

*Draft Order laid before the Scottish Parliament under section 2(5) of the Homelessness etc. (Scotland) Act 2003 for approval by resolution of the Scottish Parliament.*

---

## DRAFT SCOTTISH STATUTORY INSTRUMENTS

---

**2012 No.**

## **HOUSING**

### **The Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012**

*Made* - - - - 2012

*Coming into force* - - 31st December 2012

The Scottish Ministers make the following Order in exercise of the powers conferred by section 2(1) and (3) of the Homelessness etc. (Scotland) Act 2003<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 2(2) of that Act, the Scottish Ministers consider that 31st December 2012 is the earliest date on which all local authorities can reasonably be expected to perform the duties referred to in that section.

In accordance with section 2(5) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

#### **Citation and commencement**

1. This Order may be cited as the Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012 and comes into force on 31st December 2012.

#### **Appointed day**

2. The day appointed for the purposes of section 2 (abolition of priority need test) of the Homelessness etc. (Scotland) Act 2003 is 31st December 2012.

#### **Amendment of Part 2 of the Housing (Scotland) Act 1987**

3. The Housing (Scotland) Act 1987<sup>(2)</sup> is modified as follows.
4. Omit section 25 (priority need)<sup>(3)</sup>.

---

(1) [2003 asp 10](#).

(2) [1987 c.26](#).

(3) Section 25 is amended by section 1 of the Homelessness etc. (Scotland) Act 2003.

5. In section 28 omit subsection (2)(a) (inquiries as to priority need)(4), and the word “and” following it.
6. In the heading to section 29 (interim duty to accommodate) omit “in case of apparent priority need”.
7. In section 30 (notification of decisions)(5)—
  - (a) omit subsection (2);
  - (b) in subsection (3), for “has a priority need” substitute “is homeless or threatened with homelessness”;
  - (c) in subsection (3A), for “, threatened with homelessness or has a priority need” substitute “or threatened with homelessness.”; and
  - (d) in subsection (4)(a) omit sub-paragraph (ii) and the “or” that precedes it.
8. In section 31(2) (duties to persons found to be homeless)(6) omit “are satisfied that he has a priority need and”.
9. In section 32 (duties to persons found to be threatened with homelessness)—
  - (a) in subsection (2) omit “are satisfied that he has a priority need and”; and
  - (b) in subsection (8)(7)—
    - (i) for “falling within section 25(1)(b)” substitute “with whom dependent children reside or might reasonably be expected to reside”; and
    - (ii) omit “referred to in that provision”.
10. In section 33(1)(a) (referral of applications to another local authority)(8) omit “and has a priority need.”.
11. In section 40(1) (offences) omit paragraph (b) and the word “or” following it.
12. In section 43 (minor definitions) omit the definition of “priority need (for accommodation)”.

#### **Amendment of the Homelessness etc. (Scotland) Act 2003**

13. Omit sections 1, 3, 5 and 6 of the Homelessness etc. (Scotland) Act 2003(9).
14. In section 4(1) of that Act(10), omit the words from “(a) to “and”.

#### **Amendment of the Antisocial Behaviour etc. (Scotland) Act 2004**

15. Omit paragraph 2 of schedule 4 to the Antisocial Behaviour etc. (Scotland) Act 2004(11).

---

(4) Section 28(2) would be amended by section 4(1) of the Homelessness etc. (Scotland) Act 2003 but the amendment is not in force and is revoked by this Order.

(5) Section 30 is amended by section 4(2) of the Housing (Scotland) Act 2001 (asp 10). It is also amended, and subsection (3A) added, by paragraph 11 of Schedule 15 to the Housing and Regeneration Act 2008 (c.17). Section 30(3)(a) would be amended by section 4(2) of the Homelessness etc. (Scotland) Act 2003 but the amendment is not in force and is revoked by this Order.

(6) Section 31(2) is amended by section 3(3) of the Housing (Scotland) Act 2001. Sections 31(2A) to (2C) would be added by section 5(2) of the Homelessness etc. (Scotland) Act 2003 but that section is not in force and is revoked by this Order. There are other amendments to section 31 that are not relevant to this Order.

(7) Section 32(8) is inserted by section 3(4)(c) of the Housing (Scotland) Act 2001 and amended by section 9(2) of the Homelessness etc. (Scotland) Act 2003. There are other amendments to section 32 that are not relevant to this Order.

(8) There are amendments to section 33 that are not relevant to this Order.

(9) Sections 5 and 6 have not been commenced.

(10) Section 4 has not been commenced.

(11) 2004 asp 8. Paragraph 2 of Schedule 4 amends the definition of antisocial behaviour order in subsection (2C)(c) of section 31 of the Housing (Scotland) Act 1987, as amended by section 5 of the Homelessness etc. (Scotland) Act 2003 (which is not yet in force and is revoked by this Order).

St Andrew's House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

---

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision in relation to the duties of local authorities in respect of persons found to be homeless or threatened with homelessness.

Article 2 appoints the day for the abolition of the “priority need” test in relation to local authority duties under sections 31 and 32 of the Housing (Scotland) Act 1987 (“the 1987 Act”). The effect is that the duties in those sections to persons who are unintentionally homeless, or threatened with homelessness, will apply regardless of whether the person has a priority need for accommodation.

Section 25 of the 1987 Act sets out which persons have a priority need for accommodation. Article 4 removes that section of the 1987 Act in consequence of the abolition of the test.

Article 8 removes the need for a local authority to be satisfied that an applicant for assistance is in a priority need group from the duty to secure permanent accommodation for a homeless person. Article 9 makes a similar amendment to the duty in respect of persons threatened with homelessness.

Articles 5 and 6 make consequential changes to the inquiries that local authorities are required to make and the manner in which decisions are notified. Articles 7, 11 and 12 also make minor consequential changes.

Article 10 amends the grounds on which a local authority can choose to refer an applicant to another authority with which the applicant has a local connection, to remove a reference to such referral only being possible where an applicant has a priority need.

Article 13 revokes sections 1, 3, 5 and 6 of the Homelessness etc. (Scotland) Act 2003 (“the 2003 Act”). Section 1 amended the priority need groups that are being abolished by this Order. Section 3 set out the process to be followed prior to that abolition and has become redundant. Sections 5 and 6 provided amendments to the 1987 Act that have never been commenced and that have become otiose as a result of this Order.

Article 14 revokes part of section 4 of the 2003 Act which inserted an uncommenced amendment into the 1987 Act. That amendment relates to inquiries into priority need.

Article 15 revokes provision in the Antisocial Behaviour etc. (Scotland) Act 2004 that is also otiose as a result of this Order.