These documents relate to the Homelessness etc. (Scotland) Bill (SP Bill 63) as introduced in the Scottish Parliament on 16 September 2002.

HOMELESSNESS ETC. (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Homelessness etc. (Scotland) Bill introduced in the Scottish Parliament on 16 September 2002:
   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 63–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL: BACKGROUND AND OVERVIEW

4. The Homelessness etc. (Scotland) Bill takes forward the proposals for legislative change incorporated in the final report of the Homelessness Task Force. The Bill amends existing homelessness legislation, contained in the Housing (Scotland) Act 1987 (c.26) (“the 1987 Act”) and the Housing (Scotland) Act 2001 (asp 10) (“the 2001 Act”), and makes changes to repossession proceedings for houses let on assured tenancies, as currently set out in the Housing (Scotland) Act 1988 (c.43). The Bill primarily affects local authorities in the carrying out of their homelessness functions. There are also implications for non-local authority landlords in respect of the provisions relating to repossession of property and for registered social landlords (RSLs) in assisting local authorities in complying with their new duties.

HOMELESSNESS: PRIORITY NEED FOR ACCOMMODATION

Section 1: Amendment of section 25 of the 1987 Act

5. This section amends section 25 of the 1987 Act to widen the definition of persons having a priority need for accommodation. The amended version of section 25(1)(c) substituted by subsection (2)(a) includes within the definition those vulnerable as a result of: old age; mental illness or handicap; physical disability; chronic illness; having suffered a miscarriage or undergone an abortion; discharged from a hospital, a prison, or the armed forces; or other special reason. Subsection (2)(b) adds further paragraphs to section 25(1) to cover 16 and 17 year olds; certain young people between the ages of 18 and 20; a person who runs the risk of violence or is likely to be the victim of harassment because of their race, colour, sexual orientation or ethnic or national origins; and a person who runs the risk of domestic abuse. It also ensures that those residing with someone who is defined as having a priority need for accommodation are themselves within the definition. Subsection (3) sets out the circumstances in which a person aged 18 to 20 is defined as having a priority need. Subsection (4) amends section 25(2)(b) of the 1987 Act to ensure that the Scottish Ministers can amend or repeal the additional subsections of section 25 introduced by this Bill in the same manner as existing subsections. Subsection (5) revokes the Homeless Persons (Priority Need) (Scotland) Order 1997 (S.I. 1997/3049) as its terms are now incorporated into the 1987 Act by the amendments made by subsections (2)(b) and (3).
Section 2: Abolition of priority need test

6. This section sets out the process to be followed to provide for the eventual abolition of the priority need test. Subsections (1) and (2) allow the Scottish Ministers to abolish the test 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. Subsections (3), (4) and (5) provide the necessary powers and set out the procedures to be followed in exercising these.

Section 3: Statement on abolition of priority need test

7. This section requires the Scottish Ministers to publish a statement setting out an action plan for the abolition of the priority need test. Under subsection (1) the statement must be published by 31st December 2005 and must cover past, current and future action by Ministers and local authorities which contributes towards allowing local authorities to perform their homelessness duties without distinguishing between applicants on the basis of priority need. Subsection (2) requires that the statement include a target date, not later than 31st December 2012, for achieving the removal of priority need and also requires the statement to incorporate interim objectives which may, under subsection (3), include proposals to expand the definition in section 25 of the 1987 Act of those having a priority need for accommodation. Subsection (4) requires Ministers to keep the statement under review and allows for modification; subsection (5) requires Ministers to have regard to local housing and homelessness strategies prepared under the 2001 Act in initial preparation of the statement and when modifying it; and subsection (6) deals with the consultation arrangements.

INTENTIONAL HOMELESSNESS

Section 4: Inquiries as to intentional homelessness

8. Section 28(2) of the 1987 Act requires local authorities to investigate whether a person applying to them for accommodation has a priority need and whether the person became homeless or threatened with homelessness intentionally. Section 24 of the 1987 Act defines when a person is homeless or threatened with homelessness, and section 26 defines when a person becomes homeless or threatened with homelessness intentionally. Subsection (1) of this section gives local authorities a discretion as to whether to investigate intentionality, in place of the current duty under section 28(2)(b).

9. Subsection (2) makes a consequential change to section 30(3)(a) of the 1987 Act, in order to ensure that the local authority is not under a duty to notify the applicant of their findings as to intentionality where they have not carried out an investigation.

