



# SCOTTISH EXECUTIVE

Development Department  
Homelessness Team

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To :

Chief Executive, CoSLA  
Director, Scottish Federation of Housing Associations  
Local Authority Chief Executives and Directors of Housing  
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Your ref:

Our ref:

29 May 2002

Dear Sir/Madam

## CONSULTATION ON GUIDANCE UNDER SECTION 5 OF THE HOUSING (SCOTLAND) ACT 2001

I attach draft guidance under section 5(7) of the Housing Scotland Act 2001 covering a reasonable period for compliance by a Registered Social Landlord with a local authority request to house a homeless person and on good reason for non-compliance with such a request. I also attach proposals for the time period under section 6(1)(c) within which the local authority and landlord must reach agreement as to whether there is good reason for non-compliance before arbitration is triggered.

**Responses to the consultation are invited by 31 July 2002 and should be sent to me at the above address.**

In considering this paper you may wish to have regard to the model protocol and draft guidance prepared by SFHA and CoSLA which sets out proposals for the day to day operation of the referral system between local authorities and RSLs. This guidance will be available shortly on the members' pages of the SFHA website, [www.sfha.co.uk](http://www.sfha.co.uk), in the Housing Act section and on the CoSLA website, [www.cosla.gov.uk](http://www.cosla.gov.uk). If you have any problems accessing these then please contact David Bookbinder, SFHA, at [dbookbinder@sfha.co.uk](mailto:dbookbinder@sfha.co.uk) or 0131 473 6234

Finally you may wish to note that guidance on arbitration procedures under section 6 of the 2001 Act was issued for consultation separately on 23 May.

ISABEL DRUMMOND-MURRAY  
Homelessness Team



# DRAFT SECTION 5 GUIDANCE TO LOCAL AUTHORITIES AND DRAFT INSTRUCTIONS FOR SECTION 6 ORDER

## 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.

Question 1: Is 6 weeks the appropriate timescale to set as the reasonable period for compliance with a request? If not, what period would be more appropriate?

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 violence near the perpetrator. (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 violence against a victim residing in the area then the authority should withdraw its request to the RSL to provide housing in that area. 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 reasonable accommodation from another provider in a reasonable period a local authority may also agree to withdraw the request.

Question 2: Should any of the circumstances suggested above be “good reasons” for non-compliance in their own right rather than situations where the Local Authority may withdraw its 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.

Question 3: Do you agree with the “good reason” set out above?

Question 4: Is the procedure proposed in such circumstances acceptable?

## 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.

Question 5: Do you agree with the “good reason” set out above?

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 as to whether the reason is good should be reached before the arbitration period is triggered. Proposals for the contents of the order are set out at Annex A.

Question 6: Are the time periods proposed in Annex A appropriate?

**Section 6(1)(c) – 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**

**Power to make Order by Statutory Instrument conferred on:** The Scottish Ministers

**Parliamentary Procedure:** Negative resolution of the Scottish Parliament

1. This section provides a power for the Scottish Ministers to specify a period within which a local authority and registered social landlord must reach agreement as to whether or not the RSL has a good reason for not complying with a request to house a person to whom the authority has a duty under section 31(2) of the 1987 Act. It is intended that this power will be used to ensure that any disagreements are resolved speedily and, if they cannot be, that the local authority and registered social landlord proceed quickly to arbitration.
2. It is difficult to set a time period that will in all circumstances satisfy the need for a balance between quick resolution and allowing time for informal negotiation and agreement. The priority for the local authority and the RSL must always be the resolution of any dispute as soon as possible consistent with ensuring the applicant's needs are met appropriately and effectively.
3. Balanced against that need for quick settlement of disagreements, it is clear that the regulations under this section should be flexible enough to allow sufficient time for agreement to be sought and reached before arbitration, including allowing for preliminary responses from the RSL, and any liaison arrangements under model agreements to be operated. Whatever time period is set should be subject to periodic review to assess the effectiveness of the process.
4. In the working relationship between a local authority and an RSL arbitration should be regarded as a last resort when co-operation and dialogue have failed to produce agreement and should not be easily triggered.

**Recommendations:**

5. It is recommended that the period to be specified under section 6(1)(c) be **5 working days**.
6. The arbitration process may be commenced after **2 working days** if the RSL and local authority agree that the period may be shortened; there is no point delaying arbitration in cases where both sides agree quickly that there is no room for consensus.