

Code of Guidance on Homelessness

**Guidance on legislation, policies and practices to
prevent and resolve homelessness**

(Interim Update) November 2019



Ministerial Foreword

I am pleased that we are able to publish this interim updated version of the statutory Code of Guidance on Homelessness and act on another one of the recommendations of the Homelessness and Rough Sleeping Action Group.

The Scottish Government has a clear commitment to ending rough sleeping and homelessness in Scotland, and ensuring that everyone has a safe and secure place to live. Our Ending Homelessness Together Action Plan, which is backed by our £50 million Ending Homelessness Fund, sets out a programme of transformative change to help end homelessness in Scotland. With the assistance of our partners in local authorities and the third sector we are already making strong progress against the five-year plan.

This factual update of the Code of Guidance delivers on one of those actions and is the first step in bringing the Code up to date so that it assists staff in local authorities and other partners to adopt a person-centred approach to tackle, prevent and relieve homelessness. The Code is updated for accuracy to reflect the legislative changes since the last version was published in 2005.

Our next step is to undertake a thorough review and overhaul of the Code, as recommended by the Homelessness and Rough Sleeping Action Group. I want to see a new approach to delivering guidance through the Code so that it incorporates a modern user-friendly format to give the best possible support to frontline practitioners in their work to prevent homelessness. I will announce our plans on this before the end of 2019, which will include convening an external group of stakeholders to help take this work forward in 2020.

I am confident that this update to the Code and the forthcoming overhaul will be a valuable resource to meet the requirements of our progressive homelessness legislation in Scotland and will help to deliver our Ending Homelessness Together Action Plan.

A handwritten signature in black ink, appearing to read 'Kevin Stewart'.

KEVIN STEWART MSP
Minister for Local Government, Housing and Planning
November 2019

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Chapter 1

Introduction



CHAPTER 1 - INTRODUCTION

1.1 The purpose of this Code is to help guide local authorities in their duties to assist people who are threatened with or who are experiencing homelessness. The Code also reflects best working practice in areas such as cooperation with other parts of local and national government, and other agencies.

1.2 This Code of Guidance replaces the previous version published in 2005 and has been updated with the intention of accurately reflecting legislative changes since then, notably through the commencement of provisions in the Homelessness etc. (Scotland) Act 2003. Annex B summaries the relevant legislative changes. We intend to convene a Governance group made up of Scottish Government, local authorities and other interested parties to consider a more thorough overhaul of the Code, which we would aim to issue in 2021.

Scope of guidance

1.3 The Housing (Scotland) Act 1987 (“the 1987 Act”), as amended, sets out the powers and duties of local authorities in dealing with applications from people seeking help on the grounds that they are homeless or threatened with homelessness.

1.4 Section 37(1) requires local authorities to have regard to Guidance issued by Scottish Ministers in the exercise of their homelessness functions. This Code provides such guidance. While local authorities have discretion to deal with each application on its merits in making decisions under the 1987 Act, failure to have regard to the terms of the guidance may give grounds for judicial review of a local authority's decision. Local authorities have a statutory responsibility to prevent and alleviate homelessness. The Code should be used as a supporting document for local authority staff in carrying out relevant activities and discharging this responsibility, and should be seen as a repository of guidance and best practice to cover different scenarios.

1.5 The Code sets out a summary of legislative duties with supporting explanation and guidance. It is principally intended for local authority staff dealing with homelessness policy and responsible for making decisions on homelessness applications. It should be emphasised, however, that a local authority's duties towards a person experiencing homelessness are corporate in nature and not solely the responsibility of the department dealing with housing. This corporate approach is a key feature of local homelessness strategies (see paragraph 2.2).

1.6 The Code is also relevant to other agencies and individuals, including Registered Social Landlords (RSLs), elected council members and other council officials as well

as to a range of others involved in tackling homelessness in the statutory and voluntary sectors.

Scottish Government Policy

1.7 On 27 November 2018, the Scottish Government and COSLA jointly published a five year Ending Homelessness Together Action Plan¹ which sets the direction for lasting change in homelessness policy and practice. Delivery of the Action Plan will be led and overseen by the Homelessness Prevention Strategy Group which is jointly chaired by political leadership from Scottish Government and COSLA. The Plan outlines out how national and local Government, with third sector partners, are working to prevent homelessness in the first place and address people's needs quickly when homelessness does happen. It is backed by a £50 million Ending Homelessness Together Fund to support change on the ground so that people get the right help at the right time.

1.8 The Action Plan responds to 70 recommendations made by the Homelessness and Rough Sleeping Action Group², set up by the Scottish Government in 2017, and a report³ by the Scottish Parliament's Local Government and Communities Committee. People with lived experience were asked about their priorities and the Action Plan's person-centred approach builds on their request for services to respond urgently and flexibly to people's individual housing and support needs.

1.9 Prevention remains a top priority going forward. Homelessness is a result of a wide range of societal issues and whole system effort and change is needed to stop it happening. We need partners across all services including housing, health, education, social work and justice to recognise and act when the people they work with are at risk of becoming homeless.

1.10 At the same time, we recognise that even with a robust preventative approach, there will still be occasions where someone becomes homeless. In those circumstances the Action Plan sets out how people will be rehoused more quickly and provided with the support they need to move into a settled home. To help meet this aim, all local authorities have developed Rapid Rehousing Transition Plans setting out how they will achieve this transformation over the next 5 years.

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2018/11/ending-homelessness-together-high-level-action-plan/documents/00543359-pdf/00543359-pdf/govscot%3Adocument/00543359.pdf>

² <https://www.gov.scot/groups/homelessness-and-rough-sleeping-action-group/>

³ <https://digitalpublications.parliament.scot/Committees/Report/LGC/2018/2/12/Report-on-Homelessness>

National Performance Framework

1.11 In 2018, the Scottish Government and COSLA agreed a completely revised National Performance Framework⁴ which was developed together with the people of Scotland to reflect our values as a nation and the aspirations we hold for our future.

1.12 Central to the National Performance Framework, and the delivery of this Action Plan, is the fundamental value that we are a society which treats all our people with kindness, dignity and compassion. Ensuring everyone has a safe, warm, secure home is a key part of making sure that value is central to our society.

1.13 Achieving our ambitions of ending homelessness will support, and be supported by, all of these important outcomes which is why they provide the basis for the Ending Homelessness Together vision which underpins this plan.

Regulation and inspection

1.14 The Scottish Housing Regulator⁵ (the Regulator) was established on 1 April 2011 under the Housing (Scotland) Act 2010. The Regulator is an independent regulator with one statutory objective of safeguarding and promoting the interests of current and future tenants of social landlords, people who are or may become homeless, and people who use housing services provided by RSLs and local authorities.

1.15 As required by Section 31 of the Housing (Scotland) Act 2010, the Scottish Ministers, in the Scottish Social Housing Charter⁶, set the standards and outcomes that all social landlords should be achieving when performing their housing activities. The Charter has seven sections covering: equalities; the customer/landlord relationship; housing quality and maintenance; neighbourhood and community; access to housing and support; getting good value from rents and service charges; and other customers. It contains a total of 16 outcomes and standards that social landlords should be achieving.

1.16 The Charter helps to improve the quality and value of the services that social landlords provide, and supports the Scottish Government's long-term aim of creating a safer and stronger Scotland. The Regulator is responsible for reporting on landlords' performance against the Charter. Its statutory functions are to monitor, assess, report on (and, where appropriate, to make regulatory interventions) relating to social landlords' performance of housing activities. As part of its Regulatory Framework, social landlords are required to provide the Regulator with an Annual Assurance Statement confirming whether they are complying with Regulatory Standards and requirements, including statutory duties to prevent and alleviate

⁴ <https://nationalperformance.gov.scot/>

⁵ <https://www.scottishhousingregulator.gov.uk/>

⁶ <https://www2.gov.scot/Resource/0051/00515058.pdf>

homelessness. The Regulator's reports also help to ensure that public investment in new social housing goes only to landlords assessed by the Scottish Government as performing well.

1.17 Under the Public Services Reform (Scotland) Act 2010, the Care Inspectorate has the power to register, scrutinise and inspect care services. This includes housing support services – where support, assistance, advice or counselling is provided to a person who has particular needs.

1.18 Housing support can help people to live as independently as possible in the community. These services can be provided in individuals' homes, or in temporary accommodation such as hostels for homeless people. These services can be provided by local authorities, housing associations and voluntary sector organisations.

1.19 The Care Inspectorate's quality frameworks for inspection are being reviewed and updated to take account of the Health and Social Care Standards.

1.20 From 1 April 2018, the 'Health and Social Care Standards – my support, my life'⁷ have replaced the National Care Standards. These seek to promote and improve outcomes for people who experience care. Registered services should now be providing support in accordance with the headline standards. These are:

- I experience high quality care and support that is right for me
- I am fully involved in all decisions about my care and support
- I have confidence in the people who support and care for me
- I have confidence in the organisation providing my care and support
- I experience a high quality environment if the organisation provides the premises

1.21 As of 31 March 2019, there were 1,058 registered Housing Support services in Scotland. The majority of services are graded across all of the Care Inspectorate quality themes as 'good' or better.

A human rights approach

1.22 A Human Rights approach means putting the rights and interest of people at the centre of policies. The approach empowers people to claim their rights and encourages policy makers and service providers to meet their obligations. For example, within the context of healthcare services, the goal of a human rights approach is that all health policies, strategies and programmes are designed with the

⁷ <https://www.gov.scot/publications/health-social-care-standards-support-life/>

objective of progressively improving the enjoyment of all people to the right to the highest attainable standard of physical and mental health (International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12).

According to the Council of Europe:

“A Human Rights approach [understanding human rights and integrating them in your policy-making] allows government to better solve current and prevent future problems. Acting now is always cheaper than responding to the consequences of problems.”

The PANEL principles (Participation, Accountability, Non-Discrimination, Empowerment, Legality), endorsed by the Scottish Human Rights Commission and the United Nations, are a useful framework to ensure good governance and explain a human rights approach in practice.

Participation – people being involved in decisions that affect their rights

Accountability – monitoring of how rights are being affected and remedies for when things go wrong

Non-discrimination – people who face the biggest barriers to realising their rights should be prioritised and all forms of discrimination eliminated.

Empowerment – everyone should understand their rights and be fully supported to participate and claim their rights

Legality – adherence to domestic and international laws

International Human Rights Context

1.23 The Scottish Government and other public bodies in Scotland have an obligation to protect, respect and fulfil the rights set out in human rights treaties. The UK has ratified seven core United Nations human rights treaties and seven Council of Europe human rights treaties. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 11 of which states that everybody has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing.

1.24 The UN Committee on Economic, Social and Cultural Rights, which monitors implementation of ICESCR, has issued guidance, which specifies the adequacy of housing in order to fulfil the right:

- legal security of tenure

- availability of services, materials, facilities and infrastructure (i.e. natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services)
- affordability
- habitability
- accessibility (i.e. full and sustainable access to adequate housing resources for disadvantaged groups with appropriate prioritisation to them; including access to land as an entitlement)
- location (i.e. access to employment options, health-care services, schools, childcare centres and other social facilities; and not in immediate proximity to sources of pollution)
- cultural adequacy

The future

1.25 As mentioned at paragraph 1.2 above, the Scottish Government intends to convene a Governance group made up of Scottish Government, local authority and other interested parties to consider a more thorough overhaul of the Code. We would aim to issue this fuller update in 2021 alongside details of a clear process for future updating of the Code.

Definitions

1.26 Throughout the Code,

"the 1987 Act" means the Housing (Scotland) Act 1987 as amended;

"the 1995 Act" means the Children (Scotland) Act 1995;

"the 2001 Act" means the Housing (Scotland) Act 2001;

"the 2003 Act" means the Homelessness etc. (Scotland) Act 2003;

"the 2010 Act" means the Housing (Scotland) Act 2010.

CHAPTER 2

PREVENTION OF HOMELESSNESS



CHAPTER 2 - PREVENTION OF HOMELESSNESS

2.1 Summary - this chapter describes the action to be taken by local authorities to prevent homelessness arising in the first place and then recurring. It gives guidance on the different types of advice and information that should be provided to people in different situations in order to prevent homelessness. It also covers how homelessness may be prevented from recurring through providing support to help people settle in their tenancies.

2.2 All local authorities have a statutory duty under the Housing (Scotland) Act 2001 to carry out an assessment of homelessness in their area and to prepare and submit to Ministers their strategy on the prevention and alleviation of homelessness as part of the Local Housing Strategy. Refreshed guidance⁸ published in September 2019 to support local authorities in preparing Local Housing Strategies encourages each authority to provide information on its approach to tackling homelessness. All local authority departments and all relevant local agencies should work together to prevent homelessness occurring wherever possible. It is also vitally important that, where homelessness does occur and is being tackled, consideration is given to the factors which may cause repeat homelessness and action taken to prevent homelessness recurring. Preventing homelessness is important to alleviate the misery that homelessness causes. It also helps to prevent the additional problems that can be caused by being homeless (such as health problems, losing employment, and losing contacts with support networks). It is also important to allocate resources to preventing homelessness to reduce pressure on health, housing, social work, employment and justice services in the longer term.

2.3 The Scottish Government produced statutory guidance on the prevention of homelessness in 2009⁹ and this Code should be read alongside it. The Ending Homelessness Together Action Plan has a clear focus on prevention at its heart and sets out our intention to develop prevention pathways for the groups at highest risk and a new wide-ranging duty on local authorities, wider public bodies and delivery partners for the prevention of homelessness. We will review the 2009 prevention guidance as we develop this work.

Advice and information

2.4 Local authorities have a duty under Section 2 of the Housing (Scotland) Act 2001 (“the 2001 Act”) to secure that advice and information about the prevention of homelessness and any services which may assist in the prevention of homelessness is available free of charge to any person in the authority's area. Local authorities are required to ensure that provision meets the standards set out in the Scottish National

⁸ <https://www.gov.scot/publications/local-housing-strategy-guidance-2019/>

⁹ <https://www.gov.scot/Publications/2009/06/08140713/0>

Standards for Information and Advice Providers¹⁰. Chapter 9 of this Code discusses this further.

2.5 Local authorities should take a pro-active approach to the provision of advice and information. Local authorities should therefore publicise information on the services available to homeless people, in ways and places which ensure maximum accessibility. For example publicity via websites, libraries, post offices, rail or bus stations, prisons, accident and emergency departments and GP surgeries should be considered as well as the provision of advice in more formal settings such as the offices of voluntary organisations or the local authority.

2.6 All relevant information should also be available online, in relevant minority ethnic languages and should be otherwise widely accessible e.g. to people from black and minority ethnic communities, disabled people, people in prison (who do not have access to the internet) and people who have difficulty with reading. The aim should be to encourage early approaches by those at risk of homelessness, when their problems may be less serious and therefore easier to tackle.

2.7 Local authorities should also consider appropriate ways of communicating and providing advice and information to young people, to ensure that they have access to it.

2.8 Publicity should:

- make clear the circumstances which would make a person eligible for homelessness assistance;
- recognise that there are different types of homelessness, ensuring this is wider than just rough sleeping;
- take account of the stigma which may be attached to services badged as homelessness services; and
- take account of the different perceptions of homelessness which may prevail in different communities.

2.9 Voluntary bodies, which may be the first contact for homeless people, are key providers of specialist expertise and services and joint publicity arrangements may be more effective than each body issuing separate publicity for its own services.

¹⁰ <https://www.gov.scot/publications/scottish-national-standards-information-advice-providers-quality-assurance-framework-2009/>

Accommodation/advice and assistance

2.10 If someone is threatened with homelessness (likely to become homeless within 2 months) and has not been found to be intentionally threatened with homelessness, then the local authority has a duty to take reasonable steps to secure that accommodation does not cease to be available. More generally, the local authority has a duty to give advice and assistance to anyone threatened with homelessness.

2.11 Under Section 32(2) of the Housing (Scotland) Act 1987, where a local authority is:

- satisfied that an applicant is threatened with homelessness (likely to become homeless within 2 months); and
- satisfied that he or she did not become threatened with homelessness intentionally;

it must take reasonable steps to try to ensure that accommodation does not cease to be available for occupation by the applicant.

2.12 Section 32(4) provides that the Section 32(2) duty does not affect any right of the local authority (under any contract, enactment, or rule of law) to secure vacant possession of accommodation. However, local authorities should also bear in mind their strategic responsibility for preventing homelessness, and repeat homelessness, when considering action in any particular case.

2.13 As is set out more fully in Chapter 8, Section 32(5) excludes from the definition of accommodation, any accommodation which is overcrowded and a danger to health, does not meet any special needs of the household or which it is otherwise not reasonable for the applicant to occupy. Obtaining such accommodation for an applicant, or enabling them to remain in such accommodation, does not fulfil a local authority's duty and a person in this situation would still be homeless.

2.14 If someone is threatened with homelessness intentionally then, under Section 32(3), the local authority has a duty to provide advice and assistance that is appropriate in the circumstances. The purpose of this advice and assistance should be to support attempts by the applicant to secure that accommodation does not cease to be available for their occupation. See Chapter 9 of this Code for further guidance on the provision of advice and assistance.

2.15 The accommodation obtained for a person threatened with homelessness need not be their existing accommodation, although in practice this will often be the best option; assuming that it is reasonable for the applicant to continue to occupy it. If the local authority concludes that the loss of the applicant's present accommodation

cannot be avoided, it should consider what duties it would have towards them if the person becomes homeless and act quickly to prevent homelessness - and particularly rooflessness - actually occurring. In either case, local authorities should intervene as early as possible.

2.16 As part of their assessment of the causes and nature of homelessness in their area, and the subsequent development of strategies, local authorities and their partners should identify and focus on actions which can be taken to prevent homelessness amongst particularly vulnerable groups. Service providers should be aware that these households may also be susceptible to repeat homelessness and that therefore sustained support may be required alongside resolving accommodation issues.

2.17 Particular circumstances, such as the loss of tied accommodation, may be particularly relevant in some local authorities but some common causes of homelessness are set out below:

Relationship breakdown

2.18 Many people become homeless due to the breakdown of family relationships - divorce, separation or disagreements between siblings or parents and offspring. Such a domestic dispute may come to a local authority's attention in a number of ways and in many cases intervention to prevent the break-up of the household may not be appropriate. However, the authority should always act to ensure that long periods of homelessness, and in particular rooflessness, are avoided. Where allegations of abuse are involved it would be wholly inappropriate for the authority or another agency to intervene to keep the household together and such an intervention may in fact lead to an exacerbation of the situation. In particular, the alleged perpetrator of violence should not be approached for a view. Service providers should, however, consider whether the person who has experienced abuse would find it helpful to keep in touch with other close relatives or friends and the implications for the provision of accommodation and services.

2.19 Advice may be required by a member of the household on, for example, their rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and the Civil Partnership Act 2004. However, exercising these rights should not be made a condition of access to services. It may also be useful to ask a relevant voluntary body, such as a Women's Aid group in the case of domestic abuse, or social work services, to help in appropriate circumstances, and particularly if there are children in the household.

2.20 Particular problems may arise in the case of older people, for example where the person has been dependent on their spouse for the house or to handle financial

affairs. Such help, for example counselling or basic housing support, may be required urgently.

2.21 Generally, if it is appropriate, and if it is requested by both parties, assistance should be directed towards relieving tension within the household so as to enable the household to continue to live together.

2.22 If the local authority is satisfied that the situation warrants making accommodation available, its agreement to secure another house within a definite period of time may be preferable to transferring those involved into some interim short-term accommodation while more lasting arrangements are established. However, local authorities must not put pressure on people to remain in or return to their previous houses if that would cause distress. In particular, when a person is seeking refuge because of a fear of abuse, there will be an immediate need for rehousing.

2.23 A local authority can use its powers under paragraph 15 of Schedule 2 to the 2001 Act to transfer the tenancy of the house to (i) the tenant's spouse (or former spouse), or (ii) someone who has been living with the tenant as a spouse, where the potential transferee has applied to the landlord for the transfer because of relationship breakdown. Note that this includes same-sex couples. However, the powers under that paragraph can only be used where the sheriff is satisfied that it is reasonable to evict the tenant and that other accommodation is available for the tenant. Temporary accommodation may be needed for the person receiving the tenancy until the other person leaves. For the avoidance of doubt, the person leaving should be asked to renounce any occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and the Civil Partnership Act 2004. Such a transfer can minimise any resulting homelessness particularly when children or other dependents remain with the person applying for the transfer

2.24 In other cases it may be possible for the authority or another service provider to intervene to prevent family breakdown and resulting homelessness. Local authorities should consider whether it is appropriate for them or another agency to provide relationship counselling or mediation services. Even where the family ceases to live together, these measures can help prevent homelessness by enabling family support to continue. This support is particularly important for young people leaving the family home. It may also be appropriate to consider other forms of support - such as drug or alcohol counselling - where these may help to resolve underlying tensions. However, as noted above, the provision of support should never be an alternative to addressing housing needs where there is a risk of abuse.

Leaving institutions

2.25 People may become homeless on leaving:

- prison
- hospital
- local authority care
- the armed forces

2.26 In order to prevent this, close links between local authority departments, prisons, Integration Authorities, hospitals, primary care and community health services, secure care providers, Young Offender Institutions and the armed forces should be established locally.

2.27 Discharge protocols should be in place, including provision for the involvement of all relevant agencies in pre-discharge assessments and the formulation of any through-care and after-care plans. The National Strategy for Community Justice as prescribed by the Community Justice (Scotland) Act 2016 states that to 'improve access to housing, community justice partnerships, including Scottish Prison Service (SPS), Housing Providers and Third Sector should develop multi-agency protocols to ensure the needs of those who have committed offences are identified and addressed to ensure consistent access to suitable accommodation at all stages of the community justice process.'

2.28 Local authorities and other agencies should note the following points:

- Pre-discharge discussions are vital and should begin as early as possible, particularly where individuals may be reluctant to reveal housing difficulties for fear these could delay their discharge.
- Advance planning will be required to ensure accommodation is available, in some cases planning will be required to take place several years in advance where new accommodation has to be provided, particularly specialist accommodation.
- Even where accommodation is already available, it will be necessary in some cases to check that this is still suitable (for example for a person who has become physically disabled) or that support services are in place (for example for a discharged psychiatric patient or people leaving prison). In some cases, it will also be necessary to check the availability of move-on accommodation which the discharged person may need at a later date because of likely changes in their condition after discharge; and always where discharge accommodation is only available for a limited period

- In all cases, it will be important to establish early on in which area the person wishes to live. People may not have a local connection with the area in which they have been located. Even if they do, it may be better for them to return to the area where they lived previously. The development of Housing Options approaches by local authorities and partners and the Housing Options Guidance¹¹ can help here as will the Housing Options Training Toolkit when it is launched (see Chapter 9 for more information on Housing Options).
- For young care leavers, the values and principles set out in Staying Put Guidance published in 2013¹² and of the Continuing Care and Corporate Parenting responsibilities set out in the Children and Young People (Scotland) Act 2014, together provides a renewed focus on integrated planning and ensuring extended transitions to post-care housing and accommodation options, as a joint corporate parenting responsibility. Positively delaying transitions and ensuring integrated pathways to safe sustainable and affordable accommodation is fundamental to improving outcomes in all areas for care leavers, not least in relation to the prevention of homelessness.
- Care plans should provide for the position to be reassessed if a tenancy is in danger of not being sustained (particularly if this is due to part of the care package not being delivered).

2.29 Difficulties in dealing direct with a person at risk of homelessness, for example because they are in prison, living in a long-stay hospital or other institution or serving with the armed forces some distance from the local authority, should not prevent their receiving the assistance to which they are entitled under homelessness legislation, or under other legislation such as the Mental Health (Care and Treatment) Scotland Act 2003. Protocols and other working arrangements should address access issues.

