

Homelessness Code of Guidance for Local Authorities

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On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government (DCLG)

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Fax: 01603 723000 or email: HMSOLicensing@cabinet-office.x.gsi.gov.uk

If you require this publication in an alternative format please email alternativeformats@communities.gsi.gov.uk

DCLG Publications
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Wetherby
West Yorkshire
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Fax: 08701 226 237
Textphone: 08701 207 405
Email: communities@twoten.com
or online via the DCLG website: www.communities.gov.uk

ISBN 10: 1-85112-860-3
13: 978-1-85112-860-0

Printed in the UK on material containing no less than 75% post-consumer waste.

July 2006

Department for Health Gateway Number 6379

Product Ref: 05ASD03826

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OVERVIEW OF THE HOMELESSNESS LEGISLATION

This overview provides a summary of the homelessness legislation and the duties, powers and obligations on housing authorities and others towards people who are homeless or at risk of homelessness. This overview does not form part of the statutory code of guidance and is not a legal commentary.

Introduction

1. The homelessness legislation – that is, Part 7 of *the Housing Act 1996* – provides the statutory under-pinning for action to tackle homelessness.
2. The Government's strategy for tackling homelessness is outlined in *Sustainable Communities: Homes for All* and *Sustainable Communities: settled homes; changing lives*, published in 2005. The strategy aims to expand housing opportunities, including for those who need additional support, and for disadvantaged sections of society by offering a wider range of preventative measures and increasing access to settled homes.

The homelessness legislation

3. The homelessness legislation places a general duty on housing authorities to ensure that advice and information about homelessness, and preventing homelessness, is available to everyone in their district free of charge. The legislation also requires authorities to assist individuals and families who are homeless or threatened with homelessness and apply for help.
4. In 2002, the Government amended the homelessness legislation through *the Homelessness Act 2002* and the *Homelessness (Priority Need for Accommodation) (England) Order 2002* to:
 - ensure a more strategic approach to tackling and preventing homelessness, in particular by requiring a homelessness strategy for every housing authority district, and
 - strengthen the assistance available to people who are homeless or threatened with homelessness by extending the priority need categories to homeless 16 and 17 year olds; care leavers aged 18,19 and 20; people who are vulnerable as a result of time spent in care, the armed forces, prison or custody, and people who are vulnerable because they have fled their home because of violence.
5. The legislation places duties on housing authorities, and gives them powers, to meet these aims. But it also emphasises the need for joint working between housing authorities, social services and other statutory, voluntary and private sector partners in tackling homelessness more effectively.

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6. The Government continues to supplement housing authorities' resources with specific programmes to help them deliver effective homelessness strategies and services, prevent homelessness, reduce use of temporary accommodation and end the worst manifestations of homelessness such as people sleeping rough and families with children living in bed and breakfast hotels.

The homelessness review and strategy

7. Under the *Homelessness Act 2002* all housing authorities must have in place a homelessness strategy based on a review of all forms of homelessness in their district. The first strategy was required by July 2003 and it must be renewed at least every 5 years (unless this duty has been disapplied by the Local Authorities *Plans and Strategies (Disapplication) (England) Order 2005*). The social services authority must provide all reasonable assistance.
8. The strategy must set out the local authority's plans for the prevention of homelessness and for securing that sufficient accommodation and support are or will be available for people who become homeless or who are at risk of becoming so. Housing authorities will therefore need to ensure that all organisations, within all sectors, whose work can help to prevent homelessness and/or meet the needs of homeless people in their district are involved in the strategy. This will need to include not just housing providers (such as housing associations and private landlords) but also other statutory bodies such as social services, the probation service, the health service and the wide range of organisations in the private and voluntary sectors whose work helps prevent homelessness or meet the needs of people who have experienced homelessness.
9. Housing authorities will also need to give careful consideration to the scope for joint working between social services and the many other key players in the district who are working to meet the needs of people who are homeless or have experienced homelessness.

General duty to provide advice on homelessness

10. The housing authority can provide advice and information about homelessness – and the prevention of homelessness – themselves or arrange for another agency to do it on their behalf. Either way, the advice and assistance provided will need to be up to date and robust if it is to be effective and help achieve the housing authority's strategic aim of preventing homelessness. The service will need to be wide-ranging so that it offers advice and information about not only housing options but also the broad range of factors that can contribute to homelessness. This might include, for example, advice on social security benefits, household budgeting, tenancy support services and family mediation services. The advice provided should also act as a signpost to other, more specialist advice such as debt management, health care and coping with drug and alcohol misuse, where this is needed.

The main homelessness duty

11. Under the legislation, certain categories of household, such as families with children and households that include someone who is vulnerable, for example because of pregnancy, old age, or physical or mental disability, have a priority need for accommodation. Housing authorities must ensure that suitable accommodation is available for people who have priority need, if they are eligible for assistance and unintentionally homeless (certain categories of persons from abroad are ineligible.) This is known as the main homelessness duty. The housing authority can provide accommodation in their own stock or arrange for it to be provided by another landlord, for example, a housing association or a landlord in the private rented sector.
12. If settled accommodation is not immediately available, accommodation must be made available in the short term until the applicant can find a settled home, or until some other circumstance brings the duty to an end, for example, where the household voluntarily leaves the temporary accommodation provided by the housing authority. A settled home to bring the homelessness duty to an end could include the offer of a suitable secure or introductory tenancy in a local authority's housing stock (or nomination for a housing association assured tenancy) allocated under Part 6 of the 1996 Act or the offer of a suitable tenancy from a private landlord made by arrangement with the local authority.
13. Under *the Homelessness (Suitability of Accommodation) (England) Order 2003*, housing authorities can no longer discharge a homelessness duty to secure suitable accommodation by placing families with children, and households that include a pregnant woman, in Bed & Breakfast accommodation for longer than six weeks – and then only if more suitable accommodation is not available.

Applications and inquiries

14. Housing authorities must give proper consideration to all applications for housing assistance, and if they have reason to believe that an applicant may be homeless or threatened with homelessness, they must make inquiries to see whether they owe them any duty under Part 7 of the 1996 Act. This assessment process is important in enabling housing authorities to identify the assistance which an applicant may need either to prevent them from becoming homeless or to help them to find another home. In each case, the authority will need to decide whether the applicant is eligible for assistance, actually homeless, has a priority need, and whether the homelessness was intentional (see below). If they wish, housing authorities can also consider whether applicants have a local connection with the local district, or with another district. Certain applicants who are persons from abroad are not eligible for any assistance under Part 7 except free advice and information about homelessness and the prevention of homelessness.

Interim duty to accommodate

15. If an authority have reason to believe that an applicant may be homeless or threatened with homelessness, they must also decide if they also have reason to believe that the applicant may be eligible for assistance and have a priority need for accommodation.

They must do this even before they have completed their inquiries. If there is reason to believe the applicant meets these criteria, the housing authority have an immediate duty to ensure that suitable accommodation is available until they complete their inquiries and decide whether a substantive duty is owed under Part 7. This is an important part of the safety net for people who have a priority need for accommodation and are unintentionally homeless.

When is someone homeless?

16. Broadly speaking, somebody is statutorily homeless if they do not have accommodation that they have a legal right to occupy, which is accessible and physically available to them (and their household) and which it would be reasonable for them to continue to live in. It would not be reasonable for someone to continue to live in their home, for example, if that was likely to lead to violence against them (or a member of their family).

Intentional homelessness

17. A person would be homeless intentionally where homelessness was the consequence of a deliberate action or omission by that person (unless this was made in good faith in ignorance of a relevant fact). A deliberate act might be a decision to leave the previous accommodation even though it would have been reasonable for the person (and everyone in the person's household) to continue to live there. A deliberate omission might be non-payment of rent that led to rent arrears and eviction.

Local connection and referrals to another authority

18. Broadly speaking, for the purpose of the homelessness legislation, people may have a local connection with a district because of residence, employment or family associations in the district, or because of special circumstances. (There are exceptions, for example residence in a district while serving a prison sentence there does not establish a local connection.) Where applicants are found to be eligible for assistance, unintentionally homeless and in priority need (i.e. they meet the criteria for the main homelessness duty) and the authority consider the applicant does not have a local connection with the district but does have one somewhere else, the housing authority dealing with the application can ask the housing authority in that other district to take responsibility for the case. However, applicants cannot be referred to another housing authority if they, or any member of their household, would be at risk of violence in the district of the other authority.

Other homelessness duties

19. If applicants are homeless but do not have a priority need, or if they have brought homelessness on themselves, the housing authority must ensure that they are provided with advice and assistance to help them find accommodation for themselves – but the authority does not have to ensure that accommodation becomes available for them. The housing authority can provide advice and assistance itself or arrange for another agency to do this. The housing authority must ensure that this includes a proper assessment of

their housing needs and information about where they are likely to find suitable accommodation. Again, it will be crucial that the advice and assistance is effective and up to date if the housing authority's strategic aim of preventing homelessness is to be achieved.

20. Where people have a priority need but have brought homelessness on themselves, the housing authority must also ensure they have suitable accommodation available for a period that will give them a reasonable chance of finding accommodation for themselves. Sometimes, this may be for only a few weeks.

Intentionally homeless families with children

21. So, families with children who have been found intentionally homeless will not be owed a main homelessness duty; they will be entitled to advice and assistance and temporary accommodation for a short period only. If homelessness persists, any children in the family could be in need and the family could seek assistance from the social services authority under the *Children Act 1989*. It is therefore important that social services are made aware of such cases as soon as possible. Consequently, where a housing authority are dealing with a family that includes a child under 18 and they consider the family may be found intentionally homeless, they must make social services aware of the case. Where the family are found to be intentionally homeless by the housing authority, and social services decide the child's needs would best be met by helping the family to obtain accommodation, social services can ask the housing authority for reasonable assistance and the housing authority must respond.

Notifications/reviews of decisions/appeals to county court

22. Where authorities have reason to believe an applicant may be homeless or threatened with homelessness and make inquiries into the case, they must give the applicant written notification of their decision on the case, and the reasons for it insofar as it goes against the applicant's interests. Applicants can ask the housing authority to review most aspects of their decisions, and, if still dissatisfied, can appeal to the county court on a point of law. The county court can confirm or quash a housing authority's decision.

Power to accommodate pending a review or appeal

23. Housing authorities have the power to accommodate applicants pending a review or appeal to the county court, and they must consider whether to exercise this power in all cases. If the housing authority decide not to exercise this power pending a review, and the applicant wishes to appeal to the courts, he or she would need to seek permission to ask the High Court to judicially review the decision. If the housing authority decide not to exercise this power pending an appeal to the county court, the applicant can appeal to the county court to review the decision not to accommodate, and the court can require the housing authority to accommodate the applicant, pending the appeal on the substantive homelessness decision if the court considers this is necessary.

INTRODUCTION

PURPOSE OF THE CODE

1. The Secretary of State for Communities and Local Government is issuing this Code of Guidance to local housing authorities (referred to as housing authorities) in England under s.182 of the *Housing Act 1996* (“the 1996 Act”). Under s.182(1) of the 1996 Act, housing authorities are required to have regard to this guidance in exercising their functions under Part 7 of the 1996 Act and under the *Homelessness Act 2002* (“the 2002 Act”). This Code of Guidance replaces the previous version published in 2002.
2. Under s.182(1), social services authorities in England are also required to have regard to the guidance when exercising their functions relating to homelessness and the prevention of homelessness. The guidance applicable to social services authorities is issued jointly with the Secretary of State for Health and the Secretary of State for Education and Skills.
3. The Code gives guidance on how local authorities should exercise their homelessness 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 Department’s understanding at the time of issue. Local authorities will still need to keep up to date on any developments in the law in these areas.
4. In addition to this Code, there is issued a range of good practice publications to assist local authorities in exercising their functions relating to homelessness and the prevention of homelessness (see Annex 1).

WHO IS THE CODE FOR?

5. The Code is issued specifically for local authority members and staff. It is also of direct relevance to registered social landlords (RSLs). RSLs have a duty under the 1996 Act to co-operate with housing authorities in exercising their homelessness functions. RSLs are subject to the Housing Corporation’s Regulatory Code and guidance and they need to take this into account when assisting housing authorities. Many of the activities discussed in the Code require joint planning and operational co-operation between housing authorities and social services authorities, health authorities, other referral agencies, voluntary sector organisations and the diverse range of bodies working in the rented sectors – so the Code is also relevant to these agencies.

THE HOMELESSNESS LEGISLATION

6. Part 7 of the 1996 Act sets out the powers and duties of housing authorities where people apply to them for accommodation or assistance in obtaining accommodation. The 2002 Act places a requirement on housing authorities to formulate and publish a homelessness strategy based on a review of homelessness in their district. The 2002 Act also amends a number of provisions in Part 7 of the 1996 Act to strengthen the safety net for vulnerable people.

EQUALITY AND DIVERSITY

7. When exercising their functions relating to homelessness and the prevention of homelessness, local authorities are under a statutory duty to ensure that their policies and procedures do not discriminate, directly or indirectly, on grounds of race, sex or gender, or disability. Authorities should also ensure that their policies and procedures do not discriminate on the basis of any other ground which is not material to a person's housing application, including grounds of sexual orientation or religion or belief. Authorities should observe relevant codes of practice and adopt a formal equality and diversity policy relating to all aspects of their homelessness service, to ensure equality of access and treatment for all applicants. Appropriate provision will need to be made to ensure accessibility for people with particular needs, including those with mobility difficulties, sight or hearing loss and learning difficulties, as well as those for whom English is not their first language.
8. The Race Relations Act 1976 now places a general duty on local authorities to promote race equality. This means that they must have due regard to the need to:
 - eliminate unlawful racial discrimination; and
 - promote equality of opportunity and good relations between people of different racial groups.

In practice, this means building racial equality considerations into the day-to-day work of policy-making, service delivery, employment practice and other functions. The duty is a positive rather than a reactive one.

9. There are also specific duties relating to policy and service delivery. One of these concerns publishing a Race Equality Scheme every three years. Authorities' Race Equality Schemes should include their arrangements for:
 - assessing and consulting on the likely impact of homelessness strategies on the promotion of race equality;
 - monitoring homelessness policies for any adverse impact on the promotion of race equality;
 - publishing the results of assessments, consultations and monitoring;
 - ensuring access to homelessness information, advice and services.

The Commission for Racial Equality will publish a statutory Code of Practice on Racial Equality in Housing later this year (see Annex 1).

10. People from ethnic minority groups are around three times more likely than other households to be accepted as unintentionally homeless and in priority need¹. Housing authorities need to ensure that their homelessness strategies and homelessness services pay particular attention to the needs of the ethnic minority communities they serve, for example, by ensuring that advice and information about homelessness and the prevention of homelessness is available in a range of ethnic languages appropriate to the district. ODPM published a Development Guide for local authorities on *Tackling Homelessness Amongst Ethnic Minority Households* (see Annex 1).

11. Section 49A of the *Disability Discrimination Act 1995* (added by the *Disability Discrimination Act 2005*) introduces a new duty to promote equality for disabled people. It requires public authorities to exercise their functions with due regard to the need to:

- eliminate unlawful discrimination against disabled people;
- eliminate harassment of disabled people that is related to their disabilities;
- promote equality of opportunity between disabled people and other persons;
- take steps to take account of disabled people's disabilities (even where that involves treating disabled people more favourably than other persons);
- promote positive attitudes towards disabled people; and
- encourage participation by disabled people in public life.

Authorities will be required to publish a Disability Equality Scheme every three years setting out how they will implement the duty to promote equality in their own context.

As with the duty to promote race equality, this is a positive duty rather than a reactive one and authorities will need to consider the implications for the delivery of their homelessness services.

