

HOUSING (SCOTLAND) ACT 2001: HOUSING LISTS AND ALLOCATIONS

Introduction

1. The purpose of this guidance is to set out the statutory provisions governing admission to housing lists and the allocation of housing by local authorities and Registered Social Landlords (RSLs). It has been prepared by the Scottish Executive in consultation with the Working Group on Housing Act Implementation.

2. The legislation governing these matters is to be found in sections 19 and 20 of the Housing (Scotland) Act 1987, as amended by sections 9 and 10 of the Housing (Scotland) Act 2001. For ease of reference, the relevant provisions are shown in a consolidated manner at Annex A.

3. *[The provisions of sections 9 and 10 of the 2001 Act are expected to come into force on 2002, by [order details to be inserted]. This guidance is issued in terms of section 79 of the 2001 Act which came into force by [details of order to be inserted].*

4. The guidance has been prepared primarily to assist housing staff working in local authorities and registered social landlords who, in due course, will need to implement the new arrangements within their organisations. We also hope that the guidance will be of interest to tenant organisations and others advising tenants who wish to know about the implications of the new housing list and allocations provisions.

5. With the introduction under the 2001 Act of a common tenancy for all social sector tenants in Scotland – the Scottish Secure Tenancy (and short Scottish Secure Tenancy)- it is important that all such tenants have rights in common, including rights of access to social housing and that there is a consistency of treatment of all tenants in the social sector.

Existing Framework

Local Authority Housing

6. The existing framework of Scottish legislation requires local authorities to allocate their housing on an objective and non-discriminatory assessment of housing need. Provisions in Sections 19 and 20 of the Housing (Scotland) Act 1987 set out the statutory basis on which these functions rest.

Registered Social Landlords (RSLs)

7. There is no equivalent statutory framework governing RSLs but as a condition of registration with Scottish Homes, RSLs must comply with a set of Performance Standards prepared jointly by the Scottish Federation of Housing Associations (SFHA) and Scottish Homes. (Community Scotland) The Standards among other things require RSLs to allocate houses to those with high levels of housing need and, where appropriate, a need for support.

8. To ensure consistency in the social rented sector, the 2001 Act applies the existing statutory provisions in sections 19 and 20 of the Housing (Scotland) Act 1987 to RSLs. In addition, the 2001 Act makes amendments to the 1987 Act to strengthen the rights of social rented sector tenants in Scotland.

9. [DQInsert?] The general policy in relation to admission to social sector housing is that there should be open access to waiting lists and that houses should be allocated fairly and in accordance with need. The Executive is aware of some landlord practices whereby applicants are not actively considered for housing, usually for rent arrears or anti-social behaviour, but sometimes with little or no apparent justification. The Executive accepts that there needs to be a limited use of suspensions from waiting lists but considers that these should be exceptional and should be managed in an accountable way. Section 79 of the 2001 Act gives Scottish Ministers powers to issue guidance on a range of issues, including the allocation of housing accommodation. The Executive has commissioned work from the Chartered Institute for Housing in Scotland on suspensions, which may form the basis for future guidance on this issue.]

Housing Lists

10. Section 19(1) of the Housing (Scotland) Act 1987 (as inserted by section 9 of the 2001 Act) sets out the entitlement for anyone aged 16 or over to be admitted to a housing list.

This is intended to ensure that no one in housing need can be excluded from a housing list, and, therefore, will not be 'lost from the system' as a result. Although it is recognised that, once admitted to a housing list, the landlord will continue to determine the priority of the application, section 20 (as inserted by section 10 of the 2001 Act) sets out some broad criteria that should be taken into account by local authorities and RSLs together with more specific requirements relating to factors which should not be taken into account.

Definition of Housing List

11. Section 19(2) allows for housing lists to be held by any housing provider or jointly by or on behalf of any two or more housing providers in connection with the allocation of housing held by it or them for housing purposes.

