



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

# CODE OF GUIDANCE FOR LOCAL AUTHORITIES ON ALLOCATION OF ACCOMMODATION AND HOMELESSNESS

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# INTRODUCTION

## Section A: About this Code of Guidance

### Purpose of Code

The National Assembly for Wales is given power to issue guidance by s.169 and s.182 of the Housing Act 1996 (the 1996 Act). The Minister for Finance, Local Government and Communities is issuing the guidance contained in Parts 1 and 2 of this Code to local housing authorities in Wales pursuant to the powers delegated to her by s.62 of the Government of Wales Act 1998. The 1996 Act requires local housing authorities to have regard to this guidance in exercising their functions under Parts 6 and 7 of the 1996 Act.

Additionally, in exercising their functions relating to homelessness and the prevention of homelessness, social services authorities are also required under s.182(1) of the 1996 Act to have regard to the guidance.

The Code reflects the amendments to the 1996 Act brought about by the Homelessness Act 2002 (the 2002 Act). Details of amending and any other secondary legislation that still applies are listed in **Annex 2**.

### Who the Code is for

The Code is specifically for members and staff of local housing authorities. It is also of direct relevance to registered social landlords (RSLs), particularly those who have acquired or are to acquire stock transferred to them by local authorities. Section 170 of the 1996 Act (as amended by paragraph 5 to Schedule 1 of the 2002 Act) requires RSLs to 'co-operate to such an extent as is reasonable in the circumstances in offering accommodation to people with priority under the authority's allocation scheme'. Further guidance on this is given under Section B of the Code and in Assembly Government '*Regulatory Requirements for RSLs in Wales*'<sup>4</sup> and supporting-circular 1/98. Both documents were being reviewed when this Code of Guidance was issued. Final versions of them will be ready in 2003-4. Until then, existing Regulatory Requirements and temporary guidance based on circular 1/98 (see **Annex 22**) remain extant.

Many of the activities discussed in the Code require joint planning and operational co-operation between local housing authorities and social services departments, health authorities, other referral agencies, voluntary sector organisations and the diverse range of bodies working in the rented sectors. The Code therefore is also relevant to these agencies.

### Legal Status of Code

The Code gives guidance on how local authorities should discharge their functions and apply the various statutory criteria in practice. It is not a substitute for legislation and in so far as it comments on the law can only reflect the Assembly Government's understanding of the provisions and the decisions of the courts on the provisions at the time of issue.

Decisions on allocations and homelessness should always take account of the guidance in this Code, as they can be challenged unless the authority can show that this has been done.

Housing authorities will need to be familiar with the statutory provisions, and keep up to date on any developments in case law. The Code replaces 'Code of Guidance on Parts VI

and VII of the Housing Act 1996' issued by the Welsh Office in February 1997, which was withdrawn following the implementation of the provisions in the Homelessness Act.

## Asylum Seekers and Refugees

Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. Accordingly, the guidance contained in this Code can only reflect the law at the time it is issued. When going to print of the current version (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. In view of this, all reference to 'Exceptional Leave to Remain' in the current Guidance should be considered in light of this. The Home Office will be notifying local housing authorities of these changes separately. The Assembly Government will revise the Code to reflect the changes and issue Code revisions in due course. Local housing authorities should secure legal or other expert advice where their obligations to asylum seekers and those given permission to remain are ambiguous or unknown.

## Structure of Code

The Code of Guidance comes in 2 parts. Part 1 relates to the allocation of accommodation in accordance with Part 6 of the 1996 Act and the subsequent amendments brought about by the 2002 Act. Part 2 of the Code relates to the homelessness provisions of the 1996 Act and the revisions brought about by the 2002 Act.

## Effective Dates of Legislation

The 2002 Act received Royal Assent on the 26<sup>th</sup> February 2002. Section 8 and paragraphs 3 and 7 of Schedule 1 to the Act came into force on Royal Assent. The Homelessness Act 2002 (Commencement) (Wales) Order 2002 brought the remaining provisions of the Act into force in Wales on 30<sup>th</sup> September 2002 in the case of the homelessness provisions and on 27<sup>th</sup> January 2003 in the case of allocations.

## Effective Dates of Code

This Code provides guidance on the current view of the Assembly Government on the implementation of Part 6 and 7 and was given statutory status in March 2003.

## Compliance with Code

The Assembly Government and Audit Commission will work in partnership to monitor local housing authority compliance with this Code of Guidance.

## Innovations in Allocations and Homelessness

**Allocations:** The Social Housing Management Grant Programme is the mechanism by which the Welsh Assembly Government can support and promote the generation of good practice that is capable of being copied across the Welsh social housing sector. The Assembly Government's aim is to link the programme to the achievement of the social housing vision and broad objectives set out in '*Better Homes for People in Wales - A National Housing Strategy*'<sup>1</sup>. To date, there has been a range of projects funded under the Programme, which have focused on choice based lettings, community lettings initiatives and common

housing registers. Further information on these can be obtained from the Assembly Government's Social Housing Management Grant Programme database, which can be found on the Assembly Government's housing web pages <http://www.housing.wales.gov.uk/index.asp?task=content&a=v2>

Readers are also referred to the experiences of 27 English organisations piloting choice-based lettings schemes. A formal evaluation of these will be undertaken in 2003. The Centre for Comparative Housing Research ([CCHR](http://www.cchr.org.uk)) has been employed by the Office of the Deputy Prime Minister (OPDM) to give advice and support on choice based lettings during the pilot period and have set up a website as part of the project (see [www.choosechoice.org.uk](http://www.choosechoice.org.uk)).

**Homelessness:** The 2002 Act introduces obligations on local authorities to conduct homelessness review and strategies. These strategies will require new approaches to partnership working involving all relevant statutory and voluntary agencies. The Assembly Government is already funding work in most local authority areas in Wales to develop homelessness strategies. It will promote best practice in the development of strategies through encouraging networking, publication and exchange of good practice, and through a substantial research programme in this area.


## The Legislation in Context

The Homelessness Act 2002 introduces substantial revisions to Parts 6 and 7 of the 1996 Act.

Broadly, the responsibilities that Parts 6 and 7 give to housing authorities should be seen in the context of their other functions. Consideration should be given to the wider objectives of meeting the areas housing needs, as set out in the Local Housing Strategy. Social housing is often a form of welfare support, and authorities will want to consider how their housing allocation policies interact with other areas of welfare provision and what arrangements are required to ensure a smooth interface with different providers.

In particular, amendments to Part 6 are designed to facilitate the introduction by housing authorities of allocation schemes that offer applicants a more active role in choosing accommodation. An important component of the Part 7 revisions is that local housing authorities must adopt a strategic approach to combating homelessness. The implementation of the changes to Part 7 on homelessness should also lead to a new focus on tackling homelessness through addressing the individual circumstances of each homeless person and working with them to find solutions to their housing and support needs which reflect their particular circumstances. Homeless people themselves will also be important contributors to the development of local strategies. These developments in homelessness also reflect a more customer centred approach in service delivery.

## Terminology

In accordance with the definitions used in the 1996 and 2002 Acts, the term 'allocation' has been used throughout this Code of Guidance. The Assembly Government however, would encourage social landlords to adopt the term 'letting' in place of 'allocation', wherever appropriate, in their guidance for housing applicants. It is the Assembly Government's view that social landlords should treat recipients of allocation services as customers rather than recipients of welfare. This shift to a more customer-centred approach is reflected in the development of the choice agenda. The normalisation of the processes by which social housing customers secure accommodation is reflected in the more commonly used term 'letting'. 

## Referencing

**Part 1:** Where revisions to the 1996 Act made by the 2002 Act have been made, these are denoted by the amending 2002 Act reference being inserted in square brackets and italics after the revised 1996 Act reference. For example, s.166(3)/[s. 15] refers to amended reference s.166(3) which was amended by s. 15 of the 2002 Act. References to the 1996 Act which are not followed by a bracketed reference, reflect a section of the 1996 Act that has not been amended by the 2002 Act, unless the context suggests otherwise.

**Part 2:** 1996 Act references are as per the existing legislation where no change has been made as a result of the 2002 Act. Where there has been change, the new 2002 Act reference is given.

## Code up-dates

The Code of Guidance is presented in a loose-leaf format to facilitate dissemination of new or revised guidance. Each time the Assembly Government revises the Code, new pages will be issued that will contain a revised issue date and reference. The 'Code Revisions Index' given at **Annex 24** will be issued at the same time as a summary record of all revisions made.

# Section B: Allocations and Homelessness in Context

## Joint Working between Agencies

Although the provisions of Parts 6 and 7 are concerned with housing accommodation, the needs of some applicants are much wider and may call on the resources not only of the housing authority but also a number of other agencies such as Supporting People teams, social services departments, health authorities, education authorities, environmental health departments, voluntary sector organisations, Prison and Probation services and other referral agencies. Joint working has an important role to play in developing appropriate responses to people with housing and other needs. The Assembly Government recognises that many agencies have already made good progress in working together but considers too that there is a need to improve the situation further. It urges all agencies to be proactive in providing effective and seamless services to those with housing and support or other needs.

### The benefits to housing

Co-ordinated services provided as a result of joint assessment of an applicant's housing and other needs can help: to ensure that appropriate decisions about suitability of accommodation are made; to sustain vulnerable people in the community; and to lead to better management of housing stock and ensure that resources are targeted more effectively. Although joint working may involve some up-front resource commitments, such costs will be offset by the savings it can generate by improved quality of service down the line through the provision of more long term, cost effective solutions. From a housing perspective, potential benefits could include fewer tenancy failures and a consequent reduction in calls on homelessness services, higher housing benefit collection rates and lower rent arrears, and fewer calls on emergency housing or social services teams. The Audit Commission study '*Housing Aspects of Community Care*'<sup>2</sup> puts the cost to housing authorities of each tenancy failure at approximately £2,300 (taking into account voids, arrears, legal costs, repairs and subsequent homelessness applications).

### The statutory framework

- (i) **The Homelessness Act 2002:** Subsections 1-3 place duties on the social services functions of an authority to assist in the preparation of and take account of the homelessness strategy in the exercise of their functions. Section 3 also provides for action to be taken by other public authorities or voluntary organisations to support the homelessness strategy. Section 12 amends the Housing Act 1996 by introducing requirements on housing and social services functions to co-operate where children in homeless families may be affected by decisions regarding their homelessness status.
- (ii) **The Housing Act 1996:** Section 170 of the allocations provisions of the 1996 Act provides that where an RSL has been requested by a housing authority to offer accommodation to people with priority under the authority's allocation scheme, the RSL should co-operate to such extent as is reasonable in the circumstances. Section 213 requires another housing authority, a registered social landlord, a housing action trust or social services authority to co-operate with a housing authority requesting assistance to carry out its duties under Part 7, so far as it is reasonable in the circumstances.
- (iii) **The National Health Service and Community Care Act 1990:** Under this Act, social services departments are required to carry out an assessment of those who

may need community care services. The planning and assessment processes should identify all needs including housing. Section 47 of the Act therefore requires social services authorities to notify a housing authority in cases where housing need is apparent.

The Assembly Government is keen to ensure that people, with mental health problems, substance misusers or with other problems which affect their ability to live independently, receive appropriate care and assistance, particularly where the problem is severe and enduring. Research has shown that suitable and stable housing is essential to the successful care of vulnerable groups living in the community. When requested, housing authorities should liaise closely with social services in the development of care plans to ensure that the accommodation offered is appropriate to the needs of the individual and links with the social and health care support that may also be part of a person's care plan.

Authorities will find that the guidance in '*Social Services Guidance on Planning*'<sup>3</sup> published by the National Assembly for Wales, gives practical advice about how to achieve effective joint working in community care.

- (iv) **The Children Act 1989:** Under s.17(1)(a and b) local authorities also have a general duty to safeguard and promote the welfare of children within their area who are in need, and so far as is consistent with that duty, to promote the upbringing of such children by their families. Section 27 places a specific duty on agencies (including local housing authorities) to co-operate in the interests of children in need. A social services authority can request a housing authority's help in providing services for children in need. The housing authority must comply to the extent that it is compatible with their own statutory duties and obligations, and does not unduly prejudice the discharge of any of their own functions.

Co-operative working should be an outcome of the joint policies envisaged by the Children Act 1989 Guidance and Regulations (Volume 2) and of the requirement of local authorities to produce Children's Services Plans on an inter-agency basis.

## Joint working

Effective joint working within each authority and with other agencies is essential for the implementation of the statutory responsibilities as set out in this Guidance. This may best be achieved through frameworks developed through broader strategic responsibilities, e.g. local housing strategy, health and wellbeing strategy, crime reduction partnerships.

The bodies involved in such arrangements will include housing authorities and social services, RSLs, local health boards, criminal justice agencies and the voluntary sector. In some cases protocols will be needed to ensure a clear understanding of how services should co-ordinate their work in practice, such as in information sharing, referrals and joint assessments.

## Assessments

Effective assessment of a person's needs will generally be best achieved through co-ordinated or joint assessment. The Assembly Government would encourage authorities to set up mechanisms to make such approaches an integral part of their joint working strategy. This will be particularly important where a person has multiple needs or is preparing to return to the community from an institution, e.g. hospital or prison. Housing authorities will need to adopt sensitive assessment processes which reflect close working with social services, health and other key services. These processes will form a central



part of their systems for rehousing people who are homeless, or who need support or additional help to maintain a tenancy.

## Joint Working between Housing Organisations

### Co-operation between Housing Authorities

The Assembly Government believes there is considerable merit in developing close working relationships and practices between housing authorities, particularly in the areas of allocations and homelessness. Mutual understanding of strategic priorities and the housing markets of different areas reduce the obstacles to social housing often created by artificial boundary lines and lead to improved services.

### Co-operation between Housing Authorities and RSLs

Section 170 of the 1996 Act provides that when asked and where it is reasonable, an RSL should co-operate with an housing authority by offering accommodation to those with priority under the authority's allocation scheme.

Authorities are reminded that RSLs are bound to comply with the requirements and standards of performance determined by the Assembly Government and set out in 'Regulatory Requirements for RSLs in Wales'<sup>4</sup> (see note 1). Authorities are recommended to have regard to that guidance.

**Nominations:** RSLs are required to offer at least 50% of vacancies (net of internal transfers) to local authority nominees, unless some lower figure is agreed with the authority. A higher percentage may be agreed where a housing authority has transferred its stock or has provided funding for a scheme. The Assembly's prior approval should be sought if figures in excess of 75% are proposed. RSLs must ensure that they retain their independence and continue to honour their constitutional obligations under their governing instruments.

RSLs are required to have formal nomination arrangements with each local authority in their area of operation to help authorities meet their statutory duties and local strategic objectives. Therefore, housing authorities should give RSLs sufficient information about nominees and their status within the allocation scheme. This will enable RSLs to determine applicant and letting profiles and to demonstrate compliance with the requirement to assist authorities with their statutory duties and strategic priorities.

It is recommended that formal agreements between housing authorities and RSLs are drawn up specifying how nominations will work in practice. Such agreements should refer to the mechanisms by which the agreement will be implemented, monitored and reviewed.

The Assembly Government recommends that authorities have nomination arrangements with RSLs so that RSLs can accept a fair share of the burden of meeting housing need in an area. The Assembly Government considers that it would be wrong for an authority to use their nomination rights to require RSLs to house an unfair proportion of the authority's difficult applicants, for example, those with a history of anti-social behaviour. (See temporary guidance in **Annex 22** which sets out the Assembly Government's nomination requirements of RSLs).

**Large Scale Voluntary Transfer:** Housing authorities retain their statutory homelessness responsibilities where they have transferred all or part of their housing stock. Before consent to transfer is granted, the Assembly Government will need to be satisfied that the

authority will continue to be able to meet its homelessness duties, with the assistance of the acquiring landlord.

**Common housing lists:** Under s.14(1) of the 2002 Act, housing authorities are no longer required to maintain housing registers. It is considered unlikely however, that housing authorities would be effective in providing an allocation service that is compliant with this Code without a list of applicants containing some information about housing needs and preferences. Where housing waiting lists are retained therefore, housing authorities together with their RSL partners, are encouraged to operate common housing lists to improve access to social housing.

Generally, RSLs are advised only to adopt common allocation policies where their governing bodies are satisfied that the RSL's independence is not compromised by this action. Authorities are recommended to treat RSLs as equal partners in common housing list arrangements. There are several publications by the Chartered Institute of Housing and the Housing Corporation on common housing lists (an example is given at reference 22 of the bibliography). The Assembly Government has also funded a number of pilot projects on common housing lists under the Social Housing Management Grant Programme. Information on the programme can be obtained from the Assembly Government's Social Housing Management Grant Programme database which can be found on the Assembly Government's housing web pages <http://www.housing.wales.gov.uk/index.asp?task=content&a=v2>

**Community Housing Agreements:** It is important that housing authorities harness the contribution that RSLs can make to meeting local housing need and demand. In many areas, this relationship will extend beyond 'bricks and mortar' issues, with RSLs making an input into broad-based community development and regeneration initiatives.

To improve effective joint working between housing authorities and their RSL partners, at the strategic (devising Local Housing Strategies) and operational level (meeting housing need and demand), the Assembly Government recommends the development of Community Housing Agreements. The Assembly Government aims to assist this through the development of good practice guidance on Community Housing Agreements for issue in 2003.

**Move on strategies:** Authorities should consider the need to have move on arrangements in place for all supporting housing projects that have a move on requirement.

## Local Housing Strategies

The allocation of housing accommodation and duties to the homeless people under Parts 6 and 7 respectively must be seen as part of the authority-wide housing strategy. Assembly Government guidance '*Preparing Local Housing Strategies*'<sup>5</sup> (and '*Local Housing Needs Assessment - A Good Practice Guide*'<sup>6</sup>) should be referred to when Strategies are being developed and reviewed. Local Housing Strategies should be framed within the wider context of an authority's Community Strategy and be consistent with other relevant corporate strategies and plans, particularly those aimed at tackling and preventing homelessness. They should reflect the strategic housing objectives of the area and:

- (i) set out a locally agreed, long term housing vision and a statement of local strategic housing-related objectives and target outcomes, based upon a robust analysis of local housing needs and demands; and
- (ii) be framed for the next 5 year period, although the vision should be longer term (i.e. 10 to 15 year time horizon) within the context of the Community Strategy.

The Local Housing Strategy should also provide the overarching strategic framework for a number of more detailed issue specific housing sub-strategies and policies including, for example:

- (i) a lettings plan, which estimates supply and demand for different types of dwelling, analyses how demand can be met and sets general objectives and priorities;
- (ii) formal or informal arrangements with RSLs and other providers of housing in the area to meet the objectives in the lettings plan;
- (iii) arrangements for the provision of advice and assistance for those wishing to make housing applications; and
- (iv) a local or regional Black and Minority Ethnic (BME) Housing Strategy which should set out how housing organisations will promote race equality in housing, for example outlining how they will address the housing requirements and needs of their BME communities.

It is recommended that all relevant stakeholders should be given the opportunity to participate in the formulation and implementation of the Local Housing Strategy under the leadership of the local authority. Also, wide ranging consultation should be undertaken on the draft Strategy, ensuring that all sections of the local community have an opportunity to communicate their views.

### **Tailoring policies to meet local needs**

Within a strategic framework, there is a need to develop lettings policies which are tailored to meet local needs. This means that local authorities and RSLs must be allowed the flexibility to respond to the needs of their customers at the community and estate level. This does not necessarily mean deviation from strategic authority-wide priorities which will have been drawn up and agreed by all relevant parties. However, where circumstances at the community or estate level cause these priorities to be questioned, then such questions should be fed into the formal review mechanisms for the strategy concerned. The law provides for local lettings policies to be developed to help protect the interests of existing residents and to contribute to the prevention or reversal of social decline. See paragraph 4.52 for further details.

### **Local Homelessness Strategies**

Local homelessness reviews and strategies will require a high level of collaboration between agencies to identify and achieve joint objectives. This is explained more fully in Chapter 8.

## **Equal Opportunities**

As one of the Assembly Government's three key themes, equality of opportunity has particular significance in terms of access to housing. To realise the aim of an inclusive society, the Assembly Government believes that equality of opportunity must be enshrined in all policies and guidance. Authorities are advised therefore, to have formal equal opportunities policies which ensure equal and fair treatment of all applicants for housing under Parts 6 and 7 of the 1996 Act.

## Relevant legislation

Local housing authorities must comply with the provisions of:

- (i) **The Sex Discrimination Act 1975.** This makes it unlawful to discriminate against a person on the grounds of gender by treating him or her less favourably than others. Section 30 of that Act makes specific provision about the management and disposal of accommodation.  
  
**The Race Relations Act 1976.** Local housing authorities will be familiar with their obligations under the Race Relations Act not to discriminate on racial grounds in the provision of their housing services, including the allocation and letting of their properties. Authorities should have regard to the Commission for Racial Equality's 'Code of Practice in Rented Housing'<sup>7</sup>. Although the *Code* imposes no legal obligations, it is admissible as evidence in court proceedings.
- (ii) **The Race Relations (Amendment) Act 2000.** This strengthens and adds to the provisions of the Race Relations Act 1976. It places a statutory duty on specified public authorities to eliminate unlawful racial discrimination and to promote race equality in carrying out their functions.
- (iii) **The Disability Discrimination Act 1995.** This makes it unlawful to discriminate against disabled persons in connection with the management of premises. Section 22 of the 1995 Act specifically makes it unlawful to discriminate against a disabled person in disposing of premises (includes allocations under Part 6)
- (iv) **The Human Rights Act 1998.** This requires all public authorities in the UK to act compatibly with the European Convention on Human Rights.

## Black and Minority Ethnic (BME) Housing Action Plan for Wales

The Assembly Government document 'BME Housing Action Plan for Wales'<sup>8</sup> was published in September 2002. The aim of the Plan is to 'ensure that clear directives and targets are set for social landlords and other providers of housing, to ensure that discrimination and disadvantage is eliminated across Black, Minority Ethnic communities living in Wales'. It provides guidance to local authorities and RSLs on race equality in respect of all of their housing functions. For housing authorities, the Plan accommodates their duties under the Race Relations (Amendment) Act 2000.

Further guidance for local authorities and RSLs on housing and race equality can be found in the following publications:

- 'Code of Practice on the Duty to Promote Race Equality: A guide for public authorities'<sup>9</sup>
- 'Housing Associations and Race Equality'<sup>10</sup>

## The Welsh Language

Document 'Dyfodol Dwyieithog : A Bilingual Future' contains the Assembly Government's initial statement about how it intends to introduce measures to sustain and develop the Welsh language. This includes the development of a national action plan which will detail action in support of the language across a range of Ministerial portfolios and will tie in with

the National Assembly's budget planning process. A copy of the document can be found on <http://www.wales.gov.uk/subiculture/content/statement/action-plan-e.htm>

Housing authorities must comply with the provisions of the Welsh Language Act 1993 in delivering allocation and homelessness services.

## Wales Programme for Improvement (WPI)

The allocation schemes and services of local housing authorities must be developed and reviewed in accordance with the Wales Programme for Improvement (WPI). The underlying objective of the WPI is to achieve the delivery of high quality services to the public, which meet identified needs. The WPI is also firmly embedded in the wider context of the community leadership role of local government and is underpinned by the statutory requirements of the Local Government Act 1999. Assembly Government guidance on the Programme is contained in '*Wales Programme for Improvement: Guidance for Local Authorities*'<sup>11</sup>.

## Customer Focus

It is the Assembly Government's view that social landlords should treat recipients of allocation and homelessness services as customers i.e. users of services whose views are valued, rather than recipients of welfare.

Social landlords, when developing their allocation and homelessness services, have in the past often paid insufficient attention to the views and preferences of applicants and homeless people. Housing authorities are advised to be mindful of the consultation requirements of the Wales Programme for Improvement and are encouraged to engage customers when allocation schemes are reviewed and homelessness strategies developed.

Since April 2000, the Assembly Government has recommended that local authorities in Wales have authority-wide tenant participation compacts to promote good customer relations by ongoing consultation with customers and facilitating their involvement in decisions about services that affect them. Authorities should comply with the guidance contained in '*Tenant participation compacts for local authorities in Wales*'<sup>12</sup>.

## Authority-wide Monitoring

Housing authorities should, in conjunction with their RSL partners, draw up systems to monitor information about persons applying for and being allocated social housing. This can be used as a basis for evaluating strategies and allocation schemes and establishing whether practice outcomes are in line with strategy and scheme objectives. It can also be used to determine the success of lettings plans, homelessness strategies and whether the authority is meeting its equal opportunities obligations.

**PART 1**



**ALLOCATIONS**

# CHAPTER 1: INTRODUCTION

## Allocations and the Role of Social Landlords

- 1.1 Local housing authorities and RSLs are often collectively referred to as ‘social landlords’. They are distinguished from other landlords by having the principal objective of meeting housing need. Within this context, it is the Assembly Government’s aim to see social housing provided within mixed, settled communities that are socially inclusive. The guidance contained in this Code provides a framework within which this aim can be pursued.
- 1.2 The Assembly Government believes that allocation schemes can play an important role in broader sustainability and inclusion agendas. For example, consideration of the contribution that allocations can make to meeting the objectives set out in a housing authority’s homelessness strategy. It recognises however, that allocation schemes alone cannot address major social problems and that schemes will need to form part of an integrated range of measures and initiatives to address problems at the local level.

## Better Homes for People in Wales

- 1.3 The Assembly Government policy position on lettings is contained in *‘Better Homes for People in Wales - A National Housing Strategy for Wales’*<sup>1</sup>. It says:

‘It is our aim to see social housing provided within mixed, settled communities that are socially inclusive. This will involve minimising barriers to social housing, developing fair allocations policies that take account of local housing needs and conditions and the monitoring of lettings outcomes to gain an understanding of winners and losers.

‘An essential element of this aim is the promotion of a customer-centred approach to the allocation of social housing that:

- maximises genuine choice;
- creates settled communities; and
- ensures that a publicly funded resource remains accessible to those who need social housing’.

- 1.4 The guidance contained in this Code provides a framework within which this aim can be pursued by local housing authorities.

## Purpose of Part 1 of Code

- 1.5 The Assembly Government is issuing the guidance contained in Part 1 of this Code to local housing authorities in Wales under s.169 of the Housing Act 1996 (the 1996 Act). The 1996 Act requires local housing authorities to have regard to this guidance in exercising their functions under Part 6 of the 1996 Act.
- 1.6 Part 1 of the Code provides guidance on Part 6 of the 1996 Act as amended by the Homelessness Act 2002 (the 2002 Act). It provides information about the allocation of social housing under Part 6. This is the conventional route taken by those who wish to access social housing allocated by a housing authority providing an introductory or secure tenancy from their own stock or by nominating applicants to a starter (assured shorthold) or assured tenancy in RSL stock.

- 1.7 The 2002 Act introduces substantial revisions to Part 6 of the 1996 Act on the allocation of housing accommodation. In particular the amendments to Part 6 are designed to facilitate housing authorities in the introduction of allocations schemes which offer tenants a more active role in choosing accommodation.

## **Effective Date of Part 1 of Code**

- 1.8 The allocations provisions of the Homelessness Act 2002 were effective from 27<sup>th</sup> January 2003. From that date the Code of Guidance issued in February 1997 was no longer effective.



## CHAPTER 2: OVERVIEW OF AMENDMENTS TO PART 6 OF THE 1996 ACT MADE BY THE HOMELESSNESS ACT 2002

- 2.1 Part 6 of the 1996 Act relates to the process by which people apply and are considered for an allocation of social housing accommodation. Under s.159, housing authorities, in the allocation of introductory and secure tenancies in their own stock and their nomination of applicants to assured tenancies (which may be assured shorthold tenancies) in RSL stock, are obliged to comply with the provisions of Part 6. In this context, allocations now include transfers at the tenant's request (s.159(5)/[s.13]). Sections 161 to 165/[s.14(1)], which relate to housing registers, are repealed and the requirement to keep a register ceases, although there is nothing to prevent a housing authority from doing so if it wishes. New s.160A/[s.14(2)] provides that only those eligible for housing accommodation may be allocated such accommodation and describes eligibility. This includes at s.160A(7)/[s.14(2)] a power for a housing authority to decide that an applicant is to be treated as ineligible by reason of unacceptable behaviour serious enough to make him or her unsuitable to be a tenant. For the provisions in s.166/[s.15] relating to information about the housing register, there are substituted provisions requiring a housing authority to ensure that advice and information is available about the right to make an application and that assistance is available for those who are likely to have difficulty making an application. The housing authority must also ensure that applicants are informed of certain rights they have and that every application properly made must be considered by the housing authority.
- 2.2 Each housing authority must have and publish an allocation scheme under s.167/[s.16] re, but in addition subsection (1A)/[s.16(2)] provides that the scheme must contain a statement as to the housing authority's policy on choice of accommodation or the opportunity for applicants to express preferences about housing that is allocated. Also, s.167(2)/[16(3)] sets out new reasonable preference categories and makes further provisions relating to those categories and how they may be treated. This includes provisions at subsection (2B) to (2D)/[16(3)] relating to unacceptable behaviour. At subsection (2E)/[16(3)] there is provision for the scheme to allow for choice based lettings schemes. At subsection (4A) /[s.16(4)] an applicant is also to have rights under the scheme to request certain information, to request to be informed of certain decisions and in some cases to request reviews of decisions.
- 2.3 Apart from minor consequential amendments the supplementary provisions contained in s.169 to 174 remain unchanged.

# CHAPTER 3: ELIGIBILITY FOR AN ALLOCATION

## Overview

- 3.1 Section 166(3)/[s. 15] places an obligation on housing authorities to consider all applications for social housing that are made in accordance with the procedural requirements of the housing authority's allocation scheme. In considering applications, however, housing authorities must ascertain if an applicant is eligible for accommodation or whether he or she is excluded from allocation under s.160A (1)(a), (3) and (5)/[s. 14(2)]. Under s.160A(3)/[14(2)] persons from abroad who are subject to immigration control within the meaning of the Asylum and Immigration Act 1996 are ineligible for allocations. Some other categories of persons from abroad are also ineligible. However, the National Assembly for Wales has prescribed classes of persons who are subject to immigration control but are nonetheless to be eligible for an allocation. Under s.160A(5)/[14(2)] the National Assembly for Wales has prescribed that certain persons from abroad, who are not subject to immigration control, have to be habitually resident in the Common Travel Area (CTA) (i.e. the UK, the Channel Islands, the Isle of Man and the Republic of Ireland) in order to be eligible for an allocation (see **Annex 6**). Under section 160A(7)/[14(2)], applicants (or members of their households) can be rendered ineligible for an allocation by behaviour which makes them unsuitable to be a tenant.

## Definition of Allocation

- 3.2 For the purposes of Part 6, the allocation of housing accommodation by housing authorities is defined in s.159 of the Housing Act 1996 as:
- (i) selecting a person to be a secure or introductory tenant of housing accommodation held by a local housing authority;
  - (ii) a nomination by an authority to such tenancies of accommodation held by another person (i.e. one of the authorities or bodies fulfilling the landlord condition mentioned in s.80 of the Housing Act 1985); or,
  - (iii) a nomination to an assured tenancy (including an assured shorthold) of housing accommodation held by an RSL.

## Eligible Categories

- 3.3 **Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. When going to print of the current version of this Code (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. See the paragraph on asylum seekers and refugees on page ii of the Introduction to this Code for further information.
- 3.4 The following are the main categories of applicants to whom a housing authority may allocate accommodation taking account of nationality and immigration status (see also **Annex 4**):
- (i) **Existing tenants** - Section 160A(6)/[s. 14(2)], provides that none of the provisions relating to the eligibility of tenants with respect to their immigration status is to affect the eligibility of an applicant who is already a secure or introductory tenant or an assured tenant of housing accommodation allocated by a housing authority.

It is therefore the case that where such a tenant applies for an allocation the housing authority need not question eligibility and an allocation can be made regardless of immigration status or habitual residence.

- (ii) **British Nationals habitually resident in the Common Travel Area (CTA)** - Where a British National arrives from abroad, as with all nationals of an European Economic Area (EEA) country, he/she must establish habitual residence in order to be eligible for an allocation, even in cases where he/she was born in the CTA.
- (iii) **European Economic Area (EEA) Nationals** - These are the Nationals of the European Union (EU) countries plus Iceland, Norway and Liechtenstein. They are eligible for an allocation if they are habitually resident in the CTA, are a worker, or have a right to reside in the UK.
- (iv) **Persons subject to immigration control prescribed as eligible** - Generally, persons subject to immigration control within the meaning of the Asylum and Immigration Act 1996 are not eligible for housing accommodation. However, under s.160A(3)/[s.14(2)], the National Assembly for Wales has prescribed classes of person who are to be considered eligible. These are:
  - a) **Refugees** - A person is granted refugee status when his/her request for asylum is accepted.
  - b) **Exceptional leave to enter or remain (ELR)** - Someone who has failed in their request for asylum, but nonetheless have been given leave to remain, or someone who has been granted leave to remain where there are compelling, compassionate circumstances. However, it may be the case that when ELR was granted it was on condition that the applicant should not be a charge on public funds. If that is the case, the applicant is not eligible for an allocation.
  - c) **Indefinite leave to enter or remain (ILR)** - Someone who has permission to remain in the UK for an indefinite period and is regarded as having settled status. In order to be eligible however, the applicant will still have to establish habitual residence. It is also the case that if ILR status was obtained as a result of sponsorship, five years must have elapsed since the person's arrival in the UK or the date of the sponsorship undertaking, whichever is later. However, where a sponsor dies within the first five years, the applicant will be eligible provided he/she can establish habitual residence.
  - d) Former residents of Montserrat who have left that territory because of volcanic eruption.

(Annex 8 provides guidance on identifying persons subject to immigration control who fall within the above categories. Annex 9 lists classes of persons subject to immigration control who are not eligible for an allocation).

- (v) **Persons subject to immigration control who are nationals of a country that has ratified the European Convention on Social and Medical Assistance (ECSMA) or the European Social Charter (ESC)** - Such persons have to be lawfully present in the UK as well as habitually resident. This means that the applicant must have leave to enter or remain in the UK (see also Annex 6).

3.5 New section 160A(5)/[s.14(2)] allows the National Assembly for Wales to prescribe other classes of persons from abroad who are ineligible for an allocation of accommodation. Those regulations can be made either in respect of local authorities generally or in respect of any particular local housing authority. The Allocation of Housing (Wales) Regulations

2003 [S.I. No. 2003/239(2.36)] were made on 28th January 2003. The effect of these regulations is reflected in paragraph 3.4 above.

### **Joint Tenancies**

- 3.6 Under s.160A (1)(c)/[s. 14(2)], a housing authority shall not allocate housing accommodation to two or more people jointly if any one of them is a person from abroad who is ineligible or is a person who is being treated as ineligible because of unacceptable behaviour (see also paragraph 3.14 below).

### **The Habitual Residence Test**

- 3.7 While the majority of the categories eligible for housing require the applicant to be habitually resident in the CTA, most applicants for social housing will not be persons from abroad and there will be no reason to apply the test. It is also likely that persons who have been resident in the CTA continuously during the 2 years prior to their housing application will be habitually resident in the CTA. In such cases, therefore, housing authorities may consider it unnecessary to make further enquiries to establish habitual residence, unless there are other circumstances that need to be taken into account. A period of continuous residence in the CTA might include visits abroad e.g. for holidays or to visit relatives. Where 2 years continuous residency in the UK is not established, housing authorities may need to conduct further enquiries to determine whether the applicant is habitually resident in the CTA (see **Annex 14**).
- 3.8 Whilst habitual residence requires an appreciable period of residence, there is no minimum time limit set for an appreciable period. Case law suggests that in some circumstances 'a month can be.. an appreciable period of time'. In addition, an applicant who was previously habitually resident can establish this again on arrival. Authorities should note that it is possible to have an intention to reside in the CTA for an appreciable fixed period; it does not need to be permanent or indefinite. Each case must be decided after taking account of all the relevant circumstances.
- 3.9 A person cannot claim to be habitually resident in any country unless he/she has taken up residence and lived there for a period. There will be cases where the person concerned is not coming to the UK for the first time, but is resuming a habitual residence previously held. **Annex 14** provides detailed guidance on the factors which a housing authority should consider in determining whether an applicant is habitually resident in these circumstances. However, the fact that a person has ceased to be habitually resident in another country does not imply habitual residence in the country to which he or she has travelled.

### **Procedures for determining eligibility of persons from abroad**

- 3.10 The criteria which determine whether a person from abroad is eligible for an allocation of accommodation or homelessness assistance are complex and the task of screening applicants extends beyond the normal requirements of evaluating applicants' housing circumstances. Authorities will need to ensure that they have procedures in place to carry out appropriate checks on applicants and ensure they do not discriminate on the basis of race, colour, nationality or ethnic origins. Authorities should monitor their performance in screening housing applicants for immigration status, to ensure that members of ethnic minorities who are eligible for an allocation are not denied housing and do not experience unreasonably long delays while their application is considered. In devising such procedures, authorities should have due regard to the information contained in this Guidance and Assembly Government guidance on the housing needs of asylum seekers and refugees that will be issued for formal consultation in the summer of 2003.

- 3.11 If there is any uncertainty about an applicant's immigration status, housing authorities are recommended to contact the Home Office Immigration and Nationality Directorate, using the procedures set out in **Annex 13**. Before doing so, the authority should advise the applicant that an inquiry will be made; if at this stage the applicant prefers to withdraw his or her application, no further action will be required.
- 3.12 Housing authorities should ensure that staff who are required to screen housing applicants about eligibility for an allocation are given training in the complexities of the housing provisions, the housing authority's duties and responsibilities under the race relations legislation and how to deal with applicants in a sensitive manner. Housing authorities can refer to **Annex 5**, which provides model questions that can provide a pathway to determining eligibility. This is supported by a flowchart for determining eligibility which is contained in **Annex 15**.
- 3.13 Authorities should ensure that language and interpretation support is available for those applicants who have difficulty speaking or reading English. Consideration should be given to identifying ethnic origin and language of choice, producing information in a variety of minority languages, carefully channelling information so that it reaches its target audience; and employing staff who can speak BME language.

## Unacceptable Behaviour

- 3.14 Most applicants for social housing will not be persons from abroad, and will have been resident in the UK (or elsewhere in the CTA) for 2 years prior to their application. Such applicants, together with eligible applicants from abroad may, at the discretion of the authority, be treated as ineligible by the housing authority on the basis of unacceptable behaviour. There is no obligation on local authorities to implement these provisions and where they do robust procedures are needed to ensure compliance with the law, this Code and the fair and consistent treatment of applicants. Policies regarding the application of sanctions on the grounds of unacceptable behaviour should accommodate the broader Assembly Government policy aims of equality of opportunity, social inclusion and sustainability. Therefore, sanctions to exclude people from social housing should be kept to a minimum and support mechanisms developed to maximise opportunities for people to secure social housing. However, in developing sustainable communities the Assembly Government recognises that housing authorities must also take into account the needs of existing tenants. A decision to treat an applicant as ineligible must be underpinned by compliance with the law and this Guidance, and should be just one of a range of measures used by an authority to address issues of applicants with unacceptable behaviour. Further guidance is given in paragraphs 3.20 and 3.21 below.

### Description

- 3.15 Under s.160A(7)/[s.14(2)], a housing authority *may*, where it is satisfied that an applicant (or a member of the applicant's household) is guilty of unacceptable behaviour serious enough to make him or her unsuitable to be a tenant of the housing authority, to decide to treat the applicant as ineligible for an allocation. (Housing authorities should note, however, that where they are satisfied that an applicant is unsuitable to be a tenant they are not required to decide that he or she is ineligible for an allocation; they may instead proceed with the application and decide to give the applicant no preference for an allocation. It is for each housing authority to decide whether this provision is applied. This option is considered further in Chapter 4, paragraph 4.15.

- 3.16 Section 160A(8)/[s. 14(2)] provides that the only behaviour which can be regarded as unacceptable for these purposes is behaviour by the applicant or by a member of his or her household that would - if the applicant had been a secure tenant of the housing authority at the time - have entitled the housing authority to a possession order under s.84 of the Housing Act 1985 in relation to any of the discretionary grounds in Part I of Schedule 2, other than Ground 8 (see **Annex 23** for a list of relevant grounds). These are fault grounds and include behaviour such as non-payment of rent, breach of tenancy conditions, conduct likely to cause nuisance or annoyance, and use of the property for immoral or illegal purposes. Housing authorities should note that it is not necessary for the applicant to have actually been a tenant of the housing authority when the unacceptable behaviour occurred. The test is whether the behaviour would have entitled the housing authority to a possession order if, whether actually or notionally, the applicant had been a secure tenant.

### **Test of unacceptable behaviour**

- 3.17 Where a housing authority has reason to believe that s.160A (7)/[s.14(2)] may apply, there is a three stage test before the power to exclude (or not afford any priority for re-housing) can be used.

- (i) **Where there is evidence of unacceptable behaviour, was it serious enough to have entitled an authority to obtain a possession order?**

Authorities will need to satisfy themselves that there has been unacceptable behaviour which falls within the definition in s.160A(8)/[s. 14(2)]. If a Court has already made a possession order on one of the discretionary grounds, then an authority may accept that as evidence of unacceptable behaviour, and proceed to paragraphs (ii) and (iii) below.

- a) **Grounds for Possession:** In considering whether a possession order would be granted in the circumstances of a particular case, where no possession order has been made, the housing authority must first ask itself whether one of the discretionary grounds for possession (see **Annex 23**), would have been established. This would require the housing authority proving to the court, on the balance of probabilities, (i.e. it is more likely than not) that, for example, the property was used for immoral or illegal purposes, or the tenant caused a nuisance or annoyance to neighbours. If the housing authority are not satisfied that, on the information it has about the applicant (or a member of the applicant's household), it would have been able to prove one of the grounds for possession, the applicant cannot be guilty of unacceptable behaviour as per s.160A(7).
- b) **Reasonableness:** If the housing authority is satisfied that, on the information it has about the applicant (or a member of the applicant's household), it would have been able to prove one of the grounds for possession, it then has to consider whether the court would have decided that it was reasonable to grant a possession order. The court can only grant a possession order if it considers it reasonable to do so. In deciding whether it is reasonable to grant possession, the court must have regard to the interests and circumstances of the tenant (and their household), the housing authority and the wider public. If the housing authority is not satisfied that the court would decide it was reasonable to grant a possession order, the applicant cannot be guilty of unacceptable behaviour as per s.160A(7).
- (ii) **Was the behaviour serious enough to render the applicant or a household member unsuitable to be a tenant?**

Having concluded that there would be entitlement to an order, the housing authority will need to satisfy itself that the behaviour is serious enough to make the person unsuitable to be a tenant. To do this, the authority needs to satisfy itself that if a possession order were granted it would have been an outright order. Where an authority has reason to believe that the court would have suspended the order, then such behaviour should not be considered serious enough to make the applicant unsuitable to be a tenant.

Possession orders are often suspended in rent arrears cases to give tenants an opportunity to clear the rent arrears. This is particularly true where:

- a) the arrears are relatively modest, and/or
- b) have been caused by delays in housing benefit, and/or
- c) the tenant does not have a history of persistently defaulting on rent payments; and/or
- d) the applicant was not in control of the household's finances or was unaware that rent arrears were accruing or is being held liable for a partner's debts; and/or
- e) the housing authority has failed to take steps or provide advice to help the tenant pay their rent.

Similarly, courts are generally inclined to suspend a possession order in respect of anti-social behaviour where:

- a) the allegations of nuisance are relatively minor; and/or
- b) the nuisance was caused by a member of the household who has since left; and/or
- c) the court is satisfied that the imposition of a suspended order will serve to control the tenant's future behaviour.

**(iii) Is the behaviour unacceptable at the time of application?**

Finally, if satisfied that the applicant is unsuitable to be a tenant by reason of the unacceptable behaviour in question, the housing authority must have regard to the circumstances at the time the application is considered and must satisfy itself that the applicant is still unsuitable at the time of the application. Previous unacceptable behaviour or even an outright possession order, may not justify a decision to treat the applicant as ineligible where that behaviour can be shown by the applicant to have improved. A policy of treating all those evicted on one of the discretionary grounds as unsuitable is likely to be unlawful.

- 3.18 Only if satisfied on all three aspects, can a housing authority consider exercising its discretion to decide if the applicant is to be treated as ineligible for an allocation. In reaching its decision, an authority must act reasonably. That means it must consider each application on its own merits. It must have regard for each applicant's personal circumstances (and the personal circumstances of the applicant's household), including his or her health and medical needs, dependants and any other factors relevant to the application. In practice, the matters before the housing authority will include the information provided on the application form and supporting information.

- 3.19 If an applicant, who has, in the past, been deemed by the housing authority to be ineligible, considers his/her unacceptable behaviour should no longer be held against him/her as a result of changed circumstances, he/she can make a fresh application. Unless there has been a considerable lapse of time it will be for the applicant to show that his/her circumstances or behaviour has changed. What constitutes a considerable lapse of time, will depend upon the individual circumstances of the case and in particular the nature of the unacceptable behaviour.

### **Policy considerations**

- 3.20 It is the Assembly Government's view that barriers to social housing should be minimised. Therefore, in developing policies on unacceptable behaviour, housing authorities should:
- (i) carefully consider their role as social landlords and brokers of social housing. Social housing is subsidised stock and it is incumbent on authorities to allocate tenancies primarily to meet housing need in their areas and to co-operate with other housing providers in so doing;
  - (ii) develop 'unacceptable behaviour' policies which are based on the law, this Guidance and established good practice. They should clearly specify the grounds for determining whether a person is ineligible and whether such a determination is reasonable. Policies should be supported by robust procedures, which require applications to be considered on a case by case basis and avoid set circumstances where an unacceptable behaviour ruling will always be found. Local housing authorities should also:
    - consider the use of suspensions in place of outright exclusion;
    - set appropriate timescales for the period of exclusion;
    - ensure that determinations to exclude (or not afford preference) are for reasonable periods and no longer than necessary;
    - introduce appropriate appeal mechanisms as suggested in paragraph 3.26 below;
    - ensure that procedures are able to accommodate any relevant change in applicant circumstances;
    - provide information about the ways in which an ineligible decision may be reversed (e.g. evidence that an applicant is reducing his or her rent arrears);
    - review ineligible determinations on a predetermined basis.
  - (iii) keep exclusions to a minimum to ensure they are meeting their statutory responsibilities;



- (iv) work collaboratively with the police and probation services and other statutory and voluntary agencies in sharing information on sex offenders or other violent applicants and, where appropriate, become involved in the management of the risk posed by them (see paragraphs 4.90 to 4.92 for further guidance);
- (v) monitor and evaluate policies and practice on a regular basis to ensure outcomes are compliant with policy objectives, the law and good practice.

3.21 As a matter of good practice, the Assembly Government strongly encourages local housing authorities to refer to its publication '*Review into exclusion from social housing*'<sup>13</sup> in developing policies and procedures on excluding potential tenants for reasons of unacceptable behaviour. The Assembly Government will be issuing further guidance on exclusions for local authorities and RSLs during 2003-4.

## Notification and Appeals to Decisions on Eligibility

3.22 Under s.160A(9) and (10)/[s.14(2)] and 167(4A)/[s.16(4)] housing authorities that decide applicants are ineligible, by virtue of:

- s.160A(3)/[s.14(2)] (being subject to immigration control)
- s.160A(5)/[s.14(2)] (being an ineligible person from abroad)
- s.160A(7)/[s.14(2)] (being a person to be treated as ineligible because of unacceptable behaviour)

or not afforded any preference by virtue of:

- s.167(2B)/[s.16((3)] (being a person not afforded any preference under the allocation scheme because of unacceptable behaviour)

must give such applicants written notification of the decision and the grounds for it. This must be firmly based on the relevant facts of the case. The notification should also refer to the right of applicants to request a review of the decision.

3.23 Where an authority believes that an applicant may have difficulty in understanding the implications of a decision of ineligibility, it would be good practice for the authority to make arrangements for the information to be explained in person.

3.24 In cases where the notification cannot be sent to the applicant, or where the authority believes that it may not have been received by him or her, the authority should make available at its office a written statement of its decision, and the reasons for it, to enable the applicant, or someone who represents the applicant, to collect within a reasonable period.

3.25 Under s.167 (4A)(d)/[s.16(4)], applicants have the right to request a review under the allocation scheme of any decision as to eligibility or loss of preference and a right to be informed of the decision on review and the grounds for that decision.

3.26 Authorities should draw up fair procedures for carrying out reviews. A suggested procedure is given below though there is no statutory requirement to follow a particular procedure. However, failure to have a fair procedure for reviews may well result in a judicial review of any decision reached. Housing authorities may:

- a) ensure that notifications of a decision on eligibility include advice on the right to request a review of it, and the time within which such a request must be made.

Notices should also inform applicants that, if they need help or advice about the notice, and what to do about it, they should take it immediately to a Citizens Advice Bureau, a housing aid centre, a law centre or a solicitor;

- b) ensure that applicants have an opportunity to request further information about any decision about the facts of their case;
- b) advise applicants that they may request a review by way of an oral hearing, or without such a hearing via a written submission;
- c) ensure that the review is carried out by a person who was not involved in the decision. Where the review of a decision made by an officer is to be made by another officer, he or she should be senior to the officer who made the original decision;
- d) ensure that the circumstances of the applicant at the time of the review, not just at the time of the original decision, are taken into account. This is to allow for a change in circumstances since the original decision to be taken into account (e.g. the paying off of arrears or establishing a payment agreement, or departure of a member of the household responsible for anti-social behaviour);
- e) if there is not to be a hearing, allow the applicant to make representations in writing to be considered by the authority. The authority should inform the applicant of the date by which such representations must be received, allowing the applicant at least 5 clear days to provide representations to the authority;
- f) if there is to be a hearing, the applicant must be given notice of the date, time and place of the hearing, which should not be less than five days after receipt of the request for a hearing. If the applicant has not been given such notice, the hearing should only proceed with the consent of the applicant or their representative;
- g) ensure that the person hearing the review determines the procedure to be adopted. The procedure should provide that the applicant who has requested it is given the right to:
  - be heard;
  - be accompanied;
  - be represented by another person, whether that person is professionally qualified or not. For the purposes of the proceedings any representative should have the rights and powers which the applicant has;
  - call their own supporting witnesses to give evidence. This does not give the applicant the power to require witnesses to attend;
  - put questions to any person who gives evidence at the hearing;
  - make representations in writing.
- h) ensure that a person conducting a review where someone fails to appear at the hearing (having been given appropriate notice), should have regard to all the circumstances including any explanation offered for the absence, be able to

proceed with the hearing, or give whatever directions they think proper on the conduct of a further review;

- i) allow for applicants to be able to apply to request a postponement of a hearing and grant or refuse the request as it sees fit;
- j) ensure that the person hearing the review should be able to adjourn the hearing at any time during the hearing on the application of the applicant or their representative, or if the person hearing the review sees fit. If a hearing is adjourned part heard and, after the adjournment, the person or persons hearing the review differ from those at the first hearing, proceeding should be by way of a complete rehearing of the case;
- k) ensure that where more than one person is conducting the review, he or she should, with the consent of the applicant or their representative but not otherwise, be able to proceed in the absence of one of the persons who is to determine the review;
- l) ensure that the applicant is notified of the decision on the review. If the decision is to confirm the original decision, the housing authority should also notify the applicant of the reasons for the decision.

## Residential Criteria

- 3.27 Section 166(3)/[s.15] requires that every application made to a local housing authority for an allocation of housing accommodation shall (if made in accordance with the procedural requirements of the authority's allocation scheme) be considered by the authority. The ability to apply residential criteria therefore no longer applies. However, s.167 (2A)/[s.16(3)] provides that allocation schemes may contain provision for determining priorities for reasonable/additional preference categories. The factors that may be taken into account in determining priorities include any local connection (within the meaning of s.199 of the 1996 Act) which exists between a person and the authority's area (see **Annex 16**).

## Applications from Owner-Occupiers

- 3.28 Local housing authorities must consider the housing needs of owner-occupiers in the same way as other applicants. For example, this will ensure that appropriate support is given to elderly people whose homes are no longer suitable for them to continue to occupy. This is particularly important in the light of the fact that the elderly owner-occupied sector is a growing one. This would also ensure the needs of other groups would be met including families whose homes are in poor condition; families whose homes could not raise sufficient equity to enable them to afford alternative suitable accommodation; and families who have been deserted by the head of the household following a relationship breakdown and may become homeless, would be met.
- 3.29 The Assembly Government Rapid Response Adaptations Programme was launched in 2002. The initiative is administered by Care and Repair Cymru and aims to offer a quick service to elderly and disabled owner occupiers by providing small property adaptations to enable them to remain in their homes or be discharged from hospital or longer term care. Further information and an application form is available from the Private Sector and Renewal Branch of the Housing Directorate on request.

## No Fixed Address

- 3.30 Housing authorities must ensure that allocation scheme procedures can accommodate applications from those who do not have a fixed address.

# CHAPTER 4: THE ALLOCATION SCHEME

## Balancing Priorities

- 4.1 Housing authorities' allocation schemes should aim to achieve a balance in systems for allocating housing between: the needs and preferences of applicants; the well being of existing tenants and the community as a whole; and the need to make best use of a publicly funded resource. The Chartered Institute of Housing Cymru publication '*Striking the Right Balance - The role of allocations in building successful communities*'<sup>14</sup> provides information on allocations initiatives across Wales and the rest of the UK.

## The Requirement to have an Allocation Scheme

- 4.2 Under s.167/[s.16] of the 1996 Act, local housing authorities are required to have an allocation scheme that determines the authority's priorities and the procedure to be followed in allocating housing. 'Procedure' includes all aspects of the allocation process, including the people, or descriptions of people, by whom decisions are taken. It is essential that the scheme reflects all the housing authority's policies and procedures, including information on whether the decisions are taken by elected members or officers acting under delegated powers. Section 159(5)/[s.13] requires that existing tenants are treated on the same basis as other applicants applying for accommodation under the allocation scheme. The scheme must be framed in such a way as to ensure that reasonable preference is given to certain categories of people. The categories have been revised by s.16(3) of the 2002 Act. Also, under s.167 (1A)/[s.16(2)], the scheme must include a statement of the housing authority's policy on offering eligible applicants a choice of accommodation or the opportunity to express preferences about housing accommodation to be allocated to them.
- 4.3 Under s.1(5) of the 2002 Act, housing authorities must take their homelessness strategies into account in the exercise of their functions. It is important therefore that the allocation scheme is consistent with the homelessness strategy as a whole.

## Transfer Applicants

- 4.4 Section 159(5)/[s.13] allows existing secure, introductory and assured tenants to apply for transfer under the allocation scheme to other social housing stock, which may be in the same area or in another housing authority area. Transfer applicants can therefore expect to be treated on the same basis as other applicants in accordance with the provisions set out in the housing authority's allocation scheme. They are entitled to the same 'reasonable preference' (s.167(2)/[16.3]) if they fall into an appropriate category or categories. They must also be given the same rights to information and to reviews of decisions as applicants (s.167(4A)/[s.16(4)]). They will also be subject to the same eligibility criteria, and potential exclusion from allocation (s.160A/[s.14(2)]), as new applicants. Mutual exchanges between existing tenants do not fall within Part 6 (see Annex 1 for a full list of exemptions). Transfers that the housing authority initiates for management purposes, for example, to effect a temporary decant to allow repairs to a property to be carried out, do not fall within Part 6.

## Joint Tenancies

### Potential joint tenancies

- 4.5 The Assembly Government considers that joint tenancies can play an important role in the effective use and equitable allocation of housing. Where household members have long term commitments to the home, for example, when adults share accommodation as partners (including same sex partners), friends or unpaid live-in carers, housing authorities should normally grant a joint tenancy. In this way the ability of other adult household members to remain in the accommodation on the death of the tenant is not prejudiced. Housing authorities should ensure that there are no adverse implications from the joint tenancy for the good use of their housing stock and for their ability to continue to provide for housing need.
- 4.6 Housing authorities should ensure that applicants, including existing tenants, are made aware of the option of joint tenancies. When doing so, they should make clear the legal and financial implications and obligations of joint tenancies, including the implications for succession rights of partners and children. Where housing authorities refuse an application for a joint tenancy, clear, written reasons for the refusal should be given.

