

THE SCOTTISH  
HOUSING  
REGULATOR

## GUIDANCE NOTE

**To:** All Registered Social Landlords (RSLs)

**Subject:** Homelessness Arbitration

**Issued by:** The Scottish Housing Regulator

**Ref no:** SHR 09

**Date:** April 2008 (First issued September 2002)

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### Summary

The Housing (Scotland) Act 2001 (“the 2001 Act”) places a new duty on registered social landlords, under section 5 of the 2001 Act, to provide housing for a homeless person where requested to do so by a local authority in its area. Where an RSL does not comply with a request within a reasonable period and the local authority considers it has no good reason for not complying with the request, and the RSL and the local authority are unable to reach agreement, the local authority and the RSL must appoint an arbiter to determine the issue. If the local authority and the RSL cannot agree who to appoint as the arbiter, the Scottish Housing Regulator (on behalf of Scottish Ministers) must, on request of the local authority, appoint an arbiter.

This guidance note, under section 6 of the 2001 Act provides guidance on the procedure to be followed at arbitration and the timescales that should apply. The full text of section 6 is set out in Annex 1 to this guidance note. The guidance note should be read in conjunction with “Housing (Scotland) Act 2001, Homelessness, Section 5: Guidance on Good Reason” available from the Scottish Government web site: <http://www.scotland.gov.uk/library5/housing/homelessupdate.pdf> and The Housing (Scotland) Act 2001 (Appointment of Arbiter) Order 2002 No. 413 available from the HMSO web site: <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/s->

200204.htm

We also attach an Information Note regarding the procedure to be used under section 6(3) which should be read in conjunction with Guidance Note SHR 09.

Sections 5 and 6 of the 2001 Act will be commenced on 30 September 2002.

For any references to Communities Scotland (or Scottish Homes) please read the Scottish Housing Regulator.

If you have any questions about this guidance, you should direct them to:

**The Scottish Housing Regulator**  
**Highlander House**  
**58 Waterloo Street**  
**GLASGOW**  
**G2 7DA**  
**Tel: 0141 271 3810**  
**Email: [shr@scottishhousingregulator.gsi.gov.uk](mailto:shr@scottishhousingregulator.gsi.gov.uk)**

## **Introduction**

1. Section 5 of the 2001 Act sets out that a local authority may request an RSL in its area to provide housing for a homeless person. Section 5(3) states that RSLs must comply with such a request within a reasonable period, unless there is a good reason for not doing so.
2. Under section 5(7) of the 2001 Act, Scottish Ministers have issued guidance as to what constitutes a reasonable period and a good reason for the purposes of s.5(3). “Section 5: Guidance on Good Reason” states that the RSL is expected to comply by providing accommodation within 6 weeks of the request from the local authority, unless it has good reason for not doing so and goes on to define what might constitute “good reason”.
3. Where an RSL does not, within a reasonable period, comply with a request made by a local authority (under section 5 of the 2001 Act), and the local authority considers that the RSL had no good reason for not complying with the request, and the RSL and the local authority are unable to reach agreement as to whether there is a good reason, the local authority and the RSL must appoint an arbiter to determine the issue.
4. Section 6(1)(c) of the 2001 Act gives Scottish Ministers the powers to specify a time period for a local authority and RSL to agree whether there is a good reason for non-compliance before the requirement to appoint an arbiter is triggered. The Housing (Scotland) Act 2001 (Appointment of Arbiter) Order 2002 specifies a period of 5 days for this purpose.
5. If there is no agreement as to who is to be the appointed arbiter, then under section 6(3) of the Act, Scottish Ministers (acting through R&I) must, on request of the local authority, appoint an arbiter. The cost of any arbitration will normally be shared equally between the local authority and the RSL and both parties will be bound by the arbiter’s decision. R&I have published information separately about the procedure it will use to appoint an arbiter under section 6(3).
6. This guidance note provides information (under section 6(5) of the 2001 Act – see Annex 1) on:
  - a) the period within which an arbiter is to be appointed under section 6(1) of the 2001 Act;
  - b) the procedure to be adopted for appointing an arbiter under section 6(1) of the 2001 Act;
  - c) the remuneration and other expenses which may be paid to an arbiter appointed under section 6(1) or (3), and any other expenses to be paid in respect of arbitration;
  - d) the procedure to be followed at arbitration;
  - e) the maximum length of time of the arbitration procedure.
7. The over-riding purpose of the arbitration process explained in this guidance is to resolve disputes between local authorities and RSLs in order to help address homelessness and to provide a means for homeless people to get settled in accommodation as quickly as possible. As homeless people are in acute housing need, the procedures have been designed to allow arbitration to take place quickly and efficiently.

