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Scotland: Delivering a Right to Housing

FIONA KING*

SCOTLAND IS OFTEN PRAISED AS HAVING some of the most progressive homelessness legislation in the world and rightly so. A unique country, with a distinct culture and politics within the wider United Kingdom, Scotland has forged ahead of its Union partners to aspire to, and deliver on, the commitment that everyone should have a home.

The mechanisms through which this right to housing has been achieved are distinct: the existing and evolving homelessness legislation in the United Kingdom and Scotland; the housing profile of Scotland; and the welfare and benefits system through which means-tested people have their housing costs met in part or in full by the state. In this context and with progressive United Kingdom homelessness legislation since the 1970s, bold legislation was put in motion in 2003 by the new Scottish Parliament, which effectively removed the barriers for any homeless person getting state housing. This became known as the “2012 Commitment” which was finally achieved on 31 December 2012, after a decade of incremental steps towards the target.

During this ten-year period there were reductions in the numbers of people presenting to local authorities as “homeless” and improvements in the culture of homelessness services as they became more holistic. Particularly, there is evidence to suggest that accommodation and housing support services are working better in partnership, that statutory staff attitudes have improved, that the services people are receiving are better, and that in some cases the standard of accommodation people are allocated is greatly improved.¹

There have, however, been a number of significant changes to the environment and wider context since this aspirational legislation was passed. Not least has been the impact of the recession, both on public spending as well as on the individuals and families who are homeless or at risk of losing their home. There are also substantial issues stemming from a lack of central government investment and the supply of social homes across Scotland to meet the legal commitment. The challenge therefore remains, for Scotland to continue to deliver on the right to housing in a very different operating context.

I. BACKGROUND

A. LEGAL DEFINITION OF HOMELESSNESS IN SCOTLAND

The *Housing (Scotland) Act 1987*² and the *Homelessness etc. (Scotland) Act 2003*³ consolidated previous legislation and defined homelessness. By including those who live in statutorily overcrowded conditions as well as those who are threatened with violence within their homes, the

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¹ Shelter Scotland, *Progress and Drift: A Review of the Homelessness Task Force Recommendations*, (Shelter Scotland Policy Library, 2011), online: <http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/progress_and_drift_a_review_of_the_homelessness_task_force_recommendations>.

² (UK), 1987, c 26.

³ ASP 2003, c 10.

legal definition of homelessness in Scotland (summarized below) is broader than in many other countries.

Under the current legislation, the definition of homelessness in Scotland includes:

- A person who has no accommodation in the United Kingdom or elsewhere. A person is to be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family are legally entitled to occupy.⁴
- A person who has accommodation but cannot secure entry to it, or it is probable that occupation of it will lead to violence from some other person residing in it or to threats of violence from some other person residing in it and those threats are likely to be carried out.⁵
- A person who has accommodation, but it is probable that occupation will lead to violence, or threats of violence which are likely to be carried out from some other person who previously resided with that person in that accommodation or elsewhere.⁶
- A person who has accommodation that is a movable structure, vehicle or vessel designed or adapted for human habitation, but there is no place where she is entitled or permitted to place it and reside in it.⁷
- A person who lives in accommodation that is overcrowded within the meaning of section 135 of the *Housing (Scotland) Act 1987* and may endanger the health of the occupants.⁸
- A person who is not in permanent accommodation in circumstances where, immediately before the commencement of her occupation, a local authority had a duty under section 31(2) of the *Housing (Scotland) Act 1987* in relation to him.⁹

In addition, the Act defines a person as being threatened with homelessness if it is likely that he will become homeless within 2 months.¹⁰

Before the 2012 Commitment was achieved, there were four tests an applicant needed to pass before there was a duty to provide housing:

- Homeless: does the person meet the definition of “homelessness” as prescribed by legislation?¹¹
- Priority need: does the person or household have an additional vulnerability to be deemed “priority need” as defined by guidance?¹²
- Intentionality: was the person homeless through her own actions (e.g. rent arrears that she could pay, abandoning a home for no reason, etc.)?¹³

⁴ *Supra* note 2, s 24(1)-(2).

⁵ *Supra* note 2, s 24(3)(a)-(b).

⁶ *Supra* note 2, s 24(3)(bb).

⁷ *Supra* note 2, s 24(3)(c).

⁸ *Supra* note 2, s 24(3)(d).

⁹ *Supra* note 2, s 24(3)(e).

¹⁰ *Supra* note 2, s 24(4).

¹¹ UK, Scottish Executive, *Code of Guidance on Homelessness* (Edinburgh: 2005) at 38, online: <www.scotland.gov.uk/Publications/2005/05/31133334/33544>.