The Disability Rights Commission has published a statutory Code of Practice on the Duty to Promote Disability Equality which will come into force in December 2006 (see Annex 1).

12. Authorities should also inform themselves of the provisions of Council Directives 2000/43/EC (the Race Directive) and 2000 78/EC (the Equality Directive). Under the *Equalities Act 2006* the Commission for Equality and Human Rights (CEHR) will bring together the Disability Rights Commission and the Equal Opportunities Commission from October 2007. The Act imposes a positive duty on public authorities to promote equality of opportunity and the elimination of discrimination on grounds of age; colour; race, nationality or ethnic origins; disability; family status; gender reassignment; marital status; pregnancy; religion or belief; sex; and sexual orientation. Discrimination on any

¹ Source: ODPM data based on the P1E statistical returns completed by local authorities.

such grounds in the carrying out by a public authority of its functions would be made unlawful. The *Gender Recognition Act 2004*, the *Employment Equality (Sexual Orientation) (Amendment) Regulations 2003* and the *Employment Equality (Religion or Belief) Regulations 2003* outlaw discrimination on the grounds of gender reassignment, sexual orientation or religion in the fields of employment and vocational training. In addition, the *Employment Equality (Age) Regulations*, which are due to come into force in October 2006, will outlaw discrimination on the grounds of age in the fields of employment and vocational training.

- 13.** Housing authorities should ensure that their homelessness strategies and homelessness services comply with existing equality and diversity legislation and new legislation as it comes into force.

DEFINITIONS

Throughout the Code,

“the 1996 Act” means the Housing Act 1996;

“the 2002 Act” means the Homelessness Act 2002;

“the housing authority” means the local housing authority.

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CHAPTER 1: HOMELESSNESS REVIEWS & STRATEGIES

This chapter provides guidance on housing authorities' duties to carry out a homelessness review and to formulate and publish a strategy based on the results of that review.

DUTY TO FORMULATE A HOMELESSNESS STRATEGY

- 1.1. Section 1(1) of the Homelessness Act 2002 ("the 2002 Act") gives housing authorities the power to carry out a homelessness review for their district and formulate and publish a homelessness strategy based on the results of the review. This power can be exercised from time to time, however s.1(3) required housing authorities to publish their first homelessness strategy by 31 July 2003. Section 1(4) requires housing authorities to publish a new homelessness strategy, based on the results of a further homelessness review, within the period of five years beginning with the day on which their last homelessness strategy was published (there is an exemption from this requirement for local authorities categorised as an "excellent authority", see paragraph 1.42). However, it is open to a housing authority to conduct homelessness reviews and strategies more frequently, if they wish.
- 1.2. For a homelessness strategy to be effective housing authorities need to ensure that it is consistent with other local plans and strategies and takes into account any wider relevant sub-regional or regional plans and strategies. There will be a lot of common ground between an authority's housing strategy (whether its own or a sub-regional one produced with neighbouring authorities) and its homelessness strategy. It is open to authorities to produce either separate housing and homelessness strategies or combine these in a single document where it is consistent to do so. It is also open to authorities, again where it would be consistent to do so, to consider producing a wider composite plan that includes not only the housing and homelessness strategies but also their Housing Revenue Account Business Plans and Home Energy Conservation Act report. The homelessness strategy should also link with other strategies and programmes that address the wide range of problems that can cause homelessness (see indicative list at Annex 2). It will be important to consider how these strategies and programmes can help achieve the objectives of the homelessness strategy and vice-versa.
- 1.3. Housing authorities are encouraged to take a broad view and consider the benefits of cross-boundary, sub-regional and regional co-operation. A county-wide approach will be particularly important in non-unitary authorities, where housing and homelessness services are provided by the district authority whilst other key services, such as social services and Supporting People, are delivered at the county level. Housing authorities should ensure that the homelessness strategy for their district forms part of a coherent approach to tackling homelessness with neighbouring authorities. Authorities may wish to collaborate with neighbouring housing authorities to produce a joint homelessness strategy covering a sub-regional area. London boroughs are encouraged to work closely with the Greater London Authority when formulating their homelessness strategies.

- 1.4. When carrying out a review and formulating a strategy, housing authorities are encouraged to refer to *Homelessness Strategies: A good practice handbook*, *Local Authorities' Homelessness Strategies: Evaluation and Good Practice* and other relevant good practice documents published by the Office of the Deputy Prime Minister (see list of publications at Annex 1).
- 1.5. Housing authorities are reminded that when drawing up their strategies for preventing and tackling homelessness, they must consider the needs of all groups of people in their district who are homeless or likely to become homeless, including Gypsies and Travellers. Under s.225 of the *Housing Act 2004*, which supplements s.8 of the *Housing Act 1985*, when undertaking a review of housing needs in their district, local authorities are required to carry out an assessment of the accommodation needs of Gypsies and Travellers residing in or resorting to their district. Draft guidance on accommodation needs assessment for Gypsies and Travellers is available on the DCLG website, and will be finalised after further consultation in 2006.

Assistance from social services

- 1.6. In non-unitary districts, where the social services authority and the housing authority are different authorities, section 1(2) of the 2002 Act requires the social services authority to give the housing authority such assistance as may be reasonably required in carrying out a homelessness review and formulating and publishing a homelessness strategy. **Since a number of people who are homeless or at risk of homelessness will require social services support, it is unlikely that it would be possible for a housing authority to formulate an effective homelessness strategy without assistance from the social services authority. It will be necessary therefore in all cases for housing authorities to seek assistance from the social services authority.** In unitary authorities the authority will need to ensure that the social services department assists the housing department in carrying out a homelessness review and formulating and publishing a homelessness strategy.
- 1.7. The social services authority must comply with all requests for assistance from housing authorities within their district which are reasonable. Examples of the type of assistance that a housing authority may reasonably require from the social services authority when carrying out a review and formulating a strategy may include:
 - information about current and likely future numbers of social services client groups who are likely to be homeless or at risk of homelessness e.g. young people in need, care leavers and those with community care needs;
 - details of social services' current programme of activity, and the resources available to them, for meeting the accommodation needs of these groups;
 - details of social services' current programme of activity, and the resources available to them, for providing support for vulnerable people who are homeless or likely to become homeless (and who may not currently be social services clients).

- 1.8.** Effective co-operation will benefit both housing and social services authorities. See Chapter 5 for guidance on joint working with other agencies and Chapter 13 for guidance on co-operation in cases involving children.

Taking the strategy into account

- 1.9.** Sections 1(5) and (6) of the 2002 Act require housing and social services authorities to take the homelessness strategy into account when exercising their functions.
- 1.10.** For a homelessness strategy to be effective it will need to be based on realistic assumptions about how it will be delivered in practice. Whilst this will apply in respect of all the agencies and organisations involved, the key players will be the housing authority and the social services authority. Both authorities will therefore need to ensure that, on the one hand, the assumptions in the strategy about their future activities are realistic and, on the other, that in practice these activities are actually delivered through the operation of their statutory functions. When the strategy is formulated, the social services authority (or social services department within a unitary authority) will need to work closely with the housing authority (or department) to ensure that this can be achieved. All contributors will need to take ownership of the strategy if it is to be effective. Again, because of its crucial role in delivering the strategy, this will be particularly important in the case of the social services authority (or department).

HOMELESSNESS REVIEWS

- 1.11.** Under section 2(1) of the 2002 Act a homelessness review means a review by a housing authority of:
- a) the levels, and likely future levels, of homelessness in their district;
 - b) the activities which are carried out for any the following purposes (or which contribute to achieving any of them):
 - i) preventing homelessness in the housing authority's district;
 - ii) securing that accommodation is or will be available for people in the district who are or may become homeless; and
 - iii) providing support for people in the district:
 - who are or may become homeless; or
 - who have been homeless and need support to prevent them becoming homeless again;
 - c) the resources available to the housing authority, the social services authority for the district, other public authorities, voluntary organisations and other persons for the activities outlined in (b) above.

- 1.12. The purpose of the review is to establish the extent of homelessness in the district, assess its likely extent in the future, and identify what is currently being done, and by whom, and what level of resources are available, to prevent and tackle homelessness.

a) current levels, and likely future levels, of homelessness

- 1.13. Homelessness is defined by sections 175 to 178 of the 1996 Act (see Chapter 8 for guidance). The review must take account of **all** forms of homelessness within the meaning of the 1996 Act, not just people who are unintentionally homeless and have a priority need for accommodation under Part 7. The review should therefore consider a wide population of households who are homeless or at risk of homelessness, including those who might be more difficult to identify, including people sleeping rough, or those whose accommodation circumstances make them more likely than others to become homeless or to resort to sleeping rough.

- 1.14. The housing authority's own records of its activity under the homelessness legislation (Part 7 of the 1996 Act) will provide a baseline for assessing the number of people who are likely to become homeless and seek help directly from the housing authority. These records should give some indication as to why those accepted as statutorily homeless became homeless. Other useful sources of data on potential homelessness in the district may include:

- records on rough sleeping;
- estimates of people staying with friends/family on an insecure basis;
- court records on possession orders;
- records of evictions by the local authority and registered social landlords (RSLs);
- local advice service records on homelessness cases;
- hospital records of people homeless on discharge;
- armed forces records of those homeless on discharge;
- prison/probation service records of ex-prisoners homeless on discharge;
- social services records of homeless families with children;
- social services records of young people leaving care and children in need requiring accommodation;
- records of Supporting People clients;
- records available from hostels and refuges;
- voluntary sector records, e.g. day centres, advice services;
- records of asylum seekers being accommodated in the district by the National Asylum Support Service;
- data from the national population census and housing authorities' own household surveys.

1.15. Some groups of people are likely to be more at risk of homelessness than others. These may include:

- young people who have become estranged from their family; have been in care; have a history of abuse, running away or school exclusions; or whose parents have had mental health, alcohol or drug problems; (see chapter 12)
- people from ethnic minority groups;
- people with an institutionalised background, for example where they have spent time in prison or the armed forces;
- former asylum seekers who have been given permission to stay in the UK and are no longer being accommodated by the National Asylum Support Service;
- people who have experienced other problems that may increase the risk of homelessness including family/relationship breakdowns; domestic, racial or other violence; poor mental or physical health; drug and alcohol abuse; age-related problems and debt.

1.16. As part of the process of mapping and understanding the extent of current homelessness in the district, housing authorities may wish to develop a profile of those who have experienced homelessness. Elements within a profile may include:

- location of homelessness;
- reason(s) for homelessness;
- housing history including previous tenures and length of homelessness;
- ethnic background;
- other background (e.g. care provided by the local authority or other institution);
- age;
- gender and sexuality;
- disabilities;
- levels and types of debts;
- employment/benefits history;
- composition of household;
- vulnerability of applicant (or household members);
- support needs (housing-related or other);
- health/drug problems;
- immigration status;
- trends in any of these elements.

1.17. Housing authorities will also need to consider the range of factors which could affect future levels of homelessness in their district. Many of these will be similar to factors taken into account for the purpose of assessing housing needs in the district (e.g. as part of a broader housing strategy). Relevant factors in the district may include:

- the availability of affordable accommodation including housing provided by the housing authority and by RSLs;
- housing market analyses, including property prices and rent levels;
- the supply of accommodation in the private rented sector;
- the provision and effectiveness of housing advice;
- local voluntary and community sector services;
- the allocation policy of the housing authority;
- the lettings policies of RSLs;
- the effectiveness of nomination agreements between the housing authority and RSLs;
- the policy of the housing authority and RSLs on management of tenants' rent arrears and on seeking repossession;
- the efficiency of the housing authority's administration of housing benefit;
- the provision and effectiveness of housing-related support services;
- redevelopment and regeneration activity;
- unemployment;
- strength of the local economy;
- the local population (and demographic trends);
- the level of overcrowding;
- the rate of new household formation in the district;
- the level of inward migration (both national and international);
- the flow of itinerant population (i.e. Gypsies and Travellers) and availability of authorised sites;
- the number of people likely to be in housing need on leaving:
 - the armed forces,
 - residential care,
 - local authority care,
 - prison,
 - hospital or
 - accommodation provided by the National Asylum Support Service.

- 1.18.** Individual cases of homelessness are often the result of a complex matrix of problems that may develop over time. In many cases homelessness may be triggered by individual circumstances (for example, relationship breakdown or unemployment) but it can also be the result of a failure in the housing market (for example, high rents in the private sector and a shortage of accommodation in the social sector) or a failure of the administrative system (for example, delays in the payment of housing benefit). In districts where the housing market and administrative systems are functioning well, the levels of homelessness are likely to be lower. All these factors will need to be taken into account when assessing the likely future levels of homelessness in the district.

b) activities which are carried out

- 1.19.** The public, private and voluntary sectors can all contribute, directly or indirectly, to the prevention of homelessness, the provision of accommodation and the provision of support for homeless people. When reviewing the activities which are being carried out for these purposes, the housing authority should consider the activities of **all** the various agencies and organisations, across all sectors, which are providing, or contributing to the provision of accommodation, support or relevant services in the district (Annex 3 provides an indicative list).
- 1.20.** Having mapped all the current activities, the housing authority should consider whether these are appropriate and adequate to meet the aims of the strategy, and whether any changes or additional provision are needed.

Preventing homelessness

- 1.21.** Gaining a good understanding of the causes of homelessness during the homelessness review process will help to inform the range of preventative measures that need to be put in place. Many statutory and non-statutory services can contribute to preventing homelessness. Housing authorities should adopt an open approach and recognise that there will be a broad range of organisations operating in fields other than housing, including, for example, health, education and employment, whose activities may help to prevent homelessness. Activities that contribute to preventing homelessness may include:

- advice services;
- mediation and reconciliation services;
- tenancy support schemes;
- proactive liaison with private sector landlords;
- rent deposit/guarantee schemes;
- management of social housing by the housing authority and by RSLs;
- debt counselling;
- Supporting People programme;

- social services support for vulnerable people;
- housing benefit administration;
- benefit liaison to young people delivered through Connexions;
- ‘Sanctuary Schemes’ to enable victims of domestic violence to stay in their homes;
- planning for the housing needs of people leaving institutions – e.g. local authority care, prison and the armed services.

Further guidance on preventing homelessness is provided in Chapter 2.

Securing accommodation

1.22. Housing authorities need to consider that a range of accommodation is likely to be required for people who are, or may become, homeless. Landlords, accommodation providers and housing developers across all sectors can contribute to the provision of accommodation in the district. Activities that contribute to securing that accommodation will be available for people who are homeless, or at risk of becoming homeless, may include:

- initiatives to increase the supply of new affordable accommodation in the district (e.g.: affordable housing secured through the planning system);
- provision of new housing for owner occupation;
- initiatives to increase the supply of specialist and/or supported accommodation;
- provision of accommodation from the housing authority’s own stock;
- the proportion of lettings RSLs make available to the housing authority and to homeless people generally;
- programmes for the provision of hostel, foyer and refuge spaces;
- initiatives for maximising use of the private rented sector (e.g. rent deposit guarantee schemes and landlord/tenant mediation services);
- schemes for maximising access to affordable accommodation (e.g. rent guarantee schemes);
- local, regional and national mobility schemes (e.g. to assist tenants or homeless households to move to other areas, incentives to reduce under-occupation, and assistance to move into home ownership).

Further guidance on ensuring a sufficient supply of accommodation is provided in Chapter 3.

Providing support

1.23. As part of the review housing authorities should consider all the current activities which contribute to the provision of support for people in the district who are, or may become, homeless and people in the district who have been homeless and need

support to prevent them becoming homeless again. The range of providers whose activities will be making a contribution to this area are likely to embrace the public, private and voluntary sectors.