Section 5: Accommodation for intentionally homeless people with priority need

10. This section sets out the provision to be made for households who are assessed as being intentionally homeless. Subsection (1) amends section 24(3) of the 1987 Act to ensure that people who are owed a duty under section 31(2A) and 31(2B) of the 1987 Act are to be treated as being homeless if they are not provided with the accommodation to which they are entitled under those provisions. Subsection (2) amends section 31 of the 1987 Act to specify the
accommodation and support to be provided to an applicant in priority need and intentionally homeless. This subsection refers to the new paragraph 5A of schedule 6 to the 2001 Act, inserted by subsection (5), and requires local authorities to secure a short Scottish secure tenancy by virtue of that paragraph. This duty does not apply if the applicant has previously been a tenant in a short Scottish secure tenancy granted under paragraph 5A of schedule 6 which has been terminated within the preceding 12 months (although a local authority is given discretion under (2B)(a) to offer a further short SST if it thinks fit).

11. Section 31(2B)(b), inserted by subsection (2), deals with the situation where a short SST under the new paragraph 5A is not offered. In that case, the local authority is required to provide accommodation within the scope of regulations under section 7 of the 2001 Act for hostels and other short term accommodation and to provide housing support services in terms of section 91(8) of the 2001 Act.

12. Subsection (3) amends section 36 of the 1987 Act to ensure that when a local authority secures accommodation under the new short SST, or secures accommodation where a short SST is not offered, then the local authority’s duty under section 36 of the 1987 Act to take reasonable steps to prevent or mitigate loss or damage of an applicant’s moveable property will apply. Subsection (4) amends section 5 of the 2001 Act to ensure that an RSL’s duty to provide accommodation extends to include accommodation for priority need applicants who are intentionally homeless.

13. Subsection (5) introduces the new paragraph 5A of schedule 6 to the 2001 Act. This extends the grounds on which a short Scottish secure tenancy may be granted, allowing this to take place when the local authority has a duty under section 31(2A) or (2B)(a) of the 1987 Act (i.e. where the local authority is satisfied the applicant has a priority need and became homeless intentionally). The local authority’s duty is to secure that accommodation becomes available, so the landlord in a tenancy under the new paragraph 5A may be a body other than the local authority (eg an RSL). Subsection (5) also makes clear that the tenancy should be for a minimum of one year and should be temporary.

Section 6: Intentionally homeless persons: short Scottish secure tenancies

14. This section makes provision for the changed duties to an applicant who has a priority need for housing but is also found to be intentionally homeless. Subsection (1) modifies the application of paragraph 16 of schedule 2 of the 2001 Act as it relates to the paragraph 5A short SST to ensure that where repossession takes place under section 16(2)(b) or (c) the other suitable accommodation to be provided by the landlord must be accommodation secured by a further paragraph 5A tenancy.

15. Subsection (2) inserts new subsections (7A), (7B) and (7C) into section 34 of the 2001 Act to set out the duties of the local authority, the landlord where that is not the local authority, and the tenant, that attach to the provision of a short SST under paragraph 5A of schedule 6. Under new subsection (7A), the local authority must provide or ensure the provision of such housing support services as it considers appropriate with a view to enabling the tenancy to convert to a SST. The subsection also places a duty on the landlord to provide information to the authority on the operation of the tenancy and support services provided. Under new subsection
(7C), the local authority, landlord and tenant must periodically review the tenant’s compliance with the tenancy obligations in relation to housing support services which will be set out in the tenancy agreement (new subsection (7B)). Subsection (3) gives Ministers powers to issue guidance on support services to be provided and on the procedures to be taken on review and any action to be taken. Subsection (4) disapplies recovery of possession proceedings under section 36 of the 2001 Act in relation to a paragraph 5A short SST. Subsection (5) provides for the automatic conversion of a paragraph 5A short SST to a SST after 12 months if the landlord has not served a notice for repossession.

RESTRICTION OF POWER OF REFERRAL

Section 7: Power to modify section 33 of the 1987 Act

16. This section inserts sections 33A and 33B into the 1987 Act, giving the Scottish Ministers the power to restrict the operation of section 33 of that Act, which allows referral of a homeless applicant to another local authority in certain circumstances. Section 33A allows Ministers to prescribe that the power of a local authority to refer an applicant to another authority is not to be exercisable by, or in relation to, such local authorities as are specified in an order. This enables Ministers both to restrict a specified local authority from making referrals and/or other local authorities making referrals to it. An order under section 33A will not affect the operation of other provisions (e.g. section 34 of the 1987 Act) relating to cases where a referral has taken place prior to section 33 being disapplied. Such an order is subject to negative resolution procedure. Section 33B requires Ministers to make a statement on the circumstances in which the power will be exercised and the criteria which will be used. This statement must be consulted on before being made or modified.

HOMELESS PERSONS WITH DEPENDENT CHILDREN

Section 8: Homeless persons with dependent children

17. This section amends section 32(8) of the 1987 Act in order to make clear that accommodation provided, in pursuance of section 31 or 32 of that Act, for a person in priority need who has dependent children must be suitable for occupation by such children.