### Existing joint tenancies

- 4.7 Where a tenant dies and another household member (who does not have succession rights to the tenancy) has:
- (i) been living with the tenant for the year prior to the tenant's demise; or
  - (ii) been looking after the tenant; or
  - (iii) accepted responsibility for the tenant's dependants,
- housing authorities should, in suitable cases, consider granting a tenancy to the remaining person or persons, either in the same home or in suitable alternative accommodation.

## Reasonable Preference

- 4.8 Housing authorities must ensure that reasonable preference is given to **all of** the following categories of people, as set out in s.167(2)/[s.16(3)]:
- (i) people who are homeless within the meaning of Part 7 of the 1996 Act. See Part 2 of this Code for detailed guidance;
  - (ii) people who are owed a duty by any housing authority under section 190(2), 193(2) or 195(2) of the 1996 Act (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any housing authority under section 192(3). See Part 2 of this Code for detailed guidance;
  - (iii) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
  - (iv) people who need to move on medical or welfare grounds; and

- (v) people who need to move to a particular locality in the area of the housing authority, where failure to meet that need would cause hardship (to themselves or to others).

### **Homeless or threatened with homelessness**

- 4.9 The Assembly Government has developed a definition of homelessness which is broader than the legal definition and recommends that this be used in determining reasonable preference. Chapter 8 provides further guidance.

### **Insanitary, overcrowded or unsatisfactory housing conditions**

- 4.10 In considering whether an applicant should be given reasonable preference as a result of these factors, a housing authority should take into account the law governing unfit, overcrowding and houses in multiple occupation (i.e. Parts 9, 10, 11 of the Housing Act 1985). Annex 3 provides indicators of the criteria that local authorities may use in determining reasonable preference. This is not an exhaustive list and housing authorities may have other, local factors to consider and include as indicators of the categories.

### **Medical and welfare grounds**

- 4.11 Where it is necessary to take account of medical advice, housing authorities should contact the most appropriate health professional who has direct knowledge of the applicant's medical condition, as well as the impact their medical condition has on their housing needs. Authorities should be mindful of the potential cost to applicants of securing medical evidence to support their applications and should endeavour to ensure that where the primary need for re-housing is on medical grounds, applicants are not penalised by this.
- 4.12 'Welfare grounds' is intended to encompass not only care or support needs, but also other social needs which do not require ongoing care and support, such as the need to provide a secure base from which a care leaver or other vulnerable person can build a stable life. It would include vulnerable people (with or without care and support needs) who could not be expected to find their own accommodation.
- 4.13 Where accommodation is allocated to a person who needs to move on medical or welfare grounds, it is essential to assess any support and care needs, and housing authorities will need to liaise with social services, the Supporting People team and other relevant agencies, as appropriate, to ensure the allocation of appropriate accommodation.

### **Hardship grounds**

- 4.14 This would include, for example, a person who needs to move to a different locality in order to give or receive care, to access specialised medical treatment, or to take up a particular employment or training opportunity.

### **Unacceptable behaviour and priority for rehousing**

- 4.15 There is no obligation on a local housing authority to treat an applicant as ineligible (as permitted by s.160A(7)/s.14(2)) due to an applicant's, or member of his or her household's, behaviour. However, if an authority decides to apply these provisions and a person is deemed unsuitable to be a tenant (s.160A(7))/[s.14(2)], a local housing authority is not required to render him or her ineligible for an allocation. Rather, by virtue of s.167(2B) and (2C)/[s.16(3)], an allocation scheme may provide that no preference is given to an applicant where the housing authority is satisfied that he/she, or a member of his/her

household, has been guilty of unacceptable behaviour serious enough to make him/her unsuitable to be a tenant of the housing authority; and the housing authority is satisfied that, in the circumstances at the time the case is considered, he/she deserves not to be treated as a person who should be given reasonable preference.

- 4.16 By virtue of s.167(2D)/[s.16(3)], the same provisions apply for determining what is unacceptable behaviour for the purposes of deciding whether to give preference to an applicant, as apply to a decision on eligibility (s.160A(8)/[s.14(2)]).
- 4.17 Section 160A(8)/[s.14(2)] provides that the only behaviour which can be regarded as unacceptable for these purposes is behaviour by the applicant or by a member of his or her household that would - if the applicant had been a secure tenant of the housing authority at the time - have entitled the housing authority to a possession order under s.84 of the Housing Act in relation to any of the grounds in Part I of Schedule 2, other than Ground 8 (see **Annex 23** for a list of relevant grounds).
- 4.18 It is possible for an Authority where it has determined an applicant to be unintentionally homeless and in priority need, to determine also that they are guilty of unacceptable behaviour serious enough to make them unsuitable to be a tenant and decide to treat them as ineligible for an allocation (s.160A(7)/[s.14(2)] ; or not afford them any priority for rehousing under their allocation scheme s.167(2B and 2C)/[16(3)] or; give them preference over non-homeless applicants but less preference than other homeless applicants (s.167(2A)(b)/[16(3)] It should be noted however that authorities will still have a statutory duty to secure accommodation for such persons though this need not be through a statutory allocation (s.159 of the 1996 Act, see paragraph 3.2 above) under its allocation scheme. Rather, an authority has the discretion to accommodate such persons in its own homeless accommodation, the homeless accommodation of an RSL, the private sector or by some other means. (Part 2, below, deals with this in detail).
- 4.19 Paragraphs 3.14 and 3.21 of Chapter 3 provide guidance for the purposes of determining eligibility under s.160A(7)/[14(2)], on what constitutes unacceptable behaviour serious enough to make an applicant unsuitable to be a tenant, and sets out the steps which a housing authority should take to satisfy themselves in this regard. This guidance applies equally to decisions under s.167(2B) and (2C)/[s.16(3)].

## **Additional Preference**

- 4.20 Section 167(2)/[s.16(3)] gives housing authorities the power to frame their allocation schemes so as to give additional preference to particular descriptions of people who fall within the reasonable preference categories and who have urgent housing needs. All housing authorities must consider, in the light of local circumstances, the need to give effect to this provision. Examples of people to whom a housing authority should consider giving additional preference within their allocation scheme include:
- (i) those owed a homelessness duty as a result of violence or threats of violence likely to be carried out and who as a result require urgent rehousing, including
- victims of domestic or other violence;
  - victims of racist incidents. Such incidents will include crimes and non-crimes in policing terms and will cover victims of racist violence and racist harassment of any kind



- same sex couples who are victims of harassment amounting to violence or threats of violence
  - witnesses of crime, or victims of crime, who would be at risk of intimidation amounting to violence or threats of violence if they remained in their current homes. Housing authorities need to have local liaison arrangements with the police to ensure that allocations can be made quickly and confidentially, where necessary;
- (ii) those who need to move because of urgent medical reasons.
- (iii) an applicant with a reasonable prospect of an accommodation offer within a relatively short period who suddenly loses their existing home as a result of a disaster.

This list is not exhaustive and each case should be considered on its merits as regards the urgency of the need for re-housing.

- 4.21 It is for housing authorities to decide how they wish to reflect the categories set out in s.167(2)/[s.16(3)] in their allocation scheme. Possible indicators are given in **Annex 3**. There is no requirement to give equal weight to each of these categories but housing authorities will need to be able to demonstrate that, overall, reasonable preference for allocations has been given to applicants in all the reasonable preference categories.

## Determining Priorities

- 4.22 Section 167(2A)/[s.16(3)] allows allocation schemes to make provision for determining priorities in relation to applicants who fall within the reasonable and additional preference categories, and provides that the factors which the scheme may allow to be taken into account include:
- (i) the financial resources available to the applicant to meet his/her housing costs. This, for example, would enable a housing authority to give less priority to an applicant who was financially able to secure alternative accommodation at market rent or purchase for him or herself;
  - (ii) any behaviour of the applicant (or a member of his or her household) which affects his/her suitability to be a tenant (see paragraphs 3.14 and 3.21 for further guidance).
  - (iii) any local connection which exists between the applicant and the housing authority's area. By s.199 of the 1996 Act, broadly speaking a person has a local connection with the area of a housing authority if he/she has a connection because of normal residence there (either current or previous) of his/her own choice, employment there, family connections or special circumstances. Residence in an area is not of a person's own choice if it is the consequence of serving in the armed forces or being detained in prison (see **Annex 16**). Local connection policies should be equal opportunities compliant and not used in a way that militates against those in urgent housing need.
- 4.23 There should be arrangements for determining allocation priorities between two households with similar levels of need. It would be legitimate to employ some indicator that reflects the time spent waiting at a particular level of need. Waiting time should normally run from the date of the original application to the housing authority, in the case

of new applicants; and, in the case of transfer applicants, from the time they applied to the housing authority to be transferred. Whatever indicators are used, they should be set out clearly in the allocation scheme.

## Choice and Preference Options

- 4.24 The requirement under s.167(1A)/[s.16(2)] for a statement to be contained in the scheme as to the housing authority's policy on offering a choice of accommodation, or giving the applicant an opportunity to express preferences in relation to accommodation, means that the housing authority must address the matter and take a policy decision on it.
- 4.25 Housing authorities now have considerable flexibility within the statutory framework to pursue choice-based lettings approaches while continuing to give reasonable preference to those with the most urgent housing need.
- 4.26 The Assembly Government is not proposing that one system of allocation be adopted by all housing authorities. Decisions arising from the legal requirement for authorities to accommodate the choice and preference options and take a policy decision on it, should be informed by local circumstances, debates with partner RSLs and the experiences of the Welsh and English choice based lettings pilots. Formal evaluation studies on these will take place in 2003. In the meantime, information on the pilots can be obtained from Assembly Government's Social Housing Management Grant Programme database which can be found on the Assembly Government's housing web pages <http://www.housing.wales.gov.uk/index.asp?task=content&a=v2> Also, a website set up by the Centre for Comparative Housing Research (CCHR) who were employed by the Office of the Deputy Prime Minister (OPDM) to give advice and support on choice based lettings during the pilot period can be accessed via [www.choosechoice.org.uk](http://www.choosechoice.org.uk). See also for example publication '*Lettings - A Question of Choice*'<sup>15</sup> by the Chartered Institute of Housing.
- 4.27 It is for each housing authority to determine housing need within its area of operation and determine strategic priorities and the measures needed to address them.

## Existing and Emerging Approaches to Allocations

- 4.28 The following section gives an overview of existing and emerging practices aimed at maximising choice in the allocation process. It is included for information purposes to assist authorities in considering how they can comply with the choice and preference options of the 2002 Act.

### Definitions

- 4.29 Debates on new approaches to allocations often describe schemes as either being choice or needs based. However, in reality almost all schemes include at least some element of choice and meeting need. Those at either end of the spectrum are referred to below as choice-based and needs-based. Those schemes which are in the middle of the spectrum and combine choice and need more equally are referred to as 'midway' schemes despite often being referred to elsewhere as choice-based schemes. These titles reflect models of allocation by describing the main focus of approach. However, within each model there is a range of different approaches and combinations of activities.

### Choice-based schemes

- 4.30 The term ‘choice-based letting’ covers a range of different approaches and combinations of activities. Standard features include the advertisement of empty properties and letting them to eligible persons who have chosen to apply for them. Property labelling describes the categories of applicant eligible to apply for the vacancies concerned. Priority for rehousing is afforded those with urgent need via a time limited priority card. Where two or more persons of equivalent priority apply for an empty property, date order takes precedence.
- 4.31 Section 167(2E)/[s.16(3)] allows for the allocation of particular accommodation to a person who makes a specific application for that accommodation. This facilitates choice by providing for the adoption of advertising schemes whereby applicants can apply for particular properties, which have been advertised as vacant by the housing authority.
- 4.32 Housing authorities operating advertising schemes would be expected to provide applicants with details about the properties which have been let for example, what level of priority the successful applicant had, and/or the date on which he/she applied for re-housing. Such feedback, which must be of a kind that does not reveal the identity of the successful applicant, is crucial as it enables applicants to assess their chances of success in subsequent applications.

### **Needs-based schemes**

- 4.33 The term ‘needs-based letting’ covers a range of different approaches and combinations of activities. Two standard features are the allocation of properties to those in housing need. Often, points are used to measure the level of housing need an applicant has. This measure of need is then used to determine the applicant’s priority for rehousing. Generally, properties that become vacant are offered to those with the greatest housing need taking account of property type/area preferences expressed in the application. In the past, offers of accommodation to homeless persons have often been limited to one reasonable offer with, usually, more offers being afforded those to whom there is no homeless duty.
- 4.34 Under s.167(1A)(b)/[s.16(2)] if a choice of housing accommodation is not given, the allocation scheme should include a statement of the authority's policy on offering people who are to be allocated housing accommodation the opportunity to express preferences about the housing accommodation to be allocated to them. Relevant factors might be the size and type of accommodation and the area in which it is located.

### **Mid-way schemes**

- 4.35 The term ‘mid-way scheme’ is used in this Guidance to describe schemes which draw on the main features of both choice and needs-based approaches. They can cater for different categories of housing need whilst affording applicants the opportunity to choose a property that becomes available and for which they are entitled to bid. Many of the English lettings pilot projects are based on approaches that would be described as mid-way in the current context.
- 4.36 Mid-way schemes are often associated with ‘banding’. This involves dividing applicants into a number of bands or groups which reflect their level of housing need such as, for example, ‘emergency’, ‘high’, ‘medium’ and ‘low/no particular need’. Local circumstances will determine the number and type of bands to be used. Typically, when vacant properties are advertised, labelling is used to indicate which band has priority for each empty property. If more than one household in the relevant band bids for the vacancy, date order determines who gets it. Where there is no interest from households in

the band for which the property is intended, bids from other (usually lower) bands are considered.

- 4.37 Whatever lettings approach is adopted, local housing authorities will need to demonstrate that, overall, reasonable preference for allocations has been given to applicants in all the reasonable preference categories.

## Some of the Main Issues with Existing & Emerging Approaches

### Meeting housing need under choice-based schemes

- 4.38 A concern often expressed about choice-based systems is their ability to meet housing need which is a fundamental role of social landlords. Typically, need under choice-based schemes as defined in this Guidance, is catered for in the following ways.

- (i) **Urgent/Pressing Need.** Time limited priority cards are issued to those an authority has deemed to have an urgent or pressing housing need. During the priority period, card-holders are given priority for rehousing over non-card holding applicants. A priority period of 12 weeks is often given though this will vary with local housing supply and demand. In this way, choice based systems can be responsive to applicants with a pressing need for rehousing but set in context of a priority term that offers a reasonable number of rehousing opportunities.

Card-holders who do not secure accommodation during the priority term may be given an extended priority term where no suitable properties were advertised for the card-holders concerned. Alternatively, some organisations review the application and agree a course of action with the applicant regarding their rehousing opportunities. Others withdraw priority status enabling applicants to continue to bid for properties along with other non-urgent applicants. Care however, should be taken by authorities in discharging their duties to card-holders to whom they have a homeless duty under Part 7 but who have not secured suitable accommodation during the priority term. It will be for each authority to decide how it will satisfy s.193(6 - 8)/[s.7(2)] which describes the events that cause the main homelessness duty to cease. The priority term should be extended where no suitable properties have been advertised during the initial term. Where suitable properties have been advertised, authorities can discharge their duty by making an offer of accommodation that is suitable for the applicant and reasonable for him/her to accept (s. 193(7F)/[7(4)]). Should an offer be refused, and subject to the take up and outcome of a review, the homeless applicant should still be eligible to be considered for rehousing with non-urgent need applicants.

The Assembly Government recommends that persons who are unintentionally homeless and in priority need and to whom a local authority has a statutory homelessness duty should be issued with a priority card. Authorities should also consider adopting the Assembly Government's definition of homelessness. Further information on this is given in Chapter 8.

- (ii) **Non Urgent Need.** Section 166(3)/[s. 15] requires that every application made to a local housing authority for an allocation of housing accommodation shall (if made in accordance with the procedural requirements of the authority's allocation scheme) be considered by the authority. Reasonable preference must be given to those categories given under s.167(2)/[s. 16(3)]. To ensure compliance with this legal requirement, housing authorities should monitor applications and lettings outcomes

to determine whether reasonable preference is being given to the groups set out in the 2002 Act.

- (iii) **Property Labelling.** When vacant properties are advertised, labels are attached to them to notify applicants of the type of households that are eligible to apply for them. In this way, choice is restricted giving landlords substantial control over allocations. For example, properties that have been adapted or have design features particularly suited to households with specific needs can be matched in this way. Choice is still maintained albeit restricted by the number of suitable adapted units and their likelihood of becoming vacant.
- (iv) **Advice and Support.** Under many choice-based systems, considerable emphasis is placed on providing advice, support and counselling to homeless people and vulnerable groups to enable them to access and maintain social housing. Counselling and support services can also benefit excluded groups or those classed as difficult. It is claimed that enhanced support services are made possible, in part at least, by the reduced administration associated with choice-based systems.

See Chartered Institute of Housing/Housing Corporation publication 'Lettings: A question of Choice'<sup>15</sup> for further information on choice-based lettings.

### **Maximising choice under needs-based approaches**

- 4.39 Whilst most needs-based approaches offer a degree of choice, a criticism of them is that this has been limited. Typically some of the following options are used to increase choice under needs-based schemes.
- (i) **Restricting/removing penalties for refusals.** Choice can be extended under schemes that allocate properties to applicants by not setting limits on the number of accommodation offers or by setting a generous limit on them.
  - (ii) **Offers of more than one property.** Another option to extend choice is to offer several properties at the same time to a selected list of applicants. A limited time can be given for applicants to express an interest in one of the properties on offer. Of the households opting to be considered for these properties, the one with the highest points would be successful.
  - (iii) **Preferences.** Under s.167(1A)/[16(2)], applicants must be afforded the opportunity to express preferences about properties allocated to them. Property location, type and size (ensuring that, for example, statutory overcrowding and significant under occupation are avoided) are features in which customer preferences may be taken into consideration. For example, some social landlords have adopted smaller allocation areas that more closely reflect local communities to enable applicants to express their locational preferences more accurately. Others have provided a greater range of geographical choices.

### **Extending choice generally**

- 4.40 **Good quality information.** Section 166(1)/[15] requires a housing authority to ensure advice and information is available free to everyone in its area on how to apply for housing accommodation. Section 166(2)/[15] describes the general information that applicants have a right to (see paragraphs 4.97 - 4.100 for further guidance). Information should be easily accessible, written in plain Welsh or English and provided in languages suited to local populations and in formats to suit those who have difficulty with written material.

- 4.41 **Common housing lists.** These enable applicants to have easier access to a greater pool of properties.
- 4.42 **Mobility.** Choice is also enhanced by facilitating moves either by transfer s.159(5)/[s.13] or by mutual exchange and participation in schemes run by HOMES (see paragraphs 4.55 - 4.58 for information on HOMES).
- 4.43 **Management services.** As customers, applicants should be given the widest practicable range of options at the point of access to housing and then for the duration of the tenancy. Where desired outcomes or aspirations cannot be met, due for example to resource constraints, this should be clearly explained.

### **Simple and transparent systems**

- 4.44 When developing allocation schemes, housing authorities should take into account the importance of having a simple and readily understandable system of applicant prioritisation.

## **Offers and Refusals**

- 4.45 Under section 193(7)/s[s.7(3)], housing authorities shall cease to be subject to a homelessness duty if the applicant, having been informed of the possible consequence of refusal and of his or her right to request a review of the suitability of accommodation, refuses a final offer of accommodation under Part 6. Under s.193 (7A)/[s.7(3)] an offer of accommodation under Part 6 is a final offer for the purposes of ss.(7)/[s.7(3)] if it is made in writing and states that it is a final offer for the purposes of ss.(7)/[s.7(3)]. Therefore, it is no longer an expectation that homeless people should be given a single offer of accommodation. Wherever possible, they should receive the same number of offers, or range of choices, as existing tenants or Part 6 applicants. Obviously, local housing supply will determine the exact approach where factors such as the cost of temporary accommodation will also need to be taken into consideration.
- 4.46 It will be for each housing authority to determine its policy on offers and refusals under Part 6 and others not covered by the homelessness duty cessation provision under s.193(7)/[s.7(3)]. The policy must take account of s.167(1A)/[16(2)] regarding choice and preference options and should include a review mechanism to enable applicants without a legal right to review, redress where penalties are attached to refusing an offer.

### **Offers and management considerations**

- 4.47 When offer policies are drawn up, local housing authorities should be mindful of management implications of the allocation process including:
- control of voids;
  - the cost temporary accommodation to discharge Part 7 duties to homeless households
  - avoidance of approaches which lead to concentrations of vulnerable or homeless people being re-housed, in particular areas, especially low demand areas.
- 4.48 It would be good practice for authorities to set out their lettings and management objectives and list them according to their priority to ensure that conflicting objectives are catered for.

## Period for considering an offer

- 4.49 Applicants must be allowed a reasonable period to make a decision about accommodation, particularly where it will bring the homelessness duty to an end whether accepted or refused. There is no statutory time limit but consideration must be given to the personal circumstances of the applicant. It is important that applicants are given sufficient time for careful deliberation, allowing them the opportunity to consult as appropriate. Applicants who have had the opportunity to make an informed, positive decision to accept an offer are more likely to be committed to making a success of the tenancy.
- 4.50 Particular personal circumstances that the authority should take into account include:
- (i) difficulty for an applicant who is working or has child or other care commitments to make arrangements to view the property and/or
  - (ii) the property's distance from the applicant's current accommodation and/or
  - (iii) where acceptance of the offer would involve a child changing schools or create difficulties for members of the household maintaining work or training.

## Allocation Scheme Flexibility

- 4.51 While housing authorities will need to ensure that, overall, reasonable preference for allocations is given to applicants in the relevant categories in s.167(2), these should not be regarded as exclusive. A scheme should be flexible enough to incorporate other considerations. For example, housing authorities may wish to give sympathetic consideration to the housing needs of extended families. However, housing authorities must not allow their own secondary criteria to dominate schemes at the expense of the statutory preference categories. The latter must be reflected on the face of schemes and be evident when schemes are evaluated over a longer period.

## Local lettings policies

- 4.52 Section 167(2E)/[s.16(3)] enables housing authorities to allocate accommodation to people of a particular description, whether or not they fall within the reasonable preference categories. Essential workers such as teachers, nurses and police officers could be allocated accommodation within a reasonable travelling distance from their work in areas where high housing costs might otherwise price them out of the communities they serve. Similarly the child to adult ratio could be lowered on an estate where there is high child density or, conversely, young single people could be integrated into an estate via this route. This might also extend to selecting tenants for property on new estates in a way that aims to produce a viable social mix.
- 4.53 Where operating local lettings policies, housing authorities will need to ensure that, overall, reasonable preference for allocations is given to applicants in the reasonable preference categories (s.167(2)/[s.16(3)]). Local lettings policies should have clear aims linked to community sustainability and be supported by clear evidence of the need for the approach. Also, procedures should be in place to ensure that local policies fit with and inform strategic priorities. Where 'sustainability' and 'meeting housing need' objectives or priorities are found to be at odds, arrangements should be in place to ensure further consideration of the issue and a decision made in respect of it. Overall however, strategies should set out parameters for local lettings policies that do not prevent a housing authority

from meeting its statutory duties. The Assembly Government recognises that this could produce opposing policy objectives particularly in areas of high demand where an authority may not be able to discharge its statutory duties and have local lettings initiatives. In such circumstances the needs of applicants to whom a duty is owed should take priority over the objectives of local lettings initiatives. Local lettings policies must not discriminate on the grounds of gender, race or disability. They should also be monitored and evaluated to assess their impact.

### **Hard to let properties**

- 4.54 Housing authorities may need to go outside statutory preference categories in order to fill hard-to-let vacant stock. Providing it is not possible to let a property from the housing authority's priority list, then there is no objection to them granting tenancies to whoever is willing to take them.

### **Mobility**

- 4.55 Choice is enhanced by facilitating moves either by transfer s.159(5)/[s.13] or by mutual exchange and participation in schemes run by Housing Organisations Mobility and Exchange Services (HOMES). The HOMES contract for these services is currently under review and being re-tendered so the organisation responsible for the schemes may change in the future.
- 4.56 The primary aim of HOMES is to facilitate local authority or RSL tenants to move localities/landlords throughout the UK. It runs two major schemes on behalf of the Office of the Deputy Prime Minister (OPDM) and Devolved Administrations:
- The HOMES National Mobility Scheme (HMS) provides a network of landlords who nominate their tenants to each other for re-housing on a reciprocal basis. Tenants give up their home in return for a more suitable one with another landlord.
  - HOMESWAP (formerly the Tenant Exchange Service) that is an UK-wide exchange service that puts tenants of different landlords in touch with each other with a view to swapping homes.
- 4.57 HOMES has had an increasing role in common waiting lists and in community care. It is able to respond quickly to re-house those escaping domestic violence or harassment and has a key role in helping to reduce under-occupation and enable job-seekers move from one area to another. It may also assist in allowing relatives to live closer together so one can care for another.
- 4.58 Participating landlords include provision for the national housing mobility scheme in their allocation policies. The targets for re-housing are 2% of all annual re-lettings for local authorities and 4% for RSLs. Participation in the scheme, however, is voluntary and any allocations made by landlords would be made under their usual allocations policies that may or may not give any preference to HOMES applicants.

### **Meeting Diverse Needs**

- 4.59 Social housing exists to meet the needs of a diverse range of people, many of whom represent some of society's most vulnerable and excluded groups. Allocation schemes therefore should be sensitive to meet a diverse range of groups whose support needs may be equally as diverse. The section that follows describes the categories of person that allocation schemes should be sensitive to. The list is not exhaustive and schemes should be



informed by local housing needs assessments. The section should be read in conjunction with:

- Part 2 of the Code of Guidance for Local Authorities on Allocations and Homelessness
- *'The National Homelessness Strategy'* <sup>16</sup>
- *'Guidance on the arrangements for the implementation of Supporting People in Wales'* <sup>17</sup>

## Black, Minority Ethnic (BME) Groups

- 4.60 Housing authorities must ensure that their allocations policies and procedures do not discriminate, directly or indirectly, on racial grounds. Housing authorities must comply with statutory requirements relating to equal opportunities, and relevant codes of practice including the Commission for Racial Equality's Code of Practice in Rented Housing. Housing authorities should also have in place a formal equal opportunities policy relating to all aspects and stages of the allocation process with the aim of ensuring equality of treatment for all applicants. Local authorities and their partners should ensure that allocations processes take account of any particular difficulties experienced by BME groups, such as racial harassment.
- 4.61 Housing authorities should, where relevant, ensure that information on their allocation scheme is available via a wide range of information formats and channels of communication (e.g. leaflets in different languages) appropriate to the area, and that this information is reviewed at least annually. This information should be readily accessible to BME households, as should appropriate advice and assistance for them to apply for housing. In particular landlords should ensure that they: identify the ethnic origin and languages of choice of local BME people; and consider employing staff who can speak BME languages.
- 4.62 Where relevant, housing authorities should consider ways to improve awareness of and access to social housing for BME households and groups, which are currently under-represented in social housing. Further guidance on this can be found in Assembly Government publication *'BME Housing Action Plan for Wales'* <sup>8</sup> in September 2002.

## Refugees

- 4.63 **Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. When going to print of the current version of this Code (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. See the paragraph on asylum seekers and refugees on page ii of the Introduction to this Code for further information.
- 4.64 The Immigration and Asylum Act 1999 received Royal Assent on 11 November 1999. It introduced an entirely new set of arrangements for supporting destitute asylum seekers, a key feature of which is their dispersal across the UK on a 'no choice' basis. In Wales private and public sector accommodation contracts have been negotiated with the Home Office department responsible for asylum seekers, the National Asylum Support Service (NASS). Under NASS contracts, asylum seekers are provided with furnished accommodation and subsistence support until their claim for asylum is determined. If an asylum seeker is granted refugee status (indefinite leave to remain), he or she is entitled to the same rights and benefits as any other UK citizen including housing assistance under Parts 6 and 7 of the 1996 Act (as amended).
- 4.65 Since the introduction of the Immigration and Asylum Act, the level of asylum seekers coming to Wales has increased significantly. This in turn means that the numbers of

refugees looking for settled accommodation within Wales is also increasing. Because of this, local authorities will need to ensure that the housing needs of refugees are catered for in their local housing and homelessness strategies and that their allocation schemes are sensitive to the particular needs of this group. Local housing authorities should explore with RSLs the ways in which they can work together to ensure refugee services are developed and implemented. Assembly Government guidance on the housing needs of refugees will be issued during 2003-4.

### **People with disabilities**

- 4.66 The Assembly Government is determined to promote equality of access to social housing, and understands the difficulties faced by people with physical disabilities in this area. The Assembly Government encourages housing authorities to adopt information systems that enable them to identify accessible and adapted properties, and match them with the needs and choices of disabled people. Authorities wishing to develop good practice in these areas are referred to publications '*More Scope for Fair Housing*'<sup>18</sup> and '*A Perfect Match - Good Practice Guide to Disability Housing Registers*'<sup>19</sup> for further information.

### **Older people**

- 4.67 A commitment in the Welsh Assembly Government's '*Strategy for Older People in Wales*'<sup>33</sup> to consider the options for meeting the future housing needs of older people. A Housing and Social Care project is being undertaken to take forward various actions at the interface between housing and social care.
- 4.68 In allocating accommodation to elderly people, it would be reasonable for an authority to take account of the companionship provided to an elderly person by his or her pet. Research published by the Anchor Trust, '*Losing a friend to find a home*'<sup>20</sup> suggests that older people living in difficult conditions prefer to remain where they are rather than accept an offer of accommodation which requires them to abandon their pets.

### **People with mental health problems**

- 4.69 People with mental health problems may need support to enable them to access and maintain social housing accommodation. Local housing authorities will need to make arrangements for effective links with Supporting People teams, social services and other agencies such as health and probation to ensure that joint assessments of an applicant's housing and related needs can be made where necessary.

### **Children in need**

- 4.70 Households may include a child with a need for settled accommodation on medical or welfare grounds. Under s.27 of the Children Act 1989, housing authorities are required to comply with a request for help from a social services authority, if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any other of their functions. Section 17 of that Act imposes a general duty on social services authorities 'to safeguard and promote the welfare of children within their area who are in need'. Consistent with that duty, they must "promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs'.
- 4.71 A child in need is defined in the Children Act 1989 as one who 'is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him/her of services by a local authority; or

if his/her health or development is likely to be significantly impaired, or further impaired, without the provision for him/her of such services; or he/she is disabled'. A child in need may have particular accommodation needs on health or welfare grounds.

- 4.72 Housing authorities will need to consult with social services about the appropriate level of priority for an allocation in such cases, and how any support needs will be met.

### **Carers**

- 4.73 In making accommodation offers to applicants who receive support from carers who do not reside with them, housing authorities should take account of the applicant's need for a spare bedroom.
- 4.74 In accordance with s. 167(2)/[s.16(3)], 'reasonable preference' should be given to an applicant who needs to move to be close to a carer to avoid hardship.

### **Lone parents under 18**

- 4.75 It is the Assembly Government's view that all 16 and 17 year-old lone parents who cannot live with their parents or partner and who require social housing should be offered accommodation with support. Housing authorities should work with social services, RSLs and relevant voluntary organisations in their area towards achieving this aim.
- 4.76 The allocation of appropriate housing and support should be based on consideration of the young person's housing and support needs, their individual circumstances and their views and preferences. Housing authorities must ensure that the accommodation is suitable for babies and young children. Wherever possible, housing authorities should take account of education and employment needs and opportunities when identifying suitable accommodation.
- 4.77 The Assembly Government recommends that housing authorities have arrangements in place to ensure that, where an application for housing is received from a lone parent aged 16 or 17, they can undertake a joint assessment with social services or any other relevant agencies, of the applicant's housing, care and support needs. Housing authorities should obtain the consent of the young parent before involving social services, unless child protection concerns are present and to seek consent might endanger the welfare of the child and/or of the young parent.
- 4.78 Where RSLs in the area have vacancies in a suitable supported housing scheme, housing authorities should use their nomination rights to secure accommodation for young parents in such accommodation. The Assembly Government believes that this will be the most appropriate form of accommodation in most cases. Support may be provided on site or on a floating basis.
- 4.79 Where there is no suitable accommodation available, housing authorities should consider allocating the young parent a place in other similar accommodation where appropriate support is available.
- 4.80 In exceptional cases, it may be decided that supported housing would not be appropriate. Such a decision should only be made after careful consideration of the housing and support needs of that individual and their views and preferences. In such circumstances, housing authorities should ensure that the young person is aware of relevant sources of support and advice and how to access them. This might include social services, health visitors, and relevant voluntary agencies and local providers.

- 4.81 Housing authorities should also, in consultation with the relevant RSLs in their area, make provision for appropriate move-on accommodation for young parents who have been assessed as ready to leave supported accommodation. In some cases, where the young parent has made good progress, it may be appropriate for them to live independently before they reach the age of 18. When allocating move-on accommodation to a young parent, the housing authority should consider whether they have any continuing support needs, in consultation with the young person, social services and relevant providers.
- 4.82 If, with the young person's consent, a joint assessment is carried out with social services of the housing, care and support needs of a lone parent aged 16 or 17, it may be considered more appropriate for them to be accommodated by social services, for example, in foster care.
- 4.83 Young parents under the age of 16 must always be referred to social services so that their social care needs may be assessed.
- 4.84 A source of information on housing lone parents under the age of 18 is contained in '*Guidelines for Good Practice in Supported Accommodation for Young Parents*'<sup>21</sup>, published jointly by DTLR and the Teenage Pregnancy Unit in September 2001 (available from [www.teenagepregnancyunit.gov.uk](http://www.teenagepregnancyunit.gov.uk) or [www.housingcorp.gov.uk](http://www.housingcorp.gov.uk)).
- 4.85 Authorities should not allow complications in granting appropriate occupancy rights to persons aged under 18 to inhibit them from offering accommodation. See **Annex 25** for guidance on occupancy agreements for 16 and 17 year olds.

### **Rough sleepers**

- 4.86 Housing authority homelessness strategies have a key role to play in preventing homelessness and rough sleeping and in sustaining the reductions in rough sleeping. Access to housing will be vital for rough sleepers and people at risk of sleeping rough.
- 4.87 Housing authorities should ensure that allocation schemes make provision to enable access to local housing authority and RSL accommodation for this client group. Therefore, a person having 'no fixed address' is not grounds for treating such persons as ineligible for housing. Where appropriate, schemes should also ensure that vulnerable people have access to the assistance they need to apply for housing. Often, people at risk of homelessness will require support, for example to address mental health, alcohol or drug problems, or simply to cope with bill paying and basic life skills. Allocation schemes should be developed with strong links to such support services provided under local homelessness strategies and Supporting People.

### **Lesbian, Gay and Bisexual People**

- 4.88 Local authorities and their partners should ensure that allocations processes take account any particular difficulties experienced by lesbian, gay and bisexual people such as homophobic harassment.

### **Use of quotas in schemes for particular needs groups**

- 4.89 Many authorities have in the past made arrangements that effectively set aside a quota of anticipated allocations for groups with particular characteristics, and in some cases allocate the accommodation on the basis of referrals from social services departments, welfare bodies or specialised agencies dealing with groups such as rough sleepers.

Establishing such quotas can form part of an authority's strategy to integrate the provision of housing with other social policies, for example as part of a care in the community package, or to enable individuals to move on from a hostel or women's refuge providing temporary accommodation. It is inherent in the provisions of s.167(2)/[s. 16(3)] that authorities retain this discretion, provided that the persons who are subject to such arrangements fall within one (or more) of the reasonable preference categories.

- 4.90 However, it is important that such arrangements are not seen as a substitute for affording additional priority to people in urgent need in the authority's mainstream allocation criteria. It would not be acceptable for authorities to delay consideration of such needs on the grounds that a quota had been filled. Authorities should ensure that any such arrangements form part of their allocation scheme; that the qualifications for falling within a quota are clearly set out; and that allocations made on the basis of a quota go to persons who are eligible for a housing allocation. Where a group of authorities have common arrangements for receiving referrals from an outside agency, they will need to ensure that their individual allocation schemes are mutually compatible. The Assembly Government would particularly encourage authorities to consider the use of quotas on a collective basis with neighbouring authorities to contribute to addressing the needs of groups with significant housing needs, but who may not be long term residents of a particular area e.g. rough sleepers.

### **Sex offenders**

- 4.91 Sex offenders should be allocated accommodation in the light of considered decisions about managing any risks associated with their release from prison into the community, involving multi-agency arrangements with the police, probation, social services, health professionals and other relevant bodies. Housing authorities should have regard to the Guidance issued by the Home Office in March 2001. This underpins the duty under the Criminal Justice and Court Services Act 2000 for police and probation services to make joint arrangements for the assessment and management of the risks posed by sexual, violent and other offenders who may cause serious harm to the public. The duty commenced on 1 April 2001.
- 4.92 The Guidance states that local arrangements for inter-agency working should first and foremost be based on information sharing between agencies. Information on all relevant offenders needs to be shared to make risk assessments and re-assess them as necessary. In many cases, the sharing of information for risk assessments will be the only inter-agency action required, with the risk management action taken as a result of the assessment resting with one agency. In critical cases where additional action or resources is needed, cases should be referred to Multi-Agency Public Protection Panels (MAPPs). MAPPs deal with cases where there is a high risk of harm to the public and where management of that risk can only be achieved by inter-agency working. Local arrangements therefore must also determine criteria for referral to the MAPP. Police and probation services will be involved in MAPPs as a minimum. They will however, often include social services, health, housing authorities and other statutory and voluntary agencies. A duty to co-operate will be placed on housing authorities and the Home Office will be issuing further guidance on this in Spring 2003.
- 4.93 Local housing authorities may also wish to consider entering into reciprocal arrangements for the rehousing of sex offenders who cannot remain in the original local authority area.

### **Rent (Agriculture) Act 1976**

- 4.94 The Rent (Agriculture) Act 1976 (referred to as the 1976 Act) requires housing authorities to use their best endeavours to provide accommodation for displaced agricultural workers. Section 27 of the 1976 Act requires the housing authority to be satisfied that:

- (i) the dwelling-house from which the worker is displaced is needed to accommodate another agricultural worker;
  - (ii) the farmer cannot provide suitable alternative accommodation for the displaced worker; and
  - (iii) they need to re-house the displaced worker in the interests of efficient agriculture.
- 4.95 In reaching a decision, the housing authority must have regard to advice of an Agricultural Dwelling-House Advisory Committee (ADHAC). The ADHAC's role is to provide advice on whether the interests of efficient agriculture are served by re-housing the worker, and on the application's urgency. If the housing authority is satisfied that the applicant's case is substantiated, it is their duty under s.28 of the 1976 Act to use their best endeavours to provide suitable alternative accommodation for the displaced worker. In assessing the application's priority the housing authority is required to consider (a) the case's urgency; (b) the competing claims on the accommodation: and (c) their resources.
- 4.96 A housing authority would not be properly discharging their 1976 Act, s.28 duty if they refused, on the grounds of the displaced worker having insufficient priority under the allocation scheme, to offer that person suitable alternative accommodation. There must be proper consideration of all relevant s.28 factors in the light of the ADHAC's advice. It is important, therefore, for housing authorities to include in their allocation schemes a policy statement in respect of cases arising under the 1976 Act.

### **Move On**

- 4.97 Housing authorities should enter into partnerships to establish move-on arrangements from temporary supported housing projects, to enable the resettlement of occupants in accordance with the objectives of the project.

## **Advice and Information**

### **Making applications**

- 4.98 Applications for housing should be made on a standard form, and not by letter or verbal request, other than requests for referrals from recognised agencies. Application forms should be accompanied by guidance notes that are easy to understand and in plain language. Translations of all forms and notes should, wherever possible, be available for applicants whose first language is not Welsh or English. Alternatively, authorities might wish to provide applicants with access to translation or interpreting services. Audio tapes of the notes, large print versions or Braille copies should be available for people who have a visual impairment.
- 4.99 Section 166(1)/[s. 15], requires a housing authority to ensure advice and information is available free to everyone in its area on how to apply for housing accommodation. If they are likely to have difficulty in making an application without assistance, then any necessary assistance they require must be made available to them free of charge.

### **The right to request general information**

- 4.100 S.166(2)/[s. 15], requires housing authorities to inform applicants that they have the right to certain general information contained in s.167(4A)(a)/[s. 16.(4)], that is:

- (i) information that will enable them to assess how their application is likely to be treated under the scheme, and, in particular, whether they are likely to fall within the reasonable preference categories; and
- (ii) information about whether accommodation appropriate to their needs is likely to be made available and, if so, how long it is likely to be before such accommodation becomes available.

### **The right to be notified of a decision and to request a review**

4.101 Section 167(4A)/[s. 16(4)] also requires housing authorities to inform applicants that they have the following rights about decisions which are taken in respect of their application:

- (i) the right to be notified in writing of any decision not to give an applicant any preference under the scheme because of unacceptable behaviour serious enough to make him/her (or a member of his/her household) unsuitable to be a tenant;
- (ii) the right, on request, to be informed of any decision about the facts of the applicant's case which has been, or is likely to be, taken into account in considering whether to make an allocation to him/her; and
- (iii) the right, on request, to review a decision mentioned in paragraph (i) or (ii) above or in respect of s. 160A(9) regarding those who are ineligible or who may be treated as such on the grounds of unacceptable behaviour. The applicant also has the right to be informed of the decision on the review and the grounds for it.

### **Letting information in advertising schemes**

4.102 Housing authorities operating an open advertising scheme, whereby applicants can apply for particular properties, would be expected to provide applicants with details about the properties which have been let; for example, what level of priority the successful applicants had, and/or the date they applied for housing. Such feedback is crucial as it enables applicants to assess their chances of success in subsequent applications.

### **Confidentiality**

4.103 Section 166(4)/[s. 15] prohibits housing authorities from divulging to other members of the public that a person is an applicant for social housing, unless they have the applicant's consent and therefore personal information about individual applicants should always be kept confidential.

# CHAPTER 5: ALLOCATION SCHEME MANAGEMENT

## Housing Lists

- 5.1 The 1996 Act provisions in respect of housing registers, were repealed by the 2002 Act and the requirement to keep a register ceases, although there is nothing to prevent a housing authority from doing so if it wishes. It is unlikely that any housing authority in Wales providing an allocation service that is compliant with this Code, would be effective in doing so without a list of applicants containing some information about their housing needs and preferences.

### Adapted or specific-use lists

- 5.2 It would be good practice for authorities to set up databases of property, for example, of sheltered housing and housing accessible to people with a disability.
- 5.3 To complement the above, the Assembly Government encourages local housing authorities and RSLs to set up disability housing lists or disabled persons housing lists which include both people and property databases. Their primary objective is to assist the matching of available property with the needs of people with disabilities seeking housing. In addition, they have the potential to enable the authority to make better of existing resources (i.e. the adapted property), avoid unnecessary spending on adaptations and assist planning of future housing. The Assembly Government regards this information as essential to local authorities in providing best use of their housing stock to meet the needs of people with disabilities. Advice can be obtained from 'More Scope for Fair Housing'<sup>18</sup> published jointly in 1998 by SCOPE, Tai Cymru and the Housing Corporation.
- 5.4 Disability housing registers would also augment an authority's ability to make an effective contribution to care and support planning. By identifying needs and mapping provision, they will also help authorities to meet the challenges of the Wales Programme for Improvement (see Section B. to the Introduction for further information). Authorities establishing such lists are recommended to refer to 'A Perfect Match - Good Practice Guide to Disability Housing Registers'<sup>19</sup> published by the National Disabled Persons Housing Service.

### Common housing lists

- 5.5 The Assembly Government encourages the development of common housing lists and authorities may wish to consider the possible benefits of establishing one with RSLs operating in their areas. Common lists may have certain advantages:
- (i) they make the development of choice based lettings schemes in an area a more viable option;
  - (ii) they can enable an authority more effectively to enlist the co-operation of RSLs in meeting strategic housing objectives;
  - (iii) they can reduce void levels;
  - (iv) they can give an authority a fuller understanding of the pattern of local housing needs;



- (iv) they are likely to make social housing more accessible and so provide a better service for persons seeking this kind of housing.
- 5.6 Ease of access to social housing can be enhanced by cross-boundary or sub-regional lists across local authorities.
- 5.7 Authorities setting up common lists are reminded that the National Assembly for Wales requires RSLs to retain control of their own allocations i.e. that allocations are made in accordance with the RSLs policies and the National Assembly for Wales's regulations for RSLs. Authorities should adopt clearly specified management arrangements set out in formal agreements which allow for joint control and management of the common list.
- 5.8 The Chartered Institute of Housing and Housing Corporation have published guidance on common housing registers. The Assembly Government has also funded a number of pilot projects on common housing lists under the Section 16 Social Housing Management Grant Programme. Information on the programme can be obtained on the Assembly Government's Social Housing Management Grant Programme database which can be found on the Assembly Government's housing web pages (<http://www.housing.wales.gov.uk/index.asp?task=content&a=v2>)  
See reference 22 in the bibliography for an example of a relevant publication.

## Allocation Scheme Consultation

### The requirement to consult RSLs

- 5.9 Section 167(7) of the 1996 Act requires local housing authorities, before adopting an allocation scheme, or altering existing schemes to:
- (i) send a copy of the draft scheme, or proposed alteration, to every RSL with which they have nomination arrangements, and
  - (ii) ensure that those RSLs have a reasonable opportunity to comment on the proposals.
- 5.10 RSLs are also required by regulation to consult with local authorities on their allocations policies.

### The requirement to consult those affected by a major change in an allocation scheme

- 5.11 Under s.168(3) of the 1996 Act, when an alteration is made to a scheme reflecting a major change of policy, an authority must ensure that those likely to be affected by the change are notified of it within a reasonable period, and explain, in general terms, the effect of the change.
- 5.12 A major policy change would include any amendment that affects the relative priority of a large number of people being considered for social housing. It might also include a significant alteration to procedures. Only where housing authorities are adopting a major policy change is it necessary for each potential applicant to be informed personally by letter. Allocation schemes can be subject to frequent amendments that reflect changing local circumstances and national requirements. Therefore it is appreciated that it would be unrealistic to inform every applicant of every policy change, as this would entail disproportionate costs. While s.168 replaced parts of s.106 of the 1985 Act (information about housing allocation), authorities should be aware that they still have a duty under the 1985 Housing Act, s.106 provision.

- 5.13 Although it is not a statutory requirement, the Assembly Government considers that local housing authorities should also consult social services departments, health authorities, Supporting People teams, voluntary sector organisations and other recognised referral bodies. Housing authorities will need to do this in order to produce a scheme that reflects the particular requirements of their area. In addition, such joint working should result in the provision of effective solutions that address not only housing need but other aspects of social deprivation. Housing authorities can also consider informing or consulting existing tenants through their current consultation arrangements under the 1985 Housing Act, s.105.

### **Consultation period**

- 5.14 When consulting on an allocation scheme housing authorities will need to work to a time frame. The Assembly Government usually allows 12 weeks as the minimum time for written consultation periods by Assembly Government departments, their agencies and partners.

## **Publicising the Allocation Scheme**

- 5.15 Housing authorities should take positive steps to publicise widely their access to housing policies, to ensure as far as possible that all people in housing need are aware of the services available to them. Section 168(1) of the 1996 Act requires local housing authorities to publish a summary of their scheme and to provide a copy of the summary free of charge to any member of the public who requests one. An authority is also required, under s.168(2), to make the scheme available for inspection at their principal office and to provide a copy of the scheme, on payment of a reasonable fee, to any member of the public who requests one.
- 5.16 It is good practice for marketing and publicity policies to refer to the means by which a housing authority will endeavour to publicise its housing services to those who need social housing and/or who are under represented in its tenant profile.

## **Elected Member Involvement in Allocation Decisions**

- 5.17 Section 167 of the 1996 Act enables the National Assembly for Wales to make regulations setting down principles within which housing authorities' allocation procedures must be framed. *The Local Housing Authorities (Prescribed Principles for Allocation Schemes) (Wales) 1997* (SI 1997 No. 45) restrict a housing authority's elected members' involvement in allocation decisions in certain specified circumstances. They prevent an elected member from being part of a decision-making body (i.e. the housing authority or any sub-committee) at the time the allocation decision is made, when either:
- (i) the unit of housing accommodation concerned is situated in their electoral ward; or
  - (ii) the person subject to the decision has their sole or main residence in the member's electoral ward.
- 5.18 The regulations do not prevent elected members' involvement in allocation decisions where the above-mentioned circumstances do not apply. They do not prevent a ward member from seeking or providing information on behalf of their constituents, or from participating in the decision making body's deliberations prior to its decision. However, the elected member should be careful to ensure compliance with the relevant Code of Conduct, when doing this. Elected members remain responsible for determining allocation policies that are

compliant with the 1996 Act (as amended), this Code and equal opportunities law. They are also responsible for monitoring allocation scheme implementation to ensure the operation of open and accountable systems that are compliant with policy objectives. The regulations do not prevent elected members involvement in policy decisions that affect the generality of a particular electoral ward's housing accommodation; for example, that allocation of units in a certain block of flats should not be let to older persons or to households including young children.

## **Offences Related to Information given or withheld by Applicants**

- 5.19 Section 171 (false statements and withholding information) makes it an offence for anyone seeking assistance from a housing authority under the 1996 Act, Part 6 to:
- (i) knowingly or recklessly give false information; or
  - (ii) knowingly withhold information which the housing authority have reasonably required the applicant to give.
- 5.20 A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 5.21 It is for individual housing authorities to determine when these provisions apply and when to institute criminal proceedings. However, the circumstances in which an offence is committed could include:
- (i) any false information given on an application form for social housing;
  - (ii) any false information given in response to subsequent review letters or other updating mechanisms; or
  - (iii) any false information given or submitted by applicants during the proceedings of a review.
- 5.22 Ground 5 in Schedule 2 to the 1985 Housing Act (as amended by the 1996 Act, s.146) enables a housing authority to seek possession of a tenancy which they have granted as a result of a false statement by the tenant or a person acting at the tenant's instigation.

## **Data Protection**

- 5.23 In administering allocation schemes, local housing authorities must comply with the provisions of the Data Protection Act 1998 ('the 1998 Act'). The 1998 Act replaced the Data Protection Act 1984. It came into force on 1 March 2000 and refers to the processing and storage of personal information held either manually or on computer. The Act also gives the 'Right of Subject Access' which allows individuals to find out what information is held about them on computer and on some paper records.

## **Local Government Ombudsman**

- 5.24 Applicants may complain to the Local Government Ombudsman if they consider they have been caused injustice as a result of maladministration by an authority. The Ombudsman may investigate the way a decision has been made, but may not question the merits of a decision properly reached. For example, it would be maladministration if an authority:

- (i) took too long to do something;
- (ii) did not follow their own rules or the law;
- (iii) broke their promises;
- (iv) treated the applicant unfairly;
- (vi) gave the applicant the wrong information.

5.25 There are some matters an Ombudsman cannot investigate. These include:

- (i) matters the applicant knew about more than 12 months before he or she wrote to the Ombudsman or to a councillor, unless the Ombudsman considers it reasonable to investigate despite the delay;
- (ii) matters about which the applicant has already taken court action against the authority, for example, an appeal to the county court under s.204;
- (iii) matters about which the applicant could go to court, unless the Ombudsman considers there are good reasons why the applicant could not reasonably be expected to do so.

5.26 Where there is a right of review the Ombudsman would expect an applicant to pursue the right before making a complaint. If there is any doubt about whether the Ombudsman can look into a complaint, the applicant should seek advice from the Ombudsman's office.

## Monitoring and Evaluation

5.27 It is essential that housing authorities monitor allocations to determine, for example, the success of lettings plans and whether they are meeting equal opportunities obligations. Service reviews under the WPI will also provide valuable feedback on services provided and whether reasonable preference has been given. Given the increased emphasis on the choice agenda, it is particularly important that authorities monitor applications and lettings outcomes to gain an understanding of winners and losers and to assess whether an appropriate balance between choice and need is being achieved.

5.28 It is recommended that authorities, in conjunction with their RSL partners, draw up systems to monitor information about persons applying for and being allocated social housing accommodation. This can be used to as a basis for policy review and development and to help establish whether practice outcomes are in line with allocation scheme objectives. The Assembly Government is undertaking an evaluation of different approaches to lettings including monitoring and evaluation processes.

5.29 Allocations policies and procedures should be reviewed on a cyclical basis to ensure they are compliant with the law and good practice.

# **PART 2**

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# **HOMELESSNESS**

# CHAPTER 6: INTRODUCTION

## National Strategy on Homelessness

- 6.1 The Assembly Government's policy position on homelessness is contained in *'Better Homes for People in Wales - A National Housing Strategy for Wales'*<sup>1</sup>, *'National Homelessness Strategy'*<sup>16</sup> and this Code of Guidance building on previous work contained in *'The Homelessness Commission - Report to the Minister for Finance, Local Government and Communities'*.<sup>29</sup> 'Better Homes' states that the Assembly Government will develop proposals for meeting its aim of:

**'...eliminating the need for anyone to sleep rough and to reduce the incidence of homelessness in Wales'.**

- 6.2 The responses to the report of the Homelessness Commission explain how the Assembly Government will respond to detailed recommendations on tackling homelessness. The National Homelessness Strategy sets out how the Assembly will work with others to address the causes and consequences of homelessness.
- 6.3 The guidance contained in this Code provides a framework within which national aims and priorities can be pursued by local housing authorities. The national homelessness strategy describes the national context for tackling homelessness, and the vision and principles which underlie the Assembly Government's approach. The Assembly Government recognises that the causes of homelessness are varied and that services must work in a joined-up way to meet the specific needs of each homeless person. The policy changes reflected in the Homelessness Act 2002 and the national and local strategies should provide a new foundation for understanding and addressing homelessness, based on multi-agency partnerships. They should also ensure that homeless people are treated as customers rather than recipients of welfare.

## Purpose of Part 2 of Code

- 6.4 The Assembly Government is issuing the guidance contained in Part 2 of this Code to local housing authorities in Wales under s.182 of the Housing Act 1996 (the 1996 Act). The 1996 Act requires local housing authorities to have regard to this guidance in exercising their functions under Part 7 of the 1996 Act.
- 6.5 Part 2 of the Code provides guidance on Part 7 of the 1996 Act as amended by the Homelessness Act 2002 (the 2002 Act). It provides information about how local authorities can meet their strategic responsibilities to tackle homelessness and to assist individual homeless people.
- 6.6 The 2002 Act introduces substantial revisions to Part 7 of the 1996 Act through the introduction of new responsibilities to carry out homelessness reviews and formulate strategies, and amendments to the duties to homeless people, particularly in respect of the abolition of the two year limit on the duty to secure suitable alternative accommodation.

## Effective Date of Part 2 of Code

- 6.7 The homelessness provisions of the Homelessness Act take effect from 30<sup>th</sup> September 2002. From this date the Code of Guidance issued in February 1997 is no longer effective.

Part 2 of this Code provides guidance on the current view of the Assembly Government on the implementation of statutory homelessness responsibilities. The Code of Guidance will become effective on    2003.

