup>(a) . . . . .
- (b) in such <sup>F13</sup>... circumstances as the Secretary of State may by order specify.
- (4) An order under subsections (2) or (3) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

- F10** S. 27(2)(a)(i) repealed (1.3.2011) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), **ss. 156(a)**, 166(2); S.S.I. 2011/96, art. 2, sch.
- F11** S. 27(2)(a)(iii) and word inserted (30.1.2004) by [Homelessness etc. \(Scotland\) Act 2003 \(asp 10\)](#), **ss. 7, 14(1)**; S.S.I. 2003/609, art. 2
- F12** S. 27(3)(a) repealed (1.3.2011) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), **ss. 156(b)**, 166(2); S.S.I. 2011/96, art. 2, sch.
- F13** Word in s. 27(3)(b) repealed (1.3.2011) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), **ss. 156(c)**, 166(2); S.S.I. 2011/96, art. 2, sch.

*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
- [<sup>F14</sup>(b) may, if they think fit, make any further inquiries necessary to satisfy themselves as to] 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.

**Textual Amendments**

- F14** Words in s. 28(2) substituted (7.11.2019) by [Homelessness etc. \(Scotland\) Act 2003 \(asp 10\)](#), **ss. 4(1)**, 14(1); S.S.I. 2019/316, art. 2

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

- C3** 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 <sup>F15</sup>....**

- (1) If the local authority have reason to believe that an applicant may be homeless <sup>F16</sup>. . . , they shall secure that accommodation is made available for his occupation

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- [<sup>F17</sup>(a)] pending any decision which they may make as a result of their inquiries under section 28.
- [<sup>F18</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>F19</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>F20</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—
- (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.]

#### Textual Amendments

- F15** Words in s. 29 heading omitted (31.12.2012) by virtue of [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, **6**
- F16** 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](#))
- F17** 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](#))
- F18** 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](#))
- F19** 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](#)
- F20** 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)

- C4** 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.

- (1) 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.

[<sup>F21</sup>(2)] . . . . .

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- (3) If they notify him that their decision is that he [<sup>F22</sup>is homeless or threatened with homelessness], they shall at the same time notify him—
- (a) [<sup>F23</sup>where they have made inquiries under section 28(2)(b),] 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.
- [<sup>F24</sup>(3A) If they decide that he is homeless [<sup>F25</sup>or threatened with homelessness,] but would not have done so without having had regard to a restricted person, they shall also notify him of—
- (a) the fact that their decision was reached on that basis,
  - (b) the name of the restricted person,
  - (c) the reason why the person is a restricted person, and
  - (d) the effect of section 31(2G) or (as the case may be) 32(2A) and (2B).]
- (4) If they notify him—
- (a) that they are not satisfied—
    - (i) that he is homeless or threatened with homelessness, <sup>F26</sup> . . .
    - <sup>F26</sup>(ii) . . . . .
  - (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>F27</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.
- [<sup>F28</sup>(6) In this Part “a restricted person” means a person—
- (a) who is not eligible for assistance under this Part,
  - (b) who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996, and
  - (c) either—
    - (i) who does not have leave to enter or remain in the United Kingdom, or
    - (ii) whose leave to enter or remain in the United Kingdom is subject to a condition to maintain and accommodate himself, and any dependants, without recourse to public funds.]

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### Textual Amendments

- F21** S. 30(2) omitted (31.12.2012) by virtue of [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, **7(a)**
- F22** Words in s. 30(3) substituted (31.12.2012) by [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, **7(b)**
- F23** Words in s. 30(3)(a) inserted (7.11.2019) by [Homelessness etc. \(Scotland\) Act 2003 \(asp 10\)](#), ss. **4(2)**, 14(1); S.S.I. 2019/316, art. 2
- F24** S. 30(3A) inserted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 15 para. 11(2)**; S.I. 2009/415, art. 3
- F25** Words in s. 30(3A) substituted (31.12.2012) by [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, **7(c)**
- F26** S. 30(4)(a)(ii) and word omitted (31.12.2012) by virtue of [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, **7(d)**
- F27** 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)
- F28** S. 30(6) inserted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 15 para. 11(3)**; S.I. 2009/415, art. 3

### Modifications etc. (not altering text)

- C5** 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 <sup>F29</sup>... 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>F30</sup>permanent] accommodation becomes available for his occupation.