PERSONS AT RISK OF DOMESTIC ABUSE

Section 9: Persons at risk of domestic abuse

18. This section makes amendments to sections 20 and 33 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.
NOTICES TO LOCAL AUTHORITIES

Section 10: Notice to local authorities of proceedings for possession and enforcement of standard securities.

19. This section places a duty on landlords to notify the local authority when raising proceedings for possession of a dwelling house. The schedule to the Bill makes modifications to enactments for that purpose and also imposes a similar duty on creditors taking steps to enforce standard securities. Subsection (3) allows Ministers to prescribe in regulations the form of the notice and how it is to be given; the regulations will, under subsection (6) be subject to negative procedure. Subsection (7) extends the guidance powers of Ministers under section 79 of the 2001 Act to include guidance on the action to be taken by local authorities as a result of notification.

ASSURED TENANCIES: RECOVERY OF POSSESSION

Section 11: Assured tenancies: recovery of possession for non-payment of rent

20. Section 11 amends section 18 of the Housing (Scotland) Act 1988 to allow the sheriff discretion not to make an order for possession under Ground 8 of Schedule 5 in circumstances where the rent arrears are a consequence of a delay or failure in the payment of housing benefit. It also directs the sheriff to have regard to delay or failure in payment of housing benefit when considering whether it is reasonable to make an order for possession under Ground 11 or 12 of Schedule 5. References to delay or failure in a payment do not include circumstances where this is a result of any act or omission of the tenant.

Section 13: Commencement and short title

21. Subsections (1) to (3) allow the Scottish Ministers to set different dates to commence different provisions of the Act, and to make appropriate transitional, transitory and saving provisions.

FINANCIAL MEMORANDUM

INTRODUCTION

22. The proposals set out in the Bill will have financial implications for government, both central and local, as well as for registered social landlords. The precise nature and level of the costs arising from implementation are difficult to quantify – they will be affected by the increased duties owed to more people; by increases in the numbers of people applying as homeless, which might be expected at least initially as people become aware of the changed duties owed to them; and the success of homelessness and local housing strategies. However they will also be offset by the application of more successful measures to prevent homelessness, and to prevent it recurring. As local authorities develop their strategic approach, and improve the efficiency and effectiveness of their homelessness service, and as other authorities develop policies which address potential homelessness amongst their client groups, the increased
emphasis on prevention may be expected to result in fewer people becoming homeless, and more sustainable solutions for those who are, resulting in fewer repeat applications.

23. In 1999-2000 46,023 households applied as homeless or potentially homeless under the homelessness legislation; of these 34,100 were assessed as homeless/potentially homeless (of which 29,500 were assessed as homeless) with 15,400 assessed as unintentionally homeless and in priority need (and therefore entitled to permanent accommodation); 12,200 were considered to be non priority and at minimum were provided with advice and assistance. 2,000 were assessed as being intentionally homeless, and again would have been offered at minimum advice and assistance.

24. By confirming in primary legislation the categories of applicants which should be considered a priority (currently set out in guidance to which the local authority must “have regard”) it is expected that there will initially be a limited increase in the numbers assessed as entitled to permanent accommodation and an increase in the number of people applying in these categories. It is not possible to quantify the extent of these increases.

25. The proposal to change the local authorities’ duty to investigate intentionality to a power to do so is expected to reduce substantially the number of people found to be intentionally homeless, and reduce the present burden on local authorities to carry out the investigation. However the consequences of finding someone intentionally homeless will carry a greater burden on the authority to provide accommodation and support towards those so assessed.

26. The increased duty to provide support to intentionally homeless people will have financial implications for local authorities. Supporting people will have a key role in enabling the funding of support packages and access to sufficient and appropriate resources. The costs of housing support services, which are currently met through Transitional Housing Benefit paid by the Department of Work and Pensions, will from April 2003 be met by local authorities who will in future take the lead in managing and planning these services. Local authorities will receive Supporting People grant from the Scottish Executive to enable them to meet these costs.

**COSTS ON THE SCOTTISH EXECUTIVE**

27. It is expected that, with a strategic approach to the delivery of services and accommodation to homeless people, the resultant solutions will be more sustainable. It is currently estimated that approximately 27% of all homeless applications involve households who have made a previous application at some point. It is expected therefore that there will be efficiency savings which can be redirected towards new and improved services. There may be a call for additional central government funds as and when the further phases of the expansion of priority need are assessed and implemented. However no such expansion is proposed until detailed assessments have taken place, and until identified resources allow such expansion. In addition there will be administrative costs of providing revised guidance, encouraging good practice, and taking forward the other Homelessness Task Force recommendations which provide the essential framework within which the legislative changes are being made.