## CHAPTER 7: OVERVIEW OF AMENDMENTS TO PART 7 OF 1996 ACT MADE BY THE HOMELESSNESS ACT 2002

- 7.1 The 2002 Act is intended to encourage the authority to work more closely with other organisations, in order to adopt a strategic approach to tackling homelessness. The following is a summary of some of the most important sections in the 2002 Act:
- (i) Sections 1-4 of the Act contain new provisions relating to the requirement for the authority, with the assistance of social services departments and in consultation with RSLs and other statutory and voluntary organisations where appropriate, to carry out the review of homelessness in their area and thereafter formulate and publish their Local Homelessness Strategy. The first strategy must be published by the **30<sup>th</sup> September 2003**, and a new strategy must be published within 5 years of the previous strategy being issued.
  - (ii) Section 5 provides authorities with a power to secure accommodation for applicants who are found not to be in priority need and unintentionally homeless, where previously they had no power to do so.
  - (iii) Section 6(1) removes the two-year homelessness duty on a local authority to secure accommodation by substituting a new duty to secure accommodation until any of the circumstances specified in section 193 of the 1996 Act cause the duty to cease.
  - (iv) Section 7(2) provides additional circumstances under which the homelessness duty ceases, namely where an applicant accepts an offer of an assured tenancy (not an assured shorthold tenancy) from a private landlord. Section 7(3) provides for the homelessness duty to cease where the applicant refuses an offer of suitable accommodation allocated under the provisions of Part 6 of the 1996 Act. The authority must notify the applicant in writing that this is the final offer and that the duty will end if the offer is refused. It must also notify the applicant of his/her right to request a review of the suitability of the accommodation. Section 7(4) provides for the homelessness duty to cease where, as a result of an arrangement between the housing authority and a private landlord, the applicant accepts an offer of an assured shorthold tenancy. The shorthold tenancy must be for a fixed term, and the tenant must confirm in writing that he/she is aware that the homelessness duty will cease. The provisions are clear that the applicant is free to reject this offer.
  - (v) Section 9 removes the power of local authorities to provide only advice and assistance where they are satisfied that other suitable accommodation is available, and removes their duty to consider whether other suitable accommodation is available .
  - (vi) Section 10 amends section 177 of the 1996 Act to provide that, for the purposes of determining homelessness, it is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to violence or threats of violence. This will ensure that where violence exists, including for example racial violence, the applicant will be considered as homeless.
  - (vii) Section 11 extends the flexibility of local authorities and the courts to hear appeals and to provide accommodation during that process.



- (viii) Section 12 inserts a new clause into the 1996 Act (after section 213), and applies where a local housing authority believes an applicant, with whom a person under the age of 18 years normally resides, is ineligible and intentionally homeless. In these cases the applicant is invited to consent to the referral of his case to the social services department.
- 7.2 The other sections and Schedules in the Act also amend or repeal existing provision on homelessness. In particular, Schedule I requires local authorities to assess the housing needs of all homeless people, and to ensure they have housing advice which is specific to their needs.
- 7.3 A copy of the full text of the Homelessness Act 2002 can be found on <http://www.legislation.hmso.gov.uk/acts/acts2002/20020007.htm>

# CHAPTER 8: HOMELESSNESS REVIEWS AND STRATEGIES

## General

- 8.1 The guidance in this section covers the statutory duties on local authorities to carry out reviews and formulate strategies to tackle homelessness. The reviews and strategies will provide the framework for the achievement of local and national objectives to tackle homelessness, and thus form a vital element in local housing and community planning.
- 8.2 The 2002 Act has introduced new duties on local authorities to carry out homelessness reviews and formulate and publish homelessness strategies based on the results of those reviews.
- 8.3 The initial review and strategy must be completed and published within twelve months of the Act coming into effect (30<sup>th</sup> September 2002). Therefore all authorities must have completed this process by 30<sup>th</sup> September 2003.
- 8.4 The Homelessness Commission set up by the Assembly Government prepared initial draft guidance on the reviews and strategies. This guidance is based on that work.
- 8.5 The Assembly Government has already provided funding for most authorities to develop their strategies. All such work should in future be taken forward in accordance with this guidance. Authorities will need to check that work already done meets the requirements of the 2002 Act as explained in this guidance.
- 8.6 The Assembly Government is ready to support and advise authorities to help them meet these responsibilities. The reviews and strategies will contain valuable information on the extent and causes of homelessness, and we will wish to see copies of them when they are published.
- 8.7 Homelessness reviews and strategies will be the key tools for understanding the causes, nature and extent of homelessness in the area, and for tackling and preventing it at the local level. They should be shaped within the context of the priorities and policies set out in the national homelessness strategy, which in turn will be informed by and support the work at the local level.
- 8.8 The legislation and this guidance apply to all local authorities, including those who transfer their stock. In such circumstances the authority will need to be extremely careful to ensure that the contractual arrangements do not have any negative effect on its ability to meet these duties.
- 8.9 The formulation of the local homelessness strategy should be part of the local planning framework, and should support the development of the Local Housing Strategy and the Housing Operational Plan, which in turn should reflect the policies and priorities set out in 'Better Homes for People in Wales - National Housing Strategy'<sup>1</sup> and 'National Homelessness Strategy'.<sup>16</sup> The local homelessness strategy will need to link in explicitly to other local strategies, such as the Health, Social Care and Wellbeing Strategy and the Children and Young Persons Strategy. All of this strategic planning will be framed within the context of the Community Strategy.

## Definitions

- 8.10 It will be important for partners involved in developing the homelessness review and strategy to agree a common definition of homelessness that they are seeking to address. Under s.175 of the 1996 Act, a person is homeless if he or she has no accommodation in the UK or elsewhere which is available for his or her occupation and which that person has a legal right to occupy. A person will also be homeless where he or she has accommodation but cannot secure entry to it, or where he or she has accommodation that is a moveable structure (such as a caravan or house boat) and there is no place where it can be placed in order to provide accommodation. A person who has accommodation is to be treated as homeless where it would not be reasonable for him or her to continue to occupy it. The Assembly Government recommends the following definition of 'homelessness':

**'Where a person lacks accommodation or where their tenure is not secure'.**

Examples of people covered by this definition will include people who are:

- sleeping rough
  - living in insecure/temporary housing (excluding assured/assured shorthold tenants)
  - living in short term hostels, night shelters, direct access hostels
  - living in bed and breakfasts
  - moving frequently between relatives/friends
  - squatting
  - unable to remain in, or return to, housing due to poor conditions, overcrowding, affordability problems, domestic violence, harassment, mental, physical and/or sexual abuse, unsuitability for physical needs etc.
  - threatened with losing their home and without suitable alternative accommodation for any reason, e.g.
  - leaving hospitals, police custody, prisons, the armed forces and other institutions or supported housing,
  - required to leave by family or friends or due to relationship breakdown,
  - within three months of the end of tenancy, facing possession proceedings or threat of eviction.
- 8.11 As well as agreeing a definition of homelessness, partner organisations will need to agree other definitions of terms used in the strategy that will be appropriate to the strategy, e.g. 'excluded', 'young people', 'rough sleeping', etc.
- 8.12 The Assembly Government recommends the following definition of 'rough sleeping':

*'People who are sleeping, or bedded down, in the open air; people in buildings or other places not designed for habitation'.* This definition will include for example, people sleeping on the streets, in doorways, in parks, in bus shelters, or buildings not designed for habitation, such as barns, sheds, car parks, cars, derelict boats, stations, squats, tents, or makeshift shelters.

## Partnership and Joint Working

### Assistance from social services

- 8.13 Section 1(2) of the 2002 Act states that Social Services Departments shall provide reasonable assistance in carrying out the homelessness review. Furthermore, the Social Services Department shall take the strategy into account in the exercise of their functions

(s. 1(6)). Joint protocols and planning arrangements will be particularly important to secure a constructive engagement between the housing and social services operations. Examples of the type of assistance that may reasonably be expected from social services will include:

- (i) information about current and likely future numbers of social services client groups who are likely to be at risk of homelessness e.g. young people in need, care leavers, and those with community care needs;
- (ii) details of social services current programme of activity, and resources available to them, for meeting the accommodation needs of these groups;
- (iii) details of social services current programme of activity, and resources available to them, for providing support to vulnerable people who are homeless or likely to become homeless.

### **Working corporately within the local authority**

- 8.14 Local housing authorities will take the lead, in consultation with the voluntary sector and other partners. However, the duty to produce a strategy to prevent and tackle homelessness is imposed corporately on the whole authority, and **not** simply the housing department. The authority will need to take a strong corporate lead to ensure that all relevant departments and planning processes are co-ordinated in the preparation and implementation of the homelessness reviews and strategies. The homelessness strategy will form an important element of the local housing strategy, and will need to link closely with a range of other service strategies under the overarching Community Plan.
- 8.15 It will however be important that within the local authority there is an individual named, with appropriate authority, who can take responsibility for the delivery of the strategy. To ensure the corporate commitment to the homelessness strategy is recognised across the local authority and partners, this person might be appointed by the local authority Chief Executive. Similarly this person would normally be identified as the person taking the strategy forward on behalf of the authority, the voluntary sector and other partners. Within this framework, each service and partner organisation should identify its own lead officer to ensure effective joint working.
- 8.16 It will be important that all appropriate departments within a local authority are clearly involved in the development of the strategy and sign up to its aims and objectives. Departmental functions which should normally contribute will include:
- Housing
  - Social Services
  - Planning
  - Education
  - Economic Development
  - Social Inclusion
  - Finance
  - Environmental Health, and
  - Chief Executive's/Corporate Policy
- 8.17 It will be important to involve the Finance Department/budget holders early in the process so that they can approve the resources necessary to carry out the strategy.

- 8.18 Local housing authorities should establish protocols or interlinked procedures between departments (e.g. Housing and Social Services) to deal with particular issues (e.g. care leavers) to deal with issues for which they share responsibilities.

### **Working with other authorities and organisations**

- 8.19 The strategy may include specific action that the local authority expects to be undertaken by other public and voluntary organisations (s. 3(3)). Where the strategy includes such provision, the local authority must obtain the consent of that organisation (s. 3(4)). The authority can consider whether objectives can be met by the joint working of two or more organisations (s. 3(5)). The strategy will need to demonstrate joint working arrangements with other statutory and voluntary services, to meet the multi-disciplinary needs of the client group and to provide a more holistic approach to homelessness. At the very least these should include the involvement of:

- local Health Groups;
- Probation, Prison and Youth Justice Services;
- Children and Young Peoples Strategy Groups;
- Community Safety Partnerships;
- Registered Social Landlords;
- Accredited Support Providers; and
- Community Legal Services Partnerships.

The strategy may include specific action that the local authority expects to be taken by other public and voluntary organisations, and where the strategy includes such provision, the local authority must obtain the consent of that organisation. The authority should consider whether objectives could be met by the joint working of two or more organisations (e.g. Local Health Groups, Probation Service and other government departments). Specific liaison arrangements should be put in place with the Prison Service to ensure that prisoners are given housing advice on existing and future tenancy options following entry to prison and prior to release.

- 8.20 Authorities will need to consider the appropriate relationship and potential overlap of these strategic functions and the operational planning tasks of the Supporting People Planning Group.

### **Building successful partnerships**

- 8.21 The successful development and delivery of the strategy will be dependent upon strong partnership arrangements with other statutory and voluntary organisations. It may be appropriate to develop these partnerships within existing partnership arrangements, provided that there is a strong and distinct focus on the homelessness strategy, and that it includes relevant representation from each agency. Some authorities have already established local homelessness forums, and these are the type of group which may be able to take the strategy work forward.
- 8.22 The homelessness partnerships should be developed in accordance with good practice principles for partnership development, including: understanding the need for partnership; having a clear and realistic purpose; commitment and ownership by the partners; developing and maintaining trust; robust and clear partnership working arrangements; exchange of information on working policies and practices; monitoring and measuring progress.

- 8.23 Joint training will be an essential feature of the partnership arrangements, to promote common understanding of each others' roles and homelessness, risk assessment, joint working, support packages, and enabling homeless people to find appropriate solutions.
- 8.24 Early consideration should be given as to how the voluntary sector will be represented on the Strategy Group. The partnership should have a continuing dialogue with a broad range of representative groups and interests, many of which will not be directly represented on the group. Partner organisations should be kept informed of progress in the development of the review and strategies, and how they are being implemented.
- 8.25 Representatives of partner organisations (which might also include representatives from the private rented sector, lenders and the police) will need to be clear as to the resources that they can contribute to the development and delivery of the strategy (whether these be in terms of staff time and/or finance). The Strategy Group might hold open meetings to inform/ consult with the wider range of partner organisations and users. Such meetings might: seek broad approval for the Strategy and how it will be delivered; inform partners of progress and planned future work; and provide a consultative forum to refine/ redraw the strategy once it is nearing the end of its timescale. Partners will need to agree mechanisms to resolve any conflicts between them.

### Partnership structure

- 8.26 The local authority and partners will need to agree the most appropriate partnership structure to develop and deliver the strategy. One suggested approach might be for a small steering group led by the statutory partners to develop the strategy with the support of a wider strategy group, which is consulted on and helps to deliver the strategy. Sub-groups may be created to take forward particular actions/ issues. A list of agencies who should be considered for consultation is given at **Annex 18**.

## Reviews

- 8.27 Section 1(1) of the 2002 Act states that a local housing authority may carry out a review of homelessness in their area and formulate and publish a homelessness strategy based on the results of that review. In practice this is a requirement, and the review must be carried out prior to the formulation.
- 8.28 Section 2(1) of the 2002 Act provides that the review should cover:
- (i) the levels, and likely future levels, of homelessness in the area - the authority will need to consider the data and information needed to assess homelessness in its area. It should also look at the profile of homeless people and those most at risk of homelessness as this will assist in targeting services and resources;
  - (ii) the current activities which are carried out, or contribute to:
    - helping prevent homelessness
    - helping secure accommodation for people who are homeless or threatened with homelessness
    - providing support to people who are homeless or are threatened with homelessness and
    - helping prevent re-entry to homelessness

- (iii) the resources available to the authority and all those organisations that deal with or help prevent homelessness (e.g. the Social Services Authority, Supporting People teams, voluntary organisations, registered social landlords and any other public authorities, private rented accommodation);
- (iv) the extent to which the activities and resources applied by the authority and its partners to homelessness meet the standards expected in this statutory guidance, requirements of the homelessness legislation, and the objectives and priorities in the National Housing Strategy.

### **Frequency of reviews**

- 8.29 Under s. 3.(6) of the 2002 Act, authorities shall keep their strategies under review, and should ensure that the outcome of the review is made available to the public by depositing a copy at their principal office (s. 2(3)). However, the reviews should be undertaken and strategies revised within a five-year cycle.

### **Publication/communication**

- 8.30 The local authority must arrange for the results of the review to be publicly available (s.2.3(a)) without charge, and provide a copy of these results on request (at a reasonable charge if required). The outcome of the report should be set out in a report form which is issued to all partners and relevant public and voluntary bodies, as well as being made publicly available. It would be helpful to invite comments on the review. The publication of the review can be joined with the strategy, provided that the review process and outcomes of the review are clearly identifiable in the document.

## **Strategy Vision and Principles**

- 8.31 Homelessness strategies should aim to ensure that there is no need for anyone to become or remain homeless due to a lack of accessible, appropriate and co-ordinated services.
- 8.32 Authorities will need to have clear principles on which their strategies will be based. These should include the following:
- (i) homelessness should not just be tackled with short term measures at the point of crisis, but through longer term structural solutions;
  - (ii) homelessness must be tackled by different organisations working together, both to meet individual needs and at the strategic level;
  - (iii) services should be designed to meet all the needs of the individual which are relevant to avoiding homelessness or helping them establish or maintain a new home, including those relating to family crisis, debt, ill-health, and need for appropriate advice and support;
  - (iv) services should be designed to be accessible to homeless people, taking account of their varying circumstances and lifestyles;
  - (v) services should not discriminate against disadvantaged groups;
  - (vi) strategies and services should focus on what is effective and enables people to find and sustain secure and appropriate housing;

- (vii) homelessness must be prevented wherever possible, and this must be reflected in an emphasis on advice and other preventative work;
- (viii) homelessness is normally associated with a range of other issues such as family crisis, debt, ill-health and many others, and the appropriate support and advice services should be available to help people avoid losing their home or help them establish and sustain a new one;
- (ix) responses to homelessness should reflect the views of homeless people, who should be encouraged to contribute to the development of appropriate services.

## Strategic Objectives

- 8.33 Section 3(2) of the 2002 Act states that strategies may contain specific objectives and plans, which the Housing and Social Services Departments can pursue when exercising their functions. In practice this will be essential to the strategy.
- 8.34 The objectives of the Local Homelessness Strategy should fit coherently together to prevent and tackle homelessness, and should be based on the outcome of the review. In addition, local authorities and partner organisations should ensure that there is consistency between the homelessness strategy other strategies and plans (e.g. Supporting People Operational Plans, and strategies to tackle rent arrears, empty homes strategies, anti-social behaviour etc.). The objectives of the local homelessness strategy should aim to:
- (i) ensure that appropriate support is available to vulnerable people who are homeless or at risk of homelessness and enable them to secure settled accommodation;
  - (ii) reduce the use of bed and breakfast establishments by developing other more suitable forms of temporary accommodation, and eliminate its use for young people and families in particular;
  - (iii) ensure that all homeless people have access to furniture and practical help when moving in order to provide a sustainable housing solution ;
  - (iv) reduce 'repeat' homelessness;
  - (v) ensure findings of intentional homelessness are minimised within a fair application of the law;
  - (vi) ensure that emergency accommodation is available and accessible to anyone who would otherwise need to sleep rough;
  - (vii) reduce homelessness and the recurrence of homelessness among young people which may, in turn, help reduce the number of young people who abandon tenancies;
  - (viii) minimise exclusion of homeless people from social and private rented accommodation;
  - (ix) provide an advice and information service to the "Quality Mark" standard accredited by the Legal Services Commission, and to ensure the availability of



independent and informed advice and advocacy services to this standard within their area;

- (x) ensure that vulnerable groups have access to specialist services, e.g. domestic violence, alcohol, drug and mental health services, and that services can be provided in a joined-up way for people with multiple needs ;
- (xi) reduce homelessness due to rent arrears, which should include access to a debt counselling service and agreed protocols with Housing Benefit Departments;
- (xii) bring empty properties back into use to provide accommodation for people who would otherwise be homeless e.g. by providing grants to private landlords in return for letting to single homeless people;
- (xiii) ensure adequacy of opportunities for move-on from hostels and other supported temporary housing projects. This should include assessments of the estimated level of need and type of accommodation required, and arrangements for enabling people to secure appropriate permanent housing when they are ready;
- (xiv) maximise access to Bond Schemes in their area, particularly for young people and care leavers;
- (xv) develop practical means of enabling people to rebuild social networks;
- (xvi) develop joint working arrangements with other bodies to help people avoid homelessness at crisis points;
- (xvii) secure joint working arrangements between housing and social services to ensure that the needs of clients are fully assessed and provided for, particularly where there are joint statutory duties, e.g. care leavers;
- (xviii) ensure that people who are homeless (including those accepted as statutorily homeless in temporary accommodation) have access to the services they need e.g. health, education, social services;
- (xx) ensure that the supply of affordable accommodation in the area reflects the extent and profile of housing need;
- (xxi) minimise the need for people accepted as statutorily homeless to spend time in temporary accommodation;
- (xxii) encourage development of people's confidence and ability to live independently, by helping them into training, employment and other meaningful activities;
- (xxiii) ensure that agencies work together to enable homeless people to resettle with the necessary support through holistic planning processes.

## Choice

- 8.35 The strategy should explain how homeless people will be provided with choices, and be enabled to express their needs and preferences in regard to the nature and location of accommodation where they wish to be re-housed. These needs and preferences should be met as far as possible, subject to the availability of accommodation and the application of fair lettings policies. The Assembly Government is of the opinion that homeless people

entitled to permanent accommodation under the provisions of the 1996 Act, should receive at least two offers of accommodation which take account as far as possible of their needs and preferences. The Local Homelessness Strategy should ensure that homeless people are not disadvantaged in this respect.

## Priorities

- 8.36 Priorities should be agreed by the Strategy Group, and should be based upon good information, and where appropriate should link to other broader corporate and national objectives/strategies, such as social inclusion. The strategy should take full account of and as far as possible, work towards meeting the objectives, priorities and targets set out in *'Better Homes for People in Wales'* <sup>1</sup>.

## Key performance indicators

- 8.37 Performance measures should identify progress in achieving the objectives set out in the Action Plan. Although it is not easy, authorities and their partners should seek to establish performance indicators, targets and benchmark standards, covering both inputs and outcomes. Authorities should be mindful of Wales Programme for Improvement principles when establishing performance indicators, e.g. comparison with similar authorities, and using consultation with users to help define indicators.

## Strategy Formulation

### Statutory requirements

- 8.38 Homelessness strategies should not be developed in isolation and should be consistent with, and integral to the authority's Local Housing Strategy. The homelessness strategy should set out the authority's plans for:
- (i) preventing homelessness in their area (s. 3(1)(a));
  - (ii) securing that sufficient accommodation is available for those homeless or threatened with homelessness (s. 3(1)(b));
  - (iii) securing satisfactory support services for those homeless or threatened with homelessness (s. 3(1)(c)).
- 8.39 The Assembly Government regards this guidance as establishing a duty on local authorities to produce Supporting People Operational Plans as part of the discharge of the duty established under s. 3 (1)(c).
- 8.40 Authorities must have formulated and published their strategy within a year of the provisions of the Act coming into effect (s. 1(3)). Thereafter, reviews must be undertaken and strategies reformulated (as necessary) (s. 3(6)).
- 8.41 Both housing and social services departments should ensure that any policy changes take account of the homelessness strategy (s. 1(5) and 1(6)). Furthermore, the local housing department should ensure that all its homelessness decisions accord with the matters contained in its local homelessness strategy.
- 8.42 The authority must keep their homelessness strategy under review and can modify it, but must publish any modifications made (s. 3(6) and 3(7)).

- 8.43 Before adopting or modifying a strategy, the authority must consult any local or public authorities, voluntary organisations or other persons as they consider appropriate (s. 3(8)).

### **Drafting the strategy**

- 8.44 In preparing the strategy local authorities and partners should consider how they will address the main elements of the homelessness service i.e. prevention, securing accommodation and support:
- Prevention, including information and advice, tenancy and crisis support, debt counselling, family mediation, and housing benefit service.
  - securing availability of accommodation, including housing needs assessment, mapping housing supply and demand, emergency and other temporary housing, lettings policies, and move-on arrangements.
  - Securing access to support services, including support needs assessment, provision of support services, resettlement, and outreach work.
- 8.45 The strategy should address how local authorities and partners will work with all homeless households whether or not they are in priority need or unintentionally homeless. For particular client groups (e.g. young people) an authority may feel it appropriate to develop a complementary strategy that clearly fits with the overall Homelessness Strategy (e.g. Youth Homelessness Strategy).

### **Prevention**

- 8.46 Strategies should prioritise the need for prevention. Therefore, adequate consideration and resources should be devoted to the range of preventative services that are required to meet the needs present within the local authority area, e.g. information and advice, education, low intensity support, mediation etc. It will be important to ensure that all household types and vulnerable groups are considered.
- 8.47 The availability of a range of information and advice services is fundamental to prevention of homelessness. This will include local authority and independent housing advice, and also related areas such as money advice and debt counselling. All advice services should be planned within the context of the Community Legal Services Partnerships and their strategies, which should support the advice aspects of homelessness strategies. This is covered more fully in the next Chapter.
- 8.48 There will be a need to ensure that other policies work to prevent homelessness occurring, particularly through housing management in the areas of rent arrears and anti-social behaviour. Housing management should explicitly recognise the prevention of homelessness as one of its key objectives, and be geared to early intervention and multi-agency working to help tenancies sustain their tenancies wherever possible.
- 8.49 The importance of an efficient and fair housing benefit service in the prevention of homelessness needs to be recognised, with protocols and service standards which are monitored to assess their impact on homelessness.
- 8.50 Local authorities should also consider the need for additional services for preventing homelessness by providing more protection to tenants in private sector accommodation, particularly by the use of bond schemes. The Assembly Government recognises the

important contribution that bond schemes make in accessing private rented accommodation. The strategy should endorse the use of bond schemes to alleviate homelessness amongst all sectors of the community.

### **Securing accommodation**

- 8.51 Local authorities should already be carrying out housing needs assessments, which involve the mapping of existing services and gaps. The homelessness strategy should use these to identify shortages of provision, and to prioritise new projects which will reduce homelessness. These priorities should be reflected in capital programmes including bids for Assembly Government funding through their annual bids for Social Housing Grant.
- 8.52 The strategic needs assessments and resulting capital programmes will need to include emergency and other dedicated temporary accommodation as appropriate. Planning for temporary accommodation should be based on the aim of using it only for emergency and assessment purposes and where it is most appropriate for the needs of the users, and for no longer than necessary. The strategic needs assessments should be based on statistics of homeless people across a range of profiles and needs, taking account of the views of homeless people themselves. In particular the use of bed and breakfast accommodation should be kept to an absolute minimum.
- 8.53 Homelessness strategies will need to incorporate move-on planning, which ensures that: homeless people are able to move into permanent accommodation as soon as possible; temporary supported housing is used only for the appropriate client groups, taking account of age, needs and vulnerability; and supporting services are used efficiently to make the best use of staff skills in the context that is most appropriate to the needs of the homeless person.
- 8.54 Local authority and RSLs' lettings policies should be fully compatible with the objectives in the homeless strategy. This means that exclusions should be kept to a minimum, and should only continue as long as can be justified in the current circumstances of the individual applicant. The policies will need to ensure that social housing can be accessed by those who need it.

### **Securing support**

- 8.55 The homelessness strategy must plan for securing satisfactory support services for homeless people. The strategy must be linked to the Supporting People Operational Planning mechanism in the way set out in the Assembly Government's guidance on the arrangements for the implementation of Supporting People in Wales. This planning process will need to encompass a broad range of support services, including supported housing projects, statutory social services and health services, probation and youth justice services, and a wide range of voluntary organisations. In this context a broad definition of support should be used, to reflect the inter-related needs of homeless people which need to be met in order for them to establish a settled lifestyle and sustain their homes.
- 8.56 The Supporting People plans will form a core element of the strategy in respect of support for homeless people. They will identify the priorities for support services which can be provided through the supporting people specifications, and which will help people in the qualifying groups to resettle into sustainable tenancies. The bids arising from Supporting People Operations Plans should be consistent with the priorities in the homelessness strategy, which in turn will be partly based on the Supporting People needs assessment and planning process. Local authorities will need to take account of guidance on Supporting

People Operational Plans as part of the discharge of the duty established under s. 3(1)(c) of the 2002 Act.

- 8.57 The Supporting People Operational Plans will not be sufficient in themselves to deliver all the support elements of the homelessness strategy. Social Services in particular should be contributing to the assessment of needs and to helping people sustain their homes. This is especially the case where people are owed a duty under social services legislation e.g. in the case of children in need, elderly people, people with physical or mental disabilities, or those with mental health problems. Similarly, Health Boards should be involved with housing departments in planning to ensure that homeless people and their families receive appropriate and continuing primary health care services. Thus joint planning involving housing, social services and health will be essential, and this process should be strengthened through the new mechanisms for the Health and Wellbeing Strategies.
- 8.58 In addition it is essential that the homelessness strategy reflects the contributions to be made by voluntary and other statutory organisations in providing support for homeless people, including those which are not funded through Supporting People. These will include,
- tenancy support schemes
  - rent guarantee/ bond schemes
  - home adaptations for people with physical disabilities
  - furniture schemes
  - Social Fund loans
  - drug and alcohol services
  - Employment Service
  - Police
  - refugee organisations
  - education and youth services
  - prison, probation and youth justice services
- 8.59 The strategy will need to bring a particular focus to the process of resettling homeless people, both in terms of preparing them for and helping them resettle in to permanent accommodation. Resettlement is more than assisting with housing issues alone, and needs to include helping people to engage with other essential services, such as health and welfare benefits, as well as promoting stability through meaningful activity, particularly through training, employment and positive social networks. These services need to be reflected in the strategy.

### **Access to homelessness services**

- 8.60 Authorities will need to ensure that services are fully accessible to people who are homeless or threatened with homelessness, including a proactive approach to publicising the services and people's rights. They will need to recognise the diversity amongst homeless people, and the particular needs they are likely to have. Outreach services are likely to be particularly appropriate for the street homeless. Office based services should be fully accessible for people with physical disabilities. Authorities should take account of the local linguistic profile in providing services in Welsh, English or other languages. The needs of minority ethnic groups and refugees will need to be taken account of, ensuring that communication and cultural barriers do not prevent minorities from using the services. Authorities should also consider the ability of the person and structure its advice accordingly.

### **Access to other essential services**

- 8.61 Access to all essential services is made much more difficult for homeless people if they have no contact address. Without this it is difficult for them to make progress with housing, health, benefits, employment, education and other services, and thus lack of an address reinforces the problems associated with homelessness. Authorities are strongly encouraged to secure arrangements for homeless people to have a contact address, which can often be achieved in partnership with the voluntary sector.
- 8.62 In planning services for homeless people, authorities should work with partners to ensure that they continue to have access to essential services whilst they are in temporary accommodation. This is particularly important in the case of health, where joint working with the local health board will be required to:
- deliver flexible and accessible primary care services, including access to G.P. and community nursing services.
  - Ensure that homeless people are able to access specialist services such as for substance misuse and mental health problems.
  - Establish liaison arrangements to ensure that community health services maintain contact with young children in homeless families.

### **Equality and diversity**

- 8.63 The strategy should be sensitive to the particular difficulties facing homeless people from disadvantaged groups. In particular, the needs of the following groups should be addressed:
- **Minority ethnic groups.** Services should meet the cultural and linguistic needs of the different communities, and work proactively to address homelessness in groups where it may normally be hidden. Further advice can be obtained from the All Wales Ethnic Minority Association.
  - **Lesbian, gay and bisexual people.** Experiences of stigma and harassment very often cause and exacerbate the problems of homelessness, and access to specialist advice may be needed. Further advice on assessing these needs may be obtained from Lesbian, Gay and Bisexual Forum Cymru.
  - **Women.** Women are more likely to suffer domestic violence, and have difficulty in resolving the consequent problems of child support and financial/ property rights. Homelessness services are sometimes seen as male-focused and unsuitable for women. Reviews should ensure that appropriate advice and housing services are in place which can meet their emergency and resettlement needs. Further advice can be obtained from Welsh Women's Aid.
  - **People with disabilities.** Homelessness services should be accessible to people with disabilities, and enable them to obtain appropriately designed and located accommodation.
  - **Older homeless people.** Older homeless people often have a low profile, and are reluctant to use services even where they may have a statutory entitlement to help. At the same time they are very vulnerable to the health consequences of living rough or in unsuitable accommodation. Reviews should take account of the needs of this group, and ensure they are enabled to resettle into appropriate accommodation.

## Sources of information

- 8.64 The development of a homelessness strategy must be underpinned by good information. The local authority should take the lead in drawing together this information, from both its own sources and from partner organisations.
- 8.65 Local authorities should collate and analyse the information they provide to the Assembly Government, as well as other information/data that they hold (e.g. waiting list data). New information systems may need to be developed with partners to identify non-statutory homelessness and broader homelessness as defined within the local strategy. Information should be provided on the numbers (and proportions) of people presenting as homeless, assessed as homeless (priority/non-priority/intentional/not intentional) and on re-housing outcomes.
- 8.66 Non-statutory, as well as statutory sources should therefore be approached for relevant information. The information gathering process will need to include general consultation with organisations and people who work with or have experience of homelessness. This will require a high level of co-ordination between agencies to develop and sustain common monitoring systems.
- 8.67 Statistical measurement and monitoring of homelessness, including the statistics provided in the returns to the Assembly Government, will be of particular importance. Clarification will be required on the time period over which statistical comparisons are made, and the level of detail required.
- 8.68 It is essential that specific efforts are made to identify the extent of rough sleeping. The combined survey method is recommended, involving snapshot and continuing data collection across a range of agencies.
- 8.69 Information gained from housing market studies or use of individual assessment models ( as used in Cardiff) will help identify information gaps and the need for additional research should be identified.
- 8.70 Local authorities are collecting and collating a range of information on accommodation-related support needs through Supporting People Operational Planning mechanisms. This will be an important source of information for the review.

## Profiling homelessness

- 8.71 Analysis of homelessness should be broken down by client groups (e.g. young single people, lone parents, families etc.) and should be compared with the housing and support services available to each group.
- 8.72 It will also be important to identify numbers of repeat presenters and vulnerable groups (e.g. ex-prisoners, persons leaving the armed forces etc.), as well as identifying any trends/ issues in the reasons given for presenting as homeless.
- 8.73 Local authorities should assess the local availability of affordable housing for young people and other vulnerable groups seeking accommodation.
- 8.74 Homelessness will vary across local authority areas, and thus information should be provided on the geography of homelessness within a local authority area, identifying any particular issues in localities. This will be particularly important in rural areas.

- 8.75 The local authority should seek to encourage a culture of information sharing (which may be assisted by a corporate IT strategy), both within the authority itself and with partners.
- 8.76 Other partners within the area, e.g. Health Boards, Probation, and the voluntary sector, will have useful information that should be fed into the research process on people who may be leaving institutional care or who may have a need for particular support.
- 8.77 In order to assess what services will be required in the future, local authorities should estimate rough numbers of people who may be at risk of becoming homeless. It may be helpful to obtain such estimates for different vulnerable groups.

### **Risk groups**

- 8.78 Homelessness strategies should cover all groups affected by homelessness. Some people can be at more risk than others, and the authority should identify which people within their area are likely to be at greater risk, for example:
- young people, including care leavers
  - those leaving institutions, including prisons, hospitals and the armed forces
  - people suffering domestic violence
  - people suffering mental illness
  - people suffering from alcohol and drugs misuse
  - people suffering harassment or abuse from outside the home
  - people with debt problems
  - refugees
- 8.79 The local authority should have regard to the groups of people who do not fall within the priority categories (as defined by the Housing Act 1996 and The Homeless Persons (Priority Need) (Wales) Order 2001) and ensure that their needs are considered in developing their strategies.

### **Supply of and demand for housing**

- 8.80 A breakdown of the housing market in the local authority area should be provided (e.g. owner occupied, private rented sector and social rented housing), as well as highlighting any particular issues within the local housing market that may impact on homelessness (e.g. lack of social rented housing for single people or large families, affordability etc.). Comprehensive information should also be maintained on the range of emergency, temporary and supported accommodation available with a local authority area, its use and the client groups served, including any projects which are not funded through Supporting People. Much of the information on supported accommodation will be derived through Supporting People, but the information should include any project funded through other means. The Assembly Government has issued guidance and assistance with local housing needs assessments (see reference 6 in the bibliography), and has also issued guidance for authorities on carrying out local housing systems analysis to support the development of the housing strategy. Other structural factors which should be taken account of include: the local population; the availability of affordable housing; property prices and rent levels; economic and employment trends; and patterns in migration and new household formulation.

### **Resources available to prevent and tackle homelessness**



8.81 Services and other resources available to homeless/potentially homeless people within the local authority area should be summarised. This should cover those services provided by the voluntary and private sectors and other partners, in addition to those provided by the various departments of the local authority itself. Services could be broken down by type, e.g. prevention and alleviation, and the client group they target, e.g. young people. It will be important to collect and analyse existing data on the users of services within the local authority area, for example by household type, age, gender, sexual orientation, and ethnicity.

8.82 Resources available for the preventing and tackling homelessness include:

- advice services;
- outreach;
- tenancy support;
- support services working with people to reduce the risk of homelessness, including Supporting People, Social Services and voluntary work;
- housing stock and programmes to increase availability of affordable accommodation where demand is not met;
- lettings schemes and their operation by social housing providers;
- national and local mobility schemes;
- initiatives for maximising access to private rented accommodation, e.g. bond schemes;
- hostels and other emergency accommodation;
- programme of disabled facilities grant; and
- housing renewal and regeneration schemes.

8.83 Partners should detail their contributions (in terms of both direct resources and staff time) that are dedicated to and planned for these homelessness services.

### **Analysis - key issues**

8.84 Analysis will be required of:

- factors the local authority consider contribute to homelessness in its area (these may vary across the local authority area)
- households types/ vulnerable groups particularly affected
- variations within the local authority area
- likely future levels of homelessness, and resources available to meet the needs and for prevention.

8.85 Following analysis of the housing supply data, consideration should be given to the role/ impact of the private rented and owner occupied sectors as well as the social rented sector, as it should be clear that the strategy covers all tenures. Authorities will need to analyse the pattern of homelessness within each group in their local area, and identify means to forestall or intervene in these patterns to reduce the long-term levels of homelessness. Authorities will also need to monitor the lengths of time people are spending in temporary accommodation as a result of becoming homeless, with the aim of reducing or avoiding the need for such interim housing, as well as the quality of that accommodation.

### **Mismatches**

- 8.86 Any mismatches in the available housing stock should be highlighted (e.g. councils faced with an increase in applications from young single people with family accommodation forming the large part of their available stock). In addition any mismatches in the services on offer to homeless/ potentially homeless people and the composition of those presenting as homeless should be highlighted (e.g. services largely focused on young single people, with little available for families). Demand for furnished accommodation, or for services which help people to get the furniture they need to resettle, should be addressed.

### **Gaps**

- 8.87 Any gaps in services will need to be highlighted, e.g. lack of emergency accommodation for couples or people with dogs. It is vital that this covers information and advice, and support as well as housing services. From the research undertaken local authorities should identify vulnerable groups in their area (and rough estimates of the numbers involved) and the services that are currently available to meet their needs. This assessment will provide information as to whether any gaps in service exist.

### **Customer research**

- 8.88 **The views of homeless people will be crucial in developing a successful Strategy.** They should be consulted about:

- their own views on their situation;
- their needs;
- their experience of services and ‘what works’;
- any barriers to services;
- any suggestions for improvement etc.

- 8.89 Local authorities and partners should undertake regular surveys of service users, which should form part of their monitoring.

### **Action plan**

- 8.90 Strategies should contain an action plan which summarises the measures that will be taken. The Action Plan should clearly set out what will be done in order to achieve the aims and objectives set out in the strategy. The Action Plan will clearly detail the timescales involved and the lead agency.

## **Resources**

### **Existing resource utilisation**

- 8.91 Having developed the strategy and agreed what is to be done, consideration will need to be given to existing services, e.g. ensure that they fit in with the objectives of the strategy, that there is no duplication etc. Rationalisation of existing services may be needed to achieve a better focus of resources.

### **Strategy as supporting evidence**

- 8.92 The authority will use the strategy to prioritise bidding for Assembly Government grant funding for projects, and the Assembly Government will expect the supporting evidence for bids to be provided in the reviews and strategies.

## Consultation

- 8.93 Local authorities must consult other public and voluntary organisations and other persons as they consider appropriate before adopting or modifying a homelessness strategy. Every organisation which could contribute to the strategy should be consulted before it is adopted in its final form. Homeless people should also be invited to comment on the proposed strategy as well as assisting in its formulation, and the wider public should also be invited to comment.

## Monitoring and Evaluation - The Regulatory Framework

### Monitoring and evaluation

- 8.94 The Assembly Government will expect local authorities to establish a framework to set out the minimum monitoring/evaluation standards for implementation of the strategy. A strategy operates in a changing environment and it is therefore essential that the objectives are continuously monitored.

### Continuing review and improvement

- 8.95 Under s.3(6) of the 2002 Act, housing authorities must keep their homelessness strategy under review and may modify it from time to time. Before modifying the strategy they must consult on and publish the amendments on the same basis as the original strategy.
- 8.96 Any change which is likely to significantly affect homelessness or how it is tackled, such as stock transfer, will require modifications to the strategy. The Audit Commission has identified weaknesses in the planning of homelessness arrangements prior to stock transfer. Services should be clearly planned to provide a sustained service which meets its statutory duties and this guidance, and the Assembly Government will consider closely the proposed arrangements prior to transfer.
- 8.97 As well as the comprehensive reviews required under s.2 of the 2002 Act, homelessness strategies must be subject to the principles and disciplines of the Wales programme for Improvement. This will involve review and risk assessment of activity on homelessness, and incorporating key targets and objectives within the Improvement Plan. Homelessness action plans should also take account of the guidance on action planning within National Assembly for Wales Circular 18/2002 on the Wales Programme for Improvement.

### Strategy process

- 8.98 As well as monitoring and evaluating the outcomes of the strategy itself, there will be a need to ensure that strategy processes (e.g. information sharing etc.) are evaluated.

## General Points

### Lifetime

- 8.99 Strategies should be 'living documents' that span a period long enough to effect change, but not so long as to lose sight of their original objectives. The Strategy Group should

determine the appropriate lifetime for the Strategy, which should, of course, comply with the provisions of the Homelessness Act.

### **Timescales**

- 8.100 The strategy should contain timescales for its implementation, including the timing its review. Progress should be reviewed at least annually. A fundamental review should be programmed for no later than four years after the adoption of the strategy, to enable a revised strategy to be put in place within the five-year cycle, in accordance with the provisions of s.2(3) of 2002 Act.

### **Communications**

- 8.101 Stakeholders need to know about the strategy and understand their roles in it. It should be disseminated to all groups working with the homeless, and be available to homeless people themselves. Different groups of stakeholders may need different levels and styles of information. Strategies should have the full involvement and backing of local authority members.

### **Publication**

- 8.102 The local authority must arrange for the strategy to be publicly available (s.3(9) of the 2002 Act) without charge, and provide a copy of these results on request (at a reasonable charge if required). The published strategy should be widely circulated to all partners and relevant public and voluntary bodies, and in other ways to make it accessible to the public, e.g. the internet.

# CHAPTER 9: HOUSING ADVICE

## General

- 9.1 Under s.179 of the 1996 Act local authorities have a duty to ensure that advice and information on homelessness and the prevention of homelessness is freely available (and free of charge) to anyone in their area. Good advice at the right time can help prevent homelessness and the legislation provides that such advisory services should be available not just to people owed a main statutory duty under Part 7 but to everyone in housing need, including single people who are not in priority need, those who are intentionally homeless and persons from abroad who do not otherwise qualify for housing assistance. It is separate from those duties found in s.190, s.192, and s.195 of the 1996 Act which provide that authorities must give advice and assistance to homelessness applicants. It is a duty to which the Assembly Government would urge authorities to give serious attention, as housing advice should form the foundation for strategies to prevent homelessness. Good advisory services can enable people, often with complex problems, to explore the full range of options available to them and achieve the most favourable outcome to their difficulties.
- 9.2 Although the 1996 Act does not impose a duty on local authorities to provide general housing advice, the Assembly Government would urge authorities to consider the benefits of ensuring that a wide-ranging service is available, which will help in the prevention of homelessness and other social problems. Authorities are expected to promote a broad range of advice services within the context of Community Legal Services Partnerships. The need for housing advice is usually linked to other problems, such as financial or other personal crises, and thus there is usually a need for a broader spectrum of advice. For example someone who is, or may become, threatened with eviction because of rent or mortgage arrears may need advice not just about tenants' and landlords' / mortgagees' rights and responsibilities but also about benefit entitlements, and money management. The tenant may in such a case also need help with form filling or representation to apply for benefits or pursue benefits claims as well as support in negotiating with the landlord. Landlords should therefore ensure that tenants have access to money management and debt advice. Equally landlords may also benefit from advice or information which helps to resolve a problem without recourse to eviction.

## Who Provides the Advisory Service?

- 9.3 The legislation does not specify how an authority should meet the requirement of s.179 of the 1996 Act to secure the provision of advisory services. This gives authorities scope to meet this duty in a number of ways: providing the service themselves; securing it from some other organisation; or securing it in partnership with another organisation. Liaison with other bodies and providers can help to inform the authority's decision, as will local circumstances, resources, the effectiveness of different methods of delivery and the level of service provision required. Where there is a wide range of housing conditions, and communities within a single authority area, the authority may wish to consider securing the provision of a variety of types of advisory services with a range of delivery systems.
- 9.4 Authorities should be aware that private sector tenants and homeowners may not naturally look to the local authority to provide advice, and may wish to consider the balance of provision between the public, voluntary and private sectors. The Assembly Government has adopted the target of securing independent housing advice services in every local authority area across Wales, and this has now been achieved. The availability of independent advice

may help to minimise the scope for conflicts of interest which could occur when advisory

services are solely provided the authority. This is likely to be of particular importance where the client needs to challenge a decision made by the authority. Decisions about how to provide advisory services are matters for authorities taking account of local housing circumstances. However, authorities are urged to recognise that, whatever type of provision is made, they should ensure that the service is seen as being impartial and available to everyone in the area, and that this is recognised in agreements where independent services are funded by the authority. These considerations may be particularly relevant where the local authority meets their s.179 duty by providing a generic housing service themselves.

- 9.5 In 2000 the Assembly Government commissioned an audit of housing advice services in Wales. The resulting report sets out important recommendations for the provision of housing advice which authorities should take account of.

## Funding Voluntary Sector Agencies

- 9.6 In considering how to meet the provisions of s.179 of the 1996 Act authorities will also want to appraise the current funding arrangements for voluntary sector advice services in their area, through the Community Legal Services Partnership planning arrangements. Funding such services may not be solely a matter for the housing authority. Developing a co-ordinated approach to funding services between the various departments of authorities will help to ensure that conflicts do not arise over the purpose of the service. A co-ordinated approach will also ensure that responsibility for both the funding and direction of the authority's housing advisory services is clear and takes account of any Community Legal Services provided. In some areas it may be appropriate for an authority to fund or provide a service jointly with neighbouring authorities: this may reduce costs for each participating authority and provide a better resourced service for the applicant.
- 9.7 Authorities will also want to know which projects, if any, in the area are in receipt of grant funding from the Assembly Government under s.180 of the 1996 Act. Projects which receive s.180 funding are intended to fill an existing gap in service provision and to complement other services in the area. Authorities with a co-ordinated approach to funding and a strategy for tackling homelessness will be better placed to assess how such projects fit in with current provision, and decide whether to support them themselves. The Assembly Government consults local authorities about bids for s. 180 grants within authorities' areas as part of the bid evaluation process.

## Assessing Advice Provision

- 9.8 In order to establish that the requirements of s.179 of the 1996 Act are being fully met and to meet the requirements of the Homelessness Act 2002 in regard to the review of homelessness services, authorities will need to assess periodically the provision of housing advisory services in their area. Regular assessment, perhaps as a part of their housing strategy, would give authorities the opportunity to consider which services they continue to support. Reviewing current service provision could help to:
- ascertain the nature of the provision and the role(s) of the agency(ies);
  - consider needs/demand;

- identify any gaps or overlaps in advice provision;
- clarify the role which the local housing authority themselves wish to play and the implications for voluntary sector agencies;
- develop liaison arrangements for the strategic planning and delivery of services;
- consider funding sources;
- consider the quality and effectiveness of services;
- establish the needs of particular groups; and
- identify local factors contributing to housing difficulties.

Further guidance on how to review these services can be found in 'Welsh Housing Advice Audit Report for the National Assembly for Wales'<sup>23</sup>.

## What Service should be Offered?

- 9.9 It is important that people in the area are aware of the service and of what it offers. Advice and information are not defined in the legislation. The housing advice audit report recommended the following definition of housing advice; 'housing advice is the provision of a service or services, which seek to meet the needs of an individual, or group of individuals with a common interest, to secure or maintain a suitable home through the provision of information, advice, representation or advocacy. The service should be free, impartial, confidential, and, where required by the user, free of any conflict of interest, real or perceived. It should be provided to publicly recognised standards of service and quality'.
- 9.10 Authorities should aim to put in place a comprehensive housing advice service, to optimise the prevention of homelessness. To achieve this, services will need to comprise:
- i) advice:
    - setting out a person's possible options or courses of action;
    - about how to obtain information from other sources;
    - help with letters and/or form filling; and
    - referral to another source of help or a specialist service such as a money advice service or law centre; and
  - ii) information:
    - providing written or verbal information and/or explanation;
    - "signposting" to other available resources or services; and
  - (iii) advocacy and representation
    - helping people to challenge and negotiate with other parties.
    - Local authorities should also consider the need for specialist advice for particular disadvantaged groups, such as for ethnic minorities, lesbian and gay people, people fleeing domestic violence, and people with physical disabilities and mental health problems. Authorities should discuss with specialist

organisations in each field the best way of providing access to this advice in the local area.

- 9.11 Some advisory services may wish to provide an advocacy service, for example representing a client in negotiation with a third party such as a private landlord, or mediating on a client's behalf. However, the provision of an advocacy service is discretionary, and is not required by the 1996 Act.

## What Advice and Information?

- 9.12 The precise issues to be covered by an advisory service are for each authority to determine in the light of local housing circumstances, although they must primarily be about homelessness and the prevention of homelessness. However, it is likely, particularly where advice is sought to prevent homelessness, that information and/or advice will be sought on:

- local housing opportunities, including private sector options;
- local authority and RSL housing registers and allocations policies;
- landlords and letting agents;
- housing status, security and rights of occupation;
- harassment and illegal eviction;
- possession proceedings;
- consequences of relationship breakdown, and implications for homelessness;
- domestic abuse;
- income maximisation - welfare benefits, housing benefit;
- rent levels;
- rent guarantee/deposit schemes;
- rent deposits, and how to retrieve them;
- rent and mortgage arrears, and other money or debt issues which could lead to homelessness;
- local authority duties towards homeless households;
- housing conditions, adaptations, grants and repairs;
- leaseholders rights and service charges;
- the needs of particular groups including young single people, BME groups, people with disabilities, women, older people and lesbian, gay and bisexual people;
- supported housing projects; and,



- support services available in the area e.g. related to mental health, drugs, alcohol, tenancy support schemes.

## Standards

- 9.13 Whether providing the service under s.179 of the 1996 Act themselves or securing it from another provider, authorities should ensure that in line with the principles of the Wales Programme for Improvement they consult with local people and ensure that effective monitoring and evaluation procedures are in place, both to monitor the quality and outcome of information and advice (e.g. through quality audits and user surveys) and to evaluate performance against service plans. This means that the advice provided should be clearly recorded. It is important to keep the effectiveness of the service under review, and to measure outcomes and client satisfaction, to ensure that it is meeting the needs of all sections of the community and is providing an approachable and accessible service. The service standard to be achieved is the LSC Quality Mark, which is awarded and monitored by the Legal Service Commission (LSC). In this context housing advice should be available at Specialist Help level, and General Help with Casework in Housing. Shelter Cymru and an increasing number of local authorities and Citizens Advice Bureaux are being granted the LSC Quality Mark. An authority may also want to establish their own monitoring procedures to measure performance.
- 9.14 It is important that people are not sent to and fro between departments/bodies and that they are not referred inappropriately. Liaison between the housing authority, advice providers and (where appropriate) social services, together with (where practicable) formal referral arrangements will ensure that people receive appropriate assistance as quickly as possible.
- 9.15 Standards can only be maintained if advice services are properly resourced. This should include access to updated legal and good practice information, as well as resources for training and for promoting the service.

## Accessibility

- 9.16 Homelessness advisory services should be accessible to people in the area. People need to know that the services are available to **any** person seeking information about homelessness, not only to homeless applicants, and where and to whom they should go for advice. Thus promotion of awareness of the services is particularly important. Authorities should consider appropriate means of promoting and publicising the service and of ensuring that information is widely disseminated, with the aim that, whenever possible, homelessness is prevented. Early and accurate advice can prevent homelessness. Authorities may wish to consider the contribution that information technology and a telephone advisory service can make, particularly in rural areas. Advice services should be available in Welsh to reflect the needs of the particular area. Authorities should ensure that the information provided is accurate, up to date and accessible, for example in a range of relevant languages, and in Braille and/or on tape for people with a visual impairment. The promotion of housing advice services can best be planned in conjunction with CLS Partnership arrangements.
- 9.17 Authorities should also seek to ensure that the premises of housing advice centres or groups providing advice and assistance are accessible to people with physical or sensory disabilities. Where this is not possible, an alternative, accessible venue for the delivery of advice and assistance should be identified, or the offer of a home visit should be

considered although the offer of a home visit will need to be handled sensitively as the client may not always wish to discuss their housing situation in the home environment

# CHAPTER 10: PREVENTING HOMELESSNESS IN SPECIFIC CIRCUMSTANCES

10.1 Chapter 9 sets out the duty of authorities to provide advisory services to prevent homelessness. That is a freestanding duty which must provide for and be available to everyone. Additionally authorities should consider measures that can help prevent people losing their home when they are threatened with homelessness. This Chapter offers guidance on how authorities may address some of the more common causes of homelessness. Although they operate under different tenancy regimes, many approaches to the prevention of homelessness apply equally whether the landlord is the local authority, a registered social landlord, or a private landlord. Local authorities are recommended to work closely with other landlords in their areas to promote good management practices which prevent avoidable homelessness.

## Common Problems by Tenure

### Social housing

10.2 Common elements in good housing management practice for avoiding and tackling tenancy problems include clear information for tenants, access to advice and support services, early intervention when problems occur, and seeking fair and realistic agreements to resolve the problem. Landlords will need to work with other agencies to implement these principles, particularly with vulnerable tenants.

10.3 **Eviction:** It is the view of the Assembly Government that eviction should only be sought as a last resort, particularly by social landlords. Where local authorities and RSLs are seeking to evict, they should have robust procedures for approval and, in the case of introductory tenants, for considering appeals, which should allow for the applicant to make written and oral representations. Local housing authorities should also consider arranging with the local court for a letter or information sheet to be included with summons, providing details on the availability of housing advice. Where children or other vulnerable people are involved, social housing staff should have arrangements for liaison with social services prior to eviction, so that full consideration can be given to all the relevant issues, and that where an eviction is sought the interests of the children or other vulnerable people should be protected.

10.4 **Rent Arrears:** Much good practice advice has already been published on the management of rent arrears. Potential measures include:

- (i) ensuring that prospective tenants are fully aware of the financial commitment they are taking on, and checking that tenants are receiving any housing benefit or other relevant welfare benefits to which they are entitled. Pre-tenancy advice will be particularly important for vulnerable households.
- (ii) monitoring payments, intervening early when payments are missed, and agreeing realistic repayment arrangements;
- (iii) encouraging tenants who get into difficulty to obtain advice, including general debt counselling, money management, budgeting and benefits entitlement advice;
- (iv) using civil proceedings to recover the debt, for example by an Attachment of Earnings Order where a person has regular employment

- (v) working closely with housing benefit services to maximise entitlement and obtain speedy payments, including direct payments where appropriate.
- 10.5 Housing authorities should ensure that tenants are not subject to legal action for recovery of possession or arrears due to delays in housing benefit administration, which are not the fault of the applicant. Efficient housing benefits payments systems may also help increase the confidence of private sector landlords in letting accommodation to tenants who are claiming benefits by ensuring that landlords receive prompt rental payments at appropriate levels.
  - 10.6 Where social landlords are seeking possession for rent arrears, it would be good practice for them to have internal review and appeal mechanisms, which include allowing the tenant to make oral and written representations about their case.
  - 10.7 **Antisocial behaviour:** Tenants may also be at risk of becoming homeless as a result of their own or others antisocial behaviour. Where they are satisfied that a tenant's conduct is a nuisance or an annoyance to their neighbours, or where the tenant has been convicted of using the accommodation or allowing it to be used for immoral or illegal purposes the courts may at the request of the landlord issue a possession order.
  - 10.8 Guidance about recent changes in the law and good practice can be found in the CIH Cymru publication, '*The Law - An adequate response to anti-social behaviour?*'<sup>24</sup>. See also Welsh Office Circular 4/97 Part V of the Housing Act 1996 - *Conduct of Tenants - Introductory Tenancies & Repossession for Secure Tenancies*. Further guidance may be issued following the likely passage of a proposed bill on anti-social behaviour during 2003.
  - 10.9 Local authority tenants may become homeless or threatened with homelessness as a result of other tenants' antisocial behaviour and authorities have powers not only to take action against perpetrators but may also be able to award urgent transfers to protect victims of violence or harassment where this is requested.