Entering and Leaving prison

2.30 Local authorities and prisons should refer to the Scottish Quality Standards – Housing Advice, Information and Support for People In and Leaving Prison (SHORE Standards)¹³ and try and anticipate future problems by considering what action is needed from the beginning of an individual's sentence, rather than waiting until release. Many people lose their accommodation on entering prison or during their sentence and/or individuals leaving prison do not have secure accommodation available on their release. This makes it less easy for them to integrate successfully into the community and increases the risks of both homelessness and re-offending. Local authorities should therefore work together with SPS and individual prisons, social work, health, Department for Work and Pensions (DWP) and third sector

¹¹ <https://www.gov.scot/Publications/2016/03/6556/0>

¹² <https://www.gov.scot/publications/staying-put-scotland-providing-care-leavers-connectness-belonging/>

¹³ <http://www.sps.gov.uk/Corporate/Publications/Publication-5363.aspx>

organisations to put in place measures to prevent people becoming homeless on entering and leaving prison.

2.31 Local authorities need to bear in mind that people from their area could be in prisons across Scotland not just their local prison. Weekly information on admissions, liberations over the next 12 weeks and over the preceding week are shared with local authorities, who have signed the SPS Data Sharing Agreement, to enable them to assist people from their local area.

2.32 A person may be able to continue getting Housing Benefit or make a claim for the first time if they go to prison or on remand. They will not be entitled to claim Housing Benefit if:

- They are likely to be on remand for more than 52 weeks
- They are likely to be in prison for more than 13 weeks (including any time on remand)
- They are not intending to return home on release
- They are claiming as a couple and have split up
- The property is going to be rented out

2.33 It depends on each person's individual circumstances as to whether they can make a new claim for Housing Benefit in place of Universal Credit. One of the following must be true:

- they get the severe disability premium
- they got the severe disability premium within the last month and are still eligible for it
- they have reached State Pension Age
- they live in temporary accommodation
- they live in sheltered or supported housing with special facilities such as alarms or wardens

2.34 Single people on remand can claim Housing Benefit payments for up to 52 weeks if likely to return home in a year or less. If imprisoned, they can claim Housing Benefit for up to 13 weeks in prison if likely to return home in 13 weeks or less - including any time on remand.

2.35 If a person who is part of a couple is on remand, they can claim joint Housing Benefit for up to 52 weeks while one of them is on remand, if it's likely to be for a year or less. If imprisoned, they can claim joint Housing Benefit for up to 13 weeks if one of them has been imprisoned and is likely to return home in 13 weeks or less - including any time on remand. If a person's partner has been the one claiming Housing Benefit and goes to prison, that person may be able to claim it instead as well as any other benefits they may qualify for. They may need to have their name added to the tenancy agreement.

2.36 If a person's child is on remand, the parents' Housing Benefit payments can continue for up to 52 weeks, if they're likely to be away for a year or less. If imprisoned, the parent will need to contact their local council to see if their Housing Benefit entitlement will change. For example, if they rent from a private landlord, the amount of benefit paid is limited, depending on who is living with them. They may also wish to check their continuing eligibility for any benefits they may be receiving.

2.37 Another relative or friend may be able to receive Housing Benefit or Universal Credit if they look after the home in the prisoner's absence, assuming they fulfil the relevant criteria and are approved by the landlord¹⁴.

2.38 When working out how long the individual is likely to be away from home, the DWP should take account of any reductions that an individual is likely to get on their sentence - not simply the length of the sentence they receive. For example, an individual might be sentenced to four months in prison, but is likely to serve two months.

2.39 Local authorities and RSLs should also consider, for people previously living in local authority housing, such possibilities as allowing them to sublet their house during their sentence. The Housing Options Guidance 2016 states that local authorities should maximise 'options to secure a tenancy whilst a tenant is incarcerated. It may make more sense financially and in terms of disruption to the offender and the landlord for the home to be maintained in order to facilitate their release and rehabilitation into society'. These arrangements can be of benefit not only to the tenant but also to the landlord in terms of reducing rent arrears and avoiding abandonments. If this is not possible, however, then an agreement should be reached under which the individual gives up their present tenancy but are given equivalent accommodation on release. Naturally, this does not apply if the person has a family living with them who would be affected by such a change. Consideration also needs to be given to whether it is desirable or in the individual's best interest to return to their home area on release. For example, the person may not wish to return

¹⁴ The information in this section has been sourced from the Department for Work and Pensions gov.uk website

to the area where they have a local connection due to the offence they committed, peer pressure, proximity of victim or fear of reoffending.

2.40 Local authorities should work closely with SPS and local prisons in their area in order to ensure that people are fully aware of their housing options and are given as much assistance as possible in securing accommodation, in order to ensure they do not become homeless on release. Housing advice services are now available throughout the Scottish prison estate and local authorities should do as much as possible to assist these services and make connections to services in the community. Where necessary, to avoid homelessness on release, local authorities should also undertake homelessness assessments at least 8 weeks prior to release.

2.41 Local authorities and other agencies should also consider the need to ensure that people's possessions are secure during their sentence. People leaving prison often find it very difficult to re-establish themselves in the community and this can be exacerbated where they have lost all their possessions.

2.42 The Multi Agency Public Protection Arrangements (MAPPA) minimise the potential risk each sex offender may pose by requiring Police Scotland, the SPS and local authorities (including their housing services) to work together to assess and manage such risks. RSLs also have a duty to cooperate with these organisations in the management of sex offenders. The National Accommodation Strategy for Sex Offenders is part of these arrangements. It sets out the arrangements and roles of local authorities and RSLs when offenders subject to the sex offender notification requirements (also known as registered sex offenders), seek housing in the social rented sector.

2.43 Registered sex offenders under MAPPA should normally be housed in mainstream housing within the local authority from which they originate, although exceptional circumstances may occasionally mean that arrangements are required to house an offender in another local authority area. The key housing contacts in each local authority are the Sex Offender Liaison Officers (SOLOs). An Environmental Risk Assessment (ERA) must be undertaken collaboratively by the Responsible Authorities in MAPPA for all registered sex offenders at point of registration and any change of address. It will also be reviewed annually for certain categories of offenders unless the Responsible Authorities record justifiable and defensible decisions for not completing one. This process identifies if there are any housing-related risks associated with a particular offender.

2.44 Under no circumstances should a sex offender be placed in another local authority's area under MAPPA without the knowledge and consent of that authority and without a plan in place to manage any associated risk (Section 3.13 <https://www.gov.scot/publications/national-accommodation-strategy-sex-offenders-scotland-2/>.)

2.45 For further information on prison-based housing advice services please contact the SPS Policy Manager (Housing and Welfare) or the prison link centre (details in the SHORE document¹⁵).

Entering and Leaving Hospital

2.46 Health Boards and local authorities are required to develop joint protocols for the admission, transfer and discharge of patients, as set out in the statutory guidance CCD 9/2003¹⁶, and subsequent good practice guide published in 2009¹⁷.

2.47 The Adults with Incapacity (Scotland) Act 2000 introduced a system for safeguarding the welfare and managing the finances and property of adults who lack capacity to act, make or understand and remember some or all decisions for themselves due to mental disorder or inability to communicate due to a physical condition. It allows other people to make decisions on behalf of these adults, subject to safeguards. Guardianships and intervention orders are orders of the court and the application process can take many months. Applications should be made as early as possible to avoid undue stays in hospital due to the lack of legal authority to move a person. Arrangements for accommodation in the community should also be made as quickly as possible, to prevent people being kept inappropriately in hospital. Practical guidance on discharging Adults with Incapacity was published by the Scottish Government in April 2019¹⁸.

Leaving care

2.48 Many children and young people previously looked after by a local authority are particularly vulnerable and need support. Local authorities' duties and powers to provide for this group are set out in the Children (Scotland) Act 1995 ("the 1995 Act") and the Children and Young People (Scotland) Act 2014. Local authorities have a duty to make the welfare of the child their paramount consideration when making a decision relating to a child being looked after under the 1995 Act.

2.49 Scottish Government updated guidance explaining the duties and responsibilities of local authorities to provide Aftercare to care leavers,¹⁹ as amended by the Children and Young People (Scotland) Act 2014 and more specifically the Housing Options Protocol for Care Leavers,²⁰ make clear that local authorities and

¹⁵ <http://www.sps.gov.uk/Corporate/Publications/Publication-5363.aspx>

¹⁶ https://www.sehd.scot.nhs.uk/publications/CC2003_09.pdf

¹⁷ <https://www2.gov.scot/Topics/Health/Quality-Improvement-Performance/NHS-Performance-Targets/Delayed-Discharge/Protocol>

¹⁸ <https://hscotland.scot/couch/uploads/file/planning-discharge-from-hospital-adults-with-incapacity-march-2019.pdf>

¹⁹ <https://www.gov.scot/publications/guidance-part-10-aftercare-children-young-people-scotland-act-2014/>

²⁰ <https://www.gov.scot/publications/housing-options-protocol-care-leavers-guidance-corporate-parents-improving-housing/>

their community planning partners have a role as a corporate parent to these young people, particularly those who cannot return to their families. This means that the local authority should look after these children as any other parents would look after their own children. The approach taken should therefore reflect the fact that the provision of care and support for young people by their parents does not generally cease at a particular age and may continue long after a young person has reached adulthood; and adapts to meet the changing needs of the young person as they develop. Positively delaying transitions, for example through encouragement and consistent application of Continuing Care entitlements, allowing eligible young people to stay put with their former carers up to age 21, and ensuring integrated pathways to safe sustainable and affordable accommodation is fundamental to improving outcomes in all areas for care leavers, not least in relation to the prevention of homelessness.

2.50 Under the regulations and guidance, young people leaving care should be allocated a pathway co-ordinator. This person, who may but need not be an officer of the local authority, provides support and advice to the young people in planning and making the move from care to independent living. The pathway co-ordinator is also responsible for co-ordinating the provision of services identified in the plan agreed by the local authority and the young person.

2.51 In addition, under the regulations and guidance, the young person is entitled to a supporter, who will be a different person from the pathway co-ordinator. The young person's supporter can provide support in a range of ways, including accompanying the young person to meetings with professionals.

2.52 When working with young people leaving care every effort should be made to ensure that housing/homelessness services co-ordinate with other services. It is crucial that housing, social work and other departments work together in exercising their respective functions in relation to young people being looked after, or previously looked after, and children in need under the Children (Scotland) Act 1995. This applies during the time when the young person is being looked after, when they are approaching when they cease to be looked after, and in the transition to independent living. Liaising and working with the pathway co-ordinator is the recommended way of achieving this. It is good practice to ask the young person whether they have a pathway co-ordinator and a supporter and to seek to involve these individuals in assisting the young person with their housing need. More generally, whenever young people make contact with local authorities and other related bodies, they should receive appropriate guidance and advice at that point.

2.53 Although the legal duties set out in this guidance only apply to young people who cease to be looked after at age 16 or older, the Children and Young People (Scotland) Act 2014 introduced corporate parenting duties for young people under

26, including on how corporate parents should work together²¹. Local authorities should also take a corporate responsibility for ensuring that regular checks are made on the housing circumstances of those who have left care for at least two years after they do so. The emphasis should be on sustaining housing arrangements which meet the needs of the individual or on providing constructive arrangements where they do not. Contingency arrangements should also be put in place in case of emergencies - and young people leaving care should be aware of these arrangements.

2.54 In no circumstances should children leave the care of a local authority without alternative accommodation appropriate to the assessed needs of the young person being in place.

2.55 In no circumstances should children have to be taken into care purely as a result of their household becoming homeless.

Leaving the armed forces

2.56 Members of the armed forces can establish a local connection through the fact of their service in the area.

2.57 Where people leaving the armed forces are in a position where their license to occupy service accommodation is due to expire and they have no other accommodation they should be regarded as being threatened with homelessness. Local authorities should be aware of certificates of cessation of entitlement to occupy service accommodation which may be forwarded by the applicant several months in advance of an individual or family leaving service accommodation, in order to allow early action to be taken to prevent homelessness occurring. However, the absence of such a form should not lead to an assumption that the applicant is not threatened with homelessness or homeless on application to the local authority, and presentation of a certificate is not a condition of receiving assistance (and it is worth noting that someone fleeing domestic abuse will not have a certificate).

2.58 Local authorities should also consider forming links with veterans' benevolent and charitable organisations in their area, in order that they are aware of the particular issues facing people who have left the armed forces, and the range of assistance that is available.

Landlord action and court orders

2.59 Many people become homeless as a direct result of eviction from a tenancy or otherwise losing their right to occupy a property. Many of these situations arise as a

²¹ <http://www.legislation.gov.uk/asp/2014/8/section/58/enacted>

result of rent arrears, with fewer attributable to anti-social behaviour. In many cases, housing management policies and early identification of tenants in difficulty may enable the local authority to take appropriate measures to remedy the breach of tenancy and prevent an eviction and support the tenant to sustain their tenancy. The local authority and other local agencies should have in place programmes to support people threatened with eviction. This should include the provision of independent advice and representation where appropriate.

2.60 The Housing (Scotland) Act 2010 ("the 2010 Act") introduced pre-action requirements that landlords must satisfy in all rent arrears cases before serving a notice on a tenant. Landlords must meet the pre-action requirements for all notices of proceedings involving rent arrears which are served on a tenant and any qualifying occupiers. In 2012, the Scottish Government issued statutory guidance²² aimed at social landlords, which gives guidance on pre-action requirements and changes to repossession orders.

2.61 In the private rented sector, the Private Housing (Tenancies) (Scotland) Act 2016 requires a private landlord to give 84 days' notice if a tenant with a private residential tenancy has lived in the let property for more than six months when a conduct ground is not being used for eviction. This gives tenants time to find alternative accommodation. A tenant can challenge any eviction action in the First-Tier Tribunal (Housing and Property Chamber) and cannot be evicted whilst their case is being heard.

2.62 Under Section 11 of the Homelessness etc. (Scotland) Act 2003 ("the 2003 Act"), the local authority should be notified when a landlord or mortgagee raises proceedings for possession, providing opportunities for local authorities to work at preventing homelessness for the household concerned. More detail is provided on this below (see paragraphs 2.82 and 2.83 of this Code).

Rent arrears

2.63 Local authorities and RSLs should do all they can to prevent arrears arising and to recover them when they do. They should have clear processes in place for early intervention and managing arrears. This should include ensuring tenants have access to budgeting and money advice services. This should include having robust monitoring arrangements in place to identify arrears at an early stage and engagement with tenants to provide money advice and agree a realistic payment plan.

²² <https://www.gov.scot/publications/housing-scotland-act-2001-2010-guidance-social-landlords-pre-action/>

2.64 Early personal contact may prevent arrears escalating and ensure that tenants can access support and advice to manage arrears and pay their rent.

2.65 Some of the measures adopted by local authorities and RSLs to minimise rent arrears are set out below:

- Making prospective tenants fully aware of the financial commitments associated with their tenancy including rent, council tax, household insurance, electricity, gas and any payments for common services.
- Universal Credit is delivered in Scotland using “Scottish Choices”. This is delivered by the Department for Work and Pensions and offers people receiving Universal Credit the option of (tenants can choose to amend their Choices at any time):
 - being paid Universal Credit twice a month rather than monthly
 - having their Universal Credit housing element paid directly to their landlords. If the tenant continues to receive this directly, they remain responsible for ensuring the full rent is paid on time.
- If a tenant chooses to have their housing benefit/housing element of Universal Credit paid directly to their landlord, they must make the landlord aware they are in receipt of benefits. Failure to do so will result in the tenant being responsible for paying their rent directly to the landlord.
- Tenants may be eligible for a Discretionary Housing Payment if they claim Universal Credit or Housing Benefit and cannot afford their housing costs.
- Signposting tenants to money advice services.
- Identifying missed payments and triggering early intervention including provision of money and debt advice, agreeing a realistic payment plan with the tenant.
- Providing money and benefits advice to ensure benefit entitlement is maximised etc.
- Having clear procedures and timescales in place for agreeing realistic payment plans at an early stage to enable tenants to clear their arrears.

2.66 A local authority may still have duties to a tenant evicted for rent arrears if they apply for housing under homelessness legislation. However, if the arrears were deliberately built up by the tenant, in full knowledge of the consequences, they may be held to be intentionally homeless (but each case must be judged on its individual merits). (See also paragraph 6.18 of this Code).

Anti-social Behaviour, ASBOs and short Scottish secure tenancies

2.67 Tenancy agreements should set out the level of behaviour expected from tenants, members of their household and visitors to their home and make it clear to tenants that they are responsible for the behaviour of others in, or visiting, their home. The tenancy agreement and other tenancy information, such as tenant handbooks, should also make it clear to tenants that breaking their tenancy agreement as a result of anti-social behaviour may result in legal action to evict them, or a reduction in their tenancy rights. Tenants are responsible for ensuring that they keep to the conditions of their tenancy agreement.

2.68 Anti-social behaviour can have a serious impact on individuals and communities and needs to be clearly defined, identified, and tackled quickly and effectively when it arises. How it will be addressed should be set out in each landlord's Anti-social Behaviour Strategy/Policy. Early identification and close working arrangements between partners such as the police, local authorities, RSLs and voluntary sector organisations can help to prevent anti-social behaviour and criminal behaviour escalating and support tenants to sustain their tenancy.

2.69 The Antisocial Behaviour etc. (Scotland) Act 2004 and the Housing (Scotland) Act 2001 ("the 2001 Act") set out a range of measures that landlords or their partner agencies such as the police, can take to help address antisocial behaviour. The Scottish Social Housing Charter²³ contains outcomes that cover the role of landlords, working with others, in managing anti-social behaviour. It highlights how landlords should carry out their housing activities in a way which complies with equalities legislation.

2.70 To complement the existing measures available to landlords to address anti-social behaviour in, or in the locality of, a social housing tenancy, a number of new provisions were introduced in the Housing (Scotland) Act 2014. These measures include:

- a new short Scottish secure tenancy (SST) for anti-social behaviour, where landlords can give a new tenancy or convert an existing SST without going to court, where that person, or other specified person, has demonstrated the specified anti-social behaviour within the previous 3 years. Further information on this can be found in the guidance 'Short Scottish Secure Tenancies for anti-social behaviour and miscellaneous changes: statutory guidance for social landlords';²⁴

²³ <https://www.gov.scot/publications/scottish-social-housing-charter-april-2017/pages/0/>

²⁴ <https://www.gov.scot/publications/short-scottish-secure-tenancies-antisocial-behaviour-miscellaneous-changes-statutory-guidance-social-landlords/>

- a power for landlords to extend the term of some short Scottish secure tenancies by 6 months, including those related to previous antisocial behaviour, where housing support services are being provided; and
- a new streamlined eviction process where there has been a recent criminal conviction punishable by imprisonment for tenancy related antisocial or criminal behaviour within the previous 12 months. Further information on this can be found in the guidance 'Streamlined Eviction Process – Criminal or Antisocial Behaviour'²⁵.

Anti-Social Behaviour Orders (ASBOs) and their effect upon tenancies

2.71 RSLs and local authorities have the power to change a tenant's tenancy if the tenant or someone in their household has an ASBO. This means that if a tenant or someone else in their household has a full ASBO then the relevant tenancy can be converted from a Scottish secure tenancy (SST) to a short SST. This conversion cannot be made on the basis of an interim ASBO. New tenants can also be offered short SSTs if they or members of their household are subject to an ASBO, or if they have been evicted from previous accommodation anywhere in the UK within the past 3 years. The link between ASBOs and security of tenancy exists in relation to ASBOs made on persons aged 12 or over and in respect of ASBOs made on conviction (though the behaviour should be related to the tenancy). This link between change in tenure and ASBOs is not automatic and depends on the landlord.

2.72 The landlord must provide support appropriate to enabling the tenants to help them sustain the tenancy and convert to a full SST. The types of support envisaged should all fall within the broad definition of "housing support services" and might include, for example, alcohol/debt/family counselling, or social work support. Landlords should make sure that the support it considers appropriate to enable conversion to an SST is linked to its stated objectives in granting a short SST. In other words, the landlord should make clear that the short SST is being granted because of certain behaviour and that it will convert to an SST in 12 months or the landlord will offer a full SST before that time, provided that the behaviour is altered and that the landlord will make certain support available specifically to help the tenant to successfully convert to an SST.

2.73 The short SST will convert automatically to a full SST after 12 months, if there has been no repetition of anti-social conduct. If there has been anti-social behaviour during the short SST or if the terms of the ASBO have been broken then the tenancy can be ended, leading to subsequent eviction of the tenant and their household. The local authority or RSL must apply for a court order to end this type of tenancy but the grounds for eviction are mandatory and the tenant has no right of appeal. If the

²⁵ <https://www.gov.scot/publications/streamlined- eviction-process-criminal-antisocial-behaviour-statutory-guidance-social-landlords/>

landlord wants to prevent the short SST from converting to a full SST he or she needs to take action, otherwise the conversion will happen automatically.

2.74 Should the tenant refuse support offered by the landlord, it will be for the landlord to decide whether it wishes to offer the short SST on the basis that the behaviour will improve without support or whether it wishes to make acceptance of support a condition of the short SST offer.

2.75 If the behaviour that led to an ASBO is unrelated to the tenancy then landlords should not exercise their power to convert the tenancy to a short SST. An example of this might be when a member of the household gets an ASBO for anti-social behaviour that was committed outside the vicinity of the accommodation. An ASBO awarded as a result of anti-social behaviour in a pub that is not near to the accommodation should not be seen as related to the tenancy. Interim ASBOs can also be applied for by local authorities or RSLs and these do not impact upon the type of tenancy.

2.76 These powers have a double effect. First, it allows tenants who behave anti-socially to receive support to enable them to sustain a tenancy in a responsible manner and to convert to a full Scottish secure tenancy after a period of up to 12 months. Secondly, it enables landlords to downgrade a tenancy from the full Scottish secure tenancy for tenants who behave anti-socially, thereby making it easier for the landlord to end the tenancy, as a last resort, should the anti-social behaviour continue. The use of short SSTs is designed to prevent eviction in the first instance and give the tenant time to sort out problems without immediate fear of eviction.

2.77 The above powers on converting tenancies hold even if the person in the household subject to an ASBO is under 16 years old. If the tenancy is ended as a result of the child breaking the terms of their ASBO then the household may be deemed to have made themselves intentionally homeless, however this should not automatically be assumed and each case should be considered carefully. See Chapter 6 for further guidance on deciding if someone is intentionally homeless. Even if the local authority is satisfied that the homelessness was intentional, the applicant is still entitled to receive temporary accommodation, and advice and assistance from the local authority (see Chapters 8 and 9). The local authority may also have continuing duties to children and young people under the terms of the Children (Scotland) Act 1995.

2.78 It is important that those requiring community care or other support, for example, because of mental health problems, are referred for an assessment of their needs rather than being the subject only of punitive sanctions. Referrals to local community mental health services will be appropriate in most cases.

2.79 Anti-social behaviour which could lead to eviction is not of course confined to local authority tenants, or indeed social housing. Local authorities may wish to arrange for private sector landlords, social landlords and the police to be aware of what support or intervention can be offered by social work or housing departments or other agencies to deal with other tenures.

Closure notices

2.80 Part 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 gives police the powers to close premises which cause significant and persistent disorder or serious nuisance to the local community. Statutory guidance on this part of the Act has been published and this says that if premises are closed then people staying in those premises may be threatened with homelessness. Police should work with local authorities to inform the latter of any potentially homeless people as far as possible in advance of issuing the closure notice. This should allow local authorities to work with the affected people to prevent homelessness and find new accommodation if needed.

