

HOMELESSNESS

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This briefing provides a summary of the current legislation relevant to homelessness. Both the Housing (Scotland) Act 2001 and the Homelessness etc (Scotland) Act 2003 have changed, and will change, statutory duties towards the homeless. The implementation of these changes is also briefly considered.

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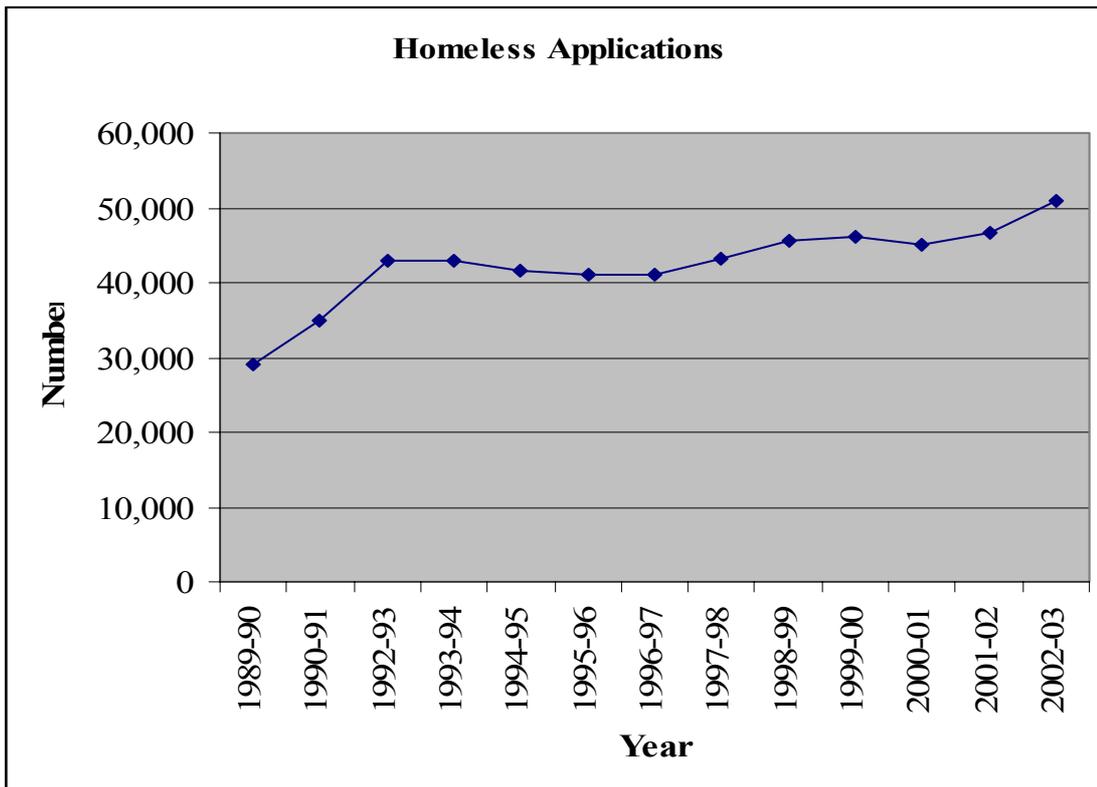
KEY POINTS

- Rising levels of homelessness during the 1990s led the government to set up the Homelessness Task Force to review the causes and nature of homelessness in Scotland and to make recommendations on how it could be prevented and tackled effectively.
- The Task Force produced two reports, in 2000 and 2002, and made a number of legislative and non-legislative recommendations.
- The Housing (Scotland) Act 1987 is the main basis for homelessness legislation in Scotland. It has been amended by the Housing (Scotland) Act 2001 and the Homelessness etc (Scotland) Act 2003.
- Local authorities have a key role in developing strategies to tackle homelessness, providing advice and assistance and assessing homeless applications.
- There are various stages in the assessment process that a local authority must consider. They must decide whether the applicant is homeless, whether they are in priority need, whether they become homeless intentionally and whether they have a local connection with any other area.
- The Homelessness etc (Scotland) Act 2003 made changes to the three key assessments of priority need, intentionality and local connection. Only some of these changes have yet come into force. It is intended that the test of priority need will be eventually be ended by 2012.
- The type of assistance and accommodation a local authority must provide depends on the outcome of the homelessness assessment.
- The Homelessness etc (Scotland) Act 2003 places a greater emphasis on support services to ensure that recurring homelessness does not happen.
- Changes in homeless legislation have been broadly welcomed by local authorities and the main campaigning agencies as a progressive approach to homeless persons. However, there have been concerns about the resource implications of implementing the changes, for example the availability of adequate housing and staff to provide support.