### **The private rented sector**

- 10.10 Most tenants of private, non-resident landlords are protected under the Rent or Housing Acts. Where a tenant is threatened with eviction in circumstances in which an order for possession could not or would not normally be granted, the applicant may need to be referred to the housing advisory service for advice on enforcing his/her rights. Chapter 13 gives further advice about the position of tenants who are threatened with possession. Generally, where there is no defence against possession authorities should not adopt blanket policies requiring tenants to fight a possession action where the landlord has a certain prospect of success, such as an action for recovery of property which is let on an assured shorthold tenancy where the fixed term of the tenancy has ended.
- 10.11 However, virtually all possession orders leading to eviction originate in the county court. Liaison with the county court can therefore provide authorities with early confirmation of impending homelessness. Authorities may want to consider whether it is possible to arrange with the local court that a letter or information sheet is included with the summons to private tenants advising them of the assistance which is available from the housing authority and the housing advisory service.
- 10.12 With certain lettings which began after 14 January 1989 where landlord and tenant share accommodation, there is no requirement for a court order and therefore homelessness could occur at any time. Homelessness advisory services must be in a position to advise

people at short notice and liaise with the homelessness department where homelessness may be imminent.

- 10.13 Someone is 'threatened with homelessness' if he or she is likely to become homeless within 28 days (s.175 (4) of the 1996 Act). Authorities are urged to ensure that where the possibility of someone becoming homeless is known to the authority more than 28 days in advance, for example where an extended period of negotiation may be required to resolve a financial problem, advice and assistance should be available to such people wherever possible. An early referral to the homelessness advisory service may help prevent homelessness. Liaison between the homelessness advisory service and homelessness officers will be needed to monitor progress on any preventative action being taken and to alert the authority to the need for any other appropriate action should this not prove successful. Where there is no defence against possession and authorities have reason to believe that the applicant will become homeless authorities should be prepared to act to either help the applicant obtain alternative accommodation or to start processing an application for homelessness assistance. (Chapter 13 gives further advice about an authority's role when someone is 'threatened with homelessness'.) Authorities will also wish to be alert to the possibility that where a tenant is threatened with possession on grounds which are unlikely to result in a possession order being made that this could be a method of harassment. The authority has powers to intervene and take action against the landlord where this is the case.
- 10.14 Potential tenants of private rented sector accommodation can find out whether they can afford a property and how much rent will be covered by housing benefit before they sign a tenancy agreement by obtaining a pre-tenancy determination through the local authority housing benefit Department; the agreement of the prospective landlord is required for such an approach. Pre-tenancy determinations help to ensure that both tenant and landlord have a clear understanding of the position before they make a tenancy commitment.

### **Owner-occupiers**

- 10.15 Owner-occupiers may be threatened with possession by their lender, or may consider yielding possession voluntarily to the lender because of difficulty in maintaining mortgage repayments. Anyone who is falling behind with mortgage payments should be advised to contact their lender and the homelessness advisory service at an early stage, so that action can be taken to forestall possession. Owner-occupiers who are entitled to Income Support or Jobseeker's Allowance may be able to get help with the interest due on their mortgages. However, this assistance (Income Support for Mortgage Interest - ISMI) does not provide help with capital repayments nor is it available immediately. There are waiting periods before benefits applicants are eligible for ISMI which vary depending on the date on which people entered into a mortgage agreement. During this time serious arrears of both interest and capital may build up. Nor will ISMI necessarily cover the whole of an applicant's interest payments as it is paid at a standard rate based on average undiscounted Building Society interest ISMI is further limited to an upper value of £100,000 of outstanding capital. Advice about the details of ISMI is available from local Benefits Agency offices.
- 10.16 Generally speaking because a mortgage lender, whether a bank or building society, owes a duty of trust to its investors or members the mortgage lender will seek to ensure that an outstanding mortgage is repaid in full. However, under the Council of Mortgage Lenders' Mortgage Code (CML), issued in July 1997, lenders should consider cases of financial difficulty and mortgage arrears sympathetically. When considering ways of alleviating arrears problems lenders will consider different strategies, including extending the mortgage term, changing the loan to repayment or interest only, deferring payment or

capitalising interest. Although it is for the lender and borrower in each case to agree how the arrears problem is to be dealt with advisory services may help mortgagees who are in difficulties to independently assess the available options to make the most appropriate decisions in the circumstances. Where owner-occupiers have no obvious defence against possession, authorities should offer early advice and information to help prevent homelessness, this may include developing effective liaison arrangements with the county court to help alert authorities about potential homelessness cases. (Chapter 13 gives further advice about an authority's role when someone is 'threatened with homelessness'.)

- 10.17 In such situations it may be that the intervention of a debt counsellor could help to make the difference between the client retaining or losing their home. Authorities may wish to consider whether the availability of specialist advice would be helpful in their area. If authorities determine that such advice services are needed they may wish to promote and support them whether or not the service is provided directly or through some other agency such as a voluntary or private sector agency. Authorities may also wish to consider developing or operating a mortgage rescue scheme. Although such schemes have not always been successful in the past where they do work they can offer an important method of preventing homelessness among owner-occupiers.

## Groups Most at Risk of Homelessness

### Armed Forces Personnel

- 10.18 The majority of armed services personnel are not home owners, and this combined with the relatively short nature of a service career means that a significant number of ex-services personnel will look to local housing authorities for accommodation on leaving the Armed Forces. Although not all will qualify for assistance as homeless under s.193 of the 1996 Act, authorities will need to offer them advice and information, and need to consider how they may access social housing in the area in which they make an application for housing assistance, even where they may not have a local connection. Welsh Office Circular 59/93 gives further guidance on the housing needs of ex-service people.
- 10.19 The resettlement services of the Ministry of Defence advise service personnel to consider their future accommodation arrangements and where they intend to live well before discharge. In particular the Joint Services Housing Advice Office (JSHAO) at the Ministry of Defence, HQ Land Command, Erskine Barracks, Wilton, Salisbury SP2 0AG, telephone 01722 436 574 or 01722 436 575, fax 01722 436 577 aims to provide information and advice on housing options well in advance of discharge and recommends individuals to liaise with authorities well in advance of discharge, to help prevent homelessness among ex-service personnel and their families. Service households approaching discharge will generally need timely and comprehensive advice on the housing options open to them and where appropriate authorities should co-operate with the services resettlement service, the JSHAO and the Defence Housing Executive (DHE) to ensure that all appropriate advice is available to all service personnel who require it.
- 10.20 The Ministry of Defence recognises that local housing authorities will often require proof that entitlement to occupy service quarters is coming to an end before they will consider an application for homelessness assistance. Authorities should not insist upon a court order for possession in such cases, and should instead accept Certificates of Cessation of Entitlement to Occupy a Service Quarter and of Impending Homelessness produced by the appropriate Area Office of the DHE a model of which is at **Annex 19**. These certificates are usually issued six months before discharge.

- 10.21 People leaving the armed forces who are homeless, and if they are eligible, will be in priority need [S.I. 2001 No. 607 (W.30)]. Authorities should accept homelessness applications up to 28 days before discharge where the service person is threatened with homelessness, and meet their duties under ss.184 and 193 of the 1996 Act.
- 10.22 In the same way as the JSHAO provides information and advice to service personnel and their dependants, the Soldiers, Sailors and Airmen's Families Association Forces Help have a housing information cell co-located with the JSHAO at HQ Land Command, Erskine Barracks, Wilton, Salisbury SP2 0AG (tel. 01722 436 400). This service provides housing information and advice to ex-service personnel and their dependants.

### **People with mental health illness or disability**

- 10.23 Local authority housing services will need to work closely with social services in helping people with mental illnesses or disabilities who are at risk of losing their homes. There are a number of agencies which could assist the local authority in their duty to provide advice and information to people who have mentally health illnesses or disabilities. These agencies include day care providers, voluntary organisations concerned with mental health, e.g. local branches of MIND or the National Schizophrenia Fellowship, and the statutory providers of help, including professional providers such as the individual's key worker. One of the most important elements in preventing homelessness among this vulnerable group is to ensure that the various agencies who may, and should be, involved in providing services and support, work effectively together and take joint responsibility for the client. Where someone with mental illness or disability is threatened with homelessness or becomes homeless, authorities will need to give careful consideration to the applicant's capacity to make informed decisions and understand the consequences of those decisions, when they make determinations about intentionality. Chapter 15 gives guidance on intentionality.

### **Substance misuse**

- 10.24 Substance misuse undermines the ability of people to maintain settled lives and often leads to and exacerbates homelessness. Local authorities will need to liaise with specialist teams within Community Safety Partnerships to ensure that people with substance misuse problems who are homeless or at risk of homelessness are referred to appropriate treatment and support services, and have access to housing which enables work on harm minimisation.

### **Young people (16-25 year olds)**

- 10.25 Advice to help prevent homelessness is particularly relevant for all young people. Both local housing and social services authorities need to work closely together to prevent young care leavers and other very young people such as 16 and 17 year olds, who will be in priority need, from becoming homeless and ensuring they are not at risk. Authorities are strongly urged to work in a holistic way internally and with partners in the statutory and voluntary sectors to address not only the narrow housing needs of care leavers, 16 and 17 year olds and other young people but also any support needs such people may have. In doing so they should pay due regard to young people's views and concerns. Such an approach will help all those young people to make a successful transition to independent living. Independent advocacy and mediation services will have a role to play in helping young people to stay at home where appropriate, or move on to independence. Local multi-agency Children and Young People's Partnerships which are now being established across Wales set the agreed headline strategic aims and priorities for all services for children and young people, including specific plans for young people aged 11-25. These

partnerships provide a useful means of ensuring co-operation across agencies and sectors to achieve shared objectives.

- 10.26 Local authorities have particular duties under the Children Act 1989 to assist care leavers. These duties do not rest solely with social services but are instead a corporate responsibility of the whole authority. In order to meet these duties local authorities are required to keep in touch with care leavers, to offer support and accommodation, help with education, training and employment, and in general to assist their transition to adulthood and independent living. The local authority is required to draw up a pathway plan, with the full participation of the care leaver. Advice and information about housing options and assistance with accommodation where appropriate will play an important role in enabling an effective, realistic and achievable plan to be formulated

### **Those experiencing domestic disputes, violence or harassment**

- 10.27 In some cases, threatened homelessness will arise because of a domestic dispute. Authorities should be ready to take action where household members are at risk from violence or abuse. Where young people under 18 are involved because of a breakdown in the relationship with their parents, or where there is a risk of abuse, the housing authority should alert the social services authority to the case. In other cases, depending on the severity of the dispute, the housing authority may still wish to ask the social services authority for help. In this respect housing authorities should be aware of the duties of their social services and certain other specified authorities under s.20 and s.27 of the Children Act 1989. An approach to the social services authority might also be directed at relieving tension within the household to enable members to continue to live together. Social services may be able to offer counselling and support or to advise on other local services and agencies which might provide specialist help. Housing authorities should ensure that advice and assistance, as well as emergency accommodation where necessary, are available to people who would be threatened with violence or abuse if they were to remain in their current accommodation whilst such approaches were pursued. Authorities should not discourage someone from making a homelessness application even if they have not made use of alternative approaches, such as counselling or the use of injunctions, to try to resolve their situation. Nor should authorities pressure victims of relationship breakdown to withdraw applications for housing assistance in such circumstances.
- 10.28 Where there is threatened or actual domestic violence, applicants will be in priority need. Local authorities should work closely with the police and Women's Aid to ensure that victims have access to the appropriate advice and support services, and enable them to remain in their home where they wish to do so.
- 10.29 Not all relationship breakdowns involve domestic violence. Relationships can still break down irretrievably in the absence of violence or threats of violence, and authorities should not require violence to have occurred to demonstrate breakdown of the relationship. Each case should be treated on its merits and careful consideration given to what information is needed to establish whether there is homelessness as a result of relationship breakdown.
- 10.30 Where someone approaches the authority for housing assistance when threatened with relationship breakdown it may be open to the authority to direct the individual to appropriate advice and information. '*Relationship Breakdown Housing Information Pack*'<sup>25</sup> provides advice to social landlords for dealing with such cases. The guidance encourages early intervention to limit the risks of violence where this is possible for local authorities and other social landlords. In some cases a referral to a counselling agency may help prevent immediate homelessness and give both parties time to make appropriate alternative accommodation arrangements. In some cases it may be appropriate for the



authority to consider offering preventative advice, although relationship breakdown is a sensitive matter for those involved and it would not be appropriate for an authority to insist on such a course of action without the full agreement of both parties.

- 10.31 People suffering or at risk of other forms of violence will also need support to resolve their problems. Social landlords should establish specific procedures and help for people suffering racial harassment, taking account of the guidance in 'Tackling Racial Harassment: Code of Guidance for Public Sector Landlords'<sup>32</sup>. Further detailed guidance on good practice can be found on the Lemos & Crane Race Action Net website ([www.raceactionet.co.uk](http://www.raceactionet.co.uk)).

### **Hospital patients and prisoners**

- 10.32 People risk losing their home during a protracted stay in hospital or prison, if they cannot maintain their rent or mortgage payments. Where the authority has early warning of this, it can aim to ensure that appropriate arrangements are made either to retain or to terminate the tenancy in order to prevent rent arrears building up. It will be essential for the landlord to first contact the key worker in the Prison Service or the hospital social worker before a decision to evict should be taken. Where a head of a household enters hospital or prison, the authority might refer their household to the homelessness advisory service for advice on any benefits to which they may be entitled and how the change in household circumstances affects the household's housing rights. In such circumstances in order to avoid homelessness authorities may want to consider whether they are able to transfer the tenancy to another household member.
- 10.33 Authorities will need to consider the arrangements for preparing people in hospital or prison for discharge, within the context of local homelessness strategies. Whether someone is leaving hospital or prison advice about housing options at an early stage, before discharge, may help to ensure that homelessness does not occur. Close liaison between the housing authority, the advice service and the health or prison authority and probation services should be put in place to ensure that people received appropriate assistance to ensure a planned discharge into appropriate accommodation. People leaving prison who have a local connection will be in priority need if they have no home to go to. Local authorities should accept homelessness applications up to 28 days before discharge, in order to prevent homelessness and a breakdown of the resettlement process. People leaving hospital and who have no home to go to will have a priority need if they are vulnerable by reason of their illness or disability.

### **People affected by redevelopment or otherwise displaced**

- 10.34 Authorities may have to compulsorily displace people to, for example, undertake the redevelopment or improvement of residential accommodation. If suitable alternative accommodation is not otherwise available, the authority will have a duty, under s.39 of the Land Compensation Act 1973, to ensure that people displaced are provided with such accommodation. This duty applies whatever the household's personal situation. Authorities should ensure that advice is available to people in what may be a confusing and upsetting situation. People who are forced to move in such circumstances are likely to be distressed to be losing their homes. Careful consideration should be given to the manner in which such news is imparted and the authority and any other relevant body should aim to ensure that people are kept fully informed, perhaps in the first instance through the offer of public meetings, about their situation and the alternative housing options available. Local authorities should ensure that tenants receive practical help with moving, taking account of 'Involving Residents in Improvements - A Major Works Agreement Compendium'

<sup>26</sup> written by the Chartered Institute of Housing Cymru, TPAS Cymru and the Welsh Tenants Federation.

## Sources of Possible Financial Help

### Social Fund

- 10.35 Interest-free Budgeting Loans are the main form of help with intermittent expenses which arise in the normal course of events but are difficult to meet from Income Support or income-based Jobseeker's Allowance. For those who are unable to get a budgeting loan, a Crisis Loan may be available to prevent serious damage or serious risk to the health or safety of themselves or to a member of their family. However, the Social Fund operates within a budget and consequently many applications will not attract sufficient priority to get a grant or loan. In addition, some applications will fail to meet the eligibility criteria for these payments. Community care grants are also available for some vulnerable people through the Social Fund where they are moving to independent living. These are grants, not loans, which need to be repaid.
- 10.36 Where applicants need financial assistance to enable them to maintain accommodation but are unable to obtain assistance through the Social Fund advisory services may be able to direct them to other sources of funding such as local or national charities.

### Rent Deposit/Guarantee/Bond Schemes

- 10.37 Authorities are also urged to give consideration to supporting or setting up a rent deposit/guarantee/bond scheme in order to help prevent people becoming homeless. The Assembly Government is aware that many local authorities already support rent deposit/guarantee schemes and that where these are available they can play an important part in helping people, particularly those who do not qualify for assistance under the homelessness legislation, secure accommodation in the private rented sector which would otherwise be difficult for them to access. The Assembly Government will be publishing a policy and practice guide on this area during 2003/4.

# CHAPTER 11: ELIGIBILITY FOR HOMELESSNESS ASSISTANCE

## General

- 11.1 Local housing authorities have a statutory duty to assess applications from people who may be homeless and who seek help in obtaining housing, in order to resolve whether any duty to provide assistance is owed to that person. Part 7 of the 1996 Act includes provisions that deny eligibility for housing assistance to certain groups of person from abroad. Housing authorities will therefore need to satisfy themselves that applicants are eligible before providing housing assistance. The provisions on eligibility are complex and housing authorities will need to ensure that they have procedures in place to carry out appropriate checks on housing applicants.
- 11.2 Housing authorities should ensure that staff who are required to screen housing applicants about eligibility for assistance are given training in the complexities of the housing provisions, the housing authority's duties and responsibilities under the race relations legislation and how to deal with applicants in a sensitive manner. Housing authorities may wish to refer to **Annex 5**, which provides model questions that can provide a pathway to determining eligibility.

## Statutory Provisions

- 11.3 The relevant provisions on eligibility are set out below:

### Section 185 of the 1996 Act

- s.185(1) provides that a person is not eligible for housing assistance if he or she is a person from abroad who is ineligible for housing assistance;
- s.185(2) provides that a person who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is not eligible for housing assistance unless he is of a class prescribed by regulations made by the National Assembly for Wales;
- s.185(2A) [Schedule 1, paragraph 7 of the 2002 Act] provides that no person who is excluded from entitlement to housing benefit by s.115 of the Asylum and Immigration Act 1999 shall be included in any class prescribed under subsection (2);
- s.185(3) provides that the National Assembly for Wales may make provision by regulations as to other descriptions of persons who are to be treated as persons from abroad who are ineligible for housing assistance.

### Section 186 of the 1996 Act

- s.186(1) provides that asylum seekers, and dependants of asylum seekers, who are not ineligible under s.185 of the 1996 Act are ineligible for housing assistance, if they have any accommodation available in the UK, however temporary, available for their occupation.

- The Homelessness (Wales) Regulations 2000 (SI 2000 No. 1079 [W.72]) have been made under s.185, a copy of which can be seen in **Annex 7**.

## Persons Subject to Immigration Control

- 11.4 **Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. When going to print of the current version of this Code (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. See the paragraph on asylum seekers and refugees on page ii of the Introduction to this Code for further information.
- 11.5 A person subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is not eligible for housing assistance under Part 7 unless he or she falls within a class of persons prescribed by regulations by the National Assembly for Wales.
- 11.6 A person subject to immigration control within the meaning of the Asylum and Immigration Act 1996 means a person who under the Immigration Act 1971 requires leave to enter or remain in the United Kingdom (whether or not leave has been given).
- 11.7 For the purpose of this guidance, any person who is not a national of a country within the European Economic Area ('the EEA'), which includes the UK, will be a person subject to immigration control. EEA member states are shown at **Annex 12**.
- 11.8 If there is any uncertainty about an applicant's immigration status, housing authorities are recommended to contact the Home Office Immigration and Nationality Directorate, using the procedures set out in **Annex 13**. Before doing so, the applicant should be advised that an inquiry will be made; if at this stage the applicant prefers to withdraw his or her application, no further action will be required.

## Persons Subject to Immigration Control Prescribed as Eligible

- 11.9 Generally persons subject to immigration control are not eligible for housing assistance. However, by the *Homelessness (Wales) Regulations 2000, SI 2000 No. 1079 [W.72]*, the National Assembly for Wales has prescribed the following classes of person subject to immigration control as eligible:
- (i) **a person granted refugee status:** a person is granted refugee status when his request for asylum is accepted;
  - (ii) **a person granted exceptional leave to enter or remain in the UK (ELR) without condition that they should make no recourse to public funds:** this status is granted to persons, including some persons whose claim for asylum has been refused, where there are compelling, humanitarian and/or compassionate circumstances for allowing them to stay. However, where ELR was granted on condition that the applicant should not be a charge on public funds, the applicant will not be eligible for assistance (see also paragraph 11.4 above);
  - (iii) **a person with current leave to enter or remain in the UK with no condition or limitation, and who is habitually resident in the CTA:** such a person will have indefinite leave to enter or remain (ILR) and will be regarded as having settled status. However, where ELR status was granted on an undertaking that a sponsor would be responsible for the applicant's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK - or the date of the

sponsorship undertaking, whichever is the later - for the applicant to be eligible. Where a sponsor died within the first five years, the applicant would be eligible;

- (iv) a person who is a national of a country that has ratified ECSMA or ESC and who is lawfully present\* in the UK and habitually resident in the CTA;
- (v) a person who is a national of a country that has signed ECSMA or ESC and before 3 April 2000 was owed a homeless duty which is still extant, and is lawfully present\* in the UK and habitually resident in the CTA;
- (vi) a person who is on an income-based jobseeker's allowance or in receipt of income support (with certain exceptions\*\*).

\* A person subject to immigration control will not be lawfully present unless they have leave to enter or remain in the UK. Asylum seekers are likely to have temporary admission only, and not have leave to enter or remain.

\*\* The exceptions at (vi) above are those that have only limited leave to remain in the UK or are eligible for benefit because they are temporarily without funds as a result of disruption to remittances from abroad.

- 11.10 **Annex 8** provides guidance on identifying the main categories of person subject to immigration control who fall within the above categories. **Annex 9** sets out the classes of person subject to immigration control who are not eligible for assistance under Part 7.

### Asylum Seekers

- 11.11 Asylum seekers whose claim for asylum was made after 2 April 2000 will not be eligible for assistance under Part 7 of the 1996 Act. Some asylum seekers whose claim for asylum was made before 2 April 2000 may be eligible for assistance under Part 7. **Annex 10** provides guidance on the limited categories of asylum seekers who are eligible (also see paragraph 11.4 above).

### Persons from Abroad who are Not Eligible

- 11.12 Under s.185(3) of the 1996 Act, the National Assembly for Wales may prescribe by regulation other descriptions of persons from abroad who are to be treated as ineligible for homelessness assistance under Part VII. This applies to persons who are not persons subject to immigration control.
- 11.12 The Homelessness (Wales) Regulations 2000 prescribe that, with certain exceptions, a person (other than a person subject to immigration control) who is not habitually resident in the Common Travel Area is ineligible for housing assistance. The Common Travel Area includes the UK, the Republic of Ireland, the Channel Islands and the Isle of Man. The exceptions are:
- (i) an EEA national who is a 'worker' (see **Annex 14**);
  - (ii) an EEA national who has a right to reside in the UK (see **Annex 14**);
  - (iii) a person who is on income-related Jobseeker's Allowance or in receipt of Income Support;
  - (iv) a person who left Montserrat after 1 November 1995 because of the effect of volcanic activity there.

### The Habitual Residence Test

- 11.13 While the majority of the categories eligible for housing require the applicant to be habitually resident in the CTA, most applicants for social housing will not be persons from abroad and there will be reason to apply the test. It is also likely that persons who have been resident in the CTA continuously during the 2 years prior to their housing application will be habitually resident in the CTA. In such cases, therefore, housing authorities may consider it unnecessary to make further enquiries to establish habitual residence, unless there are other circumstances that need to be taken into account. A period of continuous residence in the CTA might include visits abroad e.g. for holidays or to visit relatives. Where 2 years continuous residence in the UK is not established, housing authorities may need to conduct further enquiries to determine whether the applicant is habitually resident in the CTA (see **Annex 14**).
- 11.14 The term 'habitual residence' is intended to convey a degree of permanence in the person's residence in the CTA: it implies an association between the individual and the country and relies substantially on fact. When deciding whether an applicant is habitually resident, housing authorities should take account of the applicant's period of residence and its continuity, his/her employment prospects, his/her reason for coming to the UK, his/her future intentions and his/her centre of interest.
- 11.15 A person cannot claim to be habitually resident in any country unless he/she has taken up residence and lived there for a period. There will be cases where the person concerned is not coming to the UK for the first time, but is resuming a previous period of habitual residence. **Annex 14** provides detailed guidance on the factors that a housing authority should consider in determining whether an applicant is habitually resident in these circumstances. However, the fact that a person has ceased to be habitually resident in another country does not imply habitual residence in the country to which he/she has travelled.
- 11.16 A person who is in stable employment is more likely to be able to establish habitual residence than a person whose employment is, for whatever reason, transitory (for example, an au pair or someone on a fixed, short-term contract). Equally, a person, one of whose apparent aims in coming to the UK is to claim benefits, is less likely to be able to establish habitual residence.
- 11.17 A person who intends to take up permanent work is more likely to be able to establish habitual residence, as is a person who can show that he/she has immediate family or other ties in the UK.

## **Eligibility - lists of related annexes**

- 11.18 **Annex 4** - Classes of applicants eligible for an allocation and homelessness assistance  
**Annex 5** - Eligibility Pathway - Model and Procedures  
**Annex 7** - The Homelessness (Wales) Regulations 2000  
**Annex 8** - How to identify the main classes of persons subject to immigration control who will be eligible for an allocation or homelessness assistance  
**Annex 9** - Persons subject to immigration control who are not eligible for an allocation or homelessness assistance  
**Annex 10** - Asylum Seekers  
**Annex 11** - Referral of Asylum Seekers  
**Annex 12** - European Groupings (EU, EEA, ECSMA, CESC)  
**Annex 13** - How to contact the Home Office's Immigration and Nationality Directorate  
**Annex 14** - Habitual Residence Test

**Annex 15 - Eligibility Pathway Flow Chart**

# CHAPTER 12: APPLICATIONS AND INQUIRIES

## Applications for Assistance

- 12.1 An authority must make the inquiries required under Part 7 of the 1996 Act whenever:
- (i) someone approaches it for housing or help in obtaining housing; and
  - (ii) the authority has reason to believe that he or she may be homeless or threatened with homelessness.
- 12.2 Applications need not be explicitly for assistance under Part 7 or in writing and may be made by any adult member of a household. Authorities will, therefore, need to be proactive in establishing whether an applicant is homeless and have suitable arrangements in place to ensure that all applicants are referred speedily to the department dealing with homelessness.

### Applications to more than one authority

- 12.3 Authorities need to be alert to instances where an applicant has applied as homeless to other local authorities at the same time. Multiple applications are not unlawful. An authority can ask the applicant at the initial interview if he or she has applied to another local housing authority and, if so, contact the other authority or authorities to agree which authority will take the responsibility for carrying out the inquiries. Where another authority has previously decided to refuse assistance, the authority dealing with the current application will want to inquire into the reasons for that refusal, although they may not rely solely on that refusal without conducting their own investigations and reaching their own independent decision.

## Inquiries

- 12.4 As soon as a homelessness application is received and the authority has reason to believe that the applicant may be homeless or threatened with homelessness, it must make inquiries to satisfy itself whether the applicant is eligible for assistance; and what duty, if any, is owed to him or her under Part 7. An authority may also make inquiries to decide whether the applicant has a local connection with the area of another housing authority in Wales, England or Scotland. An authority must then make a decision on the basis of its inquiries. A decision making flowchart on statutory duties to homeless people is contained in **Annex 26**. Authorities should remember that any delegation to officers, committees or others must comply with s.101 of the Local Government Act 1972 (which allows authorities to make arrangements for the discharge of their functions by a committee, sub-committee, an officer or another authority).

### Carrying out inquiries

- 12.5 The obligation to make inquiries rests with the authority; it is not for the applicant to 'prove' his or her case. Clearly the nature and scope of inquiries will vary in individual cases, but authorities will wish to ensure that they are always undertaken quickly, sympathetically and, as far as possible, in confidence, with interviews conducted in private. Authorities also need to be careful to ensure that any inquiries they make are thorough enough to establish the facts. An authority may request another relevant body to



assist in discharging the inquiry duty under s.213 of the 1996 Act (co-operation between relevant housing authorities and bodies): if it does the other body will be under a duty to co-operate in rendering such assistance in the discharge of the function to which the request relates as is reasonable in the circumstances. For example, an authority may request another authority to co-operate in providing information about an earlier refusal by the other authority to assist an applicant. Under s.214 of the 1996 Act an applicant may commit an offence if he or she makes false statements, knowingly withholds information or fails to disclose any change of facts material to his or her case. It would be sensible at this early stage to inform the applicant of this.

- 12.6 Inquiries need to be undertaken carefully and quickly. A long period of uncertainty may be stressful for the applicant, and could incur extra costs for the authority where it is providing interim accommodation. It may be helpful for applicants, especially those who are under stress, to be accompanied during interviews by someone they know and trust. The applicant should always have the opportunity to explain his or her circumstances fully, particularly on matters which may lead to a decision against his or her interests, e.g. intentionality. This may be difficult for applicants for whom English is not their first language and authorities will need to ensure they have free access to competent interpreters for the languages of communities in their areas. People with disabilities, for example hearing or speech disabilities, may also need an intermediary.
- 12.7 Authorities have a duty to secure suitable housing for homeless people who are in priority need, and to provide advice and assistance to other homeless people. These duties can only be met if the applicants' needs are fully assessed. This means that they will conduct broad-based assessments of their needs as part of their inquiries. This obligation dovetails with the duty to assess the housing and support needs of homeless people in general for the purpose of preparing information for the homelessness reviews and strategies, and the need to gather information from homeless people for the Supporting People Operational Plans. Authorities are strongly recommended to adopt integrated systems for carrying out full housing and support needs assessments of all homeless people who meet all the above requirements.
- 12.8 A summarised needs assessment can be used initially to identify the need for referral and more detailed assessment. In addition to current housing circumstances and needs, the assessments should seek to identify:
- any repeat homelessness and causes;
  - benefits/money issues;
  - care and support needs, including relevant issues on health, substance misuse, criminal justice, relationships, life skills, and learning and employment.

Examples of good practice in this area can be obtained from Cardiff County Council, Shelter Cymru and Crisis.

- 12.9 Under s.177 of the 1996 Act any violence from another person or threat of violence which is likely to be carried out will mean that it is not reasonable for the applicant to continue to occupy that accommodation. Inquiries into cases where violence is alleged will need careful handling. It is essential that inquiries do not provoke further violence. It is not advisable for the authority to approach the alleged perpetrator, since this could generate further violence, and may delay assessment. Authorities may, however, wish to seek information from friends and relatives of the applicant, social services, Women's Aid, Race Equality Council and the police, as appropriate. In cases involving domestic violence or the threat of such violence, the applicant may be in considerable distress. Wherever possible, an officer of the same sex as the applicant, preferably trained in dealing with circumstances of this

kind, should conduct the interview. The Assembly Government considers it is not good practice for authorities to require direct evidence of violence in such cases. (See paragraphs 13.23 and 14.52 for further guidance).

- 12.10 Where applicants appear to have care, health or support needs, the authority should liaise with the social services and health authorities, as appropriate, when making their inquiries. An assessment by social services will, for example, be crucial to establish priority need and suitability of accommodation in the case of people who are mentally ill or disabled. Where children are involved, housing staff should be alert to the possibility that children may be “at risk” or “in need” within the definition contained in the Children Act 1989. In these circumstances referrals to social services should be made as described in paragraphs 17.4 and 17.5 Chapter 16 of this Code contains further guidance on the importance of joint working in assessing and meeting an applicant’s particular housing and support needs.

## Interim Duty to Accommodate

- 12.11 As soon as they receive a homelessness application, an authority must assess whether the applicant needs to be offered interim accommodation pending the completion of its inquiries. Section 188 requires that if an authority has reason to believe that an applicant may be:

- (i) eligible for assistance (see Chapter 13);
- (ii) homeless (see Chapter 13); and
- (iii) in priority need (see Chapter 14);

it has an immediate duty to secure that accommodation is available pending the outcome of its inquiries and a decision on any further duty it may owe. The accommodation provided must be suitable to meet the applicant’s needs. The authority should seek to ensure that arrangements are made to provide support where this is needed whilst applicants are housed under the interim duty. It is open to an authority at this stage to consider whether an applicant could be allocated accommodation quickly under Part 6 of the 1996 Act. Applications can be made by any adult member of a household and need not be made to a particular department, nor need they be expressed as specifically seeking assistance under Part 7. If the applicant is eligible to be considered under the allocation scheme, the authority may wish to consider offering him or her a tenancy under Part 6 of the 1996 Act. It should be noted that an applicant’s refusal of an offer of accommodation which the authority considers was suitable and reasonable for him or her to accept will not in these circumstances remove the authority’s obligations to the applicant under Part 7. The cessation of the duty under Part 7 by virtue of s.193(7) of the 1996 Act only applies where an authority has decided that the main housing duty under s.193 is owed.

## Service Provision for Applicants

- 12.12 It is important that the housing staff are trained in the requirements of the 1996 and 2002 Acts, are familiar with this Code, and the authority’s own policies. Staff will need to have good interviewing and interpersonal skills and to be equipped to deal with people who may be distressed, embarrassed, aggressive or confused. Reception staff will have a useful role to play in recognising people who may be homeless or threatened with homelessness and directing them to the appropriate officer(s), but unless they are thoroughly trained they should not be expected to exercise any kind of informal ‘first screening’ of applicants.

Where it becomes apparent at an early stage of the inquiries that the applicant does not have a priority need for accommodation, the authority will nonetheless need to satisfy itself whether a duty to provide advice and assistance is owed under s.192 of the 1996 Act (see Chapter 16 for further guidance on s.192).

- 12.13 When authorities are approached by people who are neither homeless nor threatened with homelessness, but whose circumstances suggest that they are likely to be at risk of becoming homeless, they should be offered advice and assistance to prevent homelessness occurring in accordance with the duty under s.179 of the 1996 Act.
- 12.14 The need for assistance can arise anytime, and the legislation assumes that authorities will operate on this basis. Authorities should therefore provide access at all times during normal office hours, and aim to have arrangements in place for 24 hour emergency cover, e.g. by enabling telephone access to an appropriate duty officer. This need not be the homelessness officer. The police and other relevant services will need to have any emergency phone number.
- 12.15 Authorities are advised to pay considerable attention to ensuring physical and geographical access to the homelessness service. Any office dealing with homeless applicants preferably needs to be easily reached by public transport and to be accessible to people with disabilities and/or young children. Where geographical access is difficult to achieve, an authority may wish, for example, to consider offering a telephone service followed up by a home visit, if appropriate. Confidential interviewing facilities are strongly advised and authorities may wish to consider offering same-sex interviewers, if requested. It is desirable for premises to have lavatories and telephones available for the use of visitors, a children's play area and access to refreshments. Appointments systems for those threatened with homelessness can help relieve the pressure of the application process for both the applicants and authorities' own staff but must not be allowed to delay urgent cases.
- 12.16 Details of the service including the opening hours, address, telephone numbers and the 24-hour emergency contact should be well publicised in plain language and, where appropriate, publicity should also be provided in relevant community languages. The needs of visually impaired people should also be taken into account, for example by the provision of information in Braille or on tape, and special provision may also need to be made for those with hearing impairments.
- 12.17 Authorities should give each applicant a clear and simple explanation of its procedures for handling applications, and of the decisions which are open to the authority as well as the procedures for seeking a review of any decision if the applicant is dissatisfied (see Chapter 21). It is advisable that this is given in writing, perhaps as a leaflet, as well as orally. Authorities will wish to give each applicant a realistic expectation of the housing assistance to which he or she may be entitled.
- 12.18 Authorities should recognise the need to adopt and monitor service standards for provision of homelessness services. These should be available for applicants and include information about statutory rights and appeals procedures, target timescales, the main stages of dealing with enquiries through to reviews, and confidentiality. Target timescales should be set for interviewing people from first point of contact, completion of assessments, and completion of reviews. These standards should be supported by comprehensive procedure manuals, which provide clear guidance on how these standards should be achieved.
- 12.19 **Monitoring:** Monitoring of service standards is extremely important. A system of checks in case files, which can be carried out by senior staff or by someone outside the department,

is good practice. The Audit Commission has identified common failings in the administration of homelessness cases, and how these should be avoided (see Audit Commission Report: *Homelessness - Responding to the New Agenda*<sup>30</sup>). In particular it highlighted the importance of good record keeping, including:

- Ensuring that all enquiries and applications, as well as decisions are recorded;
- Keeping clear file notes of all contacts, including any advice given;
- Record outcomes, including information on temporary and longer term accommodation; and
- Ensure decision letters are always sent to applicants and copies are kept with the files.

12.20 **Procedures:** Procedures should give clear direction on delegated authority for making homelessness decisions and the recording of these decisions. It is good practice for local authority members to set policy and to delegate responsibility for individual homelessness decisions to officers.

12.21 Applicants should be advised that they must report any change in their circumstances between the initial interview and the authority's decision, including any change of address where they can be contacted to be informed about the progress of the application. They should also be warned that it is an offence to make a false statement with the intent of inducing the authority to secure accommodation or other assistance for them (s.214 of the 1996 Act). This needs to be done sensitively so as not to intimidate the applicant, and at the earliest opportunity.

## Target Timescales for Inquiries

12.22 Target setting is consistent with a performance-oriented approach, which providers are being encouraged to adopt across all local authority services in line with the Wales Programme for Improvement (WPI) requirements to make sustained improvements in efficiency and quality of service. In dealing with inquiries, it is suggested that authorities should set their own specific targets for handling cases. An example is given below:

- (i) interview and carry out an initial assessment of the entitlement of the applicant on the day the application is received or on the first working day after that in the case of applications made out of office hours: if the interim duty to accommodate arises, an authority will need to comply with the duty straightaway;
- (ii) complete its inquiries as quickly as possible and within 33 working days, except in cases where exceptional circumstances apply, from the time it accepts a duty to make inquiries under s.184 of the 1996 Act; and
- (iii) issue written decisions to the applicant within three working days of the completion of those inquiries.

12.23 Where target timescales are intended to be maxima, authorities should seek to deal with applications as quickly as possible. Effective monitoring should be able to identify specific problems or delays in dealing with applications. Authorities need to ensure that accurate measures of workloads are in place and aim to maintain a manageable caseload for each staff member taking into account the complexity of cases, the level of investigations carried out, the number of inactive cases etc. Periodic reviews are advisable to ensure that caseloads are reasonable and achievable.

## Notifications

- 12.24 When a housing authority have completed their inquiries under s.184(1) and (2) of the 1996 Act, they must notify the applicant in writing of their decision as to whether he or she is eligible for assistance and whether any duty is owed (and if so, which duty) under Part 7. Where the authority has decided to refer the applicant to another authority, they must also notify the applicant of this.
- 12.25 The notification must be given in writing and must include:
- (i) the reasons for any decision which is against the interest of the applicant e.g. that he or she is not eligible for assistance, is not homeless, is not in priority need or is homeless intentionally (s.184(3));
  - (ii) the reasons for a decision to refer the applicant to another authority (s.184(4));
  - (iii) information about the applicant's right to request a review of the decisions made, and the period within which a request for a review must be made (s.184(5)).
- 12.26 Authorities should also advise applicants about their procedures on the right of review at this stage.
- 12.27 In cases where the notification cannot be sent to the applicant, or where the authority believes that it may not have been received by him or her, the authority should make available at its office a written statement of its decisions, and the reasons for them, to enable the applicant, or someone who represents the applicant, to collect within a reasonable period.
- 12.28 Authorities must notify applicants in writing as soon as decisions are made on their case. The authority will need to ensure the notification explains clearly and fully the reasons for the decisions (where required) and what, if anything, the authority will now do to assist the applicant. It will be particularly important to ensure that the applicant fully understands the nature of any housing duty that is owed. Where possible, the decisions should not only be provided in writing but also explained in person to the applicant particularly where he or she may have difficulty understanding the consequences of the decisions.
- 12.29 In line with WPI requirements, housing authorities should deal with inquiries as quickly as possible, whilst ensuring that they are thorough and, in any particular case, sufficient to enable the housing authority to satisfy themselves what duty, if any, is owed under Part 7. Housing authorities should aim to carry out an initial interview and preliminary assessment on the day the application is received or, where the application is received late in the day or after hours, the next working day. An early assessment will be vital to determine whether the housing authority has an immediate duty to secure accommodation under s.188 of the 1996 Act. Wherever possible, housing authorities should aim to complete their inquiries, and notify the applicant, within 33 working days of accepting the duty to make inquiries under s.184.
- 12.30 Where an authority has decided to discharge the duty by securing accommodation outside their area, s.208 of the 1996 Act requires that they notify the authority in whose area the accommodation is located (for further guidance on the notification procedures, see Chapter 20).

## Withdrawn Applications

- 12.31 Authorities will need to consider procedures for dealing with applications that are withdrawn or where the applicant fails to maintain contact before a decision is made on his or her application. It is good practice for applications to be considered for closure if there has been no contact with the applicant for more than three months. Any further approach from the applicant after this time may need to be considered as a new application. If the applicant contacts the authority again before his or her application is closed the authority will need to consider any change of circumstances since the last contact with the applicant.

# CHAPTER 13: HOMELESS OR THREATENED WITH HOMELESSNESS

## Statutory Position

13.1 Although authorities may adopt broader definitions within the context of local homelessness strategies, the 1996 Act sets out the definition of homelessness for the purpose of the statutory duties in the Act. Section 175 of the 1996 Act provides that a person is homeless if he or she has no accommodation in the UK or elsewhere which is available for his or her occupation. However, this is subject to a number of qualifications. A person is homeless if there is no accommodation:

- (i) available for his or her occupation,
- (ii) which he or she has a legal right to occupy

A person is also homeless if he or she has accommodation but:

- (i) to which he or she can secure entry to it,
- (ii) if it is moveable (such as a caravan), there is no place where he or she is entitled to both place it and reside in it, or
- (iii) which it is not reasonable for him or her to continue to occupy,

and which, if it is moveable (such as a caravan), there is a place where he or she is entitled to place it and reside in it. See below for further guidance on the meanings of 'available for occupation' and 'reasonable to continue to occupy'.

13.2 Under s.175(4), a person is threatened with homelessness if it is likely that he or she will become homeless within 28 days. In practice, most homelessness applicants are likely to be threatened with homelessness, rather than actually homeless, when they apply to an authority for help. Authorities must not wait until homelessness is imminent before providing assistance. Under s.183(1) of the 1996 Act, authorities must assess all applications to determine whether they have reason to believe that the applicant is or may be threatened with homelessness. Since the duty under s.195 of the 1996 Act is to ensure that someone who is threatened with homelessness does not cease to have accommodation available to occupy, authorities may either use their best endeavours to prevent homelessness and help the applicant stay in his present accommodation, or take steps to ensure that the applicant finds suitable alternative accommodation. Further guidance on the prevention of homelessness is provided in Chapter 10.

## Accommodation Available for Occupation

13.3 Section 176 of the 1996 Act provides that accommodation is available for a person to occupy only if it is available for occupation by him or her and any other person who normally resides with him/her as a member of his/her family or who might reasonably be expected to reside with him/her. The first group, *persons who normally reside with the applicant as a member of his or her family* (s.176(a)), will clearly cover all persons who normally live as part of the applicant's household. As well as the applicant's partner, children (including foster children) and any other family members, this might also include a

housekeeper, companion or a carer who lives with an elderly person or someone with a disability or illness. The second group, *persons who might reasonably be expected to reside with the applicant* (s.176(b)), will cover people who might be expected to live with the applicant but who have been unable to do so hitherto, for example, because there was no suitable accommodation available for them. This group might include, for example, partners or a married couple who have not previously been cohabiting. However, it could also include any of the other categories of household member listed above, where the circumstances were such that they had been unable to live as part of the applicant's household prior to the homelessness application.

- 13.4 When dealing with an approach from a parent who is separated authorities will need to decide which members of the family normally reside with him or her. In some cases where parents separate, the Court may make a residence order which will indicate which parent the child lives with. However, in many cases the parents will come to an agreement between themselves as to which of them has care of the child, and a court order will not be made or required. Persons who might be expected to normally reside with the applicant but who are currently unable to do so because there is no accommodation available in which they can live together should be included in the assessment.

## Legal Right to Occupy Accommodation

- 13.5 There are three categories of legal right to occupy accommodation:

- (i) by virtue of an interest (e.g. as a freeholder, lessee or tenant) or a court order (s.175(1)(a) of the 1996 Act);
- (ii) by virtue of an express or implied licence (e.g. as a lodger, as an employee with a service occupancy, or living with relatives) (s.175(1)(b)); or
- (iii) by virtue of any enactment or rule of law either giving an applicant the right to remain in occupation or restricting another person's right to recover possession (e.g. a statutory tenant under the Rent Acts after his or her contractual rights to occupy have expired or been terminated) (s.175(1)(c)).

- 13.6 Someone who has been occupying accommodation as a licensee whose licence has been terminated is homeless because he or she no longer has a legal right to continue to occupy, even if they continue to occupy. This may include, for example:

- (i) people whom friends or relatives have asked to leave,
- (ii) those required to leave hostels or hospitals; or
- (iii) former employees occupying premises under a service occupancy which is dependent upon contracts of employment which have ended.

- 13.7 People who have been occupying accommodation as a tenant and who have received a valid notice to quit or a notice that the landlord intends to begin possession proceedings would have the right to remain in occupation until the date specified in an order for possession granted by the court (except those with resident landlords and certain other tenants who do not benefit from the Protection from Eviction Act 1977). But, in assessing whether an applicant is homeless in cases where he or she is a tenant who has a right to remain in occupation pending a court order, the authority will need to consider whether it would be



reasonable for him or her to continue to occupy the accommodation pending proceedings (see paragraph 13.11 below).

- 13.8 Homeless applicants may include those who are no longer entitled to occupy accommodation because their landlord has defaulted on the mortgage of property of which they are tenants. Where a mortgage lender starts possession proceedings, the County Court Rules require the lender to send written notice of the proceedings to the occupiers of the property. The notice must be given after issue of the possession summons and at least 14 days before the court hearing.

### **Inability to secure entry to accommodation**

- 13.9 Section 175(2)(a) of the 1996 Act provides that a person is homeless if he or she has a legal entitlement to accommodation to which he or she is unable to gain entry. For example:

- (i) those who have been evicted illegally, or
- (ii) those whose accommodation is being occupied illegally by squatters.

Legal remedies may be available to the applicant to regain possession of his or her accommodation, but authorities must treat the applicant as homeless until re-entry is secured.

## **Instances where there may be no Legal Right to Occupy**

### **Accommodation consisting of moveable structures**

- 13.10 Section 175(2)(b) provides that a person is homeless if he or she has accommodation available for his or her occupation which is a moveable structure (e.g. a caravan or houseboat) and there is nowhere that he or she can legally place it and reside in it. However, the concept of residence does not necessarily imply permanence, and a person would not necessarily be homeless if his or her right to place and reside in accommodation at a particular site was for a limited period only. Some gypsies, travellers and other people with an itinerant lifestyle (e.g. travelling show people) may move regularly between authorised sites which allow access for a limited period only.

### **Accommodation which is reasonable for the applicant to continue to occupy**

- 13.11 Section 175(3) provides that a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him or her to continue to occupy. Section 177(1) of the 1996 Act provides that it is not reasonable to continue to occupy accommodation if it is probable that this will lead to domestic or other violence or to threats of violence which are likely to be carried out by any other person (see paragraph 13.16).
- 13.12 In determining whether it is reasonable for a person to continue to occupy accommodation authorities may have regard to the general housing circumstances prevailing in relation to housing in their area (s.177(2)). Under s.177(3), the National Assembly for Wales may specify circumstances in which it is, or is not, to be regarded as reasonable for a person to continue to occupy accommodation. It may also specify other matters to be taken into account or disregarded in determining whether continued occupation would be reasonable.

13.13 There is no simple test of reasonableness; authorities will need to take account of the circumstances of the applicant. It is for the local authority to make a judgement on the facts of each case. One factor that **must** be considered is:

- (i) **affordability:** *The Homelessness (Suitability of Accommodation) Order 1996 (SI 1996 No. 3204)* specifies, among other things, that, in determining whether it would be (or would have been) reasonable for a person to continue to occupy accommodation, an authority must take into account whether the accommodation is affordable for him or her, and in particular must take account of:
  - a) the financial resources available to him or her;
  - b) the costs in respect of the accommodation;
  - c) maintenance payments (in respect of ex-family members); and
  - d) his or her other reasonable living expenses.

Other factors that **may** be relevant are:

- (ii) **physical conditions:** authorities may wish to refer to Parts 9 and 11 of the Housing Act 1985 and consider whether the condition of the property is such as to render it unfit for human habitation or so bad in comparison with other accommodation in the area that it would not be reasonable to expect someone to continue to live there. Authorities may also wish to consider whether the physical characteristics of the accommodation make it unsuitable for the applicant (e.g. those who are elderly or long term disabled people or people with HIV/AIDS);
- (iii) **overcrowding:** authorities may wish to refer to Part 10 the Housing Act 1985. Although statutory overcrowding, by itself, is not sufficient to determine whether it is unreasonable for the applicant to continue to live in accommodation, it can be a key factor which suggests unreasonableness. Overcrowding will need to be considered in relation to general housing conditions in the area;
- (iv) **type of accommodation:** some types of accommodation are intended to provide temporary accommodation in a crisis, for example, women's refuges, direct access or limited stay hostels and night shelters, and it should not be regarded as reasonable for someone to continue to occupy such accommodation in the longer term.

13.14 Where the applicant is a tenant who has been given a valid notice to quit or a notice that the landlord intends to begin proceedings for possession and the tenant would have no defence to such proceedings, the authority will need to assess whether it would be reasonable for the applicant to continue to occupy the accommodation pending the proceedings. (In the case of assured shorthold tenants this will apply where the tenant, has been given a notice that the landlord requires possession of the property and the landlord has made clear his or her intention to begin proceedings for possession if possession is not relinquished voluntarily.) In considering whether the applicant has accommodation available (and therefore whether he/she is homeless or threatened with homelessness), he/she should not be treated as having accommodation unless it would be reasonable for her/him to continue to occupy the accommodation in question. In any given case, it is for the authority to decide whether it is reasonable for the applicant to continue in occupation. In making that decision the authority must consider all relevant factors and

decide the weight that individual matters should attract. As well as the factors set out in s.177 of the 1996 Act, other factors which may be relevant include the general cost to the authority, the position of the tenant, the position of the landlord, the likelihood that the landlord will actually proceed, and the burden on the courts of unnecessary proceedings where there is no defence to a possession claim.

13.15 The Assembly Government considers that where:

- (i) a homeless applicant is an assured shorthold tenant who has received proper notice in accordance with s.21 of the Housing Act 1988,
- (ii) the housing authority are satisfied that the landlord intends to seek possession, and
- (iii) there would be no defence to an application for a possession order,

then it is unlikely to be reasonable for the applicant to continue to occupy the accommodation beyond the date given in the s.21 notice, unless the housing authority are taking steps to persuade the landlord to withdraw the notice.

### **Domestic violence or other violence**

13.16 Section 177(1) provides that it is not reasonable for a person, the applicant, to continue to occupy accommodation if it is probable that this will lead to domestic violence or other violence against:

- (i) the applicant,
- (ii) a person who normally resides with the applicant as a member of the applicant's family, or
- (iii) any other person who might reasonable be expect to reside with the applicant.

13.17 Section 177(1A) provides that violence means violence from another person or threats of violence from another person which are likely to be carried out. Domestic violence is violence from a person, who is associated with the victim, and also includes threats of violence which are likely to be carried out.

13.18 Section 178 of the 1996 Act provides that, for the purposes of defining domestic violence, a person is associated with another if:

- (i) they are, or have been, married to each other;
- (ii) they are, or have been, cohabitants (e.g. a man and woman living together as husband and wife);
- (iii) they live or have lived in the same household;
- (iv) they are relatives, i.e. father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter, brother, sister, uncle, aunt, niece or nephew (whether of the full blood, half blood or by affinity) of that person or of that person's spouse or former spouse. A person is also included if he or she would fall into any of these categories in relation to cohabitants or former cohabitants if they were married to each other;

- (v) they have agreed to marry each other whether or not that agreement has been terminated;
- (vi) in relation to a child, each of them is a parent of the child or has, or has had, parental responsibility for the child (within the meaning of the Children Act 1989). A child is a person under 18 years of age;
- (vii) in the case of a child who has been adopted or freed or placed for adoption
  - (a) one is the natural parent or grandparent of the child; and
  - (b) the other is the child or a person (i) who has become the parent of the child by virtue of an adoption order or who has applied for an adoption order, or (ii) is someone with whom the child has been placed for adoption.

[‘adoption order’ means an adoption order within the meaning of section 72(1) of the Adoption Act 1976 or section 46(1) of the Adoption and Children Act 2002]

- 13.19 Domestic violence (or threat of violence) is not confined to instances within the home but extends to violence outside the home from a person with whom the applicant or a member of his or her household is associated. The fact that violence has not yet occurred does not, on its own, mean that it is not likely to occur. When considering cases involving domestic violence, housing authorities will need to make inquiries but should not necessarily expect evidence of violence as such from the applicant. An assessment of the likelihood of a threat of violence being carried out should not be based solely on whether there has been actual violence in the past.
- 13.20 All other forms of violence and threats of violence likely to be carried out towards the applicant or members of his or her household will need to be taken into account when considering whether it would be reasonable for him or her to continue to occupy accommodation. Authorities will need to liaise with local race equality councils and the Assembly Government to ensure that they have appropriate arrangements for responding to racial harassment or violence.
- 13.21 When dealing with cases involving violence, or threat of violence, from outside the home, housing authorities should consider the option of improving the security of the applicant’s home to enable him or her to continue to live there safely, where that is an option that the applicant wishes to pursue. In some cases, immediate action to improve security within the victim’s home may prevent homelessness.
- 13.22 A fast response combined with support from the housing authority, police and the voluntary sector may provide a victim with the confidence to remain in their home. When dealing with domestic violence within the home, housing authorities should consider the scope for evicting the perpetrator and allowing the victim to remain in their home. However, where there would be a probability of violence if the applicant continued to occupy his or her present accommodation, the housing authority must treat the applicant as homeless and should not expect him or her to return to the accommodation.
- 13.23 The Assembly Government considers it is not good practice for authorities to require direct evidence violence (see paragraphs 12.9 and 14.52 for further information). They should normally rely upon information provided by the applicant. In domestic violence cases, the authority must apply the probability test in section 177(1) of the 1996 Act and cannot take

other matters into account (*Bond v Leicester City Council* [Court of Appeal, 23 October 2001]. 'Probable' was defined as meaning 'more likely than not'.

- 13.24 The fact that violence has not yet occurred does not, on its own, suggest that it is not likely to occur. Injunctions ordering a person not to molest, or enter the home of, an applicant will not necessarily deter that person, and applicants should not be expected to return home where an injunction may not be effective. In such cases, authorities should continue to assess the homelessness application. Moreover, injunctions are usually temporary and cannot always be renewed. Authorities may inform applicants of the option of seeking an injunction, but should make clear that there is no obligation to do so. Where applicants wish to pursue this option, it is advisable that they obtain independent advice as an injunction may be ill advised in some circumstances.
- 13.25 A refuge may be suitable as emergency accommodation for some victims of violence, although this should not be a precondition for being accepted as homeless. However, each case should be considered on its own merits as to whether this is the right accommodation for the applicant. Also applicants should not be required to remain in the refuge for a minimum period of time before an application for rehousing will be considered.

# CHAPTER 14: PRIORITY NEED

## Priority Need Categories

- 14.1 The main homelessness duties in s.193 and s.195 of the 1996 Act apply only to applicants who have a priority need for accommodation. Section.189(1) of the 1996 Act provides that the following categories of applicant have a priority need:
- (i) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
  - (ii) a person with whom dependent children reside or might reasonably be expected to reside;
  - (iii) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
  - (iv) a person who is homeless, or threatened with homelessness, as a result of an emergency such as flood, fire or other disaster.
- 14.2 The National Assembly for Wales has power to add to these categories (s.189(2)) and has exercised this in making the Homeless Persons (Priority Need) (Wales) Order 2001 (“the Priority Need Order”). The Priority Need Order extends the descriptions of persons as having priority need so that they now also include:
- (i) A care leaver or person at particular risk of sexual or financial exploitation, 18 years or over but under the age of 21;
  - (ii) A 16 or 17 year old;
  - (iii) A person fleeing domestic violence or threatened domestic violence;
  - (iv) A person homeless after leaving the armed forces;
  - (v) A former prisoner homeless after being released from custody.

