



Department for
Communities and
Local Government

Right to Move

Statutory guidance on social housing allocations for local housing authorities in England



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Introduction

1. This is guidance by the Secretary of State for Communities and Local Government under section 169 of the Housing Act 1996 ('the 1996 Act'). Local housing authorities (housing authorities) are required to have regard to it in exercising their functions under Part 6 of the 1996 Act.
2. It is in addition to the Guidance for Local Housing Authorities in England on the Allocation of Accommodation issued in June 2012 ('the 2012 guidance').
3. References to sections in this guidance are references to sections in the 1996 Act.
4. Housing authorities are encouraged to review their existing allocation policies and revise them, where appropriate, in the light of this guidance as soon as possible.

Purpose of the guidance

5. The Government is committed to increasing mobility for social tenants to enable tenants to meet their aspirations, and to support them into work. We want to ensure that tenants are not prevented from taking up an employment opportunity because they cannot find a suitable place to live, recognising that long term unemployment is damaging for individuals and communities. That is why in the Autumn Statement 2013 we set out our intention to introduce a Right to Move for social tenants who need to move to take up a job or live closer to employment or training.
6. We've already taken some important steps in the right direction. *HomeSwap* Direct is helping social tenants search for a new home across the country. Through the Localism Act, we have given local authorities the freedom to make better use of the social housing stock by taking transferring tenants who are not in housing need out of the allocation legislation, allowing authorities to develop appropriate policies for transferring tenants, without the risk of challenge from those in greater need on the waiting list.
7. The Government has also taken decisive steps to increase the supply of affordable housing. The current Affordable Homes Programme is on track to deliver 170,000 homes between 2011 and 2015 with £19.5 billion of public and private investment. A further £38 billion of public and private investment will help deliver another 275,000 new affordable homes between 2015 and 2020.
8. To give effect to the Right to Move we have introduced regulations to prevent local authorities applying a local connection test that could disadvantage tenants who need to move across local authority boundaries for work related reasons. This guidance is intended to assist local authorities to implement these regulations.
9. The Government has made clear that we expect social homes to go to people who genuinely need and deserve them. That is why the Localism Act has maintained the

protection provided by the statutory reasonable preference criteria which ensure that priority for social housing continues to be given to those in the greatest housing need.

10. Another important aim of this guidance, therefore, is to assist local authorities to apply the allocation legislation to ensure that tenants who need to move within or across local authority boundaries are given appropriate priority under local authorities' allocation schemes.

Qualification

11. Section 160ZA(7) provides that local authorities may decide who does or does not qualify for an allocation of social housing, subject to any regulations made under subsection 8 which provides that the Secretary of State may prescribe that certain classes of persons are or are not qualifying persons, or that certain criteria cannot be taken into account in deciding who qualifies.

12. Subject to parliamentary scrutiny, the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 (SI 2015/967) ('the qualification regulations 2015') will come into force on 20 April. These provide that local authorities must not disqualify certain persons on the grounds that they do not have a local connection with the authority's district. Specifically, a local connection may not be applied to existing social tenants seeking to transfer from another local authority district in England who:

- have reasonable preference under s.166(3)(e) because of a need to move to the local authority's district to avoid hardship, and
- need to move because the tenant works in the district, or
- need to move to take up an offer of work

13. This will ensure that existing tenants who are seeking to move between local authority areas in England in order to be closer to their work, or to take up an offer of work (hereafter referred to together as 'work related reasons'), will not be disadvantaged.

14. We have made a similar provision for certain members of the Armed Forces community, by regulating to prevent local authorities from applying a local connection requirement to disqualify them¹, in order to give effect to the Government's commitment that those who serve in the Armed Forces are not disadvantaged in their access to social housing by the need to move from base to base. Aside from members of the Armed Forces and transferring tenants who will benefit from the Right to Move, the Government has made clear that we expect local authorities to ensure that only long standing local residents, or those with a well established local association should qualify for social housing, and has issued statutory guidance to ensure that local authorities apply a residency test to social housing of at least two years².

