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HOW SCOTLAND GOT THE HOUSING (HOMELESS PERSONS) ACT

PETER GIBSON

Formerly Director of Shelter (Scotland) and currently
Director, Scottish Consumer Council*

I intend here to look at how Scotland was included in the Housing (Homeless Person) Act of 1977 against the wishes of both the Scottish Office and Scotland's housing authorities. In so doing, I will examine the role of the Scottish Homeless Group, an alliance of mainly voluntary bodies, some of its problems and achievements in lobbying at Westminster, and some of the general problems of Scottish pressure groups.

This case study should be of interest to those concerned with the formulation of housing policy in Scotland, and to those who might like to be assured that anomalies in public policy, so widely predicted for post-devolution Scotland, are not totally unknown under the present constitutional framework which combines substantial administrative devolution and a separate legal system in Scotland with a single legislature for the whole United Kingdom at Westminster. For those who would like a detailed appraisal of the contents of the Act, and its effectiveness in operation, this piece may prove somewhat disappointing because I wish to concentrate mainly on what was involved in extending it to Scotland rather than on its content. Nevertheless, some background is essential.

On tackling homelessness, as on many other social issues in recent years, experience in England and Wales has been ahead of that in Scotland. Early in 1974, the Department of the Environment and the Department of Health and Social Security issued Joint Circular 18/74 recommending that responsibility for the homeless be transferred from social services departments of local authorities to housing departments in England and

*Mr Gibson writes in his personal capacity.

Wales. Though 18/74 was non-binding, it had considerable political weight behind it, having been drawn up while the Conservatives were still in office, and having been issued by the new Labour Government.

Implementation of 18/74 by housing authorities was patchy. Many refused outright to take on responsibility for homelessness, and others made purely token gestures. But enough councils implemented the letter and the spirit of the circular to show that it was indeed workable, given the necessary commitment. Certainly there were found to be problems; but it was shown that the ingenuity of housing officials could be applied just as readily to finding solutions as to finding excuses for not tackling the problems of homelessness. Moreover, the wild claims by some local politicians that such a transfer of responsibility would lead to "the end of civilisation as we know it" were exposed as absurdly alarmist. One very real problem posed by the circular, however, was that progressive authorities found themselves receiving homeless families from adjacent authorities which refused to implement the circular. This was not an argument against the transfer of responsibility: it was an argument in favour of legislation to make the transfer universal.

By November 1975 the late Secretary of State for the Environment, Anthony Crosland, conceded the need for legislation, in the face of evidence that half of the housing authorities outside London had failed to implement the circular. The Bill which his civil servants went off to draw up became, in time, the Housing (Homeless Persons) Act, but its progress was a slow and chequered one. Though a Bill had been prepared by the following autumn it did not, contrary to general expectation, feature in the Queen's Speech in November 1976. The English charities and voluntary bodies working on behalf of the homeless were furious, and denounced the Government's dropping of the Bill as "a cynical betrayal". However, the Minister of Housing Reg Freeson, let it be known that if one of the Members of Parliament who had come out near the top of the Private Members' Ballot were to take over the Bill he or she would receive the active support and co-operation of Freeson's department. For the campaigning organisations, England's peril was to be Scotland's opportunity.

Having set the scene south of the border, it is now necessary to do the same for Scotland. Here, under the Social Work

(Scotland) Act 1968, a general obligation to provide temporary accommodation for the homeless was imposed on all social work authorities. However, "homelessness" was not defined and neither was "temporary accommodation", so that practice varied greatly. In the early 1970s fewer than half of the social work authorities in Scotland had temporary accommodation of their own. Instead, they had to rely on the good will of housing departments, friends and relatives of the families, and, increasingly, bed and breakfast hotels.

Scotland's problems were highlighted in a Shelter Scotland report, "No Place to Call Home" (1973), but no equivalent to the 18/74 circular was planned for Scotland. Instead, after the shape of reformed local government had been decided in 1973, with social work going to the new Regions and housing going to the district councils, a government committee was set up under the chairmanship of Mrs Morris to study and make recommendations on links between social work and housing.