This is intended to provide for circumstances where a common housing register (CHR) is in operation, including where a CHR is operated by a third party established by housing providers to administer the CHR on their behalf.

Definition of Housing Provider

12.. Section 19(3) explains that “housing provider” means any local authority or any registered social landlord.

Admission to the Housing List

13. *Landlords need to be clear what admission to a housing list means, and importantly what it does not mean. When an applicant for social housing asks to be put on a housing list*

that person is indicating his or her need or desire to be housed by a social landlord. At that point the landlord need only establish that the person is aged 16 or over. Once this is established, the applicant should be added to the list.

14. *In this way, the applicant's need or desire for a house is logged. However this is only the beginning of the process. The landlord has then to assess that person's need and to prioritise his or her need in accordance with the legislative framework and the published rules of the landlord. The right to be admitted to the housing list is not the same as the right to be allocated a house.*

15. *In the past, some RSLs have operated a system whereby applicants are rejected whose needs, once assessed, do not meet a certain level or threshold. The right to be admitted to a housing list will ensure a more inclusive approach to all housing applications and will ensure that applicants can be re-assessed if circumstances change.*

16. *It is important that it is made clear in landlords' published rules and on application forms what is meant by admission to a list and that landlords take time to explain this to applicants and to make clear to them at the admission stage that an assessment of need and prioritisation of need will follow. Once landlords have assessed and prioritised the application, they should make clear to applicants how likely and on what timescale an allocation might be made or to offer information on other housing providers.*

Allocation of Housing

Reasonable Preference

17. Section 20 (1) of the 1987 Act as amended, requires that in selecting tenants for their houses, all local authorities and RSLs must give reasonable preference –

- a) to persons who
 - (i) are occupying houses which do not meet the tolerable standard; or
 - (ii) are occupying overcrowded houses; or
 - (iii) have large families; or
 - (iv) are living under unsatisfactory housing conditions; and
- b) to homeless persons and persons threatened with homelessness (within the meaning of Part II of the Housing (Scotland) Act 1987 (as amended by the 2001 Act).
 - *“Overcrowding” is defined in Part VII of the 1987 Act*
 - *“Tolerable Standard” is as defined by S86 of the 1987 Act*
 - *“Large families” is not defined. Landlords have discretion to exercise their own judgement on what constitutes a large family, taking account of the views of tenants and local conditions*
 - *“Unsatisfactory housing conditions” is not defined in statute and is sufficiently wide to cover the physical condition of the house and the more subjective*

aspects of an applicants circumstances, such as household composition, problems with neighbours etc

What does “reasonable preference” mean?

18. It means that local authorities and RSLs should give due weight to the factors listed above, but it does not restrict authorities to taking only such factors into account. Landlords could add other factors of their own, such as housing key workers coming into the area, whose presence is essential for economic growth. However, an authority should not allow its own secondary criteria to dominate its allocation scheme at the expense of factors in the statutory list.

Factors not to be taken into consideration in allocation of housing

19. Section 20 (2) of the 1987 Act (as amended by S10(3) of the 2001 Act) details those factors which local authorities and registered social landlords must not take into account in the allocation of houses held by them for housing purposes.

20. The factors that should not be taken account of are:-

i) the length of time for which an applicant has resided in its area.

This is intended to prevent, for example, the award of points for residence in the landlord's area where the authority bases its allocations on a points scheme. Its effect is to put applicants from outside on exactly the same footing as those from within it. It does not give incomers any advantage over local residents [DQ Do we need to elaborate further on this? What about local connection?]

ii) any outstanding liability (such as rent arrears) attributable to a house of which the applicant was not the tenant;

iii) any rent or other arrears accrued by the applicant on a previous tenancy which are no longer outstanding;

iv) any such liability which is outstanding but where:

(a) the amount outstanding is not more than 1/12th of the annual amount payable (or which was payable) by the applicant to the landlord in respect of the tenancy; or