1.24. As a starting point, the housing authority may wish to consider the level of services being provided under the Supporting People programme. Other activities which may be relevant are:

- social services support under the community care programme;
- social services support for children in need who require accommodation;
- social services support for young people at risk;
- housing advice services;
- tenancy support services;
- schemes which offer practical support for formerly homeless people (e.g. furniture schemes);
- day centres for homeless people;
- supported hostel provision;
- women's refuges;
- support for people to access health care services (e.g. registration with a GP practice);
- support for people with problems of alcohol or substance abuse;
- support for people with mental health problems;
- support for people with learning disabilities;
- support for people seeking employment, e.g. personal adviser through Connexions, Jobcentre Plus, voluntary sector organisations dealing with homelessness and worklessness;
- advocacy support.

Further guidance on securing support services is provided in Chapter 4.

c) resources available for activities

1.25. As part of the homelessness review, the housing authority should consider the resources available for the activities set out in paragraph 1.11. The housing authority should consider not only its own resources (i.e. housing funding whether provided by central government or from authorities' own sources) but also those available for these purposes to the social services authority for their district, other public authorities, voluntary organisations and other persons. Annex 3 provides an indicative list of other authorities, organisations and persons whose activities may contribute to preventing and tackling homelessness.

Preventing homelessness

- 1.26.** Housing authorities should invest their own resources in prevention services and measures since these are likely to produce direct net savings for the authority, for example through reduced processing of repeat homelessness applications, lower use of temporary accommodation and fewer social services interventions. Resources allocated to preventing homelessness will also help to reduce pressures on wider services, such as housing, health and employment, in the longer-term.
- 1.27.** Resources available for the prevention of homelessness may include:
- staff or administrative budgets and resources available to the housing authority (e.g. related to the homeless persons unit, the housing advice service, the Supporting People programme, tenancy support etc.);
 - the resources allocated within the housing authority for rent guarantee schemes and other preventative measures;
 - the availability and quality of housing and homelessness advice in the district (e.g. number and location of advice centres);
 - staff or administrative budgets and resources within other public bodies (e.g. social services authority, Primary Care Trust, local education authority) dedicated to activities that help prevent/tackle homelessness; and
 - staff or administrative budgets and resources available to other agencies working to prevent homelessness in the district (e.g. housing advice services in the voluntary sector and agencies working with young people).

Securing accommodation

- 1.28.** Resources available for securing that accommodation is, or will be, available may include:
- initiatives to increase the supply of new affordable accommodation in the district (e.g. bids for resources through the Regional Housing Strategy and Housing Corporation Approved Development Programme, cash incentive schemes, affordable housing secured through the planning system, other RSL developments, Private Finance Initiative or regeneration developments, self-funded developments, self build schemes, shared ownership schemes, Homebuy);
 - initiatives to increase the supply of specialist and/or supported accommodation;
 - staff or administrative budgets and resources to make better use of the existing social housing stock (e.g. working with RSLs, managing own housing stock, mobility schemes);
 - staff or administrative budgets and resources for maximising use of the private rented sector (e.g. landlord fora and accreditation schemes, rent deposit/guarantee schemes);
 - initiatives to enable people to remain in their homes (e.g. through housing renewal assistance and disabled facilities grants).

Providing Support

1.29. Resources available for providing support may include:

- staff or administrative budgets and resources available through the Supporting People programme;
- other staff or administrative budgets and resources available to the housing authority, for example through general fund expenditure or the Housing Revenue Account;
- staff or administrative budgets and resources available to the social services authority (e.g. personnel working to meet the support needs of homeless people);
- staff or administrative budgets and resources available to other public authorities and voluntary and community sector agencies (e.g. Primary Care Trusts, Drug Action Teams, Sure Start, Connexions and others listed at Annex 3); and
- availability of supported accommodation units and floating support for homeless people.

Results of the review

1.30. Having completed a homelessness review, housing authorities must arrange for a copy of the results of the review to be made available at their principal office; these must be available to the public for inspection at all reasonable hours without charge. A copy of the results must also be made available to any member of the public, on request (for which a reasonable charge can be made).

HOMELESSNESS STRATEGIES

1.31. Having carried out a homelessness review the housing authority will be in a position to formulate its homelessness strategy based on the results of that review as required by s.1(1)(b) of the 2002 Act. In formulating its strategy a housing authority will need to consider the necessary levels of activity required to achieve the aims set out in the paragraph below and the sufficiency of the resources available to them as revealed by the review.

1.32. Under s.3(1) of the 2002 Act a homelessness strategy means a strategy for:

- i) preventing homelessness in the district (see Chapter 2 for further guidance);
- ii) securing that sufficient accommodation is and will be available for people in the district who are or may become homeless (see Chapter 3 for further guidance);
- iii) securing the satisfactory provision of support for people in the district who are or may become homeless or who have been homeless and need support to prevent them becoming homeless again (see Chapter 4 for further guidance).

Specific objectives and actions for housing and social services authorities

- 1.33.** A homelessness strategy may include specific objectives to be achieved and actions planned to be taken in the course of the exercise of the functions of the housing authority and the social services authority. This will apply equally in areas where the social services authority is not also the housing authority (for example, in district councils in county areas). Examples of specific objectives and actions for housing and social services authorities that might be included in a strategy are set out in Annex 4.

Specific action by others

- 1.34.** A homelessness strategy can also include specific action which the housing authority expects to be taken by:
- i) other public authorities;
 - ii) voluntary organisations; and
 - iii) other persons whose activities could contribute to achieving the strategy's objectives.
- 1.35.** In all housing authority districts there will be a significant number of agencies whose activities address the wide range of needs and problems that can be linked to homelessness. These will be found across all sectors: public, private and voluntary. Housing authorities will need to seek the participation of all relevant agencies in the district in order to assist them in formulating and delivering an effective homelessness strategy that includes specific action that the housing authority expects to be taken by others.
- 1.36.** In particular, housing authorities should enter into constructive partnerships with RSLs operating in their district. See Annex 5 for guidance on co-operation between housing authorities and RSLs.
- 1.37.** An indicative list of the other public authorities, voluntary organisations and persons whose activities could contribute to achieving the strategy's objectives is at Annex 3. However, s.3(4) provides that a housing authority cannot include in a homelessness strategy any specific action expected to be taken by another body or organisation without their approval.
- 1.38.** Examples of specific action that the housing authority might expect to be taken by others are provided at Annex 6.

Joint action

- 1.39.** Section 3(5) of the 2002 Act requires housing authorities, when formulating a homelessness strategy, to consider (among other things) the extent to which any of the strategy's objectives could be achieved through joint action involving two or more of the persons or other bodies tackling homelessness in the district. This could include the housing authority, the social services authority, neighbouring housing authorities and any other public bodies working to alleviate homelessness within the district, for example, the National Offender Management Service. It might also include any other organisation or person whose activities could contribute to achieving the objectives of the homelessness strategy, for example, voluntary sector organisations working with homeless people, registered social landlords, and private landlords. The most effective strategies will be those which harness the potential of all the organisations and persons working to prevent and alleviate homelessness in the district, and which ensure that all the activities concerned are consistent and complementary. It will be important for all such organisations to take ownership of the strategy if they strive to help meet its objectives. See Chapter 5 for guidance on joint working with other agencies.

Action plans

- 1.40.** As part of the homelessness strategy housing authorities should develop effective action plans, to help ensure that the objectives set out in the homelessness strategy are achieved. Action plans could include, for example, targets, milestones and arrangements for monitoring and evaluation. Good practice guidance on developing action plans is provided in the ODPM publication *'Local Authorities' Homelessness Strategies: Evaluation and Good Practice (2004)'*.

Need to consult on a strategy

- 1.41.** Housing authorities must consult such public or local authorities, voluntary organisations or other persons as they consider appropriate before adopting or modifying a homelessness strategy. For a strategy to be effective it will need to involve every organisation and partnership whose activities contribute, or could contribute, in some way to achieving its objectives. As a minimum, therefore, it will be appropriate for all such organisations to be consulted on the strategy before it is adopted. It will be important to consult service users and homeless people themselves, or organisations representing their interests. Consultation with ethnic minority and faith-based groups will also be important in addressing the disproportionate representation of people from ethnic minority communities amongst homeless households. Annex 3 provides an indicative list of the types of authorities, organisations and people that the housing authority may wish to consult about a strategy.

Publishing a strategy

- 1.42.** Under s.1(3) of the 2002 Act, housing authorities were required to publish their first homelessness strategy by 31 July 2003. Section 1(4) requires housing authorities to publish a new homelessness strategy, based on the results of a further homelessness review, within the period of five years beginning with the day on which their last homelessness strategy was published. However, those authorities which are categorised as an “excellent authority” by the Secretary of State by virtue of the *Local Authorities’ Plans and Strategies (Disapplication) (England) Order 2005* are exempt from this requirement. Housing authorities must make a copy of the strategy available to the public at their principal office, and this is to be available for inspection at all reasonable hours without charge. A copy must also be made available to any member of the public, on request (for which a reasonable charge can be made).

Keeping a strategy under review and modifying it

- 1.43.** 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 the same basis as required before adopting a strategy (see paragraph 1.41). If a strategy is modified, the housing authority must publish the modifications or the modified strategy and make copies available to the public on the same basis as required when adopting a strategy (see paragraph 1.42).
- 1.44.** Circumstances that might prompt modification of a homelessness strategy include: transfer of the housing authority’s housing stock to an RSL; the setting up of an Arms Length Management Organisation; a review of other, relevant local plans or strategies; new data sources on homelessness becoming available; a significant change in the levels or causes of homelessness; changes in either housing/homelessness/social security policy or legislation, or new factors that could contribute to a change in the levels or nature of homelessness in the district such as significant changes to the local economy (e.g. housing markets or levels of employment).

CHAPTER 2: PREVENTING HOMELESSNESS

- 2.1. This chapter provides guidance on housing authorities' duties to have a strategy to prevent homelessness in their district and to ensure that advice and information about homelessness, and the prevention of homelessness, are available free of charge to anyone in their district. The chapter also provides some examples of the action housing authorities and their partners can take to tackle the more common causes of homelessness and to prevent homelessness recurring.**
- 2.2.** Preventing homelessness means providing people with the ways and means to meet their housing, and any housing-related support, needs in order to avoid experiencing homelessness. Effective prevention will enable a person to remain in their current home, where appropriate, to delay a need to move out of current accommodation so that a move into alternative accommodation can be planned in a timely way; to find alternative accommodation, or to sustain independent living.
- 2.3.** The prevention of homelessness should be a key strategic aim which housing authorities and other partners pursue through the homelessness strategy. It is vital that individuals are encouraged to seek assistance at the earliest possible time when experiencing difficulties which may lead to homelessness. In many cases early, effective intervention can prevent homelessness occurring. Housing authorities are reminded that they must not avoid their obligations under Part 7 of the 1996 Act (including the duty to make inquiries under s.184, if they have reason to believe that an applicant may be homeless or threatened with homelessness), but it is open to them to suggest alternative solutions in cases of potential homelessness where these would be appropriate and acceptable to the applicant.
- 2.4.** The Secretary of State considers that housing authorities should take steps to prevent homelessness wherever possible, offering a broad range of advice and assistance for those in housing need. It is also important that, where homelessness does occur and is being tackled, consideration is given to the factors which may cause repeat homelessness and action taken to prevent homelessness recurring.
- 2.5.** Homelessness can have significant negative consequences for the people who experience it. At a personal level, homelessness can have a profound impact on health, education and employment prospects. At a social level, homelessness can impact on social cohesion and economic participation. Early intervention to prevent homelessness can therefore bring benefits for those concerned, including being engaged with essential services and increasing the likelihood that children will live in a more secure environment. Investment in prevention services can also produce direct cost savings for local authorities, for example through lower use of temporary accommodation and fewer social services interventions. Furthermore, measures to prevent homelessness will also help to reduce longer-term pressures on wider services, such as health and employment.

2.6. There are three stages where intervention can prevent homelessness:

early identification – by identifying categories of people who are at risk of homelessness and ensuring that accommodation and any necessary support are available to them in time to prevent homelessness. Early identification can target people who fall within known indicator groups (e.g. those leaving local authority care, prison, secure accommodation or the armed forces, or people at known or observed risk due to mental or physical health problems) even though they may not currently have a need for housing but for whom timely intervention can avoid homelessness when they leave their institutional environment and before they reach a crisis point;

pre-crisis intervention – this can take the form of: advice services and proactive intervention such as negotiation with landlords to enable people to retain their current tenancies. Such intervention is important even if it only delays the date when a person has to leave their home, as this may allow time to plan and manage a move to alternative accommodation;

preventing recurring homelessness – ensuring tenancy sustainment can be central to preventing repeat homelessness where there is an underlying need for support and the provision of accommodation by itself is insufficient to prevent homelessness.

STRATEGY TO PREVENT HOMELESSNESS

2.7. Under s.1 of the 2002 Act, local housing authorities must formulate and publish a homelessness strategy based on a review of homelessness for their district, and they must take the strategy into account when exercising their functions. (See Chapter 1 for guidance.) Under section 3(1)(a) of the 2002 Act a homelessness strategy must include, among other things, a strategy for preventing homelessness in the district. Gaining a thorough understanding of the causes of homelessness in a local area through the review process will help to inform the range of measures required to prevent homelessness. As part of the review, housing authorities must consider all the current activities in their area that contribute to the prevention of homelessness. They must also consider the resources available. Both activities and resources are likely to involve a wide range of providers working in the public, private and voluntary sectors.

2.8. In developing their homelessness strategies, housing authorities should consider the range of measures that need to be put in place to prevent homelessness. These will depend on local circumstances. Housing authorities are advised to adopt an open approach and recognise that there will be a broad range of organisations operating in fields other than housing, for example, in education, health and employment, whose activities may help to prevent homelessness. (See Chapter 1 for further guidance on carrying out a homelessness review and formulating a homelessness strategy).

ADVICE AND INFORMATION ABOUT HOMELESSNESS AND THE PREVENTION OF HOMELESSNESS

- 2.9. Under s.179(1) of the 1996 Act, housing authorities have a duty to secure that advice and information about homelessness, and the prevention of homelessness, are available free of charge to **any person** in their district. The provision of comprehensive advice will play an important part in delivering the housing authority's strategy for preventing homelessness in their district.
- 2.10. There is an enormous variety of reasons why people become homeless or find themselves threatened with homelessness. And, in many cases, there can be multiple reasons, and a complex chain of circumstances, that lead to homelessness. Some of these may relate to the housing market, for example, high rents and a shortage of affordable accommodation in the area, or to administrative systems, for example delays in the payment of benefits. Others may relate to personal circumstances, for example, relationship breakdown, a bereavement, long-term or acute ill health or loss of employment. The provision of advice and information to those at risk of homelessness will need to reflect this. It will need to be wide-ranging and comprehensive in its coverage and may require a full multi-disciplinary assessment.
- 2.11. Many people who face the potential loss of their current home will be seeking practical advice and assistance to help them remain in their accommodation or secure alternative accommodation. Some may be seeking to apply for assistance under the homelessness legislation without being aware of other options that could help them to secure accommodation. Advice services should provide information on the range of housing options that are available in the district. This might include options to enable people to stay in their existing accommodation, delay homelessness for long enough to allow a planned move, or access alternative accommodation in the private or social sectors. This 'housing options' approach is central to addressing housing need as a means of preventing homelessness.
- 2.12. Advice on the following issues may help to prevent homelessness:
- tenants' rights and rights of occupation;
 - leaseholders' rights and service charges;
 - what to do about harassment and illegal eviction;
 - how to deal with possession proceedings;
 - rights to benefits (e.g. housing benefit) including assistance with making claims as required;
 - current rent levels;
 - how to retrieve rent deposits;
 - rent and mortgage arrears;
 - how to manage debt;

- grants available for housing repair and/or adaptation;
- how to obtain accommodation in the private rented sector – e.g. details of landlords and letting agents within the district, including any accreditation schemes, and information on rent guarantee and deposit schemes;
- how to apply for an allocation of accommodation through the social housing waiting list or choice-based lettings scheme;
- how to apply to other social landlords for accommodation.

