



Homelessness etc. (Scotland) Act 2003

**A Briefing from the Chartered
Institute of Housing in Scotland**

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1. Background

On 5 March 2003 the Scottish Parliament approved the Homelessness etc. (Scotland) Bill. This legislation radically overhauls Scotland's existing homelessness laws by, in the main, amending the Housing (Scotland) Act 1987 and the Housing (Scotland) Act 2001.

This briefing describes the provisions of the Homelessness etc. (Scotland) Act 2003. It details the implications of the Act and the challenges it will present for homelessness services, the provision of support and temporary and permanent accommodation for both local authorities and RSLs. The briefing also covers changes to possession proceedings notification and changes to the recovery procedures for Assured Tenancies.

The provisions contained in the Homelessness etc. (Scotland) Act 2003 are based on the recommendations of the final report of the Homelessness Task Force. The task force was set up by the Scottish Executive and chaired by the then Social Justice Ministers, (initially Jackie Baillie MSP and subsequently Iain Gray MSP). Membership of the task force reflected a number of interests in homelessness from the voluntary sector, the local authority and RSL sector, Scottish Executive and Westminster government departments and agencies and academics. Its terms of reference were:

"To review the causes and nature of homelessness in Scotland; to examine current practice in dealing with cases of homelessness; and to make recommendations on how homelessness in Scotland can best be prevented and, where it does occur, tackled effectively."

The first report of the Homelessness Task Force played a major role in shaping the homelessness provisions of the Housing (Scotland) Act 2001 by strengthening the legal rights of homeless people, establishing a strategic framework for preventing and tackling homelessness and creating a regulatory regime for homelessness services. The final report sought to take a longer term view on tackling homelessness and accordingly proposed a number of recommendations aimed at achieving significant change over time. The final report of the Homelessness Task Force is available on the Scottish Executive website:

<http://www.scotland.gov.uk/library3/society/htff-00.asp>

2. Implementing the Homelessness etc. (Scotland) Act 2003

The Act received Royal Assent on 9 April 2003. The dates on which the various sections of the Act will be implemented have not yet been set by the Scottish Executive. The CIH in Scotland will aim to help housing

professionals plan for and implement the provisions of the Homelessness etc. (Scotland) Act 2003. The CIH in Scotland is developing training courses on the Act for delivery through marketed training, in-house courses and events. For further information please contact the CIH training and events team - Tel 0131 225 4544 or email Scotland@cih.org

The Scottish Executive Code of Guidance on Homelessness is in the process of being revised and updated to take account of the changes brought about by both the Homelessness etc. (Scotland) Act 2003 and the Housing (Scotland) Act 2001. The CIH Scotland training will also cover updates to the Code of Guidance.

3. Overview of the Provisions of the Homelessness etc. (Scotland) Act 2003

The 2003 Act provides the legislative framework for the following changes in addressing homelessness in Scotland:

- Extension of the **priority need categories** and plans to ultimately **abolish the priority need test**,
- Changes to the operation of the **intentionally homeless test** and the provision of **accommodation for intentionally homeless households**,
- Powers to modify the **local connection** rules and a change to the rules in respect of former **asylum seekers** (people accommodated under the Immigration and Asylum Act 1999),
- Details of what constitutes **suitable accommodation for homeless persons** and the allocation of housing to **persons at risk of domestic abuse**,
- A Change of reference from domestic violence to **domestic abuse**.

The 2003 Act also introduces the following changes for possession actions:

- New duties to inform local authorities in the event of **proceedings for possession**,
- A change to the grounds for **recovery of Assured Tenancies for non-payment of rent**.

A copy of the Homelessness etc. (Scotland) Act is available on the HMSO website:

<http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2003/20030010.htm>

4. Extension of Priority Need

A person who is to be regarded as in priority need and therefore eligible for permanent accommodation is set out in Section 25 of the 1987 Act. Section 1 of the 2003 Act amends the 1987 Act by adding new categories of people who have a priority need for accommodation and by extending and clarifying the definition of vulnerability. These changes are largely in

line with the categories set out in the 1998 Code of Guidance on Homelessness, to which local authorities should have regard.