CONTEXT

Over the last 13 years the number of homeless applications to local authorities has been increasing. As Figure 1 shows, in 1989-90 there were just under 30,000 applications compared to around 51,000 applications in 2002-03, although the rate of increase is slower now than it was in the late 1980s and early 1990s. Recent increases in levels of applications have primarily been due to the increase in the numbers of single-person households applying, there has been very little variation in applications from other household types.

Figure 1 – Number of applications made by households to local authorities, 1990-91 to 2001-02



Source: Scottish Executive 2002a and 2004a

While there are a number of limitations in interpreting official statistics, such as the under-representation of the “hidden homeless” and the fact that headline figures have to some extent been inflated by 'repeat presentations' it has generally been accepted that during the 1990's homelessness had become an increasing problem. According to recent research, “the causes of homelessness have been debated for many years but never satisfactorily resolved,” but:

“The level of homelessness over the past 2 decades probably has been affected by wider structural trends in society. Unemployment, and to a lesser extent housing market affordability and de-institutionalisation, appear to be powerful forces affecting the incidence of homelessness in Scotland” (Scottish Executive, 2001, p62).

It was within the context of growing levels of homelessness during the 1990s that proposals for a homelessness review were first made. This has culminated in changes to legislation primarily through two acts of the Scottish Parliament; the Housing (Scotland) Act 2001 (the 2001 Act) and the Homelessness etc (Scotland) Act (2003) (the 2003 Act). The legislative framework is considered in more detail below.

LEGISLATIVE FRAMEWORK - BACKGROUND

The main piece of legislation relevant to homelessness is the Housing (Scotland) Act 1987 (the 1987 Act). This has been amended by both the 2001 Act and the 2003 Act. These were largely as a result of the recommendations from the two reports of the Homelessness Task Force (the Task Force). The Task Force was set up in August 1999 with the remit:

“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” (Scottish Executive, 2001c, para.1).

The Task Force completed the first phase of its work with the publication of its initial report in April 2000 (Scottish Executive 2000). These recommendations formed the basis of the homelessness section (Part 1) of the 2001 Act. In framing these recommendations it was recognised that there were additional and more wide-ranging legislative concerns, which required further consideration. The Task Force’s final report published in February 2002 (Scottish Executive 2002b) produced 59 recommendations, of which five related to legislative change. Three issues; priority need, intentionality and local connection, were the focus of the 2003 Act. The first commencement order for the Act was made in December 2003, bringing sections 1 to 3, 7, 9 and 10 into effect in January 2004. Further commencements are planned on a phased basis as outlined in Appendix 1. Details of the main non-legislative recommendations are also given in Appendix 2.

OVERVIEW OF CURRENT LEGISLATION

Local authorities have a key role in developing area wide strategies to tackle homelessness, providing advice and assistance and assessing homeless applications.

Strategy Development

Section 1 of the 2001 Act places a duty on local authorities to carry out assessments of homelessness and to prepare homelessness strategies for their area. These strategies must be submitted to the Scottish Ministers. Guidance on strategies was published in March 2002 (Scottish Executive 2002c) and local authorities were required to submit strategies by the end of March 2003. The guidance states that various factors should be taken into account, including information gathered by the assessment and the final report of the Task Force. The Executive has allocated £20 million per annum over three years (2003-04 to 2005-06) specifically to assist local authorities to implement their homelessness strategies.