The advisory service might also include an advocacy service, which may include providing legal representation for people facing the loss of their home.

- 2.13. Housing authorities will need to ensure that the implications and likely outcomes of the available housing options are made clear to all applicants, including the distinction between having priority need for accommodation under Part 7 and having priority for an allocation of social housing under Part 6.
- 2.14. Advice services will need to be effectively linked to other relevant statutory and non-statutory service providers. As noted in paragraph 2.10 above, it is often a combination of factors that lead to homelessness, and housing authorities are advised to ensure that people who require advice of a wider or more specialist nature, for example, to address family and relationship breakdown, mental or physical health problems, drug and alcohol abuse, or worklessness are directed to other agencies who can provide the service they need. In situations where there is a history of child abuse or where there are child protection concerns, homelessness and housing organisations will need to work closely with the Local Safeguarding Children Board (LSCB).
- 2.15. The effectiveness of authorities' housing advice in preventing homelessness or the threat of homelessness is measured by Best Value Performance Indicator BVPI 213. Guidance on BVPI 213 is available at www.communities.gov.uk.

Accessibility

- 2.16. It is recommended that advisory services are well publicised and accessible to everyone in the district. Appropriate provision will need to be made to ensure accessibility for people with particular needs, including those with mobility difficulties, sight or hearing loss and learning difficulties, as well as those for whom English is not their first language.

Who provides the advice and information?

- 2.17.** The legislation does not specify how housing authorities should ensure that advice and information on homelessness and the prevention of homelessness are made available. They could do this in a number of ways, for example:
- i) provide the service themselves;
 - ii) ensure that it is provided by another organisation; or
 - iii) ensure that it is provided in partnership with another organisation.
- 2.18.** The housing authority must ensure that the service is free of charge and available and accessible to everyone in their district. Securing the provision of an independent advisory service may help to avoid conflicts of interest. Private sector tenants may not naturally look to the housing authority for advice. Some young people may be reluctant to approach a statutory authority for advice, but they may feel more at ease in dealing with a more informal advisory service provided by the voluntary sector. People from different ethnic minority groups might also find advice more accessible if it is delivered through community or faith organisations. (See Chapter 21 for guidance on contracting out homelessness functions).
- 2.19.** Under s.179(2), housing authorities may give grants or loans to other persons who are providing advice and information about homelessness and the prevention of homelessness on behalf of the housing authority. Under s.179(3), housing authorities may also assist such persons (e.g. voluntary organisations) by:
- i) allowing them to use premises belonging to the housing authority,
 - ii) making available furniture or other goods, by way of gift, loan or some other arrangement, and
 - iii) making available the services of staff employed by the housing authority.

Standards of advice

- 2.20.** Housing authorities should ensure that information provided is current, accurate and appropriate to the individual's circumstances. To ensure they are providing an effective service to a high standard, housing authorities may wish to refer to the quality assurance systems applied by the National Association of Citizens Advice Bureaux, the Shelter network of housing advice centres, the National Disabled Housing Services Ltd (HoDis) accreditation scheme and the Community Legal Service Quality Mark. Housing authorities are also advised to monitor the provision of advisory services to ensure they continue to meet the needs of all sections of the community and help deliver the aims of their homelessness strategy.

PREVENTING HOMELESSNESS IN SPECIFIC CIRCUMSTANCES

2.21. Some groups of people are likely to be more at risk of homelessness than others. These may include:

- young people who have become estranged from their family; have been in care and/or secure accommodation; have a history of abuse, running away or school exclusions; or whose parents have had mental health, alcohol or drug problems (see Chapter 12 for further guidance on 16 and 17 year olds);
- people from ethnic minority groups;
- people with an institutionalised background, for example where they have spent time in care, in prison or in the armed forces;
- former asylum seekers who have been given permission to stay in the UK and are no longer being accommodated by the National Asylum Support Service;
- people who have experienced other problems that may increase the risk of homelessness including family/relationship breakdowns; domestic, racial or other violence; poor mental or physical health; drug and alcohol misuse; age-related problems and debt.

2.22. In many cases homelessness can be prevented by identifying people who are in circumstances which put them at risk of homelessness, and by providing services which can enable them to remain in their current home. Homelessness can also be prevented by ensuring assistance is available at known risk points such as discharge from prison or hospital. Table 2.1 below gives examples of some of the measures that may help tackle some of the more common causes of homelessness. More detailed guidance is provided in Annex 7.

2.23. Housing authorities should also work with housing providers to encourage them to seek to maintain and sustain tenancies by employing effective strategies for the prevention and management of rent arrears. Landlords should be encouraged to make early and personal contact with tenants in arrears and to assess whether there are any additional support needs and, where relevant, to establish that all benefits to which tenants are entitled are being claimed. Landlords should offer assistance and advice on welfare benefits and in making a claim, debt counselling and money advice either in-house or through a referral to an external agency and implement ways for recovering the money such as debt management plans or attachment to benefits or earnings orders. Possession action should only be taken as a last resort. See Annex 1 for ODPM guidance on *Improving the Effectiveness of Rent Arrears Management*.

Table 2.1: Tackling common causes of homelessness

Cause	Action
Parents, relatives or friends not being able or willing to provide accommodation	Mediation services, usually contracted out by local authority to, for example, Relate, Youth Crime prevention and parenting programmes.
Relationship breakdown, including domestic violence	‘Sanctuary’ schemes, which allow domestic violence victims to remain in their homes where they choose to do so once security measures are in place.
Discharge from an institutional situation e.g. hospital, custody, residential treatment/care	Early planning for discharge between institutional staff and local housing providers, including assessing support needs. Proactive provision of advice by local housing authority on housing options (prior to discharge).
End of assured shorthold tenancy	Housing advice. Rent deposit or bond schemes to encourage landlords to let to potentially homeless people. Landlord-tenant mediation services, to resolve disputes about behaviour or repairs.
Mortgage and rent arrears	Debt counselling. Advocacy services in county court. Fast tracking housing benefit claims.
Person ill-equipped to sustain a tenancy	Advice and support under the Supporting People programme for vulnerable people at risk of homelessness, for example improving budgeting and ‘life’ skills.
Lack of information	Early and proactive intervention from local authority homelessness services to discuss options and offer assistance and advice.

PREVENTING HOMELESSNESS RECURRING

- 2.24.** The underlying problems which led to homelessness in the first place have to be addressed in order to provide long-term solutions. Failure to address these root causes can lead to repeated episodes of homelessness. Recurring homelessness may be indicative of problems that are not being resolved by the provision of accommodation alone.

2.25. An effective approach to tackling recurring homelessness is likely to be based on:

- effective monitoring that identifies housing applicants who are homeless or threatened with homelessness and who have previously been secured accommodation under the homelessness legislation (either by the same authority or another authority in a different area);
- an analysis of the main causes of homelessness among housing applicants who have experienced homelessness more than once; and
- the existence of support services (and, in particular, strong links with the local Supporting People strategy and services) for housing applicants who have experienced homelessness more than once, which tackle these causes and help the applicants to sustain tenancies or other forms of settled accommodation in the longer term.

2.26. Tenancy sustainment is central to preventing repeat homelessness and can include a range of interventions. It is closely linked with good housing management and the Supporting People programme. See Chapter 4 for further guidance on securing support services and the housing-related support services that can be funded through Supporting People.

2.27. Whilst tenancy sustainment is the eventual objective, there are some individuals who may not be able to sustain accommodation due to personal circumstances, for example mental health or substance misuse difficulties. Support will need to be provided to progress towards the time when they are able to maintain accommodation.

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CHAPTER 3: ENSURING A SUFFICIENT SUPPLY OF ACCOMMODATION

- 3.1. This chapter provides guidance on options available to housing authorities to help increase the supply of new housing and maximise the use of the housing stock in their district.**
- 3.2.** Section 3(1)(b) of the *Homelessness Act 2002* provides that a homelessness strategy is a strategy for, amongst other things, securing that sufficient accommodation is and will be available for people who are or may become homeless. Chapter 16 provides guidance on the different ways in which housing authorities can ensure that suitable accommodation is available for applicants, for example by providing the accommodation themselves or by securing it from a private landlord or a registered social landlord.
- 3.3.** Homelessness is significantly influenced by the availability of housing, and in particular affordable housing. A shortage of affordable housing can lead to increasing numbers of people being accommodated in temporary accommodation whilst waiting for settled housing to bring the main homelessness duty to an end. ‘Settled housing’ in this context will primarily be social housing and good quality private sector accommodation (see chapter 14 for further guidance on bringing the main homelessness (s.193(2)) duty to an end.)
- 3.4.** Although, in 2005, over 80% of people living in temporary accommodation were in self-contained homes they often lack certainty over how long they will live there. This can cause disruption to their lives, make it hard for them to put roots down in the community or to access important services. For example, they may face real difficulties in gaining access to a local GP or in enrolling their children in a local school. Many may already have faced disruption and become disconnected or moved away from existing services and support networks as a result of homelessness.
- 3.5.** The Government’s current target is to halve the number of households living in temporary accommodation by 2010. Increasing the supply of new affordable housing and making better use of existing social and private rented stock to provide settled homes will be critical for achieving this target, as will measures to prevent homelessness.

INCREASE SUPPLY OF NEW HOUSING

- 3.6.** The *Sustainable Communities Plan* and *Sustainable Communities: Homes for All* set out how the Government is creating new communities and expanding existing communities in four areas in the wider South East. Taken together, these areas are expected to deliver an extra 200,000 homes above current planning totals.

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- 3.7.** At a regional level, local authorities have a key role to play to identify the priorities for housing in their region, to ensure these are reflected in regional housing strategies and to secure funding for their plans. Housing authorities will also need to ensure that housing strategies are aligned with regional economic and planning strategies.
- 3.8.** There are a number of ways housing authorities can increase the supply of new housing. The main source of funding for the provision of affordable housing is the Housing Corporation's national Affordable Housing Programme (AHP), known formerly as the Approved Development Programme (ADP). From the 2006-2008 biannual bidding round, the AHP is open to both registered social landlords and non-registered bodies (e.g. developers). Bids continue to be assessed against a range of criteria including housing quality and value for money, and against regional and local priorities. Housing authorities will need to work closely with RSLs and others to make best use of this funding.
- 3.9.** Another important means of providing affordable housing is through planning obligations, which are usually negotiated in the context of granting planning permission for new housing development. Planning obligations are generally secured by agreements made between a local authority and a developer under s.106 of the *Town and Country Planning Act 1990* and they are commonly referred to as "s.106 agreements". Obligations may be appropriate where, for example, a planning objection to a proposed development cannot be overcome by the imposition of a condition. More detailed guidance on the use of s.106 agreements is contained in ODPM Circular 05/2005: Planning Obligations.
- 3.10.** National guidance on planning and affordable housing is currently contained in Planning Policy Guidance Note 3 (PPG3): Housing, as supplemented by Circular 06/98. These documents provide advice to planning authorities about securing the provision of affordable housing either in kind or by financial contribution. They also remind local authorities when formulating local policy or determining planning applications to take account of the need to cater for a range of housing needs and to encourage the development of mixed and balanced communities in order to avoid areas of social exclusion.
- 3.11.** PPG3 and Circular 06/98 are presently under review and a draft Planning Policy Statement 3 (PPS3): Housing was issued for consultation in December 2005. Following the publication of final PPS3, local planning authorities will be expected to ensure that policies in their Local Development Frameworks take into account the updated national planning policy framework for delivering the Government's housing objectives.
- 3.12.** Planning authorities will need to ensure that their affordable housing policies are evidence-based, kept up to date over time, and applied consistently across developments to ensure that affordable housing is effectively and fairly delivered through this route.

MAXIMISING THE USE OF EXISTING HOUSING STOCK

- 3.13.** A number of options are discussed below for how housing authorities might maximise the use of current housing stock.

The private rented sector

- 3.14.** Some people living in the private rented sector can experience homelessness, but this sector can also provide solutions to homelessness. Homelessness statistics routinely show that the end of an assured shorthold tenancy (AST) is one of the top three reasons for loss of a settled home. Authorities are encouraged to work with landlords in their area to see how this can be addressed, for example, by offering mediation between landlord and tenant where relations have broken down, and negotiating to extend or renew ASTs where appropriate.
- 3.15.** For many, renting in the private sector may offer a practical solution to their housing need (for example, it may offer more choice over location and type of property). Authorities are therefore encouraged to consider providing rent deposits, guarantees or rent in advance, to help households access this sector. They may also consider establishing Accreditation Schemes, whereby landlords voluntarily agree to a set of standards relating to the management or physical condition of privately rented accommodation to help increase the supply of private rented accommodation.
- 3.16.** Many local authorities have used the private rented sector as a source of good quality, self-contained temporary accommodation. However, the private rented sector can also provide a source of settled accommodation, where qualifying offers of ASTs are accepted by households who are owed the main homelessness duty.
- 3.17.** There is scope to make greater use of the private rented sector, either to help households avoid homelessness or to provide more settled homes for people living in temporary accommodation. Authorities are recommended to establish and maintain good relations with private sector landlords, for example through landlord fora. This can be effective in securing an improved supply of properties in the private rented sector for homeless, or potentially homeless, households.
- 3.18.** It is also recommended that authorities review the extent to which qualifying offers of ASTs are being made to households in temporary accommodation in their area; whether there are any barriers to such offers being made or accepted and, if so, what additional steps would need to be taken to address those barriers.

Social housing

- 3.19.** The Secretary of State considers that, generally, it is inappropriate for general needs social housing to be used as temporary accommodation for long periods, especially where such properties are able to be let as settled homes.

- 3.20. It is important that housing authorities work effectively with RSLs to help them prevent and tackle homelessness in the district. RSLs have a key role to play in sustaining tenancies, reducing evictions and abandonment, and preventing homelessness through their housing management functions. To ensure effective collaboration between themselves and partner RSLs operating in their district housing authorities are advised to consider establishing a nominations agreement. This would include the proportion of lettings that will be made available, any conditions that will apply, and how any disputes about suitability or eligibility will be resolved. Housing authorities are also advised to aim for any exclusion criteria (that may be applied to nominees by the RSL) to be kept to a minimum. Further guidance on co-operation between RSLs and housing authorities is at Annex 5.
- 3.21. There are a number of schemes and policies that social housing providers can implement to facilitate the effective management and use of the existing housing stock and to keep voids and re-let times to a minimum.
- **Mobility:** ‘moveUK’ (formerly Housing Employment and Mobility Services) has been developed to offer social housing tenants and jobseekers more choice about where they live and work around the UK. Its services will open up new opportunities for people who wish to move. ‘moveUK’ will have three main service components:
 - (i) facilitated mobility services to social landlords and their tenants and applicants to help tenants and applicants to find new homes. This will continue and enhance the provision of the grant funded mobility previously provided by Housing Mobility and Exchange Services (HOMES) and LAWN (the Association of London Government scheme that helps tenants who want to, move out of London to areas of low demand);
 - (ii) ‘one stop shop’ web-based information about available housing, neighbourhoods and job vacancies;
 - (iii) web access to information on vacancies in social housing.
 - **Cash Incentive Scheme (CIS):** although there is no obligation for a housing authority to provide a scheme, the main objectives of the Cash Incentive Scheme (CIS) are to release local authority accommodation required for letting to those in housing need, and to encourage sustainable home ownership. This is achieved by the payment of a grant to a local authority tenant to assist them in buying a property in the private sector.
 - **The new HomeBuy scheme:** this scheme, which commenced on 1st April 2006, provides people with the opportunity to own a home based on equity sharing, whilst protecting the supply of social housing. Existing social tenants are one of the priority groups helped under the scheme, and any rented housing association/local authority home vacated by them will then be made available to others in priority housing need. The Social HomeBuy option, which allows housing association and local authority tenants to purchase a share in their rented home, will be voluntary. Landlords will be able to reinvest the proceeds in replacement social homes.