Harassment/illegal eviction

2.81 If a tenant gives up a tenancy because of harassment or illegal eviction, the courts may award damages. Where there is evidence of harassment the local authority should encourage the tenant to report this to the police. Harassment is widely defined and, besides violence or intimidation, could include cutting off gas and electricity supplies or failure to carry out, or complete, necessary repairs. Local authorities should refer those affected by illegal evictions or harassment to sources of advice and support which will help those affected to take appropriate action.

2.82 As noted above (paragraph 2.62) under Section 11 of the Homelessness etc. (Scotland) Act 2003 (“the 2003 Act”), the local authority should be notified when a landlord or mortgagee raises proceedings for possession. Ministers have prescribed the form of notice to be used and the manner in which they should be given in The Notice to Local Authorities (Scotland) Regulations 2008.

2.83 On receiving notification, the local authority should take the most pro-active approach possible to prevent homelessness occurring. For instance, it may be appropriate for the local authority to make initial contact with all households involved, and to make more concerted efforts where the household involved is already known to the homelessness service. Local authorities may wish to offer to negotiate with the landlord on the tenant's behalf, or to arrange for the provision of housing support services, advocacy or other services as relevant to the particular case. The local authority should also consider ways in which this information can be used to monitor the effectiveness of initial solutions to homelessness.

Helping owner occupiers to avoid homelessness

2.84 If a home owner is in financial difficulties, unable to pay their mortgage and threatened with homelessness there are measures that may provide support and potentially help the owner stay in their property. These include seeking independent financial advice from an accredited money adviser (Citizen's Advice Bureau for example). Even if repossession cannot be avoided, local authorities can help to plan for it in advance, for example through helping to set up a tenancy. This may avoid the need to rehouse people in temporary accommodation. Help may also be available under the Homeowners Support Scheme²⁶.

Prevention of recurrence of homelessness

2.85 While the actions discussed so far in this chapter may prevent homelessness arising in many cases, local authorities cannot hope to succeed in all cases. Equal attention should therefore be given to ensuring that homelessness - and in particular rooflessness - does not recur, as this can be extremely harmful for the individuals involved and is also expensive in terms of public resources. The assessment of the causes of homelessness within the authority will help to pinpoint local priorities for action.

2.86 In considering resettlement, local authorities and partner agencies should refer to the Housing Options guidance²⁷.

2.87 In addition to a general duty to promote social welfare in making available advice, guidance and assistance, social work services have an emergency power under Section 12 of the Social Work (Scotland) Act 1968 to assist persons in need in certain circumstances. Section 12 enables local authorities to give cash to, or in respect of, any person aged at least 18 years who is in need within the meaning of the Act, and requiring assistance in exceptional circumstances constituting an emergency, and where to do so would be more cost effective than giving assistance in another form. Local authorities should have regard to other means of assistance available to the person in need, and to whether any assistance given should be repaid.

2.88 Section 140 of the Local Government Etc. (Scotland) Act 1994 gives local authorities discretionary powers to assist voluntary organisations to provide for individuals. This can also include assistance in asserting these rights or fulfilling these obligations, either by making or receiving communications on the clients' behalf, or by making representations.

²⁶ <https://www.gov.scot/policies/homelessness/support-for-home-owners-at-risk-of-homelessness/>

²⁷ <https://www.gov.scot/Publications/2016/03/6556/0>

2.89 While homeless people, as such, are not a community care client group, homelessness officers should be alert to the possibility that some will require community care, health, or other support, to live successfully in the community; and refer them to the appropriate agency. Such referrals should be covered by protocols. Support packages must cater for the individual needs of each household - and service providers should enter into a dialogue with the recipient of services to agree to the adjustment of support levels over time. In some cases a formal community care assessment will be required. See also paragraphs 4.43 - 4.48 of this Code.

Independent living skills

2.90 Some homeless people, particularly young people or those having spent substantial periods sleeping rough or in temporary or institutional accommodation, may need to learn or relearn basic independent living skills, including budgeting, if they are to sustain their tenancy. In such cases provision of services to teach these skills by the local authority, or voluntary or other organisations, is likely to be a cost effective investment.

2.91 Homelessness officers should ensure that applicants placed in accommodation have advice on the running costs of that accommodation, including the full costs of running that property (heating and lighting costs, repairs and maintenance liabilities, service charges, and any initial costs such as rent deposits or rent in advance) and advice on meeting these costs, including advice on any housing or other benefits to which they may be entitled. Travel costs to employment, education, or training may also be relevant in some cases.

Location and support networks

2.92 In considering rehousing, local authorities and housing associations should recognise the importance of ensuring that tenancies are unlikely to be sustained if people feel isolated from friends, relatives, and other formal or informal support networks. Problems may also be caused if accommodation is located too far from their employment, or education or training establishments, or health services which are used frequently.

Social networks

2.93 Many people who have experienced homelessness will have lost, or be deprived of, their social networks of families, friendships or work. The circumstances and trauma of homelessness frequently leads to feelings of isolation and loneliness before and after resettlement. Ensuing depression and mental health problems are common. There is overwhelming evidence demonstrating that isolation and loneliness are major factors in resettlement breakdown.

2.94 The strength of a person's social networks should be an integral part of the assessment of their needs and of the support offered to them in temporary accommodation and during resettlement. Where individuals and families (including children) do not have strong positive social networks, local authorities should consider whether a befriending, mentoring or mediation service may be appropriate to enable them to build or rebuild social bonds. Local authorities should develop practical local measures to enable people affected by homelessness to (re)build social networks.

Furniture

2.95 The Scottish Welfare Fund is a discretionary grant based scheme that is administered by local authorities. The Fund can provide occasional assistance (financial or otherwise) to individuals, specifically by way of a Crisis Grant or a Community Care Grant.

2.96 Community Care Grants are provided where a qualifying individual needs help to establish or maintain a settled home.

2.97 Applications for Community Care Grants are for items and awards may be in cash, cash equivalent or in kind. Some examples of items for which an award might be made are:

- furniture (settee, armchair, carpets, curtains, wardrobe)
- household equipment (cooker, fridge, washing machine, bed, bedding, pots and pans)

Further information on the Scottish Welfare Fund can be found at:

<https://www.mygov.scot/scottish-welfare-fund/community-care-grants/>

Rent deposit/guarantee schemes

2.98 In order to maximise access to the private rented sector, local authorities can enable people at risk of homelessness or those resettling from homelessness to access a local rent guarantee/deposit scheme. Access to the scheme should be provided as early as possible and local authorities should consider marketing the scheme in such a way as to ensure that the potential for early involvement is maximised. Authorities should also satisfy themselves that the applicant has the means to continuing making rental payments once they have gained access to accommodation.

Employment

2.99 For many people resettling from homelessness, a job will be an important factor in determining whether or not accommodation is sustained. Local authorities and partners should therefore consider whether any members of the household require assistance to maintain or find employment. For homeless people who have complex needs, or who have been homeless or roofless for a significant length of time, pre-vocational support will be essential.

2.100 Local Authorities should ensure they maintain close working relationships with local DWP offices, any local enterprise companies, Skills Development Scotland, as well as local businesses and voluntary organisations who may be able to offer employment, training or pre vocational activity. Many Local Authorities deliver “employment hubs” in the local communities and work closely with people to identify any potential barriers they may have preventing an immediate return to work. They should ensure they foster and use relationships with external stakeholders who have relevant expertise to assist people with complex needs, enabling them to return to and sustain employment.

2.101 For further information and advice local authorities should contact the Scottish Homelessness and Employability Network (c/o Homeless Action Scotland, Stanhope House, 12 Stanhope Place, Edinburgh, EH12 5HH).

Health

2.102 Unmet health needs may interfere with an individual's ability to sustain accommodation. Local authorities should record information about the GP registration of all those who are assessed as homeless and should offer information about local health services to homeless people rehoused outside their existing GP area. Local authorities should also maintain close links with local healthcare providers.

2.103 The Charter of Patient Rights and Responsibilities summarises what people are entitled to when they use NHS services and receive NHS care in Scotland, and what they can do if they feel that their rights have not been respected:

<https://www.gov.scot/publications/charter-patient-rights-responsibilities-2/pages/3/>

2.104 The NHS inform helpline (0800 22 44 88) can help with questions about health or local NHS services. Lines are open 8am to 10pm, Monday to Friday, and 9am to 5pm on Saturday and Sunday.

2.105 The Patient Advice and Support Service (PASS) is a free, confidential and independent service run by Citizens Advice to offer information, help and independent advice. PASS can be contacted via:

- Website: www.patientadvicescotland.org.uk
- Phone: 0800 917 2127
- Visiting the local citizens advice bureau

CHAPTER 3

WAYS OF WORKING



CHAPTER 3 - WAYS OF WORKING

3.1 Summary - this chapter sets out how relevant parts of local authorities should work in partnership to deliver effective services to homeless people, and gives advice on drawing up relevant protocols on working together and sharing information. Local authorities should assess the applicant household's needs in their entirety and should work in partnership across departments and with other agencies to meet those needs, and in such a way that applicants feel valued and respected.

Partnership working

3.2 The defining characteristic of those experiencing homelessness is that they need a home, and as such they should not necessarily be regarded as a community care client group or in need of other types of support. However, it must be acknowledged that people experiencing homelessness may require housing support services, social work support, health care, assistance in rebuilding social networks and accessing employment and training opportunities and a range of other support services.

3.3 Housing departments must co-operate as necessary with other council departments and landlords and a wide range of statutory, voluntary and private sector agencies in order to ensure that the support which is required is provided. Other departments must also ensure that they deliver services and adopt policies which are consistent with the aim of preventing and tackling homelessness. Effective co-operation is particularly important when such support is required to prevent homelessness occurring in the first place or to ensure those experiencing homelessness can maintain themselves in a new home, and do not become homeless again.

3.4 Enabling the shift to prevention and supporting quick, effective responses to housing crises, will both be best served by planning and working across housing partners and the wider third and public sector responsible for supporting vulnerable people. The Ending Homelessness Together Action Plan²⁸ outlines what we can do to ensure planning and resources are joined up around a person-centred approach, keeping the needs of the people the services are for at the forefront and talking more with each other about how to end homelessness and rough sleeping.

3.5 Local authorities should ensure that there is provision for joint training approaches which involve all sectors and providers with a role to play in delivering the homelessness strategy (see paragraph 2.2). As a minimum, training should cover the definition of homelessness, risk assessment techniques to help "first-to-know" agencies to respond effectively, needs assessment, support packages,

²⁸ <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2018/11/ending-homelessness-together-high-level-action-plan/documents/00543359-pdf/00543359-pdf/govscot%3Adocument/00543359.pdf>

consultation techniques, information sharing and how to help and empower homeless people to find appropriate solutions. All partners should be involved in jointly assessing training needs and arranging for these needs to be met.

3.6 Homelessness strategies should also provide for the development and agreement of inter-agency protocols, particularly where these are necessary to clarify arrangements for preventing homelessness. Such protocols should cover basic contact details, information sharing and procedures for swift communication of any new developments (e.g. new legislation) alongside more detailed information regarding operational practices. The implementation of these protocols should be monitored in order that they can be revised if necessary. All protocols and partnerships should be periodically evaluated. For further guidance on protocols governing local authority/RSL arrangements for implementing Section 5 of the 2001 Act see paragraphs 8.71 - 8.72 of this Code.

3.7 All protocols, and wider arrangements, should take account of the need to develop an information sharing regime which preserves client confidentiality and complies with the General Data Protection Regulation (GDPR), without erecting barriers to timely action to help homeless people.

3.8 Local authorities and partners should work towards establishing a common definition of vulnerability in order to ensure that all the needs of the household can be met. However agencies should also be aware that partners may be working to different legislative definitions for certain aspects of their work. Whilst every attempt should be made to take a flexible approach, and to find a solution which best meets the need of the homeless household, agencies should be aware that these differences may affect the criteria used in different assessments.

3.9 All partners should also be involved in monitoring implementation of the homelessness strategy and should be represented on any fora established for this purpose.

3.10 In some cases a legal duty to give such assistance as is reasonable in the circumstances may exist:

- Section 38 of the 1987 Act provides that if a local authority requests another local authority in Scotland, or a local housing or social services authority in England or Wales, or a registered housing association, to assist it in carrying out its homelessness functions under the Act; the body receiving that request must co-operate in giving whatever assistance is reasonable in the circumstances.
- The duty to meet requests placed by Section 38(a) on a local authority or a registered housing association relates to the full range of a local authority's homelessness functions, including making inquiries, providing accommodation

and assistance, and referring an unintentionally person experiencing homelessness to another local authority.

- Under Section 38(c) a local authority can be asked to assist with the protection of the property of a person who is homeless or threatened with homelessness. Local authorities should be particularly aware of the need to protect the property of people entering prison, in order that it can be accessed on release, to facilitate resettlement.
- Section 39 of the Act empowers local authorities to give assistance to voluntary bodies' services for those experiencing homelessness, including advice, advocacy and accommodation services, by way of grant or loan, or by giving such bodies the use of premises, or the services of local authority staff, or by making available furniture or other goods as a gift or loan or otherwise.

3.11 However, the absence of a formal legal duty should not act as a barrier to joint working. Rather this should be predicated on meeting local needs, as identified by the homelessness assessment required by Section 1 of the 2001 Act. Local authorities can enter into contractual or other arrangements with external bodies for the provision of homelessness services.

Involving people affected by homelessness

3.12 The Ending Homelessness Together Action Plan highlighted the importance of lived experience in service design, ensuring that services are organised around the person allowing them greater choice and control over what happens to them. Collaboration is key to delivering effective services and people with lived experience can help identify where the join-up between services is needed most, across physical and mental health, housing, addictions services and others.

3.13 The Action Plan recognises the value of listening and responding to the people with lived experience and we are committed to developing a participation programme where people with lived experience and frontline workers assist with the development and design of policies and interventions prior to their introduction and help assess their impact after introduction.

3.14 Local authorities should ensure that the views of homeless people and those at risk of homelessness are reflected in the development of their Rapid Rehousing Transition Plans, exploring different ways in which people using their services can be involved in the design, delivery and management of these services. Local authorities and other partners should also seek feedback from users of their services as part of their monitoring and evaluation processes, and be prepared to describe changes which have come about as a result of client feedback.

Providing an individual response

3.15 All services should ensure that they are promoting and practicing values which deliver responsive and personalised services. Staff should ensure that accommodation and services are offered on the basis of a thorough assessment of the applicant's needs and that these needs are addressed in a holistic fashion. The emphasis should be on finding sustainable solutions - not on a rigid application of the legislation which does not take into account the individual circumstances of the household (although an individual's entitlements should never be undermined).

3.16 Action should be taken promptly to prevent homelessness occurring where this is a risk. Agencies must work together to find creative and lasting solutions, rather than allow organisational barriers to get in the way of helping the applicant. The needs of all members of the household should be taken into account - where necessary intensive interpersonal support should be available to parents and children, both on an individual basis and as a family, for example.

3.17 Service providers should maintain the highest standards at all times. Scotland's Housing Network is also a useful resource for local authorities and RSLs wishing to benchmark and improve their performance. The network incorporates a homelessness sub-group. The Care Inspectorate will also be relevant to some registered services including, for example, housing support and care at home – further information can be found on the Care Inspectorate website. The Health and Social Care Standards (2017)²⁹ are relevant across all health and social care settings. Service providers should ensure that the Standards and the underpinning principles are embedded in practice.

3.18 Members of staff should make serious efforts to ensure that people feel valued and respected - and this ethos should be encouraged as part of staff training. People making homelessness applications should be at the centre of service provision and staff should ensure that the applicant is kept well informed as to local policies and procedures and that the process of making a decision on their application is clearly explained in terms that they can easily understand. Care should be taken to ensure that materials and communications are appropriate for, and accessible to, a diverse range of clients. Particular attention should be paid to ensuring that the different experiences of homelessness and service requirements of people of differing age, family background, race, disability, gender, sexual orientation and religion and belief are recognised.

²⁹ <https://www.gov.scot/publications/health-social-care-standards-support-life/>

CHAPTER 4

HANDLING OF APPLICATIONS



CHAPTER 4 - HANDLING OF APPLICATIONS

4.1 Summary - this chapter discusses how initial approaches should be handled, including the recording of the results of inquiries. The inquiries which local authorities must undertake into applications under the homelessness legislation are discussed in Chapters 5 to 7 of this Code.

4.2 It is important that homeless applications are considered in the overall context of providing a service to those in housing need. Staff should adopt a person-centred approach in order to deliver a response tailored to the needs of the individual applicant. Staff should be aware that where a person has applied for accommodation, or for assistance in obtaining accommodation, and there is reason to believe that they are in fact homeless or threatened with homelessness then inquiries must be carried out to ascertain the duty owed to the household under the homelessness legislation.

4.3 Initial identification of homelessness or threatened homelessness may be via the housing department or other routes such as social work or youth services. Local authorities have a corporate responsibility towards the applicant to ensure they are helped appropriately and effectively, and all relevant departments must play a part in discharging this responsibility. Chapter 3 of this Code gives guidance on how different parts of local authorities should work together.

4.4 Local authorities have a duty to provide good quality objective housing advice on a range of housing options of which accessing local authority or housing association accommodation via a homelessness application is one. Staff responsible for dealing with a homelessness application should be trained to ensure provision of such advice. At all times, staff must be aware that if someone is threatened with homelessness within 56 days they should start a homelessness assessment. Staff should ensure that applicants are aware of their legal rights or where they may receive information on these. Staff should also be able to advise applicants on how to contact independent advocates or advisors.

Avoidance of first screening of applicants

4.5 The principal aim for staff in local authority housing offices should be to identify a housing solution for a homeless individual that reflects their needs. Staff should work to find the best way to achieve that solution. To do this, staff should ensure that all relevant information is provided to the individual.

4.6 There are a number of key points that staff should follow:

- No person experiencing homelessness should ever be refused the right to make a homelessness application.

- Particular care should be taken to ensure receptionists or general inquiry staff do not carry out any informal "first screening" of applicants, either deliberately or unwittingly, for example, by advising them in advance that they are likely to be re-housed in a difficult to let area or in a location many miles from where they wish to stay.
- Staff should not assume that every individual who enters a local authority office is aware of their legal right to make a homelessness application. Prominently displayed notices should make it clear that applicants are entitled to an interview with a homelessness officer.
- At all times, staff should give factual information to members of the public on the application process, as well as giving information to people on their legal right to apply.

4.7 Staff should receive training, if required, in the handling of such applications, including where to refer applications.

Discrimination

4.8 It is essential that applications are handled in a non-discriminatory way, at minimum taking account of local authorities' duties under the Equality Act 2010 which requires public authorities to: eliminate discrimination, harassment and victimisation; advance equality of opportunity; and to foster good relations between persons who share a relevant protected characteristic and those who do not (this is known as the Public Sector Equality Duty (PSED)). The PSED that is set out in the Equality Act 2010 is underpinned by Scottish regulations in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. These regulations are aimed at supporting Scottish public authorities improve implementation of the PSED and the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012³⁰, which require public authorities, in the exercise of their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct.
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

³⁰ <http://www.legislation.gov.uk/ssi/2012/162/contents/made>

Staff training

4.9 It is important that homelessness officers are trained in the requirements of the homelessness legislation, the Code of Guidance, anti-discrimination legislation, and the local authority's own housing and homelessness policies. Training in awareness raising and practice issues as well as clear staff support arrangements will also be helpful in ensuring staff are able to assist applicants proactively.

4.10 Staff should be able to provide at least Type 1 advice (as defined in Scottish National Standards for Information and Advice Providers³¹) on homelessness and other associated areas of housing law. They should also know how to access Types 2 and 3 advice if necessary. They should also be aware of the requirements of legislation and policies which may be relevant to particular cases, for example community care legislation or the Children (Scotland) Act 1995; and of local authority departments and independent agencies to which applicants should be referred for specialist advice and assistance where necessary. Where possible training should be carried out in partnership with other local agencies who will have a role in the assessment process.

4.11 Staff should have good interviewing skills and be equipped to deal with people who are distressed, embarrassed or confused. Where the first point of contact is a receptionist or member of staff dealing with other inquiries, the aim should be to refer the applicant to a homelessness officer as soon as possible (including those trained to deal with homelessness applications as part of their general duties).

4.12 Reception staff should always be alert to the possible wider needs of applicants in order to be able to provide a sensitive and appropriate initial response. Adoption of the Scottish National Standards for Information and Advice Providers provides a useful and relevant framework for assessing training needs against a set of agency and staff competencies. Supervision and support of staff will enable the development of best practice in handling applications.

4.13 See paragraph 3.5 of this Code for guidance on ensuring a joint partnership approach to training.

Explanation of procedures

4.14 At the initial interview, each applicant should receive a clear and simple explanation of the local authority's procedures for handling homelessness applications, including the various steps involved and likely timetables for each; and of the decisions a local authority can take on the application. Applicants should be

³¹ <https://www.gov.scot/publications/scottish-national-standard-s-information-advice-providers-quality-assurance-framework-2009/>

advised of what they should expect at each stage of the process including information on any rights they may have.

4.15 Staff should be mindful that they do not overwhelm applicants with too much information and it may be more appropriate to give explanations at different key stages in the interview. For some applicants who are particularly upset or distressed it may be appropriate to deal with the initial "crisis" commencing the application, taking basic details and arranging temporary accommodation but continue inquiries another day. However the applicant should be made aware of their options and rights before arranging temporary accommodation.

4.16 Explanations should be presented in a manner which is accessible to the applicant. There should be a written as well as a verbal explanation of the procedures and leaflets may be useful. These should be available in the main community languages.

Sequence of inquiries

4.17 The following sets out the sequence of inquiries at present.

4.18 The local authority has to have reason to believe that the applicant is homeless or threatened with homelessness and it shall make necessary inquiries to satisfy itself that this is the case. If so, the local authority will need to check whether the applicant is a person subject to immigration control, and if so whether he or she is eligible for assistance under the homelessness legislation (see new guidance from COSLA³².) The local authority may then, if it thinks fit, make inquiries as to whether the applicant became homeless or threatened with homelessness intentionally. The local authority may decide to inquire whether the applicant has a local connection with another local authority in Scotland, England, or Wales.

4.19 Local authorities should adopt targets for completion of each stage of the process and should monitor these. They should aim to:

- interview and carry out an initial assessment of an application on the day of application or on the first working day thereafter in the case of applications made out of office hours or in circumstances where the applicant is particularly distressed;
- complete their inquiries within 28 days, unless there are legitimate reasons for taking longer; and
- issue decisions within one working day of the completion of inquiries.

³² <http://www.migrationscotland.org.uk/migrants-rights-entitlements/introduction/1-1-how-use-guidance>

Progress of applications

4.20 Applicants should be given some indication of the likely length of time the application process will take, and should be kept well informed of the progress of their application, and what inquiries the local authority will make at each stage of the process. Staff should contact the applicant in person if possible throughout the process, or by other means agreed with the applicant, for example by letter, telephone or text message. Inquiries into applications should be careful, but not over elaborate. A long period of uncertainty is bad for the applicant, and may cost the local authority money as it has a duty to secure that accommodation is made available while completing its inquiries. Staff should indicate to the applicant when a final decision may be made in order to reduce uncertainty and to give the applicant time to make any arrangements that they may need to make.

Recording

4.21 Where an application is made this should be recorded through the electronic case-based HL1 returns to the Scottish Government's Homelessness Statistics branch. It should be noted that the final section of the HL1 (dealing with the rehousing outcome) should not be completed until the case has been closed: i.e. the local authority has discharged its duty in its entirety.

4.22 This recording system also enables local authorities to identify repeat applications - these may suggest a need to review current policies. Local authorities should also consider bespoke standard monitoring systems which allow them to ensure that appropriate policies and procedures are implemented, including, where appropriate, referrals to other bodies.