8. This guidance will be reviewed after 12 months.

### **Definition of Homelessness arbitration**

9. Arbitration is a procedure whereby two parties in dispute agree to be bound by the decisions of a third party acting as an arbiter. The function of an arbiter is similar to that of a judge, though the procedures can be less formal. An arbiter will come to a final decision based on evidence and arguments submitted by the parties (i.e. the local authority and the RSL); including information about the local housing conditions and what is reasonable in all the circumstances. Arbitration is generally much quicker and cheaper than going to court. Under section 6(6) of the Housing (Scotland) Act 2001, any determination of an arbiter in these circumstances is final.

### **Period within which an arbiter is to be appointed under section 6(1)**

10. Where the local authority and RSL have been unable to reach agreement, they must appoint an arbiter within a further five days of the expiry of the five day period set by the Housing (Scotland) Act 2001 (Appointment of Arbiter) Order 2002.

### **Procedure for appointing an arbiter under section 6(1)**

11. The local authority and the RSL in dispute should aim to agree on whom to appoint as an arbiter.
12. Local authorities and RSLs are free to appoint arbiters from a variety of sources and should agree in advance the arbiter(s) available to them, should the need arise under section 6(1), to ensure the timescales can be complied with. When the local authority and the RSL are unable within 5 days to reach agreement as to whether the RSL has good reason for not complying with the local authority's request, either party can nominate the arbiter and submit this nomination to the other party for agreement. There should be a joint letter of appointment to the arbiter and both parties will be jointly and severally liable for the arbiter's fees.
13. Arbiters must be suitably qualified, impartial and operate to an appropriate code of conduct that ensures (amongst other things) independence. Arbiters to be used must be provided with relevant information relating to:
  - a) Section 5 and 6 of the Housing (Scotland) Act 2001;
  - b) Scottish Executive's guidance "Housing (Scotland) Act 2001, Homelessness, Section 5: Guidance on Good Reason and The Housing (Scotland) Act 2001 (Appointment of Arbiter) Order 2002 No. 413;
  - c) Communities Scotland's guidance on homelessness arbitration;
  - d) Other relevant areas of housing and homelessness legislation.

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14. One option open to local authorities and RSLs is to contact the Chartered Institute of Arbitrators to request the appointment of a suitably qualified arbiter. Organisations should be aware that they will be required to pay an administrative fee of £100 + vat to the Chartered Institute of Arbitrators before an arbiter will be appointed. The contact details are:

*Chairman of the Chartered Institute of Arbitrators (Scottish Branch), DLA, Napier House, 27 Thistle Street, Edinburgh EH2 1BS. Tel: 0131 242 5533 or Fax: 0131 242 5541*

15. Applications to the Chartered Institute of Arbitrators for the appointment of an arbiter should be made in writing using the form provided at Annex 2 and sent by post to The Chartered Institute of Arbitrators. On receipt of the application for the appointment of an arbiter and the administration fee, the Chairman of the Chartered Institute of Arbitrators (Scottish Branch) will appoint an arbiter on behalf of the parties within an agreed timescale of 5 working days. Appointed arbiters will receive a copy of the form contained in Annex 2.
16. Appointments made through the Chartered Institute of Arbitrators will be made from the list of arbiters established under section 6(3) of the 2001 Act, accessed by R&I. The arbiters will, therefore, have received the relevant information referred to at paragraph 13 above.