[<sup>F31</sup>(2A) In a restricted case the local authority shall cease to be subject to the duty under subsection (2) if the applicant, having been informed of the matters mentioned in subsection (2B)—

- (a) accepts a private accommodation offer, or
- (b) refuses such an offer.

(2B) The matters are—

- (a) the possible consequence of refusal of the offer, and
- (b) that the applicant has the right to request a review of the decisions mentioned in section 35A(2)(e).

(2C) In this section “a restricted case” means a case falling within subsection (2) where the local authority would not be satisfied as mentioned in subsections (1) and (2) without having had regard to a restricted person.

(2D) For the purposes of this Part an offer is a private accommodation offer if—

- (a) it is an offer of a short assured tenancy made by a landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant's occupation,

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- (b) it is made, with the approval of the local authority, in pursuance of arrangements made by them with the landlord with a view to bringing their duty under subsection (2) to an end, and
  - (c) the tenancy being offered is for a period of at least 12 months.
- (2E) The local authority shall not approve a private accommodation offer unless they are satisfied that it is reasonable for the applicant to accept the offer.
- (2F) For the purposes of subsection (2E) an applicant may reasonably be expected to accept an offer even though he is under contractual or other obligations in respect of his existing accommodation, provided he is able to bring those obligations to an end before he is required to take up the offer.
- (2G) In a restricted case the local authority shall, so far as reasonably practicable, bring their duty under subsection (2) to an end as mentioned in subsection (2A).
- (2H) Subsections (2A) to (2G) are without prejudice to any other way in which the local authority can cease to be subject to the duty under subsection (2).]
- (3) [<sup>F32</sup>In a case not falling within subsection (2), the local authority] shall—
- (a) secure that accommodation is made available for [<sup>F34</sup>the applicant's] occupation for such period as they consider will give him a reasonable opportunity of himself securing accommodation for his occupation; and
  - (b) furnish him with advice and [<sup>F35</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>F36</sup>(4) .....
- [<sup>F37</sup>(5) For the purposes of subsection (2), “permanent accommodation” includes accommodation—
- (a) secured by a Scottish secure tenancy,
  - <sup>F38</sup>(b) .....
  - (c) where paragraph 1[<sup>F39</sup>, 2 or 2A] of schedule 6 to the Housing (Scotland) Act 2001 (asp 10) is satisfied in relation to the applicant, secured by a short Scottish secure tenancy.
  - [ secured by a private residential tenancy.]]
  - <sup>F40</sup>(d)

#### Textual Amendments

- F29** Words in s. 31(2) omitted (31.12.2012) by virtue of [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, 8
- F30** 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)
- F31** S. 31(2A)-(2H) inserted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), [Sch. 15 para. 12\(2\)](#); S.I. 2009/415, art. 3
- F32** Words in s. 31(3) substituted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), [Sch. 15 para. 12\(3\)\(a\)](#); S.I. 2009/415, art. 3
- F33** 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)
- F34** Words in s. 31(3)(a) substituted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), [Sch. 15 para. 12\(3\)\(b\)](#); S.I. 2009/415, art. 3



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- F35** 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)
- F36** 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)
- F37** 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)
- F38** S. 31(5)(b) repealed (1.12.2017) by Private Housing (Tenancies) (Scotland) Act 2016 (asp 19), s. 79(2), sch. 4 para. 4(4)(a); S.S.I. 2017/346, reg. 2, sch.
- F39** Words in s. 31(5)(c) substituted (1.5.2019) by Housing (Scotland) Act 2014 (asp 14), ss. 7(5), 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 3, 9)
- F40** S. 31(5)(d) inserted (1.12.2017) by Private Housing (Tenancies) (Scotland) Act 2016 (asp 19), s. 79(2), sch. 4 para. 4(4)(b); S.S.I. 2017/346, reg. 2, sch.