In future people who are vulnerable as a result of the following will be considered as having a priority need:

- Old age,
- Mental illness,
- Personality disorder,
- Learning disability,
- Physical disability,
- Chronic ill health,
- Having suffered a miscarriage or undergone an abortion,
- Having been discharged from a hospital, a prison or any part of the regular armed forces of the Crown,
- Other special reason.

The priority need categories will also be extended to include:

- A person who may reasonably be expected to reside with a person who is vulnerable or who is homeless or threatened with homelessness because of an emergency,
- A person aged 16 or 17,
- A person aged 18 to 20 who is at risk of either financial or sexual exploitation or involvement with the serious misuse of alcohol, drugs or volatile substances,
- A person aged 18 to 20 who has been looked after by a local authority within the meaning of the Children (Scotland) Act 1995,
- A person who, by reason of that person's religion, sexual orientation, race, colour or ethnic or national origins—
 - (i) runs the risk of violence; or
 - (ii) is, or is likely to be, the victim of a course of conduct amounting to harassment,
- A person who runs the risk of domestic abuse for a person with whom they may reasonably expect to reside or whom they formerly resided.

Section 1 also revokes the Homeless Persons (Priority Need) (Scotland) Order 1997 which, as a result of amendments in Section 1 of the 2003 Act, is now incorporated in the 1987 Act.

Practice Point

As many local authorities currently adhere to the Code of Guidance on Homelessness, it may be expected that this section of the Act will have only a limited impact on housing demand from an increase in homeless people who will be assessed as in priority need. For those authorities who have not adhered to some or all of the Code of Guidance then these changes may have an impact.

These authorities should now begin to make an assessment of the likely impact of the extension of priority need on the provision of their homelessness service and the consequent demand for permanent

accommodation. The training needs of staff who will implement the changes should also be assessed.

RSLs working in local authority areas where the authority has not adhered to the Code of Guidance may wish to look at any possible consequences for demand on their accommodation. This may come from the local authority fulfilling its duties toward homeless households in line with Section 5 of the Housing (Scotland) Act 2001 where they can request RSLs to provide accommodation.

5. Abolition of Priority Need Test

The Scottish Executive has made clear its intention to abolish the priority need test and section 2 of the 2003 Act sets out the basis on which this will be done. The 2003 Act does not set a date for the abolition instead it enables the Scottish Ministers to use a Statutory Instrument to set a date for its abolition.

The effect of the abolition of the priority need test will be to place a duty on local authorities to provide permanent accommodation to all households that are unintentionally homeless in Scotland. The abolition of the priority need test will also cover households that are threatened with homelessness.

The date that will be set for the abolition of the priority need test will be that which, in the view of the Scottish Ministers, is the earliest date by which that all local authorities can reasonably be expected to perform the new duties toward homeless households and households threatened with homelessness. The date set for the abolition will therefore be a date by which time all local authorities will be deemed to be able to make available permanent accommodation for all homeless households in Scotland.

Section 3 of the 2003 Act places a duty on the Scottish Ministers to publish a statement on the progress being made toward achieving the position whereby the priority need test can be abolished. This statement must be published by 31 December 2005. It will specify:

- A target date by which local authorities will be able to provide accommodation, this date being no later than 31 December 2012,
- Any interim objectives to be introduced in working toward achieving that purpose.

The interim objectives may include proposals for a further extension of the priority need categories as a step toward their full abolition.

The 2003 Act places a duty on the Scottish Ministers to keep the statement under review. It also provides for them to modify the statement if necessary including a duty to publish any modified statement.

In preparing or modifying the statement the Scottish Ministers have a duty to take note of local authority homelessness strategies and local housing strategies. There is also a duty for Scottish Ministers to consult on preparing or modifying the statement.