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- 3.22.** The Secretary of State also considers that where local authority or RSL stock is provided as temporary accommodation to discharge a main homelessness duty (owed under section 193(2)) the housing authority should give very careful consideration to the scope for allocating the accommodation as a secure or assured tenancy, as appropriate, especially where a household has been living in a particular property for anything other than a short-term emergency stay.

Choice-based Lettings schemes

- 3.23.** The expansion of choice-based lettings policy aims to achieve nationwide coverage by 2010. Local authorities are encouraged to work together, and with RSL partners, to develop sub-regional and regional choice-based lettings schemes which provide maximum choice and flexibility. Local authorities are encouraged to offer choice to homeless households, while ensuring that their schemes are designed so as not to provide a perverse incentive to applicants to make a homelessness application in order to increase their priority for housing. Housing authorities should also consider involving the private rented sector in their choice-based lettings schemes in order to maximise the housing options available.

Empty homes

- 3.24.** Housing authorities are encouraged to adopt positive strategies for minimising empty homes, and other buildings that could provide residential accommodation, across all housing sectors and tenures within their district. A strategy for minimising empty homes might include schemes for tackling low demand social housing, bringing empty private sector properties back into use and bringing flats over shops into residential use.
- 3.25.** Under the *Housing Act 2004* new provisions on Empty Dwelling Management Orders (EDMOs) are expected to be brought into force. EDMOs are a discretionary power for local authorities to use as part of their empty homes strategy. The new powers will allow local authorities to apply to a residential property tribunal for approval to make an interim EDMO lasting for up to 12 months. During this interim period, the authority may only place tenants in the house with the consent of the owner.
- 3.26.** Local authorities also have the discretion to set the council tax discount on long term empty properties at any point between 50% and 0%, as well as at any point between 50% and 10% on second homes, taking into account local conditions.

Housing renewal

- 3.27.** Housing renewal assistance can also assist in meeting the aims of the homelessness strategy. Under the *Regulatory Reform (Housing Assistance)(England and Wales) Order 2002*, local authorities have power to promote housing renewal assistance to landlords, private homeowners and others to increase the supply of a particular type of accommodation through converting under-utilised accommodation to meet identified housing need within the district. Empty homes, vacant accommodation above shops or commercial buildings can be targeted for assistance. Housing renewal assistance can also enable private homeowners to carry out essential repairs or improvements, and remain in their home.

Disabled facilities grant

- 3.28.** Uptake of the Disabled Facilities Grant – a mandatory entitlement administered by housing authorities for eligible disabled people in all housing tenures – can enable homeowners to remain living an independent life at home, and should be considered as part of an effective homelessness strategy. Authorities are required to give a decision within six months of receiving an application. The grant is subject to a maximum limit and is means tested to ensure that funding goes to those most in need.

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CHAPTER 4: SECURING SUPPORT SERVICES

- 4.1. This chapter provides guidance on the importance of support services in preventing and tackling homelessness and outlines the types of housing-related and other support services that might be required.**
- 4.2.** A homelessness strategy is defined in section 3(1)(c) of the 2002 Act as (among other things) a strategy for securing the satisfactory provision of support for people in their district:
- i) who are or may become homeless; or
 - ii) who have been homeless and need support to prevent them from becoming homeless again.
- 4.3.** In formulating their homelessness strategies, housing authorities need to recognise that for some households, homelessness cannot be tackled, or prevented, solely through the provision of accommodation. Some households will require a range of support services, which may include housing-related support to help them sustain their accommodation, as well as personal support relating to factors such as relationship breakdown, domestic violence, mental health problems, drug and alcohol addiction, poverty, debt and unemployment.
- 4.4.** Support can help to prevent people who are at risk of homelessness from becoming homeless at all. In other cases, where people have experienced homelessness and been placed in temporary accommodation, the provision of support may be essential to ensure that they are able to continue to enjoy a reasonable quality of life and access the range of services they need to rebuild their lives. The provision of support can also be important in helping formerly homeless households to sustain settled housing and prevent homelessness from recurring.
- 4.5.** Solutions to homelessness should be based on a thorough assessment of the household's needs, including support needs. Housing authorities will need to establish effective links with the Supporting People team, the social services authority and other agencies (for example, Primary Care Trusts, the Criminal Justice Service, and voluntary and community organisations) to ensure that a joint assessment of an applicant's housing and support needs can be made where necessary. Such assessments should inform decisions on intervention to enable a household to remain in their home, placements in temporary accommodation and options for the provision of more settled accommodation that will bring the main homelessness duty to an end.
- 4.6.** Where children and young people are involved, it is important that any solutions to homelessness address the issues they are facing and do not undermine any support they may already be receiving. In particular, housing authorities will need to establish effective links with children's services authorities¹ and establish whether a Common Assessment Framework has been undertaken, and, if so, which agency will have relevant information about the child's or young person's needs.

¹ All authorities should have a children's services authority, delivering through a children's trust, by April 2008. All Directors of Children's Services will be in post by 2008.

STRATEGY TO SECURE PROVISION OF SUPPORT SERVICES

- 4.7. Section 1 of the 2002 Act requires housing authorities to carry out a homelessness review for their district. Gaining a thorough understanding of the causes of homelessness through the review process will help to inform the range of support provision required. As part of the review, housing authorities must consider all the current activities in their area which contribute to the provision of support for households who are, or may become, homeless, as well as people in the district who have been homeless and need support to prevent them becoming homeless again. They must also consider the resources available. Both activities and resources are likely to involve a range of providers working in the public, private and voluntary sectors. (See Chapter 1 for further guidance on carrying out a homelessness review and formulating a homelessness strategy).
- 4.8. In formulating their homelessness strategies housing authorities will need to consider the different types and level of support that households may require. Households who have experienced homelessness or who are at risk of homelessness may have diverse needs. Some households may only need information and advice in order to avoid experiencing homelessness, or becoming homeless again. Others, however, will need greater assistance including housing-related support and in some cases may require intensive support from a range of services.

INDIVIDUALS AT RISK OF HOMELESSNESS

- 4.9. Housing authorities should be aware that some individuals may be at particular risk of homelessness, for example young people leaving care, ex-offenders, former members of the armed forces, refugees, people with mental health problems or individuals leaving hospital, and may require a broader package of resettlement support. When developing their homelessness strategies, housing authorities should consider carefully how to work effectively to prevent homelessness amongst these groups and ensure that appropriate support is available. Early identification of people at risk will be crucial to preventing homelessness. Housing authorities should consider agreeing protocols for joint action with local agencies in order to assist with early identification and prevention measures.
- 4.10. Individuals at risk of homelessness may also include those who have never experienced homelessness in the past and for whom, with the appropriate support, homelessness can be avoided. These individuals may be at risk of homelessness due to specific problems such as managing debt or accessing benefits and require specialist advice which may be delivered through partner agencies such as Citizens Advice Bureaux or Jobcentre Plus. See Chapter 2 for guidance on preventing homelessness.

YOUNG PEOPLE

- 4.11. Many young people who have experienced homelessness may lack skills in managing their affairs and require help with managing a tenancy and operating a household budget. Those estranged from their family, particularly care leavers, may lack the advice and support normally available to young people from family, friends and other mentors. 16 and 17 year olds who are homeless and estranged from their family will be particularly vulnerable and in need of support. See Chapter 12 for further guidance on 16 and 17 year olds.

HOUSING-RELATED SUPPORT SERVICES

- 4.12. Housing-related support services have a key role in preventing homelessness occurring or recurring. The types of housing-related support that households who have experienced homelessness may need include:

- ***support in establishing a suitable home*** – help, advice and support in finding and maintaining suitable accommodation for independent living in the community;
- ***support with daily living skills*** – help, advice and training in the day-to-day skills needed for living independently, such as budgeting and cooking;
- ***support in accessing benefits, health and community care services*** – information, advice and help in claiming benefits or accessing community care or health services;
- ***help in establishing and maintaining social support*** – help in rebuilding or establishing social networks that can help counter isolation and help support independent living.

- 4.13. Services might be delivered through:

- ***floating support services*** – using support workers who travel to clients' accommodation in order to provide support. These services can operate across all tenures and generally provide time-limited and low intensity support;
- ***short and medium stay housing with support*** – including direct access schemes, night shelters, hostels, transitional housing and supported lodgings. Some of these services may specialise in supporting particular groups of individuals at risk of homelessness, such as vulnerable young people;
- ***long-stay supported housing services*** – to provide ongoing support to those who are unable to live independently in the community.

- 4.14. Housing-related support can be funded through the Supporting People programme, and close co-operation between housing authorities and the Supporting People team will be essential for ensuring effective support for households who have experienced homelessness, particularly through the local Commissioning Body and Core Strategy Group. Further information on housing-related support services is provided in separate guidance, *Supporting People – Guide to Accommodation and Support Options for Homeless Households* (ODPM, 2003).

OTHER SUPPORT SERVICES

4.15. Households who have experienced homelessness may need additional support services which are not directly housing-related and fall outside the scope of the Supporting People programme funding. Housing authorities will need to co-operate and work collaboratively with other departments within the authority and a wide range of statutory, voluntary and private sector agencies in order to ensure that the support which is required is provided. Joint working with commissioners/planners and providers of the following services will be particularly important:

- health services;
- drug/alcohol services including Drug Action Teams;
- social services;
- children's and young persons' services (e.g. Connexions, Sure Start children's centres, child care services);
- voluntary and community sector service providers;
- National Offender Management Service (incorporating the Prison Service and the Probation Service);
- Youth Offending Teams;
- Crime and Disorder Reduction Partnerships;
- the Police;
- education and training services;
- the Employment Service (Jobcentre Plus);
- grant making charities and trusts;
- local strategic partnerships.

SUPPORT FOR HOUSEHOLDS IN TEMPORARY ACCOMMODATION

4.16. The provision of support to households placed in temporary accommodation is essential to ensure that they are able to continue to enjoy a reasonable quality of life and access the range of services they need. In formulating their homelessness strategies, housing authorities should consider what arrangements need to be in place to ensure that households placed in temporary accommodation, within their district or outside, are able to access relevant support services. In particular households will need to be able to access:

- primary care services such as health visitors and GPs;
- appropriate education services;

- relevant social services; and
 - employment and training services.
- 4.17.** Housing authorities will need to liaise and work collaboratively with the relevant service providers to ensure that appropriate arrangements are put in place and monitored. When households are placed in temporary accommodation, it is recommended that housing authorities offer to liaise with the relevant health, education and social services departments in the area in which the households are temporarily housed. Liaison will be particularly important in cases where households have to be accommodated in the district of another housing authority.
- 4.18.** The Secretary of State recommends that housing authorities offer to liaise with the appropriate Primary Care Trust of all families with babies or young children who are placed in temporary accommodation, to ensure that they have the opportunity to receive health and developmental checks from health visitors and/or other primary health care professionals and can participate in vaccination programmes. It would be insufficient for an authority simply to provide such a family with details of health centres and GP practices in the area.

Notify

- 4.19.** Authorities are encouraged to participate in any regional or sub-regional arrangements which facilitate the notification of other authorities and agencies about the location and support needs of households in temporary accommodation. When considering procedures for notifying the relevant agencies of placements in temporary accommodation, housing authorities may wish to have regard to NOTIFY – a web-based notification and information system administered by the Greater London Authority (GLA).
- 4.20.** NOTIFY is designed to improve access to services for households placed in temporary accommodation. Its primary role is to notify relevant services of the placement or movement of households placed in temporary accommodation by London boroughs under the homelessness legislation. The system uses information provided by London borough housing departments to notify housing, education, social services and Primary Care Trusts about households placed in, moving between or leaving temporary accommodation. Information is contained in a database and updated weekly. Authorised users of the NOTIFY notifications website can view information held on NOTIFY at any time, by accessing that website. Relevant services receive a weekly email alert from NOTIFY, informing them of any unviewed notifications and reminding them to access the website. NOTIFY will also shortly provide access for each borough to its own operational management data. The system also has the capacity to analyse aggregated data both at borough and London level. For further information on NOTIFY see notifylondon.gov.uk or contact notify@london.gov.uk.

CHAPTER 5: WORKING WITH OTHERS

- 5.1. This chapter provides guidance to housing authorities on working in partnership with other agencies to deliver co-ordinated and effective services to tackle homelessness. It considers the range of organisations and people that contribute to preventing and tackling homelessness and provides examples of types of joint working. It also sets out the statutory provisions that require co-operation between various authorities.**
- 5.2.** Under s.3(5) of the 2002 Act, when formulating a homelessness strategy the housing authority must consider, among other things, the extent to which any of the strategy's objectives could be achieved through joint action involving two or more of the organisations tackling homelessness in the district. Whilst housing authorities are best placed to take the strategic lead in tackling homelessness, it is vital that as part of their homelessness strategies effective partnerships are developed with other organisations to deliver co-ordinated and more effective approaches to tackling homelessness locally that address not only housing need but all aspects of social need.

WHY JOINT WORKING?

- 5.3.** At its best, joint working can result in higher quality and more efficient and cost-effective services. Joint working can:
- expand the knowledge and expertise of partner agencies;
 - help to provide higher quality integrated services to clients with multiple needs;
 - help to ensure people who are homeless or at risk of homelessness do not fall through the net because no one agency can meet all their needs;
 - reduce wasteful referrals and duplicated work between agencies. For example, common procedures for assessing clients and exchanging information mean homeless people do not have to be repeatedly assessed by different agencies.

ORGANISATIONS/PEOPLE WORKING TO PREVENT AND TACKLE HOMELESSNESS

- 5.4.** The most effective homelessness strategies will be those which harness the potential of all the organisations and persons working to prevent and tackle homelessness in the district, and which ensure that all the activities concerned are consistent and complementary. Joint working could involve the social services authority, the Primary Care Trust, other public bodies such as the National Offender Management Service, voluntary and community sector organisations, registered social landlords, private landlords, and any other relevant organisations. Housing authorities should also consider joint working with other agencies, for example, the Police and voluntary and community sector organisations, to tackle issues related to homelessness such as street drinking, begging, drug misuse and anti-social behaviour. Such collaborative working can help reduce the numbers of people sleeping rough and provide effective services

targeted at those who are homeless or at risk of becoming homeless. Annex 3 provides an indicative list of other authorities, organisations and persons whose activities may contribute to preventing and tackling homelessness. Chapter 2 provides guidance on the range of activities that housing authorities might undertake in conjunction with other bodies in order to prevent homelessness.

- 5.5.** Housing authorities should also consider developing cross-boundary partnerships to help tackle homelessness, for example with neighbouring local authorities and local strategic partnerships. Initiatives at regional, cross-regional and sub-regional level that address issues which cut across administrative boundaries may also be relevant – for example regional strategies for refugee integration or reducing re-offending.

