STATUTORY INSTRUMENTS

1978 No. 661

HOUSING, SCOTLAND

HOUSING, ENGLAND AND WALES

The Housing (Homeless Persons) (Appropriate Arrangements) (No. 2) Order 1978

Laid before Parliament in draft

Made - - - - - - 27*th April* 1978

Coming into Operation - - 28*th April* 1978

In exercise of the powers conferred on me by section 5(8), (9)(*a*) and (10) of the Housing (Homeless Persons) Act 1977(**a**), and of all other powers enabling me in that behalf, I hereby make the following order in the terms of a draft approved by resolution of each House of Parliament:—

Title and commencement

1. This order may be cited as the Housing (Homeless Persons) (Appropriate Arrangements) (No. 2) Order 1978 and shall come into operation on the day following the day on which it is made.

Interpretation

2.—(1) The Interpretation Act 1889(**b**) shall apply for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

(2) In this order "the Act" means the Housing (Homeless Persons) Act 1977.

(3) In this order references to any enactment shall be construed as references to that enactment as amended, extended or applied by or under any other enactment.

Appropriate arrangements

3. Where both the notifying authority and the notified authority are housing authorities in Scotland, the appropriate arrangements for the purposes of section 5 of the Act, shall be the arrangements set out in Part I of the Schedule to this order, which are the arrangements agreed by the Convention of Scottish Local Authorities.

4.—(1) Where either the notifying authority or the notified authority is a housing authority in England or Wales and the other of those authorities is a housing authority in Scotland, the appropriate arrangements for the purposes of section 5 of the Act shall be the arrangements set out in Part I of the Schedule to this order as modified by Part II of that Schedule, which

(**a**) 1977 c. 48. (**b**) 1889 c. 63.

are arrangements agreed by the associations of relevant authorities specified in paragraph (2) below.

(2) The associations of relevant authorities mentioned in paragraph (1) above are:—

(*a*) The Association of District Councils,

(*b*) The Association of Metropolitan Authorities,

(*c*) The London Boroughs Association, and

(*d*) The Convention of Scottish Local Authorities.

Bruce Millan,

One of Her Majesty's Principal Secretaries of State.

New St. Andrew's House,
Edinburgh.

27th April 1978.

Articles 3 *and* 4

SCHEDULE

APPROPRIATE ARRANGEMENTS

PART I

Panel of persons who may be appointed

1. The Convention of Scottish Local Authorities shall draw up and from time to time revise a panel of persons who may be appointed under paragraph 5 below to determine questions falling to be determined under section 5 of the Act.

Proper officers

2.—(1) The proper officer for the purposes of paragraphs 4 and 5 below shall be the President of the Convention of Scottish Local Authorities.

(2) In the case of the absence or incapacity of the President mentioned in sub-paragraph (1) above his functions under paragraph 5 below shall be exercised by, and any report under paragraph 4 below may be made to the Vice President of the Convention of Scottish Local Authorities.

Determination by person agreed upon by authorities

3.—(1) If—

(*a*) before the end of the period of 21 days following—

(i) the day on which a notification under section 5(1) of the Act is received by the notified authority, or

(ii) the day on which the Housing (Homeless Persons) (Appropriate Arrangements) (No. 2) Order 1978 came into operation,

whichever is the later, or

(*b*) after the end of that period but before a person has been appointed under paragraph 5 below to determine the question,

any question which falls to be determined under section 5 of the Act in relation to that notification has not been determined by agreement between the notifying authority and the notified authority, and those authorities have made arrangements for that question to be determined by a person agreed upon by them, the question may be determined by that person.

(2) Where the notifying authority and the notified authority have made arrangements under sub-paragraph (1) above—

(*a*) they shall jointly submit a report to the person agreed upon by them;

(*b*) paragraph 4(2) and (3) below shall apply to that report as they apply to a report made under paragraph 4(1) below;

(*c*) paragraphs 6 to 9 below shall, with any necessary modifications, apply to the determination of any question by that person as they apply to the determination of a question by a person appointed under paragraph 5 below; and

(*d*) if either of those authorities have made a report under paragraph 4 below they shall forthwith inform the person to whom they made the report that the arrangements have been made.