28. The Scottish Executive has already set aside money for the delivery of the homeless proposals resulting from the first report of the Homelessness Task Force, which were taken
forward in the Housing (Scotland) Act 2001, and those arising from the second report which are being taken forward in this Bill. £27 million (£3m, £12m, £12m) has been allocated over the financial years 2001-2 to 2003-4, principally to facilitate development of homelessness strategies, and provision of additional temporary accommodation, and a further £11 million (£3m, £8m) has been allocated for 2002-3 and 2003-4.

29. Communities Scotland’s development funding budget will increase from £215 million in 2002-3 to approximately £225 million in 2003-4. A high proportion of the new housing units that this funding will generate will be available for allocation to homeless families or persons. A further £3 million has been identified for 2003-4 to provide furniture grants for around 1000 dwellings to be let to homeless people. There may be a need for Communities Scotland to review resourcing of the regulation and inspection of homelessness as expectations become clearer and as practice in local authorities and Registered Social Landlords develops in response to the new legislation and legislative proposals.

COSTS ON LOCAL AUTHORITIES

Priority need

30. The phasing out of priority need will offer increased rights to homeless people who are currently only entitled to temporary accommodation but who will become entitled to permanent accommodation as they fall within the wider definition of priority need. It is acknowledged that this phasing out can only be implemented as housing requirements are identified through homelessness strategies and responses planned in local housing strategies. It is expected that the proposed progressive increases in rights will encourage more people to apply than currently is the case - in the greater certainty of receiving assistance. In parallel however it is expected that the improved response to homelessness will reduce the level of repeat presentations and that preventative strategies will reduce the number of presentations. Local authorities themselves have been asked, as part of the development of their homelessness strategies, to assess the efficiency and the effectiveness of current spend on homelessness.

31. The initial step of confirming priority need categories in primary legislation, which to date have been set out in Guidance, is expected to be generally cost-neutral – local authorities should already be having regard to the Guidance and treating such people as having a priority need. The Bill will provide the framework within which to phase out priority need over a ten year period but the pace of change will depend on available resources and the Homelessness Monitoring Group, which includes COSLA representatives, will advise on the timetable. Local authorities themselves will be asked, as part of the development of their homelessness strategies, to assess costs and how these can be met through efficient and effective management of current spend on homelessness.

Intentionality

32. The changes to the duties for those found to have a priority need for accommodation but also to be intentionally homeless will also have implications in the area of accommodation provision and the level of support required by the applicant. The precise demands to be made of local authorities will depend on numbers applying who are found to be intentionally homeless (bearing in mind that the legislation is removing the requirement for a local authority to
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investigate intentionality and replacing it with a power to do so. The incidence of such investigations is therefore expected to decrease considerably and so offer an administrative saving to local authorities. Cost will also depend upon the assessed support needs of the household. It is expected that the emphasis on early intervention and on prevention will reduce significantly the number of households for whom such support is required.

Local connection

33. Suspension of the local connection provision will allow an applicant to apply to a local authority of choice. Allowing choice should help achieve better and more sustainable solutions with a person accommodated in an area where they wish to live rather than where they necessarily have existing and demonstrable ties. However there are fears that there may be significant increases in numbers of applicants to certain local authorities and legitimate concerns that if such trends emerge then issues of resources necessary to meet unforeseen demand will arise. It is not expected that there will be an overall increase in resource requirements, but there may be local effects which will have to be monitored closely. The legislation allows for the reinstatement of the provision locally or nationally if monitoring shows that its impact in any area is disproportionate.

Repossession

34. The proposal that landlords should be required to notify the local authority of intended eviction of a tenant should not in itself have resource implications for local authorities. However, the success of this proposal lies in the ability of the authority to respond to such notification and this may be expected to have implications both in added bureaucracy and costs associated with the action subsequently taken. The development of improved advice and assistance as a consequence of the Housing (Scotland) Act 2001 places authorities in a better position to respond to increased demands. In addition these costs should be offset by potential savings arising from earlier, and more effective, interventions and action to assist someone threatened with homelessness.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Registered social landlords

35. Local authorities’ increased provision of accommodation and support may have implications for registered social landlords.

Courts

36. There are no anticipated additional costs for the courts although there may be the potential for indirect costs if additional court time is required to properly establish whether there had been undue delay in processing housing benefit claims.

Private landlords

37. Private landlords will have an added requirement to notify local authorities in the event of seeking repossession of a property and this may be expected to have some resource implications.
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

38. On 16 September 2002, the Minister for Social Justice (Ms Margaret Curran) made the following statement:

“In my view, the provisions of the Homelessness etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

39. On 16 September 2002, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Homelessness etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
HOMELESSNESS ETC. (SCOTLAND) BILL

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