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Homelessness Team

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To: Local Authority Chief Executives  
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Your ref: «Yourref»  
Our ref: «Ourref»

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Dear Colleague,

## HOUSING (SCOTLAND) ACT 2001: HOMELESSNESS UPDATE

1. I am writing to update you on progress towards implementation of Part 1 of the Housing (Scotland) Act 2001.

### Commencement

2. As you know the remaining homelessness sections of the 2001 Act will be commenced on 30 September 2002, that is those subsections of section 3 not commenced in April; and all of sections 5, 6 and 7. The relevant commencement order is **The Housing (Scotland) Act 2001 (Commencement No. 5, Transitional Provisions and Savings) Order 2002** and it is available on the HMSO website ( [www.hmso.gov.uk](http://www.hmso.gov.uk) ).

### Subordinate legislation

3. From 30 September three subordinate legislation measures will also come into force. These are:
- The Homeless Persons Advice and Assistance (Scotland) Regulations 2002
  - The Homeless Persons Interim Accommodation (Scotland) Regulations 2002
  - The Housing (Scotland) Act 2001 (Appointment of Arbitrator) Order 2002

All of the above documents will be available shortly on the HMSO website.

### Guidance

4. Section 5 of the Housing (Scotland) Act 2001 gives Ministers powers to issue guidance on what constitutes a good reason for a registered social landlord to refuse to comply with a local authority request to house a homeless person. This guidance is attached. I should emphasise that we are keen to assess how this works in practice. Communities Scotland will monitor the performance



of both local authorities and registered social landlords in the discharge of their respective responsibilities under Section 5 of the 2001 Act through its programme of cyclical inspections. Partnership working, effective liaison and successful solutions for homeless people will be some of the key outcomes looked for by inspectors. We will of course revisit the guidance if that becomes necessary and your feedback on the practical operation of the arrangements set out is invited. We will also liaise closely with SFHA and CoSLA whose model protocol will be vital in underpinning day-to-day working arrangements.

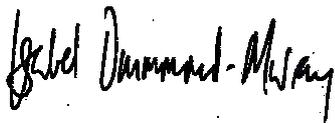
### **Temporary accommodation**

5. Finally, a number of local authorities have asked for clarification of the temporary accommodation duty which currently applies to priority need intentional applicants but which, from 30 September, will also apply to those who do not have a priority need for housing. While the duty is extended in its scope it is otherwise unchanged. However, in consultation with the Homelessness Monitoring Group, we have prepared the attached update to the section of the Code of Guidance which applies to temporary accommodation in order to try and add further clarity. We will look at this again in the context of the full update of the Code which will take place during the next 18 months; in the meantime this update should replace the existing section in the Code.

6. The update of the Code of Guidance will also provide the opportunity to look at any additional guidance necessary relating to all the new duties introduced by the 2001 Act.

7. If you require any additional information then please get in touch.

Yours faithfully



ISABEL DRUMMOND-MURRAY  
Homelessness Team



## **Revision to Chapter 10 of the Code of Guidance: Accommodation**

### **Accommodation duty for intentionally homeless people in priority need and those in non-priority need:**

#### **Legal position**

10.11 The local authority has a duty under section 31(3) of the 1987 Act, (as amended), to ensure accommodation is made available where an applicant is in priority need, but intentionally homeless, or where an applicant is not in priority need. The duty lasts only for such period as the local authority considers will give the applicant a reasonable opportunity of obtaining his own accommodation. The local authority has freedom under section 35(1) to make use of any accommodation in the public or private sectors in fulfilling this duty.

#### **Guidance**

10.12 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) which may adversely affect their ability to secure accommodation; and also local housing conditions including how readily alternative accommodation is available in the area.

10.13 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.

10.14 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 homeless but not in priority need, or in priority need but intentionally homeless, the authority should assess whether the 'reasonable opportunity' afforded to the person is still valid and relevant to the applicant's circumstances. 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.

**HOUSING (SCOTLAND) ACT 2001**

**HOMELESSNESS**

**SECTION 5: GUIDANCE ON GOOD REASON**

## Background

1. The Housing (Scotland) Act 2001, Part 1 of which built on the recommendations of the Homelessness Task Force, sets out in Section 5 that a local authority may request a RSL in its area to provide housing for a homeless person, and specifically in Section 5(3) that

“A registered social landlord must, within a reasonable period, comply with such a request unless it has a good reason for not doing so.”

2. Section 5(7)(a) enables Scottish Ministers to issue guidance as to what constitutes a reasonable period and a good reason for the purposes of s.5(3). Section 6(1)(c) gives Ministers the power to specify a time period for a local authority and registered social landlord to agree whether there is a good reason for non-compliance before arbitration is triggered.