Report to proper officer

4.—(1) If—

(*a*) at the end of the period of 21 days mentioned in sub-paragraph (1) of paragraph 3 above—

(i) any such question as is mentioned in that sub-paragraph has not been determined by agreement between the notifying authority and the notified authority, and

(ii) those authorities have not made arrangements for that question to be determined as provided in paragraph 3 above; or

(*b*) before the end of that period both those authorities have agreed that they will be unable either—

(i) to determine that question by agreement, or

(ii) to make arrangements for that question to be determined as provided in that paragraph

before the end of that period,

the notifying authority shall, and the notified authority may, report that fact in writing to the person who is, under paragraph 2 above, the proper officer for the purposes of this paragraph in relation to the authority making the report.

(2) A report under sub-paragraph (1) above—

(*a*) shall identify the notifying authority, the notified authority, and the person to whom the notification under section 5(1) of the Act relates, and

(*b*) subject to sub-paragraph (3) below, shall contain either—

(i) a statement, agreed by both those authorities, that the question which they have not determined by agreement is the question whether subsection (3) or (5) of section 5 of the Act applies to that person, or

(ii) a statement, agreed by both those authorities, setting out the particular question or questions falling to be determined under that section which they have not determined by agreement.

(3) If a report under sub-paragraph (1) above does not contain a statement falling within sub-paragraph (2)(*b*) above, it shall be deemed to contain a statement falling within sub-paragraph (2)(*b*)(i) above.

Appointment of person to determine question

5.—(1) Subject to sub-paragraph (3) below, the person who receives a report or reports under paragraph 4 above shall appoint a person who is for the time being a member of the panel drawn up under paragraph 1 above to determine the question.

(2) When an appointment is made under sub-paragraph (1) above, the person who is the proper officer—

(*a*) shall inform the notifying authority and the notified authority in writing of the appointment; and

(*b*) shall transmit to the appointed person a copy of the report, or as the case may be, copies of the reports, made under paragraph 4 above.

(3) No appointment shall be made under sub-paragraph (1) above after the proper officer has been informed under sub-paragraph (2)(*d*) of paragraph 3 above that arrangements have been made under that paragraph, and an appointment made after any such arrangements have been made shall be of no effect.

Determination of question

6.—(1) Where a report under paragraph 4 above contains a statement falling within sub-paragraph (2)(*b*)(ii) of that paragraph, the appointed person shall not determine any question that is not set out in the statement.

(2) Except as otherwise provided in this paragraph, the procedure for the determination of any question to which a statement contained or deemed to be contained in a report under paragraph 4 above relates shall be such as the appointed person may in his discretion determine.

(3) For the purpose of determining any such question the appointed person, in so far as such information and representations appear to him to be proper and relevant to the matters in issue—

(*a*) shall take into account—

(i) any representations made orally or in writing by the notifying authority and the notified authority, and

(ii) any information provided in response to an invitation under (*b*) below;

(*b*) shall invite the person to whom the notification under section 5(1) of the Act relates to provide him with information; and

(*c*) may take into account information obtained from, and representations made by, any person orally or in writing.

(4) An invitation under sub-paragraph (3)(*b*) above—

(*a*) may be given orally or in writing;

(*b*) may specify the matters concerning which information may be provided; and

(*c*) shall specify whether the information may be provided—

(i) orally,

(ii) in writing, or

(iii) either orally or in writing.

Notification of determination

7.—(1) The appointed person shall notify his determination, and his reasons for it, in writing to the notifying authority and the notified authority.

(2) A determination notified by the appointed person in accordance with sub-paragraph (1) above shall, notwithstanding that any requirement in this Schedule has not been complied with in relation to his appointment or in relation to the procedure adopted by him for the determination of the question, be final and binding on both authorities.

(3) The appointed person shall have power to correct any clerical mistake or error arising from any accidental slip or omission in his notification of a determination.

Costs

8.—(1) Subject to sub-paragraphs (2) and (3) below, the notifying authority and the notified authority shall each pay their own costs of the determination.

(2) The appointed person—

(*a*) may give directions as to the payment of the costs of the determination, and

(*b*) shall, where information has been provided orally, in response to an invitation under paragraph 6(3)(*b*) above, by the person to whom the notification under section 5(1) of the Act relates, gives directions as to the payment by the notifying authority or the notified authority or by both of those authorities of any travelling expenses reasonably incurred by that person.