¹² *Code*, *supra* note 11 at 41.

¹³ *Code*, *supra* note 11 at 45.

- Local connection: does the person have a local connection to the local government area where she is applying (*e.g.*, has been residing there for a number of years, family, paid employment, education, etc.)?¹⁴

The detail of these definitions is complex and subjective which has resulted in debate, refinement and legal challenge over the past decade. In essence, while the duty to provide housing has been enshrined in legislation for some time, there was—until recently—a number of conditions attached. The most contentious of these, priority need, placed an emphasis on households with children and other vulnerabilities as a priority group within those who had been classified as meeting the legal definition of homelessness. There was a clear rationale for this distinction, yet it relegated the needs of single homeless people and was fundamentally unjust since there was no duty to provide housing for those found to be non-priority. This is what the 2012 Commitment sought to change; to remove the priority/non-priority distinction and to make it clear that having passed the homelessness test was enough of a priority, regardless of your household’s composition or circumstances.

B. POLITICAL & LEGISLATIVE CONTEXT

In order to understand Scotland’s current legislation protecting homeless households and those threatened with homelessness, it is important to understand the wider political context which enabled it. The United Kingdom (UK) has a long history as a developed social democratic market economy with a tradition of enacting social justice through public policy and legislation. In the post-war settlement there was the formal development of state welfare with service provision through the National Health Service (NHS), the provision of social housing, and free education by the state.¹⁵ This was stable until the late 1980s when a punitive approach was taken to the welfare and benefits system, as social protection increasingly locked young people out of provision. Combined with a deteriorating economic situation, this led to a visible increase in street homelessness and rough sleeping which in turn led to the Rough Sleepers Initiative to try and tackle it.¹⁶ The Rough Sleepers Initiative, while successful, exposed wider problems and a lack of provision for homeless households. It is against this background that the Scottish Parliament had an almost unique opportunity to take bold steps and work without the baggage or limitations of other administrations. The importance of this specific and never replicable time in Scotland’s political history must not be underestimated in the development of Scotland’s leading homelessness legislation.

Although the 2003 Scottish legislation was a significant highpoint with regard to housing and homelessness, it was situated within a framework of progressive UK legislation. The *Housing (Homeless Persons) Act 1977*¹⁷ made homelessness the responsibility of state housing

¹⁴ *Code*, *supra* note 11 at 51.

¹⁵ “Social housing” is the term used for government or publically funded housing. In Scotland this is housing owned and managed by either local governments/councils or housing associations which are charitable bodies who own and managed state-subsidised housing.

¹⁶ The Rough Sleepers Initiative (RSI) was a government funded initiative to tackle street homelessness and rough sleeping started in 1990. Initially concentrated in London, the RSI did in its latter stages extend beyond the capital. A separate and distinct RSI was initiated in 1997. See UK, Communities and Local Government, *Homes for Street Homeless People: An Evaluation of the Rough Sleepers Initiative* by Randall, G and Brown S (London: 1999), online: <<http://www.homelesspages.org.uk/node/20960>>.

¹⁷ (UK), 1977, c. 48.

for England, Wales and Scotland (and subsequently Northern Ireland). This legislation was consolidated in Scotland by the *Housing (Scotland) Act 1987* which placed duties on local councils in regards to homeless households.¹⁸

In 1999 the Scottish Government (then the Scottish Executive) initiated a review of homelessness in Scotland. It established the Homelessness Task Force to review national policy and practice and to draw up an action plan for the future based on existing legislation and policy, research and wide consultation.¹⁹ The group's final report was published as "An Action Plan for Prevention and an Effective Response to Homelessness," including both long- and short-term goals.²⁰ The recommendations placed homelessness in its wider social context, emphasizing the need for corporate responsibility across all local authority departments and highlighted the need for stronger partnerships across all public bodies, private organizations, and voluntary agencies working on homelessness and associated issues.

The headline recommendation—that all homeless applicants should be considered in "priority need," essentially giving all those found to be homeless the right to permanent accommodation—attracted a great deal of national and international attention. The removal of the priority/non-priority distinction in homelessness assessments removed the principal barrier to housing and entitled all homeless people to the same rights. This ambitious commitment represented a shift in the approach to homelessness and positioned Scotland's homelessness strategy as one of the most progressive in the world. Taken as a whole, these reform measures sought to fundamentally change the focus of homeless services and extend a rights-led approach to all homeless people. At the time, for many Scottish politicians, nothing better symbolized the failure of the pre-devolution Westminster-led government than the increase in homelessness in the 1980s. By making homelessness an early priority post-devolution, Scotland's politicians showed a high level of cross-party cooperation, marking a point of departure from the Westminster government.