#### **Remuneration and other expenses which may be paid under section 6(1)**

17. Under section 6(4) of the Housing (Scotland) Act 2001, the cost of any arbitration is to be shared equally between the local authority and the RSL unless the arbiter determines otherwise. This means the actual costs of the arbitration procedure in the same way that the award of Court cases means the expenses of the action. Expenses and losses, which are consequential on the dispute, such as the loss of rent on void properties or the cost of the provision of temporary accommodation, would not be a cost of the arbitration process.
18. As an independent and impartial decision-maker, the arbiter will determine the costs of arbitration. Individual arbiters will set their own hourly rate, which may vary but should not exceed £100 per hour excluding vat. In addition, reasonable travel and other out of pocket expenses will be payable to the arbiter. The arbiter will decide on the award of costs to the local authority and the RSL according to the facts and circumstances put before him/her. The arbiter is given discretion to determine that one or other party should pay a higher share of the cost. This would allow the arbiter to award all costs against one party if (s)he considered this to be justified.

#### **Procedure to be followed at arbitration under section 6(1)**

19. Arbiters should operate in accordance with the procedure outlined in this section.
- a) **Commencement of arbitration proceedings**

The arbitration commences once the appointed arbiter begins to act. Following appointment, the arbiter will contact the local authority and the RSL to discuss the information (s)he requires and to discuss how the arbitration will be conducted. The arbiter may fix a date for a preliminary meeting if (s)he considers this appropriate.

**b) Information to be provided**

At the commencement of arbitration, the arbiter should be provided with details of the original request by the local authority, the response from the RSL and any other supporting information provided by either the local authority or the RSL in connection with the request for housing of a homeless person. Local authorities and RSLs are free to provide more information. The arbiter may request additional information to assist with any deliberation.

Where the views of the homeless person to which the dispute relates have been taken into account by the RSL or the local authority, these views should be included as evidence submitted to the arbiter. The arbiter may also take a statement of the facts directly from the homeless person. The arbiter will consider the local authority and RSL submissions and evidence; act fairly and impartially; and act according to the law. However, it is worth bearing in mind that the arbiter:

- will, in most cases, decide the case solely on the arguments and evidence presented by the local authority and the RSL; and
- will not normally receive information about the case from anybody else; and
- is not an investigator. Therefore, (s)he will work on the facts as presented rather than trying to uncover new facts.

It is therefore in the interests of both parties that the case is stated clearly and that all relevant supporting documents are provided.

**c) Matters for decision by the arbiter**

The arbiter will only be able to deal with matters referred to in the original request. (S)he will not be able to arbitrate on any additional requests. However, both parties may agree with the arbiter at the preliminary meeting, if there is one, to alter the matters that will be arbitrated, particularly if agreement on any of them has been reached.

**d) Conduct of arbitration**

In the interests of both time and costs, homelessness arbitration will normally be conducted on the basis of documents provided by the local authority and the RSL. However, if the arbiter considers it necessary, the arbitration may involve a hearing to provide both parties with an opportunity to explain points of view in person. The hearing should in most cases be limited to half a day.

**e) Documents-only arbitration**

On a specified date agreed by all parties, but not later than 7 days, after his or her appointment, the arbiter will consider all the documents and other evidence that has been given. Both parties should also receive copies of all the documents and evidence submitted.

**f) Hearings**

The arbiter should agree a time and place convenient to both parties, and should also fix a time limit for each part of the hearing. Both parties will present their case, the local authority first. The arbiter may ask questions to clarify understanding. Each party will then have the right of reply and may be questioned by the other party and the arbiter. The arbiter will summarise the facts of the case. Both parties should be able to record any disagreement with the summary.

Where the reasons for refusal of the RSL to comply with the local authority's request directly relate to the personal circumstances of the homeless person, the arbitration should take into account the personal circumstances in question. The arbiter may seek evidence from the parties that the homeless person's views have been taken into account. If the arbiter wishes to take evidence from the homeless person, the local authority should make the arrangements for attendance at arbitration by that person.

**g) Stopping the arbitration**

It is open to the parties to negotiate and agree to settle the dispute at any time. The appointment of the arbiter can be withdrawn in these circumstances with the written consent of both parties. Should an agreement be reached before the arbiter has reached a decision, both parties must inform the arbiter immediately, otherwise the arbitration will continue to a decision and the arbiter may make an award of costs to date associated with the arbitration procedure. In these circumstances the payment of all fees and expenses due will be shared equally between the parties.