Local authorities must also produce a local housing strategy for their area which covers all tenures. Again, local authorities must submit their local housing strategy to the Executive by April 2004 at the latest. It is expected that these two strategies will link in together. Guidance has been prepared on developing local housing strategies (Scottish Executive 2004a).

Advice and Assistance

The 2001 Act (s2) also places a duty on local authorities to ensure that advice on homelessness and the prevention of homelessness is available free of charge to anyone who wants it.

Where a homelessness application has been made and a household has been assessed as homeless the local authority has a duty to provide a minimum of temporary accommodation

alongside advice and assistance. In these circumstances the types of assistance have been prescribed by the Homeless Persons Advice and Assistance (Scotland) Regulations 2002 (SSI 2002/414). Types of advice to be given include housing, social issues (including advice on services provided by other agencies), financial and legal.

Assessment of Homeless Applicants

Local authorities have a duty to assess any person who applies to the authority as being homeless. There are various stages in this assessment process, and, depending on the outcome of the assessment different forms of accommodation and support must be provided. All applicants must be informed in writing of the local authority's decision and the reasons for it. Investigations into each application may take some time. If it appears to the local authority that the applicant is homeless they must provide the applicant with temporary accommodation pending further investigations. Before the 2001 Act, temporary accommodation only had to be provided at this stage where it seemed that the applicant was homeless and in priority need.

In carrying out their duties local authorities are required to have regard to a "Code of Guidance" issued by Scottish Ministers. The last Code was first issued in 1998 and is currently being updated to reflect changes in legislation. A consultation version was issued in late 2003 (Scottish Executive 2003), and a final version is expected in spring 2004.

Investigations into the application are in the following order:

- is the applicant homeless or threatened with homelessness?
- if so, is the applicant in priority need
- did the applicant become homeless or threatened with homelessness intentionally?
- if the local authority thinks fit, has the applicant a local connection with an area of another local authority in Scotland, England, or Wales?

Some of these stages have, or will be, affected by changes in the Homelessness etc (Scotland) Act 2003. These stages are considered in more detail below along with an outline of where the process has changed, or will change with the implementation of the Act. An outline of the current process is given in diagrammatic format in Appendix 3.

The basic assessment of whether a person is considered homeless or not remains the same:

- A person is homeless if they do not have any accommodation in the United Kingdom or elsewhere that they have a right or permission to occupy together with their family.
- A person is defined as having accommodation if they, or a family member they would normally reside with, have a right to occupy a property, have a legal right or permission to occupy a property or reside in a property. A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for them to occupy.
- A person is deemed to be homeless, even if they have accommodation, if any of the following apply:
 - they cannot secure entry to the property
 - there is a threat of domestic violence, from a partner or ex-partner, were the person to continue occupation of the property
 - the accommodation is not reasonable for them to occupy

- the property is a mobile structure and the person has no place where they are entitled to place it and reside in it
- it is overcrowded and may endanger the health of the occupants
- it is temporary accommodation in which the local authority placed the person under their statutory duty to house unintentionally homeless people in priority need

(Source: Adapted from the Housing (Scotland) Act 1987, s24)

If the local authority is satisfied that the applicant is homeless they must secure a minimum of temporary accommodation for the applicant, pending further investigations. They must then establish whether they are in priority need, whether they are intentionally homeless and, if the authority thinks fit, whether they have a local connection.

Priority Need

Section 25 of the 1987 Act sets out the list of persons to be regarded as in priority need and the Code of Guidance provided further advice on vulnerable persons to be considered in priority need. The 2003 Act established the framework for expanding this list of persons to be regarded as in priority need. The intention is to end the test of priority need by gradually expanding the groups so defined until, in effect, since everyone becomes in priority need, the term becomes redundant. The expansion of these groups will take place over 10 years resulting in the phasing out of priority need by 2012 – ministers have the power to make an order specifying other groups as having priority need.