Practice Point

The abolition of the priority need test will mean an increase in demand for and eligibility for permanent housing from homeless households. Local authorities will need to assess this and plan how to meet it. In preparing and modifying their homelessness strategy and local housing strategy, local authorities will therefore want to take account of proposals to abolish priority need. These strategies may want to take into account:

- An analysis of non-priority homeless applicant presentations to the local authority in order to assess the likely impact of any further extension of priority need categories prior to full abolition,
- An assessment of the number, type and size of housing units required to take account of the changes to priority need,
- An assessment of the impact of the changes on accommodation available to other households applying for local authority and RSL housing and how to put measures in place to ensure their housing needs can also be met,
- Methods for monitoring the impact that changes to priority need are having on general housing need and the local housing market,
- Any need to request 'pressured area status' to protect the social housing stock from erosion through the right to buy in order to meet any increased demand from homeless households.

RSLs should also take account of the proposals to abolish priority need when considering their future lettings and development strategies. They will want to look at any likely increase in demand placed on their housing by the local authority in discharging its duty to provide permanent accommodation for homeless households eligible for housing as a result of the abolition of priority need.

6. Changes to the Intentional Homelessness Test

Section 4 of the 2003 Act removes the duty on local authorities to assess households for intentionality. The Housing (Scotland) Act 1987 requires local authorities to investigate all priority need homeless households to determine whether they have made themselves homeless intentionally. The 2003 Act makes this a power, giving local authorities discretion over whether to investigate a household for intentionality. In doing so the 2003 Act goes further by introducing new accommodation duties. If a household is either not assessed for intentionality or is deemed not to be intentionally homeless then a duty to provide permanent accommodation exists.

Sections 5 and 6 of the 2003 Act also provide for local authorities to accommodate households who are assessed as intentionally homeless. Local authorities have a duty to provide a Short Scottish Secure Tenancy

(SSST) with housing support to all households deemed to be intentionally homeless unless they fall into one of the exceptions detailed below.

Local authorities do not have a duty to provide a SSST where:

- The homeless applicant has previously been granted a SSST as a result of an intentionally homeless decision and that SSST has been terminated within the past 12 months,
- An order for the recovery of possession of the applicant's tenancy, or of the tenancy of a person who will reside with them, has been granted in the last three years for anti-social behaviour,
- The applicant or a person who will reside with them has an ASBO in force against them.

In these circumstances the local authority is obliged to only provide 'hostel type' or 'non-tenancy' accommodation in line with section 7 of the Housing (Scotland) Act 2001, with such housing support services as it sees fit. The local authority does however have the power to grant a SSST if it wishes.

The overall aim of the changes to intentionality is to ensure that people who are deemed to have made themselves homeless intentionally are given support to address the actions that led to the intentionality decision being made, with a view to the household securing permanent accommodation. For this reason local authorities have a duty under section 6 of the 2003 Act to provide housing support services to an intentionally homeless household accommodated using a SSST with a view to this SSST converting to a full Scottish Secure Tenancy (SST) after 12 months, in line with section 37 of the 2001 Act.

Where a SSST is given to an intentionally homeless applicant the property allocated to them must be let as a separate dwelling. To ensure that the tenant is fully aware of their rights and their obligations in relation to the provision of housing support services, the housing support services must be included in the tenancy agreement. The landlord, if not the local authority, has a duty to provide the local authority with information on how the tenancy agreement and the housing support are working. There is also a duty on the local authority, the landlord (if not the local authority) and the tenant to jointly review the extent to which the tenant is engaging with the support obligations under the tenancy agreement. This means that a failure by the tenant to engage with the housing support may amount to a breach of the SSST. The Scottish Ministers may issue guidance in relation to these reviews and the action to be taken following reviews.