4.23 Authorities record information on the operation of Housing Options services in their area, and provide it to the Scottish Government via PREVENT 1. As noted in paragraph 9.27 of this Code, Housing Options is an information and advice process that councils use when someone approaches them with a housing problem. It aims to prevent homelessness wherever possible and since its introduction there has been a fall in homelessness applications. PREVENT 1 includes information on the number of approaches made, as well as details on the reasons for the approaches, the activities undertaken and the outcomes achieved.

4.24 The name of the officer who interviewed the applicant should be included in any record for ease of reference at a later date, as should the applicant's contact details and the best way of contacting him or her, by telephone or in writing. Recording systems should also allow for the recording of case notes and follow up notes so that applicants can have enquiries dealt with effectively even when their case officer is not available.

4.25 All housing advice that is provided to applicants should be noted as a matter of record. This is particularly important for applicants who are assessed as being intentionally homeless, where the type of advice and assistance they are entitled to is prescribed by legislation.

Sharing of information

4.26 Assessment interviews may involve asking applicants personal, and possibly distressing questions, and should therefore be conducted in private. Interviews must never be conducted where the interview might be overheard, and should be held in a private interview room or in an office not otherwise open to the public.

4.27 When collecting information as part of an assessment, local authorities should ensure that applicants know why the information is being collected and what it will be used for. Local authorities should obtain an applicant's written consent to information being shared with other agencies, and any implications likely to arise from this, and should ensure that they comply with the terms of data protection legislation. An applicant may have good reason for not wanting to share certain information with other parties, for example in cases of abuse, and their right to confidentiality should be respected.

4.28 In order to facilitate effective case management, local authorities should establish protocols and procedures for the sharing of information about people making homelessness applications between housing departments, social work, housing support providers and other relevant agencies. Such protocols should contain agreements as to the type of information to be shared and the stage at which this is to be done. They should also take account of the need to develop an information sharing regime which preserves client confidentiality and complies with the General Data Protection Regulation (GDPR), without erecting barriers to timely action to help homeless people.

4.29 In all cases information should only be shared where it is of direct relevance to the receiving agency - for instance it is good practice to share information about a new tenant with their landlord if this is relevant to sustaining the tenancy, or for housing management purposes, but not otherwise.

Support for applicants

4.30 All applicants should be advised that they can be accompanied during any interview relating to their application by a friend or advocate, who can speak for them if required. Applicants should always have the opportunity to explain their circumstances fully. Applicants should be informed that they can ask to see a homelessness officer of either sex, and this wish will be met wherever possible.

4.31 Consideration should also be given to interviewing applicants with young children and staff should do all they can to ensure that the interview is as comfortable as possible for parents and children. A play area or toys to keep children entertained while the applicant is being interviewed can help make the experience less stressful.

4.32 If an applicant becomes distressed during an interview, consideration should be given to continuing at a later time although this should not delay settlement of the applicant in temporary accommodation.

4.33 Arrangements must be in place to ensure support is available to those with literacy difficulties, whose first language is not English, or have other difficulties in expressing themselves. For example written documentation should be reinforced with a verbal explanation and the officer dealing with the case should check the applicant understands any advice being offered or any options proposed.

4.34 Local authorities should ensure that those applicants for whom English is not their first language have access to an interpreter - either one nominated by the local authority or by the applicant, or services like Language Line. Where applicants bring in a friend or relative to interpret they should always be given the option of using a trained interpreter. Even if an applicant prefers to use a friend to interpret, the case officer should consider using a trained interpreter if there are concerns that the applicant does not fully understand the advice they are being given.

4.35 People with hearing or speech difficulties, mental health problems or learning disabilities, may also need an intermediary or advocate. Appropriate provision for deaf applicants, e.g. provision of sign language interpreters, should be considered if necessary. Homelessness staff should also be alert to the need that some more vulnerable applicants may also require an assessment of their housing support or health needs while others may need to be referred for community care assessments.

4.36 It is important that assessments are carried out quickly to avoid the client forming a dependency on their temporary accommodation which may make subsequent moves more difficult to manage (see also paragraphs 8.5 - 8.37 of this Code on temporary and interim accommodation).

Cases involving abuse

4.37 Individuals who have experienced abuse may contact the local authority. In considering a homelessness application, staff should interpret abuse widely to include any form of violence, harassment, threatening conduct and any other behaviour giving rise or likely to give rise to physical or mental injury, fear, alarm or distress and not just domestic, racial or sexual abuse. Staff should be aware of the different types of abuse and responses they may require.

4.38 If the applicant reports abuse, the local authority should take reasonable steps to obtain information to support the applicant's case and consider all available evidence and information relating to the circumstances of each case. However, a local authority should never seek proof from an alleged perpetrator and if it proves impossible or inappropriate to obtain confirming evidence the applicant's expressed fears should be considered as sufficient evidence. For example, if the only way to obtain confirming evidence is by asking the alleged perpetrator then this should be deemed to be inappropriate.

4.39 In cases involving violence or threats of violence, or sexual or other abuse, the applicant may be in considerable distress. All local authorities should ensure an appropriately trained officer is available to applicants and wherever possible in such cases, a person of the same sex as the applicant should conduct the interview, if this is line with the applicant's wishes. There should be arrangements for assistance to be available, if required, from statutory or voluntary services.

4.40 Applicants should be advised of their rights to take action against the perpetrators of abuse, but it is for them to decide whether to use these rights in the light of their individual circumstances, bearing in mind that they may fear this will provoke further abuse. In cases of sexual abuse, particularly of children or young people, the person suffering abuse may be reluctant to mention this initially. Homelessness officers should therefore be alert to the possibility that there may be reasons, e.g. for leaving a family home abruptly, which the applicant is not divulging.

4.41 Homelessness officers are not equipped to inquire into allegations of assault or abuse. Joint protocols with social work should be considered as should joint training in child protection procedures. Staff should recognise that different forms of abuse may require very different responses - for example childhood sexual abuse requires different handling to external neighbour violence. See paragraph 3.5 of this Code for guidance on ensuring a joint partnership approach to training.

4.42 If the applicant alleges assault or sexual abuse of a child, the homelessness officer should advise him or her of the homelessness officer's responsibility to discuss this with the social work service, so that any necessary help and protection for the child and applicant can be arranged. Homelessness officers should ensure that they have telephone contact numbers and addresses of local services to which those who have experienced violence or sexual abuse can be referred, for example women's refuges, and other services specialising in violence or sexual abuse.

Links with community care assessments

4.43 All local authorities should have a mechanism for assessing housing support needs. Homelessness officers should be trained to look for triggers that would indicate that an applicant may benefit from some degree of housing support in the

short or longer term. Assessing and recording housing support needs and making arrangements for housing support services should be carried out by the homelessness officer, where possible, and be built into the housing advice/homeless application process.

4.44 Where applicants have more profound or complex needs that may benefit from community care services, from social work, health or other agencies, local authorities should ensure that a seamless referral process, that builds on information already gathered through previous assessments, is in place. Such needs may be particularly likely to come to light when assessing whether a person is vulnerable, or an assessment may be required before an applicant is assigned specialist housing, for example housing designed for ambulant disabled people. An assessment of community care needs can also prevent homelessness, particularly when a vulnerable individual is threatened with eviction.

4.45 Even if the local authority has no further duties under the homelessness legislation because the person is neither homeless nor threatened with homelessness, a referral for advice or assistance under other legislation, for example the Social Work (Scotland) Act 1968, Children (Scotland) Act 1995 or the NHS and Community Care Act 1990, may be appropriate. In addition Part 12 of the Children and Young People (Scotland) Act 2014 outlines duties to provide support for children and young people who are at risk of becoming accommodated by the local authority. Housing staff are an important point of contact for people with other community care, health or support services.

4.46 From April 2004, all people with community care needs seeking help from social work, health or housing services, and who may require the services of more than one professional discipline or agency, have been entitled to a Single Shared Assessment. According to the individual's needs, this may be a simple or comprehensive assessment with any specialist assessments that are required, and including assessment of the person's financial circumstances. The assessment is undertaken by the most appropriate person in social work, health or housing, the "lead assessor", who will be responsible for co-ordinating assessment contributions and care planning and applying the arrangements for accessing services. Single Shared Assessment should give access to a range of community care services without the need for agencies to duplicate assessments or for people to repeat their details to each service with which they have contact.

4.47 Homelessness officers, and other housing staff, will need to be familiar with the local arrangements for Single Shared Assessment and for referring to other services, and their expected role in this. Appropriately trained or experienced staff may be involved in undertaking simple assessments or contributing their specialist knowledge to comprehensive assessments, allocating resources, planning and facilitating housing support.

4.48 Social work services should be aware that people experiencing homelessness are often in urgent need of accommodation and may require a fast track assessment, and they should build this into the arrangements for Single Shared Assessment. This is particularly true of those experiencing rooflessness seeking entry to emergency accommodation with support. Housing and social work departments may delegate authority to decide on immediate admissions to voluntary and other bodies running emergency accommodation where the need is urgent.

False or misleading statements

4.49 The applicant is obliged by Section 40(2) of the Housing (Scotland) Act 1987 to notify the local authority as soon as possible of any change in the facts material to his or her application which occurs before he or she receives notification of the local authority's decision on his or her application (but not changes arising after the decision is notified). The local authority has a duty to explain to the applicant, in ordinary language, that he or she must report such changes in their circumstances, and that if this is not done the applicant would be guilty of an offence. The applicant will not be guilty if he or she can show that they had a reasonable excuse for not notifying a change, or that the necessary explanation was not given by the local authority (Section 40(3)).

4.50 The explanation given by the local authority under Section 40 should also cover information about the penalties for giving false or misleading statements. Such explanations should be handled sensitively so as not to intimidate applicants or imply dishonesty; and homelessness officers should ensure an applicant is clear what kind of changes should be reported to the local authority. An applicant cannot be expected to know every circumstance which would be relevant to his or her application.

4.51 Under Section 40(1) of the Act, a person is guilty of an offence if he knowingly or recklessly makes a statement which is false, or knowingly withholds information which the local authority has reasonably required him to give it, with the intention of inducing the local authority to believe that he or another person is:

- homeless or threatened with homelessness or;
- not homeless, nor threatened with homelessness, intentionally.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding Level 5 on the standard scale (currently £5,000) (Section 40(4)).

CHAPTER 5

INQUIRIES INTO HOMELESSNESS



CHAPTER 5 - INQUIRIES INTO HOMELESSNESS

5.1 **Summary** - this chapter gives guidance on the inquiries a local authority should make into homelessness. It includes guidance on issues of definition such as what is meant by "homelessness" and the broad definition of "family" under the legislation, what is meant by normally or reasonably residing with an applicant, and when it is not reasonable for an applicant to continue to occupy a house.

5.2 Local authorities should bear in mind throughout their inquiries that they should take action where appropriate to prevent homelessness occurring and to meet the broader needs of the applicant.

5.3 Someone is homeless under Section 24 of the 1987 Act if he or she has no accommodation in the United Kingdom or elsewhere which he or she (together with any person who normally resides with the applicant as a family member, or in circumstances in which the local authority considers it reasonable for that person to reside with the applicant) is entitled or permitted to occupy in one of the following ways:

- is entitled to occupy by virtue of an interest in it (for example as an owner or tenant) or by virtue of a court order;
- has a right or permission, or an implied right or permission, to occupy (for example as a lodger or an employee with a service occupancy); or
- currently occupies as a residence by virtue of some protection given by law. The person may have a positive right to occupy the accommodation, or may be protected only by a restriction on another person's right to repossess the accommodation.

5.4 When investigating whether accommodation is available outside the UK for the applicant, local authorities should be sensitive in the manner in which they approach the applicant. Staff should be aware of potential cultural sensitivities or language barriers during such investigations. Given the difficulty in ascertaining whether accommodation outside the UK is available, if evidence is not readily available, it should be assumed that the applicant does not have access to accommodation elsewhere. If the authority considers that there is accommodation available for the applicant then that accommodation is subject to the same tests as accommodation in the UK: it must be reasonable to occupy.

Family membership

5.5 Local authorities should be aware of the complex family structures that exist for example stepfamilies, foster relationships, and other established relationships.

5.6 Under Section 83 of the 1987 Act, as amended, someone is a member of another person's family if:

- a) they are the spouse of that person or they and that person live together as spouses;
- b) they are that person's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.

For the purpose of (b)

- a relationship by marriage shall be treated as a relationship by blood;
- a relationship of the half-blood shall be treated as a relationship of the whole blood;
- the stepchild of a person shall be treated as their child;
- a person brought up or treated by another person as if the person were the child of the other person shall be treated as that person's child; and
- a child shall be treated as such whether or not their parents are married.

Residing with applicant

5.7 People other than family members who might be regarded as reasonably residing with the applicant might include dependent foster children living with their foster carers; formal or informal carers including people residing with the family to help care for dependent children, or other companions. Households which are split up for no other reason than that they have nowhere to live together should be regarded as one household.

5.8 Following a relationship breakdown, particular care should be taken in assessing with whom a child should be treated as living. In reaching its decision, a local authority should take account of any residence and contact orders (if any) made by the courts. However, it should be noted that the "no order" principle in the Children (Scotland) Act 1995 states that children should not be subjected to legal proceedings when voluntary living arrangements suffice. An authority should not insist, therefore, that an applicant seeks a formal court order as evidence of the arrangements which may have been agreed informally.

5.9 Orders or other voluntary arrangements may provide for alternating residence with each parent, in which case the period spent with each parent or guardian is relevant. Sometimes children who would normally reside with an applicant are being

looked after by a local authority for reasons, for example abuse by a parent, which would make it unreasonable for them to stay with the applicant.

When is it not reasonable for an applicant to continue to occupy a house?

5.10 Sections 24(2A) and (2B) of the 1987 Act provide that a person is to be treated as homeless even if he or she has accommodation, if it would not be reasonable for the person to continue to occupy it. What is "reasonable" is a matter for judgement and will depend in some cases on the personal circumstances of the applicant - for example what might be reasonable for adults may not be for a household containing children, and mainstream housing may not be suitable for someone with physical impairments. This last point may apply even more to caravans and mobile homes.

5.11 Under Section 24(2B) a local authority may have regard to the general circumstances prevailing in relation to housing in the local authority's area, in determining whether it is reasonable for a person to continue to occupy accommodation. Different tests of "reasonableness" should not be applied to different categories of applicant, applications from private tenants should be dealt with on the same basis as those from tenants of local authorities or RSLs.

5.12 Examples of how the 'unreasonable to occupy' test might be applied are given below.

- The **accommodation is below the tolerable standard**, as defined in Section 86 of the 1987 Act. However, the fact that accommodation fails to meet the tolerable standard does not necessarily mean that a person cannot reasonably occupy it. Whether it is reasonable for a person to occupy accommodation below the tolerable standard will depend on the reason, or reasons, for failure to meet the tolerable standard and subsequent actions of the local authority (the local authority has a duty to close, demolish or improve the property under section 85 of the Act). It will further depend on the severity and expected duration of the problem, or the degree to which the particular individual or family concerned suffers serious inconvenience or a threat to health. Information about the severity of the problem may be available from environmental health officers.
- The applicant is living in **bed and breakfast accommodation**, which is not overcrowded within the meaning of Part VII of the 1987 Act. Bed and breakfast accommodation should be used only as a last resort in the absence of other options, particularly for households with vulnerable people. In fulfilment of their duties under Section 29 of the 1987 Act, local authorities cannot place households with children and pregnant women into unsuitable accommodation unless exceptional circumstances apply, where both unsuitable accommodation and exceptional circumstances are defined in the relevant legislation (the

Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014). See paragraphs 8.7- 8.26 of this Code for more information.

- The applicant is living in a **hostel or other accommodation** such as a women's refuge, which is not intended to provide long-stay accommodation. Often there will be a fixed limit to the time a person can stay. The same general point applies to caravans and mobile homes without a permanent or long-term site.

There is **external violence, including racial or other harassment** (not necessarily from someone who resides or has resided in the house). Local authorities should respond sympathetically to applications from people who are in fear of external violence. The absence of previous violence does not prove that these fears are unjustified (see Chapter 4, Handling Applications). Even if an applicant has obtained an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 guaranteeing his or her occupancy rights, or an interdict against abuse by a former partner, this may not always be sufficient to make it reasonable to expect him or her to continue to occupy the house.

- Continued occupation of the accommodation poses a **substantial risk to a person's health**, which could include their mental health.
- The accommodation is impracticable for a particular applicant because of his or her **physical infirmities or disabilities**.

5.13 It must be emphasised that these are examples. It is not possible to give a comprehensive list, and sympathetic judgement must always be exercised.

Who else is homeless under the Act?

5.14 Section 24(3) of the 1987 Act defines as homeless someone who has accommodation but cannot use it for one of the reasons listed below.

- **They cannot secure entry to it (Section 24(3)(a))**. This includes those who have a legal entitlement to accommodation to which they are unable to secure entry - such as unlawfully evicted tenants or occupiers who for some practical reason cannot immediately be restored to occupation of their homes.
- **An attempt to continue living in the accommodation would be likely to be met with violence or threats of violence** likely to be carried out from someone else living in it, or from someone who previously lived with the applicant, whether in their present accommodation or somewhere else (sections 24(3)(b) and (bb)).
- **They have a mobile home, caravan, houseboat or other moveable structure but have no place where they are entitled or permitted both to put it or moor it and to live in it, (Section 24(3)(c))**. For example; temporary mooring for

holiday use would not be sufficient. Naturally, a person would be homeless if evicted from the mobile accommodation itself.

This provision has particular relevance to Gypsy/Travellers, who should be considered for housing under the homelessness legislation, if they wish it, on the same basis as anyone else. However, while some Gypsy/Travellers want to settle in houses, conventional housing will not meet the needs of those who want to live in a caravan in order to maintain their traditional way of life. Gypsy/Travellers who move into a house for lack of any alternative may find it difficult to settle, and for them the most satisfactory solution may be a place on a local authority site for Gypsy/Travellers. Where a pitch is not available on a local authority site, the local authority may wish to consult private interests to see if a site can be found. Chapter 10 of the 'Local Housing Strategy: Guidance 2019' provides information for local authorities on the needs of Gypsy/Travellers³³.

- **The accommodation is both overcrowded within the meaning of Section 135 of the Act and may endanger health, (Section 24(3)(d)).** Both overcrowding and a danger to health must be present. Overcrowding standards are set out in sections 136 and 137 of the Act: if either of the standards (the room standard or the space standard, respectively) is contravened, there is overcrowding.

Homelessness officers should be familiar with the overcrowding legislation and able to apply it. A strict application of these standards may require an inspection of the accommodation, and perhaps measurement of the size of the rooms. In practice, and certainly always if there are reasons to suppose the application is urgent, the local authority should consider taking any interim action that is necessary, such as the provision of temporary accommodation. There are no legislative standards for danger to health, and the local authority should consider such factors as the effect of dampness or condensation on respiratory disease suffered by occupants. It should also include the possibility of danger to mental health. Even if there is no statutory overcrowding, local authorities must consider whether it is unreasonable to occupy the accommodation. Further information on overcrowding can be found in Section 5.2 of the "Social Housing Allocations in Scotland - a practice guide."³⁴

- **It is not permanent accommodation, in circumstances where, immediately before the commencement of their occupation of it, a local authority had a duty under Section 31(2) in relation to them.**

This ensures that people who are owed a duty under Section 31(2) are to be treated as being homeless if they are provided with accommodation which is not

³³ <https://www.gov.scot/publications/local-housing-strategy-guidance-2019/pages/11/>

³⁴ <https://www.gov.scot/publications/social-housing-allocations-scotland-practice-guide/pages/6/>

permanent accommodation. This means that a local authority's duty under Section 31(2) continues until permanent accommodation is secured. Permanent accommodation is defined in broad terms to acknowledge a range of situations which could reasonably be considered to be permanent accommodation and, therefore, end the local authority's duty under Section 31(2). See paragraphs 8.38 - 8.39 of this Code for more detail on the definition of permanent accommodation.

Is the applicant threatened with homelessness?

5.15 A person is defined in the 1987 Act as being threatened with homelessness if they are likely to become homeless (as defined above) within two months. Local authorities should bear in mind that the earlier that action is taken, the greater the likelihood that measures to avert homelessness will be effective. Local authorities should therefore not wait until homelessness has actually occurred before providing assistance.

CHAPTER 6

INQUIRIES INTO INTENTIONALITY



CHAPTER 6 - INQUIRIES INTO INTENTIONALITY

6.1 **Summary** - this chapter sets out guidance on how a local authority may inquire into intentionality, and provides guidance on different criteria for deciding intentionality.

6.2 The commencement of Section 4 of the Homelessness etc. (Scotland) Act 2003 (on 7 November 2019), following a recommendation from the Homelessness and Rough Sleeping Action Group (HARSAG), provides for changes to the intentionality regime under the Housing (Scotland) Act 1987. These are:

- change from a duty for local authorities to investigate intentionality to a power for local authorities, if they think fit, to investigate; and
- a consequential change so 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.

6.3 While most applicants are unintentionally homeless, local authorities have the discretionary power to consider, if they think fit, the intentionality criteria to distinguish between the case of a person who has become homeless through no fault of their own, and the case of a person, who through deliberate action or inaction, has contributed to their homelessness. This enables local authorities to take a person-centred approach and apply discretion on a case by case basis for each applicant(s), based on the merits of their individual application. Whether or not someone is found to be intentionally homeless the local authority should seek to find solutions to the person's homelessness and offer support to address any difficulties that they face.

6.4 Where an applicant has been found to be homeless, or threatened with homelessness, the local authority may choose, if they think fit, to then assess whether the applicant became homeless or threatened with homelessness intentionally. Intentionality depends on the applicant having acted, or failed to act, deliberately, and being aware of all the relevant facts. A person is not intentionally homeless if it would not have been reasonable for them to continue to occupy their previous accommodation (see Chapter 5 of this Code).

6.5 Local authorities should have regard to all the circumstances of an applicant before considering whether to investigate for or reaching a decision on intentionality, and each case should be decided on its merits. Even if the local authority is satisfied that the homelessness was intentional, the applicant is still entitled to receive temporary accommodation, and advice and assistance from the local authority (see Chapter 9 of this Code). The local authority may also have continuing duties to children and young people under the terms of the Children (Scotland) Act 1995.

6.6 The circumstances in which a person may be regarded as having become intentionally homeless or threatened with homelessness are set out in Section 26 of the 1987 Act. There are three requirements - all of which must be satisfied.

- **the applicant, if homeless, must deliberately have done, or failed to do, something in consequence of which they have ceased to occupy accommodation which was at the time available to them.** To be intentionally threatened with homelessness, an applicant must deliberately have done or failed to do something the likely result of which was that they will be compelled to leave accommodation (Section 26(2)).
- **it must have been reasonable for the applicant to have continued to occupy the accommodation.** The local authority may have regard to the general circumstances prevailing in relation to its area in applying this test (Section 26 (4)).
- **the applicant must have been aware of all the relevant facts before taking or failing to take the deliberate actions referred to above.** An act or omission in good faith on the part of a person unaware of any relevant fact is not to be regarded as deliberate.

6.7 Homelessness officers must consider all the circumstances of an applicant before coming to a decision on intentionality. They should not simply apply standard criteria.

6.8 It is for the local authority to satisfy itself whether an applicant became homeless or threatened with homelessness intentionally. There is no onus on the applicant to satisfy the local authority that they did not become homeless intentionally.