3. Section 79 enables Ministers to issue guidance to local authorities and RSLs on provision of housing accommodation and related services, including the prevention and alleviation of homelessness. Under section 79(7), in considering whether action needs to be taken to secure the proper management of the provision of housing accommodation and related services by a local authority or a registered social landlord, the Scottish Ministers may have regard to the extent to which any guidance under Part 1 of the 2001 Act, section 37 of the Housing (Scotland) Act 1987 or section 79 of the 2001 Act has been followed.

### Reasonable period within which to comply

4. Compliance with a local authority request to provide accommodation under section 5 of the 2001 Act requires the provision of accommodation secured by a Scottish secure tenancy, (or in cases of anti-social behaviour a short Scottish secure tenancy), unless an express request for other accommodation has been made by the local authority.

5. It is difficult to be prescriptive about timescales for compliance. Imposition of a short timescale could lead to hurried re-housing, in order to meet the timetable, without a full assessment of the applicant's needs and consideration of how these can best be met. However setting a long time period could result in that period becoming the norm and could unnecessarily lengthen the period within which a homelessness person is housed. It would also be the minimum length of time which would have to pass before arbitration could be triggered.

6. The key objective must be to minimise the time spent by applicants in temporary accommodation whilst at the same time properly assessing their needs and identifying appropriate solutions. These solutions should take account of the identified needs and the availability of suitable accommodation. The priority is to ensure that the applicant is housed **appropriately** and as **speedily as practicable**.

*Where a request is made to an RSL to house a homeless applicant it is expected that the RSL should comply by providing accommodation within **6 weeks** unless it offers a good reason for not doing so.*

7. As a matter of good practice, an RSL should respond to a request from a local authority as quickly as possible. This is particularly important where an RSL considers it will not be in a position to comply with a request; in such circumstances it should aim to respond to the authority immediately, setting out the grounds for non-compliance. Guidance on good reason for non-

compliance, set out below, deals with circumstances where the RSL is able to comply but is unable to do so within a 6-week period.

### **Principles underpinning requests**

8. Any request made by a local authority should be made within the context of existing statutory requirements. These include that

- the local authority should have had regard to the availability of appropriate accommodation in its area.
- the accommodation to be secured should be reasonable in terms of the 1987 Act and take account of any special needs of the applicant.
- the authority should have had regard to the Code of Guidance and any other relevant Guidance in making its request.

In addition the local authority should take account of any written agreements or protocols between it and the RSL (the terms of which should not be contrary to any legal provision). A model protocol and guidance will be provided by SFHA and COSLA. The views of the applicant should also be taken account of.

9. It is clear, therefore, that a local authority should not make a request that, for example, would place a victim of domestic abuse near the perpetrator unless the victim has specifically requested to stay in the area, for example because of children in local schools or family and friends nearby. (It should be noted that in most such cases the *applicant* would be able to request a review of the decision by the local authority).

10. There may also be circumstances where the local authority and the RSL agree to the withdrawal of a request to provide housing for a homeless person. These include cases where the local authority is provided with new information that leads it to review its decision to request that particular accommodation. For example if an authority is made aware, by an RSL or another source, that the applicant had perpetrated an act of domestic abuse against a victim residing in the area then the authority should withdraw its request to the RSL to provide housing in that area.

11. Where an RSL has agreed to house a homeless person, but subsequently cannot do so in a reasonable period and the local authority is satisfied that it can source appropriate accommodation from another provider in a reasonable period a local authority may also agree to withdraw the request.

### **Good reason for RSL not complying**

11. **Assuming that the principles set out above have been adhered to, the presumption should be that in most cases there would be no good reason for an RSL not to comply with a request made by a local authority and not withdrawn.** However, there are specific circumstances where an RSL may have good reason and these are described below.

#### **11.1. Non-compliance within 6 weeks**

Where the RSL is unable to make appropriate accommodation available (ie comply with the request) within 6 weeks of the request then it has good reason for non-compliance. However when the RSL can identify a property which may be made available in a longer time period;

is able to make a definite arrangement for that accommodation to be made available to the homeless applicant and can provide assurances to the local authority that it will be able to comply with the request by an agreed date, then the authority may accept its initial response of good reason for non compliance as a preliminary response, but should resubmit its request to the RSL for the accommodation at an appropriate time.

## **11.2 Non-compliance in any timescale**

Where the only accommodation the RSL has available is of a particular nature (for example, sheltered housing for older people, specialist supported accommodation, individual property specifically designed or significantly adapted for occupation by people with a disability) and this is not appropriate for the applicant then an RSL will have a **good reason** for non-compliance.

However, it is important that the views of the applicant and the nature of local demand are considered in reaching a decision on appropriateness. The special characteristics of the accommodation should not be used as the sole reason for not complying with a request but regard should be had to the sustainability of the accommodation as a specialist resource.

12. Section 6 of the Housing (Scotland) Act 2001 allows Ministers (in an order) to set a period within which agreement should be reached as to whether the reason is good before the arbitration period is triggered. The time period set in the The Housing (Scotland) Act 2001(Appointment of Arbiter) Order 2002 is 5 working days.