TYPES OF JOINT WORKING

- 5.6.** Joint working can take many forms. Examples of types of collaborative working that could help to achieve the objectives of a homelessness strategy might include:
- establishment of a multi-agency forum for key practitioners and providers to share knowledge, information, ideas and complementary practices;
 - clear links between the homelessness strategy and other key strategies such as Supporting People, and the NHS Local Delivery Plan;
 - protocols for the referral of clients between services and sharing information between services – for example a joint protocol between hospital-based social workers and housing officers to address the housing needs of patients to be discharged from hospital;
 - joint consideration of the needs of homeless people by housing and social services authorities under Part 7, the *Children Act 1989* and community care legislation;
 - establishment of formal links with other services – for example with those provided by voluntary and community sector organisations;
 - joint planning and commissioning of services;
 - joint training;
 - funding of joint posts, for example with the social services authority;
 - senior housing representation on key corporate groups such as the Local Strategic Partnership (LSP) and the Crime and Disorder Reduction Partnership (CDRP);
 - senior commitment from all stakeholders to joined-up working to ensure the homelessness strategy action plan is carried out;
 - appropriate user involvement and consultation.

- 5.7. When offering housing advice and assistance, housing authorities should consider devising screening procedures that identify at an early stage those cases where there is a need for case-specific joint working. Authorities may also wish to encourage their partner agencies to develop similar procedures. Where there is a need for such an approach, authorities are encouraged to adopt agreed protocols to ensure that appropriate action can be quickly initiated. Early appraisal of all clients who may require multiple assessments, by whichever authority is first approached, with agreed triggers and procedures for further action, may help to prevent duplication of enquiries.
- 5.8. *Homelessness Strategies – A good practice handbook* (DTLR, March 2002) provides advice on successful joint working and the establishment of good links between different agencies and programmes that can prevent and alleviate homelessness. The handbook also signposts to other sources of guidance, for example, on joint protocols, joint commissioning and joint assessments.

THE STATUTORY FRAMEWORK

- 5.9. The need for co-operation between statutory authorities is recognised in legislation:

- s.213, s.213A and s.170 of the *Housing Act 1996*;
- s.1 of the *Homelessness Act 2002*;
- s.2 of the *Local Government Act 2000*;
- s.27 of the *Children Act 1989*;
- s.10, s.11 and s.13 of the *Children Act 2004*;
- s.47 of the *National Health Service and Community Care Act 1990*;
- s.27 and s.31 of the *Health Act 1999*.

These provisions are outlined in more detail below. However, the absence of a formal legal duty should not act as a barrier to joint working. Rather this should be predicated on meeting local needs and effectively implementing the homelessness strategy.

Housing Act 1996

Section 213

- 5.10. Where housing or inquiry duties arise under the 1996 Act a housing authority may seek co-operation from another relevant housing authority or body or a social services authority in England, Scotland or Wales. The authority or body to whom the request is made must co-operate to the extent that is reasonable in the circumstances. For this purpose, “relevant housing authority or body” will include:

in England and Wales:

- another housing authority,
- a registered social landlord,
- a housing action trust, and

in Scotland:

- a local authority,
- a registered social landlord, and
- Scottish Homes.

- 5.11.** The duty on the housing authority, body or social services authority receiving such a request to co-operate will depend on their other commitments and responsibilities. However, they cannot adopt a general policy of refusing such requests, and each case will need to be considered in the circumstances at the time.
- 5.12.** Section 170 of the 1996 Act also provides that where a registered social landlord (RSL) has been requested by a housing authority to offer accommodation to people with priority under its allocation scheme, the RSL must co-operate to such extent as is reasonable in the circumstances. RSLs have a key role to play in preventing and tackling homelessness. See Annex 5 for guidance on co-operation between RSLs and housing authorities.

Section 213A

- 5.13.** Section 213A applies where the housing authority has reason to believe that an applicant with whom a person under the age of 18 resides, or might normally be expected to reside, may be ineligible for assistance, or homeless, or threatened with homelessness, intentionally. Housing authorities are required to have arrangements in place to ensure that all such applicants are invited to agree to the housing authority notifying the social services authority of the essential facts of their case. This will give social services the opportunity to consider the circumstances of the child(ren) and family and plan any response that may be deemed by them to be appropriate. See Chapter 13 for further guidance on s.213A.

Local Government Acts

- 5.14.** The promotion of well-being power contained in s.2 of the *Local Government Act 2000* gives local authorities substantial capacity for cross-boundary partnership working with other authorities and partners, such as the health and social services sectors. In particular, the power provides local authorities with increased scope to improve the social, economic and environmental well-being of their communities. Section 2(5) of the *Local Government Act 2000* makes it clear that local authorities may act in relation to and for the benefit of any person or area outside their own area if they consider that to do so is likely to promote or improve the social, economic or environmental well-being of their own area. This, therefore, provides scope for:
- co-operation between neighbouring local authorities and local strategic partnerships; and
 - initiatives at regional, cross-regional and sub-regional level that address issues which cut across administrative boundaries.

It should be noted, however, that the s.2 power cannot be used by authorities to delegate, or contract out their functions. In order to do this, authorities will need to make use of specific powers such as those in s.101 of the *Local Government Act 1972* which provides for the joint exercise of functions between local authorities.

Children Act 1989

- 5.15.** Under s.27 of the *Children Act 1989* (“the 1989 Act”), a local authority can ask a range of other statutory authorities, including a housing authority, to help them in delivering services for children and families, under their functions in Part 3 of the 1989 Act. Authorities must comply with such a request to the extent that it is compatible with their own statutory duties and other obligations, and does not unduly prejudice the discharge of any of their own functions. They cannot adopt a general policy of refusing such requests, and each case will need to be considered according to the circumstances at the time.
- 5.16.** Children and young people should not be sent to and fro between different authorities (or between different departments within authorities). To provide an effective safety net for vulnerable young people who are homeless or at risk of homelessness, housing and social services will need to work together. Effective collaborative working will require clear corporate policies and departmental procedures agreed between the relevant departments. These should make provision for speedy resolution of any dispute as to which department should take responsibility for a particular case. Joint agreements should cover not only the assessment of clients, but should also reflect the strategic planning and delivery of provision to be set out in the local Children and Young People’s Plan. Local Safeguarding Children Boards, which will co-ordinate and ensure the effectiveness of local work to safeguard and promote the welfare of children, may also be involved in drawing up policies and procedures to ensure effective inter-agency co-operation (see also paragraphs 5.17-5.20 below) and Chapter 13.
- 5.17.** Under the 1989 Act, young people leaving care and 16/17 year old children assessed as in need are owed duties which may extend to the provision of accommodation. Where social services approach a housing authority for assistance in housing a young person, the housing authority must co-operate subject to the conditions referred to above in para 5.16. Whether a young person is accommodated under the auspices of the social services authority or the housing authority is a matter for individual authorities to determine in each case. Ideally the relationship of the two authorities should be symbiotic, with jointly agreed protocols in place in respect of the assessment of needs. In many cases the social services authority will have a continuing responsibility for the welfare of vulnerable young people and for assisting them in the transition to adulthood and independent living. Under the 1989 Act, these responsibilities can extend until the young person is aged 18 and in the case of care leavers until the age of 21 (or beyond that age if they are in an agreed programme of education and training). Thus, social services authorities can request assistance from housing authorities in meeting their obligations to provide accommodation for a young person and housing authorities can look to social services authorities to provide the support that young homeless applicants may require. In some cases, housing and

social services authorities will both have responsibilities towards young people and will need to work together in order to ensure that an appropriate combination of housing and support is arranged to help the young person to live independently successfully.

Children Act 2004

- 5.18.** The *Children Act 2004* (“the 2004 Act”) provides the legislative support for the *Every Child Matters: Change for Children* programme which sets out a national framework for local change programmes to build services around the needs of children and young people. Improved outcomes for children will be driven by an analysis of local priorities and secured through more integrated front-line delivery such as multi-agency working, integrated processes such as the Common Assessment Framework, integrated strategy with joint planning and commissioning and governance arrangements such as the creation of a Director of Children’s Services and lead member for children’s services.
- 5.19.** To support the integration of systems to improve outcomes for children and young people by the creation of children’s trusts, s.10 of the 2004 Act establishes a duty on county level and unitary authorities¹ to make arrangements to promote co-operation between the authority, relevant partners (including district councils) and other persons or bodies engaged in activities in relation to children, to improve the well-being of children and young people in the authority’s area. Relevant partners are required to co-operate with the authority. Section 11 of the 2004 Act requires a range of agencies – including county level and unitary authorities and district authorities where there are two tiers of local government – to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children. Section 13 of the 2004 Act requires county level and unitary authorities to set up a Local Safeguarding Children Board (LSCB) incorporating key organisations including district councils where relevant. As set out in s.14, the objective of the LSCB is to co-ordinate and ensure the effectiveness of what is done by each person or body represented on the board to safeguard and promote the welfare of children in that area.
- 5.20.** The 2004 Act also makes provision for indexes containing basic information about children and young people to enable better sharing of information. In addition, each local authority is required to draw up a Children and Young People’s Plan (CYPP) by April 2006. The CYPP will be a single, strategic, over-arching plan for all services affecting children and young people. The CYPP and the process of joint planning should support local authorities and their partners as they work together. An integrated inspection framework is also being created with Joint Area Reviews assessing local areas’ progress in improving outcomes.

¹ Section 65 of the Children Act 2004 uses the term ‘children’s services authority’ to define these authorities as: a county council in England; a metropolitan district council; a non-metropolitan district council for an area where there is no county council; a London borough council; the Common Council of the City of London and the Council of the Isles of Scilly.

The Department for Education and Skills has produced statutory guidance on the *Children Act 2004* which is available from www.everychildmatters.gov.uk.

National Health Service and Community Care Act 1990

- 5.21. Under the National Health Service (NHS) and Community Care Act 1990 (“the 1990 Act”), social services authorities are required to carry out an assessment of any person who may have a need for community care services. The purpose of the legislation is to ensure that the planning and assessment processes identify a person’s full range of needs, including housing needs. Section 47 of the 1990 Act requires social service authorities to notify the housing authority if there appears to be a housing need when the assessment is carried out. The “housing need”, for example, may be for renovation or adaptation of the person’s current accommodation or for alternative accommodation.
- 5.22. An assessment of vulnerability under the homelessness legislation will not necessarily mean that a client is eligible for social care services. Policy guidance on fair access to care services (FACS) was published on 2 June 2002 under guidance of local authority circular (LAC) (2002) 13. The guidance provides authorities with an eligibility framework for adult social care for them to use when setting and applying their eligibility criteria.

Health Act 1999

- 5.23. Section 27 of the *Health Act 1999* (“the 1999 Act”) requires NHS bodies and local authorities to co-operate with one another in exercising their respective functions in order to secure and advance the health and welfare of the people of England and Wales.
- 5.24. Under s.31 of the 1999 Act, partnership arrangements can be designed to help break down the barriers between NHS and local authority services by removing existing constraints in the system and increasing flexibility in the provision and commissioning of services. The legislation introduces three flexibilities: pooled budgets, lead commissioning and integrated provision. Any health-related local authority function can be included in these partnerships, for example, housing, social services, education and leisure services.

National Standards, Local Action: Health and Social Care Standards and Planning Framework 2005/06–2007/08

- 5.25. This document sets out the framework for all NHS organisations and social services authorities to use in planning over the financial years 2005/06–2007/08. It looks to Primary Care Trusts (PCTs) and local authorities to lead community partnership by even closer joint working to take forward the NHS Improvement Plan. Building on joint work on Local Strategic Partnerships (LSPs), they will need to work in partnership with other NHS organisations in preparing Local Delivery Plans (LDPs) for the period 2005/06 to 2007/08.

Mental health

- 5.26.** The Mental Health National Service Framework (NSF 30/09/1999) addresses the mental health needs of working age adults up to 65. It sets out national standards; national service models; local action and national underpinning programmes for implementation; and a series of national milestones to assure progress, with performance indicators to support effective performance management. An organisational framework for providing integrated services and for commissioning services across the spectrum is also included.
- 5.27.** The Government wants to ensure that people suffering from mental illness receive appropriate care and assistance, particularly those whose illness is severe and enduring. Research has shown that provision of suitable, settled housing is essential to the well-being of this vulnerable group. A key element in the spectrum of care and support is the development of a care plan under the Care Programme Approach (CPA). The initial assessment and ongoing reviews under the CPA must include an assessment of an individual's housing needs. It is essential that housing authorities liaise closely with social services authorities so that any provision of housing is appropriate to the needs of the individual, and meshes with the social and health care support that may be an essential part of the person's care programme.
- 5.28.** This is equally important for young people up to the age of 18. Chapter 9 of the National Service Framework for Children, Young People and Maternity Services published in 2004 makes clear that use of the CPA is also a key marker of good practice for child and adolescent mental health services working with young people with high levels of mental health need.

CHAPTER 6: APPLICATIONS, INQUIRIES, DECISIONS AND NOTIFICATIONS

- 6.1. This chapter provides guidance on dealing with applications for accommodation or assistance in obtaining accommodation; a housing authority's duty to carry out inquiries (where it has reason to believe an applicant may be homeless or threatened with homelessness); and, following inquiries, an authority's duty to notify an applicant of its decision.**

APPLICATIONS FOR ASSISTANCE

- 6.2.** Under s.184 of the 1996 Act, if a housing authority has reason to believe that a person applying to the authority for accommodation or assistance in obtaining accommodation may be homeless or threatened with homelessness, the authority must make such inquiries as are necessary to satisfy itself whether the applicant is eligible for assistance and if so, whether any duty, and if so what duty, is owed to that person under Part 7 of the 1996 Act. The definitions of "homeless" and "threatened with homelessness" are discussed in Chapter 8.

Preventing homelessness

- 6.3.** Under s.179, housing authorities have a duty to ensure that advice and information about homelessness and the prevention of homelessness are available free of charge to anyone in their district (see Chapter 2 for further guidance on providing advice and information to prevent homelessness). In many cases early, effective intervention can prevent homelessness occurring. Many people who face the potential loss of their current home will be seeking practical advice and assistance to help them remain in their accommodation or secure alternative accommodation. Some may be seeking to apply for assistance under the homelessness legislation without being aware of other options that could help them to secure accommodation. Authorities should explain the various housing options that are available. These might include:

- advice and assistance (e.g. legal advice or mediation with a landlord) to enable them to remain in their current home;
- assistance (e.g. rent deposit or guarantee) to obtain accommodation in the private rented sector;
- an application for an allocation of long term social housing accommodation through a social housing waiting list or choice-based lettings scheme; or
- advice on how to apply to another social landlord for accommodation.

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- 6.4. Housing authorities should ensure that the implications and likely outcomes of the available housing options are made clear to all applicants, including the distinction between having a priority need for accommodation under Part 7 and being in a “reasonable preference” category for an allocation of housing under Part 6. Authorities must not avoid their obligations under Part 7 (especially the duty to make inquiries under s.184), but it is open to them to suggest alternative solutions in cases of potential homelessness where these would be appropriate and acceptable to the applicant.

Interim duty to accommodate

- 6.5. If a housing authority has reason to believe that an applicant may be eligible for assistance, homeless and have a priority need, the authority will have **an immediate duty under s.188 to ensure that suitable accommodation is available for the applicant** (and his or her household) pending the completion of the authority’s inquiries and its decision as to what duty, if any, is owed to the applicant under Part 7 of the Act. Chapter 7 provides guidance on the interim duty to accommodate. Authorities are reminded that ‘having reason to believe’ is a lower test than ‘being satisfied’.