Criteria for determining intentionality

6.9 The following points are relevant in determining whether an act or omission was deliberate.

- **An applicant must have deliberately done or failed to do something which resulted in homelessness or threatened homelessness.** They would not be intentionally homeless if they had not agreed to the action or omission leading to homelessness. For example, if an applicant's partner has failed to pay rent, or defaulted on loan or mortgage repayments, or given up a tenancy, without the knowledge of the applicant, the applicant cannot be held to be intentionally homeless. Similarly, the applicant would not normally be intentionally homeless if they were aware of their partner's actions, but took reasonable steps to prevent it. Legally, any responsibility to find a home for the applicant remains even if the partner whose acts or omissions were responsible for the homelessness in the

first place remains in the household, and so will benefit from the local authority's discharge of that responsibility.

- **The person concerned should have acted or failed to act in a way which that person knew could result in homelessness.** So, for example, a person with mental health issues, or someone with learning disabilities, may well have been unlikely to have acted deliberately, and so should not be treated as intentionally homeless. Similarly, where a person has been evicted for anti-social behaviour local authorities should take account of contributory factors including the effects of any mental health issues or learning disability (see paragraphs 2.67 onwards in Chapter 2 for more guidance on anti-social behaviour and homelessness). Even if the applicant seems to be homeless only because of their financial (or other) imprudence or lack of foresight, it should not be automatically decided that the homelessness was intentional.

6.10 Other factors relating to an applicant that an authority may wish to take into account are youth; inexperience; education; or health (including whether or not there is a history of substance abuse).

6.11 This list of relevant factors is not intended to be exhaustive, and local authorities must consider all the circumstances of each case, not just single factors.

Leaving temporary accommodation

6.12 In general, a person who has to leave temporary accommodation because their right to live there has expired, should not be regarded as being intentionally homeless. However, if a person gave up permanent accommodation, the circumstances which led the person to leave the permanent accommodation will determine whether homelessness was intentional. For instance, a person who gave up permanent accommodation for an extended holiday with the expectation of subsequently applying as homeless might be regarded as intentionally homeless; while someone who moved to obtain employment in the belief that permanent accommodation would be available, but who was made redundant, might not.

6.13 A person experiencing homelessness who leaves temporary accommodation provided pending discharge of a permanent accommodation duty should not be considered to have become intentionally homeless. Under Section 32A(2) of the 1987 Act a person may not be found intentionally homeless from interim accommodation.

Financial difficulties

6.14 A person who chooses to sell their home, or who has lost it because of wilful and persistent refusal to pay rent; or who has shown such disregard of advice as to

amount to neglect of their affairs; may well be regarded as having become homeless intentionally. If, however, a person's house was sold because they could not keep up the loan repayments, or they got into rent arrears because of real personal or financial difficulties (for example, if they have become unemployed, or are working part time, or have reduced income following death of a partner or relationship breakdown), their acts or omissions should not be regarded as having been deliberate. A person should not be regarded as intentionally homeless if they were unable to obtain accommodation because of the loss of a rent deposit which was not due to a deliberate act or omission on their part, nor should a lost deposit be regarded as rent arrears.

6.15 There is no absolute test of whether someone is in real financial difficulties - as distinct from the reasons for such difficulties. However, areas that should be considered include whether, if they continued to pay the housing costs, the amount of disposable income left would be equal to or less than the amount which someone reliant entirely on benefit would be entitled to receive in income support.

6.16 Account would need to be taken in applying this test of other necessary costs incurred by the applicant, for example care costs, and benefit or other income available to meet them. (It would also be relevant if the rent paid was excessive.) Second mortgage costs related to legitimate housing costs should be taken into account as should the fact that housing debt is likely to be only one part of a multiple debt problem and other creditors may also have a claim on someone's income.

6.17 No distinction should be made between public and private sector tenants, or between the local authority's own tenants and other public sector tenants. Regardless of whether the applicant is intentionally homeless, if they have become homeless because of financial problems, it is good practice to consider whether the applicant could benefit from debt counselling or other advice.

Rent arrears

6.18 It should not be assumed automatically that an applicant is intentionally homeless where they have lost their accommodation because of rent or mortgage arrears. Reasons should be fully explored and decisions made as to whether arrears resulted from deliberate acts or omissions.

Young people

6.19 Tenancies that are not sustained are a common occurrence for young people when they first leave home, especially if they have not had much in the way of support to sustain a tenancy. Local authorities should consider the position sensitively and only make a finding of intentionality where there is compelling evidence that the applicant deliberately refused to accept advice or engage with

agencies who could provide support and were aware of the consequences of their actions.

6.20 A young person who has a clash of lifestyle with their parents should not automatically be considered intentionally homeless and equal weight should be given to both the young person's views and the views of the parents.

Tied accommodation

6.21 A person who becomes homeless or threatened with homelessness as a result of losing tied accommodation including loss of accommodation on retirement, should not normally be considered as intentionally homeless. Neither should a local authority expect a person to continue in employment, if it would be unreasonable for them to remain in the job simply in order to keep the accommodation, or if the circumstances would have given them grounds for claiming constructive dismissal.

6.22 Local authorities should encourage tied tenants who know that they will have to leave a tied tenancy some time in advance, for example on retirement, to seek advice from the local authority or other sources on the housing options open to them, to minimise the chances of their becoming homeless when the tenancy ends.

Special cases

6.23 Someone who has left home because of domestic abuse should never be regarded as having become homeless intentionally. Similar rules should be applied to those who leave because of external violence or threats, for example racial attacks or anti-social neighbours.

6.24 An applicant who has not exercised their occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, and the Civil Partnership Act 2004, should not be regarded as intentionally homeless for that reason, regardless of why those rights were not exercised. In relevant cases, advice should be made available to applicants on what their rights are under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and the Civil Partnership Act 2004, and how they can enforce these rights if they wish.

Period for which intentionality lasts

6.25 If a local authority decides that a person became homeless intentionally, the person should not be considered to be intentionally homeless for all time; nor should a fixed period of disqualification be applied.

6.26 If a further application is made then that application should be considered on its merits. If there is reason to believe that there has been a change of circumstance, for

example if through support the behaviour of a person evicted for anti-social behaviour has improved, or if some genuine efforts are being made to reduce rent arrears, then there may well be sufficient grounds to merit a review of the earlier decision, taking into account the altered circumstances. Applicants should be given a clear indication of what change of circumstances would allow them to apply again or have their case reconsidered.

Monitoring and Review

6.27 The Scottish Government will monitor the impact of the new discretionary power to investigate intentionality, provided for in Section 4 of the Homelessness etc. (Scotland) Act 2003, using the current homelessness applications data which is published twice a year (in January and June). We will also commence a review of local authorities' implementation of the new discretionary approach after 12 months and will report on the outcome by July 2021.

Future changes under consideration

6.28 HARSAG also recommended narrowing the definition of intentionality to focus on instances of 'deliberate manipulation' of the homelessness system where the applicant actually foresees that their actions would lead to them becoming homeless. The Scottish Government will work with our lawyers and stakeholders in 2020 to explore the most effective way of changing this focus and to develop options. We will update the Code of Guidance to reflect any future changes.

CHAPTER 7

INQUIRIES INTO LOCAL CONNECTION



CHAPTER 7 – INQUIRIES INTO LOCAL CONNECTION

7.1 **Summary** - this chapter defines "local connection" and sets out local authorities' powers with respect to applicants who are deemed not to have a local connection.

7.2 In looking to provide sustainable housing solutions for applicants it will generally be best for an application to be dealt with by the local authority to which it is made. Most homeless people apply to their local authority for assistance and those who apply elsewhere generally have a good reason for doing so. This chapter sets out guidance on the operation of the local connection provision in the 1987 Act.

Local authorities' powers concerning local connection

7.3 A local authority has a power, but not a duty, to refer an applicant to another local authority in Scotland, England and Wales if it thinks the applicant does not have a local connection with it and does have a local connection with another authority. In exercising its discretion a local authority should take particular care to operate in a non-discriminatory way.

7.4 Only applicants who are assessed as being unintentionally homeless may be referred to another authority (Section 33(1) of the 1987 Act).

7.5 The local authority which first receives the application must carry out the inquiries into homelessness and intentionality; and it will generally be necessary to pursue questions about local connection only if there is reason to suppose they will be relevant.

7.6 If the applicant, or any person who might reasonably be expected to reside with the applicant, has a local connection with the area of the local authority to which the application is made, then the duty to secure permanent accommodation will remain with that local authority. Even if a case is referred to another authority on local connection grounds, an applicant may be able to reapply to the original local authority if circumstances change, for example if he or she finds permanent employment in that local authority's area. A local authority which accepts a referral will be responsible for any further decisions or inquiries relating to that application. However the homelessness decision of the notifying authority cannot be revised by the authority accepting the referral.

7.7 If the applicant has no previous local connection anywhere in Scotland, England or Wales, the responsibility for dealing with the application rests with the local authority he or she applied to.

7.8 When an applicant does not have a local connection with the authority applied to, but does have a local connection with more than one other local authority, the local

authority receiving the application should weigh up all the relevant factors in deciding which other local authority to refer the application to. Relevant factors should include the views of the applicant.

7.9 Where a local authority refers an application to another local authority on the basis of local connection the notifying authority is obliged, under Section 34, to secure that accommodation is available for the applicant's occupation until the outcome of the referral is decided. Local authorities should bear in mind the possibility that transitional arrangements may be required when this duty expires (where the conditions for referral are satisfied but the notified authority has not yet provided accommodation or where the conditions are not accepted and the notifying authority does not have permanent accommodation available).

Domestic abuse

7.10 An applicant cannot be referred to another local authority if there is a risk of domestic abuse, to either the applicant or anyone who might reasonably be expected to reside with them (Section 33(2)(c)) in that other local authority's area. The definition in the Protection from Abuse (Scotland) Act 2001 applies. This sets out that "abuse" includes violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress. A person is at risk of abuse if that person runs the risk of abuse from someone with whom they would otherwise reasonably be expected to reside, or with whom they formerly resided (see paragraph 4.37 onwards.)

Definition of local connection

7.11 Local connection is defined in Section 27(1) of the 1987 Act as a connection which a person has with an area:

- **because he or she is or was in the past normally resident in it, and this residence was of his or her own choice; or**
- **because he or she is employed in it; or**

7.12 Normal residence might be taken as residence for at least 6 months during the previous 12 months, or not less than 3 years during the previous 5 years. Periods of temporary residence of the applicant's own choice should be taken into account in this calculation.

7.13 If an applicant is a former asylum seeker and has been housed previously in Asylum Accommodation and Support Services Contract (AASC)³⁵ accommodation, the applicant has not formed a local connection with the relevant Local Authority in

³⁵ Formerly COMPASS contract

which the accommodation is situated (Section 7 of the 2003 Act). This is because the applicant had no element of choice as to where the accommodation was provided. (A former asylum seeker may be subsequently eligible for assistance under the homelessness legislation if they have been granted leave to remain - see new guidance from COSLA³⁶.)

- **because of family associations; or**

7.14 Family associations normally arise when an applicant or other member of the household has family members who have been resident in an area for at least 5 years. However, the residence of children in another local authority should not be taken into account where there are reasons, such as previous abuse for example, for not placing children with one or both of their parents, in which case their position may have to be considered separately. Applicants should not be referred to another local authority because of family associations if they object.

- **because of any special circumstances**

7.15 Special circumstances might include, for example, the need for continuing provision of education or health treatment for a household member in a particular local authority area; or where there is no current local connection with any area, that the applicant was brought up in an area or had lived there for a considerable time in the past. The latter consideration may be particularly relevant to persons who have lived abroad for some time. For those who have been serving in the armed forces, changes to the 1987 Act were introduced (through the 2010 Act) which enable members of the armed forces to establish a local connection through residence or employment in the same way as a civilian.

7.16 There is no bar to a local authority making arrangements for another local authority to take responsibility for an applicant household, if this accords with the wishes of the applicant. If an applicant who is threatened with homelessness has a local connection elsewhere, the local authority to which the application is made should alert the other local authority at an early stage, and seek an agreement in principle that the responsibility for rehousing the applicant, if required, should fall to that other local authority.

7.17 Alternatively a local authority may wish in some circumstances to consider an out-placement in another authority (see paragraphs 8.80 – 8.83 of this Code).

Special cases

7.18 Local authorities should take account of changes in employment patterns, for example the greater use of fixed term contracts and part-time working. While casual

³⁶ <http://www.migrationscotland.org.uk/migrants-rights-entitlements/introduction/1-1-how-use-guidance>

employment may or may not be regarded as establishing local connection, depending on the individual circumstances, temporary employment for a substantial period should be considered. Part-time employment should be considered on the same basis as full-time employment, and brief breaks in employment in an area, for example between temporary contracts, might be ignored. Where a person works in more than one centre, regard should be had to the location of their principal place of work, or to their main base for travelling workers.

7.19 Local authorities should also take into account any known risk of external violence to the applicant when deciding whether to refer an application to another local authority.

Arrangements in case of a dispute

7.20 Scottish Ministers have power to make a statutory instrument setting out arrangements to establish if local connection exists where the two local authorities cannot agree. These arrangements may either be those agreed directly between the two local authorities or under procedures set out in agreements between local authority associations in Scotland, England and Wales. The current provisions are in the Homelessness (Decisions on Referrals) Order 1998 (SI 1998/1578) and the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 (SI 1999/71) for applications to English and Welsh local authorities; and by the Homelessness (Decisions on Referrals) (Scotland) Order 1998 (SI 1998/1603) for applications to Scottish local authorities.

7.21 Where the two local authorities cannot agree on whether a local connection exists, the question shall be decided by a person appointed by the two authorities. However if no such person has been appointed within 21 days of the notification that the opinion of the notifying authority that there is a local connection the President of the local authority association (or the President's nominee), will appoint a person from a standing panel to make a final and binding decision on disputes between the local authorities. For cross border disputes, the person deciding the dispute is drawn from a panel appointed jointly by COSLA and the other local authority associations. There is also an agreement between the local authority associations on referral procedures.

Future changes

7.22 Powers in Section 8 of the 2003 Act for Scottish Ministers to modify the use of local connection were commenced on 7 November 2019. This allows Scottish Ministers by order made by statutory instrument to modify the operation of Section 33 of the 1987 Act, which allows local connection referral of a homeless applicant to another local authority in certain circumstances. The intention of making a modification is to allow people making homelessness applications as much choice as

possible, including in respect of the Council to which they apply. However, nothing will change for local authorities in the short-term. The law sets out a process that Scottish Ministers must consult widely on, and then publish, a statement by November 2020 which will set out the circumstances in which the power to modify local connection is to be exercised, as well as the criteria to be considered before using the power. Following the Ministerial Statement, the statutory instrument to introduce any changes would be brought to the Scottish Parliament. Any statutory instrument prepared by Scottish Ministers would restrict the modification of local connection to arrangements between Scottish local authorities only. **Further guidance will be issued at the point at which any changes to the use of local connection are to be brought into force.**

CHAPTER 8

ACCOMMODATION



CHAPTER 8 - ACCOMMODATION

8.1 **Summary** - this chapter sets out a local authority's accommodation duties towards applicants who are homeless or threatened with homelessness, and guidance on how the duties are fulfilled. It includes guidance on the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014.

8.2 When securing accommodation for applicants the priority for local authorities must be to minimise the risk of homelessness recurring. This is not only in the interests of the applicant, who should be able to establish, or re-establish, a settled way of life, but also in the interests of local authorities, as repeated applications give rise to additional administrative costs.

8.3 Accordingly, when making accommodation available, local authorities should always seek to secure long-term solutions to homelessness. This should include consideration of the wide range of factors which may impact on resettlement - in particular the household's requirements in terms of proximity to family and friends and the accessibility of healthcare, employment, education and training and support providers.

Local Authority Accommodation Duties

8.4 Local authorities have a range of accommodation duties under the homelessness legislation and these are described below in paragraphs 8.5 to 8.43. All references are to the 1987 Act unless otherwise stated.

Interim Duty To Accommodate (Section 29 of the 1987 Act, as amended by Section 9 of the 2003 Act)

8.5 If an authority has reason to believe an applicant is homeless it has an interim duty to secure accommodation until it has reached a final decision on their application. This duty continues during the process of review if one is requested.

8.6 Where the authority's decision is that it has a duty to provide accommodation under Section 31, the interim duty continues until the Section 31 duty is discharged. Ministers have the power to specify by statutory instrument accommodation which cannot be used to fulfil this interim duty - this power was used to make the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014, which revoked the 2004 Order of the same name.

The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014

8.7 Many local authorities, have been reducing the use of B&B accommodation for homeless families with children. The Homelessness etc. (Scotland) Act 2003

contained a provision which allowed Scottish Ministers to create regulations which would limit the use of B&B across Scotland, establishing consistency in this area of homelessness practice.

8.8 The Scottish Government has made the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 on standards which temporary accommodation for households with children and pregnant women must meet. The purpose of this Order is to put an end to the routine use of B&Bs and other unsuitable accommodation for these households.

8.9 Under this Order, local authorities cannot put households with children and pregnant women into "unsuitable" temporary accommodation unless exceptional circumstances apply. Exceptional circumstances are intended to give flexibility to councils when meeting their new duty, as well as giving families the ability to exercise choice in whether to stay in unsuitable accommodation beyond 14 days. An amendment to the 2014 Order via The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017 reduced the maximum time spent in unsuitable accommodation from 14 days to 7 days for the same group.

8.10 The Order is made under Section 29 of the 1987 Act, as amended, which gives local authorities the duty to provide accommodation to people who apply for homelessness assistance whilst their applications are being assessed, until it has reached a final decision on their application. This duty continues during the process of review if one is requested.

8.11 Note that these regulations do not just cover B&Bs, but go wider to cover any temporary accommodation used by local authorities in fulfilling this duty.

8.12 The regulations set out what is meant by unsuitable accommodation and then specify the circumstances in which the definition does not apply. In all other circumstances, unsuitable accommodation cannot be used. Some exceptional circumstances have an associated time limit of 7 days, others do not.

8.13 In the Order, in all circumstances, accommodation is unsuitable if it does not meet **basic standards**. The accommodation is always unsuitable if it is:

- **not wind and watertight**; or
- **not suitable for occupation by children**. The primary purpose of this is to ensure that the local authority is satisfied that overall, the accommodation does not pose significant risk to the safety of children. Local authorities will need to use their judgment in deciding the possible risk posed by any sort of accommodation, ideally after carrying out a risk assessment both of the

accommodation and also of the people associated with the accommodation - residents and workers.

8.14 Subject to the exemptions set out below, accommodation will also be unsuitable if it does not meet the following physical and location standards. The accommodation is unsuitable if it:

- **is outwith the local authority's area.** This is to prevent households with children being placed out of area and into accommodation where other clients may pose a risk to children, which the local authority may not be aware of. It also helps to preserve access to support services offered by the local authority;
- **is not in the locality of facilities and services for the purposes of health and education which are being used, or might reasonably be expected to be used, by members of the household, unless those facilities are reasonably accessible from the accommodation, taking into account the distance of travel by public transport or transport provided by a local authority** (Some authorities provide travel expenses to families to help children access schools that may otherwise be out of reach because they are living in B&B accommodation;)

The purpose of this is to allow households to access the same types of services that they have used in the past or can be expected to use in the near future. This is because many households who become homeless and are moved to temporary accommodation lose access to schools, and health provision. Whilst it is ideal for households to continue to be able to access the same facilities that they've accessed in the past - it is recognised that this is not always possible. So it is acceptable under this standard to ensure that similar facilities are accessible. LAs should also ensure that the facilities which are being counted as being accessible must be genuinely accessible to the household. It is no good ensuring that a household is near a GP if that particular GP will not allow the household onto their list;

- **lacks adequate bedrooms and adequate toilet and personal washing facilities within the accommodation for the exclusive use of the household.** LAs should use their own HMO standards when considering if accommodation meets this standard;
- **does not have use of adequate cooking facilities** - as above facilities should meet HMO standards. Note that cooking facilities can be shared with other households in the accommodation - subject to what HMO standards define;
- **does not have use of a living room** (the purpose of this is to allow any children space to play and do homework) - again, as with the cooking facilities, this does not have to be for the exclusive use of the household;

- **is not usable by the household for 24 hours a day.** The purpose of this is to prevent households being locked out of the accommodation for part of the day, as can be common practice in some sorts of temporary accommodation.

8.15 If the accommodation does not meet any of these standards then it is unsuitable accommodation in terms of the Order.

8.16 The Order provides exemptions in which accommodation does not meet the physical and location standards may be used. **Note that the basic standard must always be met.** Local authorities may use unsuitable accommodation which do not meet the physical and location standard if one or more of the following exceptions applies:

8.17 Exception 6(a). **Where a local authority has reason to believe that an applicant may be homeless or threatened with homelessness as a result of an emergency such as a flood, fire or other disaster.** The use of unsuitable accommodation is not subject to a time limit in this case.

8.18 Exception 6(b). **Where the local authority makes available accommodation which meets all the standards and the applicant expresses a wish to be placed in unsuitable accommodation.** This is not subject to a time limit. The purpose of this is to allow for the fact that some applicants may choose to stay in unsuitable accommodation if it offers other advantages, for example proximity to family or employment. In this circumstance the applicant must have been offered suitable accommodation by the local authority - there must have been a genuine choice made available to the applicant. In addition, this must be an informed and uncoerced decision by the applicant, it must be subject to regular review, and the applicant must have had access to independent housing advice before making the decision. Note that the standards set out in Annex A must still be met.

8.19 Councils should ensure that the family has sufficient time to consider whether or not they wish to stay in the unsuitable accommodation. For example, contacting the family within two days of the 7 day deadline for them to leave, and asking whether or not they want to stay or not, will not give enough time for the family to consider the offer of suitable accommodation, and obtain independent advice to inform their decision. Best practice would suggest that on the point of entry to the unsuitable accommodation, the family's options are explained to them, and they can spend the 7 days accessing housing advice and considering those options.

8.20 Exception 6(c). **Where the accommodation is used wholly or mainly to provide temporary accommodation to persons who have left their homes as a result of domestic abuse and is managed by an organisation which is not a public authority or a local authority; and does not trade for profit.** The purpose

of this is to allow accommodation such as women's refuges which may not meet all the standards but which nevertheless offer other advantages to the household.

8.21 Exception 6(d). **Where the accommodation is owned by a local authority and services relating to health, child care or family welfare are provided to persons accommodated there.** The purpose of this is to allow local authorities to continue to use accommodation which may not meet all the standards but which nevertheless offers other advantages to the household. Some LA-owned accommodation has associated services and many LAs consider it preferable for households to stay in such accommodation if they have issues which can be addressed through these support services.

8.22 Exception 7(1)(a). **Where the applicant applies to the local authority for assistance outwith normal business hours.** In this circumstance unsuitable accommodation can only be used for 7 days. The intention is for this exception to be used in the case of emergency "out of hour" presentations.

8.23 Exception 7(1)(b). **Where there is no other accommodation suitable for occupation by an applicant with family commitments available to a local authority.** In this circumstance unsuitable accommodation can only be used for 7 days.

8.24 If more than one exceptional circumstance applies, then the one which has no time limit will override one which does have a time limit. For example if a household presents as out of hours and expressly wishes to stay in particular accommodation which fails standards (but not the safety standard which must always be met) when other accommodation which meets all standards has been offered to them, then no time limit will apply.

8.25 The time limit of 7 days for some exceptional circumstances applies during any one period of homelessness, i.e. from presentation to resolution.

8.26 If a woman staying in temporary accommodation becomes pregnant then the local authority will be expected to act in accordance with the Order when they become aware of the pregnancy.