¹ The Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012 (SI 2012/1869)

² Providing Social Housing for Local People: Statutory guidance on social housing allocations for local authorities in England.

Local connection

15. Local connection is defined by s.199. A person has a local connection because of normal residence (current or previous) of their own choice, employment, family associations, or special circumstances.

Need to move

16. The qualification regulations 2015 apply to transferring tenants who have reasonable preference under s.166A(3)(e), that is to say the local authority is satisfied that they need to move to a particular locality in the district of the housing authority, where failure to meet that need would cause hardship (to themselves or others).

17. The local authority must ensure, therefore, not simply that the tenant needs to move for work, but that, if they were unable to do so, it would cause them hardship.

18. Local authorities must be satisfied that the tenant needs, rather than wishes, to move for work related reasons. In the Secretary of State's view the factors that local authorities should take into account in determining whether a tenant needs to move to be closer to work or to take up a job offer include:

- the distance and/or time taken to travel between work and home
- the availability and affordability of transport, taking into account level of earnings
- the nature of the work and whether similar opportunities are available closer to home
- other personal factors, such as medical conditions and child care, which would be affected if the tenant could not move
- the length of the work contract
- whether failure to move would result in the loss of an opportunity to improve their employment circumstances or prospects, for example, by taking up a better job, a promotion, or an apprenticeship

19. This is not an exhaustive list and local authorities may wish to consider providing for other appropriate factors to take into account in the light of local circumstances.

Work

20. The qualification regulations 2015 only apply if work is not short-term or marginal in nature, nor ancillary to work in another district. Voluntary work is also excluded.

Short-term

21. In determining whether work is short-term, the Secretary of State considers that the following are relevant considerations:

- *whether work is regular or intermittent*

This is likely to be particularly relevant in the case of the self-employed.

- *the period of employment and whether or not work was intended to be short-term or long-term at the outset*

In the Secretary of State's view a contract of employment that was intended to last for less than 12 months could be considered to be short-term.

Marginal

22. The following considerations would be relevant in determining whether work is marginal:

- *the number of hours worked*

In the Secretary of State's view employment of less than 16 hours a week could be considered to be marginal in nature. This is the threshold below which a person may be able to claim Income Support and the threshold for a single person's entitlement to Working Tax Credit.

- *the level of earnings*

23. Local authorities should take into account all the relevant factors when reaching a decision. The fact that a tenant only works 15 hours a week, for example, may not be determinative if they are able to demonstrate that the work is regular and the remuneration is substantial.

Ancillary

24. Work must not be ancillary to work in another local authority's district. This means that, if the person works occasionally in the local authority's district, even if the pattern of work is regular, but their main place of work is in a different local authority's district, the work is excluded from the ambit of these regulations.

25. A further relevant consideration would be whether the tenant is expected eventually to return to work in the original local authority district. If a local authority has reason to believe this is the case, they should seek verification from the tenant's employer.

26. A person who seeks to move into a local authority to be closer to work in a neighbouring authority – for example, where the transport links are better in the first local authority's area – is also excluded from these regulations. However, there is nothing to prevent local authorities looking sympathetically on tenants seeking to move into their authority's district for this reason, if they choose to do so.

Voluntary work

27. The regulations exclude voluntary work. Voluntary work means work where no payment is received or the only payment is in respect of any expenses reasonably incurred.

Apprenticeship

28. The term 'work' includes an apprenticeship. This is because an apprenticeship normally takes place under an apprenticeship agreement which is an employment contract (specifically a contract of service).

Genuine intention to take up an offer of work

29. Where the tenant has been offered a job and needs to move to take it up, they must be able to demonstrate to the local authority's satisfaction that they have a genuine intention to take up the offer.

30. Local authorities may wish to ask to see a letter of acceptance and may wish to contact the employer to verify the position. Authorities may also wish to seek clarification from the tenant by interviewing them over the telephone or in person.