The Morris Committee reported in Spring 1975, and recommended, amongst many other things, that statutory responsibility for homelessness should be transferred from social work to housing.¹ This was welcomed by voluntary organisations, by those in the social work field, and by a few housing managers. But, on the whole, housing authorities, and the housing committee of COSLA (the Convention of Scottish Local Authorities) were highly critical. The idea of *housing* departments in Scotland having a responsibility to help those without a *house* seemed dangerous and new, and the Morris Committee, in spite of its carefully balanced membership, was characterised as being in some way "anti-housing" and "pro-social work".

Mrs Morris herself had been, seemingly, an ideal choice to help bridge any gap between social work and housing. Apart from her personal abilities, Mrs Morris had been chairman of a local authority housing committee, she was at the time chairman of a housing association, and she was also a professional social worker. She spoke on her committee's report at the Scottish Conference of The Institute of Housing in the Spring of 1975 and at many other conferences and seminars around Scotland for the next year. But, with a few honourable exceptions in some places, it was largely to no avail. Only social work authorities and the social work committee of COSLA accepted and supported the report's main proposals and this

merely confirmed the worst fears of those on the housing side.

One would have expected that the Scottish Office, which had after all set up the committee and whose civil servants had serviced it from start to finish, would have taken the lead in trying to gain general acceptance. One would have been wrong.

The report was not given full ministerial endorsement or backed up with a circular. Caution was the order of the day, and consensus was still earnestly hoped for even after battle lines had been drawn. It was not until eighteen months after publication, on 9 November 1976, that the Secretary of State for Scotland, Bruce Millan, took the bold step of announcing that the Scottish Office accepted that primary responsibility for the homeless *should* be passed from social work to housing, but that this could be better achieved by "voluntary agreement" than by a change in the law — at the very time when legislation for England and Wales was ready to be put forward.

The reaction to the Secretary of State's announcement by those of us in Shelter Scotland was glum, the more so because the announcement came a few days before the Queen's Speech and we did not know that the Government was about to drop its Bill for England and Wales. What we did know was that the Scottish Office was proposing a course of action which was bound to prove inadequate, not least because experience in England and Wales had shown that a voluntary transfer of responsibility for the homeless had been most unsuccessful in non-metropolitan areas, where housing was a district function and social work a county responsibility, the same split as occurs in all of mainland Scotland. In England and Wales, there had been some consolation from the fact that the bulk of the population lived in Greater London or the metropolitan areas, where both functions were handled at either borough or district level, and where the transfer was somewhat smoother: in Scotland only the new Island Councils were in that happy position.

Why, we asked, could Scotland not learn from the hard-won experience south of the border, that a voluntary transfer of responsibility was not workable, and that legislation would prove necessary? As things turned out, of course, this is precisely what happened, but not as a result of the Scottish Office changing its mind.

When the Liberal MP for the Isle of Wight, Stephen Ross, came near the top of the Private Members' Ballot, voluntary

organisations in England immediately appealed to him to take up Reg Freeson's offer and to sponsor a Bill on homelessness. At first he toyed with the idea of producing a catch-all Bill, covering compulsory penal rating for empty property and the exemption of landlords of single properties from the provisions of the Rent Acts, as well as homelessness. But he soon came to realise that a Bill covering a number of topics had little or no chance of survival, particularly since penal rating on empty property would arouse the ire of the Conservatives and any amendment to the Rent Acts would be likely to be strenuously opposed by Labour. Homelessness was still a difficult and contentious issue, but when Ross took over the Government Bill he did manage to attract all-party sponsorship, which gave it a strong chance of eventual enactment.

The Housing (Homeless Persons) Bill becoming a private measure was something of an irritation to the English charities, but to those of us in Scotland it was a godsend. Immediately, Shelter Scotland urged Stephen Ross, both publicly and privately, to extend the Bill to include Scotland. Simultaneously we asked the English charities to press the case for Scotland's inclusion, which they did at the earliest discussions.

At that stage we had no idea what the problems would be in achieving our goal of having a Private Members' Bill supported by the Government south of the border, in the shape of the Department of the Environment, extended to Scotland in the face of Scottish Office opposition. It was not of course unusual to have different housing policies pursued by government north and south of the border: earlier in 1976, for example, a Bill on agricultural tied cottages, which was similarly opposed by the government in Scotland, had been passed for England and Wales. But that had been a Government measure. A Private Members' Bill was a different kettle of fish, and there had been no direct precedent in recent years.

