

The Homelessness etc. (Scotland) Bill 2002

Introduction

The Homelessness Task Force was established in August 1999 and one of its key tasks was to make recommendations on how homelessness in Scotland could be prevented and, where it occurred, tackled effectively. The Task Force initially published an interim report in April 2000, making recommendations that were later enacted through Part 1 of the Housing (Scotland) Act 2001. The Homelessness Task Force final report was published in February 2002 and made a total of 59 recommendations which were endorsed by the Scottish Parliament on 7 March 2002. The Homelessness etc (Scotland) Bill takes forward the recommendations that specifically relate to homelessness legislation.

Background

Homelessness legislation takes its roots from the Housing Homeless Persons Act 1977 [consolidated in the Housing (Scotland) Act 1987] It was the first act to place specific and comprehensive duties on local authorities for dealing with homelessness in their area. However, it was limited in scope. Even though an applicant was found to be homeless, a number of further *hurdles* had to be overcome.

The applicant's success at negotiating these hurdles determined the level of help that the local authority was under a duty to provide. These hurdles were 'priority need', 'intentionality' and 'local connection'. 'Priority need' was included to ensure that where supply was limited, families with children and the most vulnerable homeless people would have a right to local authority accommodation. 'Intentionality' was included to counter the fear that households would give up their homes deliberately, using the homelessness route to obtain better accommodation. Finally, 'local connection' was included to prevent 'magnet' cities from being overwhelmed by homeless people from other parts of the country. In effect these hurdles represented a rationing mechanism.

Twenty-five years on, the nature of homelessness has changed reflecting the greater proportion of single person households in wider society. Single people who are homeless typically account for over 60% of all homeless applications¹, but the overall effect of the existing legislation has been to exclude many of these people. For example, between 1 January and 31 March 2002, 4,065 applications from single people resulted in the person being assessed as either homeless or potentially homeless. However, the 'priority need', 'intentionality' and 'local connection' criteria then rationed out at least 49% of these people². Therefore, the legislation surrounding these hurdles does not address the needs of single homeless people or address the current profile of homelessness in Scotland. **The Homelessness etc. (Scotland) Bill 2002, combined with the Housing (Scotland) Act 2001, is one of the most progressive pieces of legislation in Europe, and updates existing legislation so that local authorities can respond effectively to homelessness in the twenty first century. The Bill fundamentally introduces a change of culture, concentrating available resources on re-housing homeless people successfully, rather than investigating whether they can be rationed out of the system.**

To do this, the main areas of the Bill propose to phase out 'priority need' within ten years, update the law surrounding 'intentionality' and suspend the 'local connection' provision. The Bill also

¹ *Operation of the Homeless Persons Legislation in Scotland 1989-90 to 1999-00: National and Local Authority Analyses*. Scottish Executive Statistical Bulletin HSG/2001/5. Published November 2001.

² *Operation of the Homeless Persons Legislation in Scotland: Quarters ending 31 December 2001 and 31 March 2002*. Scottish Executive Statistics Release. 24 September 2002.

places duties on private-sector landlords to inform local authorities if they are evicting a tenant. Finally, the Bill also enables the courts to take into account where rent arrears are the result of a delay in housing benefit payment, and therefore avoid unnecessary evictions.

Key Areas of Legislation

Homelessness: priority need for accommodation

Households that currently have a 'priority need' are those containing a pregnant woman, or dependent children, or a person who is vulnerable as a result of old age, mental illness, physical disability or other special reason³. Households which are homeless or threatened with homelessness as a result of an emergency, for example a fire or flood, also have a 'priority need'.

The Bill proposes to eliminate the 'priority need' test by 31 December 2012, so that the right to permanent accommodation is extended to all people who find themselves homeless, not just those who are in 'priority need'. To do this, the definition of 'priority need' will gradually be widened until all households assessed as either homeless or potentially homeless are included. This is a managed and phased approach to ensure those who are in greatest need are not disadvantaged, and also allows accommodation and services to be developed for those who do not currently fall within the definition. The Homelessness Monitoring Group established by the Scottish Executive, of which SCSH is a member, will recommend on the further widening of the 'priority need' definition.

In the first phase, the definition of 'priority need' will be broadened to include most households that contain a person who local authorities currently have to "have regard to", under the 1998 *Code of Guidance on Homelessness*. These are people deemed vulnerable as a result of:

- having a chronic illness;
- having suffered a miscarriage or undergone an abortion;
- having been discharged from an institution;
- being aged 18 to 20 and run the risk of sexual or financial exploitation, alcohol or drug misuse, or were previously looked after by the local authority;
- running the risk of violence or harassment as a result of their colour, race, sexual orientation, ethnic or national origins.

This strengthens the legal rights of these groups of vulnerable people. Additionally, 'priority need' will automatically be given to those aged 16 or 17 years old. Refugees have been omitted from the first phase of expansion for technical reasons relating to which matters are reserved to Westminster and which are devolved to Scotland.