The Welsh Assembly Government considers that local authorities should treat people who reside with or would normally be expected to reside with the categories in the Priority Need Order as if they were in priority need.

- 14.3 The housing duties of authorities as defined by sections 190(2) (Duties to persons becoming homeless intentionally), 193 (Duties to persons with priority need who are not homeless intentionally) and 195 (Duties in cases of threatened homelessness) of the 1996 Act will now apply to the aforementioned categories of persons.

### Enquiries about priority need

- 14.4 Enquiries as to whether an applicant has a priority need must be carried out in all cases where the housing authority have reason to believe that an applicant may be homeless or threatened with homelessness (s.184 of the 1996 Act). Moreover, where the housing authority has reason to believe that the applicant is homeless, eligible for assistance and in

priority need, they will have an immediate duty to secure suitable accommodation, pending a decision on the case (see Chapter 16).

### **Decision changes on priority need**

- 14.5 Once a housing authority has notified an applicant that he or she has a priority need and has been accepted as owed the main homelessness duty (s.193) they cannot - unless the decision is subject to a request for a review - change their decision if the applicant subsequently ceases to have a priority need, (e.g. because a dependent child leaves home or reaches 18). Any change of circumstance prior to the decision on the homelessness application should be taken into account. However, once all the relevant enquiries are completed, the housing authority should not defer making a decision on the case in anticipation of a possible change of circumstance. (See Chapter 21 for guidance on reviews.)

## **Dependent Children**

- 14.6 Priority need arises when an applicant has one or more dependent children living with him or her or who might reasonably be expected to do so. The 1996 Act does not define dependent children, but authorities may wish to treat as dependant all children under 16, and all children aged 16-18 who are in, or are about to begin, full-time education or training or who for other reasons are unable to support themselves and who live at home. Children over the age of 16 who are financially independent of their parents would not normally be considered to be dependants, although they could be if they were dependent on them in other ways: some children in this position may not be ready to live independently of their parents. Dependent children need not necessarily be the applicant's own children but could be, for example, related to the applicant or his or her partner or adopted or fostered by the applicant. There must, however, be some form of parent/child relationship. The child must be actually resident (or have a reasonable expectation of residence) with some degree of permanence or regularity, rather than a temporary arrangement for a limited period.
- 14.7 Authorities may receive homelessness applications from a parent who is separated. In some cases where the parents of a child separate, the Court may make a residence order, which will indicate which parent the child lives with. In such cases, the parent named in the order may be considered to have care of the child, and the child may be considered to be dependent on that parent. However, in many cases the parents will come to an agreement between themselves as to which of them has care of the child, and a court order will not be made or required. In these cases, to satisfy itself whether the child is dependent on the parent making the homelessness application, the authority will need to consider all the circumstances, taking into account the arrangements made between the parents themselves. A child may be dependent on an applicant even though he or she does not live with him or her at all times but divides his or her time between parents or others. And there may be cases where the child does not reside with the applicant for want of suitable accommodation. Authorities need to take care that each case is fully assessed on its individual circumstances.
- 14.8 Where the applicant's children are being looked after by a local authority, i.e. are subject to a care order or are accommodated under a voluntary agreement, and are not currently living at home, liaison with the social services department will be essential in determining the nature and degree of the children's dependency, particularly since local authorities are required to take steps to settle the children back with their family and to encourage contact between them (unless either of these things would be contrary to the children's'

best interests). A joint approach with the social services department will be necessary to ensure that the best interests of the applicant and the children are served.

## Pregnant Women

- 14.9 A pregnant woman, together with anyone who she lives with (or who she might reasonably be expected to live with) has a priority need for accommodation. Authorities are reminded that this is regardless of the length of time she has been pregnant. The normal letter of confirmation of pregnancy from the medical services issued to pregnant women or a midwife's letter should be adequate evidence of pregnancy. If a pregnant woman suffers a miscarriage or terminates her pregnancy during the assessment process the authority may need to consider whether she continues to have a priority need (e.g. on the basis that she is vulnerable for an other special reason, see below). Once an authority has accepted that an applicant has a priority need, and that a homelessness duty is owed, it cannot reverse its decision if the applicant subsequently ceases to have a priority need. However, authorities should not defer making decisions on applications once all the relevant enquiries are completed.

## Vulnerable

- 14.10 A person has a priority need for accommodation if he or she is vulnerable as a result of:
- (i) old age;
  - (ii) mental illness or handicap;
  - (iii) physical disability; or
  - (iv) other special reason.
- 14.11 The critical test is whether the applicant is less able to fend for him or herself when homeless or in finding and keeping accommodation, so that he or she would suffer injury or detriment, in circumstances where a less vulnerable person would be able to cope without harmful effects. Authorities should apply the test for vulnerability as found in *R v Camden LBC exp Pereira* (1999) 31 HLR 317 CA, as to whether a person would, if homeless, suffer greater injury or detriment than an average homeless person. People who live or might reasonably be expected to live with a vulnerable person also have a priority need for accommodation.
- 14.12 **Old age:** while age alone may not necessarily be sufficient for the applicant to be deemed vulnerable, the authority should consider whether it is a factor which makes the applicant less able to fend for him or herself. Applications from people aged over 60 need to be considered carefully, particularly where the applicant is leaving tied accommodation and authorities should normally consider applicants over 60 to be vulnerable. Authorities should not use 60 as a fixed age below which it is ruled out, particularly if they applicant is a rough sleeper; each case will need to be considered on its individual circumstances.
- 14.13 **Mental illness, learning or physical disability:** authorities should have regard to any medical advice or social services advice obtained, but the final decision on the question of vulnerability will rest with the housing authority. Factors which an authority will need to consider include:



- (i) the nature and extent of the illness or disability which may render the applicant vulnerable; and
- (ii) the relationship between the illness or disability and the individual's housing difficulties.

Information about an applicant's illness or disability should be treated in strict confidence.

- 14.14 Health authorities have an express duty (advice contained in Department of Health circulars HC (90)23, LASSL (90)11, HSG (94)27 and LASSL (94)4) to implement a specifically tailored care programme for all patients considered for discharge from psychiatric hospitals and all new patients accepted by the specialist psychiatric services. People discharged from psychiatric hospitals and local authority hostels for those with mental health problems are likely to be vulnerable. Effective liaison between housing, social services and health authorities will assist in such cases but authorities also need to be sensitive to direct approaches from discharged patients who are homeless.
- 14.15 Physical disability or chronic illness, such as those defined by the Disability Discrimination Act 1996, which impinge on the applicant's housing situation and give rise to vulnerability may be readily ascertainable, but advice from health or social services staff should be sought, if necessary.

## Other Special Reason

- 14.16 Section 189(1)(c) of the 1996 Act provides that a person has a priority need for accommodation if he or she is vulnerable for an "other special reason". Other special reasons for vulnerability are not restricted to the physical or mental characteristics of a person. They may include a combination of circumstances which render the person less able than others to fend for him or herself in finding and keeping accommodation. Where applicants have a real need for support but have no family or friends on whom they can depend they may be vulnerable for a special reason.
- 14.17 Authorities must keep an open mind and should avoid blanket policies which assume that particular groups of applicants will, or will not, be vulnerable for a special reason. Where an authority consider that an applicant may be vulnerable for a special reason it will be important to make an in-depth assessment of the circumstances of the case; significant factors in determining vulnerability may only emerge over a period of time and once a rapport has been established with the applicant. Every application must be considered on the basis of the individual circumstances of the applicant. Further guidance on certain groups of applicants who may be vulnerable for a special reason is given below.
- 14.18 **Chronically sick people, including people with AIDS and HIV related illnesses:** people in this group may be vulnerable not only because their illness has progressed to the point of physical or mental disability (when they would anyway be vulnerable and in priority need under the 1996 Act) but because the manifestations or effects of their illness, or common attitudes to it, make it very difficult for them to find stable or suitable accommodation. Whilst this may be particularly true of people with Aids, it could also apply in the case of people infected with HIV without having any overt signs or symptoms, if the nature of their infection is known.
- 14.19 **Young people:** applicants aged 16 and 17, and those 18-20 who are at risk of financial or sexual exploitation, will be in priority need. Where other young people apply for assistance under the homelessness legislation, housing authorities have a duty to consider the application, and whether the applicant is vulnerable (and therefore has a priority need) as

a result of his or her age and circumstances. Most young people can expect a degree of support from families, friends or an institution (e.g. a college or university) with the practicalities and costs of finding, establishing, and managing a home for the first time. But some young people, particularly those who are forced to leave the parental home, may lack this back-up network and be less able than others to establish a home for themselves.

- 14.20 Information about provision and rights needs to be made readily available to young people in a form which they can understand, and access to appropriate support and guidance. Working effectively with young people requires input of specialist skills, which may be achieved through joint working via the Young Peoples Partnerships.
- 14.21 Where accommodation is secured for a young person under the homelessness legislation consideration should be given to any ongoing support and assistance that may be required from social services or voluntary organisations to ensure that homelessness does not recur.
- 14.22 **Victims of violence, abuse or harassment:** persons of either sex and of any age may be subject to violence or abuse. Victims of domestic violence will be in priority need. Authorities should consider whether other applicants are vulnerable as a result of having suffered violence or abuse from persons with whom they are associated; and whether such people would be at risk of further violence or abuse if they returned to live at their former home. Authorities should also consider whether applicants who have suffered, or who are at risk of, harassment or violence on account of their gender, race, colour, ethnic or national origin, religion or sexual orientation are vulnerable. Those who are vulnerable in this way will have a priority need for accommodation.
- 14.23 **Rough Sleepers:** People who are sleeping rough are likely to be vulnerable for an 'other special reason' due to the health and social implications of their situation. Appropriate assessment and provision of housing and support needs would need to be available to people in this situation.
- 14.24 **People with multiple needs:** Many people who have been homeless long term have multiple needs, often including mental health and substance misuse problems. Someone may be vulnerable not from a single need but from a combination of needs. Statutory and voluntary services should be co-ordinated to identify and address multiple needs in a joined-up and flexible way.
- 14.25 **Homeless as a result of an emergency:** An applicant has a priority need if he or she is homeless or threatened with homelessness as a result of an emergency such as fire, flood or other disaster. A person has a priority need by reason of such an emergency whether or not he or she has dependent children or is vulnerable for one of the other reasons described above. The volcanic eruptions on the island of Montserrat were treated as such a disaster; as a result all evacuees arriving in this country, including single people, were treated as having a priority need for accommodation.

## **The Homeless Persons (Priority Need) (Wales) Order 2001**

- 14.26 The Priority Need Order extends the descriptions of persons as having priority need so that they now also include the groups described below.

### **Care Leavers or 18 - 20 Year Olds at Risk of Sexual or Financial Exploitation**

- 14.27 (i) Priority need arises when an applicant is over 18 but under 21 and **at any time** whilst still a child;
- (ii) was looked after by a local authority; or
- (iii) was accommodated by or on behalf of a voluntary organisation; or
- (iv) was accommodated in a private children's home; or
- (v) was accommodated for a three month consecutive period by any health authority,
- (vi) special health authority, local education authority, any residential home, nursing home or mental home or in any accommodation provided by a National Health Service Trust; or
- (vii) was privately fostered.
- 14.28 Authorities should be aware that a young person is in priority need for the purpose of the Act if he or she has spent any time, **however short**, during their childhood in care.
- 14.29 Young people who have been in care, or are leaving care, are highly vulnerable and are too often placed in unsuitable housing with no support and little prospect for independent living. This Order makes specific provision for care leavers under the age of 21, but authorities should continue to give careful consideration to homelessness applications from care leavers who are 21 and over who are likely to be vulnerable as a result of being in care and not having a network of family to fall back on for housing support.
- 14.30 It is particularly important that authorities make arrangements for joint assessments between social service departments and housing authorities in respect of care leavers and other vulnerable young people. Any consideration of housing needs should take account of the young persons need for support, education, employment training and health care. It should also take account of the suitability of property offered to young people in this category, and to the location of that property. Local housing departments and social services departments should have joint protocols in place for dealing with care leavers, which are effective in ensuring that both departments play a full role in providing support to this client group.
- 14.31 Under the provisions of the Children Act 1989, as amended by the Children (Leaving Care) Act 2000, from 1<sup>st</sup> October 2001 the responsibility of local authorities for dealing with care leavers extends to the age of 21, and in the case of those in continuing further education, up to 24. Authorities are reminded that under s.23B of the Children Act, they are required (in the circumstances prescribed) to assist in meeting the accommodation needs of care leavers, whether or not they fall within the provisions of the Order.
- 14.32 In meeting their housing responsibilities toward care leavers, authorities will need to take careful account of the statutory guidance issued by the National Assembly for Wales on the Children (Leaving Care) Act 2000 (see reference **28** of bibliography).
- 14.33 Priority need also arises when a young person 18 or over but under the age of 21 is deemed to be at particular risk of sexual or financial exploitation. This could include a person who is:-
- (i) at risk of sexual abuse; or

- (ii) at risk due to their sexual orientation; or
- (iii) at risk of prostitution; or
- (iv) suffering from a learning disability; or
- (v) at risk of misuse of power or exercise of control by another person; or
- (vi) at risk of financial extortion; or
- (vii) on a low income and is vulnerable due to a lack of alternative financial means ('low income') should not be regarded as someone whose income is below a threshold, but someone whose income falls substantially below their needs). It would therefore be a matter of judgement in each individual case based on the applicant's personal circumstances, but for the purposes of this clause does not include a student who is in further education).

14.34 Authorities should consider whether the young person (considered to be in priority need under this category) is vulnerable as a result of having suffered such exploitation from persons with whom they are associated or reside. Authorities should also consider, where relevant, whether young persons would be at risk of further exploitation if they returned to live at their former home.

14.35 Where young persons have a history of being sexually or financially exploited, they should normally be regarded as vulnerable and in priority need, unless there is strong evidence that they are no longer at risk. The Assembly Government considers it is not good practice for authorities to always expect evidence of sexual or financial exploitation. Care leavers under the age of 18 are included in the wider category of 16 or 17 year olds below.

### **A 16 or 17 Year Old**

14.36 Authorities must now treat 16 or 17 year olds as being in priority need.

14.37 Most young people can expect a degree of support from their families and friends but some young people are forced to leave the parental home, or cannot remain there. This group lacks the normal back up network and due to their age and low income will be less able to establish a home.

14.38 The Assembly Government considers homeless 16 or 17 year olds as particularly vulnerable and at risk due to their age and circumstances, it is vital that local authorities have joint working arrangements between housing and social services functions to ensure the proper assessment and resettlement of vulnerable young homeless people.

14.39 Authorities should take account of the young person's vulnerability, and should not assume that they have made themselves homeless just because there was a breakdown in the family relationship, or that uncorroborated claims by the parents are true.

14.40 Authorities should not allow complications in granting appropriate occupancy rights to persons aged under 18 to inhibit them from offering accommodation. See **Annex 25** for guidance on occupancy agreements for 16 and 17 year olds.

### **A Person Fleeing from or Threatened with Domestic Violence**

14.41 Priority need now arises where a person, without dependant children:-

- (i) has been the subject of domestic violence; or
  - (ii) is at risk of such violence; or
  - (iii) if he or she returns home is at risk of domestic violence.
- 14.42 Section 177(1) of the 1996 Act also provides that domestic violence in respect of a homeless application means violence from a person with whom he or she is associated, or threats of violence from such a person that are likely to be carried out. Section 178 of the Act sets out the meaning of a person being 'associated' with another.
- 14.43 Authorities should be aware that domestic violence can take a number of forms, such as physical assault, sexual abuse, rape threats, intimidation, psychological and emotional abuse. Domestic violence can occur in same gender as well as mixed gender relationships.
- 14.44 The violence or threat of violence is not confined to instances within the home but extends to violence outside the home from a person with whom the applicant, or a member of his or her household, is associated.
- 14.45 Authorities should not base their assessment of a likely threat of violence solely on the basis of actual evidence in the past.
- 14.46 Authorities should make the appropriate inquiries sympathetically, carefully and quickly as the applicant may be in considerable distress. Inquiries should be made, wherever possible, by an officer of the same sex as the applicant and who has been trained in dealing with cases of domestic violence.
- 14.47 Authorities are advised not to approach the alleged perpetrator since this could delay assessment and could generate further incidents of violence.
- 14.48 Authorities should ensure that advice and assistance, as well as emergency accommodation where appropriate, is available to a person threatened with violence or abuse.
- 14.49 In assessing whether a person is homeless or threatened with homelessness, authorities should consider whether it is reasonable for a person to continue to occupy accommodation if he or she (or a person who normally resides with them) will, as a result, be subject to violence or the threat of violence.
- 14.50 In a study commissioned by the Centre for Housing Policy, University of York, 1999, it was found that 63% of homeless women state domestic violence as the reason for their homelessness.
- 14.51 Authorities must acknowledge the need for a person to move between local authority areas to escape violence, and are reminded that under the provisions of Section 198(2)(c) of the Act, they must not refer any applicant to another authority where the person would run a risk of domestic violence in that area.
- 14.52 The Assembly Government considers it is not good practice for authorities to require direct evidence of violence (see paragraphs 12.9 and 13.23 for further information). The fact that violence has not yet occurred does not, on its own, suggest that it is not likely to occur - a genuine risk of violence can be sufficient. Authorities should normally rely upon information provided by the applicant. In domestic violence cases, the authority must apply the probability test in section 177(1) of the 1996 Act and cannot take other matters into

account (*Bond v Leicester City Council* [Court of Appeal, 23 October 2001]. 'Probable' was defined as meaning 'more likely than not'.

### **Armed Forces Personnel**

- 14.53 Priority need arises where a person formerly serving in the regular Armed Forces of the Crown as been homeless since leaving those forces.
- 14.54 Persons included in this definition mean the Royal Navy, the regular forces as defined by s.225 of the Army Act 1955, the regular Air Force as defined by s. 223 of the Air Forces act 1955 and Queen Alexandra's Royal Naval Nursing Service.
- 14.55 As the majority of armed forces personnel are not homeowners, a significant number of service personnel will present as homeless on leaving the armed forces. Authorities should accept Certificates of Cessation of Entitlement to occupy a Service Quarter and of Impending Homelessness produced by the appropriate Area Office of the Defence Housing Executive as sufficient evidence - these certificates are usually issued six months before discharge.
- 14.56 Authorities should recognise that priority need arises where the applicant has failed to secure suitable permanent accommodation and has therefore been unable to establish stable accommodation since leaving the armed forces. 'Suitable permanent accommodation' is defined for the purposes of this clause as being accommodation provided by a social landlord (either an introductory, a secure or an assured tenancy), a private landlord (assured shorthold tenancy only), or an accredited supported housing provider, or permanently settled with family or friends as part of their household. No time limit should be placed on eligibility following discharge, if no suitable permanent accommodation has been found in the interim.
- 14.57 Authorities are reminded that sections 198 and 199 of the 1996 Act apply to the Order. 'Local connection' by employment in a district, does not arise simply because the individual has served in the Armed Forces there (s.199(2)). The Order does not require a person who is leaving the Armed Forces to have a local connection to be in priority need. If there is no local connection to another area, an application may be referred, if all the conditions are met. Otherwise the authority will retain the duty to secure accommodation.

### **Former Prisoners**

- 14.58 Priority need arises where the applicant is a former prisoner who has been homeless since leaving custody **and** who can establish a local connection with the area of the local housing authority.
- 14.59 **Local connection** is defined by s. 199 of the 1996 Act as a connection which the applicant has with any area because:-
- (i) he or she is, or was in the past, normally resident there and that residence was of his or her own choice; or
  - (ii) he or she is employed there; or
  - (iii) of family associations; or
  - (iv) of any special circumstances (e.g. the need to be near special medical or support services which are available only in a particular area).

- 14.60 In assessing whether an applicant's household has a local connection with their area, an authority should also consider whether any person who might reasonably be expected to live with the applicant has such a connection.
- 14.61 Residence in prison does not in itself establish a local connection with an area. However, any period of residence in accommodation prior to imprisonment may give rise to a local connection.
- 14.62 For the purposes of this article a **prisoner** means a person who has been detained in lawful custody as the result of a requirement imposed by a court. **Lawful custody** means any period whereby a person has been held on remand, in a young offenders institution or in a prison, whether as a result of a conviction or not.
- 14.63 Authorities should recognise that priority need arises where the applicant has failed to secure suitable permanent accommodation and has therefore been unable to establish stable accommodation since leaving prison. '**Stable accommodation**' is defined for the purposes of this clause as being accommodation provided by a social landlord (either an introductory, a secure or an assured tenancy), a private landlord (assured shorthold tenancy only), or an accredited supported housing provider. Authorities are reminded that a timescale should not be applied as each case should be considered on its merits.
- 14.64 The Assembly Government considers that the actions that caused the person to be imprisoned, except in the circumstances set out below, should not be considered as grounds for regarding him or her as intentionally homeless. Such an approach would doubly penalise the offender and undermine the purpose of the Order, which is to assist the resettlement of ex-offenders. However, if the offence which resulted in the prison sentence was a direct breach of the tenancy agreement, which led to repossession of the property, then it would be legitimate to consider whether that person was homeless intentionally or not.
- 14.65 Authorities are reminded that the Order does not change the law in respect of who is intentionally homeless - a person could be in priority need but still intentionally homeless (s.192 of the 1996 Act). It would only be legitimate to consider a person intentionally homeless if they had made themselves homeless by deliberate act or omission (ss.191 and 196 of the 1996 Act). Authorities should consider a person's 'vulnerability' when making a decision on intentionality and should have regard to the definition of 'vulnerability' referred to in Chapter 14. This should include where a person has a mental illness or some other vulnerability. Authorities would be advised to seek advice from their Legal Departments on individual cases.
- 14.66 In exercising their responsibilities toward ex-offenders who may pose a danger to the public, authorities should take full account of advice from other statutory services, particularly the police and probation services. Authorities are encouraged to promote multi-agency arrangements for the risk assessment and management of dangerous persons, particularly sex offenders, which can co-ordinate advice on appropriate housing. See paragraphs 4.90 - 4.92 for further guidance.

# CHAPTER 15: INTENTIONAL HOMELESSNESS

## Dealing with Cases on an Individual Basis

- 15.1 Decisions about intentional homelessness, or threatened homelessness, in any particular case must be based on the investigations carried out in that case. Housing authorities must not adopt general policies which seek to pre-define circumstances that do or do not amount to intentional homelessness or threatened homelessness (for example, intentional homelessness should not be assumed in cases where an application is made following a period in custody). In each case, housing authorities must form a view in the light of all their inquiries about that particular case. Where the original incident of homelessness occurred some years earlier and the facts are unclear, it may not be possible for the housing authority to satisfy themselves that the applicant became homeless intentionally. In such cases, the applicant should be considered to be unintentionally homeless.

## Meaning of Intentional Homelessness

- 15.2 The 1996 Act sets out three ways in which a person can become homeless or threatened with homelessness intentionally. The first of these (s.191(1) and (2) and s.196(1) and (2)) has three component parts:
- (i) the applicant must **deliberately** have done, or failed to do something, in consequence of which he or she has ceased, or the likely result will be that he or she will have to cease, occupation of accommodation which was, or is available, and
  - (ii) it would have been reasonable for the applicant to have continued to occupy accommodation, and
  - (iii) the applicant must have been aware of all the facts before deliberately taking, or failing to take, the actions referred to in a) - an act or omission in good faith on the part of someone unaware of any relevant facts is not to be regarded as **deliberate**.
- 15.3 Sections 191(3) and 196(3) provide that a person must be treated as homeless, or threatened with homelessness, intentionally if:
- (i) the person enters into an arrangement under which he or she is required to cease to occupy accommodation which it would have been reasonable for the person to continue to occupy,
  - (ii) the purpose of the arrangement is to enable the person to become entitled to assistance under Part 7, and
  - (iii) there is no other good reason why the person is homeless or threatened with homelessness.

## Who is Intentionally Homeless?

- 15.4 When assessing intentionality, authorities will need to ascertain the real cause of the present homelessness; this may involve consideration of accommodation occupied prior to



the most recent period of occupation of accommodation, which may have been available for only a limited period of time.

15.5 The act or omission referred to in paragraph 15.2 must have been **deliberate**. The local authority must satisfy themselves that any actions or omissions were deliberate; applicants should always be given an opportunity to explain an act or omission. Generally the following may not be considered deliberate:

- (i) where the authority has reason to believe the applicant is incapable of managing his or her affairs, for example on account of old age, or illness or disability.
- (ii) where particular acts or omissions were the result of limited mental capacity or the result of temporary aberrations caused by mental illness or frailty. Social services may be of help in making this assessment.

15.6 Other circumstances in which the applicants actions may not amount to intentional homelessness include:

- (i) where imprudence or lack of foresight on the part of an applicant led to homelessness, but the applicant's act or omission was in good faith;
- (ii) where an applicant has lost his or her home, or was obliged to sell it because he or she got into rent or mortgage arrears because of real financial difficulties (for example because he or she became unemployed or ill or suffered greatly reduced earnings or family breakdown), and genuinely could not keep up the rent payments or loan repayments even after claiming benefits, and for whom no further financial help was available. In the case of mortgagors, authorities need to look at the applicant's ability to pay the mortgage commitment when it was taken on, given his or her financial circumstances at the time;
- (iii) where an applicant has fled his or her home because of domestic violence, intimidation or harassment, or threats of such, and the applicant has failed to pursue all legal remedies against the perpetrator because of a well-grounded fear of reprisal;
- (iv) where an applicant has just served a prison sentence due to offences which in themselves were not breaches of the tenancy.

15.7 Acts or omissions which may be regarded as deliberate include the following examples:

- (i) where someone chooses to sell his or her home in circumstances where he or she is under no risk of losing it, or has lost it because of wilful and persistent refusal to pay rent or mortgage payments;
- (ii) where someone could be said to have significantly neglected his or her affairs having disregarded sound advice from qualified persons;
- (iii) voluntary surrender of adequate accommodation in this country or abroad which it would have been reasonable for the applicant to continue to occupy;
- (iv) where someone is evicted because of anti-social behaviour such as nuisance to neighbours, harassment etc.;
- (v) where someone is evicted because of violence or threats of violence by them;

- (vi) where someone leaves a job with tied accommodation and the circumstances indicate that it would have been reasonable for him or her to continue in the employment and reasonable to continue to occupy the accommodation.

15.8 The examples in paragraphs 15.5 - 15.7 do not constitute comprehensive lists. Where a person becomes homeless intentionally, that condition may persist until the link between the causal act or omission and the intentional homelessness has been broken. It could be broken, for example, by a period in settled accommodation which follows the intentional homelessness. It has been established that a period in settled accommodation after an incidence of intentional homelessness would make the deliberate act or omission which led to that homelessness irrelevant in the event of a subsequent application for housing assistance. Conversely, occupation of accommodation that was merely temporary rather than settled, for example, staying with friends on an insecure basis, may not be sufficient to break the link with intentional homelessness.

### **Acts or omissions in good faith**

- 15.9 Acts or omissions in good faith where someone was genuinely unaware of a relevant fact must not be regarded as deliberate. This may be the case in situations where someone gives up possession of accommodation in the belief that they have no legal right to continue to occupy the accommodation and that it would therefore not be reasonable for them to continue to occupy. Examples might include situations:
- (i) where someone gets into rent arrears, being unaware that they may be entitled to housing benefit or other social security benefits;
  - (ii) where an owner occupier, who is faced with foreclosure or possession proceedings to which there is no defence, sells before the mortgagee recovers possession through the courts or surrenders the property to the lender; or
  - (iii) where a tenant, faced with possession proceedings to which there would be no defence, and where the granting of a possession order would be mandatory, surrenders the property to the landlord. Although the authority may consider that it would have been reasonable for the tenant to continue to occupy the accommodation, the tenant would not have become homeless deliberately if he had taken a contrary view in ignorance of material facts e.g. the general pressure on the authority for housing assistance.

### **Enters into an arrangement etc.**

15.10 Authorities will need to be alert to the possibility of collusion by which in order to take advantage of the homelessness legislation a person may claim that he or she is obliged to leave accommodation. Collusion is not confined to those staying with friends or relatives but can also occur between landlords and tenants. Authorities need to use their experience and knowledge to identify possible collusion but must be aware that they will need to be 'satisfied' that it exists, and not merely rely on hearsay or unfounded suspicions. For collusion to amount to intentional homelessness, the 1996 Act also requires that 'no other good reason exists' for the homelessness. Examples of other good reasons would include overcrowding or an obvious breakdown in relationships between the applicant and the 'host' household. Written confirmation of a requirement to leave accommodation occupied on licence may be sufficient, but a home visit may help to determine whether collusion has taken place. The authority must have some objective evidence to justify a conclusion that collusion has taken place and thus deciding that the applicant is intentionally homeless.

## Whose Conduct Results in Intentional Homelessness?

- 15.11 It is the **applicant** who must deliberately have done or failed to do something which resulted in homelessness or threatened homelessness. Nothing in the 1996 Act prevents another member of the household from making a separate application. For example an applicant may have deliberately failed to pay the rent or defaulted on the mortgage payments, which resulted in homelessness or threatened homelessness, against the wishes or without the knowledge of his or her partner. This could include cases involving former joint tenants or mortgagors where both were legally responsible for the rent or mortgage payments, regardless of who actually made the payments. Where the partner of someone who has become intentionally homeless in this way makes a separate homelessness application, he or she might be found to be intentionally homeless if there was evidence of acquiescence, e.g. he or she was a party to his or her partner's act or omission, or deliberately failed to take reasonable steps to prevent the homelessness. The applicant may have lost a tenancy in circumstances where a member of the household or joint tenant acted against their wishes or they could not control them, such as in some arrears or anti-social behaviour cases. It will be for the authority to take a view on whether he or she could reasonably be expected to have prevented or mitigated that behaviour.

## Families with Children under 18

- 15.12 Section 213A of the 1996 Act requires authorities to have arrangements in place to ensure that social services are alerted as quickly as possible to cases where the applicant has children under 18 and the authority consider the applicant may be intentionally homeless.

## When can someone Re-apply?

- 15.13 There is no period of disqualification if someone wants to re-apply as homeless after he or she has been found intentionally homeless. The authority will need to make their usual enquiries and to consider whether the applicant's circumstances have changed i.e. whether there is a fresh incidence of homelessness and if so whether it is the result of a deliberate action or inaction by the applicant.

# CHAPTER 16: MAIN DUTIES OWED UNDER PART 7

## Main Duties Owed to Applicants on Completion of Inquiries


16.1 There are a number of duties to advise applicants and secure that accommodation is available for some classes of applicants which can be owed under Part 7. In all cases, the accommodation used to discharge the duty must be available for occupation by the applicant - and any other person who normally resides, or might reasonably be expected to reside, with him or her - and must be suitable. This section sets out the various duties to provide advice and secure accommodation, and the circumstances under which they are owed. Chapter 18 addresses other provisions in Part 7, which govern how these duties may, or must, be discharged.

### Summary of duties

16.2 The following duties will be owed to applicants where the housing authority have completed their inquiries and are satisfied that the applicant is eligible for assistance and homeless or threatened with homelessness.

NB: *No duty to provide accommodation is owed to applicants who are ineligible for assistance or not homeless or threatened with homelessness (but homelessness advice must be available to them under s.179 of the 1996 Act. This section also gives authorities the option of providing assistance to advice providers).*

### 16.3 Unintentionally homeless

- unintentionally homeless and have a priority need (s.193 of the 1996 Act): *duty to secure accommodation*
- unintentionally homeless and do not have a priority need (s.192 of the 1996 Act): *duty to assess needs and provide advice and assistance*. Section 192(3) gives housing authorities a power to secure accommodation for applicants who are unintentionally homeless and do not have a priority need 

### 16.4 Unintentionally threatened with homelessness

- threatened with homelessness unintentionally and have a priority need (s.195(2) of the 1996 Act) : *duty to take reasonable steps to ensure that accommodation does not cease to be available*
- threatened with homelessness unintentionally and do not have a priority need (s.195(5)): *duty to assess needs and provide advice and assistance*. Section 192(9) gives housing authorities a power to take reasonable steps to ensure that accommodation does not cease to be available for applicants who are threatened with homelessness unintentionally and do not have a priority need.

### 16.5 Intentionally homeless

- intentionally homeless and have a priority need (s.190(2)): *duty to secure accommodation for such period as will give applicant a reasonable period to secure accommodation for him/her self, and assess need and provide advice and assistance in securing accommodation*
- intentionally homeless and do not have a priority need (s.190(3)): *duty to assess needs and provide advice and assistance*

### 16.6 Intentionally threatened with homelessness

- threatened with homelessness intentionally and have a priority need (s.195(5)): *duty to assess needs and provide advice and assistance*
  - threatened with homelessness intentionally and do not have a priority need (s.195(5)): *duty to assess needs and provide advice and assistance*
- 16.7 Section 192(3) of the 1996 Act gives housing authorities a power to secure accommodation for applicants who are unintentionally homeless and do not have a priority need.
- 16.8 Section 192(9) gives housing authorities a power to take reasonable steps to ensure that accommodation does not cease to be available for applicants who are threatened with homelessness unintentionally and do not have a priority need.

## **Duty to Secure Accommodation that is Available**

- 16.9 Where an applicant is eligible for assistance unintentionally homeless and has a priority need for accommodation the housing authority must secure that accommodation becomes available for the applicant, unless conditions are met for referral to another local authority (see Chapter 20).

### **Duty under s.200(1)**

- 16.10 If the housing authority have notified the applicant that they propose to refer the case to another housing authority, under s.200(1) they must secure that accommodation is available for the applicant until the question of whether the conditions for referral are met has been decided. The duty under s.200(1) is therefore an interim duty only.

### **Duty under s.193(2)**

- 16.11 If the housing authority are not proposing to refer the case to another housing authority, they will owe the duty under s.193(2). In referral cases, once it has been established whether or not the conditions for referral are met, a duty under s.193(2) will be owed by either the notified housing authority or the notifying housing authority. The authority shall, on becoming subject to the duty under this section, give the applicant a copy of its statement on offering choice within its Part 6 allocations scheme.

### **Duty pursuant to s.195(2)**

- 16.12 Where the applicant is eligible for assistance threatened with homelessness unintentionally and has a priority need for accommodation, and the housing authority have been unable to secure that the applicant's accommodation remains available for occupation, the housing authority will have a duty to secure that other accommodation becomes available pursuant to s.195(2). In such cases, the nature of the duty to secure accommodation is the same as the duty under s.193(2), and the relevant provisions of s.193 will apply.
- 16.13 In all cases, the accommodation secured must be available for occupation by the applicant and any other person who normally resides, or might reasonably be expected to reside, with him or her, and must be suitable for their occupation. See guidance on suitability in Chapter 19, and discharging the duty to secure accommodation in Chapter 18.
- 16.14 Acceptance of a duty under s.193(2) does not pre-empt an immediate allocation of accommodation under Part 6 of the 1996 Act, if the applicant has the necessary priority under the housing authority's allocation scheme.

## When does the s.193 Duty end?

- 16.15 The housing authority will cease to be subject to the duty under s.193 (or s.195(2) ) in the following circumstances:
- (i) the applicant refuses an offer of accommodation to discharge the duty (i.e. temporary accommodation) which the housing authority are satisfied is suitable (s.193(5) ) : the duty does not end unless the applicant was informed by the housing authority of the consequences of refusal and of his or her right to ask for a review of the suitability of the accommodation. The housing authority must also have notified him or her that they regard themselves as having discharged their duty, before it can end. Under s.202(1A), applicants can request a review of suitability whether or not they have accepted the offer (see Chapter 19 for guidance on suitability and Chapter 21 for guidance on reviews).
  - (ii) the applicant accepts an offer of accommodation under Part 6 (the housing authority's allocation scheme) (s193(6)(c)) : under s.202(1A), applicants can request a review of suitability whether or not they have accepted the offer. If the offer is accepted but subsequently found to be unsuitable on review or appeal, the duty has not been discharged;
  - (iii) the applicant refuses a final offer of accommodation under Part 6 (the housing authority's allocation scheme) (s.193(7)) : the duty does not end unless the applicant had been informed of the possible consequences of refusal and of his or her right to ask for a review of the suitability of the accommodation; the offer was made in writing and stated that it was a final offer (s.193(7A)), and the housing authority are satisfied that the accommodation is suitable and that it would have been reasonable for the applicant to accept it (s.193(7F)) (see below). Under s.202(1A), applicants can request a review of suitability whether or not they have accepted the offer;
  - (iv) the applicant accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord : this could include an offer of an assured tenancy made by a registered social landlord (s.193(6)(c));
  - (v) the applicant accepts a qualifying offer of an assured shorthold tenancy (s.193(7B)) (see below).

### Qualifying offer of an assured shorthold tenancy

- 16.16 An offer of an assured shorthold tenancy is a qualifying offer if:
- (i) it is made to the applicant by a private landlord with the approval of the housing authority in pursuance of arrangements made between the housing authority and the landlord with a view to bringing the s.193 duty to an end,
  - (ii) it is for a fixed term (within the meaning of Part 1 of the Housing Act 1988) , and
  - (iii) it is accompanied by a written statement that sets out the terms of the tenancy and explains in ordinary language that whilst there is no obligation on the applicant to accept the offer, the s.193 duty will end if he or she accepts it.

- 16.17 The s.193 duty will not end with acceptance of an offer of a qualifying tenancy unless the applicant signs a statement acknowledging that he or she has understood the written statement accompanying the offer.

### **Reasonable to accept an offer**

- 16.18 Housing authorities must not make a final offer under Part 6 or approve a qualifying offer of an assured shorthold tenancy unless they are satisfied that the accommodation is suitable for the applicant and that it is reasonable for him or her to accept the offer. If it would be reasonable for the applicant not to accept the offer (e.g. due to personal crisis) even though the accommodation is suitable, the duty cannot reasonably be regarded as discharged. The offer should advise applicants they can both accept the property and also request a review of its suitability. Where an applicant has contractual or other obligations in respect of his or her existing accommodation (e.g. a tenancy agreement or lease), the housing authority can reasonably expect the offer to be taken up only if the applicant is able to bring those obligations to an end before he or she is required to take up the offer (s.193(8)).
- 16.19 Housing authorities must allow applicants a reasonable period for considering offers of accommodation, particularly final offers made under Part 6 that will bring the homelessness duty to an end whether accepted or refused. There is no set reasonable period; some applicants may require longer than others depending on their circumstances, whether they wish to seek advice in making their decision and whether they are already familiar with the property in question. Longer periods may be required where the applicant is in hospital or temporarily absent from the district. In deciding what is a reasonable period, housing authorities must take into account the applicant's circumstances in each case.

### **Other circumstances that bring the s.193(2) duty to an end**

- 16.20 Under s.193(6) the housing authority will also cease to be subject to the duty under s.193 (or s.195(2)) in the following circumstances:
- (i) the applicant ceases to be eligible for assistance as defined in s.185 and s.186 of the 1996 Act : this will apply mainly to some applicants who are asylum seekers whose claim for asylum was made before the provisions of the Immigration and Asylum Act 1999 came into force (see **Annex 10** for further information). The issues and entitlements of asylum seekers will vary depending on the date their claim for assistance was made and location (i.e. either in country or at a port of entry);
  - (ii) the applicant becomes homeless intentionally from accommodation made available to him or her under s.193 or s.195;
  - (iii) the applicant otherwise voluntarily ceases to occupy as his or her only or principal home accommodation made available under s.193 or s.195.
- 16.21 Authorities will also be required to secure that accommodation is available for such period as will give them a reasonable opportunity of securing accommodation themselves, under s.190(2)(a) (see paragraph 16.25 below).

## Re-applications

- 16.22 Under s.193(9) a person who ceases to be owed a duty under s.193(2) can make a fresh homelessness application.

## Duty to Take Reasonable Steps to Ensure that Accommodation does not Cease to be Available

- 16.23 Under s.195(2) of the 1996 Act, where an applicant is eligible for assistance, has become threatened with homelessness unintentionally and has a priority need for accommodation, the housing authority must take reasonable steps to secure that accommodation does not cease to be available for him or her. Wherever possible, the housing authority should try and prevent applicants from losing their current home. This might be achieved through negotiation with the applicant's landlord or, in cases where the applicant has been asked to leave by family and friends, by exploring the scope for mediation and the provision of support to the household in order to ease the pressures that have led to the applicant being asked to leave. Where a housing authority is able to identify the precise reasons why the applicant is being required to leave his or her current accommodation - for example, by interviewing the applicant and visiting his or her landlord or family or friends (as appropriate) - there may be specific action within the gift of the housing authority or other organisations, for example, mediation services in the voluntary sector, that can prevent the threat of homelessness being realised. Housing authorities are required to have a strategy for preventing homelessness in their district and this should be deployed to assist applicants owed a duty under s.195(2), wherever possible. See Chapter 10 for guidance on preventing homelessness.
- 16.24 Where housing authorities are unable to prevent applicants from losing their current home, they will need to secure alternative accommodation and the provisions of s.193(2) will apply.

## Duty to Provide Advice and Assistance

- 16.25 Housing authorities must ensure that in certain cases applicants are provided with advice and assistance in any attempts that they make to:
- a) secure that accommodation becomes available for themselves (in cases where they are homeless), or
  - b) secure that accommodation does not cease to be available for themselves (in cases where they are threatened with homelessness).
- 16.26 The housing authority can provide the advice and assistance themselves or arrange for it to be provided by another person, for example, an organisation providing advice in the voluntary sector. A duty is owed to the following applicants who are eligible for assistance:
- a) those who are threatened with homelessness intentionally and have a priority need (under s.195(5)(b));
  - b) those who are homeless or threatened with homelessness, and do not have a priority need (under s.190(3) s.192 and s.195(5)(a)).
- 16.27 Under s.190(2)(b), housing authorities must also ensure that advice and assistance is provided to applicants who are homeless intentionally and have a priority need.



- 16.28 Housing authorities should note that they have a power to provide further assistance to applicants who are homeless, or threatened with homelessness, unintentionally, and do not have a priority need.
- 16.29 Under s.192(3), housing authorities may secure that accommodation is available for applicants who are unintentionally homeless and do not have a priority need (see Chapter 18 for further guidance). Under s.195(9), housing authorities may take reasonable steps to secure that accommodation does not cease to be available for applicants who are threatened with homelessness unintentionally and do not have a priority need. See paragraph 16.23 above for guidance on reasonable steps to secure that accommodation does not cease to be available.
- 16.30 Where housing authorities arrange for advice and assistance to be provided by another person, they will need to monitor provision, to ensure that their duties are being fully carried out.

### **Assessment of housing needs**

- 16.31 The duties set out above require an assessment to be made of the housing needs of the applicant before advice and assistance is provided. This assessment may need to range wider than the housing authority's inquiries into the applicant's homelessness, carried out for the purpose of s.184 of the 1996 Act, and should inform the provision of appropriate advice and assistance for that particular applicant. Among other things, the assessment should identify any factors that may make it difficult for the applicant to secure accommodation for him or herself, for example, poverty, outstanding debt, health problems, disabilities and support needs, and whether Welsh or English is not his or her first language. In particular the assessment should take account of the circumstances that led to the applicant's homelessness, or threatened homelessness, since these may impact on his or her ability to secure and maintain accommodation and may indicate what types of accommodation would be appropriate.

### **Provision of advice and assistance**

- 16.32 The advice and assistance provided must include information about the likely availability in the housing authority's district of the types of accommodation that would be appropriate to the applicant's housing needs, and this must include, in particular, information about the location and sources of those types of accommodation.
- 16.33 Consideration of what type of accommodation would be appropriate to meet the applicant's needs might include the following factors:
- (i) the size of the accommodation;
  - (ii) the location of accommodation;
  - (iii) the affordability of the accommodation for the applicant (particularly where the applicant has a low income and may need to rely on housing benefit);
  - (iv) (if the applicant has any special needs) the accessibility and layout of the accommodation.
- 16.34 Housing authorities must ensure that advice and assistance is provided to applicants in any attempts they make to obtain accommodation or prevent the loss of their current home; applicants may be involved in a series of attempts before they are successful. In cases where the applicant is threatened with homelessness and it is not possible to prevent the loss of their home applicants should be provided with advice and assistance in any attempts

they make to secure alternative accommodation. In many areas the principal source of accommodation for applicants may be the private rented sector, and some authorities will also be required to secure that accommodation is available for such period as will give them a reasonable opportunity of securing accommodation themselves, under s.190(2)(a) (see paragraph 16.37 below).

- 16.35 A general consent under s.25 of the Local Government Act 1988 allows housing authorities to incur expenditure on paying rent deposits and providing guarantees to private landlords to help homeless people to secure accommodation in the private sector. The housing authority must be of the opinion that the applicant could not reasonably afford to pay the rent deposit required by the landlord, and the value of the assistance provided must not exceed 8 times the weekly rent. Housing authorities may wish to make other payments to private landlords to facilitate the provision of accommodation for homeless applicants, e.g. to meet a shortfall between the rent and the amount of housing benefit payable;
- 16.36 Where appropriate, housing authorities should ensure that the applicant is provided with information about how to apply for accommodation held by registered social landlords in the district, as well as information about the housing authority's own allocation scheme, the right to apply for an allocation, and the right to assistance for those who would have difficulty in making an application without it (s.166 of the 1996 Act).

## **Duty to Provide Advice and Assistance and Secure Accommodation for a Reasonable Period**

- 16.37 Under s.190(2) of the 1996 Act, where an applicant is intentionally homeless and has a priority need for accommodation the housing authority must:
- (i) secure that accommodation becomes available for the applicant for such period as will give him or her a reasonable opportunity of securing accommodation for him or herself (s.190(2)(a)), and
  - (ii) ensure that the applicant is provided with advice and assistance in any attempts that he or she makes to secure accommodation for him or herself (s.190(2)(b))
- 16.38 The duty to provide advice and assistance is the same as that discussed in paragraphs 16.25 to 16.36.
- 16.39 The accommodation secured must be suitable. Securing temporary accommodation for a 28-day period may provide the applicant with a reasonable opportunity to secure accommodation for him or herself, but housing authorities will need to consider each case on its merits. In particular, housing authorities will need to take account of the housing circumstances in the local area, including how readily other accommodation is available in the district, and have regard to the particular circumstances of the applicant, including the resources available to him or her to provide rent in advance or a rent deposit where this may be required by private landlords.
- 16.40 Under s.213A, in cases where the applicant has children under 18, the housing authority must seek the consent of the applicant to make the social services authority aware of the essential facts of the case, and notify them of their decision on the homelessness case. See Chapter 14 for further guidance on s.213A.

## Duties where a Case is Referred to another Authority

- 16.41 Section 200(1) provides that where an authority would be under a s.193(2) duty to secure accommodation but have notified the applicant that they intend to notify, or have already notified, another authority that they consider that the conditions for referral of the case to that other authority are met, the authority:
- (i) cease to be subject to any duty owed under s.188 (interim duty to accommodate in case of apparent need),
  - (ii) are not subject to any duty under s.193, but
  - (iii) must secure that accommodation is available for the applicant until he or she is notified of the decision as to whether the conditions for referral are met.
- 16.42 Refer to Chapter 20 for guidance on the procedure for deciding whether the conditions for referral of a case to another authority are met and **Annex 20** for procedures.
- 16.43 When it has been decided whether the conditions for referral to another authority are met, the notifying authority must notify the applicant of the decision and the reasons for it (s.200(2) of the 1996 Act). The notification must also advise the applicant of his or her right to request a review of the decision, and the time within which such a request must be made.
- 16.44 All notifications to the applicant must be given in writing and, if not received, copies made available at the authority's office for collection by the applicant, or his or her representative, for a reasonable period.
- 16.45 Section 200(3) provides that where it is decided that the conditions for referral are not met, the notifying authority are subject to the duty under s.193 (the main housing duty).
- 16.46 Section 200(4) provides that where it is decided that the conditions for referral are met, the notified authority are subject to the duty under section 193 (the main housing duty).] The interim duty to accommodate under s.200(1) ceases, regardless of whether the applicant requests a review of the authority's decision. However, where the applicant requests a review, the authority may secure that accommodation is available pending the review decision, if they wish.

### Protection of property

- 16.47 Sections 211(1) and (2) of the 1996 Act provide that where the authority have become subject to a duty to:
- (i) secure interim accommodation under s.188 or s.200, or
  - (ii) secure accommodation under s.190(2)(a), or
  - (iii) secure accommodation under s.193(2) or s.195(4),

then, whether or not they are still subject to such a duty, they must take reasonable steps to prevent the loss of, and prevent or mitigate damage to, any personal property of the applicant, if they have reason to believe that:

- (iv) there is a danger of loss or damage to the property because the applicant is unable to protect or deal with it, and
  - (v) no other suitable arrangements have been, or are being, made.
- 16.48 Section 211(3) of the 1996 Act provides that in all other circumstances authorities have a power to take any steps they consider reasonable to protect an applicant's personal property. For the purposes of both the duty and the power, the personal property of an applicant includes the personal property of any person who might reasonably be expected to reside with him or her (s.212(6) of the 1996 Act).
- 16.49 Applicants may be unable to protect their property if, for example, they are ill, or are unable to afford to have it stored themselves. In order to protect an applicant's property, an authority can enter the applicant's current or former home, and deal with the property in any way which seems reasonably necessary (s.212(1)). They may store the property or arrange for it to be stored; this may be appropriate where the applicant is accommodated by the authority in furnished accommodation for a period. In some cases, where the applicant's previous home is not to be occupied immediately, it may be possible for the property to remain there, if it can be adequately protected.
- 16.50 The applicant may request the authority to move his or her property to a particular location. If the authority consider that the request is reasonable, they may discharge their responsibilities under s.211 by doing as the applicant asks. Where such a request is met, the authority will have no further duty or power to protect the applicant's property, and they must inform the applicant of this consequence before complying with the request (s.212(2)).
- 16.51 Authorities may impose certain conditions on the assistance they provide; these may include making a reasonable charge for storage of property and reserving the right to dispose of property in certain circumstances specified by the authority e.g. if the applicant loses touch with them and cannot be traced after a certain period (s.211(4)).
- 16.52 Section 212(3) provides that where a request to move property to another location either is not made or is not carried out, the duty or power to take any action under s.211 ceases when the authority believes there is no longer any serious risk of loss or damage to the property. This may be the case, for example, where an applicant recovers from illness or finds accommodation where he or she is able to place his or her possessions, or becomes able to afford the storage costs him/herself. However, where an authority has discharged the duty under s.211 by placing property in storage, they may continue to keep the property in storage, if they wish. Where they do so, any conditions imposed by the authority continue to apply and may be modified as necessary.
- 16.53 Where an authority cease to be under a duty, or cease to have a power, to protect an applicant's property under s.211 they must notify the applicant of this and give the reasons for it. The notification must be delivered to the applicant or sent to his or her last known address (s.212(5)).

# CHAPTER 17: APPLICANTS WITH CHILDREN WHO ARE INTENTIONALLY HOMELESS OR INELIGIBLE FOR ASSISTANCE

## Co-operation between Housing Departments and Social Services Departments

- 17.1 Section 12 of the 2002 Act inserts a new section 213A in the 1996 Act. This applies where the housing department of a local authority are dealing with a homelessness application from a person whose household includes a child under 18 years of age, and they have reason to believe that the applicant may be either intentionally homeless (or threatened with homelessness) or not eligible for assistance under Part 7 of the Housing Act 1996.
- 17.2 Applicants found to be ineligible for assistance will be owed no further duty by the housing authority. By section 190(2), those found eligible but intentionally homeless will need to be secured accommodation for such period as the housing authority consider will give them a reasonable opportunity to secure accommodation for themselves, as well as advice and assistance with any efforts they make to secure accommodation themselves. However, in either case, families with children could find themselves without accommodation and any prospect of further assistance from the housing authority. This could give rise to a situation in which the children of such families become a child in need.
- 17.3 It is important that social services are alerted without delay by housing officials where the family may wish to seek assistance under Part 3 of the Children Act 1989 because they are owed no, or only limited, assistance under the homelessness legislation. This will give social services the opportunity to consider the case, and plan any response that may be required, in good time. Section 213A(3) of the 1996 Act therefore requires authorities to have arrangements in place to ensure that all such applicants are invited to agree to the housing department notifying the social services department of the essential facts of their case. The arrangements must also provide that where consent is given the social services department are made aware of the essential facts and, in due course, made aware of the subsequent decision on the homelessness case.
- 17.4 Even where consent is withheld, the housing department may disclose information about a homelessness case to the social services department, if they have reason to believe that a child is, or may be, at risk of significant harm. Housing departments should be working in accordance with 'Working Together to Safeguard Children: a guide to interagency working to safeguard and promote the welfare of children' (1999)<sup>27</sup>, under guidance from the Area Child Protection Committee. Section 213A(4) provides that nothing in sections 213A(2) or (3) affects any power other than those in section 213A to disclose information about a homelessness case to the social services department.
- 17.5 Where ineligible or intentionally homeless families with children, or housing departments approach the local authority's social services, the authority will determine its response within one working day of receipt of a referral. The referrer should be informed of the decision and its rationale, as well as parents or caregivers and the child, if appropriate. A decision to gather more information constitutes an initial assessment, which should be undertaken within a maximum of seven working days, but could be very brief depending on the child's circumstances. It should address the dimensions of the Assessment Framework, determining whether the child is in need, the nature of any services required, from where and within what timescales, and whether a further, more detailed core assessment should

be undertaken (paragraphs 3.8 and 3.9 Framework for the Assessment of Children in Need and their families 2001, National Assembly for Wales) the department will decide whether the child is a child in need under the terms of the Children Act 1989, by carrying out an assessment of their needs.

- 17.6 Section 17 of the Children Act 1989 requires a local authority to promote the upbringing of children within their family, in so far as this is consistent with their general duty to safeguard and promote their welfare. Where the child is a child in need solely as a result of family homelessness, the authority may wish to consider whether the best way of meeting his or her needs would be by assisting the family to obtain accommodation, possibly by providing temporary accommodation or a rent deposit under section 17 of the 1989 Act.
- 17.7 Where a social services authority have been made aware of a homelessness family likely to be found ineligible for assistance or intentionally homeless by the housing authority, and they consider the needs of a child or children could best be met by helping the family to obtain accommodation, they can request the housing authority to provide them with such advice and assistance as is reasonable in the circumstances. By section 213A(5) of the 1996 Act and under s.27 of the Children Act 1989, the housing authority must comply with such a request. Advice and assistance as is reasonable in the circumstances might include, for example, help with locating suitable accommodation and making an inspection of the property to ensure that it meets adequate standards of fitness and safety. However, the duty does not extend to a requirement on the housing authority to provide accommodation for the family, although they have the power to do so if they wish.
- 17.8 Section 213A(6) requires authorities to have similar arrangements in place so that the housing department provide the social services department with such advice and assistance as they may reasonably request.
- 17.9 In all cases involving homeless children, local authorities should take into account the United Nations Convention on the Rights of the Child, and the need to secure them with adequate housing with their family.

# CHAPTER 18: DISCHARGE OF DUTIES TO SECURE ACCOMMODATION

## General

- 18.1 A housing authority has a number of functions under Part 7 to secure that accommodation is available for homeless applicants. These include both duties and powers. These functions are referred to as 'housing functions' and sections 206, 208 and 209 of the 1996 Act set out how they are to be discharged. In order to discharge one of their housing functions, the housing authority must ensure that suitable accommodation becomes available for the applicant and his or her household. See Chapter 19 for guidance on suitability.