Form of the application

- 6.6. Applications can be made by any adult to any department of the local authority and expressed in any particular form; they need not be expressed as explicitly seeking assistance under Part 7. Applications may also be made by a person acting on behalf of the applicant, for example, by a social worker or solicitor acting in a professional capacity, or by a relative or friend in circumstances where the applicant is unable to make an application themselves.

Applications to more than one housing authority

- 6.7. In some cases applicants may apply to more than one housing authority simultaneously and housing authorities will need to be alert to cases where an applicant is doing this. In such cases, where a housing authority has reason to believe that the applicant may be homeless or threatened with homelessness, it may wish to contact the other housing authorities involved, to agree which housing authority will take responsibility for conducting inquiries. Where another housing authority has previously made decisions about an applicant’s circumstances, a housing authority considering a fresh application may wish to have regard to those decisions. However, housing authorities should not rely solely on decisions made by another housing authority and will need to make their own inquiries in order to reach an independent decision on whether any duty, and if so which duty, is owed under Part 7. Any arrangements for the discharge of any of their functions by another housing authority must comply with s.101 of the *Local Government Act 1972*.

Service provision

- 6.8.** A need for accommodation or assistance in obtaining accommodation can arise at anytime. Housing authorities will therefore need to provide access to advice and assistance at all times during normal office hours, and have arrangements in place for 24-hour emergency cover, e.g. by enabling telephone access to an appropriate duty officer. The police and other relevant services should be provided with details of how to access the service outside normal office hours.
- 6.9.** In the interests of good administration, it is recommended that housing authorities should give proper consideration to the location of, and accessibility to, advice and information about homelessness and the prevention of homelessness, including the need to ensure privacy during interviews. Details of the service including the opening hours, address, telephone numbers and the 24-hour emergency contact should be well publicised within the housing authority's district.
- 6.10.** Housing authorities should provide applicants with a clear and simple explanation of their procedures for handling applications and making decisions. It is recommended that this is provided in written form, for example as a leaflet, as well as orally. In order to ensure advice and assistance are accessible to everyone in the district, it is recommended that information is made available in the main languages spoken in the area, and that for languages less frequently spoken there is access to interpreters. Applicants should be kept informed of the progress of their application and the timescales involved for making a decision on their case. They should also be given a realistic expectation of the assistance to which they may be entitled.
- 6.11.** Under s.214, it is an offence for a person, knowingly or recklessly to make a false statement, or knowingly to withhold information, with intent to induce the authority to believe that he or she, or another person, is entitled to accommodation under Part 7. If, before the applicant receives notification of a decision, there is any change of facts material to his or her case, he or she must inform the housing authority of this as soon as possible. Housing authorities must ensure that all applicants are made aware of these obligations and that they are explained in ordinary language. Housing authorities are advised to ensure that the obligations are conveyed sensitively to avoid intimidating applicants.

INQUIRIES

- 6.12.** Under s.184, where a housing authority has reason to believe that an applicant may be homeless or threatened with homelessness, it must make inquiries to satisfy itself whether the applicant is eligible for assistance (see Chapter 9) and, if so, whether any duty and if so what duty is owed to him or her under Part 7. In order to determine this, the authority will need to establish whether the applicant is homeless or threatened with homelessness (see Chapter 8), whether he or she became homeless, or threatened with homelessness, intentionally (see Chapter 11) and whether he or she has a priority need for accommodation (see Chapter 10).

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- 6.13.** In addition to determining whether an applicant is owed any duty under Part 7, housing authorities are reminded that they have a **power** to provide further assistance to applicants who are eligible for assistance, homeless (or threatened with homelessness) unintentionally and do not have a priority need. Under s.192(3), housing authorities may secure that accommodation is available for applicants who are eligible, unintentionally homeless and do not have a priority need (see Chapter 15 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 eligible for assistance, unintentionally threatened with homelessness and do not have a priority need for accommodation (see paragraph 14.7 for guidance on steps to secure that accommodation does not cease to be available).
- 6.14.** Under s.184(2), housing authorities may also make inquiries to decide whether the applicant has a local connection with another housing authority district in England, Wales or Scotland, but they are not required to do so. The possibility of a referral of an applicant to another housing authority can only arise where the applicant has been accepted as eligible for assistance, unintentionally homeless and having a priority need for accommodation (see Chapter 18 for guidance on local connection and referrals).
- 6.15.** The obligation to make inquiries, and satisfy itself whether a duty is owed, rests with the housing authority and it is not for applicants to “prove their case”. Applicants should always be given the opportunity to explain their circumstances fully, particularly on matters that could lead to a decision against their interests, for example, a decision that an applicant is intentionally homeless.
- 6.16.** 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 itself what duty, if any, is owed or what other assistance can be offered. Housing authorities are obliged to begin inquiries as soon as they have reason to believe that an applicant may be homeless or threatened with homelessness and should aim to carry out an initial interview and preliminary assessment on the day an application is received. An early assessment will be vital to determine whether the housing authority has an immediate duty to secure accommodation under s.188 (see Chapter 7 for guidance on the interim duty to accommodate). Wherever possible, it is recommended that housing authorities aim to complete their inquiries and notify the applicant of their decision within 33 working days of accepting a duty to make inquiries under s.184. In many cases it should be possible for authorities to complete the inquiries significantly earlier.

Violence

- 6.17.** Under s.177, it is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic or other violence against him or her, or against a person who normally resides with him or her as a member of his or her family, or any other person who might reasonably be expected to reside with him or her. Violence includes threats of violence from another person which are likely to be carried out. 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

housing authority to approach the alleged perpetrator, since this could generate further violence, and may delay the assessment. Housing authorities may, however, wish to seek information from friends and relatives of the applicant, social services and the police, as appropriate. In some cases, corroborative evidence of actual or threatened violence may not be available, for example, because there were no adult witnesses and/or the applicant was too frightened or ashamed to report incidents to family, friends or the police. In many cases involving violence, the applicant may be in considerable distress and an officer trained in dealing with the particular circumstances should conduct the interview. Applicants should be given the option of being interviewed by an officer of the same sex if they so wish.

- 6.18.** In cases where violence is a feature and the applicant may have a local connection elsewhere, the housing authority, in considering whether to notify another housing authority about a possible referral of the case, must be aware that s.198 provides that an applicant cannot be referred to another housing authority if he or she, or any person who might reasonably be expected to reside with him or her, would be at risk of violence in the district of the other housing authority (see Chapter 18 for guidance on referrals to another housing authority).

Support needs

- 6.19.** 16 and 17 year olds (including lone parents) who apply for housing assistance may also have care and support needs that need to be assessed. The Secretary of State recommends that housing authorities and social services authorities (and the relevant departments within unitary authorities) have arrangements in place for joint consideration of such young people's needs, whether the application is made initially to the housing department or social services department. See Chapter 12 for further guidance on 16 and 17 year olds.

Assistance from another authority or body

- 6.20.** Under s. 213, a housing authority may request another relevant housing authority or body to assist them in the discharge of their functions under Part 7. In such cases the authority or body must co-operate in rendering such assistance in the discharge of the functions to which the request relates as is reasonable in the circumstances. For example, a housing authority may request another housing authority to co-operate in providing information about a previous application. See paragraph 5.10 for further guidance on s.213.

DECISIONS/NOTIFICATIONS

- 6.21.** When a housing authority has completed its inquiries under s.184 it must notify the applicant in writing of its decision on the case. Where the decision is against the applicant's interests, e.g. a decision that he or she is ineligible for assistance, not homeless, not in priority need or homeless intentionally, the notification must explain clearly and fully the reasons for the decision. If the housing authority has decided that the conditions for referring the applicant's homelessness case to another housing authority have been met, they must notify the applicant of this and give their reasons for doing so.

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- 6.22.** All notifications must inform applicants of their right to request a review of the housing authority's decision and the time within which such a request must be made. At this stage, it is also recommended that housing authorities explain the review procedures. (See Chapter 19 for guidance on reviews of decisions and appeals to the county court).
- 6.23.** It will be important to ensure that the applicant fully understands the decision and the nature of any housing duty that is owed. In cases where the applicant may have difficulty understanding the implications of the decision, it is recommended that housing authorities consider arranging for a member of staff to provide and explain the notification in person.
- 6.24.** Under s.193(3A), where the housing authority accepts a duty to secure accommodation for an applicant under s.193(2), they must give the applicant a copy of the statement included in their allocation scheme of the housing authority's policy on offering people a choice of housing or the opportunity to express their preferences about the accommodation to be allocated to them. This statement is required to be included in the allocation scheme under s.167(1A).
- 6.25.** Section 184(6) provides that where a notification is not received by an applicant, it can be treated as having been given to him or her, if it is made available at the housing authority's office for a reasonable period that would allow it to be collected by the applicant or by someone acting on his or her behalf.

WITHDRAWN APPLICATIONS

- 6.26.** It is recommended that housing authorities have procedures in place for dealing with applications that are withdrawn or where someone fails to maintain contact with the housing authority after making an application. The Secretary of State considers that it would be reasonable to consider an application closed where there has been no contact with the applicant for three months or longer. Any further approach from the applicant after this time may need to be considered as a fresh application. Where an applicant renews contact within three months the housing authority will need to consider any change of circumstances that may affect the application.

FURTHER APPLICATIONS

- 6.27.** There is no period of disqualification if someone wants to make a fresh application. Where a person whose application has been previously considered and determined under Part 7 makes a fresh application, the authority will need to decide whether there are any new facts in the fresh application which render it different from the earlier application. If no new facts are revealed, or any new facts are of a trivial nature, the authority would not be required to consider the new application. However, where the fresh application does reveal substantive new facts, the authority must treat the fresh application in the same way as it would any other application for accommodation or assistance in obtaining accommodation. Therefore, if the authority has reason to believe that the person is homeless, or threatened with homelessness, the authority should make inquiries under s.184 and decide whether any duty is owed under s.188(1).

CHAPTER 7: INTERIM DUTY TO ACCOMMODATE

- 7.1. This chapter provides guidance on housing authorities' interim duty to secure that accommodation is available for an applicant if they have reason to believe that the applicant may be homeless, eligible for assistance and has a priority need.**
- 7.2.** Section 188(1) imposes an interim duty on housing authorities to secure that accommodation is available for an applicant (and his or her household) pending their decision as to what duty, if any, is owed to the applicant under Part 7 of the Act if they have reason to believe that the applicant may:
- a) be homeless,
 - b) be eligible for assistance, and
 - c) have a priority need.
- 7.3.** The threshold for the duty is low as the local authority only has to have a reason to believe that the applicant **may** be homeless, eligible for assistance and have a priority need. (See paragraph 6.5 for guidance on the “reason to believe” test.)
- 7.4.** The s.188(1) duty applies even where the authority considers the applicant may not have a local connection with their district and may have one with the district of another housing authority (s.188(2)). Applicants cannot be referred to another housing authority unless the housing authority dealing with the application is satisfied that s.193 applies (i.e. the applicant is eligible for assistance, unintentionally homeless and has a priority need). (See Chapter 18 for guidance on referrals to other housing authorities.)

SUITABILITY OF ACCOMMODATION

- 7.5.** The accommodation provided under s.188(1) must be suitable for the applicant and his or her household and the suitability requirements under s.206(1) and s.210(1) apply (see Chapter 17 for guidance on the suitability of accommodation). The applicant does not have the right to ask for a review of the housing authority's decision as to the suitability of accommodation secured under the interim duty, but housing authorities are reminded that such decisions could be subject to judicial review.
- 7.6.** Housing authorities should avoid using Bed & Breakfast (B&B) accommodation wherever possible. Where B&B accommodation has been used in an emergency situation, applicants should be moved to more suitable accommodation as soon as possible. The *Homelessness (Suitability of Accommodation) (England) Order 2003* provides that B&B accommodation is not suitable accommodation for families with children and households that include a pregnant woman unless there is no alternative accommodation available and then only for a maximum of six weeks.

DISCHARGING THE INTERIM DUTY

- 7.7. Where the s.188(1) interim duty is being discharged, inquiries should be completed as quickly as possible to minimise uncertainty for the applicant and the period for which accommodation needs to be secured by the housing authority. (See Chapter 6 for guidance on inquiries).
- 7.8. Housing authorities can discharge their interim duty to secure accommodation by providing their own accommodation or by arranging that it is provided by some other person, or by providing advice and assistance so that it will be provided by some other person. (See Chapter 16 for more information on discharging the duty to secure accommodation).

ENDING THE INTERIM DUTY

- 7.9. The s.188(1) interim duty ends once the housing authority has notified the applicant of its decision as to what duty, if any, is owed to him or her under Part 7, even if the applicant requests a review of the decision.
- 7.10. Where, having completed their inquiries, the housing authority is satisfied that they are under no further duty to secure accommodation, they should give the applicant a reasonable period of notice to vacate the accommodation to enable him or her to make alternative accommodation arrangements for him/herself. The time allowed should be reasonable when judged against the circumstances of the applicant. Housing authorities should give the applicant time to consider whether to request a review of their decision and, if a review is requested, will need to consider whether to exercise their discretionary power under s.188(3) to secure that accommodation is available (see paragraph 7.13 below).
- 7.11. It has been established that, as a general rule, accommodation provided pending inquiries under s.184 does not create a tenancy or a licence under the *Protection from Eviction Act 1977*. The courts have applied this principle in cases where the accommodation provided was B&B accommodation in a hotel and where it was a self-contained flat. Consequently, where this general rule applies, housing authorities are required only to provide an applicant with reasonable notice to vacate accommodation provided under the interim duty, and do not need to apply for a possession order from the court. Authorities should note, however, that this general rule may be displaced by an agreement between the housing authority and the applicant, or if the occupation of the accommodation is allowed to continue on more than a transient basis.
- 7.12. In cases involving applicants who have children under 18 where the housing authority are satisfied that the applicant is ineligible for assistance, the housing authority must alert the social services authority, or social services department, as appropriate, to the case (see Chapter 13 for further guidance on co-operation with social services). Applicants should be invited to consent to social services being notified of the case, but in certain circumstances, for example where the housing authority are concerned about the welfare of the child, they should disclose information about the case even where consent has not been given.

ACCOMMODATION PENDING A REVIEW

- 7.13.** Where a review of a decision of a housing authority is requested under s.202, although there is no duty under s.188(1), under s.188(3) the housing authority has a discretionary power to provide accommodation pending the outcome of the review. Failure to consider exercising this discretionary power could be the subject of challenge by judicial review proceedings. Housing authorities are reminded that applicants have 21 days in which to request a review of a decision. (See Chapter 19 for guidance on review of decisions and Chapter 15 for guidance on powers to accommodate pending a review).

Archived

CHAPTER 8: HOMELESS OR THREATENED WITH HOMELESSNESS

- 8.1.** This chapter provides guidance on how to determine whether a person is “homeless” or “threatened with homelessness” for the purposes of Part 7.
- 8.2.** Under s.184 of the 1996 Act, if a housing authority has reason to believe that a person applying to the housing authority for accommodation, or assistance in obtaining accommodation, may be homeless or threatened with homelessness, the housing authority must make inquiries to satisfy itself whether the applicant is eligible for assistance and if so, whether a duty is owed to that person under Part 7 of the 1996 Act (see Chapter 6 for guidance on applications for assistance).

THREATENED WITH HOMELESSNESS

- 8.3.** Under s.175(4), a person is “threatened with homelessness” if he or she is likely to become homeless within 28 days. In many cases, effective intervention can enable homelessness to be prevented or the loss of the current home to be delayed sufficiently to allow for a planned move. The Secretary of State considers that housing authorities should take steps to prevent homelessness wherever possible, offering a broad range of advice and assistance for those in housing need. Authorities should not wait until homelessness is a likelihood or is imminent before providing advice and assistance. (See Chapter 2 for guidance on preventing homelessness).