Referral to another local authority (Section 34 of the 1987 Act)

8.27 Where a local authority refers an application to another local authority on the basis of local connection (see Chapter 7 of this Code), the referring authority is obliged, under Section 34, to secure that accommodation is available for the applicant's occupation until the outcome of the referral is decided. Local authorities should bear in mind the possibility that transitional arrangements may be required when this duty expires (where the conditions for referral are satisfied but the notified

authority has not yet provided accommodation or where the conditions are not accepted but the notifying authority does not have permanent accommodation available immediately).

Advisory Standards for Temporary Accommodation

8.28 In line with the Homelessness and Rough Sleeping Action Group recommendation to produce a new set of standards that are applicable to all types of temporary accommodation, the Scottish Government consulted in May 2019 on creating a set of advisory standards that are based on the Guidance on Standards for Temporary Accommodation³⁷ published by Chartered Institute for Housing (CIH) Scotland and Shelter Scotland in 2011.

8.29 Analysis of the responses showed that the majority of responders were in agreement that the CIH Scotland/Shelter Scotland guidance should be used as a basis to produce a new set of advisory standards that are aimed at ensuring that any time spent in temporary accommodation causes minimal harm by making sure that temporary accommodation is of good quality, safe, warm, affordable and there is a consistency of standards across all local authority areas.

8.30 A list of new advisory standards has now been produced which include the CIH/Shelter standards as well additional standards suggested by key stakeholders and people with lived experience of temporary accommodation, who responded to the Improving Temporary Standards Consultation. The standards cover 4 main areas that should be considered by Local Authorities: Physical, location, Service and Management. More detail of what is contained under each area is available at Annex A.

Temporary Accommodation with advice and assistance (Section 31(3)(b) of the 1987 Act)

8.31 Where the applicant is assessed as being intentionally homeless, the duty is to secure that accommodation is made available for such a period as will give the applicant a reasonable opportunity to find alternative accommodation for them.

8.32 These applicants must also be given advice and assistance in their attempts to find alternative accommodation, as set out in the Homeless Persons Advice and Assistance (Scotland) Regulations 2002 (see Chapter 9 of this Code.)

³⁷https://scotland.shelter.org.uk/_data/assets/pdf_file/0009/322677/Temporary_Accommodation_Guidance.PDF/nocache

Discharge of temporary accommodation duty

8.33 A 'reasonable opportunity', should be assessed in terms of the circumstances of the applicant, including consideration of factors (such as disability, addiction, mental health problems, chaotic lifestyle and affordability) which may adversely affect their ability to secure accommodation; and also local housing conditions including how readily alternative accommodation is available in the area.

8.34 In any situation where an authority has provided advice and assistance which takes account of the availability of alternative accommodation, and takes account of the circumstances of the applicant, but no reasonable options have been identified, the applicant cannot then be deemed to have had a 'reasonable opportunity' of securing accommodation. The local authority's duty to provide accommodation therefore continues in this instance.

8.35 Where an applicant has a reasonable opportunity to secure accommodation and fails to take this opportunity the local authority's duty to provide accommodation ends. If the applicant then re-applies and is assessed again as intentionally homeless, the authority should assess whether the 'reasonable opportunity' afforded to the person is still valid and relevant to the applicant's circumstances.

8.36 In cases where the applicant's circumstances have changed, or where the advice and assistance is no longer relevant or current, then the authority will be obliged to accommodate them for a further period which is considered will give a reasonable opportunity of securing accommodation. Conversely, if the applicant's circumstances have not changed, and the advice and assistance previously offered remains the most up-to-date and relevant possible, then local authority may be deemed to have discharged its duty.

8.37 A house let expressly on a temporary basis, for a term of less than 6 months, to fulfil a local authority's duties under Part II of the 1987 Act will not constitute a Scottish secure tenancy or a Private Residential Tenancy.

Permanent accommodation (Section 31(2) of the 1987 Act)

8.38 The 2001 Act amended the 1987 Act to clarify that where the applicant is assessed as being unintentionally homeless the authority has a duty to secure the provision of permanent accommodation.

8.39 Permanent accommodation is defined by Section 31(5)(a), and (d) as accommodation secured by a Scottish Secure Tenancy or, in the private sector, by a Private Residential Tenancy. Section 31(5)(c) allows for the provision of a short Scottish secure tenancy where a member of the applicant's household is subject to an ASBO or where an order for repossession has been made against the

prospective tenant(s), within the past 3 years, on grounds of anti-social behaviour or illegal/immoral activity.

The Homeless Persons (Provision of Non-permanent Accommodation) (Scotland) Regulations 2010

8.40 Local authorities may provide accommodation other than permanent accommodation in the circumstances prescribed by The Homeless Persons (Provision of Non-permanent Accommodation) (Scotland) Regulations 2010. These circumstances are:

a) a housing support services assessment has concluded that the applicant or any other person residing with that applicant requires a level of housing support services which make permanent accommodation inappropriate; and

(b) as a result of that housing support services assessment, the local authority is providing an applicant or any person residing with that applicant with transitional accommodation together with:

(i) all services required in terms of the housing support services assessment and a record of the services to be provided;

(ii) access to independent advice and information services in connection with the services mentioned in sub-paragraph (i);

(iii) a timetable, agreed with the applicant, for the provision of the transitional accommodation and housing support services and a record of the timetable;

(iv) a review date for the provision of services and transitional accommodation, not later than six months from the date on which the transitional accommodation was first provided;

(v) an undertaking to provide permanent accommodation when a housing support services assessment identifies that this would be appropriate; and

(vi) a mechanism to monitor the use of transitional accommodation and the long term outcomes for each applicant.

8.41 Local authorities should ensure that the individual circumstances of the applicant are examined on a case by case basis and that the regulations are not invoked automatically for certain categories of applicants (e.g. young people or people with learning difficulties).

Threatened with homelessness (Section 32(2) of the 1987 Act)

8.42 Where an applicant is still in accommodation but is assessed as being unintentionally threatened with homelessness, a local authority has a duty to ensure that accommodation does not cease to be available for occupation.

8.43 If it is not possible to prevent the loss of the accommodation, the authority must ensure that other housing becomes available. Unless there is a change of circumstances the household will still be unintentionally homeless and therefore this accommodation should be provided on a permanent basis.

Provision of accommodation:

Temporary and transitional accommodation

8.44 Homeless people should not be placed in temporary accommodation unnecessarily, and their time there should be as short as possible. Care should also be taken to avoid moves between temporary placements particularly for households with children. Moves are disruptive, and can exacerbate existing social or health problems including mental illness, hinder continuity of education and employment, can lead to repeat homelessness and in the worst cases can cause families to split up. Temporary accommodation will also tend to be more expensive than permanent accommodation, particularly if there are moves from one temporary accommodation to another.

8.45 However, it is recognised that homeless people may sometimes need to be accommodated in temporary accommodation until permanent accommodation becomes available; or in transitional accommodation for the purposes of providing support which will enable them to sustain a tenancy in the long term (**nb** “transitional accommodation” means accommodation that is non-permanent accommodation as prescribed by The Homeless Persons (Provision of Non-permanent Accommodation) (Scotland) Regulations 2010.)

8.46 In all cases the ultimate aim should be to move residents of temporary or transitional accommodation on to permanent accommodation, as quickly as possible whilst also ensuring that this is only done at a time when the household is able to sustain permanent accommodation. The objective should be to enable people to have a home of their own which meets their needs, and enables them to live independently. Care should be taken to provide for the particular needs of families, young people and groups who currently find it difficult to access or sustain any form of accommodation - such as people with problematic alcohol or drug use, people with mental health problems and people with challenging behaviour.

8.47 Where temporary accommodation is required, there are standards which should apply to all accommodation provided, irrespective of the type or tenure of the property, to ensure consistent high quality accommodation is provided. These standards are set out fully in Annex A.

Bed and breakfast

8.48 It is essential that local authorities explore all alternatives to bed and breakfasts, hotels or other similar establishments, and use them only as a last resort. They are expensive, and can never be regarded as a permanent home for applicants. If local authorities do arrange bed and breakfast in guest houses or hotels, they should ensure that it is for as short a period as possible. The arrangements must allow homeless people to use the rooms during the day and should include access to cooking facilities.

Hostels

8.49 Local authority hostels, or hostels run by voluntary bodies, can be a useful form of short-term accommodation, as long as these hostels are reasonably small-scale and are an appropriate environment in which to deliver support if required. They may therefore be appropriate for the needs of some individuals. Different models of hostel accommodation may be suitable for different applicants: for example, small high-support units may suit some young people or communal accommodation can enable households at crisis point to have some relief for a short period from coping alone; and the company of other people who have gone through similar problems can be helpful.

8.50 However, local authorities should be clear which people are suitable for each hostel (outside bodies will have admission criteria for their own hostels), and seek to place people according to such factors as their support needs, if any, and the likely length of stay. Hostels required to register with the Care Inspectorate under the Public Services Reform (Scotland) Act 2010 will be regulated by the Inspectorate against the requirements of the Act and its associated regulations. The relevant Care Inspectorate quality frameworks and inspection regimes will also reflect the Health and Social Care Standards (2017)³⁸.

8.51 Move-on arrangements should be clearly planned from the time the person experiencing homelessness first enters the hostel - move on will vary according to the individual's needs, for example from direct access to medium term supported accommodation, in addition to move on permanent accommodation. The management of hostels should be resident-centred, and staff trained in the

³⁸ <https://www.gov.scot/publications/health-social-care-standards-support-life/>

necessary skills according to the needs of the residents. In some cases, support services will be supplied by social work, health, training or other agencies.

Lodgings

8.52 For some homeless applicants, particularly single people without support needs, lodgings in privately owned accommodation may offer suitable housing. Local authorities should seek to establish and maintain links with owner occupiers and other potential landlords who are willing to offer lodgings to homeless people. Authorities should ensure that the accommodation offered is of an acceptable standard.

Private sector leasing

8.53 The leasing of private sector accommodation can add to the supply of good quality temporary accommodation, including in sparsely populated areas where normal lets may occur infrequently. In particular, it can be used in rural areas to continue 'winter only' lets over the summer where the occupants would otherwise become homeless. However, such leases may be expensive, though usually cheaper than bed and breakfast. There may be advantages to the local authority undertaking the management of the property itself rather than leaving this to the landlord. This is particularly useful where several successive placements are expected during the course of a lease, or support services have to be provided.

Mobile homes

8.54 Although mobile homes or caravans may sometimes provide temporary accommodation for single people or childless couples; or in more remote areas to allow people to remain close to families, friends or employment, they are generally not satisfactory, even as temporary housing. Any mobile homes used must be built to modern day standards with high levels of insulation, security and stability, and sites must comply with Scottish Government 'Model Standards for Residential Mobile Home Site Licences'.³⁹

Local authority stock

8.55 Where a local authority is using its own stock to provide temporary or transitional accommodation, it should ensure that this allows a balance to be struck with duties to provide permanent accommodation to other applicants. A regular turnover of council properties used for temporary accommodation should be considered, to avoid particular dwellings being identified and possibly stigmatised as 'homeless accommodation', while allowing a cost-effective life span for individual

³⁹ <https://www.gov.scot/publications/model-standards-residential-mobile-home-site-licences/>

properties. Local authorities may also wish to consider engaging the local communities in which these properties are located in order to counter any negative stereotyping of those experiencing homelessness.

Permanent accommodation

8.56 Section 32(5) of the 1987 Act states that a local authority cannot fulfil its accommodation duties to a homeless household through the provision of accommodation which is overcrowded within the meaning of Section 135, may endanger the health of the occupants, does not meet any special needs of the household or is not reasonable for the applicant to occupy.

8.57 Under Section 32(8) of the 1987 Act any accommodation provided must be suitable for occupation by any children in the household so far as is consistent with their best interests. Local authorities should have regard to guidance issued by the Scottish Government in May 2011 on 'Meeting the Best Interests of Children Facing Homelessness'⁴⁰.

8.58 Local authorities' duty to secure accommodation for unintentionally homeless people would be fulfilled by a single offer of housing, even if this is refused by the applicant, provided that the offer was a reasonable one. Those experiencing homelessness should however be treated on the same basis as other housing applicants to local authorities in relation to the number of offers of accommodation they receive, where the local allocation policy is offers based.

Determining a reasonable offer

8.59 In general local authorities should take into account the importance of offering homeless people a genuine choice of accommodation, as this is more likely to ensure sustainable resettlement. In meeting urgent homelessness cases, local authorities may have to use what houses may be immediately available, including non-council housing. However, in considering what is a reasonable offer, local authorities should take into account the particular circumstances and needs of the applicant and their household. (see also Chapter 5 of this Code).

8.60 Local authorities should also take into account the sustainability of the accommodation for that particular applicant. Examples of poor practice might include placing people in hard to let housing which may merely exacerbate the problems which led to homelessness in the first place, leading to homelessness recurring; or placing families with social or other problems in the same area, which can cause problems for both those from the area itself and for housing management.

⁴⁰ <https://www.gov.scot/publications/best-interests-of-children-facing-homelessness/>

Reasonable preference

8.61 Local authorities and Registered Social Landlords have a duty under Section 20 of the 1987 Act to give reasonable preference in the selection of their tenants to people assessed as being homeless.

8.62 It should be noted that this reasonable preference extends to all those who are assessed as homeless, regardless of the outcome of any further assessment for intentionality. Homeless people should always be included in local authorities' mainstream allocation system as from the date of their application, rather than at a later date. This duty to give reasonable preference also extends to those who have unmet housing needs, are living in unsatisfactory housing needs and are social tenants who their landlord considers to be underoccupied.

8.63 What degree of preference is 'reasonable' is a matter for each social landlord and this should be set out in their Allocations policy. At the very least, homeless people should not be given lesser preference than the other specified groups. These reasonable preference requirements do not prevent priority being given to other groups of applicants besides those listed in Section 20, and local authorities still have to consider applications from homeless or other people on their individual merits. In January 2019, the Scottish Government published the 'Social Housing Allocations in Scotland: A Practice Guide'⁴¹ to offer practical assistance to staff with responsibility for reviewing, monitoring and updating allocation policies and procedures to ensure they comply with current legislation.

Choice-based lettings

8.64 Any scheme operated *must* meet statutory requirements particularly in terms of assessing and prioritising applicants who meet the reasonable preference criteria. A choice-based system must be consistent with statutory duties under the homelessness legislation, including discharge of any duty owed. Further information on choice based lettings can be found in the 'Social Housing Allocations in Scotland: A Practice Guide' (see link in footnote 41 below.)

Accommodation held by RSLs/voluntary organisations/private landlords

8.65 Under Section 35 of the 1987 Act, the local authority has freedom to fulfil duties to provide accommodation for homeless people either by making use of council housing or by obtaining accommodation from other providers in the social rented or private sectors.

⁴¹ <https://www.gov.scot/publications/social-housing-allocations-scotland-practice-guide/>

8.66 Where a local authority has a duty under Section 31(2) to secure the provision of accommodation for an applicant, a Registered Social Landlord in its area must, within a reasonable period, comply with an authority's request to provide this accommodation unless it has a good reason for not doing so (section 5 of the Housing (Scotland) Act 2001).

8.67 The Scottish Government has issued guidance under Section 5(7) of the Housing (Scotland) Act 2001 on the length of the reasonable period and on what constitutes good reasons for non-compliance with a request. This sets out that where a request is made, an RSL should comply by providing accommodation within 6 weeks unless it has a good reason for not doing so. The guidance states that where a RSL is unable to make appropriate accommodation available within 6 weeks this shall constitute a good reason for non-compliance. The RSL shall also have a good reason for non-compliance if the only accommodation it has available is of a specialist nature and this is not appropriate for the applicant.

Arbitration

8.68 Section 6 of the Housing (Scotland) Act 2001 allows Ministers to set a period within which the local authority and RSL should reach agreement as to whether the reason is good before arbitration is triggered. The time period is set, by the Housing (Scotland) Act 2001 (Appointment of Arbitrator) Order 2002, as 5 working days.

8.69 Local authorities should enter into constructive and supportive relationships with RSLs in their area to ensure that the arbitration process is only invoked as a measure of last resort. Section 5 of the 2001 Act requires that a RSL must comply with any reasonable request for information about its stock made by a local authority for the purposes of coming to a decision about rehousing a person experiencing homelessness. It also requires a local authority to have regard to the wider availability of accommodation in its area when requesting that an RSL provide accommodation.

8.70 Local authorities should take into account the view of the applicant and should also be prepared to take a flexible approach to withdrawing requests where necessary, in the light of new information. An example might be where the authority is made aware that the applicant perpetrated an act of domestic abuse against a person residing in the area.

Nomination Agreements between LAs and RSLs

8.71 Historically local authorities and RSLs have a nomination agreement in place where local authorities nominate applicants from their own lists for an agreed percentage of an RSL's annual vacancies. Nomination agreements acknowledge that more people are likely to join the local authority's housing list than that of an

RSL. Nomination agreements should have clear aims and be based on a robust analysis of need and demand. There should also be clear guidelines for accepting or rejecting nominees and for resolving disputes.

8.72 RSLs should make sure that their allocation policy reflects arrangements for referrals under Section 5 of the Housing (Scotland) Act 2001. Councils and RSLs can agree to offset Section 5 referrals against nomination quotas, but they do not have to. The achievement of a quota is not a 'good reason' for refusing a Section 5 referral. Nomination agreements should be regularly reviewed to ensure they reflect changing needs and demand. The Section 5 referral protocol is currently being reviewed by SFHA and COSLA and an updated protocol will be published shortly.

Other sources of accommodation

8.73 Local authorities should ensure that empty houses within their stock are used wherever practicable to help to relieve homelessness in their areas, either by housing homeless households in them directly, or by relieving pressure elsewhere to create room for those experiencing homelessness. Local authorities should not impose unreasonable restrictions on subletting or other forms of multiple occupancy in their own stock (or indeed in the private rented sector). Subject to the available resources, Cash Incentive Schemes can help to release existing council housing for homeless people and other applicants. Transfers within a council's stock can make available suitable housing for homeless people, while also meeting the needs of other tenants.

8.74 Voluntary bodies may offer another source of accommodation, especially those which specialise in housing people with special needs. Local authorities have powers under Section 39(2) to assist voluntary bodies to tackle homelessness, including making available staff, assistance, premises, furniture or other goods.

8.75 Accommodation in the private rented sector will be an option for some applicants. The local authority should build up contacts with reputable and registered private landlords. Many private landlords can offer accommodation quickly, and sometimes outside working hours, or on public holidays. The local authority may be able to arrange contracts with private landlords to provide such a service; and can, if necessary, use its powers under sections 24 - 26 of the Local Government Act 1988, with the Secretary of State's consent, to give assistance to private landlords in providing it, for example by paying for rent deposits or rent in advance. Before making such arrangements with private landlords the local authority should ensure that the landlord is registered⁴², that the properties meet the repairing standard⁴³ and

⁴² <https://www.ros.gov.uk/our-registers/scottish-landlord-register>

⁴³ <https://www.gov.scot/publications/repairing-standard/>

that the landlord will use the Scottish Government's Model Private Residential Tenancy Agreement⁴⁴.

8.76 All local authorities should provide access to a rent deposit or guarantee scheme in order to allow homeless people, and others in housing need, to access private sector rented housing more easily (see paragraph 2.98 of this Code for further information.)

8.77 For some people house purchase may be a possibility, at least after their immediate problems have been resolved. A mortgage or loan can help to establish a family permanently in the private sector. Local authorities may wish to offer advice to formerly homeless families on purchasing a house, when their housing and financial situation has stabilised. Local authorities may find it useful to develop close links with the local property market. Information on sources of advice on all options for financing house purchase should be made freely available to homeless people, especially those financial packages which may be attractive to people on lower incomes such as shared ownership.

8.78 For homeowners facing financial difficulties and possible repossession and eviction from their home there are measures in place which may offer help and support. These include independent money advice, help from the Scottish Government e.g. Home Owners Support Fund (HOSF) and legal aid to help with legal issues relating to mortgage difficulties.

8.79 Home owners at risk of repossession may be eligible to apply to the Scottish Government's Home Owners Support Fund. It consists of two schemes:

- Mortgage to Rent – where a social landlord purchases the property and the applicant continues to live there as a tenant.
- Mortgage to Shared Equity – where Scottish Government buys a stake in the property allowing the applicant to reduce the secured loan.
- Potential HOSF applicants should be referred to an accredited money adviser such as CAB or the Council's own money advice service.

Out-of-area placement

8.80 As a general rule a local authority should always rehouse a homeless household within its own area, particularly where temporary accommodation is being provided. However in rare cases the local authority may need to consider placing homeless people in another local authority's area, although this should be done only with the household's consent. The local authority should retain responsibility for such outplacements. Note that the Homeless Persons (Unsuitable Accommodation)

⁴⁴ <https://www.gov.scot/publications/scottish-government-model-private-residential-tenancy-agreement/>

(Scotland) Order 2014 defines the use of temporary out-of-area placements as "unsuitable accommodation" for households with children or pregnant women which can only be used in the exceptional circumstances defined in this Order - see paragraphs 8.7 - 8.26 of this Code for more details.

8.81 Outplacements may be appropriate in cases of, for example, domestic abuse or external violence, or in the case of an ex-prisoner who would face local hostility if returned to his home area. In some cases such an outplacement may be nearer to the applicant's home area than a placement elsewhere in the local authority's area or provide suitable accommodation or access to healthcare which is not currently available in the placing local authority's area.

8.82 When considering an out of area placement, the local authority should consider the costs to the household, such as increased travelling costs or in some cases disruption of education and employment; and to itself of for example maintaining contact with the household and offering any support required. It should also notify the local authority in whose area the household is placed (though that local authority cannot block the placement). If there is any risk associated with the placement then it should notify the local authority in whose area the household is placed of the placement and also of the associated risk. Local authorities should consider what sort of arrangements need to be put in place to ensure that other local authorities are informed promptly of out of area placements.

8.83 In considering an out of area placement for persons made homeless by domestic abuse or external violence, local authorities should give first importance to the expressed fears and wishes of those concerned. Local authorities should adopt the general rule that the new location should remove them from the range of the perpetrators of the violence. The application of this rule should take account of the particular circumstances, for example likely travel routes for the person who has suffered the abuse or violence and for the perpetrator.

Charges

8.84 An applicant can be asked to pay a reasonable charge for any accommodation provided directly by the local authority; or a reasonable amount for accommodation supplied by another housing provider but paid for by the local authority (Section 35(2) of the 1987 Act). In deciding what is reasonable, the local authority should take account of what the applicant can pay in the longer term. If an applicant is being asked to pay for accommodation provided by or paid for by the local authority then the applicant should be informed in advance of the cost of the accommodation. They should also be assisted when applying for benefit to cover the cost of such accommodation. The local authority should take account of, and advise of, the likely level of benefit when considering charges.

Special circumstances

8.85 Local authorities should make specific provision for the accommodation and support of people experiencing homelessness with disabilities and respond quickly to requests for adaptations to housing stock which will prevent the occupier from becoming homeless. People with disabilities can be statutorily homeless if they are unable to occupy their present accommodation without excessive hardship or risk to personal safety (see paragraph 5.12 of this Code).

8.86 Local authorities should also be sensitive to the needs of people who have become homeless as a result of domestic abuse. Local authorities should ensure that safe emergency supported accommodation is available for those who have experienced domestic abuse, taking into account the diverse needs of disabled people, people from black and minority ethnic groups and those with addiction problems. Women's Aid refuges are a useful source of temporary accommodation for women, children and young people who have experienced domestic abuse, and local authorities may find it cost effective to assist voluntary bodies to provide such specialist provision. Beyond securing the provision of emergency accommodation the local authority should also ensure the availability of suitable long term accommodation and support, taking account of the views of the applicant and the paramount importance of minimising the risk of further incidents of abuse and/or homelessness. (See paragraph 8.81 above on the use of outplacements in cases of domestic abuse.)