## Ways of Securing Accommodation

- 18.2 An authority may discharge a duty to secure that accommodation is available for an applicant in a number of ways:
- (i) by providing suitable accommodation themselves (s.206(1)(a)),
  - (ii) by securing that the applicant obtains suitable accommodation from another person (s.206(1)(b)); or
  - (iii) by giving the applicant such advice and assistance as will secure that suitable accommodation is available from another person (s.206(1)(c)).

## Offers of accommodation

- 18.3 In all cases, the accommodation offered must be suitable for the applicant and his or her household. Where accommodation is offered as a discharge of the duty under s.193(2) (or pursuant to the duty under s.195(2)), housing authorities must ensure that the applicant is informed of the possible consequence of refusal and of his or her right to ask for a review of the suitability of the accommodation.

## Need for support

- 18.4 Some applicants may need support to enable them to sustain the accommodation provided to them. This might be 'housing support', that is, support to help them live in the accommodation or personal support which may, for example, need to be provided by social services. In deciding what accommodation needs to be secured to discharge the duty, housing authorities will need to consider whether the applicant has support needs. Housing authorities will therefore need to make arrangements for effective links with the Supporting People team, the social services authority and other agencies (for example, the health authorities and the probation service) to ensure that a joint assessment of an applicant's housing and related needs can be made where necessary. Such assessments will also assist in considering options for the provision of more settled accommodation that will bring the duty under Part 7 to an end.





## **Standard of accommodation**

- 18.5 Authorities should ensure that all accommodation provided as a discharge of a homelessness duty complies with relevant legislation and regulations on health and safety standards, and arrange appropriate inspections. The Assembly Government recommends that authorities set minimum standards for all such accommodation covering the state of repair, general safety, fire safety, public hygiene and basic facilities (e.g. bathroom, toilet and kitchen).
- 18.6 Where authorities secure that accommodation is available for an applicant, they may, if they wish, require him or her to:
- (i) pay reasonable charges in respect of accommodation which they make available themselves (s.206(2)(a)), or
  - (ii) pay a reasonable amount towards the costs payable by the authority for accommodation made available by another person (s.206(2)(b)).
- 18.7 In setting charges, authorities will need to bear in mind that accommodation secured for applicants must be affordable by them (see below).

## **Available accommodation**

- 18.8 Accommodation secured for the applicant must be available. Section 176 provides that accommodation is available for a person only if it can accommodate his or her complete household together, that is, the applicant and:
- (i) any other person who normally resides with him or her as a member of his or her family, and
  - (ii) any other person who might reasonably be expected to reside with him or her (e.g. a full-time carer).

## **Location of accommodation**

- 18.9 Section 208(1) requires authorities 'as far as reasonably practicable' to secure accommodation in their area. The location of the accommodation will be relevant to suitability, taking account of the needs of all members of the family. Authorities should aim to secure accommodation within their own area wherever possible, except where an applicant has been subject to violence or is at risk of violence and may need to be accommodated at a distance. The authority must also ensure that the applicant has the means to get to the accommodation, and provide practical help where necessary. Other than in these cases, the use of out-of-area accommodation should be considered only as a last resort.
- 18.10 Where it is either not possible or not appropriate for the applicant to be placed in accommodation within the housing authority's area, and the housing authority place the applicant in accommodation elsewhere, s.208(2) requires the housing authority to notify the local housing authority in whose area the accommodation is situated of the following:
- (i) the name of the applicant;

- (ii) the number and description of other persons who normally reside with the applicant as a member of his or her family or might reasonably be expected to do so;
  - (iii) the address of the accommodation;
  - (iv) the date on which the accommodation was made available;
  - (v) which function the housing authority is discharging in securing the accommodation.
- 18.11 The notice must be given in writing within 14 days of the accommodation being made available to the applicant.
- 18.12 The Assembly Government also recommends that authorities avoid placing people in isolated accommodation, away from public transport, shops and other facilities and, that wherever possible, they secure accommodation which is as close as possible to where applicants were previously living, so that they can maintain established links with key services and personal support networks. Proximity of accommodation to place of work or study should also be considered, as should cultural support for BME groups.
- 18.13 Applicants whose household needs social services support or to maintain links with other essential services within the area, for example, specialist medical or educational services, should be given priority for accommodation within the housing authority's own area. Where households have to be accommodated in the area of another authority, the placing authority should take positive steps to ensure effective liaison and co-operation between the relevant service departments of both authorities, for example, housing, social services, environmental health and education. It will particularly important to ensure the applicant has access to health services, and that community health services are able to maintain contact with young children.
- 18.14 Authorities should be aware of the *Education (Areas to which Pupils and Students Belong) Regulations (SI 1996 No.615)*, which generally place responsibility for the provision of and payment for the education of pupils, and further education students from families placed in accommodation outside an authorities boundaries, on the receiving authority. A general principle of the Regulations is that where such a pupil or student does not have ordinary residence, he or she will be treated as belonging to the authority in which he or she is for the time being resident. Generally, the receiving authority is eligible for funding support for the education of such pupils. However, this principle does not apply in the case of pupils or students who are in the care of an authority; the carer authority retains responsibility for funding their education.

### **Local authority general needs stock**

- 18.15 Housing authorities may discharge a duty to secure accommodation by providing suitable accommodation for the applicant themselves (s.206(1)(a)). Where a duty is discharged in this way the housing authority will be the immediate landlord of the applicant, for example, where the housing authority place the applicant in:
- (i) a house or flat from its own stock (i.e. held under Part 2 of the Housing Act 1985),
  - (ii) a hostel owned by the housing authority, or
  - (iii) accommodation leased by the housing authority from another landlord (e.g. under a private sector leasing agreement) and sub-let to the applicant.

- 18.16 In considering whether to provide accommodation from their own general needs stock, authorities will need to balance the limited, short term requirements of people accepted as homeless against the requirement of others on the housing register seeking accommodation in the longer term. The accommodation will need to be suitable. Hard-to-let stock and accommodation which is awaiting demolition, improvement or repair, may be suitable as very short term emergency housing in some circumstances, but it must be in a reasonable state of repair and have adequate heating, and generally should not be used as a matter of policy to accommodate homeless acceptances (see Chapter 20). The concentration of people accepted as homeless in a particular area or estate can have implications for the sustainability of that community, which should be taken account of by the authority.
- 18.17 Paragraph 4 of Schedule 1 to the Housing Act 1985 (as amended by the 1996 Act) provides that a tenancy granted by a housing authority in pursuance of any function under Part 7 of the 1996 Act is not a secure tenancy unless the authority notify the tenant that it is so. Authorities are reminded that the allocation of secure tenancies must be made through their housing scheme in accordance with the provisions of Part 6 of the 1996 Act.
- 18.18 From 27 January 2003, amendments to the Housing Act 1996 as a result of the Homelessness Act 2002 will require local authorities to give reasonable preference to certain categories of applicant, including people who are homeless as defined in sections 175-177 of the 1996 Act. Authorities and RSLs are encouraged to give priority in their allocations schemes to people who are statutorily homeless or otherwise in pressing housing need (see Part 1 of this Code for more detail).

## Discharge of Duty to Secure Accommodation

- 18.19 **Housing authority hostels:** Some housing authorities operate their own hostels and may wish to use these to provide temporary accommodation for certain homeless applicants, particularly where they consider the applicant would benefit from a supported environment. See paragraph 18.30 for further guidance on the use of hostel accommodation.
- 18.20 **Accommodation leased from a private landlord:** In areas with a thriving private rented sector, accommodation leased from a private landlord can provide housing authorities with a source of good quality, self contained accommodation which can be sub-let to applicants as a discharge of the homelessness functions. Such leases may fall outside the Housing Revenue Account. Housing authorities are encouraged to maximise their use of this type of leasing to provide temporary accommodation for homeless applicants, in so far as they can secure cost-effective arrangements with landlords.
- 18.21 Since 1 April 1997, the capital finance regulations have allowed housing authorities to take leases on property owned by private landlords, for use to accommodate homeless households owed a duty under Part 7, for a period of up to ten years without requiring authorities to set aside capital cover for the cost of the lease. Moreover, there is no restriction on housing authorities taking further leases on property that has already been the subject of a previous housing authority lease. From April 2002, the non-HRA housing benefit subsidy rate for temporary accommodation leased or licensed by a housing authority was increased from 12.5% to 95% of the cost falling between the authority's threshold and cap, whilst the equivalent B&B subsidy level remained at 12.5%. This change should greatly improve the financial viability of leased and licensed accommodation, and assist housing authorities in keeping the use of bed and breakfast to a minimum.

- 18.22 **Accommodation secured from another person (S.206(1)(b)):** Housing authorities may discharge a duty to secure accommodation by securing that the applicant obtains suitable accommodation from some other person (s206(1)(b) ) Housing authorities can make use of a wide range of accommodation, including housing in the private rented sector and accommodation held by RSLs. The following paragraphs discuss a number of options for securing accommodation from another landlord, which are available to housing authorities.
- 18.23 **Registered social landlords:** As the proportion of housing stock in the social sector held by RSLs increases, housing authorities should ensure that they maximise the opportunities for securing assistance with housing accommodation from RSLs within the broad principle that the burden should be shared in proportion to the stock (see temporary guidance on local authority nominations and requirements of RSLs in **Annex 22**). Under s.213, where requested by a housing authority, an RSL must assist the housing authority in carrying out their duties under the homelessness legislation by co-operating with them as far as is reasonable in the circumstances. The Assembly Government also expects RSLs, on request, to consider giving assistance to the housing authority with the provision of interim accommodation whilst the authority investigates whether it has a duty to house that applicant (further information is contained in RSL circular 9/98 which will be reviewed during 2003).
- 18.24 Housing authorities should also consider contracting with RSLs for assistance in discharging their homelessness functions under arrangements whereby the RSL lease and/or manage accommodation owned by private landlords, which can be sub-let to homeless households nominated by the housing authority. A general consent under s.25 of the Local Government Act 1988 allows housing authorities to provide RSLs with financial assistance in connection with such arrangements. Housing authorities must reserve the right to terminate such agreements, without penalty, after 3 years.
- 18.25 **Private letting:** Housing authorities may seek the assistance of private sector landlords in providing suitable accommodation direct to homeless applicants. A general consent under s.25 of the Local Government Act 1988 allows housing authorities to incur expenditure on paying rent deposits and providing guarantees to private landlords to help homeless people to secure accommodation in the private sector. Authorities are also encouraged to facilitate bond schemes which allow people who may otherwise be homeless to access private rented accommodation.
- 18.26 The housing authority must be of the opinion that the applicant could not reasonably afford to pay the rent deposit required by the landlord, and the value of the assistance provided must not exceed 8 times the weekly rent. Housing authorities may wish to make other payments to private landlords to facilitate the provision of accommodation for homeless applicants, e.g. to meet a shortfall between the rent and the amount of housing benefit payable; such payments would, however, require consent under s.25.

### **Tenancies granted by private landlords and RSLs to assist with interim duties**

- 18.27 Tenancies granted to homeless applicants by a private landlord or RSL to assist a housing authority discharge a duty under Part 7 would normally be an assured shorthold tenancy. However, s.209 provides that where a private landlord provides accommodation to assist a housing authority discharge an interim duty, for example, a duty under s.188(1), s.190(2) or s.200(1), the tenancy granted will not be either an assured shorthold tenancy or a full assured tenancy- unless the landlord notifies the tenant that it is to be such a tenancy. However, where such notification is not given, the tenancy will become an assured shorthold tenancy after a 12 month period which would begin with:

- (i) the date the interim duty ends in consequence of a notification under s.184, or
  - (ii) in the case of a review of that decision under s.202, the date the applicant was notified of the review decision, or
  - (iii) in the case of an appeal to the county court under s.204, the date the applicant was notified of the outcome of the appeal.
- 18.28 Where a private landlord or RSL provides accommodation to assist a housing authority discharge any other homelessness duty, the tenancy granted will be an assured shorthold tenancy unless the tenant is notified that it is to be regarded as an assured tenancy.
- 18.29 **Lodgings:** Lodgings provided by householders may be suitable for some young and/or vulnerable single applicants. Housing authorities may wish to establish a network of such landlords in their area, and to liaise with social services who may operate supported lodgings schemes for people with support needs.
- 18.30 **Hostels:** Some applicants may benefit temporarily from the supportive environment which managed hostels can provide, provided that the hostel is designed to meet their needs. Hostels can offer short-term support to people who are experiencing a temporary crisis, and provide an opportunity for them to regain their equilibrium and subsequently move-on to live independently. Night shelters will not be appropriate for meeting statutory duties.
- 18.31 Where an applicant appears to need support, particularly on-going support, and there is no social worker or support worker familiar with their case, the housing authority should consider requesting a community care assessment by the social services authority. However, housing authorities should not assume that a hostel will automatically be the most appropriate form of accommodation for vulnerable people.
- 18.32 Housing authorities will need to take into account that most hostels are designed to meet short-term needs only. In addition to the question of whether the hostel accommodation would be suitable for the applicant for other than a short period, housing authorities should have regard to the need to ensure that bed spaces continue to be available in hostels for others who need them.
- 18.33 **Women's refuges:** Housing authorities should develop close links with women's refuges within their area and neighbouring area, to ensure they have access to emergency accommodation for women who are fleeing domestic or other violence or who are at risk of such violence. However, housing authorities should recognise that placing an applicant in a refuge will be a temporary expedient only, and a prolonged stay could block a bed space that was urgently needed by someone else at risk. Refuges should be used to provide accommodation for the minimum period necessary before alternative suitable accommodation is secured elsewhere. Housing authorities should not delay in securing alternative accommodation in the hope that the applicant might return to her partner, or require them to spend a minimum period of time in a refuge before they can be considered for rehousing.
- 18.34 **Other Supported Accommodation:** Some homeless people will need support to sustain their accommodation, either temporarily or in the longer term. These support needs should be identified as part of the homelessness assessment process, and they should then be helped to access that support as quickly as possible (if necessary in their temporary accommodation), either in general needs or in supported housing accommodation.

- 18.35 **Accommodation provided by other housing authorities:** Other housing authorities experiencing less demand for housing may be able to assist a housing authority by providing accommodation for homeless and other reasonable preference applicants. This will only be appropriate in exceptional circumstances, such as applicants who would be at risk of violence or serious harassment in the area of the housing authority to whom they have applied for assistance. Under s.213(1), where one housing authority requests another to help them discharge a function under Part 7, the other housing authority must co-operate in providing such assistance as is reasonable in the circumstances. Housing authorities should consider entering into reciprocal and co-operative arrangements under these provisions.
- 18.36 **Mobile homes:** Although mobile homes may sometimes provide emergency accommodation e.g. to discharge the interim duty, they are unlikely to be satisfactory for households with children, or for elderly or disabled people. Housing authorities will need to be satisfied that the accommodation is suitable for the particular applicant and his or her household, paying particular regard to conditions and facilities on the site. Caravans designed primarily for short term holiday use should not be regarded as suitable for homeless people.

### **Advice and Assistance that will secure accommodation from another person (S.206(1)(c))**

- 18.37 The duty to secure accommodation can be discharged by giving advice and assistance to the applicant that will secure that accommodation becomes available for him or her from another person (s.206(1)(c)). Unlike the duty to provide advice and assistance for intentionally homeless applicants (s.190(2) and (3)) and applicants who are not in priority need (s.192(2)), the duty under s.206(1)(c) requires that the advice and assistance provided must result in suitable accommodation actually being secured. Merely assisting the applicant in any efforts that he or she might make to find accommodation will not be sufficient if suitable accommodation does not actually become available.
- 18.38 One example of securing accommodation in this way is where house purchase is a possibility for the applicant. Advice on all options for financing house purchase should be made available, especially those financial packages which may be suited to people on lower incomes, including Low Cost Home Ownership schemes funded by the authority or by the Assembly Government through RSLs.
- 18.39 In other cases, applicants may have identified suitable accommodation but need practical advice and assistance to enable them to secure it. Housing authorities should bear in mind that the advice and assistance must result in suitable accommodation being secured, and that applicants may need interim accommodation until this result is achieved.

### **Applicants who normally occupy moveable accommodation (e.g. Caravans, Houseboats)**

- 18.40 Under s.175(2) applicants are homeless if their accommodation is a caravan, houseboat, or other movable structure, designed or adapted for human habitation, and they do not have a place where they are entitled, or permitted, to put it and live in it. If a duty to secure accommodation arises in such cases, the housing authority are not required to make equivalent accommodation available (or provide a site or berth for the applicant's own accommodation), but they should consider whether such options are reasonably available, particularly where this would provide the most suitable solution to the applicants accommodation needs. These circumstances will be particularly relevant in the case of gypsies and travellers, whose applications must be considered on the same basis as all

other applicants. If no pitch or berth is available to enable them to resume occupation of their moveable home, it is open to the housing authority to discharge its homelessness obligations by arranging for some other form of suitable accommodation to be made available.

### **Bed and breakfast accommodation**

- 18.41 Bed and breakfast accommodation should be considered as emergency accommodation catering for very short-term stays only, and generally will afford residents only limited privacy and may lack certain important amenities such as cooking and laundry facilities. Consequently, wherever possible, housing authorities should avoid using bed and breakfast hotels to discharge a duty to secure accommodation for all homeless applicants, and should not regard this type of accommodation as an appropriate way of meeting their duty to provide interim accommodation.
- 18.42 Living in bed and breakfast accommodation can be particularly detrimental to the health and development of children. Housing authorities should, therefore, use other means to discharge a duty to secure accommodation for families with children. Where no other emergency accommodation is available, placement in bed and breakfast accommodation for this client group should be kept to the minimum period possible and for no more than six (6) weeks at most. In the case of families with young children, the facilities should include safe play areas which are located away from sleeping accommodation and cooking areas.
- 18.43 Where bed and breakfast is used as a last resort, authorities should take steps to ensure that homeless applicants are allowed to use their rooms during the day and have adequate access to cooking facilities. Where breakfasts or other meals are provided by the hotel, authorities will wish to ensure that the food provided is adequate. Where the authority considers that food provision is inadequate, or applicants do not wish to take meals provided by the hotel, the authority may wish to negotiate bed only arrangements.
- 18.44 Authorities should ensure that the standard of bed and breakfast accommodation meets the statutory requirements for houses in multiple occupation. Authorities may wish to consider co-operating with other authorities in drawing up guidance to monitor conditions and safety standards in hotels used to discharge homelessness obligations.

### **Tenancies for minors**

- 18.45 Authorities should not allow complications in granting appropriate occupancy rights to persons aged under 18 to inhibit them from offering accommodation. See **Annex 25** for guidance on occupancy agreements for 16 and 17 year olds.

### **Powers to Secure Accommodation**

- 18.46 Housing authorities have a power to secure accommodation for applicants who are eligible for assistance, unintentionally homeless and do not have a priority need for accommodation. They also have powers to secure accommodation for applicants who are homeless and have a priority need, pending a review by the housing authority under s.202 of the decision on their case or an appeal by the applicant to the County Court under s.204.
- 18.47 The fact that the housing authority may have decided that an applicant is ineligible for housing assistance under Part 7 does not preclude the use of these powers, where the applicant requests a review or appeals to the County Court in respect of that decision.

## **Powers to secure accommodation for applicants who are unintentionally homeless and do not have priority need**

- 18.48 Under s.192(3), housing authorities may secure that accommodation is available for applicants who are eligible for assistance, unintentionally homeless and do not have a priority need for accommodation. Where a housing authority decides to exercise this power this will not affect the duty owed to the applicant under s.192(2) and housing authorities will need to ensure that advice and assistance is provided to the applicant in any attempts that he or she may make to secure accommodation for him or herself. See Chapter 16 for guidance on the duty under s.192(2).
- 18.49 By virtue of paragraph 4 of Schedule 1 to the Housing Act 1985, tenancies granted under the power in s.192(3) will not be a secure tenancy. Housing authorities should not provide accommodation under s.192(3) as an alternative to allocating accommodation under Part 6, and should not allow non-secure tenancies to continue over the long term.
- 18.50 Non-secure tenancies will generally be suitable for a limited period only and should be provided as part of a managed programme of accommodation, to give the applicant an opportunity to secure a more settled housing solution in due course. This should be explained to the applicant from the outset and the housing authority should assist him or her to secure alternative accommodation. Reasonable notice should be given of a decision to stop exercising the power.



# CHAPTER 19: SUITABILITY OF ACCOMMODATION

## Elements of Suitability

- 19.1 Section 206 provides that housing authorities may discharge their functions to secure that accommodation is available for applicants in one of three ways. In all cases the accommodation secured for the applicant must be suitable. This applies in respect of all powers and duties to secure accommodation under Part 7, including interim duties such as those under s.188(1) and s.200(1).
- 19.2 Accommodation secured for the applicant must be suitable; this applies in respect of all duties to secure accommodation under Part 7, including interim duties such as s.188(1). Section 210 requires that, in assessing suitability, authorities must have regard to Part 9 (slum clearance), Part 10 (overcrowding) and Part 11 (houses in multiple occupation) of the Housing Act 1985.
- 19.3 Part 9 of the Housing Act 1985 (“the 1985 Act”) is specifically concerned with dwelling houses or houses in multiple occupation that are unfit for human habitation. Section 604 of the 1985 Act states that for a dwelling to be considered fit for habitation it must not fail any of the tests set out in that section, and if it does, is not reasonably suitable for occupation. Therefore, before any establishment is used to provide temporary accommodation for a homeless household, the placing authority should ensure it meets the standards set out in s.604 of the 1985 Act.
- 19.4 Part 10 of the 1985 Act addresses overcrowding in dwellings. Section 324 provides a definition of overcrowding that in turn relies on the room standard specified in s.325 of the 1985 Act, and the space standard specified in section 326 of the 1985 Act. If the temporary accommodation contravenes the standards relating to overcrowding, it will be for the authority to show that the accommodation nevertheless remains suitable.
- 19.5 Part 11 of the 1985 Act refers to houses in multiple occupation (‘HMOs’). In particular s. 352 of the 1985 Act sets out standards for HMOs. The Assembly will be revising these standards in the light of forthcoming legislation.
- 19.6 Authorities will also need to ensure that temporary accommodation offered to homeless people meets its statutory requirements for dwellings, including regulations on gas and electricity appliances and the provisions of the Furniture and Furnishings (Fire Safety) regulations.
- 19.7 The accommodation must be suitable in relation to the applicant and all members of his or her household who normally reside with him or her, or who might reasonably be expected to reside with him or her; authorities should therefore have regard to the relevant circumstances of the applicant and his or her household. Authorities also need to take account of any medical and/or physical needs, and any social considerations which might affect the suitability of accommodation. For example, accommodation may be unsuitable for disabled applicants because of its location (e.g. in hilly areas); some disabled applicants may require certain facilities to be close at hand (e.g. an exercise area for a guide dog or a parking space for a car on which they rely). Authorities should also consider factors such as access to schools and other services and facilities (e.g. GPs and informal support networks) with a view to maintaining stability for the household, particularly in respect of children’s schooling, wherever possible. Authorities should be aware of cultural factors in addressing suitability of accommodation (*R [Price] v Carmarthenshire County Court QBD, 2003*). Any risk of violence or racial harassment should also be taken into account.

- 19.8 Applicants may challenge the suitability of accommodation offered by seeking a review of the authority's decision (under s.202(1)(f)). Where such a review is sought, the applicant should be allowed to accept the offer subject to a review of its suitability; if the review confirms the original decision, the applicant should be allowed to retain the accommodation, if he or she wishes to do so.

## Affordability

- 19.9 The Homelessness (Suitability of Accommodation) Order 1996 (SI 1996 No. 3204) specifies that in determining whether it would be, or would have been, reasonable for a person to occupy accommodation that is considered suitable, a housing authority must take into account whether the accommodation is affordable by him or her, and in particular must take account of:
- (i) the financial resources available to him or her (i.e. all forms of income), including, but not limited to:
    - a) salary, fees and other remuneration (from such sources as investments, grants and pensions etc.);
    - b) social security benefits (such as housing benefit, income support, income based Jobseekers allowances or council tax benefit etc.);
    - c) payments due under a court order for the making of periodical payments to a spouse, or to, or for the benefit of, a child;
    - d) payments of child support maintenance due under the Child Support Act 1991;
    - e) pensions;
    - f) contributions to the costs in respect of the accommodation which are or were made or which might reasonably be expected to be, or have been, made by other members of the household (most members can be assumed to contribute, but the amount depends on various factors including their age and income. Other influencing factors can be drawn from the parallels of their entitlement to housing benefit and income support in relation to housing costs. Current rates should be available from housing authority benefit sections);
    - g) financial assistance towards the costs in respect of the accommodation, including loans, provided by a local authority, voluntary organisation or other body;
    - h) benefits derived from a policy of insurance (such as cover against unemployment or sickness);
    - i) savings and other capital sums (which may be a source of income or might be available to meet accommodation expenses. However, it should be borne in mind that, again drawing from the parallel social securities assistance, capital savings below a threshold amount are disregarded for the purpose of assessing a claim);
  - (ii) the costs in respect of the accommodation, including, but not limited to:
    - a) payments of, or by way of, rent (including rent default/property damage deposits);

- b) payments in respect of a licence or permission to occupy the accommodation;
- c) mortgage costs (including an assessment of entitlement to Income Support Mortgage Interest covering repairs/improvements, service charges, ground rent etc.);
- d) payments of, or by way of, service charges (e.g. maintenance or other costs required as a condition of occupation of the accommodation);
- e) mooring charges payable for a houseboat;
- f) where the accommodation is a caravan or a mobile home, payments in respect of the site on which it stands;
- g) the amount of council tax payable in respect of the accommodation;
- h) payments by way of deposit or security in respect of the accommodation;
- i) payments required by an accommodation agency;
- (iii) payments which that person is required to make under a court order for the making of periodical payments to a spouse or former spouse, or to, or for the benefit of, a child and payments of child support maintenance required to be made under the Child Support Act 1991; and
- (iv) his or her other reasonable living expenses.

19.10 In considering an applicant's residual income after meeting the costs of the accommodation, the Assembly Government recommends that housing authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be significantly less than the level of income support or income-based Jobseekers allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit. This amount will vary from case to case, according to the circumstances and composition of the applicant's household. A current tariff of applicable amounts in respect of such benefits should be available within the authority's housing benefit section. Housing authorities will need to consider whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials. The Secretary of State recommends that housing authorities avoid placing applicants who are in low paid employment in accommodation where he or she would need to resort to claiming benefit to meet the costs of that accommodation.

## Location

19.11 The location of the accommodation will be relevant to suitability, and the suitability of the location for all the members of the household will have to be considered. See guidance in the Chapter 20 for further details.

## Right to Request a Review of Suitability

- 19.12 Applicants may ask for a review of the housing authority's decision that the accommodation offered to them is suitable - under s.202(1)(f) - although this right does not apply in the case of accommodation secured under s.188, the interim duty to accommodate pending inquiries, or s.200(1), the interim duty pending the decision on a referral. Under s.202(1A) an applicant may request a review as to suitability regardless of whether or not he accepts the accommodation. This applies equally to offers of accommodation made under s.193(5) to discharge the s.193(2) duty and to offers of an allocation of accommodation made under s.193(7) that would bring the s.193(2) duty to an end. This means that the applicant is able to ask for a review of suitability without inadvertently bringing the housing duty to an end (see Chapter 21 for guidance on reviews). When making an offer of accommodation local authorities should give applicants clear information on their right to a review of suitability under s. 202 (1)(f).

## Asylum Seekers

- 19.13 The law and regulations on the housing rights and entitlements of asylum seekers are complex and vary according to when and where a claim for asylum was made. Further clarification is given in **Annex 10**. Housing authorities should always secure legal or other expert advice where their obligations to asylum seekers are ambiguous or unknown.
- 19.14 The Homelessness (Asylum Seekers) (Interim Period) (England) Order (SI 1999 No.3126) modifies the provisions of Part 7 of the 1996 Act in respect of homeless applicants who are asylum seekers. The Order modifies s.210 such that, in considering whether accommodation is suitable for an applicant who is an asylum seeker, housing authorities must:
- (i) have regard to the fact that the accommodation is to be temporary pending the determination of the applicant's claim for asylum, and;
  - (ii) not have regard to any preference that the applicant (or any person who might reasonably be expected to reside with him or her) may have as to the locality of the accommodation secured.
- 19.15 The provisions of the Homelessness (Asylum Seekers) (Interim Period) (England) Order (SI 1999 No.3126) do not apply to asylum seekers falling within the provisions of the Immigration and Asylum Act 1999. Asylum seekers falling within the provisions of the Immigration and Asylum Act 1999 are supported by the Immigration and Nationality Directorate and have no entitlement to assistance under Part 6 or Part 7 of this Code of Guidance.

# CHAPTER 20: LOCAL CONNECTION AND REFERRALS

## Conditions for Referral

- 20.1 Where an authority decide that an applicant is owed a duty under s.193 of the 1996 Act to secure accommodation, but considers that the conditions for referral of the case to another authority are met, they may notify the other authority of their opinion (s.198(1)). An applicant can be considered for referral only when an authority would be under the duty under s193(2). Referral is not an option where an applicant is owed the interim duty under s188, or any other duty (e.g. where they are threatened with homelessness or found to be homeless intentionally). The decisions to make enquiries in regard to local connection and to seek to refer the applicant are discretionary; an authority can decide not to do so, if they wish. Detailed Guidance on referrals is given in **Annex 20**.
- 20.2 A housing authority may refer an applicant to whom s.193(2) applies to another housing authority if:
- (i) neither the applicant nor any person who might reasonably be expected to live with him or her has a local connection with their area, and
  - (ii) at least one member of the applicant's household has a local connection with the area of the other housing authority; and
  - (iii) none of them will be at risk of violence, or threat of violence which is likely to be carried out, in the area of the other housing authority.
- 20.3 The conditions for referral are also met if:
- (i) the applicant was placed in accommodation in the area of the housing authority to which his or her application is now made;
  - (ii) the accommodation was provided in discharge of a homelessness duty arising from a previous application made to another housing authority; and
  - (iii) the placement occurred within a prescribed period of the present application.
- 20.4 The prescribed period (see The Homelessness (Wales) Regulations SI 2000 No. 10792) is the aggregate of:
- (i) 5 years, and
  - (ii) the length of time between:
    - (a) the date the previous application was made to the other housing authority; and
    - (b) the date when accommodation was first made available to discharge the previous duty (under s.193(2) or s.195(4)).
- 20.5 Thus, where a housing authority accept a duty to secure that accommodation is available (under s.193 or s.195) and place the household in accommodation which is outside their area, the placing housing authority retains "responsibility" for that household in the event of a further application for assistance under Part 7 within a period of 5 years of the date when accommodation was first made available under the initial duty.

## Local Connection

- 20.6 When an authority makes inquiries to determine whether an applicant is eligible for assistance and owed a duty under Part 7, they may also make inquiries to decide whether the applicant has a local connection with the area of another housing authority in England, Wales or Scotland, if they wish (s.184(2)).
- 20.7 Local connection is defined in s.199 of the 1996 Act as a connection which the applicant has with an area:
- (i) because he or she is, or was in the past, normally resident there, and that residence was of his or her own choice, or
  - (ii) because he or she is employed there (i.e. the applicant actually works in the area rather than that the area is the site of his or her employers' head office), or
  - (iii) because of family associations; or
  - (iv) because of any special circumstances (e.g. the need to be near special medical or support services which are available only in a particular area).
- 20.8 In assessing whether an applicant's household has a local connection with their area, an authority should also consider whether any person who might reasonably be expected to live with the applicant has such a connection.
- 20.9 An authority may not seek to transfer responsibility to another authority where the applicant has a local connection with their area but the authority consider there is a stronger local connection elsewhere. However, in such a case, it would be open to an authority to seek assistance from the other authority in securing accommodation, under s.213 of the 1996 Act (co-operation between authorities).
- 20.10 Where a person has a local connection with more than one other authority, the referring authority will wish to take account of the applicant's preference in deciding which authority to notify.

### Ex-service personnel

- 20.11 For the purposes of the 1996 Act, serving members of the Armed Forces, and other persons who normally live with them as part of their household, do not establish a local connection with an area by virtue of serving, or having served, there while in the Forces (s199(2) and s.199(3)).

### Ex-prisoners

- 20.12 Similarly, residence in prison does not itself establish a local connection with an area. However, any period of residence in accommodation prior to imprisonment may give rise to a local connection under s199(1)(a).

### No local connection anywhere

- 20.13 If an applicant, or anyone who might reasonably be expected to live with him or her, has no local connection with any area in Great Britain, then the duty to secure accommodation

will rest with the authority to which his or her application has been made. This may apply to people who have had an unsettled way of life for many years.

## **Violence**

- 20.14 A housing authority cannot refer an applicant to another housing authority if that person or any person who might reasonably be expected to reside with him or her would be at risk of violence. The conditions for referral are not met if the applicant or any person who might reasonably be expected to reside with them has suffered violence in the district of the other authority and it is probable that the return to that district will lead to further violence of a similar kind. Authorities should take 'similar kind' to mean any violence forming a pattern of conduct against them, even where the individual perpetrators may vary.
- 20.15 Section 198(3) defines violence as violence from another person or threats of violence from another person which are likely to be carried out.

## **Duties where a Case is referred to another Housing Authority**

- 20.16 If a housing authority decide to refer a case to another housing authority, they will need to notify the other housing authority that they believe the conditions for referral are met (s.198(1)). They must also notify the applicant that they have notified, or intend to notify, another housing authority that they consider that the conditions for referral are met. At that point, the housing authority would cease to be subject to the interim duty to accommodate under s.188) but will owe a duty under s.200(1) to secure that accommodation is available for the applicant until the question of whether the conditions for referral are met is decided.
- 20.17 Under s.200(4), if the referral is accepted by the other housing authority, they will be under a duty to secure accommodation for the applicant under s.193. It is not open to a receiving housing authority to re-assess whether the applicant is homeless, unintentionally homeless and in priority need. Under s.200(3), if it is decided that the conditions for referral are not met, the referring housing authority will be under a duty to secure accommodation for the applicant under s.193.
- 20.18 When the question of whether the conditions for referral to another housing authority are met has been decided, the notifying housing authority must notify the applicant of the decision and the reasons for it (s.200(2)). The notification must also advise the applicant of his or her right to request a review of the decision, and the timescale within which such a request must be made. The interim duty to accommodate under s.200(1) ends regardless of whether the applicant requests a review of the housing authority's decision. However, where the applicant requests a review, by s.200(5) the housing authority has a power to secure that accommodation is available pending the review decision. (See Chapter 21 for guidance on powers to secure accommodation pending review).
- 20.19 Notifications to the applicant must be provided in writing and copies made available at the housing authority's office for collection by the applicant, or his or her representative, for a reasonable period.

## **Disputes**

- 20.20 The question of whether the conditions for referral are met in a particular case should be decided by agreement between the authorities concerned, but if they cannot agree, the

decision should be made in accordance with such arrangements as may be directed by order of the National Assembly for Wales (s.198(5)).

- 20.21 The Homelessness (Decisions on Referrals) Order 1998 (SI 1998 No. 1578) directs that the arrangements to be followed in such a dispute are the arrangements which have been agreed between the local authority associations (i.e. the Local Government Association, the Convention of Scottish Local Authorities, the Welsh Local Government Association and the Association of London Government). See **Annex 20**.
- 20.22 Broadly speaking, the arrangements provide that in the event of two authorities being unable to agree whether the conditions for referral are met, they must seek to agree on a person to be appointed to make the decision for them. If unable to agree on who should be the appointed person, they may wish to seek advice from the Welsh Local Government Association.
- 20.23 The arrangements set out in the Schedule to SI 1998 No. 1578 apply in all cases where a housing authority in England, Wales or Scotland seeks to refer a homelessness case to another authority in England or Wales, and the two authorities are unable to agree whether the conditions for referral are met. A virtually identical Order, the Homelessness (Decisions on Referrals (Scotland) Order 1998, has been made under the Scottish homelessness legislation; the arrangements specified in that order apply in all cases where a housing authority in England, Wales or Scotland seeks to refer a homelessness case to another authority in Scotland, and the two authorities are unable to agree whether the conditions for referral are met.



# CHAPTER 21: REVIEW OF DECISIONS AND APPEALS TO COUNTY COURT

## Right to Request a Review

- 21.1 Homeless applicants have the right to request the housing authority to review their decisions on the homelessness case in some circumstances s.202 of the 1996 Act. Regulations made under s.203 set down the procedures for undertaking such reviews.
- 21.2 When a housing authority have completed their inquiries into the applicant's homelessness case under s.184, they must notify the applicant of their decision and the reasons for it; and of his or her right to request a review and the time within which such a request must be made. At this stage, housing authorities should advise the applicant of his or her right to request a review of the suitability of accommodation whether or not he or she has accepted the offer. Authorities should also advise the applicant of the review procedures.
- 21.3 An applicant must request a review within 21 days of being notified of a housing authority's decision and has no right to request a review of a decision on an earlier review. The housing authority may specify a longer period during which a review may be requested.
- 21.4 Under s.202 an applicant has the right to request a review of:
- (i) any decision of a housing authority about his or her eligibility for assistance (i.e. whether he or she is considered to be a person from abroad who is ineligible for assistance under Part 7);
  - (ii) any decision of a housing authority as to what duty (if any) is owed to him or her under sections 190, 191, 192, 193, 195 and 196;
  - (iii) any decision of a housing authority to notify another housing authority under s.198(1) (i.e. a decision to refer the applicant to the other housing authority because they appear to have a local connection with that housing authority's area and not with the area where they have made the application);
  - (iv) any decision under s.198(5) whether the conditions are met for the referral of the applicant's case (including a decision taken by a person appointed under the Homelessness (Decisions on Referrals) Order 1998 (SI 1998 No.1578));
  - (v) any decision under s.200(3) or (4) (i.e. a decision as to whether the notified housing authority or the notifying housing authority owe the duty to secure accommodation in a case considered for referral or referred);
  - (vii) any decision of a housing authority as to the suitability of accommodation offered to the applicant under any of the provisions in (b) or (e) above or the suitability of accommodation offered under s.193(7).

## The Review Regulations

### Review of Decisions and Appeals to the County Court

- 21.5 Under s.202 (1A) applicants can request a review of the suitability of accommodation whether or not they have accepted the offer.
- 21.6 The Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 (SI 1999 No.71), set out the procedures to be followed by local housing authorities in carrying out reviews under Part 7.

### Who may carry out the review?

- 21.7 A review may be carried out by the housing authority itself or by someone acting as an agent of the housing authority (see **Annex 21** about contracting out). The regulations provide that where the review is to be carried out by an officer of the housing authority, the officer must not have been involved in the original decision, and he or she must be senior to the officer (or officers) who took that decision. Seniority for these purposes means seniority in rank or grade within the housing authority's organisational structure. The seniority provision does not apply where a committee or sub-committee of elected members takes the original decision.
- 21.8 Where the decision under review is a joint decision by the notifying housing authority and the notified housing authority as to whether the conditions of referral of the case are satisfied, s.202(4) requires that the review should be carried out jointly by the two housing authorities. Where the decision under review was taken by a person appointed pursuant to the arrangements set out in the Schedule to the Homelessness (Decisions on Referrals) Order 1998 (SI 1998 No.1578), the review must be carried out by another person appointed under those arrangements.

### Written presentations

- 21.9 The regulations provide that the applicant should be invited to make representations in writing in connection with his or her request for a review. The relevant provisions in Part 7 give a person an unfettered right to request a review of a decision, so he or she is not required to provide grounds for challenging the housing authority's decision. The purpose of the requirement is to invite the applicant to state his or her grounds for requesting a review (if he or she has not already done so) and to elicit any new information that the applicant may have in relation to his or her request for a review.
- 21.10 Regulation 6 requires the housing authority to notify the applicant that he or she, or someone acting on his or her behalf, may make written representations in connection with the request for a review. The notice should also advise the applicant of the procedure to be followed in connection with the review (if this information has not been provided earlier). Regulation 6 also provides that:
- (i) where the original decision was made jointly by the notifying and notified housing authorities under s.198(5), the notification should be made by the notifying housing authority;
  - (ii) where the original decision was made by a person appointed pursuant to the Homelessness (Decisions on Referrals) Order 1998 (SI 1998 No.1578), the notification should be made by the person appointed to carry out the review.

## Oral hearings

- 21.11 Regulation 8 provides that in cases where a review has been requested, if the housing authority, authorities or person carrying out the review consider that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but they are minded nonetheless to make a decision that is against the applicant's interests on one or more issues, they should notify the applicant:
- (i) that they are so minded and the reasons why; and,
  - (ii) that the applicant, or someone acting on his or her behalf, may, within a reasonable period, make oral representations, further written representations, or both oral and written representations.
- 21.12 It is envisaged that such deficiencies or irregularities would include:
- (i) failure to take into account relevant considerations and to ignore irrelevant ones;
  - (ii) failure to base the decision on the facts;
  - (iii) bad faith or dishonesty;
  - (iv) mistake of law;
  - (v) decisions that run contrary to the policy of the 1996 Act;
  - (vi) Wednesbury unreasonableness, i.e. the legal test of the level of irrationality or unreasonableness in the exercise of a power or duty that needs to be shown before the courts will intervene.

## Period during which a review must be completed

- 21.13 Regulation 9 provides that the period within which the applicant must be notified of the decision on review is:
- (i) eight weeks from the day of the request for a review, where the original decision was made by the housing authority;
  - (ii) ten weeks, where the decision was made jointly by two housing authorities under s.198(5) (a decision whether the conditions for referral are met);
  - (iii) twelve weeks, where the decision is taken by a person appointed pursuant to the Schedule to the Homelessness (Decisions on Referrals) Order (SI 1998 No.1578).
- 21.14 The regulations provide that in all of these cases it is open to the reviewer to seek the applicant's agreement to an extension of the prescribed period; any such agreement must be given in writing.

## Late representations

- 21.15 The regulations require the reviewer(s) to consider any written representations received subject to compliance with the requirement to notify the applicant of the decision on

review within the period of the review i.e. the period prescribed in the regulations or any extended period agreed in writing by the applicant. It may in some circumstances be necessary to make further enquiries of the applicant about information he or she has provided. The reviewer(s) should be flexible about allowing such further exchanges, having regard to the time limits for reviews prescribed in the regulations. If this leads to significant delays, the applicant may be approached to agree an extension in the period for the review. Similarly, if an applicant has been invited to make oral representations and this requires additional time to arrange, the applicant should be asked to agree an appropriate extension.

## **Procedures for review of decisions made under the Decisions on Referrals Order**

- 21.16 Where the original decision under s.198(5) was made by a person appointed pursuant to the Schedule to the Homelessness (Decisions on Referrals) Order 1998 (SI 1998 No.1578), regulation 7 provides that a review should be carried out by another person appointed by the notifying housing authority and the notified housing authority. This requirement applies even where the original decision was carried out by a person appointed from the panel by the chairman of the Welsh Local Government Association, or his or her nominee. If, however, the two housing authorities fail to appoint a person to carry out the review within 5 working days of the date of the request for a review, the notifying housing authority must request the chair of the Welsh Local Government Association to appoint a person from the panel. The chair, in turn, must within 5 working days of that request appoint a person from the panel to undertake the review. The housing authorities are required to provide the reviewer with the reasons for the original decision, and the information on which that decision is based, within 5 working days of his or her appointment.
- 21.17 Any person thus appointed must comply with the procedures set out in regulations 6, 7, 8 and 9. Specifically, he or she must invite written representations from the applicant and send copies of these to the two housing authorities, inviting them to respond. The reviewer is also required to notify in writing the two housing authorities of his or her decision on review and the reasons for it at least a week before the end of the prescribed period of twelve weeks (or of any extended period agreed by the applicant). This allows the housing authorities adequate time to notify the applicant of the decision before expiry of the period.

### **Notification of decision on review**

- 21.18 Section 203 requires a housing authority to notify the applicant of the reasons for their decision where it:
- (i) confirms the original decision against the interests of the applicant;
  - (ii) confirms a previous decision to notify another housing authority under s.198; or,
  - (iii) confirms a previous decision that the conditions for referral in s.198 are met in the applicant's case.
- 21.19 Where the review is carried out jointly by two housing authorities under s.198(5), or by a person appointed pursuant to the Homelessness (Decisions on Referrals) Order 1998 (SI 1998 No.1578), the notification may be made by either of the two housing authorities concerned.

## Power to Accommodate pending a Review

- 21.20 Under s.202, applicants have the right to ask for a review of the housing authority's decision on a number of issues relating to their case. Broadly speaking, where applicants who have a priority need request a review of the housing authority's decision on their case, the housing authority have a power to accommodate them, pending a decision on a review.
- 21.21 The relevant powers are found in s.188(3) and s.200(5). These include a power to accommodate where the applicant was found to be intentionally homeless and in priority need and:
- (i) a duty was owed under s.190(2)(a),
  - (ii) the s.190(2)(a) duty has been fully discharged, and
  - (iii) the applicant is awaiting a decision on a review.
- 21.22 Under s.200(5), a notifying housing authority have the power to accommodate an applicant, pending a review of a decision that the conditions are met for referral of the case to another housing authority.
- 21.23 In considering whether to exercise their power to accommodate pending a decision on a review, housing authorities will need to balance, on the one hand, the objective of maintaining fairness between homeless persons in circumstances where they have decided that no duty is owed to them, and, on the other, proper consideration of the possibility that the applicant might be right (and the housing authority wrong) and that to deprive the applicant of accommodation could result in the denial of an entitlement under Part 7. In weighing the balance, there are certain matters that the housing authority will always need to consider (although other matters may also be relevant):
- (i) the merits of the case itself and the extent to which it could be said that the decision was either one that appears to be contrary to the merits of the case or one that required a very fine balance of judgement that could have gone either way;
  - (ii) whether any new material, information or argument has been put to the housing authority, which could have a real effect on the decision under review; and
  - (iii) the personal circumstances of the applicant and the consequences to him or her of a decision not to exercise the discretion to accommodate.
- 21.24 For housing authorities where, generally, only a small proportion of requests for a review are successful, it may be open to the housing authority to adopt a policy of deciding to exercise the power to accommodate pending a review only in exceptional circumstances. However, such a policy would need to be applied flexibly, and each case would need to be considered on the particular facts and circumstances. In deciding whether there were exceptional reasons in any particular case, the housing authority would need to ensure that account was taken of all material considerations and no account taken of any that were immaterial.

## Appeals to County Court

- 21.25 Section 204 provides an applicant with the right of appeal to the county court on any point of law arising from the decision on the review if:
- (i) he or she is dissatisfied with the decision on a review, or
  - (ii) he or she is not notified of the decision on the review within the time prescribed in regulations made under s.203.
- 21.26 In the latter case, an applicant will be entitled to appeal against the original decision. The right of appeal is on a point of law arising from the decision on the review or, as the case may be, the original decision.
- 21.27 An appeal must be brought by an applicant within 21 days of:
- (i) the date on which he or she is notified of the decision on review; or
  - (ii) the date on which he or she should have been notified (i.e. the date marking the end of the period for the review prescribed in the regulations, or any extended period agreed in writing by the applicant).
- 21.28 The court may give permission for an appeal to be brought after 21 days, but only where it is satisfied that:
- (i) (where permission is sought within the 21 day period), that there is good reason for the applicant to be unable to bring the appeal in time; or
  - (ii) (where permission is sought after the 21 day period has expired), that there was a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for permission.
- 21.29 An appeal, a county court is empowered to make an order confirming, quashing or varying the housing authority's decision as it thinks fit. It is important, therefore, that housing authorities have in place review procedures that are robust, fair, and transparent.
- 21.30 Under s.204A, where an applicant has the right to appeal to the County Court against a housing authority's decision on review (or the original decision), he or she also has a right to appeal against a decision of the housing authority not to secure accommodation for him or her pending that appeal.
- 21.31 The applicant can also appeal against a decision of the housing authority to secure accommodation for him or her for only a limited period which ends before final determination of the appeal.
- 21.32 In deciding whether or not to accommodate an applicant pending an appeal, a housing authority must act reasonably (see Chapter 18 for guidance on powers to accommodate). On an appeal against the housing authority's decision not to accommodate, the Court must apply the principles that would be applied by the High Court on an application for judicial review. In effect, this means that the County Court can only test the reasonableness of the decision taken by the housing authority; it cannot substitute its own decision as such. However, where the Court quashes the decision of the housing authority, it may order the housing authority to accommodate the applicant, but only where it is satisfied that failure to do so would substantially prejudice the applicant's ability to pursue the main appeal on the homelessness decision.

## **Powers to Accommodate pending an Appeal to County Court**

- 21.33 Under s.204(1), applicants have the right of appeal to the County Court on a point of law if they are dissatisfied with a decision on a review or are not notified of the decision on the review within the time prescribed. Under s.204(2), an appeal must be brought by applicants within 21 days of the date they were notified of the decision on the review (or the date by which they should have been notified). Under s.204(2A), the court may give permission for an appeal to be brought after 21 days, in certain circumstances. See Chapter 21 for guidance on appeals.
- 21.34 Under s.204(4), the housing authority have a power to accommodate certain applicants:
- (i) during the period for making an appeal, and
  - (ii) pending the appeal and any subsequent appeal (until all appeals are finally determined). By s.202(4), housing authorities have such a power in respect of applicants who were previously owed a duty to secure accommodation under s.188 (interim duty pending initial inquiries), s.190 (duty owed to applicants intentionally homeless and in priority need), or s.200 (interim duty owed pending decision on a referral). Housing authorities also have such power in a case where the applicant was owed a duty under s.195(5)(b) (intentionally threatened with homelessness and in priority need), the applicant requested a review and subsequently become homeless, and, in consequence, the housing authority had a power under s.195(8)(b) to secure accommodation pending the decision on the review.
- 21.35 The powers under s.204(4) to accommodate an applicant pending an appeal to the County Court apply whether or not the housing authority have exercised their power to accommodate the applicant pending a review.
- 21.36 In deciding whether to exercise their power to accommodate pending an appeal to the County Court, housing authorities will need to adopt the same approach, and consider the same factors, as for a decision whether to exercise their power to accommodate pending a review (see paragraph 21.23).

### **Applicants right to appeal to the County Court against decision not to accommodate**

- 21.37 In deciding whether or not to accommodate an applicant pending an appeal, a housing authority must act reasonably. On an appeal against the housing authority's decision not to accommodate, the Court must apply the principles that would be applied by the High Court on an application for judicial review. In effect, this means that the County Court can only test the reasonableness of the decision taken by the housing authority; it cannot substitute its own decision as such. However, where the Court quashes the decision of the housing authority, it may order the housing authority to accommodate the applicant, but only where it is satisfied that failure to do so would substantially prejudice the applicant's ability to pursue the main appeal on the homelessness decision.

## **Local Government Ombudsman**

- 21.38 An applicant may complain to a Local Government Ombudsman if the applicant considers that he or she has been caused injustice as a result of maladministration by a housing authority. See Chapter 5 for more detail on the role of the Ombudsman.

# ANNEXES



# ANNEX 1

## Scope of Part 6 - Exemptions

1. Part 6 of the 1996 Act (as amended) does not apply to mutual exchanges within an RSL's stock or between local authorities and RSLs, for example through the Housing Organisations Mobility and Exchange Services (HOMES) schemes.

### Primary Legislation Exemptions

2. Section 159(5) of the 1996 Act provides that the provisions of Part 6 do not apply to someone who is already:
  - a) a secure or introductory tenant unless the allocation involves a transfer of housing accommodation for that person and is made on his or her application:
3. Similarly, s.160 of the 1996 Act (as amended) exempts from the provisions of Part 6 cases:
  - a) where a secure tenant dies, the tenancy is a periodic one, and there is a person qualified to succeed the tenant under s.89 of the Housing Act 1985;
  - b) where a secure tenant dies and the tenancy is one for a fixed term and therefore remains a secure tenancy by virtue of s.90 of the 1985 Act;
  - c) where a secure tenancy is assigned by way of exchange under s.92 of the 1985 Act;
  - d) where a secure tenancy is assigned to someone who would be qualified to succeed to the tenancy if the secure tenant died immediately before the assignment; or
  - e) where a secure tenancy vests or is otherwise disposed of in pursuance of an order made under:

s.24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings);

s.17(1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce); or

paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents), or
  - f) where an introductory tenancy:
    - i) becomes a secure tenancy on ceasing to be an introductory tenancy;
    - ii) vests under s.133(2) of the 1996 Act (succession to an introductory tenancy on death of tenant); or
    - iii) is assigned to someone who would be qualified to succeed the introductory tenancy if the introductory tenant died immediately before the assignment; or
    - iv) meets the criteria in paragraph 3(e) above.

# **ANNEX 2**

## **Amending and Secondary Legislation**

### **Part 6 - Allocations**

The Homelessness Act 2002

The Local Authority (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 S.I. 1996/3205

The Allocation of Housing (Reasonable and Additional Preference) Regulations 1997 S.I. 1997/1902

The Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 S.I. 1999/71

The Allocation of Housing (Wales) Regulations 2003 S.I. 2003/239 (W.36)

### **Part 7 - Homelessness**

#### **The Immigration and Asylum Act 1999**

Section 117

Schedule 14 para.116

Schedule 15 para.13

#### **The Homelessness Act 2002**

The Homelessness (Suitability of Accommodation) Order 1996 S.I.1996/3204

The Local Authority (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 S.I. 1996/3205

The Homelessness (Suitability of Accommodation)(Amendment) Order 1997 S.I.1997/1741

The Homelessness (Decisions of Referrals) Order 1998 S.I. 1998/1578

The Homelessness (Asylum-Seekers) (Interim Period) (England) Order 1999 S.I.1999/3126

The Homelessness (Wales) Regulations 2000 Statutory Instrument 2000 No. 1079 (W. 72)

The Homeless Persons (Priority Need) (Wales) Order 2001

## **ANNEX 3**

# **Indicators of the criteria in the reasonable preference categories**

Local housing authorities may devise their own indicators of the criteria in the reasonable preference categories in s.167(2) of the 1996 Act (as amended). The following list is included for illustrative purposes and to assist authorities in this task: it is by no means comprehensive or exhaustive, and local housing authorities may have other, local factors to consider and include as indicators of the categories.

### **Insanitary, overcrowded and unsatisfactory housing conditions**

- Lacking bathroom or kitchen
- Lacking inside WC
- Lacking cold or hot water supplies, electricity, gas, or adequate heating
- Lack of access to a garden for children
- Overcrowding
- Sharing living room, kitchen, bathroom/WC
- Property in disrepair
- Property unfit
- Poor internal or external arrangements
- Under occupation
- Children in flats or maisonettes above ground floor

### **People with a particular need for settled accommodation on medical or welfare grounds (criteria may apply to any member of the household)**

- A mental illness or disorder
- A physical or learning disability
- Chronic or progressive medical conditions (e.g. MS, HIV/AIDS)
- Infirmity due to old age
- The need to give or receive care
- The need to recover from the effects of violence or threats of violence, or physical, emotional or sexual abuse
- The need to recover from the effects of racist incidents
- Ability to fend for self restricted for other reasons
- Young people at risk
- People with behavioural difficulties
- Need for adapted housing and/or extra facilities, bedroom or bathroom
- Need improved heating (on medical grounds)
- Need sheltered housing (on medical grounds)
- Need ground floor accommodation (on medical grounds)
- Need to be near friends/relatives or medical facility on medical grounds
- Recovery from alcohol/drug problem

## ANNEX 4

# Classes of applicants eligible for an allocation and homelessness assistance

**Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. Accordingly, the guidance contained in this Code can only reflect the law at the time it is issued. When going to print of the current version (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. In view of this, all reference to 'Exceptional Leave to Remain' in the current Guidance should be considered in this context. The Home Office will be notifying local housing authorities of these changes separately. The Assembly Government will revise the Code to reflect the changes and issue Code revisions in due course. Local housing authorities should secure legal or other expert advice where their obligations to asylum seekers and refugees are ambiguous or unknown.