## 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 <sup>F41</sup>... 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.
- <sup>F42</sup>(2A) Subsection (2B) applies in a restricted threatened homelessness case where, in pursuance of the duty under subsection (2), the local authority secure that accommodation other than that occupied by the applicant when he made his application is available for occupation by him.
- (2B) The provisions of section 31(2A) to (2H) (circumstances in which duty in restricted case ceases) apply, with any necessary modifications, in relation to the duty under subsection (2) as they apply in relation to the duty under section 31(2) in a restricted case (within the meaning of that section).]
- (3) [<sup>F43</sup>In a case not falling within subsection (2) the local authority shall furnish the applicant] with advice and [<sup>F45</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>F46</sup>(a) that is overcrowded within the meaning of section 135 or which may endanger the health of the occupants.
    - <sup>F47</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>F48</sup>(5A) In this section “a restricted threatened homelessness case” means a case falling within subsection (2) where the local authority would not be satisfied as mentioned in subsections (1) and (2) without having had regard to a restricted person.]
- <sup>F49</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 <sup>F50</sup>with whom dependent children reside or might reasonably be expected to reside], the local authority shall have regard to the best interests of the dependent children <sup>F51</sup>... <sup>F52</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

- F41** Words in s. 32(2) omitted (31.12.2012) by virtue of [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, **9(a)**
- F42** S. 32(2A)(2B) inserted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 15 para. 13(2)**; S.I. 2009/415, art. 3
- F43** Words in s. 32(3) substituted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 15 para. 13(3)**; S.I. 2009/415, art. 3
- F44** 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)
- F45** 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)
- F46** 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)
- F47** 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)
- F48** S. 32(5A) inserted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 15 para. 13(4)**; S.I. 2009/415, art. 3
- F49** 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)
- F50** Words in s. 32(8) substituted (31.12.2012) by [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, **9(b)(i)**
- F51** Words in s. 32(8) omitted (31.12.2012) by virtue of [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, **9(b)(ii)**
- F52** 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>F53</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

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- (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

**F53** 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)

### [<sup>F54</sup>32B Housing support: persons found to be homeless or threatened with homelessness

- (1) Subsection (2) applies where a local authority—
- (a) are subject to the duty under section 31(2) or 32(2) in relation to an applicant; and
  - (b) have reason to believe that the applicant may be in need of prescribed housing support services.
- (2) The local authority must assess whether the applicant, and any other person residing with the applicant, needs prescribed housing support services.
- (3) In carrying out such an assessment the local authority must—
- (a) conduct inquiries of such type as may be prescribed; and
  - (b) have regard to any prescribed matters.
- (4) Following such an assessment, the local authority must ensure that prescribed housing support services are provided to any person assessed as being in need of them.
- (5) The Scottish Ministers may by regulations made by statutory instrument make further provision about the provision of prescribed housing support services in pursuance of subsection (4) and may, in particular, specify—
- (a) the period for which services are to be provided;
  - (b) matters to which a local authority are to have regard when ensuring provision of services.
- (6) Regulations made under this section may make different provision for different purposes and different areas.
- (7) Before making any regulations under this section, the Scottish Ministers must consult—
- (a) such bodies representing local authorities;
  - (b) such bodies representing the interests of homeless persons; and
  - (c) such other persons,
- as they think fit.
- (8) Regulations under this section may be made only if a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.
- (9) In this section, “housing support services” includes any service which provides support, assistance, advice or counselling to an individual with particular needs with

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a view to enabling that individual to occupy, or to continue to occupy, residential accommodation as the individual's sole or main residence.]

#### Textual Amendments

**F54** S. 32B inserted (7.10.2011 for specified purposes, 1.6.2013 in so far as not already in force) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), ss. 158, 166(2); S.S.I. 2011/339, art. 2; S.S.I. 2012/283, art. 3

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

- (1) If a local authority—
- (a) are satisfied that an applicant is homeless <sup>F55</sup>... 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>F56</sup>abuse] in that other local authority's district.
- (3) For the purposes of this section a person runs the risk of domestic [<sup>F57</sup>abuse] —
- (a) if he runs the risk of [<sup>F58</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>F57</sup>abuse], he might reasonably be expected to reside, or from a person with whom he formerly resided, <sup>F59</sup>...
  - <sup>F59</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.

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#### Textual Amendments

- F55** Words in s. 33(1)(a) omitted (31.12.2012) by virtue of [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, **10**
- F56** 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
- F57** 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
- F58** 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
- F59** 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

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

- C6** [S. 33\(1\)](#) modified (29.11.2022) by [The Homeless Persons \(Suspension of Referrals between Local Authorities\) \(Scotland\) Order 2022 \(S.S.I. 2022/356\)](#), arts. 1(1), **2** (with art. 3)

### [<sup>F60</sup> **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.

#### Textual Amendments

- F60** Ss. 33A, 33B inserted (7.11.2019) by [Homelessness etc. \(Scotland\) Act 2003 \(asp 10\)](#), ss. **8**, 14(1); S.S.I. 2019/316, art. 2

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

- (1) The Scottish Ministers must, before the expiry of the period of [<sup>F61</sup>18] 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.

