



# THE SCOTTISH HOUSING REGULATOR

## INFORMATION NOTE

### **Appointments by the Scottish Housing Regulator (on behalf of Scottish Ministers) of Arbiters under the Housing (Scotland) Act 2001 Part 1 section 6(3)**

**Issued by: The Scottish Housing Regulator**

**April 2008 (first issued September 2002)**

**Issued to: All Local Authorities and Registered Social Landlords**

### **Summary**

The Housing (Scotland) Act 2001 (“the 2001 Act”) places a new duty on RSLs, 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 or 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 information note, under section 6 of the 2001 Act, provides information to local authorities and RSLs on the procedures the Scottish Housing Regulator will follow to appoint an arbiter. This should be read in conjunction with the Scottish Housing Regulator guidance note SHR 09.

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

Any questions about this information note should be referred 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)

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

## 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. 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.
3. If there is no agreement as to who is to be the appointed arbiter, the Scottish Housing Regulator (on behalf of Scottish Ministers) 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.
4. The over-riding purpose of the arbitration process explained in this information note 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.
5. The approach taken by Scottish Ministers (acting through the Scottish Housing Regulator ) will be reviewed after 12 months.
6. Where the local authority and the RSL cannot reach agreement on the appointment of an arbiter the Scottish Housing Regulator, on the request of the local authority, must appoint an arbiter (under section 6(3) of the 2001 Act). The decision by the Scottish Housing Regulator relating to the appointment of the arbiter will be final.
7. Applications by local authorities for the appointment of an arbiter by the Scottish Housing Regulator should be made in writing using the form provided at [Annex 1](#) and sent by post or fax to the Scottish Housing Regulator. On receipt of the application for the appointment of an arbiter, the Scottish Housing Regulator will request that the current Chairperson of the Chartered Institute of Arbitrators (Scottish Branch) appoint an arbiter on behalf of the Scottish Housing Regulator within an agreed timescale of 5 working days. Appointed arbiters will receive a copy of the form contained in Annex 1.
8. The Chartered Institute of Arbitrators charges a standard administration fee of £100+ vat for appointing an arbiter. The Scottish Housing Regulator will make this payment initially but will later invoice the local authority and the RSL for an equal share of this administration fee. The contract is strictly between the arbiter and the local authority. The local authority and the RSL concerned will be responsible for paying all other costs associated with the arbitration directly to the appointed arbiter.
9. Arbiters will be suitably qualified, impartial and operate to an appropriate code of conduct that

ensures (amongst other things) independence. The appointment will be made from a small list of chartered arbiters who will have been 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) The Scottish Housing Regulator's guidance on homelessness arbitration;
- d) Other relevant areas of housing and homelessness legislation.

10. As a contingency, the Scottish Housing Regulator will also hold a list of Members of the Law Society of Scotland who are experienced in arbitration and who will be provided with the same relevant information referred to in paragraph 9 above. The Scottish Housing Regulator will appoint an arbiter from this list in the event that there is an unexpected volume of work which the Chartered Institute of Arbitrators cannot respond to.

11. An arbiter's decision is final and binding on both parties. Complaints relating to the professional conduct of an arbiter should be made to the Chartered Institute of Arbitrators in London or in the case of members of the Law Society then complaints of this nature should be made directly to the Law Society of Scotland.

12. The Scottish Housing Regulator will gather information from the local authorities and the RSLs involved in arbitration cases to inform the review of its approach under section 6(3).

### **Procedure to be followed at arbitration**

13. Arbiters appointed under Section 6(3) of the 2001 Act by the Scottish Housing Regulator will operate in accordance with the same procedure outlined in Communities Scotland Guidance Note 2002/12.

### **Conclusion**

14. The Scottish Housing Regulator intends that the appointment of an arbiter under section 6(3) will be made within 5 days of an application by the local authority and that the procedure to be followed at arbitration, including remuneration, and timescales will reflect the guidance issued to local authorities and RSLs (CSGN 2002/12). The Scottish Housing Regulator has undertaken to review that guidance, taking account of the views of the parties involved, and similarly will review the procedure where the SHR has appointed an arbiter when a local authority and an RSL could not agree who to appoint themselves.

Annex 2

**Homelessness Arbitration Scheme**  
**Application for appointment of an arbiter**  
**by the Scottish Housing Regulator**

This form should be completed in black ink.

To: The Scottish Housing Regulator  
Highlander House  
58 Waterloo Street  
GLASGOW  
G2 7DA

Fax. No: 0141 XXX XXXX

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

of-----

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

Represented by (if applicable) -----

hereby requests Scottish Ministers to appoint an arbiter following a dispute to be resolved under Section 6(3) of the Housing (Scotland) Act 2001.

The dispute concerns the following issues

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

----- (Name of RSL involved)

of-----

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

Represented by (if applicable) -----

*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 with the RSL within a reasonable period; and we have been unable to agree with the RSL on the appointment of an arbiter to determine the issue.

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