The Act also provides for the production of a ministerial statement by 2005 which will outline how the phasing out of priority need will be completed. The first expansion of the priority need category came into effect from 30 January 2004 (SSI 204/609) and now the following persons fall into the priority need category.

- a) a pregnant woman
- b) a person with whom dependent children reside or might reasonably be expected to reside
- c) a person who is vulnerable as a result of 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, prison or any part of the regular armed forces or other special reason
- d) anyone who has lost their accommodation as a result of an emergency such as flood, fire or other disaster
- e) a person who resides or might reasonably be expected to reside with the person referred to in a,c or d above
- f) a person aged 16 or 17
- g) a young person aged between 18 and 20 and either, living in circumstances which might put them at risk of sexual or financial exploitation or misuse of alcohol or drugs, or who was, at the time that they ceased to be of school age (or at any subsequent time) looked after by a local authority and is no longer looked after
- h) a person whose religion, sexual orientation, race, colour, ethnic or national origins mean that s/he runs the risk of violence or harassment, or is likely to suffer harassment
- i) a person who runs the risk of domestic abuse

Those who do not have priority need are only entitled to temporary accommodation with advice and assistance. For those who do have priority need the support offered depends on “intentionality”.

Intentionality

Currently local authorities have to assess whether a homeless person is “intentionally homeless.” A person is defined as becoming intentionally homeless if:

“he (or she) deliberately does, or fails to do, anything in consequence of which she or he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy”. (Housing Scotland Act 1987 S26(1)).

Depending on the outcome of this assessment local authorities should:

- provide permanent accommodation for those assessed as being unintentionally homeless and in priority need.
- provide temporary accommodation, advice and assistance, for those assessed as not having a priority need and those assessed as being intentionally homeless.

The Homelessness etc (Scotland) Act 2003 will change the intentionality “test” although a commencement date is not yet known. When the relevant sections come into force local authorities will no longer be under a duty to assess households for intentionality. Rather, local authorities will have a power, to investigate a household for intentionality. The overall aim of this 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.

If a household is either not assessed for intentionality or is deemed not to be intentionally homeless then a duty to provide permanent accommodation will exist. Where a person is assessed as being intentionally homeless and in priority need then that individual only has a right to a short tenancy, with support, with a view to converting that tenancy to a full tenancy at the end of the year. Where households fail to obtain the full tenancy at the end of the year the local authority will have to provide them with one of the following:

- a new short tenancy to the household, again with a view to moving to a full tenancy
- accommodation on an occupancy basis with support

There will be some intentionally homeless households who will not automatically qualify for the short tenancy. These will be:

- those who have failed the short tenancy within the last year
- those who have been evicted on the grounds of anti-social behaviour or those who are subject to an anti-social behaviour order

These groups will be allocated either a short tenancy or short term accommodation at the discretion of the local authority.

Local Connection

Local authorities have the discretion to investigate whether a homeless applicant has a “local connection” with the local authority area. Section 27 of the 1987 Act sets out a definition of local connection. A person can have a local connection with a local authority area where:

- they are, or were, normally resident in that area through choice. This excludes those residing in an area through statutory compulsion, e.g. prisoners
- they are employed in that area, excluding HM forces personnel
- they have family connections with that area
- there are any special circumstances

Under the 1987 Act local authorities can refer a homeless household to another local authority where they think that the household has a local connection with that other authority and not with them. The local authority may not, however, make such a referral where this would result in a situation where a member of the household would 'run the risk of domestic violence'.

Section 8 of the 2003 Act gives Scottish Ministers the power to modify the local connection rules by Order. The Order may be applied to all local authorities or to selected local authorities and could include both making referrals and receiving referrals. The intention of this provision is to recognise the fact that those who apply to another local authority usually have a very good reason for doing so, for example, because they wish to get away from an abusive partner. This provision has not yet come into force. On commencement, Ministers must publish a statement within 12 months, setting out the circumstances and general criteria by which the powers outlined above would be exercised.

Some local authorities with limited supply of social rented stock have expressed concerns that this may have a detrimental effect on their allocations. In recognition of these concerns the power to modify the local connection rules allows for these to be reinstated where there is evidence of unmanageable demand on local authorities.