[ The Scottish Ministers may by regulations modify subsection (1) so as to extend the <sup>F62</sup>(1A) period mentioned in subsection (1).

(1B) But the power may not be exercised to extend the period—

- (a) by more than 6 months, or
- (b) more than once.]

(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.

[ Regulations under subsection (1A) are subject to the affirmative procedure.]]  
<sup>F63</sup>(4)

#### Textual Amendments

**F60** Ss. 33A, 33B inserted (7.11.2019) by [Homelessness etc. \(Scotland\) Act 2003 \(asp 10\)](#), **ss. 8, 14(1)**; [S.S.I. 2019/316, art. 2](#)

**F61** Word in s. 33B(1) substituted (27.5.2020) by [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), s. 16(1), **sch. 3 para. 4(2)(a)** (with s. 9)

**F62** S. 33B(1A)(1B) inserted (27.5.2020) by [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), s. 16(1), **sch. 3 para. 4(2)(b)** (with s. 9)

**F63** S. 33B(4) inserted (27.5.2020) by [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), s. 16(1), **sch. 3 para. 4(2)(c)** (with s. 9)

### 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) [<sup>F64</sup>If it is determined that the conditions for referral—

- (a) are satisfied, the notified authority are subject to the duty under section 31(2);
- (b) are not satisfied, the notifying authority are subject to that duty.]

(3) When the matter has been determined, the notifying authority shall notify the applicant—

- (a) [<sup>F66</sup>whether they or the notified authority are subject to the duty under section 31(2),] and

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(b) of the reasons why the authority subject to that duty are subject to it.

[<sup>F67</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>F68</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>F69</sup>(5) For the purposes of subsection (1), “accommodation” has the meaning given in section 32(5).

(6) [<sup>F70</sup>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

- F64** S. 34(2) substituted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), [Sch. 15 para. 14\(2\)](#); S.I. 2009/415, art. 3
- F65** 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](#))
- F66** S. 34(3)(a) substituted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), [Sch. 15 para. 14\(3\)](#); S.I. 2009/415, art. 3
- F67** 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](#))
- F68** 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](#))
- F69** 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](#))
- F70** S. 34(6) repealed (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), [Sch. 15 para. 14\(4\)](#), [Sch. 16](#); S.I. 2009/415, art. 3

### 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)—
  - (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)—

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- (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>F71</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.
  - [<sup>F72</sup>(e) in a case where a private accommodation offer is made to the applicant, any decision—
    - (i) that the accommodation offered is not accommodation falling within section 32(5)(a) to (c), or
    - (ii) that the authority have discharged their duty to the applicant under section 32(8).]
- (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

- F71** 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)
- F72** S. 35A(2)(e) inserted (2.3.2009 for specified purposes) by Housing and Regeneration Act 2008 (c. 17), s. 325(1), Sch. 15 para. 15; S.I. 2009/415, art. 3

### <sup>F73</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—
  - (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.

#### Textual Amendments

**F73** 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.

*Administrative provisions*

**37 Guidance to authorities by the Secretary of State.**

- (1) In relation to homeless persons and persons threatened with homelessness, a relevant authority shall have regard in the exercise of their functions to such guidance as may from time to time be given by the Secretary of State.
- (2) The Secretary of State may give guidance either generally or to specified descriptions of authorities.

**38 Co-operation between authorities.**

Where a local authority—

- (a) request another local authority in Scotland or England or Wales, a development corporation, a registered housing association or the Scottish Special Housing Association to assist them in the discharge of their functions under sections 28, 29, 31 to 33 and 34(1) and (2) (which relate to the duties of local authorities with respect to homelessness and threatened homelessness as such),
- (b) request a social work authority in Scotland or a social services authority in England or Wales to exercise any of their functions in relation to a case which the local authority are dealing with under those provisions, or
- (c) request another local authority in Scotland or England or Wales to assist them in the discharge of their functions under section 36 (protection of property of homeless persons and persons threatened with homelessness),

the authority to whom the request is made shall co-operate in rendering such assistance in the discharge of the functions to which the request relates as is reasonable in the circumstances.