8.87 If social work service considers that a person needs a greater degree of care and support than is available, it may offer that person a place in accommodation provided by them under Section 59(2)(a) of the Social Work (Scotland) Act 1968, or for young people under the Children (Scotland) Act 1995, in response to the local authority's duty under the homelessness legislation.

Maintaining contact with rehoused homeless people

8.88 When people have been rehoused either permanently or temporarily the local authority should maintain contact with them, particularly in the early weeks, to enable them to settle and to ensure early action is taken to avoid their becoming homeless again. This is particularly important for people who are not rehoused in local authority stock, and will be essential where the local authority is organising support for them. The co-operation of the social work service, local Health Board, appropriate voluntary organisations and other local agencies should be sought as required.

8.89 These arrangements will also apply to those people who are not rehoused under the homelessness legislation but are otherwise vulnerable - young people moving into their first tenancy or people who have recently left institutional surroundings (hospital, prison, local authority care or the armed forces.)

8.90 Where people experiencing homelessness have multiple and complex needs, the Housing First model can ensure permanent, mainstream accommodation with wraparound support. Housing First can provide stable accommodation with person centred support for those who may have particular challenges in sustaining tenancies and who may have a history of repeat homelessness or rough sleeping.

Housing support duty

8.91 The Housing (Scotland) Act 2010 introduced a duty, under Section 32B of the 1987 Act, on local authorities to conduct a housing support assessment for applicants who are unintentionally homeless or threatened with homelessness and who they 'have reason to believe' need housing support. Regulation 2 of The Housing Support Services (Homelessness) (Scotland) Regulations 2012 prescribes four types of housing support services which apply for the purposes of the duty. These are for advising or assisting a person:

- with personal budgeting, debt counselling or in dealing with welfare benefit claims
- to engage with individuals, professionals or other bodies with an interest in that person's welfare
- in understanding and managing their tenancy rights and responsibilities, including assisting a person in disputes about those rights and responsibilities
- in settling into a new tenancy

The 'Housing Support Duty to Homeless Households - guidance for local authorities'⁴⁵ was published in 2013 to assist local authorities in complying with the new duty.

⁴⁵ <https://www.gov.scot/publications/housing-support-duty-homeless-households-guidance-local-authorities/>

CHAPTER 9

ADVICE AND ASSISTANCE



CHAPTER 9 - ADVICE AND ASSISTANCE

9.1 **Summary** - this chapter explains the legislation on, and gives guidance on, the scope of local authorities' advice and assistance duties under the 1987 Act. Good quality advice and assistance play a key role in preventing homelessness, alleviating it when it does occur and helping people to sustain their accommodation and is an important element of local homelessness strategies.

9.2 Offering good quality advice and assistance involves not only implementing the regulations but should involve the local authority being proactive in its approach and actively seeking a resolution to the applicant's needs.

9.3 Local authorities should also have regard to their wider duty under Section 2 of the 2001 Act to secure that:

- advice and information about homelessness and the prevention of homelessness is available; and
- any services which may assist a person experiencing homelessness or assist in the prevention of homelessness,

is available free of charge to any person in the authority's area.

9.4 Separate guidance has been issued on this duty. The guidance requires that local authorities ensure that provision meets the standards set out in Scottish National Standards for Housing Information and Advice Providers⁴⁶. The development of Housing Options approaches by local authorities and partners and the Housing Options guidance⁴⁷ can also help here as will the Housing Options Training Toolkit when it is launched. The principles for good quality provision are:

- *Equal opportunities* - by meeting the needs of the whole community, regardless of tenure, location, ethnicity and particular needs.
- *Accessibility* - by being available to all and provided in locations and using methods and forms of dissemination that are appropriate to particular needs.
- *User-centred services* - by ensuring that advice puts the needs of the service user first and is free of the views, prejudices or vested interest of the adviser or agency.

⁴⁶ <https://www.gov.scot/publications/scottish-national-standards-information-advice-providers-quality-assurance-framework-2009/>

⁴⁷ <https://www.gov.scot/Publications/2016/03/6556/0>

- *Choice* - by offering as far as possible a range of providers, including at least one that is independent of the providers of housing services, which can advocate on behalf of service users.
- *Confidentiality* - through clear policies that guarantee users privacy and confidentiality as well as access to their personal files.
- *Accountability* - by ensuring clarity and transparency of purpose, activity and accountability to stakeholders, including service users, the general public, commissioners and relevant interest groups (whether community-based or national bodies or professional associations).
- *Best value and effectiveness - by optimising:*
 - resource use through ensuring management effectiveness
 - effective and integrated services through joint working and sharing of information, training and expertise
 - professional competence, by ensuring staff have access to training, information resources, effective and supportive case management and opportunities for networking and liaison
 - best practice, by adopting and implementing the Standards and other relevant standards of competence.
- *Reflective services* - through comprehensive monitoring of casework and ensuring opportunities for user feedback to inform service review and development.

9.5 The local authority also has general powers under Section 88 of the Local Government (Scotland) Act 1973 to give advice, either directly or through other bodies, on other matters relating to local government services, such as community care (for example, alcohol or drugs issues, disability, old age, mental health) or other services such as welfare rights, debt advice or environmental health services.

9.6 The nature of the advice and assistance needed by a person who is homeless or faces homelessness is likely to vary from local authority to local authority, and from case to case. Advice should be individually tailored and should be wide-ranging and comprehensive. It should respond to the whole needs of the individual and involve the range of allied services to meet these needs either locally or nationally.

9.7 Advice to homeless people should be part of a general strategy for the provision of housing advice, including support for independent agencies, where appropriate. Homelessness officers should be able to deal with at least the main non-housing items likely to arise on the spot, but should also know when and how to refer people to other advice agencies for specialist advice.

9.8 Advice and assistance must be available and accessible to all people. This may require the use of interpreters, translations of documents and material being available in alternative formats (e.g. Braille or audiotape), when appropriate.

9.9 Applicants receiving advice and assistance (including intentionally homeless households) remain responsible for obtaining, or retaining, accommodation themselves (although the local authority must provide temporary accommodation for a sufficient period to give the applicant a reasonable opportunity to secure their own accommodation). However, local authorities should respond in a proactive way, actively assisting applicants, with the aim of ensuring that applicants find accommodation with security of tenure.

9.10 Under the 1987 Act, if a local authority is satisfied that an applicant is homeless but that they became homeless intentionally then the local authority's duty under sections 31(3) and (4) of the Act is to ensure that the applicant is given at minimum advice and assistance, as set out in the guidance referred to in paragraph 9.4 above, in any attempts the applicant makes to secure accommodation.

9.11 Where the conditions set out above apply to an applicant who is threatened with homelessness, under Section 32(3) advice and assistance has to be provided to help that person to secure that accommodation does not cease to be available for their occupation. This need not be their existing home, but this is usually the best option. If the period is greater than two months then the local authority should nonetheless actively seek to prevent homelessness occurring. In such cases, local authorities should ensure they are assisted in gaining access to appropriate services.

9.12 Section 35(1)(c) of the 1987 Act indicates that a local authority may fulfil duties to secure accommodation for an applicant by providing advice and assistance to enable them to obtain accommodation from another housing provider.

9.13 In fulfilling this duty the local authority should actively assist the applicant to make contact with alternative housing providers (for example, by offering to make an appointment for them). Local authorities need to ensure that information about other providers is regularly kept up to date. Local authorities should consider developing a Housing Options guide which clearly outlines the options open to any person in housing need in their local area, including for example different tenure options and access to appropriate grants.

9.14 **The Homeless Persons Advice and Assistance (Scotland) Regulations 2002 (SSI 2002 No.414)** prescribe the types of advice and assistance that local authorities must provide at minimum to homeless applicants and applicants threatened with homelessness who have become homeless intentionally. Below,

these categories of advice and assistance, as prescribed in the regulations, are set out in bold.

Advice

9.15 The advice to be provided is:

- Housing advice appropriate to local housing conditions and the applicant's circumstances which may include:
 - **Advice on the availability of permanent accommodation provided by local authorities or registered social landlords;**
 - **Advice on the availability of temporary accommodation provided by local authorities, registered social landlords and other private, public or voluntary bodies;**
 - **Advice on nomination procedures, waiting lists and any restrictions imposed by landlords;**
 - **Advice on specialist, supported or furnished accommodation;**
 - **Advice on services provided by estate agents and accommodation agencies; and**
 - **Advice on owner occupation including shared ownership and the availability of grants for owner occupation, improvement, repair and adaptation.**

9.16 In giving housing advice the authority should include information on:

- how long it may take to be offered one of the local authority's own houses
- the possibilities (including the risks) of taking a tenancy in the private rented sector, advice about the standards that properties should meet, the Private Residential Tenancy and tenancy deposits
- private landlords who let out rooms and any restrictions they may impose
- letting agents or accommodation agencies which provide services without charge (it is illegal for letting agents to charge for finding accommodation.) All letting agents in Scotland are required to be registered with Scottish Ministers. The Scottish Letting Agent Register can be checked online at:
<https://register.lettingagentregistration.gov.scot/search>
- the possibilities of accessing licensed houses in multiple occupation where appropriate

9.17 Good liaison with other housing providers should be maintained, and local authorities should be able to direct applicants to accommodation which the homelessness officer knows to be suitable and to have vacancies. A common housing register, or at least a common database on available accommodation, may be helpful in achieving this. Both private and social housing providers should be covered.

- Advice on social issues appropriate to an applicant's circumstances including advice on services provided by specialist agencies or bodies dealing with health, welfare or other social issues. This should include advice on support and care packages to enable people to sustain tenancies.
- Financial advice appropriate to an applicant's circumstances, which may include:
 - **advice on the availability of personal benefits, grants (including from Scottish Welfare Fund) and loans directly or indirectly related to the provision of housing;**
 - **advice on rent and mortgage arrears and the financial implications of home ownership including in relevant cases, potential eligibility to make application to the SG's Home Owners Support Fund programme which can offer help to some homeowners in financial difficulty;**
 - **advice on the management of personal finance;**
 - **advice on rent guarantee and deposit schemes; and**
 - **advice on specialist agencies providing financial advice to individuals.**

9.18 Rent guarantee and deposit schemes may help homeless people to obtain accommodation in the private rented sector. In securing private rented sector accommodation every effort should be made to maximise security of tenure.

- Legal advice appropriate to an applicant's circumstances which may include:
 - **advice on Tribunal and court proceedings;**
 - **advice on legal rights including -**
 - **advice on the availability of legal aid; and**
 - **advice on the availability of independent advice and advocacy.**

9.19 Many legal matters affect housing. Probably the most important arise for tenants faced with eviction, and tenants of social landlords should be advised that a court order will always be required in addition to a notice to quit, and an order will be

granted by the court only if the landlord proves his or her case, and usually only on a limited number of grounds.

9.20 There are a number of different scenarios that might apply where tenants are renting from a private landlord. In all circumstances it is the Housing & Property Chamber (HPC) of the First-tier Tribunal for Scotland that will consider eviction cases in the private rented sector and will issue an order. The HPC will only grant an order if the landlord proves their case on the basis of the grounds for eviction that apply to the tenancy.

9.21 Tenants with a short assured or assured tenancy should be advised that a court order will always be required in addition to a notice to quit.

9.22 Tenants with a private residential tenancy must be given a notice to leave by their landlord.

9.23 A court order or order by the HPC may also be required in most cases where there is no formal tenancy agreement. Legal advice on whether an action can be defended is important.

Assistance

9.24 The types of assistance set out in regulation that must be provided by local authorities are:

- **providing a personal interview at such a time and place, and with a local authority officer of such sex, as the applicant may reasonably request;**
- **providing an interpreter or an independent personal representative for an applicant at any interview if a request is made by the applicant to that effect;**

Any appointment should be set up at a time convenient both for the applicant and their personal representative

- **providing a written record of any interview held under this regulation in an appropriate form for the applicant including Braille, translation or large print;**
- **providing a follow up interview to review progress;**

This should normally be held within 4 weeks, regardless of whether the applicant has requested it.

- **arranging and facilitating interviews and appointments with other independent providers of housing financial or legal services; and**
- **providing access to mediation services for family and neighbour disputes and harassment.**

9.25 Local authorities should bear in mind that temporary accommodation arrangements may well result in the applicant becoming homeless again, thus creating both problems for the applicant and renewed expense for the public purse. If resources permit, and the applicant wishes, contact should be maintained with the applicant until suitable stable accommodation is found.

9.26 Local authorities and other agencies should carefully record all advice and assistance offered, and monitor their service in relation to race equality and other equalities requirements.

Housing Options

9.27 Housing Options is an information and advice process that councils use when someone approaches them with a housing problem. It aims to prevent homelessness wherever possible and since its introduction, there has been a fall in homelessness applications.

9.28 The service focuses on people's personal circumstances, helping them to explore all options including council housing, housing association homes and private rented accommodation. It can also provide support for underlying issues that can underpin housing problems such as debt, family breakup and mental health problems.

9.29 This means that, rather than just making a homeless application, housing officers can work with other services to help people before they reach crisis point.

Housing Options Guidance

9.30 Our Housing Options guidance⁴⁸ sets out the principles on which any effective Housing Options service should be based, as well as the outcomes it should aim to achieve.

⁴⁸ <https://www.gov.scot/publications/housing-options-guidance/>

CHAPTER 10

NOTIFICATION AND REVIEW OF DECISIONS



CHAPTER 10 - NOTIFICATION AND REVIEW OF DECISIONS

10.1 **Summary** - this chapter sets out the legal requirements relating to notification and review as well as guidance on practice - good decision-making should lead to fewer requests for review. The notification of the homelessness decision to an applicant and the manner in which it is given plays an important part in ensuring that effective solutions to an individual's housing situation are found as well as minimising the likelihood of the need for a review of a decision.

10.2 It is essential that in communicating its decision on an application the local authority ensures its response:

- is clear, easy-to-understand and as helpful to the applicant as possible;
- contains full explanation of the reasons for the decision reached and what happens next;
- provides advice on what the applicant should do if they are dissatisfied with the decision; and
- provides advice on options for the applicant if the decision is that they are not homeless or that the local authority does not have a duty to secure permanent accommodation for the applicant.

Independent advice

10.3 Applicants should be informed that they can seek independent legal or other advice on the decision if dissatisfied, and also independent representation in review procedures.

Notification

10.4 When its inquiries into a homelessness application are complete, the local authority is required by Section 30 of the 1987 Act to notify the applicant of its decision on:

- whether the applicant is homeless or threatened with homelessness;
- where the local authority has exercised the discretionary power to investigate for intentionality, whether the applicant is judged to have become homeless or threatened with homelessness intentionally; and
- whether it has notified or intends to notify another local authority of the application, because it believes the applicant has a local connection with that local authority, and not with itself.

10.5 The local authority must also notify the applicant, and give reasons for its decision:

- if it is not satisfied that the applicant is homeless or threatened with homelessness;
- where the local authority has exercised the discretionary power to investigate for intentionality, if it is satisfied that the applicant became homeless or threatened with homelessness intentionally; or
- if a referral to another local authority on local connection grounds has been or is to be made.

10.6 A local authority should inform an applicant of its decision - whether favourable or unfavourable - as quickly as possible. Normally, a decision should be notified within 28 days of the application. Where the decision will take some time because special inquiries have to be carried out, an interim reply should be sent, explaining fully the reasons for the delay.

10.7 All notifications must be in writing and where an applicant's first language is not English, a translation should be provided.

10.8 If a notification is not received by an applicant it can be treated as being given to them only if it has been made available at the local authority's office for a reasonable period for collection either by the applicant, or on their behalf. A 'reasonable period' for the collection of a notification letter from the local authority's office is considered to be 28 days.

10.9 The decision letter should state whether placement of an applicant in accommodation completely fulfils the local authority's duties or, if an interim reply is sent, whether it is only a temporary placement pending further action, such as completion of inquiries.

10.10 Where the local authority is making an offer of accommodation under the homelessness legislation, the letter should set out why it thinks the house is reasonable for the applicant. Letters should give names and telephone numbers of the relevant officer, and also advise applicants on sources of independent advice such as solicitors, Citizens Advice Bureaux or other advice centres.

10.11 If the applicant telephones for a decision, the local authority should take the opportunity to confirm the address to which the written notification required by statute should be sent, since homeless people will often move between a series of 'care of' or other temporary addresses. The address to which written notification should be sent, and a telephone contact number if desired by the applicant, should be ascertained at the time of the initial interview.

10.12 A checklist of the information that should be included in the decision letter can be found at the end of this chapter.

Review of decisions

10.13 Local authorities must notify the applicant that there is a right to review of the decision, the time within which a request for a review should be made and of any advice and assistance that is available to the applicant in connection to the review.

10.14 Local authorities have a duty to review homelessness decisions, if requested, under Section 35A of the 1987 Act. This states that:

- decisions on duties (if any) owed to applicants who are homeless or threatened with homelessness;
- the decision to notify another local authority that the local authority believe that the conditions for referral of an application to that other local authority have been met;
- the determination of whether the conditions for referral of an application to another local authority are satisfied; and
- where accommodation is secured for the applicant, whether the provision of that accommodation discharges the authority's duty to the applicant are all open to review.

10.15 A request for a review should be made within 21 days of the applicant being notified of the authority's decision, or a longer period if the authority allows this.

10.16 The procedure for the review is set out in Section 35B of the 1987 Act. This specifies that the person who carries out the review should be senior to the person who made the decision that is under review, and should also have had no involvement in the making of the decision.

10.17 The authority is (or either of the authorities are, as the case may be) under a duty to notify the applicant of the decision reached on review. If the decision is to confirm the original decision on any issue against the interests of the applicant, or to confirm a previous decision to either notify another authority or that the conditions are met for the referral of the case, then the authority should also notify the applicant of the reasons for the decision.

10.18 Notice of the decision will not be treated as given unless the reasons for the decision are given. Notice must be given in writing and shall, if not received by the applicant, be treated as having been given only if it is made available at the

authority's office for a reasonable period for collection by the applicant or on behalf of the applicant.

10.19 Under Section 29 of the 1987 Act temporary accommodation should be provided to applicants requesting a review of the decision of the authority until they have been notified of the review decision of the authority and, if appropriate, the reasons for the decision.

10.20 Applicants should be advised that they have a right to temporary accommodation while the review is being carried out.

10.21 There is no right to request a review of a decision reached on review.

10.22 Each local authority will wish to consider the most suitable review procedure for its circumstances, but it should incorporate the following features:

- it should be as speedy as is consistent with a full and fair hearing of the case, bearing in mind that an applicant will often be in urgent need;
- the applicant should be fully informed of the points to be considered in the review, and given a reasonable period to prepare his or her case;
- information on the availability of independent advocacy in the area should be provided;
- the applicant should have the right to be accompanied by a friend, adviser or legal representative, and to have an interpreter if their first language is not English;
- people with, for example hearing or speech difficulties, mental health problems or learning disabilities may also need an intermediary;
- the applicant should be able to make verbal as well as written representations;
- suitable training should be given to those reviewing decisions who should be able to consider the merits of the case, and to substitute their own decision for the original one, or to carry out further investigations; as well as considering such matters as whether proper and unbiased procedures were followed, whether all relevant and no irrelevant factors were taken into account, and whether the decision was within the local authority's powers;
- sometimes those reviewing a decision may decide that, while the decision was correct, the case was handled insensitively, or no information, or inadequate information, was provided to the applicant, and that an apology should be offered to the applicant for these inadequacies;

- the written notification of the review decision should include full and clear explanations of the reasons behind the decision and set out clearly which parts of the original notification are, and are not, being changed; and
- arrangements should be in place for ensuring that the implications of review decisions for decisions on, or the handling of, future applications are drawn to the attention of homelessness officers and senior officers.

10.23 Local authorities should publicise the right to request a review and the procedures for the review ensuring these are available in accessible and easily understandable format.

10.24 It is important that an applicant is not disadvantaged by requesting a review and it would be expected in normal circumstances that a local authority should hold a property offered pending the outcome of the review. Ensuring that the review is carried out promptly will minimise the period where there may be any loss of rental income for the landlord.

10.25 Review notification letters should advise applicants of their right to go to the Scottish Public Services Ombudsman if they are dissatisfied with the way in which their application has been handled.

Judicial review

10.26 Applicants unhappy with a decision may seek judicial review. In a judicial review the court cannot substitute its own opinion for that of the decision makers. However, it can strike down a decision on the grounds that the decision maker has exceeded or abused their powers, or failed to perform the duty delegated or entrusted to them, or exhibited bias. The court's decision may affect the particular case only, but it may also have wider implications for the local authority's policies and procedures. For example, it may call into question the legality of a current policy being applied, or indicate shortcomings in the local authority's procedures.

Checklist for decision letter

10.27 The following is a simple checklist of the minimum basic information a model decision letter should contain. It is not exhaustive and depending on the applicant's circumstances and the decision reached, additional or alternative information might also be necessary.

Have you:

- Set out clearly your decision as to whether or not the applicant is
 - Homeless?
 - Intentionally homeless?
- Set out whether or not you have investigated local connection and if so whether or not you intend to refer the applicant to another authority?
- Provided clear reasons for your decision including matters which you took into account?
- Explained what happens next and any actions that the applicant is required to take?
- Informed the applicant of their right to request a review of your decision, including review of the accommodation offered?
- Set out clearly the procedures for review including likely timescales?
- Provided details of where the applicant can access further advice or information, including independent sources in the area?
- Provided full contact details for the applicant to use if they wish to discuss anything in your letter?
- Checked that the letter is in a form which is accessible and understandable to the applicant?

Chapter 11

Protection Of Property And Action On Unoccupied Houses



CHAPTER 11 - PROTECTION OF PROPERTY AND ACTION ON UNOCCUPIED HOUSES

11.1 **Summary** - this chapter sets out the local authority's duties relating to protection of an applicant's property and action regarding property which is unoccupied. If homeless people are to set themselves up successfully in a new home, they are likely to need all, or most, of their existing possessions. Therefore, the preservation of their possessions benefits not only the applicant themselves, but can produce savings to the public purse in terms of homelessness recurring, or the need for such support as provision of furniture.

11.2 If the local authority has reason to believe that an applicant is homeless or threatened with homelessness, and they also have a duty to find accommodation for them, then if:

- there is a danger of loss of, or damage to, the applicant's moveable property because of their inability to protect and deal with it; and
- no other suitable arrangements have been or are being made to protect it;

the local authority has a duty to take reasonable steps to prevent the loss of the property, or to prevent or mitigate damage to it (sections 36(1) and (2) of the 1987 Act). 'Moveable property' includes, for instance, furniture, pots and pans, and clothing, though not fixtures. The duty also extends to the property of anyone who might reasonably be expected to reside with the applicant (Section 36(8)).

11.3 Even if the local authority is not subject to a duty to accommodate an applicant, it has power to take any reasonable steps to protect the applicant's property.

11.4 Homelessness officers should always check whether there is a need to protect the property of applicants. If there is, and this need is not being met, they should advise the applicant of the service for protection of property including any charges. Local authorities should also consider arranging for such property to be insured against loss or damage while it is in their care. For the service itself the local authority can use a private provider.

11.5 Reasons for an applicant being unable to protect their property, apart from lack of funds and storage space, could include being placed in temporary accommodation with little or no storage space, or incapacity due to such causes as mental health problems or learning disability. Many applicants will of course prefer to make their own arrangements with friends or relatives or private providers.

11.6 As a matter of good practice the local authority should also consider providing assistance with the kenneling of any pets that an applicant may have if they are not able to keep them in their temporary accommodation.