Class of Applicant	Conditions of eligibility	How to identify / verify
Existing social tenant (allocated accommodation by LA)	None	
British citizen	Must be habitually resident in the CTA <sup>1</sup>	Passport
EEA citizen <sup>1</sup>	Must be habitually resident in CTA, unless: - applicant is a "worker" <sup>2</sup> , or - applicant has a right to reside in the UK <sup>3</sup>	Passport or national identity card
Person subject to immigration control granted refugee status	None	Stamp in passport or Home Office letter
Person subject to immigration control granted exceptional leave to remain	ELR must not be subject to a condition requiring him/her to maintain him/herself and dependants	Stamp in passport or Home Office letter
Person subject to immigration control granted indefinite leave to remain	Must be habitually resident in CTA  And, if ILR was granted on undertaking that a sponsor(s) would be responsible for maintenance & accommodation and 5 years has not elapsed since date of entry to UK or the undertaking - then at least one sponsor must have died	Stamp in passport or Home Office letter
Person subject to immigration control who is a citizen of a country that has ratified ECSMA <sup>5</sup> or ESC <sup>6</sup> (see Annex 12)	Must be lawfully present <sup>7</sup> in UK  Must be habitually resident in CTA	Passport
1	CTA: The <b>Common Travel Area</b> includes the UK, the Channel Islands, the Isle of Man and the Republic of Ireland	
2	<b>EEA countries</b> are : Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the UK (see Annex 12)	
3	A " <b>worker</b> " for the purpose of Council Regulation (EEC) No. 1612/68 or (EEC) No.1251/70 (see Annex 14)	
4	A <b>right to reside</b> pursuant to Council Directive No.68/360/EEC or No.73/148/EEC (see Annex 14)	
5	<b>ECSMA</b> is the European Convention on Social and Medical Assistance. Non EEA ratifying countries are : Belgium, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, Turkey, and the UK. (see Annex 12).	
6	<b>ESC</b> is the European Social Charter. Non EEA ratifying countries are : Cyprus, Czech Republic, Hungary, Latvia, Poland and Slovakia.	
7	Persons subject to immigration control are not <b>lawfully present</b> in the UK unless they have leave to enter or remain in the UK. Asylum seekers are generally granted "temporary admission" and do not have leave to enter or remain.	

## ANNEX 5

# Eligibility Pathway - Model and Procedures

**Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. Accordingly, the guidance contained in this Code can only reflect the law at the time it is issued. When going to print of the current version (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. In view of this, all reference to 'Exceptional Leave to Remain' in the current Guidance should be considered in this context. The Home Office will be notifying local housing authorities of these changes separately. The Assembly Government will revise the Code to reflect the changes and issue Code revisions in due course. Local housing authorities should secure legal or other expert advice where their obligations to asylum seekers and refugees are ambiguous or unknown.

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**Questions housing authorities will need to ask to determine whether applicants are eligible for an allocation or homelessness assistance.**

1. **ASK ALL APPLICANTS - Are you either:**
  - an existing secure or introductory tenant of a housing authority, or
  - an existing assured tenant of accommodation allocated to you by a housing authority?

If YES - Applicant is eligible  
If NO - Go to 2
  
2. **Are you a citizen of the United Kingdom, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway Portugal, Spain or Sweden ?**

*(i.e. a country within the European Economic Area (EEA) - for confirmation of current EEA membership check Annex 12 or <http://secretariat.efta.int/>)*

If YES - Go to 11  
If NO - Go to 3
  
3. **Have you been granted refugee status in the UK?**

If YES - Applicant is eligible  
If NO - Go to 4
  
4. **Do you have indefinite leave to enter or remain in the UK with no condition or limitation?**

If YES - Go to 5  
If NO - Go to 11
  
5. **Were you given leave on an undertaking that a sponsor would be responsible for your accommodation needs ?**

If YES - Go to 6  
If NO - Go to 11
  
6. **Do both the following statements apply in your case:**
  - i) **you have been resident in the UK for less than 5 years since the date of your entry to the UK, or the date of the undertaking, whichever is the later, and**

- ii) the person (or at least one of the persons) who gave the undertaking is still alive?

If YES - Applicant is not eligible

If NO - Go to 11

7. Have you been granted exceptional leave to enter or remain in the UK ?

If YES - Go to 8

If NO - Go to 9

8. Is your leave subject to a condition that you are required to maintain and accommodate yourself (and any dependants) ?

If YES - Applicant is not eligible

If NO - Applicant is eligible

9. Are you a citizen of Cyprus, Czech Republic, Hungary, Latvia, Poland or Slovakia, Malta and Turkey.

*(i.e. a non-EEA country that has ratified either the European Convention on Social and Medical Assistance (ECSMA) and/or the European Social Charter (ESC) - for current ratification status of countries check Annex 12 or <http://www.humanrights.coe.int>).*

If YES - Go to 10

If NO - Applicant is not eligible

10. Do you have leave to enter or remain in the UK ?

If YES - Go to 12

If NO - Applicant is not eligible \*

\* Persons subject to immigration control are not lawfully present in the UK if they do not have leave to enter or remain. Asylum seekers are generally granted “temporary admission” and do not have leave to enter or remain.

11. Are you any of the following:

- (i) a “worker” (for the purposes of Council Regulation (EEC) No. 1612/68 or (EEC) No.1251/70)\*\*

- (ii) a person with a right to reside in the UK (pursuant to Council Directive No.68/360/EEC or No.73/148/EEC \*\*

- (iii) a person who left Montserrat after 1 November 1995 because of the effect of volcanic eruption there ?

\*\* see Annex 14\_(habitual residence and exceptions)

If YES - Applicant is eligible

If NO - Go to 12

12. Have you been resident in the UK (or the Channel Islands, the Isle of Man or the Republic of Ireland) continuously for the last 2 years ?

If YES - Go to 13

If NO - Go to 14

13. **[Question for the housing authority: ] Is the housing authority satisfied that the applicant is habitually resident in the Common Travel Area (CTA)?** *(A housing authority might not be satisfied, for example, if there were circumstances that suggested the applicant was not habitually resident e.g. applicant has strong interests elsewhere, for example, family, property, business etc.)*

If YES - Applicant is eligible

If NO - Go to 14

14. **Determine whether applicant is habitually resident in the CTA (see Annex 14).**  
Applicant is eligible if habitually resident - and not eligible if not habitually resident.

## ANNEX 6

### Table of information from The Allocation of Housing (Wales) Regulations 2003 S.I.2003/239(W.36)

**Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. Accordingly, the guidance contained in this Code can only reflect the law at the time it is issued. When going to print of the current version (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. In view of this, all reference to 'Exceptional Leave to Remain' in the current Guidance should be considered in this context. The Home Office will be notifying local housing authorities of these changes separately. The Assembly Government will revise the Code to reflect the changes and issue Code revisions in due course. Local housing authorities should secure legal or other expert advice where their obligations to asylum seekers and refugees are ambiguous or unknown.

The Allocation of Housing (Wales) Regulations 2000 S.I. 2000/1080 was replaced on the 28<sup>th</sup> January 2003 by regulations made under Sections 160A(3) and (5) - The Allocation of Housing (Wales) Regulations 2003 S.I. 2003/239, a copy of which can be found on the HMSO website. This Annex is intended to reflect the regulations.

#### Persons subject to immigration control prescribed as ELIGIBLE under s.160A(3)

Class of applicant	Conditions of eligibility	Reference
Person subject to immigration control granted refugee status	None	s.4(a) - Class A
Person subject to immigration control granted exceptional leave to remain	ELR must not be subject to a condition requiring him/her to maintain him/herself and dependants	s.4(b) - Class B
Person subject to immigration control granted indefinite leave to remain	Must be habitually resident in CTA  And, if ILR was granted on undertaking that a sponsor(s) would be responsible for maintenance & accommodation and 5 years has not elapsed since date of entry to UK or the undertaking - and the sponsor(s) have died	s.4(c) - Class C
Person subject to immigration control who is a citizen of a country that has ratified ECSMA or ESC (see Annex 12)	Must be lawfully present in UK  Must be habitually resident in CTA	s.4(d) - Class D

#### Other classes of person from abroad prescribed as INELIGIBLE under s.160A(5)

Class of applicant	Reference
EEA nationals (including UK nationals) who are not habitually resident in the CTA - unless they: - are a worker, - have a right to reside in the UK, or - left Montserrat after 1 November 1995 because of volcanic activity	

#### Notes

- 1 CTA : The **Common Travel Area** includes the UK, the Channel Islands, the Isle of Man and the Republic of Ireland
- 2 **ECSMA** is the European Convention on Social and Medical Assistance. Ratifying countries are : Belgium, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, Turkey, and the UK. (see Annex 12).
- 3 **ESC** is the European Social Charter. Non EEA ratifying countries are : Croatia, Cyprus, Czech Republic, Hungary, Iceland, Latvia, Malta, Norway, Poland, Slovakia and Turkey (see Annex 12).



- 4 Persons subject to immigration control are not **lawfully present** in the UK unless they have leave to enter or remain in the UK. Asylum seekers are generally granted “temporary admission” and do not have leave to enter or remain.
- 5 **EEA countries** are : Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway Portugal, Spain, Sweden and the UK (see **Annex 12**)
- 6 A “**worker**” for the purpose of Council Regulation (EEC) No. 1612/68 or (EEC) No.1251/70 (see **Annex 14**)
- 7 A **right to reside** pursuant to Council Directive No.68/360/EEC or No.73/148/EEC (see **Annex 14**)

# Annex 7

## The Homelessness (Wales) Regulations 2000

### S.I.2000/1079(W.72)

The Homelessness (Wales) Regulations 2000 No.1079 (W.72) can be found on the HMSO website. Regulations 3,4,5 and 6 of the Homelessness (England) Regulations 2000 have effect in Wales. For ease of reference, tables containing copies of the English Regulations are given at Parts A and B to this Annex.

**Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. Accordingly, the guidance contained in this Code can only reflect the law at the time it is issued. When going to print of the current version (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. In view of this, all reference to 'Exceptional Leave to Remain' in the current Guidance should be considered in this context. The Home Office will be notifying local housing authorities of these changes separately. The Assembly Government will revise the Code to reflect the changes and issue Code revisions in due course. Local housing authorities should secure legal or other expert advice where their obligations to asylum seekers and refugees are ambiguous or unknown.

## Annex 7 - Part A

# Table of information from the Homelessness (England) Regulations 2000 (SI 2000 No. 701) (Other than Asylum Seekers)

## Regulation 3

Persons subject to immigration control (other than Asylum Seekers) prescribed as ELIGIBLE under s.185(2)

Class of applicant	Conditions of eligibility	Reference
Person subject to immigration control granted refugee status	None	Class [A]
Person subject to immigration control granted exceptional leave to remain	ELR must not be subject to a condition requiring him/her to maintain him/herself and dependants	Class [B]
Person subject to immigration control granted indefinite leave to remain	Must be habitually resident in CTA  And, if ILR was granted on undertaking that a sponsor(s) would be responsible for maintenance & accommodation and 5 years has not elapsed since date of entry to UK or the undertaking - then at least one sponsor must have died	Class [C]
Person subject to immigration control who is a citizen of a country that has ratified ECSMA or ESC (see Annex 12)	Must be lawfully present in UK  Must be habitually resident in CTA	Class E(i)

Other classes of person from abroad prescribed as INELIGIBLE under s.185(3)

Class of applicant	Reference
EEA nationals (including UK nationals) who are not habitually resident in the CTA - unless they: - are a worker, - have a right to reside in the UK, or - left Montserrat after 1 November 1995 because of volcanic activity	Class [E]  Class [D]
Person on an income-based jobseeker's allowance or in receipt of income support and is eligible for that benefit other than because: (i) he has limited leave to enter or remain in the UK which was given in accordance with the relevant immigration rules and (ii) he is temporarily without funds because remittances to him from abroad have been disrupted	Class [I]

### Notes

1 CTA : The Common Travel Area includes the UK, the Channel Islands, the Isle of Man and the Republic of Ireland

- 2 **ECSMA** is the European Convention on Social and Medical Assistance. Non EEA ratifying countries are : Belgium, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, Turkey, and the UK. (see **Annex 12**).
- 3 **ESC** is the European Social Charter. Non EEA ratifying countries are : Cyprus, Czech Republic, Hungary, Latvia, Poland and Slovakia.
- 4 Persons subject to immigration control are not **lawfully present** in the UK unless they have leave to enter or remain in the UK. Asylum seekers are generally granted “temporary admission” and do not have leave to enter or remain.
- 5 **EEA countries** are : Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway Portugal, Spain, Sweden and the UK (see **Annex 12**)
- 6 A “**worker**” for the purpose of Council Regulation (EEC) No. 1612/68 or (EEC) No.1251/70 (see **Annex 14**)
- 7 A **right to reside** pursuant to Council Directive No.68/360/EEC or No.73/148/EEC (see **Annex 14**)

# Annex 7 - Part B

## Table of information from the Homelessness (England) Regulations 2000 (SI 2000 No. 701) (Asylum Seekers)

**Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. Accordingly, the guidance contained in this Code can only reflect the law at the time it is issued. When going to print of the current version (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. In view of this, all reference to 'Exceptional Leave to Remain' in the current Guidance should be considered in this context. The Home Office will be notifying local housing authorities of these changes separately. The Assembly Government will revise the Code to reflect the changes and issue Code revisions in due course. Local housing authorities should secure legal or other expert advice where their obligations to asylum seekers and refugees are ambiguous or unknown.

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### Regulation 3

Class of Applicant	Reference
An asylum-seeker who has made a claim for asylum: (i) which is recorded by the Secretary of State as having been made on his arrival (other than on his re-entry) in the UK from a country outside the CTA; and (ii) which has not been recorded by the Secretary of State as having been either decided (other than on appeal) or abandoned.	Class F
An asylum-seeker- (i) who was in Great Britain when the Secretary of State made a declaration to the effect that the country of which that person is a national is subject to such a fundamental change in circumstances that he would not normally order the return of a person to that country; (ii) who made a claim for asylum which is recorded by the Secretary of State as having been made within a period of three months from the day on which that declaration was made; and (iii) whose claim for asylum has not been recorded by the Secretary of State as having been either decided (other than on appeal) or abandoned.	Class G
An asylum-seeker- (i) who made a relevant claim for asylum on or before 4th February 1996; and (ii) who was, on 4th February 1996, entitled to benefit under regulation 7A of the Housing Benefit (General) Regulations 1987 (d) (persons from abroad).	Class H

#### Notes

1. CTA : The **Common Travel Area** includes the UK, the Channel Islands, the Isle of Man and the Republic of Ireland.
2. Persons subject to immigration control are not **lawfully present** in the UK unless they have leave to enter or remain in the UK. Asylum seekers are generally granted "temporary admission" and do not have leave to enter or remain.

## ANNEX 8

# How to identify the main classes of persons subject to immigration control who will be eligible for an allocation or homelessness assistance

**Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. Accordingly, the guidance contained in this Code can only reflect the law at the time it is issued. When going to print of the current version (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. In view of this, all reference to 'Exceptional Leave to Remain' in the current Guidance should be considered in this context. The Home Office will be notifying local housing authorities of these changes separately. The Assembly Government will revise the Code to reflect the changes and issue Code revisions in due course. Local housing authorities should secure legal or other expert advice where their obligations to asylum seekers and refugees are ambiguous or unknown.

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### Refugee Status

1. A person granted refugee status has been recognised as a refugee in accordance with the criteria set out in the 1951 United Nations Convention relating to the status of refugees and granted asylum in the United Kingdom.
2. A person granted refugee status will have been issued by the Home Office with a letter (marked either GEN 22 or GEN 23 in the top right-hand corner) validated by an Immigration and Nationality Directorate (IND) date stamp.

### A Person Who Has Exceptional Leave to Enter or Remain in the UK

3. Exceptional leave to enter or remain in the UK may be granted to asylum seekers who are refused asylum (i.e. not given refugee status) and other persons where there are compelling, compassionate circumstances which justify granting leave to enter or remain on an exceptional basis.
4. Exceptional leave to enter or remain is sometimes granted initially for 12 months only, and the person will have the opportunity of seeking renewal for a further three years, prior to full settled status being granted (i.e. indefinite leave to remain with no limitation or condition). Housing authorities should note that persons holding exceptional leave to enter or remain (even where this may be time limited) will be eligible for an allocation unless it is subject to a condition requiring them to maintain and accommodate themselves (and their dependants) without recourse to public funds.
5. Persons holding exceptional leave to enter or remain which is time limited should not be treated as a person holding limited leave to enter or remain in the UK (who will not be eligible).
6. Former asylum seekers granted exceptional leave to enter or remain will have been issued with a letter (marked GEN 19 in the top right-hand corner) showing the date until which leave to enter or remain has been granted. This letter will have been validated by an IND date stamp.

## **A Person Who Has Current Leave to Enter or Remain in the United Kingdom which is not subject to any limitation or condition**

7. Persons subject to immigration control who have permission to remain in the United Kingdom for an indefinite period are regarded as having settled status within the meaning of the immigration rules. Such persons are granted indefinite leave to remain and this will be reflected by an endorsement to that effect in their passport, which will be accompanied by an authenticating date stamp issued by IND.

### **Confirmation of Status**

8. If there is any doubt about an applicant's immigration status or the particular leave to enter or remain which they hold, housing authorities should contact IND using the procedures set out in **Annex 13**.

## ANNEX 9

# Persons subject to immigration control who are not eligible for an allocation or homelessness assistance

**Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. Accordingly, the guidance contained in this Code can only reflect the law at the time it is issued. When going to print of the current version (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. In view of this, all reference to 'Exceptional Leave to Remain' in the current Guidance should be considered in this context. See the paragraph on Asylum Seekers and Refugees on page ii of this Guidance for further information. The Home Office will be notifying local housing authorities of these changes separately. The Assembly Government will revise the Code to reflect the changes and issue Code revisions in due course. Local housing authorities should secure legal or other expert advice where their obligations to asylum seekers and refugees are ambiguous or unknown.

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1. Persons subject to immigration control who are not eligible for an allocation of housing under Part 6 or Part 7 (since they do not fall within a class of persons prescribed by regulations under s160A(3)/s.185(2) respectively) will include the following (unless they are an existing secure or introductory tenant of a housing authority or an assured tenant of accommodation allocated to them by a housing authority:

### **Classes of person ineligible for an allocation or homelessness assistance**

a person registered with the Home Office as an **asylum seeker**

a **visitor** to this country (including an overseas students) **who has limited leave to enter or remain** in the UK granted on the basis that he or she will not have recourse to public funds

a person **who has a valid leave to enter or remain** in the UK which includes a condition that there shall be **no recourse to public funds**

a person who has a **valid leave to enter or remain** in the UK which carries no limitation or condition and who is **not habitually resident** in the Common Travel Area

a **sponsored person** who has been in this country less than 5 years (from date of entry or date of sponsorship, whichever is the later) and **whose sponsor(s) is still alive** (see paragraph 2 below)

a person who is a national of a non-EEA country that is a signatory to the ECSMA and/or the ESC but has ratified neither

a person who is a national of a non-EEA country that has ratified the ECSMA and/or the ESC but is not lawfully present in the UK (i.e. does not have leave to enter or remain or is an asylum seeker with temporary admission) and/or is not habitually resident in the Common Travel Area

a person who is **in the United Kingdom illegally**, or who has **overstayed** his/her leave (see paragraphs 3 to 5 below)



## Asylum seekers

2. Asylum seekers are unlikely to have possession of their passport since this will generally be lodged with IND when they make an asylum application. Instead they may have a standard acknowledgement letter (**SAL**) or other letter from IND in connection with the asylum claim. Other documents which an asylum seeker may produce include a **Form IS 96** (used by the Home Office to notify a person that he or she has been granted temporary admission to the United Kingdom) and a **GEN 32** (used by the Home Office to provide an applicant with a date for attending the Asylum Screening Unit for an interview).

## Sponsored persons

3. A person subject to immigration control may be given indefinite leave to enter or remain in the UK on an undertaking given by another person, or persons, that he or she will be responsible for the cost of his/her maintenance and accommodation. (This could occur, for example, where an elderly relative joins a family member who is already living in the UK.) Generally, sponsored persons will not be eligible for an allocation under Part 6 or homelessness assistance under Part 7, if they make a housing application within 5 years of either the date of entry to the UK or the date of the sponsorship undertaking, whichever is later. However, a sponsored person would be eligible for an allocation or homelessness assistance if his/her sponsor had died and he/she was habitually resident in the Common Travel Area.

## Illegal entrants

4. Illegal entrants will include:

Description of persons who are illegal entrants

a person who entered the country by evading immigration controls

a person who has been deported from the United Kingdom, but who re-enters the country while the deportation order is still in force

a person who obtained entry clearance by practising fraud or deceit towards the entry clearance officer when applying for a visa or other entry clearance abroad, or by deceiving the immigration officer on arrival (the deceit or fraud would have to be material)

## Confirmation of Status

5. The question of whether or not someone is an illegal entrant is a matter of fact that could be established by a housing authority. However, in all cases where a housing authority considers that an applicant may be an illegal entrant it is recommended that the housing authority makes an inquiry of the Home Office Immigration and Nationality Directorate (IND), using the procedures set out in **Annex 13**. Only IND will have access to full details of any representations made by a person seeking entry to the United Kingdom to the entry clearance officer or to the immigration officer at the point of entry. IND are also able to regularise the stay of a person, so that they would be in the country lawfully.

## Overstayers

6. Establishing whether a person has overstayed his or her leave to remain is unlikely to be straightforward and may require detailed knowledge of the provisions of the Immigration Act 1971. Consequently, in all cases where a housing authority considers that an applicant may be an overstayer, it is recommended that the housing authority consults IND using the procedures set out in **Annex 13**.

# ANNEX 10

## Asylum Seekers

**Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. Accordingly, the guidance contained in this Code can only reflect the law at the time it is issued. When going to print of the current version (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. In view of this, all reference to 'Exceptional Leave to Remain' in the current Guidance should be considered in this context. The Home Office will be notifying local housing authorities of these changes separately. The Assembly Government will revise the Code to reflect the changes and issue Code revisions in due course. Local housing authorities should secure legal or other expert advice where their obligations to asylum seekers and refugees are ambiguous or unknown.

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### Overview

1. Asylum seekers whose claim for asylum was made after 2 April 2000 will not be eligible for assistance under Part 7. However, some asylum seekers whose claim for asylum was made before 3 April 2000 may be eligible (see below).
2. Asylum seekers can be expected to be persons subject to immigration control with temporary admission but not leave to enter or remain in the UK (and it has been established that a person with this status is not "lawfully present" in the UK).
3. Broadly speaking, an asylum seeker is a person claiming to have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, and who is unable or unwilling to avail him or her self of the protection of the authorities in his or her own country.
4. A person becomes an asylum seeker when his or her claim for asylum has been recorded by the Home Secretary, and he or she remains an asylum seeker until such time as that application has been finally resolved (including the resolution of any appeal). The recording, consideration and resolution of such claims is a matter for the Home Office Immigration and Nationality Directorate (IND).
5. If there is any uncertainty about an applicant's immigration or asylum status, housing authorities should contact the IND, using the procedures set out in **Annex 13**. Before doing so, the applicant should be advised that an inquiry will be made: if at this stage the applicant prefers to withdraw his or her application, no further action will be required.

### Asylum Seekers who are eligible for Part 7 Assistance

6. The Homelessness (England) Regulations 2000, SI 2000 No. 701, provide that asylum seekers who claimed asylum before 3 April 2000 are eligible for assistance under Part 7 in certain circumstances (set out below). However, housing authorities should note that, by virtue of s.186(1), regardless of any other circumstances, an asylum seeker is not eligible for Part 7 assistance if he or she has any accommodation in the UK - however temporary - available for his or her occupation. This would include a place in a hostel or bed and breakfast hotel.
7. Subject to s.186(1), asylum seekers will be eligible for assistance under Part 7, if they claimed asylum before 3 April 2000, and:

- i) the claim for asylum was made at the port on initial arrival in the UK (but not on re-entry) from a country outside the Common Travel Area, and has not been recorded by the Home Office as determined or abandoned; or
- ii) the asylum seeker was present in the UK when the Home Secretary made a declaration that his or her country of origin had undergone an upheaval, and the claim for asylum was made within 3 months of that declaration, and the claim has not been recorded by the Home Office as determined or abandoned; or
- iii) the claim for asylum was made on or before 4 February 1996 and the applicant was entitled to housing benefit on 4 February 1996, and either:
  - a) the asylum claim has not been recorded by the Home Office as determined or abandoned; or
  - b) the claim has been recorded as determined on or before 4 February 1996; and an appeal in respect of the claim was either:
    - aa) pending on 5 February 1996; or
    - bb) made within the time limits specified by the Asylum Appeals (Procedure) Rules; and the appeal has not been determined or abandoned.

Re-entry to the UK - occurred where a person claimed asylum at the port within a short period of having pursued a previous claim for asylum in the UK. The Common Travel Area - includes the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland.

- 8. Subject to s.186(1), asylum seekers will also be eligible for assistance under Part 7, if they claimed asylum before 3 April 2000, are nationals of a country which is a signatory to ECSMA or the European Social Charter, were owed a homelessness duty before 3 April 2000 which is still extant, and are habitually resident in the Common Travel Area.

## Declarations of upheaval

- 9. The Home Secretary has made two declarations of upheaval; one concerned Zaire (on 16 May 1997) and the other Sierra Leone (on 1 July 1997). These were made where a particular country had undergone an upheaval such that it would be impossible to expect individuals to return there for the time being. Nationals of the country affected were given the opportunity to claim asylum in the UK rather than have to return home. Where nationals of these countries were in the UK when the relevant declaration was made, and they claimed asylum within 3 months of that declaration, they were, at that time, eligible for assistance under Part 7. Such persons will continue to be eligible for assistance until the Home Office record that the asylum claim has been determined or abandoned.
- 10. To be eligible for assistance under Part 7, nationals of Zaire and nationals of Sierra Leone who were trapped in the UK would need to have claimed asylum between 16 May 1997 and 15 August 1997, and between 1 July 1997 and 30 September 1997, respectively. Nationals of these countries who had an "in-country" claim for asylum outstanding when a declaration was made (i.e. a claim that was made after arrival at the port), would not have been (and are not) eligible for assistance under Part 7.

11. Information about the immigration status of applicants who may fall within the terms of a Declaration and still be eligible for assistance under Part 7, may be obtained from the IND using the procedures set out in **Annex 13**.

## **Cessation of eligibility for assistance**

12. As regards sub-paragraphs 7 (i) and 7 (ii) above, eligibility for Part 7 assistance would cease when the Home Office records that it has made a negative decision on the asylum claim (i.e. refused the claim) or that the claim has been abandoned.
13. As regards paragraph 7 (iii) above, eligibility would cease when:
  - a) the next negative decision on the asylum claim was made (that is, either the initial determination of the claim by the Home Office or the next decision on an appeal, as the case may be); or
  - b) the claim, or appeal, was abandoned.
14. Where the Home Office determination of an asylum claim is "positive" - or an appeal against a negative decision is successful - the person may be granted either refugee status or exceptional leave to remain in the UK. In either case, the former asylum seeker would be eligible for homelessness assistance.

## **Information**

15. Under section 187, the IND will, on request, provide housing authorities with the information necessary to determine whether a particular housing applicant is an asylum seeker, or a dependant of an asylum seeker, and whether he or she is eligible for assistance under Part 7. In cases where it is confirmed that a housing applicant is an asylum seeker, or the dependant of an asylum seeker, any subsequent change in circumstances which affect the applicant's housing status (e.g. a decision on the asylum claim) will be notified to the housing authority by the IND. The procedures for contacting the IND are set out in **Annex 13**.

# ANNEX 11

## Referral of Asylum Seekers

**Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. Accordingly, the guidance contained in this Code can only reflect the law at the time it is issued. When going to print of the current version (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. In view of this, all reference to 'Exceptional Leave to Remain' in the current Guidance should be considered in this context. The Home Office will be notifying local housing authorities of these changes separately. The Assembly Government will revise the Code to reflect the changes and issue Code revisions in due course. Local housing authorities should secure legal or other expert advice where their obligations to asylum seekers and refugees are ambiguous or unknown.

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### General

1. This Annex provides guidance on the *Homelessness (Asylum Seekers) (Interim Period) (England) Order* (SI 1999 No.3126) and should be read in conjunction with Chapter 16.
2. The Order (made under Paragraph 13 of Schedule 15 to the Immigration and Asylum Act 1999) modifies the provisions of Part 7 of the Housing Act 1996 in respect of homeless applicants who are asylum seekers.
3. The Order modifies s.198 and provides that the conditions for referral of a case to another local housing authority are met if:
  - a) the authority to whom the application has been made has agreed with another local housing authority that the case will be referred to that other authority,
  - b) the other authority has provided written confirmation of the agreement to the referring authority, and
  - c) neither the applicant nor any person who might reasonably be expected to reside with him or her will run the risk of domestic violence in the area of the other authority.
4. When reaching agreement on the referral of a case, neither the authority to whom the application was made nor the other authority need have regard to:
  - a) any preference that the applicant (or any person who might reasonably be expected to reside with him or her) may have as to the location of the accommodation that is to be secured, or
  - b) whether the applicant (or any person who might reasonably be expected to reside with him or her) has a local connection with the area of a local housing authority.
5. Where it is agreed between two authorities that a case will be referred, the referring authority will need to notify the applicant of this decision and the reasons for it, in accordance with s.184(4). Under s.202(1)(c) and (d), applicants will have the right to request a review of a decision to notify another authority, and of the question of whether the conditions for referral are met in their case.
6. When considering making a referral under these provisions, although authorities must ignore personal preference they will still need to consider the individual circumstances of each case to determine whether it would be reasonable for the applicant (and all persons who might reasonably be expected to reside with him or her) to be referred to the other authority.

7. The Order modifies s.206 such that, when discharging their housing functions under Part 7 in respect of applicants who are asylum seekers, authorities must have regard to the desirability in general of securing accommodation in areas in which there is a ready supply of accommodation. So far as possible, authorities should avoid placing applicants in areas where accommodation -particularly social accommodation is in short supply.
8. The Order modifies s.208 by disapplying it in certain circumstances. The requirement in s.208(1) that so far as practicable authorities must secure accommodation in their own area does not apply where an authority has the agreement of another authority that it may place an applicant who is an asylum seeker in accommodation in the area of the other authority. The other authority must have provided written confirmation of the agreement to the placing authority.

Agreements may relate to the placing of all asylum seeker applicants in the other authority's area or an agreed number of such applicants.

9. In the absence of such an agreement it is open to an authority to place an asylum seeker in accommodation in the area of another authority, but s.208(1) will apply and the placing authority will need to satisfy themselves that it was not reasonably practicable to place the applicant in accommodation in their own area.
10. The Order modifies s.210 such that, in considering whether accommodation is suitable for an applicant who is an asylum seeker, authorities must:
  - a) have regard to the fact that the accommodation is to be temporary pending the determination of the applicant's claim for asylum, and
  - b) not have regard to any preference that the applicant (or any person who might reasonably be expected to reside with him or her) may have as to the locality of the accommodation secured.

## **Cessation of the Order**

11. The Order will have effect for an interim period only. The interim period will end when s.186 is repealed.

## ANNEX 12

### European groupings (EU, EEA, ECSMA, CESC)

1. **Countries within the European Union (EU)**  
Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.
2. **Countries within the European Economic Area (EEA)**  
All EU countries, plus Iceland, Norway and Liechtenstein.
3. **Countries that have ratified the European Convention on Social and Medical Assistance (ECSMA)**  
All EU countries (except Austria and Finland) plus Iceland, Malta, Norway, and Turkey.
4. **Countries that have ratified the Council of Europe Social Charter (CESC)**  
All EU countries plus Croatia, Cyprus, Czech Republic, Hungary, Iceland, Latvia, Malta, Norway, Poland, Slovakia, and Turkey.

NB List updated on publication. See websites [http://www.europa.eu.int/abc/governments/index\\_en.html](http://www.europa.eu.int/abc/governments/index_en.html), <http://www.humanrights.coe.int>, and <http://secretariat.efta.int/> for current memberships.



## ANNEX 13

# How to contact the Home Office's Immigration and Nationality Directorate

1. The Home Office's Immigration and Nationality Directorate (IND) will exchange information with Local Housing Authorities subject to relevant data protection and disclosure policy requirements being met and properly managed, provided that the information is required to assist with the carrying out of statutory functions or prevention and detection of fraud.
2. The Evidence and Enquiries Unit (EEU) will provide a service to local housing authorities to confirm the immigration status of an applicant from abroad (Non Asylum Seekers). In order to take advantage of the service, local housing authorities first need to register with the Evidence and Enquiries Unit, Immigration and Nationality Directorate, C Block 3<sup>rd</sup> Floor, Whitgift Centre, Wellesley Road, Croydon, CR9 2AT either by letter or **Fax: 020 8604 5783**.
3. Registration details required by the EEU's Local Authorities' Team are;
  - (a) Name of enquiring local housing authority on headed paper,
  - (b) Job title/status of officer registering on behalf of the local housing authority,
  - (c) Names of local housing authority staff and their respective job titles/status who will be making enquiries on behalf of the local housing authority.
4. Once the local housing authority is registered with the EEU, then the authorised personnel can make individual enquiries by letter or fax, but replies will be returned by post.
5. In cases where the EEU indicate that the applicant may be an asylum seeker, enquiries of their status can be made to the National Asylum Support Service (NASS) by **Fax: 020 8633 0014**. Copies of the EEU's correspondence must accompany the request.

# ANNEX 14

## Habitual Residence Test

**Note:** Immigration law on the rights of asylum seekers and refugees is complex and subject to frequent change. Accordingly, the guidance contained in this Code can only reflect the law at the time it is issued. When going to print of the current version (1/03), the UK Government had issued proposals to change the law, effective from 1<sup>st</sup> April 2003, on asylum seekers given 'Exceptional Leave to Remain'. In view of this, all reference to 'Exceptional Leave to Remain' in the current Guidance should be considered in this context. The Home Office will be notifying local housing authorities of these changes separately. The Assembly Government will revise the Code to reflect the changes and issue Code revisions in due course. Local housing authorities should secure legal or other expert advice where their obligations to asylum seekers and refugees are ambiguous or unknown.

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### Who the Habitual Residence Test applies to

The regulations provide that some classes of applicant will be eligible for an allocation subject to their being habitually resident in the Common Travel Area (CTA). However, in practice, when considering applications from these classes of applicant it is only necessary to investigate habitual residence if the applicant has entered the UK in the last two years.

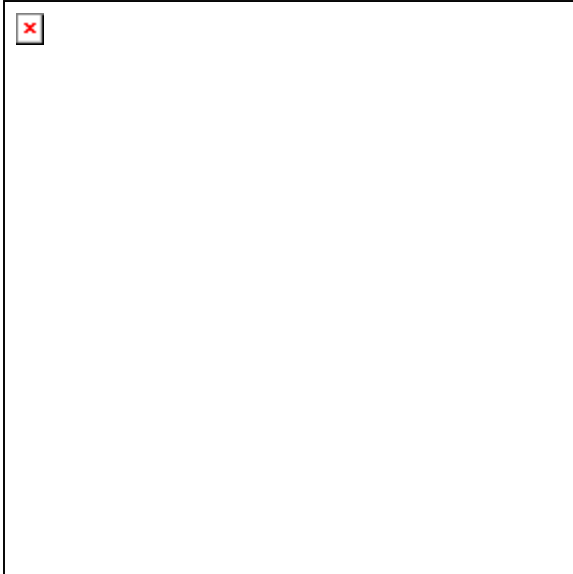
A person can satisfy the Habitual Residence Test (HRT) if they are habitually resident in the CTA. The CTA includes:

- the UK, or
- Channel Islands, or
- Isle of Man, or
- Republic of Ireland

### Who the Habitual Residence Test does not apply to

The HRT does not apply to:

- the applicant's partner;
- dependent children; or
- young persons who are part of the applicant's family.



## Definition of habitually resident

The term 'habitually resident' is not defined in legislation. Always consider the overall circumstances of a case to determine whether someone is habitually resident in the CTA.

The above is not an exhaustive check list of questions or factors which will need to be considered. Further enquiries may be needed. The circumstances of each case will dictate what information is needed, and it is vital all relevant factors are taken into account.

## General principles

When deciding whether a person is habitually resident in a place consideration must be given to all the facts of each case in a common sense way. It should be remembered that:-

- the test focuses on the fact and nature of residence and not the legal right of abode;
- a person who is not resident in this country at all cannot be habitually resident. Residence is a more settled state than mere physical presence in a country. To be resident a person must be seen to be making a home. It need not be the only home or a permanent home but it must be a genuine home for the time being. For example a short stay visitor or a person receiving short term medical treatment is not resident;
- it is a question of fact whether a person who has established residence in a country has also become habitually resident; this must be decided by reference to all the circumstances of the particular case;
- the length, continuity and general nature of actual residence can provide important evidence of an applicant's intention

the practicality of a person's arrangements for residence is a necessary part of determining whether it can be described as settled and habitual. However, the fact that an applicant is dependent on welfare benefits is not sufficient reason to decide that he or she is not habitually resident.

- established habitual residents of this country who have periods of temporary or occasional absence of long or short duration may still be habitually resident during such absences.

## Definition of Worker

Applicants are treated as being habitually resident in the CTA if they are a worker for the purposes of EC law, (see Council Regulation (EEC) No. 1612/68(EEC) No. 1251/70) or they have the right to a reside under treaty rights (see Council Directive No.68/360/EEC or No. 73/148/EEC)

## Action on receipt of an application

Applicant came to live in the UK in the last two years

- If it appears that the applicant came to live in the UK in the last two years, make further enquiries to decide if the applicant is habitually resident, or can be treated as such.

### Factors to consider

It is important to consider the applicant's stated reasons and intentions for coming to the UK.

If the applicant's stated intention is to live in the UK, and not return to the country from which they came, that intention must be consistent with their actions. To decide whether an applicant is habitually resident in the UK, consider the following factors.

### Why has the applicant come to the UK?

A. If applicant is returning to the UK after a period spent abroad, where it can be established that the applicant was previously habitually resident in the UK and is returning to resume his former period of habitual residence, he is immediately habitually resident. In determining whether an applicant is returning to resume a former period of habitual residence consider

- when did the applicant leave the UK?
- how long did the applicant live in the UK before leaving?
- why did the applicant leave the UK?
- how long did the applicant intend to remain abroad?
- why did the applicant return?
- did the applicant's partner and children, if any, also leave the UK?
- did the applicant keep accommodation in the UK?
- if the applicant owned property, was it let, and was the lease timed to coincide with the applicant's return to the UK?

- what links did the applicant keep with the UK?
- have there been other brief absences? If yes, obtain details
- why has the applicant come to the UK?

B. If the applicant has arrived in the UK within the previous two years and is not resuming a period of habitual residence, consideration should be given to his reasons for coming to the UK, and in particular to the factors set out below.

### **Work arrangements**

If the applicant states that they have a job, consider:

- is the work full time or part time?
- how many hours do/will they work?
- is the work short term employment, e.g. au pair, seasonal work?
- is the applicant on a short term contract with a current employer?

The applicant's employment record and in particular the nature of any previous occupation and plans for the future are relevant. A person with the offer of genuine and effective work in the UK, whether full time or part time is likely to be habitually resident here.

### **Pattern of work**

Consider the pattern of work, i.e.:

- has the applicant has a succession of casual or short term jobs either in the UK or the previous country? Be aware that a history of working in short term jobs does not always mean an applicant is not habitually resident;
- what is the name and address of the employer - are they well known for employing casual labour?
- has the applicant worked in the UK previously? If so:
  - how long ago?
  - for what period, either casual or short term?
  - has the applicant work prospects? If the applicant has come to the UK to seek work:
  - has a job been arranged?
  - who has the job been arranged with?
  - if a job has not been secured, have enquiries been made about a job?
  - who were the enquiries made with?
  - does the applicant have qualifications to match their job requirements?
  - does the applicant, in your opinion, have realistic prospects of finding work?
  - are prospects of finding work in the UK any better than in the country they have left?

### **Joining family or friends**

If the applicant has come to the UK to join or rejoin family or friends, consider:

- has the applicant sold or given up any property abroad?
- has the applicant bought or rented accommodation or are they staying with friends?
- is their move to the UK permanent?

### **Applicant's plans**

Consider the applicant's plans, i.e.:

- if the applicant plans to remain in the UK, is their stated plan consistent with their actions?
- were any arrangements made for employment and accommodation before the applicant arrived in the UK?
- did they buy a one-way ticket?
- did they bring all their belongings with them?
- is there any evidence of links with the UK, e.g. membership of clubs?

The fact that a person may intend to live in the UK for the foreseeable future does not, of itself, mean that habitual residence has been established. However, the applicant's intentions along with other factors, for example the purchase of a home in the UK and the disposal of property abroad may indicate that the applicant is habitually resident in the UK.

An applicant who intends to reside in the UK for only a short period, for example on holiday, to visit friends or for medical treatment, is unlikely to be habitually resident in the UK.

### **Length of residence in another country**

Consider the length and continuity of an applicant's residence in another country:

- how long did the applicant live in the previous country?
- have they lived in the UK before, if so for how long?
- are there any remaining ties with their former country of residence?
- has the applicant stayed in different countries outside the UK?

It is possible that a person may own a property abroad but still be habitually resident in the UK. A person who has a home or close family in another country would normally retain habitual residence in that country. A person who has previously lived in several different countries but has now moved permanently to the UK may be habitually resident here.

### **Centre of interest**

An applicant is likely to be habitually resident in the CTA, despite spending time abroad, if their centre of interest is located in the CTA.

People who maintain their centre of interest in the UK, for example a home, a job, friends, membership of clubs, are likely to be habitually resident in the UK. People who have retained their centre of interest in another country and have no particular ties here are unlikely to be habitually resident in the UK.

Take the following into account when deciding the centre of interest:

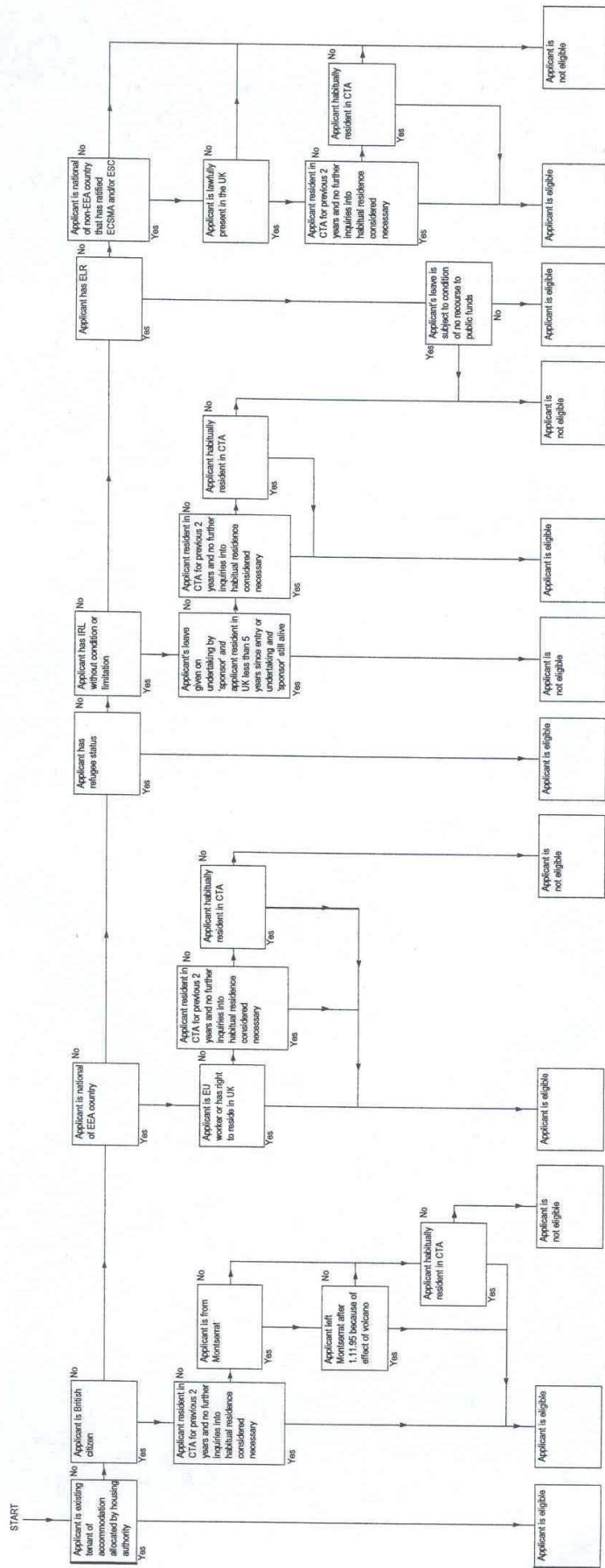
- home
- family ties
- club memberships
- finance accounts

If the centre of interest appears to be in the CTA but the applicant has a home abroad, consider the applicant's intentions regarding the property.

In certain cultures, e.g. the Asian culture, it is quite common for a person to have property abroad which they do not intend to sell, even if they have lived in the CTA for many years and do not intend to leave. This does not mean that an applicant's centre of interest is anywhere but in the CTA.

# ANNEX 15 Eligibility Pathway Flow Chart

A flow chart giving diagrammatic representation of Annex 5's eligibility pathway.





# ANNEX 16

## Local Connection under Part 6

1. Under s.167(2A)/[s.16(3)] allocation schemes may contain provision for determining priorities for reasonable/additional preference categories. The factors that may be taken into account in determining priorities include any local connection (within the meaning of s. 199 of the 1996 Act) which exists between a person and the authority's area.
2. Local connection is defined in s.199 of the 1996 Act as a connection which the applicant has with an area because:
  - (i) he or she is, or was in the past, normally resident there, and that resident was of his or her own choice, or
  - (ii) he or she is employed there (i.e. the applicant actually works in the area rather than that the area is the site of his or her employers' head office), or
  - (iii) of family associations; or
  - (iv) of any special circumstances (e.g. the need to be near special medical or support services which are available only in a particular area).
3. In assessing whether an applicant's household has a local connection with their area, an authority should also consider whether any person who might reasonably be expected to live with the applicant has such a connection.

### **Ex-service personnel**

4. For the purposes of the 1996 Act, service members of the Armed Forces, and other persons who normally live with them as part of their household, do not establish a local connection with an area by virtue of serving, or having served, there while in the Forces (s.199(2) and s.199(3)).

### **Ex-prisoners**

5. Similarly, residence in prison does not itself establish a local connection with an area. However, any period of residence in accommodation prior to imprisonment may give rise to a local connection under s.199(1)(a).

### **No local connection anywhere**

6. If an applicant, or anyone who might reasonably be expected to live with him or her, has no local connection with any area in Great Britain, then the duty to secure accommodation will rest with the authority to which his or her application has been made. This may apply to people who have had an unsettled way of life for many years.

## **ANNEX 17**

# **Specific action that might be expected to be taken by others that might be included in a Homelessness Strategy**

### **Voluntary Sector**

- Rent in advance/deposit bond schemes;
- Night stop schemes;
- Supported lodgings schemes;
- Homelessness awareness / preventative input to schools;
- Advice services (housing / debt / benefits etc.);
- Counselling, mediation, reconciliation services;
- Provision of floating support;
- Lay advocacy services;
- Dependency services;
- Hospital discharge services;
- Women's Refuges

### **Public Sector**

#### **Youth and Community Service**

- developing peer support schemes;
- raising awareness of homelessness issues with young people at risk
- mentoring support
- promoting use of young people's information services and Canllaw On-line
- guidance and counselling from suitably skilled and experienced workers and volunteers

#### **Benefits Agency**

- ensuring speedy access to severe hardship payments.

#### **Health Authority**

- ensuring access to primary health care for rough sleepers and those using emergency access accommodation;
- liaising with social services and special needs housing providers to ensure access to dependency and multiple needs services where needed;
- unified assessments on health and social care.

#### **Education**

- school curriculum work on homelessness and how to avoid it.

#### **Registered social landlords**

- ensuring allocation policies meet the needs of homeless households;
- ensuring that arrears policies take into account the aims of the homelessness strategy (and facilitate early access to money and housing advice).

#### **Drug and Alcohol Teams (under Community Safety Partnerships)**

- consider the need to commission treatment for homeless people, or whether mainstream services can be extended to meet their needs;

### **Local Health Boards**

- develop health services for homeless people, (e.g., walk-in centres, GP service that visits hostels and day centres);

### **Children and Young People's (Framework) Partnerships**

- ensure appropriate advice and information is available to all 11 to 25 year olds who need it;
- ensure vulnerable young people get personal advice and support to prevent homelessness
- ensure that the need of homeless children and young people and their families receive due priority in local service planning
- ensure that young people are given opportunities to participate in decisions which are made about their lives.

### **Probation Service**

- ensure those within the criminal justice system receive support with their housing needs;
- provide a floating support service to young ex-offenders to help prevent homelessness and re-offending (through projects such as Time for Youth).

### **Private Sector**

- provision of hostels
- making lettings available to homeless people (e.g. through landlord accreditation schemes)
- lettings agencies.

## **ANNEX 18**

# **Authorities, organisations and persons that the Authority may wish to consult about a Homelessness Strategy**

- Registered Social Landlords
- Private Landlords
- Lettings agencies
- Self build groups
- Housing Co-operatives
- Voluntary sector organisations working with vulnerable groups
- Primary Care Trusts
- Community Mental Health Teams
- Police
- Crime and Disorder Reduction Partnerships
- Drug and Alcohol Teams (under Community Safety Partnerships)
- Local Strategic Partnerships
- Local Children and Young People's Partnership and its sub-groups (the Children's Partnership and the Young People's Partnership)
- Youth Services and Youth advice groups, funding schemes such as Cymorth, and local young people's forums
- Refuges
- Citizens Advice Bureaux
- Shelter Cymru
- Street Wardens
- Probation Service
- Prison Service
- Benefits Agency
- National Asylum Support Service
- Armed Forces resettlement services
- Education and Employment programmes (e.g. The Princes Trust, New Deal, Careers Service)
- Faith groups
- Victim support groups
- Refugee support organisations
- Local businesses / Chamber of Commerce
- The Samaritans
- Salvation Army
- Local disability groups
- Regional Planning bodies
- Homeless people (and their representative bodies)
- Rough sleepers (and their representative bodies)
- Residents/Tenants organisations

# ANNEX 19

## Ministry of Defence Entitlement Cessation Certificates Certificate A

### MINISTRY OF DEFENCE

MOD Form 1166  
(Introduced 5/97)

CERTIFICATE OF CESSATION OF ENTITLEMENT FOR SINGLE PERSONNEL TO OCCUPY SERVICE LIVING ACCOMMODATION AND OF IMPENDING HOMELESSNESS

I certify that (Name) (Name)  
(rank and number)

Of (unit)

will cease to be entitled to occupy Service Living Accommodation (address)

From (date)

by reason of

An application for housing was made to .....

Housing Authority/Association on ..... (copy of letter attached).

The person has the following special circumstances .....

.....

..

Signed

Name

Position

Date

**NOTES:**

1. This certificate provides evidence of impending homelessness arising from cessation of entitlement to occupy Service Living Accommodation. DOE Circular 14/93 (Welsh Office Circular 59/93) Housing for People Leaving the Armed Forces.
2. The certificate should be completed and sent at the earliest possible date to the Housing Authority/Association to which application for accommodation has been made, preferably as soon as it is known that entitlement to occupy Service Living Accommodation will cease.

# CERTIFICATE B

**DEFENCE HOUSING EXECUTIVE (MINISTRY OF DEFENCE)**  
**CERTIFICATE OF CESSATION OF ENTITLEMENT TO OCCUPY A SERVICE FAMILIES QUARTER AND OF**  
**IMPENDING HOMELESSNESS**

I certify that (Name) (Name)  
(rank and number)\*  
Of (unit)\*  
will cease to be entitled to occupy (address of quarter or hiring)  
with effect from (date)

by reason of his/her discharge  
from the <service> and will be  
liable to eviction as from that  
date.\*

An application for housing was made to .....

Housing Authority/Association on ..... (copy of letter attached).

The household is as follows\*\*:

Remarks:\*\*\* .....

Signed

Name/Designation (caps)

Position

Date

\* Omit if family only involved

\*\* Indicate number of members of household, their ages, and relations to the serviceman/woman and any other relevant information

\*\*\* Indicate any special circumstances e.g. medical discharge, disablement or pregnancy of member of the household.

**NOTES:**

1. This certificate is intended to provide evidence of impending homelessness arising from cessation of entitlement to occupy a service quarter or hiring and should dispense with the need to obtain a Court Order for possession as evidence of this situation.
2. The certificate should be completed by the tenancies officer of the Defence Housing Executive and should be sent at the earliest possible date to the Housing Authority to which the application for accommodation has been made, preferably as soon as it is known that entitlement to occupy a quarter or hiring will cease.
3. A period of at least 6 months notice should normally be allowed so that the appropriate arrangements can be made.

# **ANNEX 20**

## **Procedures for referrals of homeless applicants on the grounds of local connection with another local authority**

### **Index**

#### **Guidelines for Local Authorities on Procedures for Referral**

1. Purpose of the Guidelines
2. Definitions
3. Criteria for Notification
4. Local Connection
5. Procedures Prior to Making a Referral
6. Making the Notification
7. Arrangements for Providing Accommodation
8. Disputes Between Authorities

#### **Guidelines for Invoking the Disputes Procedure**

9. Purpose of the Disputes Procedure
10. Arrangements for Appointing Referees
11. Procedures for Determining the Dispute
12. Oral Hearings
13. Notification of Determination
15. Costs of Determination
16. Circulation of Determination
17. Payment of Fees and Costs
18. Reopening a Dispute
19. Right to Review Referee's Decision
20. Procedure on a Review

#### **Standard Notification Form**



# Guidelines for Local Authorities on Procedures for Referral agreed by the Welsh Local Government Association (WLGA); Association of London Government (ALG); Convention of Scottish Local Authorities (CoSLA); Local Government Association (LGA)

## Purpose of the Guidelines

- 1.1 For English and Welsh authorities s.198 “*referral of case to another local authority*” of the Housing Act 1996 provides that:
  - (5) The question whether the conditions for referral of a case are satisfied shall be determined by agreement between the notifying authority and the notified authority or, in default of agreement, in accordance with such arrangements as the Secretary of State may direct by order.
  - (6) An order may direct that the arrangements shall be:
    - (a) those agreed by any relevant authorities or associations of relevant authorities, or
    - (b) in default of such agreement, such arrangements as appear to the Secretary of State to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as he thinks appropriate.”
- 1.2 Subsections 33(4) and (5) of the Housing (Scotland) Act 1987 make the same provision for Scotland.
- 1.3 The ALG, CoSLA, LGA and the WLGA, the local authority associations in England, Scotland and Wales, have agreed on arrangements for referrals which they recommend to local housing authorities. S198 Housing Act 1996 and S33 Housing (Scotland) Act 1987 lay down the general procedures to be followed where it appears that the local authority responsible for the homeless applicant is one other than the authority to which the application has been made. There are, however, considerable areas of possible disagreement and dispute in the interpretation of the Act. Although, in the last resort, these can only be resolved by the courts, the associations are anxious to avoid, as far as possible, legal disputes between local authorities. They therefore issue this agreement on the procedures and criteria to be followed, and recommend it for general adoption by all their members. **This Agreement does not replace the duty of local authorities to treat each case on its merits and to take into account existing and future case law.** Furthermore, this Agreement *only* applies to the issue of local connection.
- 1.4 In *Re Betts* (1983) the House of Lords considered the application of the referral arrangements agreed between the local authority associations. It decided that a rigid application of the arrangements would constitute a fetter on an authority’s discretion. However, the agreement could certainly be taken into account provided its application to each case is given individual consideration.