Intentionally homeless households who are accommodated in 'hostel type' or 'non-tenancy' accommodation must also be provided with housing support services by the local authority. The duty to both provide the hostel style accommodation and housing support remains on the local authority until the household becomes eligible for a SSST or the household secures alternative accommodation for itself. The local

authority is therefore under an ongoing duty to provide at the least hostel type accommodation for intentionally homeless households.

Practice Point

Local authorities will need to think about:

- How they will assess an intentionally homeless household's support needs, this may include working with local authority Social Work or with voluntary agencies with experience of support and assessment,
- Funding for the housing support services, this may include looking at Supporting People Funding, the overall local authority housing budget and that of other departments and joint working with voluntary agencies that can access alternative funding sources,
- Ensuring that any in-house housing support services are registered with the Care Commission,
- Devising a strategy and procedures for accommodating intentionally homeless households:
 - (i) to meet the needs for the provision of SSSTs, this may include working with RSLs,
 - (ii) for Section 7 accommodation which may involve RSLs, voluntary agencies and the private sector,
- Reviewing their policies and procedures for dealing with tenants who have rent arrears and for dealing with anti-social behaviour,
- Meeting the training needs of staff who will be implementing these sections of the 2003 Act.

RSLs may want to start looking at what role they may be able to play in working with local authorities to provide accommodation for intentionally homeless households. They may also want to consider what if any will be the implications for their policies and procedures of the new duty on local authorities to accommodate households that have been evicted for rent arrears and anti-social behaviour.

7. Local Connection

Sections 7 and 8 of the 2003 Act deal with local connection. Section 7 alters the current local connection rules set out in section 27 of the 1987 Act. The 2003 Act amends local connection to cover a person who was previously an asylum seeker accommodated in National Asylum Support Service (NASS) accommodation under the Immigration and Asylum Act 1999. If such a person has been given leave to remain in the UK, granted refugee status, and is therefore eligible for assistance under the homelessness legislation they cannot automatically be deemed to have a local connection to the local authority area in Scotland in which they were accommodated under the 1999 Act. This means that they will be free to present themselves as a homeless person to any local authority in Scotland and that authority having the responsibility for providing them with housing, should they meet the other relevant homelessness criteria.

Section 8 gives Scottish Ministers the power to issue a statutory instrument suspending the local connection rules. This may be applied to

all local authorities or to selected local authorities and can include both making referrals and receiving referrals.

Within 12 months of Section 8 of the 2003 Act coming into force the Scottish Ministers must publish a statement setting out the criteria for and the circumstances in which this power may be used. The statement must be kept under review by the Scottish Ministers and may be modified. If modified the modified statement must be published. The Scottish Ministers have a duty to consult on the drawing up of or any modification to the statement.

Practice Point

Some local authorities have expressed concern that the removal of local connection may lead to more homeless people presenting in their area. To assist the Scottish Ministers in preparing their statement, local authorities may wish to research the likely impacts if any of changes on housing demand in their area. Such information may also prove useful for the homelessness strategy and the local housing strategy.

8. Suitable Accommodation for Homeless Persons

Section 9 of the 2003 Act makes a statutory provision for local authorities to provide homeless households with interim accommodation (often referred to as temporary accommodation) once a positive homelessness decision has been made, whilst they wait for permanent accommodation to become available. This section tidies up the 1987 Act as amended by the 2001 Act. It also gives Scottish Ministers the power to issue a statutory instrument defining what type of accommodation is deemed to be suitable for use as interim accommodation in these circumstances.

The section also sets out a duty for a local authority to ensure that in discharging its duty to accommodate a household with children, the local authority must ensure the accommodation is suitable for those children. This covers both interim and permanent accommodation.

Practice Point

Local authorities and RSLs may wish to audit their accommodation to gain a clear picture of suitable accommodation for children. This may also include an assessment of the needs of children looking at issues such as play space, quiet spaces for homework, privacy, overcrowding, access to their current school and friends etc.