In Scotland, Shelter recruited the active support of other organisations in the weeks over Christmas 1976 and the New Year. An impressive range of mainly voluntary bodies had soon lined up with Shelter in support of Scotland's inclusion in the Bill: these were the Scottish Legal Action Group, the Scottish Consumer Council, the Scottish section of the British Association of Social Workers, Scottish Women's Aid, the Scottish Council for the Single Homeless, and the Scottish Council for Single

Parents. These groups, who were later to form the Scottish Homeless Group, wrote to Stephen Ross, the Scottish Office, and to individual MPs pressing for Scotland's inclusion.

Stephen Ross's response from the start had been favourable, though, like the Scottish voluntary organisations themselves, he was unwilling to risk the whole Bill for the sake of Scotland. He received powerful backing for including Scotland from David Steel, MP, a former Chairman of Shelter Scotland, who was not totally without influence in the Parliamentary Liberal Party and who, more surprisingly, was not totally lacking in influence with the Labour Government from the start of the Lib-Lab pact in March 1977.

The initial response from other parties was also good. Labour and Conservative Scottish backbench support seemed reasonably strong, while the SNP Parliamentary Party took a group decision to allow Andrew Welsh, MP, their housing spokesman, to take what was for them the unique step of sponsoring a piece of legislation for England and Wales for the express purpose of extending it to Scotland.

From the Scottish Office, however, the response remained negative. The voluntary approach was characterised as being preferable, and it was explained that this was being pursued actively by COSLA, whose housing and social work committees were drawing up a voluntary "code of practice". It was further suggested, informally, that the Bill was badly drafted. Moreover, it was argued that since housing was a devolved subject under the Scotland and Wales Bill, it would be inappropriate for Westminster to legislate at this stage. As had happened in local government before reorganisation took place, those in power were able to use the impending shake-up as a justification for holding up some measures while rushing through others. Since both processes were unique, there was no precedent by which such claims could be judged, particularly by bodies lobbying from the outside. Most pressure groups are unwilling to be cast as unreasonable, but in this instance it seemed far from unreasonable to press ahead with Scotland's inclusion in the Bill, given the widespread support from most quarters. At the root of the Scottish Office's reluctance to budge was a commitment given to COSLA (which was itself divided and understandably reluctant to have these divisions exacerbated) that there would be no legislation until a voluntary code had been tried.

It must be conceded that the main advantage of this approach would have been that housing authorities would have had time to adjust their policies, train their staff, and learn from their neighbours' experiences. However, the lack of preparation for assuming this responsibility, and the shock at the sudden prospect of taking it on were both intensified by the shortage of properly qualified housing management staff in Scotland. This has been well described in the report "Training for Tomorrow", produced by a sub-committee of the Scottish Housing Advisory Committee in 1977. Had there been a well-qualified profession of housing management in Scotland, lessons from English experience could have been more readily drawn and applied by local authority housing departments. One irony is that many of the best-qualified housing staff in Scotland are employed by the Scottish Special Housing Association and by the New Towns, which under the Act do not have primary responsibilities for the homeless, only a duty to co-operate.

Thus, the Scottish Office maintained their opposition to Scotland's inclusion and this continued up to the second reading on Friday, 18th February. In this period, a couple of worrying technical points were thrown at Stephen Ross, which had everyone reaching for their Erskine May. One was the assertion that a Committee of the Cabinet would have to approve the Bill's place on an already cramped timetable, and that this approval could be withheld if Scotland was not taken out. Another was that the House of Commons would have to give a formal "instruction" for Scotland to be included. Bob Hughes, the Labour MP for Aberdeen North, and an ex-Scottish Office Minister, was an invaluable adviser at this stage. Having himself fought hard at the Scottish Office to have Scotland included in the Children Bill, he had solid experience of some of the procedural niceties.