**h) Timescales**

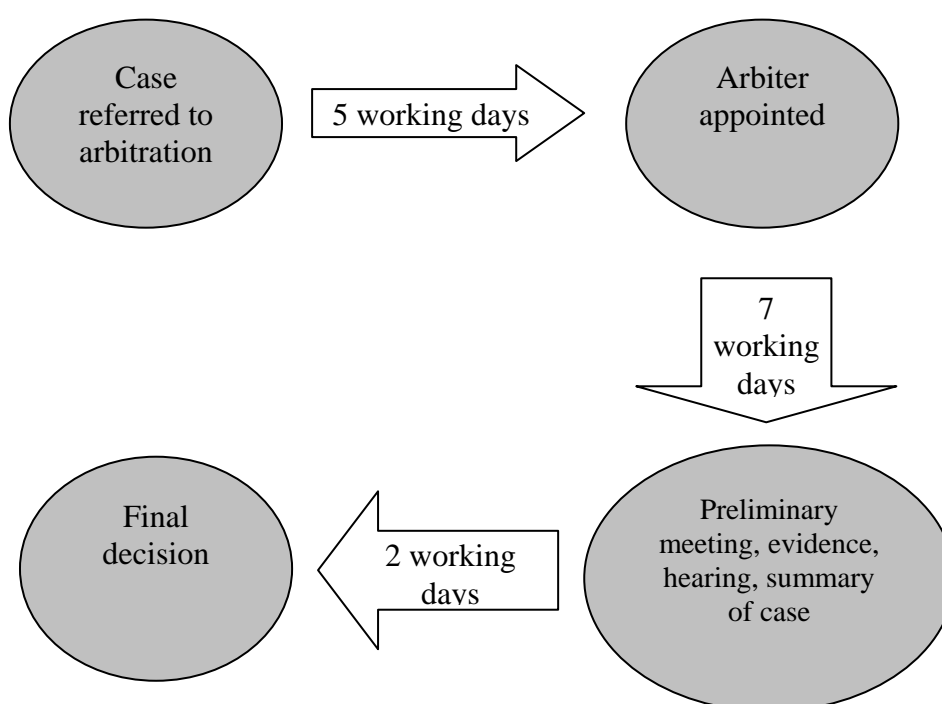
In both documents-only arbitration and arbitration involving a hearing, the arbiter is required to arrange any preliminary meeting, consider the evidence and invite submissions from both parties and arrange for any hearing within 7 working days of his/her appointment. The arbiter is then required to make a final decision within 2 working days of the hearing or submission of documents where it is a documents-only arbitration. A summary of the facts will be made by the arbiter at the hearing, if there is one. This final decision may be notified to both parties verbally and will be confirmed in writing. The maximum length of the arbitration procedure from referral to arbitration to the arbiter's decision should be no longer

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than 14 working days. However, the arbitration process should be conducted as quickly as possible. The shorter the timescale, the less time that a homeless person is kept waiting.

The following summarises the homelessness arbitration process:

**i) Homelessness Arbitration Process**



**j) Use of legal representatives and advisors**

Homelessness arbitration is intended, in the interest of time and cost, to allow both parties to present their case without the need for a lawyer to be present to speak for them. However, legal or other representation will be allowed if desired by either party. Each party will be liable for the costs of its own legal advice unless the arbiter determines otherwise.

**k) Confidentiality**

The arbiter will only issue his/her report to the local authority and the RSL involved in the arbitration. R&I will request information directly from local authorities and RSLs to inform its evaluation of the process. Any publication by R&I relating to the arbitration process will protect the identity of the parties involved.

**l) Outcome of arbitration**

Written notification of the arbiter's decision will set out the arbiter's determination as to whether the RSL had good reason for not complying with the request from the local authority to provide housing for a homeless person in accordance with section 5 of the Housing (Scotland) Act 2001 and taking account of the guidance issued by Scottish Ministers "Section 5: Guidance on Good Reason" and will set out reasons for this decision. The written notification will also set out the award of costs to both parties.