ASYLUM SEEKERS

The situation for asylum seekers is a complex area of law (Mullen 2004) and depends on a number of factors including when they claimed asylum, whether their case has been determined and whether they have any dependent children.

In general those who claimed asylum on arrival and arrived after 5 February 1996 and on or before 2 April 2000 are entitled to assistance under the homelessness legislation. Those who claimed within this time period but did not claim on arrival are entitled to support under social work legislation.

Claimants for asylum from 3 April 2000 are excluded from getting help under the homelessness legislation. The provision of accommodation is dealt with by the Immigration and Asylum Act 1999. Under s95 of this Act the Home Secretary may provide accommodation for an asylum seeker who is "destitute or likely to become destitute". Accommodation is provided through the National Asylum Support Service (NASS) on a no choice basis.

If claims for asylum are accepted and the applicant is allowed to stay in the country (i.e. given "refugee" status) then, if necessary, they can claim for assistance under homelessness legislation. Some local authorities, in assessing homeless applications from refugees, had considered that residence in NASS accommodation was evidence of a local connection with the area where that accommodation was. However, s7 of the 2003 Act now means that local authorities are prevented from determining that residence in NASS accommodation was of a persons' own choice. This will impact on how refugees pass the local connection test.

ACCOMMODATION PROVIDED

Local authorities have always had to provide accommodation for those unintentionally homeless and in priority need. However, the 2001 Act amended the 1987 Act to specify that accommodation provided must be permanent (1987 Act s31 (2)). This reverses the effect of the “Awua” decision (*Awua v Brent LBC*, [1995] 3 All ER 493) which stated that accommodation provided need not necessarily be permanent (Mullen 2004). The 2001 Act also went further in amending the 1987 Act to ensure that accommodation provided must meet any special needs and must be reasonable for the applicant to occupy (1987 Act s 32(5)).

While, in general, accommodation for unintentionally homeless people in priority need must be permanent, Scottish Ministers can prescribe exceptions to this, for example where a housing support services assessment has concluded that housing support services cannot reasonably be provided in permanent accommodation. The current exceptions are set out in The Homeless Persons Interim Accommodation (Scotland) Regulations 2002 (SI No. 412 (2002)).

Role of Registered Social Landlords

Where a homeless applicant is entitled to accommodation this does not necessarily have to be provided from the local authority housing stock. Local authorities have in the past referred homeless nominations to other registered social landlords (RSLs) in the area. With the stock transfer process continuing, the role of RSLs in re-housing homeless persons will increase.

New arrangements have been made to reflect changes in stock tenure. Firstly the Scottish Federation of Housing Associations and COSLA have developed model contracts between local authorities and RSLs. If co-operation does not work then the powers in the 2001 Act can be used. Section 5 and 6 of the Housing 2001 Act impose new duties on RSLs. A local authority may request a RSL in its area to provide accommodation for a homeless person who is unintentionally homeless and in priority need, but must consider the availability of appropriate accommodation before making such a request. A RSL must comply with such a request in a reasonable time period unless it has good reason for not doing so.

Disputes about these matters will be resolved ultimately by arbitration. If local authorities cannot agree on an arbiter, one will be appointed by Communities Scotland.

RIGHT TO REVIEW

If a homeless applicant is unhappy with a decision letter then they can request an internal review under s35A and s35B of the 1987 Act (as inserted by the 2001 Act). The request for a review must be made, either verbally or in writing, within 21 days of being notified of the local authority's decision. The review must be carried out by a senior housing officer who has had no prior involvement in the case. The applicant should be informed of the review decision and reasons for that decision in writing. While a review is being investigated the applicant will have the right to temporary accommodation until a decision is made.

If an applicant is unsuccessful it may still be possible to challenge the decision by way of judicial review in the Court of Session. There are various grounds for review. Mullen (2004) notes that this is a complex area and gives an overview of some of the grounds that may be relevant.