On the first technicality, he pointed out that as the Cabinet legislative committee had already provided time for the Bill, and given the Department of the Environment's support for the measure, it was unlikely to be ditched out of spite. On the second point, concerning the alleged need for an "instruction" from the House, he had consulted with the Clerk of the House who said that this was simply not so. "They are just trying to frighten you," he told Stephen Ross. It thus became apparent that as long as Stephen Ross kept his nerve and formally included

Scotland in the Bill, there was little that the Scottish Office could do. The necessary re-drafting was therefore done, the Bill was published, and it was welcomed by the Department of the Environment, although its spokesman expressed the obligatory misgivings about Scotland's inclusion.

The timely advent of the Lib-Lab pact has been mentioned by some commentators as being the crucial turning point on Scotland's inclusion. Certainly, the listing of the successful passage of the Homeless Persons Bill, with Scotland in it, as one of the conditions of the first phase of the pact was most welcome to the members of the Scottish Homeless Group. But this mainly served to make explicit what had already been tacitly agreed: so, while the Lib-Lab pact was valuable, it was not necessarily critical.

During the second reading debate, Hugh Brown, the Parliamentary Under Secretary of State for Scotland with responsibility for housing, voiced the Scottish Office's unhappiness about what had come to pass, but neither he nor any of the other handful of critics of the Bill on the floor of the House voted against the second reading. He said that the Scottish Office would not now attempt to frustrate the Bill.

The organisations in the Scottish Homeless Group were delighted at having achieved their main aim. They little realised how many problems for the Bill there would be at the Committee Stage, problems which would be common to England, Wales and Scotland. Nor did they realise that when it came to implementing the Act in Scotland in 1977 problems would again arise with the Scottish Office's reluctance, in contrast to the Department of the Environment, to issue a proper "Code of Guidance" which is vital to the proper working of the Act. All that was yet to come, and there was a proper sense of what had been achieved since the early days of the previous November. Of course, it is arguable that even if the Scottish organisations had not lobbied hard through press releases, letter-writing, telephoning, and occasional individual visits to London, the Bill would have been extended to the whole of Britain anyway.

That is indeed arguable, but recent legislative history is littered with instances of reforms being passed for England and Wales and no action being taken for Scotland. The reasons for this are various.

Robin Cook, MP, mentioned the ineptitude and inactivity of

many Scottish pressure groups in last year's *Scottish Government Yearbook* as being a root cause.² This is undoubtedly a major factor, and the instances which he quoted were convincing as far as they went. However, a useful distinction can be made between two basic sorts of pressure groups, in Scotland or elsewhere. On the one hand there are the established interest groups like the STUC, the CBI, the NFUS, the local authorities and the traditional professions. On the other hand there are a variety of voluntary organisations, ranging from the local to the national and from the purely charitable to the highly political. There may be some problem of classification, notably with the Churches, which may be firmly established organisations but also have to rely heavily on the work of volunteers for many of their activities. Nevertheless, the distinction is a useful one, and most of the evidence in Scotland is that the established interests need few lessons from anyone. The Scottish Licensed Trade Association's performance over the reform of the licencing laws may provide a spectacularly risible exception to this: but an exception it is.

Voluntary bodies on the other hand have been traditionally weak in Scotland on matters of lobbying, though it is to be hoped that the campaigns on the Children Bill and the Housing (Homeless Persons) Bill will mark a significant shift. Lack of resources is one reason for this weakness. A British-wide body may be just able to scrape up enough money to fund a full-time worker to staff an office. A Scottish-level body, because of the much smaller population, has to fund-raise ten times as effectively from its public to fund that first, crucial, full-time worker. Faced with this problem, the tendency of many Scottish organisations is simply to leave any lobbying felt necessary to the London head office or to the equivalent organisation in England.

Secondly, while much administrative devolution exists already in Scotland, and voluntary organisations can consult fairly regularly with civil servants in the relevant departments, consultations with Scottish Members of Parliament are much more difficult for purely practical reasons. Even though one can sometimes arrange a meeting with one particular MP on a Friday, when Scottish MPs are usually back in Scotland on constituency business, if one wants to meet several MPs together on an issue, one generally has to go to London. This is both time consuming and costly for voluntary bodies. Thus, the

relative ease of contact with civil servants and the relative difficulty of contact with legislators combine, in classic Skinnerian fashion, to condition the behaviour of the voluntary organisations.