## Definitions

- 2.1 All references in this agreement to an ‘*applicant*’ are to be taken as references to homeless applicant(s) under s.183 Housing Act 1996 or s.28 Housing (Scotland) Act 1987, and any

person(s) who might reasonably be expected to reside with him or her, who are in priority need, not homeless intentionally and for whom, under S193 Housing Act 1996 or S31 Housing (Scotland) Act 1987, there is a duty to secure accommodation available for the household's occupation.

- 2.2 The authority to whom the applicant applies for assistance under s.183 Housing Act 1996 or s.28 Housing (Scotland) Act 1987 is the “*notifying authority*”.
- 2.3 If the notifying authority decides that the applicant's local connection lies in another local authority area and advises that authority accordingly, the authority which they notify is known as the “*notified authority*”.
- 2.4 S.199 Housing Act 1996 and s.27 Housing (Scotland) Act 1987 defines “*local connection*”. These guidelines provide a framework within which the local connection referral procedures may be applied.

## Criteria for Notification

- 3.1 Before a local authority refers a homeless applicant, or an applicant threatened with homelessness, to another authority it must first be satisfied that the applicant is:
  - (i) eligible for assistance
  - (ii) homeless
  - (iii) in priority need
  - (iv) not homeless intentionally.
- 3.2 S.185 Housing Act 1996 defines those persons from abroad *not eligible* for assistance. In England and Scotland S118 and S119 Immigration and Asylum Act 1999 define persons subject to immigration control as not eligible for accommodation or homelessness assistance unless they fall within a class of persons specified in the *Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (SI 2000/706)*. In Wales the 1996 Act and the *Housing Accommodation and Homelessness (Persons subject to Immigration Control) Order 1996 (SI 1996/1982)* apply.
- 3.3 Before making a referral the notifying authority must be of the opinion that:
  - (a) no member of the applicant's household has any local connection with its area
  - (b) at least one member of the household has a local connection with another authority's area
  - (c) no member of the household is liable to be at risk of domestic violence if referred to another authority *OR for English and Welsh authorities only* the applicant has, within a period of time designated by the Secretary of State, been accepted as homeless by another authority which has discharged its duty through accommodation in the notifying authority's area. *The Homelessness (England) Regulations SI 2000 No. 701* and, for Wales, the *Homelessness Regulations SI 1996 No. 2754* have established the designated period as five years from the date when the accommodation was first made available under the initial duty.
- 3.4 Only 3.3(a)(b) and (c) above apply to Scottish authorities.
- 3.5 The above criteria must be satisfied before a referral takes place. However, it is not necessary to apply the test of whether suitable accommodation is available under S197

Housing Act 1996 before making a referral. There is no equivalent test to S197 in the Scottish legislation.

- 3.6 In deciding whether or not to make a referral authorities must consider the Judgement in the case of RvLB Newham ex parte LB Tower Hamlets (1990). The notifying authority should have regard to any decisions made by the notified authority that may have a bearing on the case in question (e.g. a previous finding of intentionality) as well as any other material considerations, which can include the general housing circumstances prevailing in both its own area and that of the notifying authority. The notifying authority should also consider whether it is in the public interest to accept the full duty rather than make the referral.
- 3.7 Should a local authority wish to assist an applicant who might otherwise be referred to another authority under the local connection criteria, nothing in this agreement shall prevent the authority from providing such assistance. The decision to make a referral is discretionary and can be challenged if the discretion is exercised unreasonably.
- 3.8 In Welsh and English authorities an applicant has the statutory right to request a review of the decision of the local authority and whether the conditions are met for the referral of the case. There is no statutory right to review in Scotland but the Scottish Code of Guidance advises local authorities to establish internal procedures for reviewing homelessness decisions.

## Local Connection

- 4.1 Authorities are advised to consider the relevant date for deciding whether or not a local connection exists as being the date of application to the notifying authority. However, if the initial enquiries, prior to the authority making a decision on a homeless application, have been prolonged the notifying authority should also consider whether there has been any material change in circumstances which may affect the assessment of local connection. A local connection may arise if any of the following conditions are met, subject to the exceptions outlined in paragraph 4.3:
  - (i) the applicant or a member of the applicant's household is, or in the past was, normally resident in the area. It is suggested that a working definition of "*normal residence*" should be residence for at least 6 months in the area during the previous 12 months, or for not less than 3 years during the previous 5 year period. The time taken into account should only be up to the date of the homeless application;
  - (ii) the applicant or a member of the household is at present employed in the area. The local authority should obtain confirmation from the employer that the person is in employment and that the employment is not of a casual nature;
  - (iii) the applicant or a member of the household has family associations in the area. Family associations normally arise when an applicant or member of the household has parents, adult children or brothers or sisters who have been resident in the area for a period of at least 5 years at the date of application and the applicant indicates a wish to be near them. Only in exceptional circumstances would the residence of relatives other than those listed above be taken to establish a local connection. The residence of children in another authority from that of their parents cannot be taken to be residence of their own choice and therefore does not constitute a local connection. However, a referral should not be made to another local authority on the grounds of family associations if the applicant objects to those grounds.

**NB:** A Scottish authority, when considering the application of this clause, is advised to bear in mind the definition of “family” in S83 Housing (Scotland) Act 1987.

- (iv) there are special circumstances which the authority considers give rise to a local connection in the area. This may be particularly relevant in dealing with people who have been in prison or in hospital and who do not conform to the criteria in (i) - (iii) above. The fact that an applicant seeks to return to an area where he or she was brought up or lived for a considerable length of time in the past may be grounds for finding a local connection because of special circumstances. An authority must exercise its discretion when considering whether special circumstances apply.
- 4.2 The special circumstances provision in 4.1(iv) should not be used to override the exceptions criteria in 4.3. A notifying authority should only use 4.1(iv) to accept a local connection within its own area or to refer a case with the prior consent of the notified authority. Alternatively, authorities may come to an informal arrangement in these cases on a reciprocal basis.
- 4.3 **Exceptions:** There are certain exceptions to the rule that residence and employment establish a local connection with an area. The statutory exceptions are:
- (i) time spent in the service of the Regular Armed Forces of the Crown;
  - (ii) time spent in detention under the authority of any Act of Parliament (e.g. prisons, mental hospitals);
  - (iii) **for English and Welsh authorities only** time spent, as a result of an earlier homelessness application, in accommodation secured by another local authority under the homeless legislation within the last five years. The local authority associations recommend that the following circumstances should also be considered as exceptions for the purposes of determining a local connection:
    - (iv) time spent in hospital;
    - (v) time spent in an institution in which households are accepted only for a limited period (e.g. mother and baby homes, refuges, rehabilitation centres).
- 4.4 Once the local authority has established that the applicant is eligible, homeless, in a priority category, not intentionally homeless and does not have any local connection in its own area it may notify another authority under Section 198 Housing Act 1996 or S33 Housing (Scotland) Act 1987, provided it has satisfied itself that a local connection with the notified authority exists and that no member of the household would be at risk of domestic violence in returning to that area. In determining whether or not there is such a risk authorities should have regard, where relevant, to the advice in the Code of Guidance.
- 4.5 The notifying authority must be satisfied that the applicant does not have **any** local connection with its own area but that it **does** have a local connection with another local authority in accordance with the criteria and exceptions listed above. The degree of local connection is irrelevant except where an applicant has no local connection with the notifying authority but does have a local connection with more than one other local authority. In such a scenario, the notifying authority must weigh up all the relevant factors in deciding which authority to notify. These should include the applicant’s preference and the strength of the residential local connection in relation to connections established by virtue of employment and family ties.
- 4.6 Relevant changes in an applicant’s circumstances, e.g. obtaining permanent employment, may be taken into account in determining local connection. Authorities should use their discretion in determining where exceptional circumstances may apply.

## Procedures prior to making a Referral

- 5.1 If the notifying authority suspects that it may be able to notify another local authority under Section 198 Housing Act 1996 or S33 Housing (Scotland) Act 1987 it should, as soon as possible, make any necessary enquiries concerning the facts of the case of any local authorities liable to become involved. The notifying authority must investigate all the circumstances with the same **thoroughness** that it would use if it did not intend to refer the applicant to another local authority. The notifying authority is responsible for securing that accommodation is available for occupation by the applicant until the conditions for referral have been met.
- 5.2 Under Section 200(2) Housing Act 1996 or S34 Housing (Scotland) Act 1987 the notifying authority should advise the applicant of its intention to refer the application to another authority and the reasons for so doing. For English and Welsh authorities the notice should also inform the applicant of his right, under S202, to request a review of the decision and of the time within which a request for review must be made. The Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 (SI 1999 No. 71) establishes the period within which the review must be carried out and the decision made. Sections 202 to 204 specify procedures for review including the applicant's right of appeal to county court on a point of law arising from the decision.
- 5.3 Although there is no statutory right to review in Scotland Scottish authorities may wish to refer to their internal review procedures as outlined in the Scottish Code of Guidance on Homelessness.
- 5.4 Once enquiries have been completed, there is no provision outside judicial review for the notified authority to challenge the notifying authority's decision that the applicant is eligible, homeless, in priority need and not intentionally homeless. Should the notified authority produce fresh evidence as to the facts of the case it is the notifying authority's duty to reconsider its decision in the light of this new information. The local authority associations' disputes procedure should be used only where there is a disagreement over the existence of a local connection, and not for resolving disagreement on any other matter.

## Making the Notification

- 6.1 All notifications and arrangements concerning an applicant should be made by telephone and then confirmed in writing. A specimen standard notification form is attached, which authorities are advised to use. If telephone contact cannot be made a fax or e-mail should be sent. Where the notified authority accepts responsibility, it should not wait for the receipt of written confirmation of notification before making the appropriate arrangements to accommodate the homeless household.
- 6.2 Each authority should nominate an officer responsible for making decisions about applications notified by another authority. Appropriate arrangements should also be put in place to ensure cover during any absences of the designated officer.
- 6.3 The notified authority should accept the facts of the case relating to residence, employment, family ties etc., as stated by the notifying authority, unless they have clear evidence to the contrary. It is the notifying authority's duty to investigate the application with the same degree of care and thoroughness before making a referral as it would for any other case.

- 6.4 Local authorities should try to avoid causing undue disruption to the applicant which could arise from the operation of the criteria and procedures set out above. For instance, where a local connection with another authority is established the two authorities involved could agree, subject to the applicant's consent, to enter into a reciprocal arrangement so as to avoid having to move a household which may already have made arrangements within the notifying authority's area for schooling, medical treatment etc. Such arrangements could involve provision via nominations to other social housing providers such as registered social landlords.
- 6.5 Once the written confirmation of notification has been received the notified authority should, within 10 days, reply to the notifying authority. If, despite reminders the notified authority unduly delays in formally responding to the referral the notifying authority may ask its local authority association to intercede on its behalf as outlined in paragraph 8.7 and 8.8 below.

## Arrangements for providing accommodation

- 7.1 The notifying authority is responsible for providing temporary accommodation and protection of property while arrangements for referral are proceeding.
- 7.2 The notified authority shall have a period of up to 21 days from the date of notification in which to make arrangements for the accommodation of any applicant for whom it accepts responsibility. However, subject to the applicant's right to request a review of the decision, arrangements should be made in a shorter period of time if possible. Once the conditions for referral are met the notified authority shall secure that accommodation is available for the applicant until (in English and Welsh authorities only) it has considered, under s.200(4) Housing Act 1996, whether other suitable accommodation in its area is available.  
**NB:** The suitable accommodation test does not apply to Scotland.
- 7.3 Once a notified authority has accepted responsibility for an applicant, it shall reimburse the notifying authority for any expenses which may reasonably have been incurred in providing temporary accommodation, including protection of property. If the notifying authority unduly delays advising an authority of its intention to refer an applicant then the notified authority shall only be responsible for expenses incurred after the receipt of notification. In normal circumstances a period of more than 30 working days, commencing from the date of homelessness, should be considered as constituting undue delay.
- 7.4 Charges passed onto the notified authority should be the net accommodation costs, excluding any collectable income from either housing benefit and/or contributions or charges irrespective of any arrears. In cases where the disputes procedure has been invoked, the costs of providing temporary accommodation and protection of property shall be borne by whichever authority is given responsibility for the applicant by the referee's decision.

## Disputes between Authorities

- 8.1 The Homelessness (Decisions on Referrals (Scotland) Order 1998 and the Homelessness (Decisions on Referrals Order 1998 (SI 1998 No. 1578) establish the arrangements for determining whether the conditions for referral are satisfied, should the notifying and the notified authority fail to agree. These arrangements allow the question to be decided either by a person agreed between the two authorities concerned or, in default of such agreement, by a person appointed from a panel established by the Local Government Association.

- 8.2 Where a notified authority disputes the referral from the notifying authority it should set down its reasons in full within 10 days. The letter should contain all the reasons for refusing the referral in order to avoid delaying the appointment of an arbitrator and to minimise any inconvenience for the applicant.
- 8.3 Where two authorities cannot reach agreement on whether the local connection conditions for a referral are met they must seek to agree on an arbitrator who will make the decision. CoSLA and the LGA have jointly established an independent panel of referees for this purpose. The arbitrator should be appointed within 21 days of the notified authority receiving the referral.
- 8.4 Authorities invoking the disputes procedure should, having first agreed on the proposed referee, establish that he is available and willing to accept the case. Each authority is then responsible for providing the referee with such information as he requires to reach a decision, making copies of the submission available to the applicant and ensuring prompt payment of fees and expenses. Sections 10-19 (Guidelines for Invoking the Disputes Procedure) set out in greater detail the requirements and timescale for the arbitration process.
- 8.5 Authorities invoking the disputes procedure should be bound by the decision of the referee, including the apportionment of fees and expenses, subject to the applicant's right to review.
- 8.6 If the authorities are unable to agree on the choice of an arbitrator they must jointly request that CoSLA (for Scottish authorities) or the LGA (for English or Welsh authorities) appoint a referee on their behalf as outlined in paragraph 8.8 below.
- 8.7 If an arbitrator has not been appointed within six weeks of the notified authority receiving the referral the notifying authority may request CoSLA or the LGA, as appropriate, to appoint a referee as outlined in paragraph 8.8 below.
- 8.8 Where the two authorities fail to agree on the appointment of a referee CoSLA (if the dispute is between Scottish authorities) and the LGA (if the dispute is between English or Welsh authorities) may appoint an arbitrator from the panel of referees. Where the notified authority is Scottish then the local authority association responsible for appointing a referee will be CoSLA, even if the notifying authority is in England or Wales. The LGA will be the responsible association if the notified authority is English or Welsh.
- 8.9 The local authority associations should only be involved in the direct appointment of referees as a last resort. Under normal circumstances authorities should jointly agree the arrangements between themselves in accordance with the Guidelines for Invoking the Disputes Procedure.

# Guidelines for invoking the Disputes Procedure agreed by the Welsh Local Government Association (WLGA); Association of London Government (ALG); Convention of Scottish Local Authorities (CoSLA); Local Government Association (LGA)

## Purpose of the Disputes Procedure

- 9.1 The local authority associations have been concerned to establish an inexpensive, simple, speedy, fair and consistent way of resolving disputes between authorities arising from the referral of homeless applicants under S198 Housing Act 1996 (England and Wales). In Scotland the provisions of S33 Housing (Scotland) Act 1987 apply.
- 9.2 In determining disputes referees will need to have regard to:
- a) for English and Welsh authorities.
    - Part 7 Housing Act 1996
    - regulation 6 of the *Homelessness Regulations 1996* (SI 1996 No. 2754) for Wales
    - regulation 6 of the *Homelessness (England) Regulations 2000* (SI 2000 No. 701)
    - *the Homelessness (Decisions on Referrals) Order 1998* (SI 1998 No. 1578)
    - *the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999* (SI 1999 No.71)
  - b) for Scottish authorities
    - Housing (Scotland) Act 1987
    - *the Homelessness (Decisions on Referrals) (Scotland) Order 1998*
    - *the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000* (SI 2000 706)
  - c) for all authorities
    - *the Procedures for S198 (Local Connection) Homeless Referrals: Guidelines for Local Authorities and Referees* produced by the local authority associations
    - *the relevant Code of Guidance* (separate Codes apply to English, Welsh and Scottish authorities) as amended or supplemented by further guidance issued by the appropriate Secretary of State.
- 9.3 Copies of the above documents can be obtained from the appropriate local authority association. The LGA will be responsible for providing copies of documentation which apply to *both* English and Welsh authorities, CoSLA for Scottish documentation and the WLGA for the Welsh Code of Guidance (when published).
- 9.4 Where there is a cross border dispute involving a Scottish authority and an English or Welsh authority then the legislation relevant to the location of the *notified* authority should be applied.

## Arrangements for Appointing Referees

- 10.1 Referees will be approached by the authorities in dispute, both of which must agree that the referee should be invited to accept the referral, to establish whether they are willing and able to act in a particular dispute. The referee should be appointed within 21 days of



the notified authority receiving the referral. If the local authorities are unable to agree on the choice of referee they should contact CoSLA or the LGA, as appropriate, in accordance with Section 8 of the Guidelines for Local Authorities on Procedures for Referral.

- 10.2 A referee will be given an initial indication of the reason for the dispute by the relevant authorities or the local authority association. The referee's jurisdiction is limited to the issue of local connection.
- 10.3 A referee must not have any personal interest in the outcome of the dispute. He should not act if he is or was employed by, or is a council tax payer in, one of the disputing local authorities or if he has any connection with the applicant.

## Procedures for determining the dispute

- 11.1 The general procedures to be followed by a referee in determining a dispute are outlined in the schedule to the *Homelessness (Decisions on Referrals) Order 1998 (SI 1998 No. 1578)*. It is recommended that the following, more detailed, procedures are applied to *all* cases.
- 11.2 Following his appointment, the referee shall invite the notifying and notified authorities to submit written representations within a period of **fourteen** working days, specifying the closing date, and requiring them to send copies of their submission to the applicant and to the other authority involved in the dispute. Authorities must have the opportunity to see each other's written statements, and should be allowed a further period of **ten** working days to comment thereon before the referee proceeds to determine the issue. The referee may also invite further written representations from the authorities if he considers it necessary.
- 11.3 The homeless applicant to whom the dispute relates is not a direct party to the dispute but the referee may invite written or oral representations from the applicant, or any other person, which is proper and relevant to the issue. If the referee invites representations from any person those representations may be made by any person acting on his behalf, whether or not legally qualified.
- 11.4 The disputing authorities should make copies of their submissions available to the applicant. The authorities should have the opportunity to comment on any information from the applicant (or any other source) upon which the referee intends to rely in reaching his decision.
- 11.5 Since the applicant's place of abode is in question, and temporary accommodation and property storage charges may be involved, it is important that a decision should be reached as quickly as possible - normally within **a month** of the receipt of the written representations from the notifying and notified authority. In the last resort, a referee may determine a dispute on the facts before him if one authority has, after reminders, failed to present its case without reasonable cause.

## Oral Hearings

- 12.1 Where an oral hearing is necessary or more convenient (e.g. where the applicant is illiterate, English is not his first language or further information is necessary to resolve issues in dispute), it is suggested that the notifying authority should be invited to present its case first, followed by the notified authority and any other persons whom the referee wishes to hear. The applicant may be invited to provide information on relevant matters. The authorities should then be given a right to reply to earlier submissions.

- 12.2 The referee's determination must be in writing even when there is an oral hearing. The referee will have to arrange the venue for the hearing and it is suggested that the offices of the notifying authority would often be the most convenient location.
- 12.3 Where a person has made oral representations the referee may direct either or both authorities to pay reasonable travelling expenses. The notifying and notified authorities will pay their own costs.

## **Notification of Determination**

- 13.1 The written decision of the referee should set out:
- (a) the issue(s) which he has been asked to determine
  - (b) the findings of fact which are relevant to the question(s) in issue
  - (c) the decision
  - (d) the reasons for the decision.

The referee's determination is binding upon the participating local authorities, subject to the applicant's right to review. The statutory right to review does not apply to Scottish legislation.

## **Costs of Determination**

- 14.1 Referees will be expected to provide their own secretarial services and to obtain their own advice on points of law. The cost of so doing, however, will be costs of the determination and recoverable as such.

## **Circulation of Determination**

- 15.1 Referees should send copies of the determination to both disputing authorities and to the LGA. The LGA will circulate copies to other members of the Panel of Referees as an aid to settling future disputes and promoting consistency in decisions.
- 15.2 The notifying authority should inform the applicant of the outcome.

## **Payment of Fees and Costs**

- 16.1 The local authority associations recommend a flat rate fee of £400 per determination (including determinations made under the right to review) which should be paid in full and as speedily as possible after the determination has been received. However, in exceptional cases where a dispute takes a disproportionate time to resolve, a referee may negotiate a higher fee. In addition, the referee may claim the actual cost of any travelling, secretarial or other incidental expenses which he has incurred, including any additional costs arising from the right of review or the right of appeal to a county court on a point of law.
- 16.2 The LGA will determine such additional fees as may be appropriate for any additional work which may subsequently arise should there be a further dispute or appeal after the initial determination has been made or should a referee be party to an appeal, under s.204 Housing Act 1996, to the county court on a point of law.
- 16.3 The referee's fees and expenses, and any third party costs, would normally be recovered from the unsuccessful party to the dispute, although a referee may choose to apportion expenses between the disputing authorities if he considers it warranted. Referees are

advised, when issuing invoices to local authorities, to stipulate that payment be made within 28 days.

## Reopening a Dispute

- 17.1 Once a referee has made a determination on a dispute he is not permitted to reopen the case, even though new facts may be presented to him, unless it is to rectify an error arising from a mistake or omission.

## Right to Review Referee's Decision

- 18.1 S202(1)(d) Housing Act 1996 gives an applicant the right to request a review of any decision made under these procedures. The right to review does not apply to Scottish legislation.
- 18.2 Should an applicant invoke the right to review a referee's decision the notifying and notified authority must, within five working days, appoint another referee from the panel. This applies even if the original referee was appointed by the LGA. If the two authorities fail to appoint a referee within this period then the notifying authority must, within five working days, request the LGA to appoint a referee and the LGA must do so within seven days of the request.
- 18.3 The authorities are required to provide the reviewer with the reasons for the original decision, and the information on which the decision is based, within five working days of his or her appointment. The two authorities should decide between them who will be responsible for notifying the applicant of the referees' decision, once received.

## Procedure on a Review

- 19.1 The procedural requirements for the right to review are outlined in the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 (SI 1999 No.71).
- 19.2 Referees undertaking a review are required to:
- (i) invite written representations from the applicant
  - (ii) notify the applicant of the review procedures
  - (iii) send copies of the applicant's representations to the two authorities inviting them to respond
  - (iv) invite further written or oral representations where an irregularity has been discovered in the original decision.
- 19.3 In carrying out a review referees are required to:
- (i) consider any representations made by, or on behalf of, the applicant
  - (ii) carry out the review on the basis of the facts known at the date of the review.
- 19.4 If the referee considers that there is an irregularity in the original decision, or in the manner in which it was made, but is nevertheless minded to make a decision which is against the interests of the applicant, the referee shall notify the applicant:
- (a) that he is so minded and the reasons why
  - (b) that the applicant, or someone acting on his behalf, may make further written or oral representations.

- 19.5 The applicant should be notified of the decision on a review within twelve weeks from the date on which the request for a review is made, or such longer period as the applicant may agree in writing. The two authorities should be advised in writing of the decision on the review, and the reasons for it, at least a week before the end of the period in order to allow them adequate time to notify the applicant. Copies of the decision should also be sent to the LGA.

# Standard Notification Form agreed by the Welsh Local Government Association (WLGA); Association of London Government (ALG); Convention of Scottish Local Authorities (CoSLA); Local Government Association (LGA)

## A NOTIFYING AUTHORITY DETAILS

Contact Name

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Authority

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Telephone Number ..... Fax Number

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E-mail

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Address for Correspondence

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## B APPLICANT DETAILS

Name of Main Applicant ..... Date of Birth

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Current Address

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## C FAMILY MEMBERS

Name

Relationship

Date of Birth

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**D ADDRESSES IN LAST 5 YEARS (include dates and type of tenure)**

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**E PRESENT/PREVIOUS EMPLOYMENT DETAILS**

Employer ..... Tel No  
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Address  
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Contact Name ..... Job Title  
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Previous Employer  
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Date from ..... Date to  
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Address

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**F REASONS FOR HOMELESSNESS**

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**G INTENTIONALITY (indicate why applicant has been deemed unintentionally homeless)**

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**H PRIORITY NEED CATEGORY**

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**I LOCAL CONNECTION DETAILS**

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**J WISHES OF THE APPLICANT(S) (in the context of the referral)**

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**K REASON FOR THE REFERRAL**

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**L ANY SUPPLEMENTARY INFORMATION (attach supporting documentation if relevant)**

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**I confirm that, in accordance with S198 Housing Act 1996, I do not consider any member of the household to be at risk of domestic violence through this referral**

Signed ..... Date  
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## ANNEX 21

# Contracting Out of Functions under Parts 6 and 7

The *Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996* (SI 1996 No. 3205) enables local authorities to contract out certain functions under Parts 6 and 7 of the 1996 Act. Contracting out of allocation schemes under these provisions often arises where a housing authority has transferred its stock to a RSL. The Order is made under s.70 of the Deregulation and Contracting Out Act 1994 (the 1994 Act). In essence, the Order allows the contracting out of executive functions while leaving the responsibility for making strategic decisions with the housing authority. 

### Functions which cannot be contracted out under Part 6

Schedule 1 to the Order lists the allocation functions which may **not** be contracted out:

- (i) adopting or altering the allocation scheme, including the principles on which the scheme is framed, and consulting RSLs; and
- (ii) making the allocation scheme available for inspection at the authority's principal office.

### Functions which can be contracted out under Part 6

The functions in Part 6 that may be contracted out under the Order include:

- (i) making enquiries and reaching decisions in individual cases whether persons are or are not eligible persons;
- (ii) carrying out reviews of decisions;
- (iii) providing information to applicants; and
- (iv) making individual allocations in accordance with the allocation scheme.

### Contracting out or reviewing existing contracted out schemes

Housing authorities that have contracted out their Part 6 functions cannot rely on the contracted agency to make the scheme compliant with the 2002 Act. The housing authority must take decisions about how it will revise its scheme and then amend or agree a new contract with its agency in order to comply with the 2002 Act.

Housing authorities that are reviewing or agreeing contracts should ensure that their agreement includes:

- (i) arrangements for monitoring and performance targets
- (ii) requirements to provide the housing authority with information it needs to carry out its strategic housing function
- (iii) provisions to review and amend the scheme in the light of changing circumstances (e.g. changes in demand or legislation)

- (iv) the requirement to manage the allocations scheme in accordance with Parts 1 and 2 of this Code of Guidance and the authority's homelessness strategy

## **Functions that must not be contracted out under Part 7**

Schedule 2 to the Order lists the functions in Part 7 that may **not** be contracted out:

- (i) giving various forms of assistance to people providing advice and information about homelessness and the prevention of homelessness to people in the area;
- (ii) giving assistance to voluntary organisations concerned with homelessness;
- (iii) co-operating with another local housing authority by rendering assistance in the discharge of their homelessness functions.

## **Functions that may be contracted out under Part 7**

The functions in Part 7 that may be contracted out under the Order include:

- (iv) making arrangements to secure that advice and information about homelessness, and the prevention of homelessness, is available free of charge within the authority's district;
- (v) making inquiries about and deciding a person's eligibility for assistance;
- (vi) making inquiries about and deciding whether any duty, and, if so, what duty is owed to a person under Part 7;
- (vii) handling referrals to another local housing authority;
- (viii) carrying out reviews of decisions.

The 1994 Act provides that a contract made:

- (i) may authorise a contractor to carry out only part of the function concerned;
- (ii) may specify that the contractor is authorised to carry functions only in certain cases or areas specified in the contract;
- (iii) may include conditions relating to the carrying out of the functions e.g. prescribing standards of performance;
- (iv) shall be for a period not exceeding 10 years and may be revoked at any time by the Minister or the authority. Any subsisting contract is to be treated as having been repudiated in these circumstances;
- (v) shall not prevent the authority from themselves exercising the functions to which the contract relates.

The 1994 Act also provides that the authority is responsible for any act or omission of the contractor in exercising functions under the contract, except:

- (i) where the contractor fails to fulfil conditions specified in the contract relating to the exercise of the function; or,

- (ii) where criminal proceedings are brought in respect of the contractor's act or omission.

Where there is an arrangement in force under s.101 of the Local Government Act 1972 by virtue of which one authority exercises the functions of another, the 1994 Act provides that the authority exercising the function is not allowed to contract it out without the principal authority's consent.

## **Large Scale Voluntary Transfer**

Local housing authorities that have transferred all or part of their housing stock, or are in the process of transferring their stock, are still required under Part 6 to have an allocation scheme. Nomination arrangements between the transferring authority and the transfer RSL must reflect the requirement that nominations of assured tenancies must be to eligible persons in accordance with the authority's allocation scheme.

A transferring authority may contract to the transfer RSL a range of functions under Parts 6 and 7 of the 1996 Act, as permitted under the Order, or they may participate in a common register with other landlords. The requirement in s.167(7) of the 1996 Act to consult RSLs before adopting or altering their allocation scheme will be particularly important in the case of a transferring authority.

The Assembly Government is aware that some local authorities have already delegated the operation of their allocations and homelessness functions either voluntarily or under compulsory competitive tendering. Where such contracts have already been awarded to external contractors (including delegations to Tenant Management Organisations), the contractor must be made aware of the provisions of Parts 6 and 7 and advised how the legislation and this guidance may apply to them. Functions of an operational or administrative nature may also have been delegated or contracted out to transfer landlords or registered social landlords: they, too, must be made aware of these provisions and of the guidance.

## ANNEX 22

# Temporary guidance on local authority nominations to tenancies with Registered Social Landlords

The information below is taken from RSL Circular 1/98 which was under review at the time this Code of Guidance was issued in <insert date>. It describes the Assembly Governments requirements of RSLs regarding nominations for housing and homelessness referrals. The Homelessness Act 2002 removed the need for the nomination/referral distinction as persons to whom the local authority has a homelessness duty now fall within the 'reasonable preference' categories (s.167(2)/[s. 16(3)]), and as such are entitled to be considered for an allocation of accommodation under Part 6 of the 1996 Act. Therefore, this information is being issued as a temporary measure ONLY to ensure that local authority housing departments are aware of current Assembly Government requirements of RSLs and the fundamental changes to the Circular brought about by the 2002 Act. The revised version will accommodate both the statutory and Assembly Government policy requirements and will be issued later in 2003 following formal consultation with relevant organisations.

### 1 Introduction

- 1.1 In July 1991, Tai Cymru issued Circular 14/91: Local Authority Nominations to Housing Association Tenancies. Circular 14/91 now requires amendment to take account of the Housing Act 1996 and Tai Cymru's Regulatory Requirements.
- 1.2 Section 170 of the Housing Act 1996 requires RSLs to "co-operate to such extent as is reasonable in the circumstances in offering accommodation to people with priority on the authority's housing register".
- 1.3 Where local authorities request RSLs to assist them in the discharge of their homelessness functions, Section 213 of the Housing Act 1996 requires RSLs to "co-operate in rendering such assistance...as is reasonable in the circumstances".
- 1.4 The definition of "reasonable" can only be tested in the courts, but Tai Cymru believes that a sensible test of "reasonableness" would be whether assistance was provided within the terms of the type of formal agreement outlined in this Circular.
- 1.5 Tai Cymru's Regulatory Requirement 7.1 requires registered social landlords (RSLs) to offer lettings which will be made available for nominations to people prioritised according to the local authority's allocations scheme, including those who are statutorily homeless.
- 1.6 Tai Cymru's Regulatory Requirement 7.2 requires RSLs to seek formal agreements with each local authority in their areas of operation, specifying how nomination arrangements will work in practice.
- 1.7 This Circular provides good practice advice on the content of such agreements and on procedures and practices for nominations and aims to take account of each party's problems and priorities.
- 1.8 Where common housing registers or common allocations policies are in operation, different arrangements for nominations will need to be negotiated, but the advice in this Circular should still be useful in informing those negotiations.

## **2 What should agreements cover?**

- 2.1. In Tai Cymru's view, if a formal agreement is to specify adequately how nomination arrangements are to work in practice, it will need to be clear on the following issues:
- a. which lettings are to be included for the purpose of calculating the percentage of lettings offered to local authorities (see 3 below);
  - b. the percentage of these lettings which will be made available to the local authority (see 4 below);
  - c. how nominees will be provided with information about RSLs and their tenancies (see 5 below);
  - d. how the RSL will offer vacancies to the local authority (see 6 below);
  - e. how the local authority will nominate (see 7 below);
  - f. how the RSL will select nominees for particular vacancies (see 8 below);
  - g. how the acceptance or refusal of an offer of tenancy will be communicated (see 9 below);
  - h. how nominations will be coordinated and monitored (see 10 below);
  - i. the procedure for dealing with any disagreements which might arise (see 11 below).

## **3. Which lettings are to be included for the purpose of calculating the percentage of lettings offered to local authorities?**

- 3.1 Tai Cymru's Regulatory Requirement 7.2 requires that RSLs normally offer 50% of lettings to local authorities. A formal agreement will need to specify which lettings made by the social landlord may be excluded for the purpose of calculating this percentage.
- 3.2. (No longer applicable)
- 3.3 Supported housing projects and specialist housing (e.g. for the frail elderly) will not normally form part of a formal nomination agreement, but will be covered by their own agreements on a project by project basis. For supported housing projects, Tai Cymru's Regulatory Requirement 7.1 requires that RSLs arrange to take nominations from relevant statutory authorities, and/or arrange to take recommendations from appropriate voluntary organisations or professionals working closely with potential tenants, and/or have arrangements for self referral.
- 3.4 The RSL and local authority will also need to agree whether other categories of lettings are to be excluded for the purpose of calculating the percentage of lettings offered to local authorities. For example:
- a. lettings made to property provided without public funding (some such property is subject to an existing agreement in this respect);
  - b. lettings made as the result of mutual exchanges between the RSL's own tenants;
  - c. lettings made to the RSL's own tenants for decant purposes to enable new development, improvements, or repairs to take place;

- d. lettings made to the RSL's own tenants as a result of transfers. The RSL will want to ensure that it has sound policies and procedures on transfers to meet its own tenants' transfer needs, and to make best use of its stock. The local authority will want to ensure that it can have access to a fair cross section of the RSL's relets, and will be concerned if all the desirable vacancies, whether by size, type or location, have been used for internal transfer. This is likely to be a particular concern in rural areas where the RSL has a dispersed stock in small villages;
  - e. lettings made under HOMES;
  - f. lettings made to people moving into the general needs stock from supported housing projects. The RSL and the local authority will want to ensure that adequate move-on accommodation is available to enable optimum use to be made of non-permanent and direct access supported housing;
  - g. lettings made from the general needs stock for floating support schemes.
- 3.5 All new lets and re-lets from categories of lettings not specifically excluded in the agreement would normally be included for the purpose of calculating the percentage of lettings offered to local authorities.

#### **4 What percentage of these lettings will be made available to the local authority?**

- 4.1 Of those lettings to be included under 3 above, a formal agreement will need to specify what percentage the RSL will make available to the local authority.
- 4.2 Tai Cymru's Regulatory Requirement 7.2 requires that RSLs normally offer 50% of lettings to local authorities. A higher percentage may be agreed where a local authority has provided funding for a scheme, but Tai Cymru's prior approval should be sought if figures in excess of 75% are proposed.
- 4.3 Some local authorities may feel unable to provide nominees for 50% of lettings, in which case it may be appropriate for the agreement to specify a lower percentage.
- 4.4 The way in which the overall percentage is apportioned to nominations falling into the 'reasonable preference' categories under s. 167(2) of the 1996 Act (as amended by the Homelessness Act 2002) and contained within the local authority's allocations scheme is a matter for agreement between the RSL and the local authority. Local authorities must give 'reasonable preference' to the following categories within its allocation scheme:
  - (i) people who are homeless within the meaning of Part 7 of the 1996 Act. See Part 2 of this Code for detailed guidance;
  - (ii) people who are owed a duty by any housing authority under section 190(2), 193(2) or 195(2) of the 1996 Act (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any housing authority under section 192(3). See Part 2 of this Code for detailed guidance;
  - (iii) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
  - (iv) people who need to move on medical or welfare grounds; and

- (v) people who need to move to a particular locality in the area of the housing authority, where failure to meet that need would cause hardship (to themselves or to others).
- 4.5 (no longer applicable).
- 4.6 Tai Cymru's Regulatory Requirement 7.2 requires that the percentage of lettings made available to the statutorily homeless should:
- a. take account of the historical level of homelessness nominations from the local authority;
  - b. take account of the RSL's own circumstances (e.g. some RSLs might have a large proportion of 1-bed stock, which may be suitable for single homeless people, but have few properties suitable for homeless families);
  - c. not normally be greater than the proportion of the local authority's own stock used for homelessness accommodation.
- 5. How will nominees be provided with information about RSLs and their tenancies?**
- 5.1 Many people who may be offered nominations know little or nothing about RSLs. They will need accurate information about RSLs and their tenancies in general (e.g. the differences between local authority and RSL tenancies) and about the particular RSL and its tenancies (e.g. rent levels).
- 5.2 A formal agreement will need to specify how this information will be provided to nominees.
- 5.3 It would appear to be most efficient for the RSL to provide information to the local authority, and for the local authority to provide that information to the nominee. In that way:
- a. general information about all the RSLs in an area could be consolidated;
  - b. information could be provided before nomination, so that the offer of a tenancy from an RSL would not be unexpected, and potential nominees would have more time to consider the option of an RSL tenancy;
  - c. the local authority could systematically provide the information to people gaining access to their housing register, and positively enquire whether they would wish to be nominated to a RSL, with a view to establishing a pool of prospective nominees (see 7.5c below).
- 6. How will the RSL offer vacancies to the local authority?**
- 6.1 A formal agreement will need to specify how the RSL will offer vacancies to the local authority.
- 6.2 There needs to be clear agreement on what constitutes an offer of a vacancy, and how such offers will be recorded. Offers will normally need to be made in writing. For the avoidance of delay, however, it is likely to be necessary that some offers will be made by telephone or by fax, but these will always need to be confirmed in writing.
- 6.3 For new schemes, the RSL will need to offer a range of vacancies to the local authority well in advance of the completion of schemes.

6.4 For re-lets, the local authority may wish to be provided with forecasts in general terms of the number of vacancies requiring nominations likely to arise in a given period. The RSL will need to ensure that such forecasts are pragmatically based on its historic information on turnover.

## **7. How will the local authority nominate?**

7.1 A formal agreement will need to specify how the local authority will nominate.

7.2 It is important that the local authority only makes appropriate nominations, since otherwise time is wasted and false hopes are raised in persons nominated:

- a. nominations will need to be based on up to date information about the circumstances, needs and requirements of the people concerned;
- b. Tai Cymru's Regulatory Requirement 7.5 allows the RSL, in specified circumstances, to add additional criteria for allocation over and above those pertaining to housing need. The formal agreement will need to be clear that all local authority nominations are normally required to meet such additional allocation criteria;
- c. Tai Cymru's Regulatory Requirement 7.3 allows RSLs to exclude from allocations certain specified categories of applicants. The formal agreement will need to be clear that local authority nominations will not normally be accepted from people so excluded. (Further Circulars on Exclusions will be issued for RSLs and Local Authorities later in 2003). Parties to the agreement may wish to specify that the local authority has responsibility for certifying to the RSL that the nomination is based on up to date information, and complies with any additional allocation criteria and exclusion criteria adopted by the RSL.

7.3 It is important that the local authority provides appropriate information on nominees to the RSL, since otherwise the RSL may not have the information it needs to properly manage the tenancy. In particular, the RSL will need:

- a. information on any community care (including details of the care package, housing assessment, keyworkers and their responsibilities);
- b. information relating to the health and safety of potential neighbours and of RSL staff (so that, for example, home visits are not made in ignorance of potential dangers known to the local authority).

A formal agreement will need to specify what information on nominees will be provided by the local authority to the RSL. Parties to the agreement may wish to specify that the local authority has responsibility for negotiating issues of confidentiality with the nominee with a view to disclosing relevant details, and will provide to the RSL all information held on the nominee's application.

7.4 The local authority will need to make one to one nominations to vacancies in respect of homeless households and the formal agreement will need to reflect this.

7.5 In respect of nominations to people with priority on the authority's housing register, the formal agreement will need to specify how the local authority will ensure a flow of nominees to the RSL. The following points will need to be considered:

- a. if a first nomination is abortive, and the authority has to search for other nominees, the RSL is faced with a longer than necessary void;



- b. the number of nominations which will need to be made for each vacancy will depend on the nature of the RSL's stock, and the particular scale of demand from different client groups. However, the local authority will normally need to provide at least two nominees per vacancy;
- c. the local authority may consider establishing a pool of applicants willing to be nominated to the RSL. If so, the agreement will need to specify how this pool will be updated on a regular basis to ensure that, for example, those included are still at the address provided, and are still in need of housing;
- d. whether providing names from a "pool", or by other means based on agreed criteria, the local authority may wish to indicate an order of preference for its nominees;
- e. there will, on exceptional occasions, be the need to make a one-to-one nomination for a re-let where the local authority is faced with a particularly pressing problem which cannot reasonably be dealt with via a "pooling" arrangement.

7.6 A formal agreement will need to specify timescales within which the local authority will provide nominations to the RSL:

- a. for new schemes, the local authority will need to notify the RSL within agreed timescales whether it is likely to take up the range of vacancies offered by the RSL in advance of the completion of the scheme;
- b. for both new lets and re-lets, the local authority will need to provide nominations to the RSL promptly to agreed timescales in order to prevent the possibility of void losses on schemes.

## **8. How will the RSL select nominees for particular vacancies?**

8.1 A formal agreement will need to specify how the RSL will select nominees for particular vacancies.

8.2 Parties to the agreement may wish to specify that the RSL may let from its own waiting list if the local authority does not meet agreed timescales for providing nominations .

8.3 An RSL will need to rely on certifications from the local authority that the nomination is based on up to date information, and complies with any additional allocation criteria and exclusion criteria adopted by the RSL (as outlined in 7.2 above). An RSL will also need to be able to rely on the local authority providing specified information on nominees (as outlined in 7.3 above).

Parties to the agreement may wish to specify that, where the local authority has not certified to the RSL that the nomination is based on up date information, and complies with any additional allocation criteria and exclusion criteria adopted by the RSL, or where the local authority has not provided agreed information to the RSL, the RSL may choose either:

- to undertake a home visit to verify this information for itself; or
- where an unacceptable void period would result, to reject the nomination .

Parties to the agreement may also wish to specify that the RSL may reject all nominations which do not comply with any additional allocation criteria and exclusion criteria adopted by the RSL.

- 8.4 The RSL will need to accept one-to-one nominations to vacancies in respect of homeless households.
- 8.5 In respect of nominations to people with priority on the authority's housing register, a formal agreement will need to specify how the RSL will select tenants for particular vacancies. The following points will need to be considered:
- a. whether the RSL will invoke its own points based scheme for comparative assessment of housing need in respect of nominees. This would not normally be expected, since:
    - it would delay decision making;
    - nominees would not necessarily come at the very top of both the local authority's and the RSL's comparative needs assessment, since there can be no absolute measure of need;
    - the local authority may have its own strategic requirements (e.g. for obtaining vacancies in homes more appropriate to an existing tenant's needs) which would in turn release a property which could then house another high priority case.
  - b. whether, where the local authority indicates an order of preference for its nominees, this will be accepted by the RSL. This would normally be expected, unless the RSL could demonstrate good reason otherwise;
  - c. there will, on exceptional occasions, be the need for the RSL to accept a one-to-one nomination for a re-let where the local authority is faced with a particularly pressing problem which cannot reasonably be dealt with via a "pooling" arrangement.
- 8.6 A formal agreement will need to specify timescales within which the RSL will accept or reject nominations made by the local authority:
- a. in order to prevent void losses, the RSL will need to notify the local authority promptly whether it has accepted or rejected nominations;
  - b. the RSL would normally be expected to reject nominations only on the grounds outlined in 8.3 above;
  - c. the RSL will need, within agreed timescales, to provide the local authority with reasons for rejection.

Parties to the agreement may wish to specify that, where the RSL rejects a nomination, the RSL may choose either:

- to request an alternative nomination from the local authority; or
- where an unacceptable void period would result, to let from its own waiting list.

## **9 How will the acceptance or refusal of an offer of tenancy be communicated?**

- 9.1 A formal agreement will need to specify how acceptance or refusal of an offer of tenancy will be communicated.
- 9.2 Normally, the nominee will need to communicate refusal or acceptance of an offer of tenancy directly to the RSL.
- 9.3 A formal agreement will need to specify timescales within which the RSL will notify the local authority of acceptance or refusal of an offer of tenancy.
- 9.4 Notification of refusals will need to be accompanied by reports on reasons for refusals.

9.5 Parties to the agreement may wish to specify that, where an offer of tenancy has been refused, the RSL may choose either:

- to request an alternative nomination from the local authority; or
- where an unacceptable void period would result, to let from its own waiting list.

**10. How will nominations be coordinated and monitored?**

10.1 A formal agreement will need to specify how the nomination process will be coordinated, and how performance will be monitored.

10.2 Parties to the agreement may wish to designate named officers from both the RSL and the local authority as initial points of contact, and specify their key responsibilities. There will be a need for each party to notify the other in writing of any changes to these arrangements.

10.3 Nomination procedures may be facilitated by the use of agreed common nomination forms which contain the information necessary to allow the local authority to make a nomination, and the RSL to make an allocation.

10.4 The RSL may wish to offer nominations, and the local authority to make nominations, from local offices and/or centrally. In any event there will need to be central coordination for the purpose of monitoring performance.

10.5 The local authority may wish to establish a liaison group with the RSLs working in its area to monitor the workings of nominations agreements. If RSL activity does not warrant the establishment of a liaison group, the local authority may wish to hold regular meetings with their RSLs.

10.6 A formal agreement will need to specify methods and frequency of monitoring, for example, quarterly reports made to the liaison group, or to the local authority housing committee and the RSL's board.

10.7 A formal agreement will need to specify which elements of the agreement will be monitored. These are likely to include:

- a. percentage of lettings offered to the local authority compared to agreed percentages for the reasonable preference categories;
- c. percentage of lettings made to local authority nominations;
- d. local authority performance against agreed timescales for providing nominations to the RSL;
- e. lettings made by the RSL from its own waiting list because the local authority has not met agreed timescales for providing nominations ;
- f. RSL performance against agreed timescales for accepting or rejecting nominations;
- g. lettings made by the RSL from its own waiting list because it has rejected a nomination;
- h. nominations rejected by the RSL because:

- the local authority had not certified that they were based on up date information;
- the local authority had not certified that they complied with any additional allocation criteria and exclusion criteria adopted by the RSL;
- they did not comply with additional allocation criteria and exclusion criteria adopted by the RSL;
- the local authority had not provided agreed information on nominees;

Reasons for rejection will need to be reviewed by each party in order to identify any underlying problems.

- i. RSL performance against agreed timescales for notifying the local authority of acceptance or refusal of an offer of tenancy;
- j. the number of and reasons for refusals of offers of tenancy. These will need regular monitoring to identify any recurring problems.

10.8 The RSL and the local authority will need to take any necessary remedial action if monitoring suggests that agreements are not operating effectively.

**11. What are the procedure for dealing with any disagreements which might arise?**

11.1 A formal agreement will need to specify the procedure for dealing with any disagreements which might arise.

11.2 Parties to the agreement may wish to specify that, in the event of any disagreement between the RSL and the local authority which cannot be resolved between the parties, either party may refer the matter to independent arbitration.

11.3 If both parties so wish, Tai Cymru's Director of Performance Audit is prepared to be responsible for setting up an independent arbitration panel to seek to bring about a resolution of the difficulty, with the expenses involved shared between the parties to the dispute.

## ANNEX 23

# Discretionary Grounds and Unacceptable Behaviour Determinations

Under s. 160A(8)/[s. 14(2)], the following discretionary grounds (s.84 and Part 1 of Schedule 2 of the Housing Act 1985 as amended by s.144 to s.146 of the Housing Act 1996) are relevant to determining whether an applicant (or a member of his/her household) is guilty of unacceptable behaviour to make him/her unsuitable to be a tenant.

**Note:** The court must be satisfied that the ground is valid and that it is reasonable to make an order. In deciding what is reasonable it may consider the conduct of both parties and the public interest.

1. Rent lawfully due has not been paid or an obligation of the tenancy has been broken or not performed.
2. The tenant or a person residing in or visiting the dwelling house has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality of the dwelling or has been convicted of using the dwelling or allowing it to be used for immoral or illegal purposes or of an arrestable offence committed in or in the locality of the dwelling house.
- 2A. The dwelling was occupied (whether alone or with others) by a married couple or a couple living together as husband and wife, one or both the partners is a tenant of the dwelling, one partner has left because of violence or threats of violence by the other towards that partner or member of the family and the court is satisfied that the partner who has left is unlikely to return.
3. The condition of the dwelling or any common parts has deteriorated owing to acts of waste, neglect or default by the tenant or by anyone living with him or her, and where a lodger or sub-tenant is responsible for the deterioration, the tenant has not taken steps to remove that person.
4. The condition of furniture provided by the landlord for use in the dwelling or in common parts has deteriorated owing to ill treatment by the tenant or by anyone living with him or her, and in the case of ill treatment by a lodger or sub-tenant, the tenant has not taken steps to remove that person.
5. The landlord was induced to grant the tenancy to the tenant as a result of a false statement made knowingly or recklessly by the tenant or a person acting at the tenant's instigation.
6. The tenancy was exchanged by an assignment under Section 92 and the tenant paid or received a premium in return for the exchange.
7. A tied tenant of a property which forms part of or is within the curtilage of a building held for non-housing purposes who is guilty of conduct that make it inappropriate for him or her to remain in occupation.
8. Not applicable to unacceptable behaviour determinations.



## ANNEX 25

# Occupancy agreements for 16 & 17 year olds

Following the making of the Homeless Persons (Priority Need) (Wales) Order 2001 in the spring of 2001, which gives 16 & 17 year olds a priority need for accommodation if they are homeless, housing authorities should be aware of the following issues of legality and good practice in housing minors.

It would not be appropriate for the Assembly Government to provide definitive legal advice on this matter, as the housing authority must be satisfied that it is acting in a proper manner and should therefore seek its own legal advice.

However, the Assembly Government provides the following guidance on law and practice by way of assistance:

In principle, housing applications by minors should be considered on the same basis as other applications. A minor cannot hold a legal estate in land (s.1(6) of the Law of Property Act 1925), but this does not restrict a minor from acquiring an “*equitable*” interest. Since 1997 any attempt to convey a legal estate to a minor operates as a declaration that the property is held on trust in favour of the minor (Trusts of Land & Appointment of Trustees Act 1996, Schedule 1, paragraph 1[1]). Simply, the authority (as landlord) would hold the property as trustee on behalf of the minor.

However, there is nothing preventing the minor from having a right of occupation of the property, subject to any obligations attached to an agreement. Further, unless s/he repudiates the tenancy within a reasonable time after reaching the age of 18, s/he will be bound by it (Davies v Beynon-Harris [1931] 47 T.L.R. 424).

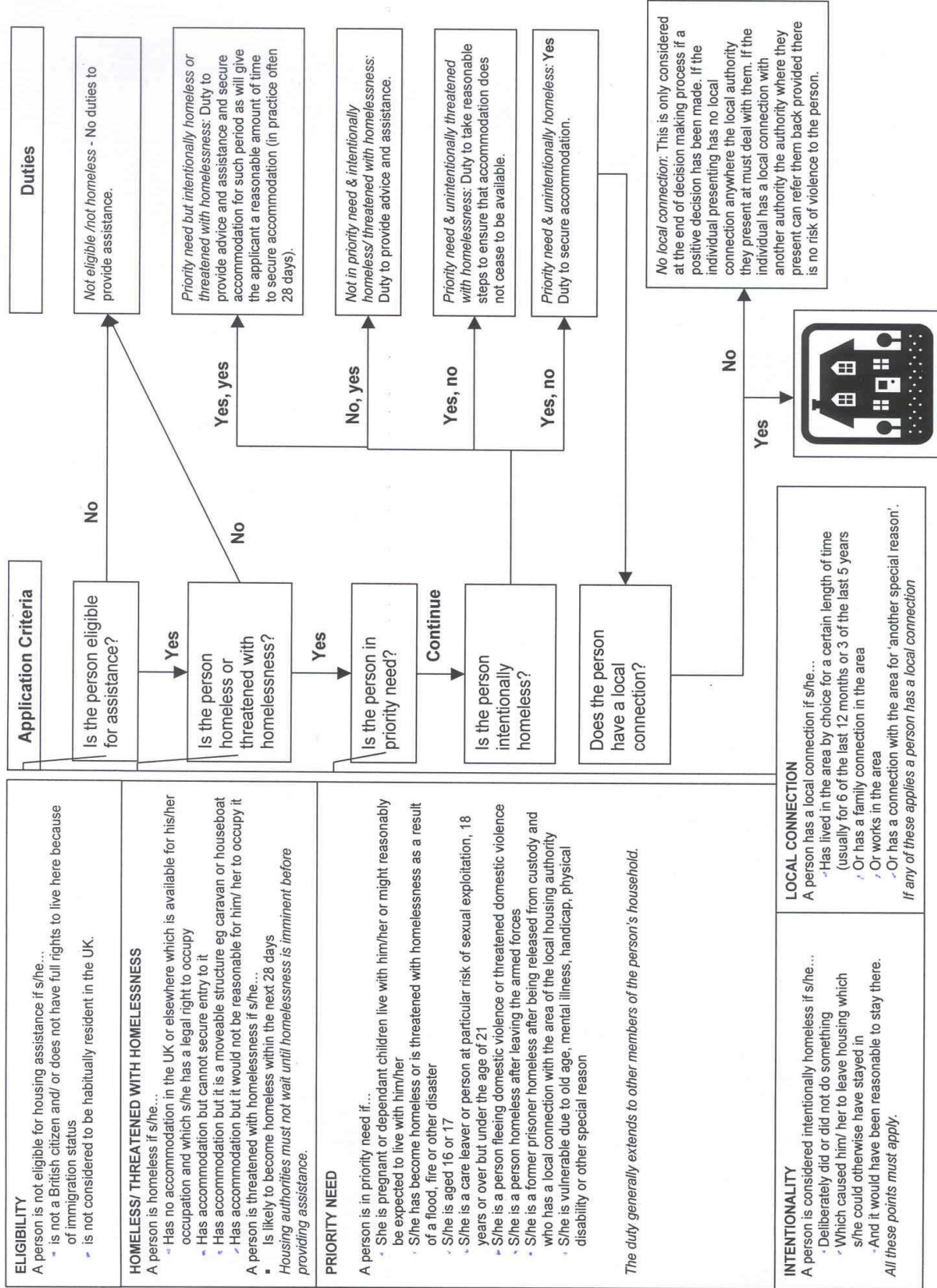
An equitable tenancy would only apply where the occupier is granted exclusive possession of any part of the premises. In the case of Kingston-upon-Thames Borough Council-v-Prince [1999] 1 FLR 593 it was held that a minor could succeed to a statutory tenancy under s.87 of the Housing Act 1985 (“the 1985 Act”). However, this only applies to housing authorities and not RSLs.

A local authority can grant a licence to a minor, particularly if the person is only occupying part of a premises. Section 79(3) of the 1985 Act provides the same security to licence to occupy a dwelling house as it given to a tenancy.

Both an equitable tenancy and a licence would be considered as a contract of necessity and would be enforceable against the minor (s.3(2)-(3) Sale of Goods Act 1979). Local authorities would be able to enforce any rental and other covenants against the minor, provided that the property is the minor’s only or principal home. Authorities could insert an appropriate clause into the agreement. However, a minor cannot take or defend legal proceedings and therefore the court would appoint a “litigation friend”, normally a Guardian ad litem.

**ANNEX 26**  
**Homelessness Decision-Making Flowchart**





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