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### *Assistance for voluntary organisations*

## **39 Financial and other assistance for voluntary organisations concerned with homelessness.**

- (1) The Secretary of State, with the consent of the Treasury, may, upon such terms and subject to such conditions as he may determine, give to a voluntary organisation concerned with homelessness, or with matters relating to homelessness, assistance by way of grant or loan or partly in the one way and partly in the other.
- (2) A local authority may, upon such terms and subject to such conditions as they may determine, give to such a voluntary organisation such assistance as is mentioned in subsection (1), and may also assist such an organisation by—
  - (a) permitting them to use premises belonging to the authority upon such terms and subject to such conditions as may be agreed,
  - (b) making available furniture or other goods, whether by way of gift, loan or otherwise, and
  - (c) making available the services of staff employed by the authority.
- (3) No assistance shall be given under subsection (1) or (2) unless the voluntary organisation first give an undertaking—
  - (a) that they will use the money, furniture or other goods or premises made available to them for a specified purpose, and
  - (b) that they will, if the person giving the assistance serves notice on them requiring them to do so, furnish, within the period of 21 days beginning with the date on which the notice is served, a certificate giving such information as may reasonably be required by the notice with respect to the manner in which the assistance given to them is being used.
- (4) The conditions subject to which assistance is given under this section shall in all cases include, in addition to any conditions determined or agreed under subsection (1) or (2), conditions requiring the voluntary organisation to—
  - (a) keep proper books of account and have them audited in such manner as may be specified,
  - (b) keep records indicating how they have used the money, furniture or other goods or premises made available to them, and
  - (c) submit the books of account and records for inspection by the person giving the assistance.
- (5) If it appears to the person giving the assistance that the voluntary organisation have failed to carry out their undertaking as to the purpose for which the assistance was to be used, he shall take all reasonable steps to recover from the organisation an amount equal to the amount of the assistance; but no sum is so recoverable unless he has first served on the voluntary organisation a notice specifying the amount which in his opinion is recoverable and the basis on which that amount has been calculated.

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### *Supplementary provisions*

#### **40 False statements, withholding information and failure to disclose change of circumstances.**

- (1) If a person, with intent to induce a local authority to believe, in connection with the exercise of their functions under this Part, that he or another person—
  - (a) is homeless or threatened with homelessness, or
  - <sup>F74</sup>(b) .....
  - (c) did not become homeless or threatened with homelessness intentionally, knowingly or recklessly makes a statement which is false in a material particular, or knowingly withholds information which the authority have reasonably required him to give in connection with the exercise of those functions, he shall be guilty of an offence.
- (2) If before an applicant receives notification of the local authority's decision on his application there is any change of facts material to his case, he shall notify the authority as soon as possible; and the authority shall explain to every applicant, in ordinary language, the duty imposed on him by this subsection and the effect of subsection (3).
- (3) A person who fails to comply with subsection (2) commits an offence unless he shows that he was not given the explanation required by that subsection or that he had some other reasonable excuse for non-compliance.
- (4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Textual Amendments**

**F74** S. 40(1)(b) omitted (31.12.2012) by virtue of [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, **11**

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

**C7** S. 40 applied (26.7.1993) by 1993 c. 23, s. 4(5), [Sch. 1 para. 5](#) (with [Sch. 1 para. 8](#)); S.I. 1993/1655, [art. 2](#).

#### **41 Meaning of accommodation available for occupation.**

For the purposes of this Part accommodation shall be regarded as available for a person's occupation only if it is available for occupation both by him and by any other person who might reasonably be expected to reside with him; and references to securing accommodation for a person's occupation shall be construed accordingly.

#### **42 Application of this Part to cases arising in England or Wales.**

- (1) Sections 33 and 34 (referral of application to another local authority and duties to persons whose applications are referred) apply—
  - (a) to applications referred by a local authority in England or Wales in pursuance of [<sup>F75</sup>section 198(1) of the Housing Act 1996], and
  - (b) to persons whose applications are so transferred,
 as they apply to cases arising under this Part.

