

# HOUSING (SCOTLAND) ACT 2001

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## EXPLANATORY NOTES

### BACKGROUND AND OVERVIEW

#### Part 1 – Homelessness and Allocation of Housing

##### *Section 3: Homeless persons and persons threatened with homelessness*

7. This section amends various sections of the 1987 Act, which set out local authorities' duties towards homeless people and people threatened with homelessness.
8. *Subsection (1)(a)* amends the definition of homelessness in the Housing (Scotland) Act 1987 Act to ensure that people who have accommodation outwith Scotland, England and Wales are not automatically assessed as being homeless, by widening the reference so that a person is treated as being homeless if he/she has no accommodation in the United Kingdom or elsewhere. *Subsection (1)(b)* amends section 24(3) of the 1987 Act to ensure that people who are owed a duty under section 31(2) are to be treated as being homeless if they are provided with accommodation which is not permanent accommodation. A definition of permanent accommodation is inserted into section 24 of the 1987 Act by *subsection (1)(d)*. This means that a local authority's duty under section 31(2) continues until permanent accommodation is secured. Permanent accommodation is defined in broad terms in this section to acknowledge a range of situations, some of which may not be secured by a local authority, but which could reasonably be considered to be permanent accommodation and, therefore, end the local authority's duty under section 31(2). *Subsection (1)(c)* amends section 24(4) of the 1987 Act to provide that a person is threatened with homelessness if it is likely that they will become homeless within 2 months.
9. Section 29 of the 1987 Act places an interim duty on local authorities to accommodate people who they have reason to believe are homeless and have a priority need. *Subsection (2)* amends section 29 to make this an interim duty to accommodate anyone whom they have reason to believe is homeless, without taking into account whether they are likely to be in priority need.
10. *Subsection (3)* makes amendments to section 31 of the 1987 Act, which sets out local authorities' duties towards homeless people. Section 31(2) is amended to require local authorities to secure that the accommodation made available for unintentionally homeless people in priority need is permanent accommodation which includes a Scottish secure tenancy or an assured tenancy (but not a short assured tenancy) or, where a person has a record of anti-social behaviour, a short Scottish secure tenancy. This definition of permanent accommodation is narrower than the definition contained within section 24 in order to acknowledge the types of accommodation which local authorities can secure. Section 31(3) is amended to remove the distinction between intentionally homeless people in priority need and homeless people not in priority need and to enable the Scottish Ministers to prescribe what type of advice and assistance should be provided in those cases. The amendment to section 31(3) makes section 31(4) redundant and so that subsection is repealed.

*These notes relate to the Housing (Scotland) Act 2001  
(asp 10) which received Royal Assent on 18 July 2001*

11. *Subsection (4)* makes amendments to section 32 of the 1987 Act, which sets out local authorities' duties towards people threatened with homelessness and provides a definition of accommodation. *Subsection (4)(a)* amends section 32(3) of the 1987 Act to enable the Scottish Ministers to prescribe the type of advice and assistance which should be provided to people threatened with homelessness. The wording of section 32(3) of the 1987 Act is also amended to match the amended wording of section 31(3), although this does not change the effect of this section.
12. *Subsection (4)(b)* amends section 32(5) of the 1987 Act to ensure that accommodation referred to in sections 31 or 32 does not include accommodation which does not meet any special needs of the applicant or other members of their household or is not reasonable for the applicant to occupy. *Subsection (4)(c)* sets out the arrangements which will apply to the regulations on types of advice and assistance made under sections 31 and 32 of the 1987 Act. It also requires local authorities to have regard to the best interests of any dependent children of the applicant when providing advice and assistance under section 31 or 32.
13. *Subsection (5)* inserts section 32A into the 1987 Act. Section 32A(1) enables the Scottish Ministers to define the situations in which accommodation which is not permanent can be secured for unintentionally homeless people in priority need. This power could be used, say, to specify where temporary accommodation may be provided as an interim measure. It also enables Ministers to prescribe circumstances in which accommodation which does not meet the special needs of the applicant and their household may be secured. Section 32A(2) makes clear that, when interim accommodation is secured in these circumstances, the homeless applicant cannot be subsequently reassessed as being intentionally homeless from that accommodation.
14. *Subsection (6)* makes a number of minor changes to section 34 of the 1987 Act to ensure that accommodation secured under this section must be permanent and as suitable as other accommodation secured under the 1987 Act.