Thirdly, in Scotland the concept of "politics" is commonly believed to be identical to "party politics". This misconception is reinforced, rather than dispelled, by commentators on TV who announce with a straight face that certain Regional Council election contests are "non-political". In this climate, voluntary organisations shy away from any activity like parliamentary lobbying which could, rightly, be construed as "political" in the real meaning of the word.

On issues which are highly contentious, and over which the political parties divide, any voluntary organisation which does not want to be caught up in party politics would certainly be wise to pronounce with caution, but caution and inactivity are not the same. In fact, many politicians would welcome greater levels of activity by special groups. Before the Scottish monthly *Focus* folded up at the end of 1976, its last editor was producing a special feature on mental health and he made enquiries by telephone to find out what the mental health policies were of the various parties in Scotland. In each case, after inconclusive shunting from one person to another, he was asked what sort of policy he thought they should adopt! Voluntary organisations should need no encouragement to fill this vacuum.

Thus, voluntary pressure groups in Scotland may, for a variety of reasons, have been weak in pushing their views onto legislators. But that is only half of the equation. While many Scottish Members of Parliament are able and hard-working, and unfailingly send a courteous reply or at least an acknowledgment to letters from lobbying organisations, a distressingly large minority fail to respond at all. When the Scottish Homeless Group was lobbying, the member organisations each wrote assiduously to MPs, and it was interesting to note the pattern of replies. Not surprisingly, many MPs preferred to reply at great length to some bodies, with which they presumably had more regular contact or great sympathy, and merely acknowledged receipt to other organisations. Fair enough. But it soon became evident that a core of MPs never reply to anything. Presumably they feel that this sort of correspondence is a dispensable part of the job. Now, these individuals may be "good

constituency members" and much loved colleagues in the House, but their apparent lack of interest in a crucial issue like homelessness is hardly encouraging to campaigning organisations when they do take the trouble to send individual letters to MPs. Lobbying, to have any meaning must be a two-way process. Members of Parliament and equally importantly, councillors, have a duty to understand and to facilitate this essential democratic process.

There are signs that the number of voluntary bodies in Scotland willing and able to engage in campaigning is on the increase. Of the seven organisations originally involved in the Scottish Homeless Group, four, the Scottish Legal Action Group, the Scottish Consumer Council, Scottish Women's Aid, and the Scottish Council for the Single Homeless, had all been established within the previous three years, and BASW had only recently taken on a full-time Scottish organiser. If an Assembly is finally established in Edinburgh this will both facilitate and stimulate the work of pressure groups in Scotland, and the Scottish Council of Social Service is encouraging voluntary organisations to plan now for that eventuality.

Even though the Scottish Homeless Group was successful in its main aim of extending the Bill to Scotland, it was still dependent throughout on the active co-operation of the English charities, and during the Committee Stage of the Bill the logistical problems of a Scottish voluntary group lobbying in London were compounded. Amendments would be put down by MPs on the Committee the day before the next sitting, other amendments would suddenly be withdrawn as the result of private agreements made in the corridors of power: all normal practice no doubt. But it bears emphasising that the very speed and unpredictability of the changes makes it extremely difficult for any voluntary organisation to keep up with the passage of a complicated piece of legislation from nearly 400 miles away.

In the event, John Smythe of Shelter went down to London on behalf of the Scottish Homeless Group to attend some of the key sittings. His personal lobbying was far from unsuccessful: it resulted, for one thing, in an amendment being carried with the effect that homeless persons being turned away by a housing authority must receive reason in writing, and it nearly resulted in the right of appeal to the courts being written into the Bill — something which the English charities were reluctant to propose.

However, the problem of having only one representative on the spot in Westminster without much back up is that this person in turn tends to become isolated from those in Scotland whom he represents.

Of course, in principle, these logistical problems can be overcome — all one needs is an office in London, extra staff to run it, and couriers who can fly back and forward between London and Scotland with fresh drafts and lists of new amendments. But if the Civil Service finds this demanding at times, how much more so for the penny-pinching charity? Even a brief period of intensive lobbying at Westminster tends to make keen devolutionists of those involved. The prospect of being able to nip along to the "High School" about an issue seems most attractive. Whether this greater accessibility will result in genuine "open government" in a devolved Scotland, or in a new cosiness for the well connected, is a matter for conjecture. But the chances are that we will soon know the answer.

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