

Annex A

Summary of legislative changes

Extract from:
Code of Guidance on Homelessness
May 2005

ANNEX A

SUMMARY OF LEGISLATIVE CHANGES

The following is a summary of the changes introduced by the Housing (Scotland) Act 2001 and Homelessness etc (Scotland) Act 2003 – it is not intended to be detailed legal advice on the provisions.

Housing (Scotland) Act 2001

- **Section 1** requires local authorities to assess the levels of homelessness in their area and produce homelessness strategies. Guidance has been issued which incorporates the recommendations of the Homelessness Task Force and stresses the need for the development and delivery of strategies to be a corporate undertaking and to involve partnership working with agencies external to the local authority.
- **Section 2** requires local authorities to provide information and advice about homelessness free of charge – guidance on the form and content of this has been issued.
- **Section 3** makes a number of alterations to the Housing (Scotland) Act 1987. These have the effect of:
 - Changing the **definition** of homelessness to ensure that people with reasonable accommodation overseas cannot apply as homeless.
 - Ensuring that people who are assessed as having a priority need and unintentionally homeless are entitled to **permanent accommodation**, setting out a definition of permanent accommodation and stating that if this is not provided the applicant should continue to be assessed as homeless. This section also gives local authorities the discretion to place someone in interim accommodation where there is a duty to provide permanent accommodation – regulations setting out the circumstances in which this can be done have been issued.
 - Lengthening the period during which people can be assessed as '**threatened with homelessness**' from 28 days to 2 months.
 - Requiring that anyone who is assessed as homeless has a right to **temporary accommodation** whilst enquiries are made.
 - Requiring that all homeless people are entitled to a minimum of **temporary accommodation, advice and assistance** – the type of advice and assistance to be provided is set out in regulations.
 - Requiring that accommodation offered is **reasonable to occupy and meets any special needs** the applicant may have.
 - Requiring local authorities to have regard to **the best interests of children** in exercising their functions.
- **Section 4** gives applicants the right of **internal review of a decision**.
- **Section 5** provides that **Registered Social Landlords** must comply with a local authority's request to provide accommodation unless there is a 'good reason' not to – guidance on what constitutes a 'good reason' has been issued.
- **Section 6** sets out the procedures for **arbitration** where there is a disagreement between the local authority and the RSL – Communities Scotland have issued guidance on this.

- **Section 7** gives Ministers the power to issue regulations setting out **minimum terms of occupancy** for persons living in hostels and other short-term accommodation. These regulations have not yet been made.

Homelessness etc (Scotland) Act 2003

Section 1 expands priority need categories to include those currently listed in the 1997 version of Code of Guidance – i.e. all those who are under 18 or who have been subject to harassment or domestic abuse, people under 21 who are vulnerable to financial or sexual exploitation or involvement in substance misuse due to their living circumstances and anyone who is vulnerable as a result of personality disorder, leaving hospital, prison or the armed forces, having suffered a miscarriage or undergone an abortion or chronic illness. This section came into force on 30 January 2004.

Section 2 gives Ministers the power to specify a time from which priority need is to be abolished. Ministers are required to take into account whether local authorities can reasonably be expected to perform their duties before making this change. This section came into force on 30 January 2004.

Section 3 gives Ministers the duty to consult on and publish a statement setting out the measures to be taken to achieve the abolition of priority need. This statement must include a target date for abolition of no later than the end of 2012 and set interim objectives towards the achievement of this target. This section came into force on 30 January 2004.

Section 4 gives local authorities a discretionary power, rather than the current duty, to investigate whether a household is intentionally homeless. This section is not yet in force.

Section 5 and section 6 change the provision given to intentionally homeless households. When these sections come into force, local authorities will be under a duty to grant a short Scottish Secure Tenancy (SST) with housing support to these households. Where this short SST remains in place for a year then the household will be entitled to a full SST. If the short SST fails then the local authority will continue to have a duty to provide accommodation and support, but not to provide a tenancy. However where the applicant is intentionally homeless but also subject to an ASBO or has been evicted for anti-social behaviour in the last 3 years, the local authority is not required to grant a short SST with support but must still provide non-tenancy accommodation. These sections are not yet in force.

Section 7 provides that accommodation provided for asylum seekers under the Immigration and Asylum Act 1999 (i.e. NASS accommodation) does not constitute accommodation of the applicants' own choice so does not establish a local connection. This section came into force on 30 January 2004.

Section 8 gives Ministers a flexible power to modify the application of the local connection provisions of the 1987 Act. This power can be exercised in a variety of ways – local connection can be suspended altogether, and reactivated again or it can be applied differently between certain local authorities or for certain categories of applicant. The Bill requires that Ministers consult on and make a statement setting out the circumstances in which, and the criteria by reference to which, the power is to be exercised. This section is not yet in force.

Section 9 gives Ministers the powers to specify accommodation that is NOT suitable as interim accommodation. This section came into force on 30 January 2004. An Order laid under this section specifying unsuitable temporary accommodation and the exceptional circumstances in which it may be used came into force in December 2004. See chapter 9 for more details of LAs' duties under this Order.

Section 10 amends various parts of the 1987 Act to replace references to domestic "violence" with references to domestic "abuse". This enables consistency with the wording in section 25 and extends the references to include behaviour other than physical violence. This section came into force on 30 January 2004.

Section 11 requires landlords to notify the relevant local authority when they raise repossession proceeding. This section is not yet in force.

Section 12 requires that sheriffs should consider reasonableness in repossession proceedings where rent arrears are due to a delay or failure in Housing Benefit. This section came into force in July 2004.