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- (2) Section 38 (duty of other authorities to co-operate with local authority) applies to a request by a local authority in England or Wales under [F76]section 213 of the Housing Act 1996] as it applies to a request by a local authority in Scotland.
- (3) In this Part, in relation to England and Wales—
- (a) “local authority” means a local housing authority within the meaning of section 1(1) of the said Act of 1985 and references to the district of such an authority are to the area of the council concerned,
  - (b) “social work authority” means a social services authority for the purposes of the M1Local Authority Social Services Act 1970, as defined in section 1 of that Act;
- and in section 38(a) (requests for co-operation) “development corporation” means a development corporation established by an order made or having effect as if made under the M2New Towns Act 1981 or the Commission for the New Towns.

#### Textual Amendments

**F75** Words in s. 42(1) substituted (20.1.1997) by 1996 c. 52, s. 216(3), **Sch. 17 para. 4**; S.I. 1996/2959, **art. 2**

**F76** Words in s. 42(2) substituted (20.1.1997) by 1996 c. 52, s. 216(3), **Sch. 17 para. 4**; S.I. 1996/2959, **art. 2**

#### Marginal Citations

**M1** 1970 c. 42.

**M2** 1981 c. 64.

### 43 Minor definitions.

In this Part—

“accommodation available for occupation” has the meaning assigned to it by section 41;

“applicant (for housing accommodation)” has the meaning assigned to it by section 28(1);

“homeless” has the meaning assigned to it by section 24(1) to (3);

“homeless intentionally or threatened with homelessness intentionally” has the meaning assigned to it by section 26;

“local connection (in relation to the district of a local authority)” has the meaning assigned to it by section 27;

F77

[F78“private accommodation offer” has the meaning assigned to it by section 31(2D);]

[F79“private residential tenancy” has the meaning given by the Private Housing (Tenancies) (Scotland) Act 2016;]

“relevant authority” means a local authority or social work authority;

[F80“restricted person” has the meaning assigned to it by section 30(6);]

“securing accommodation for a person’s occupation” has the meaning assigned to it by section 41;

[F81“short assured tenancy” has the same meaning as in Part 2 of the Housing (Scotland) Act 1988;]

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“social work authority” means a local authority for the purposes of the <sup>M3</sup>Social Work (Scotland) Act 1968, that is to say, a regional or islands council;

“threatened with homelessness” has the meaning assigned to it by section 24(4);

“voluntary organisation” means a body, not being a public or local authority, whose activities are carried on otherwise than for profit.

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#### Textual Amendments

- F77** Words in s. 43 omitted (31.12.2012) by virtue of [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012 \(S.S.I. 2012/330\)](#), arts. 2, **12**
- F78** Words in s. 43 inserted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008](#) (c. 17), s. 325(1), **Sch. 15 para. 16(a)**; S.I. 2009/415, art. 3
- F79** Words in s. 43 inserted (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#) (asp 19), s. 79(2), **sch. 4 para. 4(5)**; S.S.I. 2017/346, reg. 2, sch.
- F80** Words in s. 43 inserted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008](#) (c. 17), s. 325(1), **Sch. 15 para. 16(b)**; S.I. 2009/415, art. 3
- F81** Words in s. 43 inserted (2.3.2009 for specified purposes) by [Housing and Regeneration Act 2008](#) (c. 17), s. 325(1), **Sch. 15 para. 16(c)**; S.I. 2009/415, art. 3
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#### Marginal Citations

- M3** 1968 c. 49.

**Changes to legislation:**

Housing (Scotland) Act 1987, PART II is up to date with all changes known to be in force on or before 06 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 21(3)(i)s. 21(3)(ai)(ii) by [2001 asp 10 Sch. 10 para. 13\(3\)\(c\)para. 13\(I\)-\(iii\)](#)
- s. 24(3)(f) and word(s) inserted by [2003 asp 10 s. 5\(1\)](#) (This amendment not applied to legislation.gov.uk. S. 5 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 31(2C)(c) words substituted by [2004 asp 8 Sch. 4 para. 2](#)
- s. 61(2)(a)(ia) by [2001 asp 10 Sch. 10 para. 13\(6\)\(a\)\(ii\)](#)
- s. 63(1A)-(61C) by [2001 asp 10 s. 46\(2\)](#)
- s. 66(1)(vi)(vii) by [2001 asp 10 Sch. 10 para. 13\(9\)\(b\)](#)
- s. 286(a)(c) by [2001 asp 10 Sch. 10 para. 13\(40\)\(a\)\(b\)](#)