BED AND BREAKFAST ACCOMODATION

The Executive endorsed the Homelessness Task Force's recommendation that local authorities' strategies should include proposals to eliminate the use of bed and breakfast accommodation for families and issued guidance to this effect in March 2002 (Scottish Executive 2002). This set out that:

"It is essential that.....homelessness strategies should clearly identify which forms of non-permanent or intermediate accommodation are appropriate. It should therefore be a feature of homelessness strategies to reduce the use of accommodation considered inappropriate to aiding the re-settlement process. This would include a reduction in the number of homeless people placed in bed and breakfasts and large-scale hostels and the elimination of bed and breakfast provision for families." (Scottish Executive 2002)

Section 9 of the 2003 Act has introduced a power to the 1987 Act enabling Ministers to set regulations specifying accommodation which is unsuitable for use as temporary accommodation for homeless households. Regulations under Section 9 could be used to specify bed and breakfast accommodation as unsuitable temporary accommodation for families. On 30 January 2004 a consultation on unsuitable temporary accommodation for families with children was launched. It is due to end in April 2004 (Scottish Executive 2004c).

REPOSSESSION

The 2003 Act will make two changes to repossession procedures, both with the intention of ensuring the prevention of homelessness. It is planned that these provisions will be enacted in the spring of 2004.

Proceedings for Possession

Section 11 of the 2003 Act sets out that where landlords or mortgage lenders are raising possession proceedings for the recovery of a house, the local authority in whose area the house is located must be informed. This is intended to allow the local authority to act to prevent homelessness occurring.

Recovery of Assured Tenancies for Non-Payment of Rent

Section 12 of the 2003 Act changes provisions relating to repossession to ensure that courts, when deciding whether to grant an eviction order to a private landlord, take into account that rent may be in arrears due to a delay or failure in the payment of Housing Benefit.

IMPLEMENTATION

Changes in homelessness legislation have been broadly welcomed by local authorities and the main campaigning agencies as a progressive approach towards homeless persons. The 2003 Act has won an international award¹ as an example of legislation that protects human rights and safeguards human dignity. However, implementation will require long term change in culture and in working practices. In presenting its final report, the Task Force was clear that the agenda

¹ The Housing Rights Protector Award from the Centre on Housing Rights and Evictions (COHRE), based in Switzerland

it recommended would require 10 years until 2012 to deliver in full. Despite broad support during the Parliamentary scrutiny of the Homelessness Bill there were some concerns from key organisations about the financial implications of the changes and the adequacy of resources, in terms of housing stock, support services and staff to support the changes.

A successor to the Task Force, the Homelessness Monitoring Group (HMG) was set up in June 2002 to monitor implementation of the Task Force recommendations. The group meets every two months. Its first report, outlining the progress that has been made and setting out the agenda for change in the forthcoming period, was published in January 2004 (Scottish Executive 2004d).

The Group found that in the case of most recommendations progress has been made in raising awareness and putting in place the framework and conditions to support and shape their delivery. In spite of this there were also a number of recommendations where serious work had yet to begin. In some cases:

“..rising homelessness applications, pressure on temporary accommodation, and an apparent increasing demand for support services have meant that local agencies have found it difficult to respond effectively to the recommendations. These trends have coincided with the implementation of the homelessness provisions of the Housing (Scotland) Act 2001 and it is our initial sense that the two are linked to the extent that latent demand for homelessness services, and related services such as those providing housing support, has been brought to the surface”. (Scottish Executive 2004d)

However, the fact that those who previously would not have applied, as they would have had no entitlement to accommodation, are now coming forward is seen by the HMG as “a positive development - as hidden homelessness becomes visible it is more likely to be addressed.”