(b) the applicant:

has agreed arrangements with the landlord for paying the outstanding liability; or

has made payments in accordance with that arrangement for at least 3 months and is continuing to make such payments;

v) any outstanding debts of the applicant or anyone who it is proposed will reside with the applicant which do not relate to the tenancy;

The provisions at (ii) to (v) above seek to limit the circumstances in which landlords refuse to house an applicant because of their or others previous debts. It is clearly reasonable for landlords to refuse to house an applicant if he or she has significant outstanding rent arrears and these provisions do not prevent landlords from doing this. However, it is important to strike a reasonable balance between the interests of applicants and landlords and these provisions prevent landlords from:

- *refusing to house an applicant because of non-housing debts; or*
- *if they have had arrears of rent or service charges which have since been repaid;*
- *or where the rent or service charges arrears amount to no more than a month's charges, to avoid penalising applicants for purely technical arrears;*
- *or where the applicant has come to an arrangement for repaying arrears, has kept to the arrangement for at least 3 months and is continuing to make the payments. This is designed to help applicants who are making a genuine effort to pay off arrears.*

vi) the age of the applicant provided that the applicant is 16 years of age or over

except in the allocation of (a) houses which have been designed or substantially adapted for occupation by persons or a particular age group; (b) houses to persons who are or are to be in receipt of housing support services (within the meaning of S91 of the Housing (Scotland) Act 2001 (asp 10) for persons of a particular age group.

These exceptions are brought in under S20 (2A) of the 1987 Act as inserted by S16(4) of the 2001 Act. They reflect that whilst age should not be a barrier to getting houses, in some cases, certain houses will be particularly or only suitable for certain age groups, e.g. sheltered housing for older people, supported housing, such as foyers, for young people.

vii) the income of the applicant and his family.

Income in this context refers to any source of income including benefits.

viii) whether or to what value the applicant or any of the applicant's family owns or has owned (or any of them own or have owned) heritable or moveable property.

The rationale for not taking account of property is to reflect that owners can find themselves in necessitous circumstances and require social housing. Such circumstances might include mortgage repossessions, relationship breakdown, loss of employment or other income required to sustain ownership, age, infirmity or the need to be near a relative or carer. As with

all allocation decisions, the overriding criterion is that allocations should be made on an objective assessment of need.

Residency Requirement

21. In allocating houses held by them for housing purposes, local authorities and RSLs shall take no account of whether an applicant is resident in their area if the applicant:
- i) is employed, or has been offered employment, in the area; or
 - ii) wishes to move into the area to seek employment and the landlord is satisfied that this is the applicant's intention
 - iii) wishes to move into the area to be near a relative or carer; or
 - iv) has special social or medical reasons for requiring to be housed within the area; or
 - v) wishes to move into the area because of harassment; or
 - vi) wishes to move into the area because he or she runs the risk of domestic violence
- "Harassment" is as defined in section 8 of the Protection from Harassment Act 1997 (c40).
22. *The rationale behind these categories is to remove obstacles within the social sector to the mobility of households between areas where applicants need to move for employment, social or medical reasons or because it has become untenable for them, because of the behaviour of others, to remain in their area.*

Action for Landlords

23. Landlords need to review their policies, waiting lists, published rules, application forms, to ensure that they comply with the new statutory requirements and to make their tenants aware of these changes. They also need to ensure that housing staff and elected and committee members receive appropriate training in the statutory provisions and in the exercise of discretion over those areas such as "reasonable preference", "unsatisfactory housing conditions" which do not have a statutory definition but decisions on which require to be open and accountable and to be able to withstand any judicial challenge.
24. Landlords will need to have clear policies on admission to the housing list; the reasonable preference categories; the factors not to be taken into account in allocation of housing; and on residency requirement. and to publish these as part of their rules.
25. In relation to persons entitled to move into an area for employment, medical or social reasons or by virtue of harassment or risk of domestic abuse, landlords will require to put in place mechanisms for checking the validity of the reason for the move, such as employment offers, medical certificates, references from a previous landlord, confirmation from a Family Practitioner, Social Worker, Police. In any event, seeking confirmation should be carried out in a sensitive manner.