Intentional Homelessness

Under the 1987 Act, every household assessed as either homeless or potentially homeless and deemed to have a 'priority need' must also be further assessed to see whether they have made themselves homeless intentionally. For example, between 1 January and 31 March 2002, there were 5,837 homeless and potentially homeless households, who were deemed to have a 'priority need'. However, only 401 of these were assessed as having made themselves intentionally homeless and therefore 93% of investigations were unnecessary, resulting in the applicant being found unintentionally homeless⁴. The new Bill replaces the *duty* on local authorities to investigate intentionality with a *power* to do so. This will give local authorities more flexibility in dealing with cases of intentionality.

³ Examples of special reasons are given in the 1998 Code of Guidance on Homelessness.

⁴ *Operation of the Homeless Persons Legislation in Scotland: Quarters ending 31 December 2001 and 31 March 2002*. Scottish Executive Statistics Release. 24 September 2002.

The 1987 Act gave local authorities the duty only to secure temporary accommodation and provide advice and assistance to those found to be intentionally homeless. The new Bill recognises the need to take a more proactive approach to episodes of intentional homelessness. If a local authority chooses to investigate intentional homelessness and the household is found to be intentionally homeless, the authority will have a duty to provide a short tenancy with agreed support to address the cause of intentionality. For example, if it is due to a problem with rent arrears or debt, money advice and help in establishing an arrears repayment schedule could be offered. If this tenancy is successful, it will convert to a full tenancy after 12 months. If it fails, there is still a duty to offer basic accommodation.

If an intentionally homeless household has already failed such a tenancy in the previous 12 months, the local authority may decide to try again and provide a short tenancy with support or they can opt to provide accommodation let under hostel-type occupancy rights. Again, housing support must be offered in these cases to try and bring the person up to the level where they can sustain a short tenancy for 12 months.

Local Connection

Currently, households found to be in 'priority need' and unintentionally homeless may be denied help from the local authority they have applied to if they are deemed to have a local connection with another local authority. In these cases, the original local authority has a power to refer them to another local authority which will then take responsibility for discharging the statutory duties. Referrals may not be made if a member of the household runs the risk of domestic abuse.

A local connection is established with a local authority by living or working within the local authority area, typically for at least 6 months of the previous 12 months, or not less than 3 years of the previous 5 years. Family associations and other special circumstances can also enable a household to establish a local connection with an area. It is important to bear in mind that local connection does not apply *within* a local authority area.

Between 1 January and 31 March 2002, local authorities used their power to apply local connection in only 59 cases. Therefore, in 95% of cases local authorities decided that those who were unintentionally homeless, or potentially homeless, and in 'priority need' either had a local connection with the area, or they chose not to exercise the local connection power⁴. This is concurrent with the view of the Homelessness Task Force that most homeless people apply to their local council and those who apply to another council usually have a very good reason for doing so⁵. Suspending the local connection provision would eliminate a further bureaucratic hurdle.

There is a generally held belief that a number of homeless households do not reach application stage because they are told they do not have a connection with the area. As such households are not included in any statistics, the extent of informal screening is impossible to quantify and this has led to *fears* that suspending the local connection provision may lead to flows of homeless applicants into some areas. This is the reason why the Bill proposes only to *suspend* local connection and if these fears are realised, local connection could be reactivated in particular areas.

Homeless persons with dependent children

The new Bill proposes that accommodation offered to homeless families must be suitable for occupation by children.

Notices to local authorities

The Bill further proposes that if a landlord is seeking to recover possession of a dwelling, they must also inform the local authority where the dwelling is located. This will enable local

⁵*Helping Homeless People*. Homelessness Task Force Final Report. Published February 2002.

authorities to consider what assistance could be provided to prevent the eviction and avoid homelessness.

Assured tenancies: recovery of possession

Assured tenancies will remain for the private rented sector and this section of the Bill attempts to improve the rights of these tenants when recovery is being sought on the grounds of rent arrears. The rights of such private tenants are more limited than their social renting counterparts in the same situation who have a test of 'reasonableness' applied to *all* grounds for repossession.

The Bill proposes that recovery of possession of a dwelling when arrears to the value of three-month's rent is no longer a mandatory ground for re-possession. Rather, if the rent is owed and this is a consequence of a delay or failure of a housing benefit payment, the court will apply a test of 'reasonableness'. Where grounds for re-possession include persistent delays in the payment of rent, or where some rent is due, the court must also additionally consider whether these are because of a delay or failure on the part of the housing benefit system, and apply the test of 'reasonableness'.

Conclusion

SCSH believes the Bill sets the framework for making significant and lasting inroads into tackling homelessness in Scotland. However, adequate resources are needed in the form of good-quality affordable housing in the right locations; well-funded support, advice and independent advocacy; and well-trained, motivated staff if the Bill is to be implemented successfully. SCSH strongly urges MSPs of all parties to support the legislation which will set a medium term blueprint for tackling homelessness seriously in Scotland.

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8 October 2002

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