Cessation of duty

11.7 The duty or power to protect an applicant's property ceases when the local authority has reason to believe there is no longer any risk of loss or damage to it (section 36(5) of the 1987 Act). This will normally be the case where the applicant finds permanent accommodation where they can put their possessions.

11.8 Local authorities must notify the applicant of the fact they no longer have a duty or power to protect their property, and the reason for believing the risk of loss or damage has disappeared (sections 36(6) and (7) of the 1987 Act). However, any property already placed in storage by the local authority can continue to be kept in store, subject to the original conditions including charges (with any necessary modification).

11.9 Applicants should be warned in good time that the local authority's duty to protect their property is coming to an end, so they can make alternative arrangements. However, applicants may need a reasonable period to, for example, arrange for furniture to be moved to their new home, and local authorities should therefore consider storing property for a transitional period if necessary, subject to appropriate charges.

11.10 Where an applicant has had belongings placed in storage by the local authority and is moving into permanent accommodation, the authority should consider assisting with the delivery of their belongings. This can help facilitate a quick move into the new tenancy thereby freeing up temporary accommodation and reducing storage costs.

Powers of entry

11.11 Under Section 36(3) of the 1987 Act local authorities have powers of entry, at reasonable times, to an applicant's present or last home, in order to protect their property; and power to deal with the property in any way which seems reasonably necessary. They may store the property or arrange for it to be stored.

11.12 Use of this power may be appropriate where the applicant has to be placed in furnished accommodation such as bed and breakfast for a period. It may also be useful where an applicant has difficulty in recovering their property from a landlord, though it should be remembered that a landlord may have a claim on it for debts owed by the applicant.

Charges and disposal of property

11.13 Local authorities have power under Section 36(4) of the 1987 Act to impose, as a condition for agreeing to protect property, a reasonable charge for storing

protected property, and can dispose of the property in circumstances which the local authority specifies in advance. Provided it so specifies in advance, the local authority can dispose of property if it has lost all contact with the applicant, in order to recover storage charges or other debts owed to it.

11.14 Any charges levied on individual applicants should take account of what (if anything) they can reasonably be expected to pay, as well as storage costs; and applicants should be advised of these charges in advance. Private sector storage providers may be the most cost effective option, if the number of cases is few. An appropriate minimum period before disposal of stored property in cases where the local authority has lost contact with the applicant is 6 months. Local authorities should attempt to contact the applicant or other agencies who might have contact with the applicant (for example Social Work) before disposing of their belongings. Before selling stored property to recover storage charges or other debts owed by the applicant, the local authority should consider the likely proceeds and costs of disposal; together with any danger that the applicant's loss of these possessions will make a recurrence of homelessness more likely, leading to further costs.

Power to repossess social rented tenancy

11.15 Under sections 17 and 18 of the 2001 Act, local authorities or registered social landlords can repossess a house let under a Scottish secure tenancy, if they have reasonable grounds to believe that it is unoccupied, and that the tenant does not intend to occupy it as their home. To do so they must give the tenant 4 weeks' notice and make the necessary inquiries to satisfy themselves of the position. At the end of this 4 week period, if the landlord is satisfied that the house is unoccupied and the tenant does not intend to occupy it as their home, they can bring the tenancy to an end immediately by serving a further notice on the tenant. Further possession proceedings are not required. The Scottish Secure Tenancies (Abandoned Property) (Scotland) Order 2002 (SSI 2002 No. 313) provides that the serving of a notice in terms of that order shall be served by posting it to the tenant in a recorded delivery letter, addressed to the tenant at their last known address, or by leaving the notice at that address.

11.16 A tenant aggrieved by a termination of his tenancy under Section 18 can appeal to the sheriff under Section 19 within 6 months of the termination. If the appeal is successful the court will order the tenancy should continue or that the landlord should provide other suitable accommodation if the house that has been repossessed is no longer available. The court can make further orders, for example to instruct a landlord to forego rent due for the period of apparent abandonment.

11.17 Paragraph 5 of Part I of Schedule 2 to the 2001 Act also allows a sheriff to grant to a landlord repossession of a house let under a Scottish secure tenancy where the tenant (and their spouse/partner) have been absent without a reasonable

cause for a continuous period exceeding 6 months, or have ceased to occupy it as their principal home. Temporary absence for a period in institutional care would normally be considered to be a reasonable cause.

11.18 Social landlords have duties to secure the property of tenants of abandoned houses, and in the first place to check that they really are abandoned. Premature repossession could cause homelessness, and in some cases there may also be fears for a tenant's safety.

11.19 For anyone who is, or may be, in hospital, or a residential or other institution, the landlord should check with the relevant health or social work agency whether the person is expected to return. Inter-agency consultation is particularly important where the person does not accept that their move to institutional care is permanent, or they may recover at some future date. A proper check should also be made that the person is no longer in the house, particularly when there is any reason to suspect illness, (including mental health) or other problems.

11.20 Where a relative or friend of the tenant says the tenant is giving up a tenancy, the landlord should check if that person has the necessary authority to do so, preferably in writing. In this type of case a landlord should not accept the keys of a house and termination of a tenancy, without receipt of written or other acceptable confirmation from the tenant or someone properly authorised to act for the tenant. Again, where a person has been received into institutional care, the landlord should check the position if possible with the person themselves, and with the relevant health or social work agency, prison or other agency.

Powers of entry to secure house

11.21 Section 17(2) of the 2001 Act gives the landlord of a house let under a Scottish secure tenancy reasonably believed to be both unoccupied and that the tenant does not intend to occupy it as their home, the power to enter the house to secure the house, and any fittings, fixtures or furniture, against vandalism.

11.22 Clear procedures should be in place for deciding when to use this power, and for checking first that the house is unoccupied and the tenant does not intend to return to it as their home. On the other hand, landlords may wish to consider using this power when a tenant's removal has attracted local publicity which would alert burglars and others to the house being empty. Sensible precautions should also be taken to avoid damage such as turning off gas, electricity or water, removing perishable foodstuffs, securing the property and informing the police.

Safe custody of property

11.23 Section 18(4) of the 2001 Act gives Scottish Ministers power to make an order making provision for the landlord:

- to secure the safe custody and delivery to the secure tenant of any property found in a house repossessed under Section 18;
- to levy charges for doing so; and
- if the tenant has not arranged for delivery within the period specified in the order, to dispose of the property and recover any rent or costs owing to the landlord by the tenant.

11.24 This power has been exercised by the Scottish Secure Tenancies (Abandoned Property)(Scotland) Order 2002 (SSI 2002/313). This order provides that the tenant must be advised by notice that if they do not collect their property within a specified time (6 months, unless the value of the property would not, in the opinion of the landlord, exceed the amount which the landlord would be able to deduct for any costs incurred and any arrears of rent) it may be disposed of in accordance with the Order. Property of a value insufficient to cover the cost of storage may be disposed of in the most expedient manner (but see paragraphs 11.13 -11.14 above).

11.25 The landlord may deduct their expenses and the amount of any arrears of rent from the proceeds of sale of any property to which this order applies. Finally the Order requires landlords to maintain a register containing information about the houses in which property has been found: the register must be open to public inspection and the information on it held for 5 years.

Chapter 12

Local Authorities' Duties Towards Persons Subject To Immigration Control And Persons From Eea Member States



CHAPTER 12 - LOCAL AUTHORITIES' DUTIES TOWARDS PERSONS SUBJECT TO IMMIGRATION CONTROL AND PERSONS FROM EEA MEMBER STATES

12.1 This chapter has been deleted as it is out of date. New guidance was issued⁴⁹ by COSLA in February 2019 which sets out the current legal framework and good practice to assist local authorities in meeting their statutory duties and delivering an effective social work response when working with people who have no recourse to public funds (NRPF). Local authorities also have wider responsibilities to support the integration of migrants and asylum seekers and to promote good relations within their communities. They are expected to act to reduce poverty, homelessness and discrimination experienced by anyone living in their local areas. The guidance therefore seeks to provide additional advice on responses that may be needed in circumstances where migrants are at risk of homelessness.

⁴⁹ <http://www.migrationscotland.org.uk/migrants-rights-entitlements/introduction/1-1-how-use-guidance>

Advisory Standards for Temporary Accommodation

This guidance provides a set of advisory standards to be applied by local authorities to their temporary accommodation and also to any temporary accommodation provided from other providers. These standards relate to all types of temporary accommodation including Bed and Breakfast, to ensure that the quality of temporary accommodation is of good standard and to meet the needs of the household.

Local Authorities across Scotland utilise a diverse portfolio of temporary accommodation beyond bed and breakfast accommodation including local authority, housing association and private rented stock as well as hostels. The majority of people who are homeless are housed on a temporary basis in the social rented sector.

Across all of these different types of accommodation there already exists a wide variety of legislation that cater for physical standards of accommodation which are largely tenure specific. These include the [Tolerable Standard](#) which applies to all property, the [Scottish Housing Quality Standard](#) which applies to social rented sector properties, [HMO Licencing](#) for B&B and hostels and the [Repairing Standard](#) in the private rented sector.

Physical standards

The following details the physical standards that should apply where appropriate across all tenures to ensure that temporary accommodation is an *adequate, safe and secure space for the household*. The temporary accommodation should:

- **Be accessible and able to meet the needs of any disabled person within the household;**
- **Comply with relevant housing quality standards including health and safety, hygiene, fire, furniture and electrical equipment legislation and regulations;**
- **Provide units that are secure with individual locks so people feel that their belongings are safe;**
- **Provide a facility to secure personal mail, where appropriate;**
- **Have sufficient bedroom space to meet the needs of the household in line with the [overcrowding](#) and [HMO](#) standards;**
- **Have adequate communal living space which includes, for example, space for children to play or do homework;**
- **Have adequate toilet and personal washing facilities for the exclusive use of the household;**
- **Have access to on site laundry facilities;**
- **Have access to adequate cooking facilities for the needs of the household;**

- Have a suitable standard and minimum level of furniture to meet the household's needs, where relevant;
- Have a good standard of cleanliness;
- Have a sufficient and affordable heating system at an acceptable efficiency rating in line with those published in the Energy Efficiency Standard for [Social Housing](#) and those for [Private Rented Property](#);
- Be accessible 24 hours a day with no curfews;
- Include a household assessment to consider whether the temporary accommodation being offered is affordable by the household;
- Allow access to digital technologies (e.g. via WiFi), where possible, so households can access online facilities e.g. welfare benefits, choice based letting systems;
- Have the means to support people to maintain relationships with their pets; and
- Have provision to allow visitors, including provision for visits from children, where possible.

Location standards

When considering offering a household temporary accommodation it is important to discuss with the household the location of the property and its proximity to services and local amenities.

- Accommodation provided should be located so that the main essential services used by a household can be reached by foot, by public transport or by transport provided by a local authority. Services to include education/school/nursery, supermarket or convenience store, doctors, dentists, support or other health providers and advice agencies (where applicable);
- The location of the property should also take into account the needs of all household members in terms of reasonable access to place of employment and formal or informal support networks.
- Cultural or religious need should also be identified and met through the location of accommodation where possible;
- The location of the accommodation also needs to take into account the social and economic needs of the household; and
- An assessment of personal safety of the household, specifically households fleeing domestic abuse, predominately women, and whether the temporary accommodation being offered is in an area that is close to the perpetrators family and/or is too far from children's school, social network etc.

Service standards

For some families a stay in temporary accommodation can be long term as they wait for suitable permanent property to become available. It is crucial that households receive a consistent standard of service delivery in order to sustain their temporary accommodation and facilitate a move into settled accommodation.

Service delivery standards include providing:

- **Services identified by an assessment of the needs of all household members, followed up with referrals and support to engage with the relevant housing, health, education, social care services and independent advice services;**
- **Support to access different types of accommodation especially where households are fleeing domestic abuse and the accommodation is used by mixed sex and/or only has male or female staff;**
- **Support to access flexible and ongoing needs led support, specifically where households have multiple and complex needs;**
- **Support to access the necessary information of the appropriate services including counselling, addictions, mental health, medical, dental, optical and money/welfare advice to signpost the household to relevant and available support;**
- **Psychologically Informed Environments, where appropriate, and if required, ensuring staff have been trained in trauma informed care to ensure person-centred needs are met;**
- **Regular reviews of household's needs on a case by case basis, agreed by the household, and taking into account any change in circumstances;**
- **Regular and sustained home visits by allocated officers to identify any unmet needs of the household; and**
- **Ongoing communication with the household with easy access to Housing Officers to discuss issues, ensuring that any information provided is available in different formats and an interpreter is provided where necessary.**

Management standards

The following standards will ensure that a resident is aware of their rights and responsibilities during their stay in temporary accommodation, including any procedures that they need to follow. Providing a household with relevant information at the time of moving in or relocating to alternative temporary accommodation, as well as supporting the household to understand the information can help to ensure the best possible outcome for the household.

This includes ensuring:

- **A written occupancy agreement is in place and has been explained to the household which includes an agreed minimum amount of notice (*at least 24 hours*) that a landlord must give before accessing a person's property/unit and under what circumstances they would give such notice;**
- **Information on any House rules has been provided, including an appropriate set of procedures to demonstrate that anti-social behaviour will not be tolerated especially in shared accommodation such as B&B's;**
- **Information on the Repairs procedure has been provided;**
- **The household is provided with or can access all relevant information applicable to the household's requirements whilst in temporary accommodation and this information is available in different formats;**
- **Information on the Notice period to end an occupancy agreement, including the right to appeal is provided;**
- **Procedures are in place to ensure there is minimum disruption to the household when moving in and out of the accommodation and made aware of any support available to help with the move;**
- **Procedures are in place to protect personal possessions and provide support, advice and information on storage where necessary;**
- **That residents are involved in all discussions surrounding their needs including relocation and changes to occupancy agreements;**
- **That staffing levels match those required to meet the services of the household and all staff have been appropriately trained to understand the needs of the household;**
- **That households are made aware of the Local Authority's Complaints procedure and how to access it; and**
- **That households are provided with a rent statement of charges and how they are paid, in light of the introduction of Universal Credit.**

It is recommended that the advisory standards in this annex should be available in leaflet format in every individual local authority housing and homelessness office as well as publishing the standards on the local authority website.

The leaflet should be included in any information pack that the household receive when they move into temporary accommodation and it should be explained by staff that check the household into the accommodation.

It should also be distributed amongst organisations that provide independent housing advice for display in their waiting rooms in the local authority area and should be made available for publishing on public advice websites such as Citizen's Advice Scotland and Shelter Scotland.

SUMMARY OF LEGISLATIVE CHANGES

The Housing (Scotland) Act 1987, as amended, sets out the powers and duties of local authorities in dealing with applications from people seeking help on the grounds that they are homeless or threatened with homelessness. Since the 1987 Act, there have been a number of changes to legislation, some of which are described below.

The Housing (Scotland) Act 2001 established the right to review a homelessness decision, and introduced a duty on registered social landlords (RSLs) to assist local authorities in rehousing homeless people.

- **Section 1** requires local authorities to assess the levels of homelessness in their area and produce homelessness strategies.
- **Section 2** requires local authorities to provide information and advice about homelessness free of charge. See link below to regulation and guidance at Chapter 9 of this Code.
- **Section 3** makes a number of alterations to the Housing (Scotland) Act 1987. These have the effect of:
 - Changing the definition of homelessness to ensure that people with reasonable accommodation overseas cannot apply as homeless.
 - Ensuring that people who are assessed as unintentionally homeless are entitled to permanent accommodation, setting out a definition of permanent accommodation and stating that if this is not provided the applicant should continue to be assessed as homeless. This section also gives local authorities the discretion to place someone in interim accommodation where there is a duty to provide permanent accommodation - The Homeless Persons (Provision of Non-permanent Accommodation) (Scotland) Regulations 2010 set out the circumstances in which this can be done.
 - Lengthening the period during which people can be assessed as 'threatened with homelessness' from 28 days to 2 months.
 - Requiring that anyone who is assessed as homeless has a right to temporary accommodation whilst enquiries are made.
 - Requiring that all homeless people are entitled to a minimum of temporary accommodation, advice and assistance.
 - Requiring that accommodation offered is reasonable to occupy and meets any special needs the applicant may have.
 - Requiring local authorities to have regard to the best interests of children in exercising their functions.
- **Section 4** gives applicants the right of internal review of a decision.
- **Section 5** provides that RSLs must comply with a local authority's request to provide accommodation unless there is a 'good reason' not to - guidance on what constitutes a 'good reason' has been issued.
- **Section 6** sets out the procedures for arbitration where there is a disagreement between the local authority and the RSL.
- **Section 7** gives Ministers the power to issue regulations setting out minimum terms of occupancy for persons living in hostels and other short-term accommodation.

The Homeless Persons Advice and Assistance (Scotland) Regulations 2002

prescribe the types of advice and assistance that local authorities must provide under Section 31(3)(b) and 32(3) of the Housing (Scotland) Act 1987 to homeless applicants and applicants threatened with homelessness.

The Homelessness etc. (Scotland) Act 2003 amended the Housing (Scotland) Act 1987 and the Housing (Scotland) Act 2001 and primarily affects how local authorities carry out their homelessness functions, strengthening people's rights to support when they are facing homelessness. The 2003 Act also improved the housing rights of people experiencing domestic abuse and provided a mechanism for the abolition of priority need.

- **Section 1** was omitted by virtue of The Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012 (see below).
- **Section 2** gives Ministers the power to specify a time from which priority need is to be abolished. Priority need was subsequently abolished by virtue of The Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012 - see below.
- **Section 3** gives Ministers the duty to consult on and publish a statement setting out the measures to be taken to achieve the abolition of priority need. Priority need was subsequently abolished by virtue of The Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012 (see below).
- **Section 4** gives local authorities a discretionary power, rather than the current duty, to investigate whether a household is intentionally homeless. This section came into force on 7 November 2019 by virtue of The Homelessness etc. (Scotland) Act 2003 (Commencement No. 4) Order 2019 (see below).
- **Section 5 and Section 6** were omitted by virtue of The Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012 (see below).
- **Section 7** provides that accommodation provided for asylum seekers under the Immigration and Asylum Act 1999 does not constitute accommodation of the applicants' own choice so does not establish a local connection.
- **Section 8** This section gives Scottish Ministers the power by statutory order to restrict the operation of section 33 of that 1987 Act, which allows referral of a homeless applicant to another local authority in certain circumstances. It 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 section was commenced on 7 November 2019 by virtue of The Homelessness etc. (Scotland) Act 2003 (Commencement No. 4) Order 2019 (see below). Ministers must consult on and make a statement within 12 months of commencement, setting out the circumstances in which, and the criteria by reference to which, the power is to be exercised.
- **Section 9** gives Ministers the powers to specify accommodation that is NOT suitable as interim accommodation. The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 specifies unsuitable temporary accommodation and the exceptional circumstances in which it may be used.
- **Section 10** amends various parts 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.

- **Section 11** requires landlords and mortgage lenders to notify the relevant local authority when they raise repossession proceedings.
- **Section 12** requires that sheriffs should consider reasonableness in repossession proceedings where rent arrears are due to a delay or failure in Housing Benefit.

The Homeless Persons (Provision of Non-permanent Accommodation) (Scotland) Regulations 2010 prescribe the circumstances in which local authorities can provide non-permanent accommodation to homeless applicants who otherwise would be entitled to permanent accommodation in terms of Section 31 of the Housing (Scotland) Act 1987. It sets out two sets of prescribed circumstances. The first is where an applicant for housing or a person living with the applicant requires housing support services which it is not appropriate to provide within permanent accommodation. The second is where a short assured tenancy can be made available to the applicant, and various conditions in respect of the tenancy and the applicant are fulfilled.

Housing Scotland Act 2010 established the Scottish Housing Regulator as an independent body and made provision about housing, including about the performance and regulation of social landlords and reforms of the right to buy social housing. It also introduced a duty on local authorities to conduct a housing support assessment for applicants who are unintentionally homeless or threatened with homelessness and who they have 'reason to believe' need housing support services as prescribed in the following regulations:

The Housing Support Services (Homelessness)(Scotland) Regulations 2012 make provision in relation to the duty of Local Authorities to assess whether some persons found to be unintentionally homeless or threatened with homelessness need housing support services (see paragraph 8.91 of this Code for details.)

The Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012 abolished the priority need test for homeless households. As a result, from 31st December 2012, all unintentionally homeless households are now entitled to settled accommodation.

The Public Bodies (Joint Working) (Scotland) Act 2014 established a legal framework for the integration of health and social care services in Scotland. The Act requires each Health Board and local authority to delegate some of their statutory functions, and associated budgets, to their Integration Authority. The Integration Authority is then responsible for the planning and delivery of the related services. The provision of equipment and adaptations are services that must be delegated to the Integration Authority.

The Act also introduced national health and wellbeing outcomes that apply equally across health and social care services in Scotland. These outcomes aim to enable service users and carers to have a clear understanding of what they can expect in terms of improvements in their health and wellbeing.

Outcome 2: People, including those with disabilities, long-term conditions, or who are frail, are able to live, as far as reasonably practicable, independently and at home or in a homely setting in their community.

Outcome 5: Health and social care services contribute to reducing health inequalities.

The Act is supported by a set of regulations that prescribe the housing-related functions that **must** be delegated by a Local Authority. In addition the regulations set out where Local Authority housing-related functions **may** be delegated subject to local agreement.

Homelessness services fall into the range of functions that **may** be delegated to the Integration Authority. Full advice is available in the [Housing Advice Note](#) which is statutory guidance to Integration Authorities, Health Boards and Local Authorities issued under the Act.

The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 revoked The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 and prescribes accommodation which may not be used to fulfil the duty on local authorities to provide interim accommodation under Section 29(1) of the Housing (Scotland) Act 1987 in relation to applicants who are pregnant, or whose household includes either a pregnant woman or children. Article 7 of the 2014 Order provides two particular circumstances where such accommodation may be used and this was time limited to 14 days. The time limit in Article 7 was amended to 7 days for families with children or pregnant women by virtue of The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017 (see below). See Chapter 8 and Annex A of this Code for further guidance.

Private Housing (Tenancies) (Scotland) Act 2016 introduced a new type of tenancy for the private rented sector in Scotland to replace the short assured tenancy and assured tenancy for all future lets. In the Act, this new type of tenancy is called the private residential tenancy.

The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017 – for families with children or pregnant women, amends the time limit in article 7 of the 2014 Order from 14 days to 7 days. The aim is to minimise the amount of time families with pregnant women and children should spend in bed and breakfast accommodation, and reduce the time to a maximum of 7 days, unless there are exceptional circumstances. See Chapter 8 of this Code for further guidance.

The Homelessness etc. (Scotland) Act 2003 (Commencement No. 4) Order 2019, which commenced on 7 November 2019, brings into force sections 4 and 8 of the Homelessness etc. (Scotland) Act 2003 (“the 2003 Act”)

- Commencing the provisions in Section 4 changes the duty in Section 28(2) of the Housing (Scotland) Act 1987 (“the 1987 Act”) for local authorities to investigate

whether a person applying to them for accommodation became homeless or threatened with homelessness intentionally to a power. This **gives local authorities the discretion to investigate for intentionality** (see Chapter 6 of this Code for guidance on inquiries into intentionality.)

- Commencing the provisions in Section 8 allows Scottish Ministers by order made by statutory instrument to modify the operation of Section 33 of the 1987 Act, which allows local connection referral of a homeless applicant to another local authority in certain circumstances. Within 12 months of commencing the Section 8 provisions, Scottish Ministers must publish a statement setting out the general criteria by reference to which modifications would take place, and are obliged to consult before making or modifying this statement. Following the Ministerial Statement, the statutory instrument to introduce any changes would be brought to the Scottish Parliament (see paragraph 7.22 of this Code for further details and Chapter 7 for guidance, more generally, on inquiries into local connection.)



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