(3) Without prejudice to the generality of sub-paragraph (2) (*a*) above, the directions that may be given thereunder include directions as to—

(*a*) any costs of the notifying authority and the notified authority, and

(*b*) any costs incurred by any person from whom the appointed person has obtained information, or who has made representations, orally or in writing.

Determination of question by agreement

9.—(1) At any time before a determination has been notified under paragraph 7 above the notifying authority and the notified authority may jointly report to the appointed person that they have determined a question by agreement.

(2) Where a report under sub-paragraph (1) above is made, the appointed person shall not determine, but paragraph 8 above shall apply as if he had determined, any question to which that report relates.

PART II

10. Part I of this Schedule shall have effect with the substitution for paragraphs 1, 2 and 5 of the following paragraphs:

"Panel of persons who may be appointed

1. The Association of District Councils, the Association of Metropolitan Authorities, the London Boroughs Association and the Convention of Scottish Local Authorities shall draw up and from time to time revise a panel of persons who may be appointed under paragraph 5 below to determine questions falling to be determined under section 5 of the Act.

Proper officers

2.—(1) The proper officer for the purposes of paragraphs 4 and 5 below shall be—

(*a*) in relation to the council of a non-metropolitan district in England and Wales, the Chairman of the Association of District Councils;

(*b*) in relation to any other housing authority in England and Wales except the council of a London borough and the Common Council of the City of London, the Chairman of the Association of Metropolitan Authorities, and in relation to the council of a London borough and to the Common Council of the City of London, the Chairman of the London Boroughs Association; and

(*c*) in relation to a district or islands council in Scotland, the President of the Convention of Scottish Local Authorities.

(2) In the case of the absence or incapacity of the Chairman or President of any body mentioned in sub-paragraph (1) above his functions under paragraph 5 below shall be exercised by, and any report under paragraph 4 below may be made to, a person nominated in that behalf by that body, or in the case of the Convention of Scottish Local Authorities the Vice President.

Appointment of person to determine question

5.—(1) Subject to sub-paragraph (4) below, a person who receives from an authority a report under paragraph 4 above shall transmit a copy of the report to the person who is the proper officer in relation to the other authority identified in the report and jointly with him appoint a person who is for the time being a member of the panel drawn up under paragraph 1 above to determine the question.

(2) Subject to sub-paragraph (4) below, where two proper officers have failed to agree on a person to appoint under sub-paragraph (1) above—

(*a*) each of them shall nominate a person who is for the time being a member of the panel drawn up under paragraph 1 above, and

(*b*) the person who is the proper officer in relation to the notifying authority shall—

(i) decide by lot between the persons so nominated, and

(ii) appoint the person on whom the lot falls to determine the question.

(3) When an appointment is made under sub-paragraph (1) or (2) above, the person who is the proper officer in relation to the notifying authority—

(*a*) shall inform the notifying authority and the notified authority in writing of the appointment; and

(*b*) shall transmit to the appointed person a copy of the report, or as the case may be, copies of the reports, made under paragraph 4 above.

(4) No appointment shall be made under sub-paragraph (1) or (2) above after a proper officer has been informed under sub-paragraph (2)(*d*) of paragraph 3 above that arrangements have been made under that paragraph, and an appointment made after any such arrangements have been made shall be of no effect."

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

Section 5 of the Housing (Homeless Persons) Act 1977 makes provision for the transfer between housing authorities, in specified circumstances, of responsibility for a homeless person. Any question falling to be determined under the Section (that is to say, any question as to whether the circumstances which result in a transfer of responsibility exist in a particular case) is to be determined by agreement between the two housing authorities concerned or, in default of such agreement, in accordance with the appropriate arrangements (Sub-section (7)). The appropriate arrangements are any such arrangements as the Secretary of State may by order direct, which may be arrangements agreed by the associations representing the relevant authorities.

The Act of 1977 comes into force in Scotland on 1 April 1978. This Order directs that, for cases involving only Scottish authorities, the appropriate arrangements are to be the arrangements set out in the Schedule to the Order, which have been agreed by the Convention of Scottish Local Authorities. The arrangements provide for any disputed question under Section 5 of the Act to be determined either by a person agreed upon by the two authorities concerned or in default by a person appointed, from a panel to be drawn up by the President of the Convention of Scottish Local Authorities.

The Order also makes provision for appropriate arrangements in cases where an English or Welsh authority is in dispute with a Scottish authority.

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