In all cases, a declarator from the tenant on the application form should be sought which, if false or misleading could lead to a Notice of Proceedings for possession. Staff will require

appropriate instructions and training in both the nature of information required and how best to obtain it.

Publication of Rules

22. Local authorities and RSLs have a duty to make rules covering admissions, priority of allocation of houses, transfers and exchanges; and to publish these rules (section 21 of the 1987 Act, as amended by section 155 of the Leasehold Reform, Housing and Urban Development Act 1993). Authorities should make sure that the full set of rules is in plain English and is available to all for scrutiny at the offices of the authority. In addition, a free summary of the rules must be available to all members of the public on request.

Role of Councillors

23. Councillors are excluded from decisions on certain allocations by virtue of section 20 (3) of the 1987 Act as inserted by section 154 of the Leasehold Reform, Housing and Urban Development Act 1993. Section 20(3) of the 1987 Act excludes the local councillor from a decision on allocating a council house where the house in question is situated; or the applicant for the house in question resides; in the electoral division or ward for which that member is elected. This does not prevent councillors from making factual information known to the Council or from making representations to the Council on behalf of a constituent.

SECTION 19 – 21 OF THE HOUSING (SCOTLAND) ACT 1987: AS AMENDED BY THE HOUSING (SCOTLAND) ACT 2001

19 Admission to housing list.

- (1) An application for housing held by a local authority or a registered social landlord is entitled to be admitted to a housing list unless the applicant is under 16 years of age.
- (2) In this section and in section 20, “housing list” means a list of applicants for housing which is kept by any housing provider or jointly by or on behalf of any two or more housing providers in connection with the allocation of housing held by it or them for housing purposes.
- (3) In subsection (2), “housing provider” means any local authority or any registered social landlord.

20 Persons to have priority on housing list and allocation of housing.

- (1) A local authority and a registered social landlord shall, in relation to all houses held by them for housing purposes, secure that in the selection of their tenants a reasonable preference is given –
 - (a) to persons who –
 - (i) are occupying houses which do not meet the tolerable standard; or
 - (ii) are occupying overcrowded houses; or
 - (iii) have large families; or
 - (iv) are living under unsatisfactory housing conditions; and
 - (b) to homeless persons and persons threatened with homelessness (within the meaning of Part II).
- (2) In the allocation of such housing a local authority and a registered social landlord –
 - (a) shall take no account of –
 - (i) the length of time for which an applicant has resided in its area;
 - (ii) any outstanding liability (for payment of rent or otherwise) attributable to the tenancy of any house of which the applicant is not, and was not when the liability accrued, a tenant; or
 - (iii) any liability (for payment of rent or otherwise) of the applicant which is attributable to the applicant’s tenancy of a house but which is no longer outstanding;

(iv) Any such liability which is outstanding but in respect of which subsection (2A) is satisfied; or

(v) any outstanding liability of the applicant or any person who it is proposed will reside with the applicant which is not attributable to the tenancy of a house;

(vi) except to the extent permitted by subsection (2B), the age of the applicant provided that he has attained the age of 16 years, or

(vii) the income of the applicant and his family; or

(viii) whether, or to what value, the applicant or any of his family owns or has owned (or any of them own or have owned) heritable or moveable property;

(aa) shall take no account of whether an applicant is resident in their area if the applicant –

(i) is employed, or has been offered employment, in the area; or

(ii) wishes to move into the area and they are satisfied that his purpose in doing so is to seek employment; or

(iii) wishes to move into the area to be near a relative or carer; or

(iv) has special social or medical reasons for requiring to be housed within the area or

(v) is subject to conduct amounting to harassment (“conduct” and “harassment” being construed in accordance with section 8 of the Protection from Harassment Act 1997 (c40)) and wishes to move into the area; or

(vi) runs the risk of domestic violence (within the meaning of Section 33(3)) and wishes to move into the area, and

(b) shall not impose a requirement –

(i) that an application must have remained in force for a minimum period; or

(ii) that a divorce or judicial separation be obtained; or

(iii) that the applicant no longer be living with, or in the same house as, some other person,

before the applicant is eligible for the allocation of housing.