9. Persons at Risk of Domestic Abuse

Section 10 of the 2003 Act replaces the term 'violence' with 'abuse' in sections 20, 24 and 33 of the 1987 Act where it makes reference to domestic violence. In doing so it extends these sections to include behaviour other than physical violence and will now cover threatening behaviour, intimidation, harassment etc.

Practice Point

Local authorities and RSLs should look at their relevant policies and procedures to ensure that they reflect the change of emphasis on the definition of domestic abuse brought about by the 2003 Act. This relates to policies covering priority on housing lists, local connection and homeless people and people threatened with homelessness.

Any training needs for staff working with these policies and procedures should also be considered in terms of determining what constitutes domestic abuse and how the change will impact on their role.

10. Proceedings for Possession

Section 11 and the schedule attached to the 2003 Act requires that where landlords or mortgage lenders are raising possession proceedings for the recovery of a dwellinghouse, the local authority in whose area the house is located must be informed. The only exceptions to this are where the landlord is the local authority or where the landlord is already required to give such notice to the local authority under any other legislation.

The Schedule attached to the 2003 Act amends the following relevant pieces of legislation to insert a section requiring notice to be given to the local authority:

- The Conveyancing and Feudal Reform (Scotland) Act 1970
- The Rent (Scotland) Act 1984
- The Housing (Scotland) Act 1988
- The Housing (Scotland) Act 2001
- Mortgage Rights (Scotland) Act 2001

The format of the notices to local authorities and the way in which they are to be given may be prescribed at a later date by the Scottish Ministers either through regulation or statutory instrument.

Practice Point

Local authorities should look at the way in which they will record the receipt of notices of possession action and determine how they will develop an audit trail for them.

Local authorities should give consideration to what they will do once they have been notified of action. This may be considered in the context of their:

- Homelessness strategy and the duty to prevent homelessness in their area,
- Duty to provide advice and information,
- Duties toward people threatened with homelessness.

RSLs, private landlords and mortgage lenders may want to look at the need for internal procedures to ensure that local authorities are notified of any possession actions.

All may want to consider the training needs of their staff whose roles and responsibilities will be affected by the legislation.

11. Recovery of Assured Tenancies for Non-Payment of Rent

Section 12 of the 2003 Act amends section 18 of the Housing (Scotland) Act 1988. Where a possession action under an Assured Tenancy is on the mandatory ground 8 for rent arrears the sheriff will now look at the reason for those arrears. If the sheriff is satisfied the arrears are a result of delays or failures in the payment of housing benefit then an order for possession will not be granted unless the sheriff deems it reasonable to do so.

Where action is on the discretionary grounds 11 or 12 for rent arrears the sheriff will, in considering whether it is reasonable to make an order of possession, look specifically at whether the arrears are a consequence of delay or failure in the payment of housing benefit.

However, if the sheriff considers that the delay or failure to pay housing benefit is due to an act or omission by the tenant then an order for possession may be granted.

Practice Point

Housing Associations not registered with Communities Scotland and any private landlords who use Assured Tenancies may need to give greater consideration to the causes of their tenants rent arrears before pursuing eviction action.

This briefing has been prepared by the Chartered Institute of Housing in Scotland. If you have any questions or comments on this briefing please contact Nick Fletcher, Policy and Public Affairs Officer.

The Chartered Institute of Housing in Scotland
6 Palmerston Place
Edinburgh, EH12 5AA

Tel: 0131 225 4544 Fax. 0131 225 4566
Email nick.fletcher@cih.org

The Chartered Institute of Housing in Scotland is the professional organisation which represents people who work in housing. Its purpose is to maximise the contribution that housing professional make to the well-being of communities. The CIH has over 1600 individual members working in local authorities, registered social landlords, Communities Scotland, The Rent Service, voluntary organisations, educational institutions and the private sector.
Email: scotland@cih.org. Website: www.cihscotland.org

Whilst all reasonable care and attention has been taken in compiling this briefing the Institute regret that it cannot assume responsibility for any error or omission that it contains.