Verification and evidence

31. Local authorities will want to satisfy themselves that the work or job-offer is genuine and should seek appropriate documentary evidence.

32. Appropriate evidence could include:

- a contract of employment
- wage/salary slips covering a certain period of time, or bank statements (this is likely to be particularly relevant in the case of zero-hours contracts)
- tax and benefits information – eg proof that the applicant is in receipt of working tax credit (if eligible)
- a formal offer letter

33. Additionally, local authorities may wish to contact the employer to verify the position.

34. Authorities are strongly advised to consider whether an applicant qualifies for an allocation under the qualification regulations 2015 both at the time of the initial application and when considering making an allocation.

Prioritisation

35. The qualification regulations will ensure that tenants who need to move between local authority districts for work related reasons are not disadvantaged by a local connection test. However, to deliver the Right to Move, it is also important that tenants who need to move for work, within or across local authority boundaries, are given appropriate priority under local authorities' allocation schemes.

Hardship reasonable preference

36. Section 166A(3) provides that housing authorities must frame their allocation scheme to ensure that reasonable preference is given to people who need to move to a particular locality in the authority's district, where failure to meet that need would cause hardship (to themselves or others).

37. Paragraph 4.11 of the 2012 guidance sets out the Secretary of State's view that 'hardship' would include, for example, a person who needs to move to a different locality to take up a particular employment, education or training opportunity.

38. This guidance goes further and strongly encourages all local authorities to apply the hardship reasonable preference category to tenants who are seeking to transfer and who need to move within the local authority district or from another local authority district to be closer to work, or to take up an offer of work.

39. In considering whether a transferring tenant needs to move for work related reasons to avoid hardship to themselves (or others), they may wish to take account of the guidance set out in paragraphs 16 to 34 above.

40. Where a tenant is seeking to move within the same local authority district, local authorities are encouraged to take a more flexible approach. This is because the tenant is already accommodated in the district and any move to another social home will therefore be broadly stock neutral (that is to say the transfer creates another void which can be used to meet other housing needs). In particular, local authorities should consider whether or not the issue of whether work is short-term, marginal, ancillary or voluntary carries the same weight in relation to a within district move.

Setting aside a proportion of lets for cross-boundary moves

41. In framing their allocation scheme to determine their allocation priorities, local authorities will wish to strike a balance between the interests of transferring tenants who need to move into their district for work related reasons and the demand from other applicants in identified housing need.

42. The Secretary of State considers that an appropriate way to do so would be for a local authority to set a quota for the proportion of properties that it expects to allocate each year to transferring tenants who need to move into their district for work related reasons ('the Right to Move quota'). The Secretary of State strongly encourages all local authorities to adopt such an approach and considers that an appropriate quota would be at least 1%.

43. Local authorities should publish the quota as part of their allocation scheme, together with their rationale for adopting the specific percentage. They should review and revise the proportion as appropriate, in the light of changing circumstances.

44. Local authorities may wish to set aside a higher proportion than 1%. Authorities that decide to set a quota that is lower than 1%, should be ready to explain publicly why they have chosen to do so.

45. It is important that local authorities are open and accountable, to their own tenants and the wider community as well as to tenants seeking to move into the area for work related reasons. Accordingly, local authorities are encouraged to report locally on demand for and lettings outcomes in relation to the Right to Move quota.

Area based choice based lettings schemes

46. We are aware that in some parts of the country, local authorities participate in area-based choice based lettings schemes that bring together a number of authorities and Private Registered Providers of social housing, often with a common allocation policy that applies to all the partner local authorities.

47. We consider that such schemes provide an excellent basis for cross-boundary mobility, particularly as housing and employment markets are likely to be similar across the partner authorities. Accordingly, we strongly encourage all local authorities that participate in area-based choice based lettings schemes to consider how they can provide for tenants to move between partner authorities for work related reasons, for example, by providing for a quota of lettings to be made available for this group.