

# HOUSING (SCOTLAND) ACT 2001

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## EXPLANATORY NOTES

### BACKGROUND AND OVERVIEW

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

##### ***Section 1: Homelessness strategies***

5. This section requires every local authority, when required to do so by the Scottish Ministers, to carry out an assessment of homelessness in its area and to prepare, and submit to the Scottish Ministers, a strategy for preventing and alleviating homelessness in its area. *Subsections (2) and (3)* allow Ministers to make requirements or give guidance on various aspects of preparing assessments or strategies. Homelessness strategies must state how the local authority is to comply with its equal opportunities duties so far as relating to matters in the strategy. *Subsection (6)* provides for the revision of the strategy, which may be undertaken by the local authority itself at an appropriate time or, as the case may be, under direction from Ministers.

##### ***Section 2: Advice on homelessness etc.***

6. This section requires every local authority to ensure that advice and information about homelessness, the prevention of homelessness and services which may assist a homeless person or the prevention of homelessness is available free of charge. Local authorities are not required to provide this advice themselves. *Subsection (2)* enables the Scottish Ministers to issue guidance on the fulfilment of this duty.

##### ***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.
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.

#### ***Section 4: Review of decisions***

15. This section establishes a right to a review on homelessness decisions and makes provisions about the main procedural matters.

#### ***Section 5: Duty of registered social landlord to provide accommodation***

16. *Subsection (1)* enables local authorities to request a registered social landlord (RSL) which holds accommodation in the local authority's area to provide accommodation

for an unintentionally homeless person in priority need. *Subsection (2)* requires local authorities, before making such a request, to consider the availability and appropriateness of any accommodation in their area. This duty will have no effect on local authorities which hold no housing stock, but will provide a safeguard against local authorities who hold stock making inappropriate requests to registered social landlords. *Subsection (3)* requires registered social landlords to comply with a local authority request, within a reasonable period, unless there is a good reason for not complying. *Subsection (4)* sets out that compliance with a request must be through the provision of accommodation secured by a Scottish secure tenancy, but where *paragraph 1 or 2 of Schedule 6* are satisfied (that is, in relation to anti-social behaviour) a short Scottish secure tenancy is also permitted. *Subsection (5)* allows RSLs to provide other accommodation (say, temporary accommodation) in cases where that has been expressly requested by the local authority. *Subsection (6)* places a duty on RSLs to comply with reasonable requests for information relating to the local authority's functions under section 5. *Subsection (7)* enables the Scottish Ministers to give guidance on what constitutes a reasonable period for compliance; good reason for an RSL's non-compliance; and for the purposes of *subsection (6)* what is a reasonable request. *Subsection (8)* sets out the arrangements for consulting on such guidance.

### ***Section 6: Duty of registered social landlord: further provision***

17. This section sets out the arrangements which are to apply in the event of any dispute between a registered social landlord and a local authority about whether the registered social landlord has good reason for not complying with a local authority request. *Subsection (1)* requires that, if both parties cannot reach agreement within a set period (to be defined by the Scottish Ministers in subordinate legislation), they must appoint an arbiter. If there is no agreement on the appointment of an arbiter, Ministers must appoint an arbiter when requested to do so by the local authority. *Subsections (4) and (5)* deal with the sharing of costs of arbitration and the issuing of guidance by Ministers on the details of the arbitration process. *Subsection (6)* makes it clear that both registered social landlords and local authorities must comply with the arbiter's decision.

### ***Section 7: Persons living in hostel and other short-term accommodation***

18. This section enables the Scottish Ministers to make regulations to establish minimum rights for homeless people living in hostels and other types of short-term accommodation. *Subsection (1)* enables Ministers to specify the types of occupancy of accommodation to which these minimum rights will apply. *Subsection (2)* sets out a number of types of occupancy of accommodation which cannot be included in any regulations. *Subsections (3), (5) and (6)* enable Ministers to specify the terms of occupancy of the accommodation, including arrangements for appeals, but do not prevent additional agreements being made between the provider of accommodation and the occupier. *Subsection (4)* requires regulations under *subsection (3)* to include provision for a minimum period of notice, which may be waived when there is a serious danger to other occupiers or staff of the accommodation. *Subsection (7)* makes it a criminal offence for a provider of accommodation to fail to comply with the terms of the regulations. *Subsection (8)* sets out the consultation arrangements which would apply to the regulations.

### ***Section 8: Common housing registers***

19. There is currently a voluntary framework for the establishment of common housing registers. This section provides Ministers with powers (to be exercised where appropriate) to instead require the establishment of common housing registers.

### ***Section 9: Housing lists***

20. This section substitutes a new version of section 19 of the 1987 Act. Section 19(1) will now extend a right to register on a housing list for accommodation held by local

authorities or registered social landlords to anyone aged 16 or over. Section 19(2) defines a housing list.

***Section 10: Allocation of housing***

21. This section amends section 20 of the 1987 Act to provide additional criteria governing the operation of the housing list by a local authority or registered social landlord. *Subsection (2)* states that reasonable preference in allocations must be given to persons – among others – both homeless and threatened with homelessness. *Subsection (3)* sets out those factors which cannot be taken into account by a local authority or registered social landlord in making allocation decisions. *Subsection (4)* includes a list of the circumstances under which landlords can take account of age when allocating houses.