While the barriers of intentionality and local connection are still in place (there was a legislative commitment to removing them also but it was never delivered on), in the past few years they have not been used in a significant way to gate-keep people from services. With the removal of the priority/non-priority distinction, if you are now found to be unintentionally homeless as prescribed by legislation, then local authorities have a legal duty to provide you with permanent housing, or temporary housing until a suitable permanent house is available.²¹

C. WHO IS HOMELESS IN SCOTLAND?

Because of the welfare system, state housing, and progressive homelessness legislation the profile of statutorily homeless households would be different from some other countries. Most notably, there is not always a link to rough sleeping or street homelessness. The Scottish Government records homelessness statistics annually from each local council which provides an extremely comprehensive record of those who are statutorily homeless, which means we have

¹⁸ *Supra* note 2.

¹⁹ UK, The Scottish Executive, *Helping Homeless People: An Action Plan for Prevention and Effective Response*, (St. Andrew's House Edinburgh, 2004), online: <<http://www.scotland.gov.uk/Resource/Doc/26487/0028733.pdf>>.

²⁰ *Supra* note 1 at 6.

²¹ Scotland's local government structure is 32 local authorities or councils with the Scottish Parliament, based in Edinburgh. Responsibility for housing was devolved from the United Kingdom Government in Westminster.

been able to track changing trends due to the impact of the 2012 Commitment and whether new pieces of legislation or other structural changes are making a difference.²²

The data includes an applicant's previous circumstances and their final outcome after engagement with the local government services. In the year 2013 there were 36,457 homelessness applications to local government. Of these, 81% were assessed as homeless and 71% (25,940) were found "priority, unintentional," and were therefore owed the full homelessness duty (*i.e.*, permanent accommodation). Unpacking this a little more, the demographic would be similar to other parts of the United Kingdom and beyond. To illustrate, 67% of all applications are from single people and 21% from single parents. The single largest group is, perhaps unsurprisingly, from single men and within that, single men aged between 20-35 years. We also know that young people are over-represented in homeless figures and records show that the single biggest reason for presenting as homeless is relationship breakdown, with 44% of all applicants last year reporting their previous living circumstances as living with family or friends.²³

II. HOUSING CONTEXT

In order to understand the significance and implications of the 2012 Commitment it is important to place it within its wider context. Scotland has a population of around 5.2 million and it is aging.²⁴ In terms of housing profile, there are around 2.4 million households of which 1.5 million (61%) are owner-occupied, 305,000 (12%) are privately rented, and 596,000 (24%) are state housing (local authorities and housing associations).²⁵ This is a relatively high percentage of public housing although it has dropped significantly over the past few decades. The duty to provide housing to homeless households sits with the local authority and the majority of households who move into permanent housing do so into social housing, although privately rented housing has an increasingly significant role to play in meeting housing need.

What is called "social housing" across Scotland is a combination of state owned municipal housing (council housing) and an almost equal number owned by not-for-profit providers (registered social landlords and housing associations). There are currently more than 150,000 households on council housing waiting lists and that number is likely to be far higher once you include housing associations, who now own 11% of all housing stock.²⁶ This means there is significant pressure on social housing and we are simply not building enough homes; demand is currently far outstripping supply.

²² UK, The Scottish Government, *Operation of the Homeless Persons Legislation in Scotland: 2013-2014*, (National Statistics: 24 June 2014), online: <<http://www.scotland.gov.uk/Resource/0045/00453960.pdf>>. For more information, see UK, The Scottish Government, *Homelessness Reference Tables and Guidance*, online: <<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/RefTables>>.

²³ UK, The Scottish Government, *Annual Homelessness Publication – Tables and Charter 2013-14*, (National Statistics: 23 June 2014), online: <<http://www.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/RefTables/PublicationTables2013-14>>.

²⁴ UK, General Registrar Office for Scotland, *Population Estimates by Sex, Age and Administrative Area, Scotland, 2011 and 2012*, (National Records of Scotland: 8 August 2013), online: <<http://www.gro-scotland.gov.uk/statistics/theme/population/estimates/mid-year/2012/index.html>>.

²⁵ *Supra* note 23.

²⁶ UK, The Scottish Government, *Housing Statistics for Scotland- Housing Lists*, (National Statistics: 20 August 2014), online: <<http://www.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/HSfS/HousingLists>>.