Similarly, the Scottish Council for Single Homeless recognised that while considerable steps forward have been made:

“The crucial questions are whether we will have enough affordable houses of the right quality to meet the 2012 deadline, and whether we have the range of support needed to prevent homelessness and tackle it effectively”. (Scottish Council for the Single Homeless 2004)

Shelter has also highlighted a shortage in social care staff as a potential problem in fully taking forward change. As Liz Nicholson, Director of Shelter Scotland stated:

“Scotland has the best homelessness law in Europe. But what really matters to homeless people is having the best homelessness service in Europe. To do that everyone needs to work together. But staff will always struggle to work effectively while there are such shortages of skilled and trained people who can offer the care and support that some homeless people need. Working with homeless people needs to be as high a priority for the Scottish Executive as recruitment of teachers and nurses.” (Shelter 2004)

FURTHER INFORMATION

Further information can be found at:

Scottish Executive [Homelessness](#) home page

Scottish Executive [Housing statistics](#) home page

Shelter Scotland's [Changing Homelessness in Practice](#) webpages which provides information to support local authorities, registered social landlords and others in implementing the recommendations of the Homelessness Task Force over time.

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APPENDIX 1: TIMETABLE FOR COMMENCEMENT OF THE HOMELESSNESS (SCOTLAND) ACT 2003

Phase 1: 30 January 2004

Section 1	Changes to priority need categories
Section 2	Allows Scottish Ministers to abolish the priority need test at some point in the future as soon as they are satisfied that local authorities will be able to carry out their duties in relation to homeless people without distinguishing between applicants on the basis of priority need.
Section 3	Places a duty on Scottish Ministers to produce a statement by the end of 2005 setting out how they intend to abolish priority need by 2012.
Section 7	Local authorities are prevented from determining that residence in NASS accommodation was of a persons' own choice. This will impact on how refugees pass the local connection test.
Section 9	Gives Scottish Ministers the power to set out in regulations accommodation that is unsuitable for homeless people.
Section 10	Amends the Housing Act 1987 to replace references to domestic violence with domestic abuse.

Phase 2- Spring 2004

Section 11	Local authorities should be notified where there is an intention to repossess a property in their area.
Section 12	Sheriffs must take into account whether housing delay has contributed to rent arrears in possession actions.

Phase three - commencement date unknown

This phase will be introduced at a date later than the first two phases. It will include the following commencements:

Section 4	Changes the duty to carry out an intentionality investigation to a power.
Section 5	Those applicants who are found to be intentionally homeless are provided with a Short Scottish Secure tenancy (SSST) (with some exceptions). Those who fail the short tenancy are provided with accommodation within the scope of regulations under section 7 of the Housing (Scotland) Act 2001.
Section 6	Those who are given an SSST are also to be provided with housing support services, with a view to eventually moving to a full tenancy.
Section 8	Removes the local connection test.

APPENDIX 2: THE TASK FORCE'S NON-LEGISLATIVE RECOMMENDATIONS

The Task Force produced a total of 59 recommendations, of which only three related to legislative change. The main non-legislative proposals can be summarised as follows:

- All local authorities should provide access to a rent and deposit guarantee scheme by 2004. The Scottish Executive will provide start-up funding for these schemes
- Communities Scotland should draft a national framework for furnished tenancies. This framework should include a target of 1000 new furnished tenancies to be established each year for the next five years, at which point further need would be assessed
- The Department of Work and Pensions should be asked to review the operation of certain benefits and work with the Scottish Executive in monitoring and improving the benefits system in Scotland as it relates to homeless people
- Homelessness strategies should include proposals on counselling, advice, anti-social behaviour, the needs of those leaving HM Forces or institutional care, joint working, domestic abuse and social networks
- Local authorities should establish crisis response systems able to deal with any incidence resulting in emergency need for accommodation from homeless people
- Jobcentre Plus should work with the Scottish Executive, local authorities and voluntary agencies, to improve access to employment and training for homeless people
- NHS Boards should work to improve health services to homeless people, with particular emphasis on drugs/alcohol abuse, mental health, children and primary care
- A monitoring group will be established to take forward the Report's recommendations

This is only a summary of the Task Force's recommendations, full details are available in the [report](#). (Scottish Executive 2002b)

APPENDIX THREE – CURRENT HOMELESS PERSONS LEGISLATION

Housing (Scotland) Act 1987