**m) Rights of review and appeal**

Under section 6(6) of the Housing (Scotland) Act 2001, the arbiter's decision is final and binding. Therefore, having referred a dispute to arbitration, a party cannot thereafter refer the matter to the courts. If an RSL refuses to abide by the arbiter's decision, R&I (on behalf of Scottish Ministers) will consider appointing a manager to enforce it (under Section 71 of the 2001 Act).

**Review of guidance**

20. R&I will gather information from the local authorities and the RSLs involved in arbitration cases to inform the review of this guidance. In addition, local authorities and RSLs are requested to raise any concerns relating to the operation of the homelessness arbitration scheme directly with R&I as these concerns arise. Local authorities and RSLs are expected to retain relevant information relating to homelessness referrals and arbitration cases for their own purposes and to help inform the review of the guidance and any publication relating to the arbitration process.

**Conclusion**

21. This is the first year of implementing the new provisions of the 2001 Act and R&I will take account of the views of the parties involved regarding the effectiveness and the efficiency of arbitration. R&I will undertake to review this statutory guidance after a year of its operation and will consult key stakeholders on any proposed revisions to this guidance.

## **Annex 1**

### **Extract from the Housing (Scotland) Act 2001**

#### **Part 1 – Homelessness and allocation of housing**

#### **6 Duty of registered social landlord: further provision**

- (1) Where –
  - (a) a registered social landlord does not, within a reasonable period, comply with a request made by a local authority under section 5,
  - (b) the local authority considers, having regard to any guidance issued under subsection (7) of that section, that the landlord had no good reason for not complying with the request, and
  - (c) the local authority and the landlord are unable, within such a period as the Scottish Ministers may specify by order, to reach agreement as to whether there is such a good reason, the local authority and the landlord must appoint an arbiter to determine the issue.
- (2) In determining for the purposes of subsection (1) (a) what is a reasonable period, regard must be had to any guidance issued under section 5 (7).
- (3) If there is no agreement as to who is to be appointed as arbiter, the Scottish Ministers must, on the request of the local authority, appoint an arbiter.
- (4) The cost of any arbitration under this section is to be shared equally between the local authority and the landlord unless the arbiter determines otherwise.
- (5) The Scottish Ministers may issue guidance as to –
  - (a) the period within which an arbiter is to be appointed under subsection (1),
  - (b) the procedure for appointing an arbiter under that subsection,
  - (c) the remuneration and other expenses which may be paid to an arbiter appointed under subsection (1) or (3), and any other expenses which may be paid in respect of arbitration,
  - (d) the procedure to be followed at arbitration,
  - (e) the maximum length of time of the arbitration procedure.
- (6) Any determination of an arbiter by virtue of this section is final.

Annex 2

**Homelessness Arbitration Scheme**  
**Application for appointment of an arbiter**  
**Under Housing (Scotland) Act 2001 Part 1 – Homeless and allocation of housing**  
**section 6(1) Duty of registered social landlord: further provision**

This form should be completed in black ink.

To: Chairman Telephone: 0131 242 5533  
Chartered Institute of Arbitrators (Scottish Branch) Fax: 0131 242 5541  
DLA Napier House  
27 Thistle Street  
Edinburgh EH2 1BS

----- (Name of local authority requesting arbiter)

of-----

Tel-----Email-----Fax-----

Represented by (if applicable) -----

----- (Name of RSL requesting arbiter)

of-----

Tel-----Email-----Fax-----

Represented by (if applicable) -----

hereby requests the Chartered Institute of Arbitrators to appoint an arbiter following a dispute to be resolved under Section 6(1) of the Housing (Scotland) Act 2001.

The dispute concerns the following issues

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*Please note: where possible the local authority (as claimant) should agree a brief description of the dispute with the RSL (as respondent). Give only brief details above and do not attach any documentation in relation to your request; you will have the opportunity to present your full case once the arbitration procedure begins.*

We confirm that we have been unable to agree the dispute within a reasonable period.

Signed-----Date-----  
(as, or on behalf of, local authority)

Signed-----Date-----  
(as, or on behalf of, RSL)