III. DELIVERING ON 2012

Since 2003, local authorities and a range of partner organizations have been recalibrating their services to prepare for this expansion of rights and its anticipated impact on the allocation of social housing. From 31 December 2012, all thirty-two local authorities have been meeting the 2012 Commitment and have removed the priority/non-priority distinction. Significantly, the accompanying culture shift has meant better partnerships across public services and a greater emphasis on housing support to help people move away from the crisis of homelessness and maintain a home once it has been allocated.

Local authorities and their partners have had to examine practices and processes and ask what people in crisis really need and want, what services can we and should we be providing and whether the advice and support being provided is effective. In recent years this has led local authorities to develop Housing Options approaches to housing and homelessness advice to focus on the prevention of homelessness before it becomes a crisis.²⁷

The previous homelessness system focused on points—ranking and rationing—while the current approach, promoted by the Scottish government since 2010 aims to be truly client-centred. This model takes a more holistic view of a person's circumstances and seeks to explore every avenue, across all tenures that might be available to them. One of those avenues must always be to make a homelessness application that, if there is a legal duty, means the provision of any kind of housing, but normally this means social housing. The priority currently being put on homelessness prevention largely through the Housing Options model is a timely and pragmatic response to the pressure on housing resources and local authority budgets. The move towards Housing Options is an opportunity to embed solid prevention principles alongside the statutory homelessness framework to ensure that people get all the advice and information they require to find a positive housing solution, which enables them to move on or away from homelessness.

A. THREATS TO DELIVERY

Since the 2012 Commitment was met at the end of 2012, we have seen a steady decline in the numbers of homeless applicants. This is ostensibly very positive and it is encouraging to see such an active approach to the prevention of crisis. That being said, the operating context in the United Kingdom and Scotland has changed dramatically since this legislation was initiated in the early 2000s. The global economic recession has had a well-documented impact on unemployment levels, repossession rates and household budgets. It has also had a paralyzing impact on levels of house building, which has continued to exacerbate the existing disparity between demand and supply. In terms of public spending, public sector budgets in Scotland reduced by 9% in real terms between 2009 and 2014, from £31.9 billion to £28.9 billion. A further cut of £100 million is planned for 2015-16 to £28.8 billion.²⁸ This is impacting on delivery by councils and their third sector partners and will continue to make delivery of vital services extremely difficult. The Westminster Government's austerity programme has impacted

²⁷Shelter Scotland, "Housing Options in Scotland" (July 2011), online: <http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/a_shelter_scotland_report_housing_options_in_scotland>.

²⁸Audit Scotland, *Scotland's public finances - a follow-up audit: Progress in meeting the challenges* (June 2014), online: <http://www.audit-scotland.gov.uk/docs/central/2014/nr_140605_public_finances.pdf>.

not only on public spending but also the welfare system, through a series of punitive welfare reforms aimed at cutting £19 billion from the benefits bill. These ill-conceived reforms seek to cut state-subsidy but are riddled with fundamental and costly flaws and are impacting negatively on some of the most vulnerable in society.²⁹

The most evident impact of the recession on the homelessness commitment is that the legal duty to provide a home to all unintentionally homeless households is only real if there are homes available. In this context it is vital that all the improvements to service delivery and partnerships are not lost and the emphasis continues to be on prevention homelessness but when it does occur, ensuring people get the best possible service.

IV. CONCLUSION

The 2012 Commitment has acted as a powerful catalyst for changing homelessness services in Scotland. Over the past 10 years there has been a significant expansion of rights and importantly, the way homeless people are treated and the services they can expect in Scotland have improved beyond recognition. This legislation is set against a backdrop of existing UK-wide legislation for homeless households and a strong social housing sector. It must also be recognised that this agenda had strong political buy-in and leadership from the outset and despite changing governments, the drive to meet the legislative commitment was maintained. The removal of priority need was delivered primarily by local authorities but partners across the sector have played a role including housing associations, voluntary organizations, support providers, and private rented housing providers.

It is critical that the abolition of priority need must be seen as the starting point of an ongoing commitment to homeless households, not the end of the story. The importance attached to homelessness prevention must continue in the post-2012 era and in such austere times, close working with all partners is even more critical. The United Kingdom government's changes to the welfare and benefits system have had, and will continue to have, a significant impact and services and progress must not be reversed as a response to challenging circumstances and restricted public spending. We must take stock of what a significant advancement the 2012 Commitment was and the progress that has been made, but we must not be complacent. Scotland has put a marker in the sand and made a commitment to homeless households, the challenge now is delivering on that.

²⁹ Joe Penny, "Why the government's welfare reform can't work" *The NEF blog* (16 August 2013) online: <www.neweconomics.org/blog/entry/why-the-governments-welfare-reform-cant-work>.