

Fact sheet

The Homelessness etc. (Scotland) Act

From the Shelter policy library

April 2003

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Shelter

The passage through parliament of the Homelessness etc. (Scotland) Bill has been a key campaigning priority for Shelter Scotland.

Shelter supported the bill throughout its parliamentary passage, praising the progressive nature of the new legislation. It is expected that the bill will gain Royal Assent over the summer.

This paper briefly outlines the bill's main provisions.

The Homelessness tests

The bill makes major changes to the tests which determine the services which homeless people receive on application. Crucially, the bill makes no change to the first test, the 'are you homeless' test. The tests which are significantly reformed are those of priority need, intentionality, and local connection. Changing these tests reflects the view of the Homelessness Task Force that 'in many instances homelessness is a result of wider needs which have not been recognised, or have not been met effectively'.

Priority Need

The policy intention of the bill is to end the test of priority need. It will do this by gradually expanding the groups defined as in priority need, until in effect, since everyone becomes in priority need, the term becomes redundant. The expansion of these groups will take place over ten years, resulting in the 'phasing out' of priority need by 2012.

According to the bill, the first set of groups will be added to the priority need category immediately. These include those with mental illness, those discharged from prison or the armed forces, and those who due to their religion, sexual orientation, race, colour ethnic or national origins run the risk of violence.

The bill also provides for the production of a ministerial statement by 2005, which will outline how the phasing out of priority need will be completed, i.e. how other groups will be included in the priority need category by 2012.

Intentionality

The intentionality provisions in the bill are the most complex.

- Local authorities will no longer be under a duty to carry out intentionality investigations.
- For those who are deemed to be intentionally homeless, the local authority must provide a short tenancy, with support, with a view to converting that tenancy to a full tenancy at the end of a year.

- Many people will sustain that tenancy, and receive the full tenancy. However, there will also be households who fail to sustain the tenancy, and local authorities will have an ongoing duty to accommodate.

The local authority can provide the household with one of the following:

1. a new short tenancy, again with a view to moving to a full tenancy
2. accommodation on an occupancy basis, covered by section seven of the Housing (Scotland) Act 2001, with support.

There are some intentionally homeless households who will not automatically qualify for the short tenancy: those who have failed the short tenancy within the last year, those who have been evicted on grounds of anti-social behaviour within the last three years or those who are subject to an anti-social behaviour order will be allocated either a short tenancy, or 'section seven' accommodation, at the discretion of the local authority.

Support

The bill places an emphasis on the importance of support provision. According to the bill, support must be provided as part of the short tenancy, and is crucial to helping the household move to a full tenancy. When providing the 'section seven' accommodation, local authorities must also provide 'such housing support services as they consider appropriate' until the household becomes entitled to a short tenancy again, i.e. at the end of a year.

The bill defines housing support services according to the same definition as outlined in section 91(8) of the Housing (Scotland) Act 2001,

'any service which provides support, assistance, advice or counselling to an individual with particular needs with a view to enabling that individual to occupy, or to continue to occupy, as the persons sole or main residence, residential accommodation other than excepted accommodation'.

Local connection

The bill suspends local authority powers of referral. This means that at a point in the future local connection could be reinstated. The bill provides for the production of a statement by ministers within a year of the act coming into force, which will outline how ministers will manage their powers regarding local connection.

The bill exempts refugees from being deemed to have a local connection with the area they were placed in by NASS, in carrying out their duties under the Immigration and Asylum Act 1999. This will only apply should local connection be reinstated in an area.

Suitability of accommodation

The bill contains provisions which allow ministers to produce regulations prescribing accommodation which is unsuitable, the circumstances in which it is unsuitable, and any exemptions to this.

This provision replaces an amendment to the bill at Stage 2 which outlawed the use of bed and breakfast accommodation for families. During the parliamentary debate the minister assured parliament that the regulations would provide a 'flexible structure framed in the principle of attempting to end the use of bed-and-breakfast accommodation'. Shelter will continue to campaign for these regulations to be produced according to that principle, and before the summer parliamentary recess.

Repossessions

The bill contains two provisions, which deal with repossessions:

- When a landlord raises proceedings for possession, that landlord must inform the local authority in whose area the property is situated, of the action. According to the bill's Policy Memorandum, this is intended to allow the local authority to act, to prevent homelessness occurring.
- The bill also provides for a sheriff, when deciding on an eviction order, to take into account whether delays in housing benefit may have caused rent arrears. This relates to both the public and private sector, and maintains the policy intention of preventing homelessness.

Helping the most vulnerable

The bill will be implemented alongside the recommendations of the Homelessness Task Force, as they are put into practice over the next decade. It will complement other ongoing work to improve homelessness service provision. The intentionality provisions will change the role of housing staff from that of 'gate-keepers' to enablers, in the provision of services to homeless people.

The bill recognises that the provision of a house is not always sufficient to solving the problems of every homeless applicant. If passed and effectively implemented, the new legislation has the potential to provide the help needed by the most vulnerable people in Scotland.