



Housing (Scotland) Bill 2013 – Shelter Scotland

Policy proposal: Section 5 referrals

Shelter Scotland supports the broad aims of the Housing (Scotland) Bill (2013)¹: to improve the management of social housing and safeguard its supply, to improve dispute resolution mechanisms in the private rented sector and to regulate letting agents.

Shelter Scotland has been involved in the various consultations and advisory groups which have fed into this Bill over the past few years, and we support many of the intentions of the proposed legislation. We believe however, that any legislative changes must ultimately help to ensure that the housing sector functions as effectively as possible, and that everyone has access to a safe, secure and affordable home and the right to a fair, transparent service.

In addition to the legislative changes already in the draft Bill, Shelter Scotland has a number of proposals which stem directly from our clients and the people we help who face homelessness and bad housing.

Summary: homelessness referrals

- Shelter Scotland believes that all statutory homeless referrals from local authorities to registered social landlords (RSLs) should be dealt with using a 'Section 5 referral', a power laid out in the Housing (Scotland) Act 2001. This Housing Bill should reframe that legislation to make use of these powers mandatory.
- By making Section 5 referrals mandatory, there will be greater transparency for individuals and organisations and it will be easier to track and monitor partnership working between local authority and RSL partners.

Proposal: Developing homelessness referrals

RSLs already play a leading role in preventing and tackling homelessness. The total social housing stock in Scotland is owned by councils (54%) and RSLs (46%)² and in many areas – especially stock

¹ [Housing \(Scotland\) Bill](#) (Published 22 November 2013)

transfer authorities – the provision of housing to those in need is through partnership working to find properties that best suit that need and minimise waiting times.

Across all social housing, the allocation of housing to households classified as statutorily homeless households is 35%. Yet, local authorities allocate 42% of their annual lets to homeless households whereas RSLs only allocate 27% on average. Shelter Scotland has been monitoring the use of section 5 referrals and believes that in some areas RSLs are doing more work to respond to and prevent homelessness than these figures portray.³ We also believe that there is potential for some RSLs to do more to meet acute housing need.⁴ One way to approach this is to ensure that there is greater consistency in the way that RSLs take referrals of homeless people from local authorities.

Section 5 of the Housing (Scotland Act) 2001⁵ introduced a system of referrals of homeless households by councils to RSLs. More than ten years after the commencement of that part of the legislation there is still mixed practice. Data from 2012/13 shows that, of homeless referrals housed by RSLs, 65% are described as section 5 referrals with 29% described as ‘LA nominations’ and 8% described as ‘other’, which are generally informal nomination arrangements⁶.

The Scottish Housing Regulator, in its thematic report on RSLs and homelessness published in 2009, found that:

*“We have also identified some specific areas where current practices could be improved, to help councils move towards the 2012 target and RSLs to make more of a contribution. We recommend that councils should work more effectively with RSLs to agree evidence-based targets for their contribution to housing homeless people, and share information to maximise the availability and suitability of lets. This may mean setting aside their current reluctance to use section 5 powers”.*⁷

We would like to see a simple amendment to the 2001 Act to ensure that section 5 is used for **all** homelessness referrals. We believe that this will lead to a better service for homeless households in the following ways:

- Households will be assured that all the various landlords in their area are making accommodation available to those in acute housing need.

² Scottish Government Housing Statistics: <http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/socialtables>

³ Shelter Scotland, ‘RSLs and homelessness in Scotland’, 2009, http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/rsls_and_homelessness_in_scotland

⁴ Shelter Scotland, ‘Maximising the use and effectiveness of section 5 referrals’, 2005, http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/maximising_the_use_and_effectiveness_of_section_5_referrals

⁵ <http://www.legislation.gov.uk/asp/2001/10/section/5>

⁶ RSL statistics from the Scottish Housing Regulator: <http://www.scottishhousingregulator.gov.uk/publications/benchmarking-tables>

⁷ “RSLs and Homelessness”, Scottish Housing Regulator, 2009

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- In practice, section 5 is accompanied by better exchange of information, especially in relation to support needs, which in turn increases the possibility of the let being sustainable which is better for the household and more cost effective for the landlord.
- Section 5 produces a more transparent process than informal nominations and allows the council, the RSL and the household to better understand and negotiate a referral decision.

In addition, the process sets out clear expectations for both the council and the RSL and provides a framework for action for the council should some RSLs be more reluctant to take responsibility than others. This is of benefit to those RSLs who are most committed to action.

We also think it would be helpful to amend the 2001 Act to put certain matters which are currently in guidance into primary legislation: namely what constitutes “good reason” for declining a referral; and how long an RSL has to respond to a referral.

As a package, amendments to improve the Section 5 referral process would help to ensure that social housing stock is being used most effectively and that **all** social landlords are meeting their statutory duties to respond to and prevent homelessness wherever possible. With significant pressure on social housing it is important that allocations prioritise those in the greatest housing need and formalising of the Section 5 referral process is one way to make housing allocations transparent.

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Draft amendment:

5 Duty of registered social landlord to provide accommodation

- (1) Where a local authority has a duty under section 31(2) (duty to persons found to be homeless) of the 1987 Act in relation to a homeless person, it may request a registered social landlord which holds houses for housing purposes in its area to provide accommodation for the person.
- (1A) No request may be made by a local authority to a registered social landlord to provide accommodation to a person to whom a duty is owed under section 31(2) of the 1987 Act otherwise than in accordance with this section, and any request made by a local authority to a registered social landlord which holds houses for housing purposes in its area to provide accommodation for such a person shall be deemed to be a request under subsection (1).
- (2) In deciding whether to make such a request, the local authority must have regard to the availability of appropriate accommodation in its area.
- (3) A registered social landlord must, within a reasonable period, comply with a request under subsection (1) unless it has a good reason for not doing so.
- (4) A registered social landlord complies with a request under subsection (1) only if it provides for the person concerned accommodation—
 - (a) where paragraph 1 or 2 of schedule 6 is satisfied, secured by a short Scottish secure tenancy,
 - (b) in that or any other case, secured by a Scottish secure tenancy.
- (5) Subsection (4) does not apply where such a request is expressly for the provision of accommodation not secured as mentioned in that subsection.
- (6) A registered social landlord which holds housing for housing purposes in a local authority's area must comply with any reasonable request for information in relation to that housing made to it by the authority in connection with the exercise of the authority's functions under this section.
- (7) The Scottish Ministers may issue guidance as to what constitutes—
 - (a) for the purposes of subsection (3)—
 - (i) a reasonable period,
 - (ii) a good reason,
 - (b) for the purposes of subsection (6), a reasonable request.
- (8) Before issuing any such guidance, the Scottish Ministers must consult—
 - (a) such associations representing local authorities,
 - (b) such associations representing registered social landlords, and
 - (c) such other persons, as they think fit.