“(2A) This subsection is satisfied in respect of an outstanding liability where:

(a) the amount of the outstanding liability is not more than one twelfth of the annual amount payable (or which was payable) by the applicant to the landlord in respect of the tenancy in question; or

(b) the applicant –

- (i) has agreed with the landlord an arrangement for paying the outstanding liability;
 - (ii) has made payments in accordance with that arrangement for a least three months; and
 - (iii) is continuing to make such payments.
- (2B) A local authority and a registered social landlord may take into account the age of applicants in the allocation of –
- (a) houses which have been designed or substantially adapted for occupation by persons of a particular age group;
 - (b) houses to persons who are or are to be in receipt of housing support services (within the meaning of section 91 of the Housing (Scotland) Act 2001 (asp 10)) for persons of a particular age group.
- (3) A member of a local authority shall be excluded from a decision on the allocation of local authority housing, or of housing in respect of which the local authority may nominate the tenant, where –
- (a) the house in question is situated; or
 - (b) the applicant for the house in question resides,
- in the electoral division or ward for which that member is elected.
- (4) In the application of this section to registered social landlords, any reference to their area means the local authority area or areas, or the part of that area or those areas, in which the registered social landlord holds houses for housing purposes.

NOTES TO s20

Amendment

Sub-s (3): added by the Leasehold Reform, Housing and Urban Development Act 1993, s154

21 Publication of rules relating to the housing list and to transfer of tenants

- [(1) It shall be the duty –
- (a) of every local authority to make and to publish in accordance with subsection (4), and again within 6 months of any alteration thereof, rules governing –
 - (i) the priority of allocation of houses;
 - (ii) the transfer of tenants from houses owned by the landlord to houses owned by other bodies;
 - (iii) exchanges of houses;
- (2) It shall be the duty of every registered social landlord –

- (a) to make rules governing the matters mentioned in subsection (1) (a) (ii) to (iv);
- (b) within 6 months of the making of rules under paragraph (a), and within 6 months of any alteration of such rules (whether or not made under that paragraph) –
 - (i) to send a copy of them to each of the bodies mentioned in subsection (3); and
 - (ii) to publish them in accordance with subsections (4) and (5)
- (3) The bodies referred to in subsection (2) (b) (i) are –
 - (i) the Scottish Ministers;
 - (ii) every local authority within whose area there is a house let, or to be let, by a registered social landlord under a Scottish security tenancy.
- (4) The rules to be published by a body in accordance with subsection (1) or (2) shall be –
 - (a) available for perusal; and
 - (b) on sale at a reasonable price; and
 - (c) available in summary form on request to members of the public, at all reasonable times –
 - (i) in a case where the body is a local authority or a development corporation, at its principal offices and its housing department offices; and
 - (ii) in any other case, at its principal and other offices
- (5) Rules sent to a local authority in accordance with subsection 2 (b) shall be available for perusal at all reasonable times at its principal offices.
- (6) An applicant for housing provided by a body mentioned in subsection (1) or (2) shall be entitled on request to inspect any record kept by that body of information furnished by him to it in connection with his application.

NOTES to s21**Amendment**

Sub-s (1): substituted by the Leasehold Reform, Housing and Urban Development Act 1993, s155(1).

Sub-s (3): words in square brackets added by the Housing (Scotland) Act 1988, s3, Sch2, para 7.