HOMELESS

- 8.4.** There are a number of different factors that determine whether a person is homeless. Under s.175, 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 is also homeless if he or she has accommodation but cannot secure entry to it, or the accommodation is a moveable structure, vehicle or vessel designed or adapted for human habitation (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 that accommodation.

Available for occupation

- 8.5.** Section 176 provides that accommodation shall be treated as available for a person’s occupation only if it is available for occupation by him or her together with:
- i) any other person who normally resides with him or her as a member of the family, or
 - ii) any other person who might reasonably be expected to reside with him or her.

The first group covers those members of the family who normally reside with the applicant. The phrase “as a member of the family” although not defined, will include those with close blood or marital relationships and cohabiting partners (including same sex partners), and, where such a person is an established member of the household, the accommodation must provide for him or her as well. The second group relates to any other person, and includes those who may not have been living as part of the household at the time of the application, but whom it would be reasonable to expect to live with the applicant as part of his or her household. Persons in the second group might include a companion for an elderly or disabled person, or children who are being fostered by the applicant or a member of his or her family. The second group will also include those members of the family who were not living as part of the household at the time of the application but who nonetheless might reasonably be expected to form part of it.

- 8.6. It is for the housing authority to assess whether any other person might reasonably be expected to live with the applicant and there will be a range of situations that the authority will need to consider. Persons who would normally live with the applicant but who are unable to do so because there is no accommodation in which they can all live together should be included in the assessment. When dealing with a family which has split up, housing authorities will need to take a decision as to which members of the family normally reside, or might be expected to reside, with the applicant. A court may have made a residence order indicating with whom the children are to live, but in many cases it will be a matter of agreement between the parents and a court will not have been involved.

Legal right to occupy accommodation

- 8.7. Under s.175(1), a person is homeless if he or she has no accommodation which he or she can legally occupy by virtue of:
- i) an interest in it (e.g. as an owner, lessee or tenant) or by virtue of a court order;
 - ii) an express or implied licence to occupy it (e.g. as a lodger, as an employee with a service occupancy, or when living with a relative); or
 - iii) any enactment or rule of law giving him or her the right to remain in occupation or restricting the right of another person to recover possession (e.g. a person retaining possession as a statutory tenant under the Rent Acts where that person's contractual rights to occupy have expired or been terminated).
- 8.8. A person who has been occupying accommodation as a licensee whose licence has been terminated (and who does not have any other accommodation available for his or her occupation) is homeless because he or she no longer has a legal right to continue to occupy, despite the fact that that person may continue to occupy but as a trespasser. This may include, for example:
- i) those required to leave hostels or hospitals; or
 - ii) former employees occupying premises under a service occupancy which is dependent upon contracts of employment which have ended.

People asked to leave accommodation by family or friends

- 8.9.** Some applicants may have been asked to leave their current accommodation by family or friends with whom they have been living. In such cases, the housing authority will need to consider carefully whether the applicant's licence to occupy the accommodation has in fact been revoked. Housing authorities may need to interview the parents or friends to establish whether they are genuinely revoking the licence to occupy and rendering the applicants homeless. Authorities are encouraged to be sensitive to situations where parents or carers may have been providing a home for a family member with support needs (for example a person with learning difficulties) for a number of years and who are genuinely finding it difficult to continue with that arrangement, but are reluctant to revoke their licence to occupy formally until alternative accommodation can be secured.
- 8.10.** In some cases the applicant may be unable to stay in his or her accommodation and in others there may be scope for preventing or postponing homelessness, and providing the applicant with an opportunity to plan their future accommodation and pursue various housing options with assistance from the housing authority. However, housing authorities will need to be sensitive to the possibility that for some applicants it may not be safe for them to remain in, or return to, their home because of a risk of violence or abuse.
- 8.11.** In areas of high demand for affordable housing, people living with family and friends may have genuine difficulties in finding alternative accommodation that can lead to friction and disputes within their current home, culminating in a threat of homelessness. In some cases external support, or the promise of assistance with alternative housing, may help to reduce tension and prevent homelessness. The use of family mediation services may assist here.
- 8.12.** Housing authorities will also need to be alert to the possibility of collusion where family or friends agree to revoke a licence to occupy accommodation as part of an arrangement whose purpose is to enable the applicant to be entitled to assistance under Part 7. Some parents and children, for example, may seek to take advantage of the fact that 16 and 17 year old applicants have a priority need for accommodation (see also Chapter 11 on intentional homelessness).

16 and 17 year olds

- 8.13.** The Secretary of State considers that, generally, it will be in the best interests of 16 and 17 year olds to live in the family home, unless it would be unsafe or unsuitable for them to do so because they would be at risk of violence or abuse. See Chapter 12 for further guidance on 16 and 17 year olds.

Tenant given notice

- 8.14.** With certain exceptions, a person who has been occupying accommodation as a tenant and who has received a valid notice to quit, or notice that the landlord requires possession of the accommodation, would have the right to remain in occupation until a warrant for possession was executed (following the granting of an order for possession

by the court). The exceptions are tenants with resident landlords and certain other tenants who do not benefit from the *Protection from Eviction Act 1977*. **However, authorities should note that the fact that a tenant has a right to remain in occupation does not necessarily mean that he or she is not homeless.** 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 execution of a warrant for possession, the housing authority will also need to consider whether it would be reasonable for him or her to continue to occupy the accommodation in the circumstances (see paragraphs 8.30-8.32 below).

- 8.15.** Some tenants may face having to leave their accommodation because their landlord has defaulted on the mortgage of the property they rent. Where a mortgage lender starts possession proceedings, the lender is obliged to give written notice of the proceedings to the occupiers of the property before an order for possession is granted. The notice must be given after issue of the possession summons and at least 14 days before the court hearing. As for tenants given notice that the landlord requires possession of the accommodation (see paragraph 8.14 above), authorities will need to consider whether it would be reasonable for a tenant to continue to occupy the accommodation after receiving notice of possession proceedings from the lender.

Inability to secure entry to accommodation

- 8.16.** Under s.175(2), a person is homeless if he or she has a legal entitlement to accommodation, but is unable to secure entry to it, for example:

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

Although legal remedies may be available to the applicant to regain possession of the accommodation, housing authorities cannot refuse to assist while he or she is actually homeless.

Accommodation consisting of a moveable structure

- 8.17.** 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, vehicle or vessel designed or adapted for human habitation (e.g. a caravan or houseboat), and there is nowhere that he or she is entitled or permitted to place it and reside in it. The site or mooring for the moveable structure need not be permanent in order to avoid homelessness. In many cases the nature of the structure may reflect the itinerant lifestyle of the applicant, who may not be looking for a permanent site but somewhere to park or moor on a temporary basis.

Reasonable to continue to occupy

8.18. 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. There are a number of provisions relating to whether or not it is reasonable for someone to continue to occupy accommodation and these are discussed below. There is no simple test of reasonableness. It is for the housing authority to make a judgement on the facts of each case, taking into account the circumstances of the applicant.

Domestic violence or other violence

8.19. Section 177(1) provides that it is not reasonable for a person 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 as a member of the applicant's family; or
- iii) any other person who might reasonably be expected to reside with the applicant.

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. Domestic violence is not confined to instances within the home but extends to violence outside the home.

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

- (a) they are, or have been, married to each other;
- (b) they are or have been civil partners of each other;
- (c) they are, or have been, cohabitants (including same sex partners);
- (d) they live, or have lived, in the same household;
- (e) they are relatives, i.e. father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson, granddaughter, brother, sister, uncle, aunt, niece or nephew (whether of 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;
- (f) they have agreed to marry each other whether or not that agreement has been terminated;

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- (g) they have entered into a civil partnership agreement between them whether or not that agreement has been terminated;
 - (h) 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;
 - (i) if a child has been adopted or freed for adoption (s.16(1) *Adoption Act 1976*), two persons are also associated if one is the natural parent or grandparent of the child and the other is the child of a person who has become the parent by virtue of an adoption order (s.72(1) *Adoption Act 1976*) or has applied for an adoption order or someone with whom the child has been placed for adoption.
- 8.21.** The Secretary of State considers that the term ‘violence’ should not be given a restrictive meaning, and that ‘domestic violence’ should be understood to include threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between persons who are, or have been, intimate partners, family members or members of the same household, regardless of gender or sexuality.
- 8.22.** An assessment of the likelihood of a threat of violence being carried out should not be based on whether there has been actual violence in the past. An assessment must be based on the facts of the case and devoid of any value judgements about what an applicant should or should not do, or should or should not have done, to mitigate the risk of any violence (e.g. seek police help or apply for an injunction against the perpetrator). Inquiries into cases where violence is alleged will need careful handling. See Chapter 6 for further guidance.
- 8.23.** In cases involving violence, housing authorities may wish to inform applicants of the option of seeking an injunction, but should make clear that there is no obligation on the applicant 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. Housing authorities should recognise that injunctions ordering a person not to molest, or enter the home of, an applicant may not be effective in deterring perpetrators from carrying out further violence or incursions, and applicants may not have confidence in their effectiveness. Consequently, applicants should not be expected to return home on the strength of an injunction. To ensure applicants who have experienced actual or threatened violence get the support they need, authorities should inform them of appropriate organisations in the area such as agencies offering counselling and support as well as specialist advice.
- 8.24.** 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. 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, where the authority is the landlord, 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 remain in, or return to, the accommodation. In all cases involving violence the safety of the applicant and his or her household should be the primary consideration at all stages of decision making as to whether or not the applicant remains in their own home.**

- 8.25. The effectiveness of housing authorities' services to assist victims of domestic violence and prevent further domestic violence is measured by Best Value Performance Indicator BVPI 225. Guidance on BVPI 225 is available at www.communities.gov.uk.

General housing circumstances in the district

- 8.26. Section 177(2) provides that, in determining whether it is reasonable for a person to continue to occupy accommodation, housing authorities may have regard to the general housing circumstances prevailing in the housing authority's district.
- 8.27. This would apply, for example, where it was suggested that an applicant was homeless because of poor physical conditions in his or her current home. In such cases it would be open to the authority to consider whether the condition of the property was so bad in comparison with other accommodation in the district that it would not be reasonable to expect someone to continue to live there.
- 8.28. Circumstances where an applicant may be homeless as a result of his or her accommodation being overcrowded should also be considered in relation to the general housing circumstances in the district. Statutory overcrowding, within the meaning of Part 10 of the *Housing Act 1985*, may not by itself be sufficient to determine reasonableness, but it can be a contributory factor if there are other factors which suggest unreasonableness.

Affordability

- 8.29. One factor that **must** be considered in all cases is affordability. The *Homelessness (Suitability of Accommodation) Order 1996* (SI 1996 No.3204) requires the housing authority to consider the affordability of the accommodation for the applicant. The Order specifies, among other things, that in determining whether it would be (or would have been) reasonable for a person to continue to occupy accommodation, a housing authority must take into account whether the accommodation is affordable for him or her and must, in particular, take account of:
- (a) the financial resources available to him or her;
 - (b) the costs in respect of the accommodation;
 - (c) maintenance payments (to a spouse, former spouse or in respect of a child); and
 - (d) his or her reasonable living expenses.

Tenant given notice of intention to recover possession

- 8.30. In cases where the applicant has been occupying accommodation as a tenant and has received a valid notice to quit, or a notice that the landlord intends to recover possession, housing authorities should consider the scope for preventing homelessness through consulting the landlord at an early stage to explore the possibility of the tenancy being allowed to continue or the tenant being allowed to remain for a reasonable period to provide an opportunity for alternative accommodation to be found. If the landlord is not persuaded to agree, the authority will need to consider whether it would be reasonable for the applicant to continue to occupy the accommodation once the valid notice has expired.
- 8.31. In determining whether it would be reasonable for an applicant to continue to occupy accommodation, the housing authority will need to consider all the factors relevant to the case and decide the weight that individual factors should attract. As well as the factors set out elsewhere in this chapter, other factors which may be relevant include the general cost to the housing authority, the position of the tenant, the position of the landlord, the likelihood that the landlord will actually proceed with possession proceedings, and the burden on the courts of unnecessary proceedings where there is no defence to a possession claim (see paragraphs 8.14 and 8.15 above for guidance on the right to occupy where notice of possession proceedings has been given).
- 8.32. Each case must be decided on its facts, so **housing authorities should not adopt a general policy of accepting – or refusing to accept – applicants as homeless or threatened with homelessness when they are threatened with eviction but a court has not yet made an order for possession or issued a warrant of execution.** In any case where a housing authority decides that it would be reasonable for an applicant to continue to occupy their accommodation after a valid notice has expired – and therefore decides that he or she is not yet homeless or threatened with homelessness – that decision will need to be based on sound reasons which should be made clear to the applicant in writing (see Chapter 6 for guidance on housing authorities' duties to inform applicants of their decisions). **The Secretary of State considers that where a person applies for accommodation or assistance in obtaining accommodation, and:**
- (a) **the person is an assured shorthold tenant who has received proper notice in accordance with s.21 of the *Housing Act 1988*;**
 - (b) **the housing authority is satisfied that the landlord intends to seek possession; and**
 - (c) **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 is taking steps to persuade the landlord to withdraw the notice or allow the tenant to continue to occupy the accommodation for a reasonable period to provide an opportunity for alternative accommodation to be found.

- 8.32a.** Authorities are reminded that an applicant cannot be treated as intentionally homeless unless it would have been reasonable for him or her to have continued to occupy the accommodation. Guidance on ‘intentional homelessness’ is provided in Chapter 11.

Former armed forces personnel required to leave service accommodation

- 8.33.** The Ministry of Defence recognises that housing authorities will need to be satisfied that entitlement to occupy service accommodation will end on a certain date, in order to determine whether applicants who are service personnel and who are approaching their date of discharge may be homeless or threatened with homelessness. For this purpose, the MOD issues a *Certificate of Cessation of Entitlement to Occupy Service Living Accommodation* six months before discharge (see examples at Annexes 14 and 15). These certificates indicate the date on which entitlement to occupy service accommodation ends, and the Secretary of State considers that housing authorities should not insist upon a court order for possession to establish that entitlement to occupy has ended. Authorities should take advantage of the six-month period of notice of discharge to ensure that service personnel receive timely and comprehensive advice on the housing options available to them when they leave the armed forces.

Other relevant factors

- 8.34.** Other factors which may be relevant in determining whether it would be reasonable for an applicant to continue to occupy accommodation include:

physical characteristics: it would not be reasonable for an applicant to continue to occupy accommodation if the physical characteristics of the accommodation were unsuitable for the applicant because, for example, he or she was a wheelchair user and access was limited.

type of accommodation: some types of accommodation, for example women’s refuges, direct access hostels, and night shelters are intended to provide very short-term, temporary accommodation in a crisis and it should not be regarded as reasonable to continue to occupy such accommodation in the medium and longer-term.

people fleeing harassment: in some cases severe harassment may fall short of actual violence or threats of violence likely to be carried out. Housing authorities should consider carefully whether it would be, or would have been, reasonable for an applicant to continue to occupy accommodation in circumstances where they have fled, or are seeking to leave, their home because of non-violent forms of harassment, for example verbal abuse or damage to property. Careful consideration should be given to applicants who may be at risk of witness intimidation. In some criminal cases the police may provide alternative accommodation for witnesses, but usually this will apply for the duration of the trial only. Witnesses may have had to give up their home or may feel unable to return to it when the trial has finished.

This is not an exhaustive list and authorities will need to take account of all relevant factors when considering whether it is reasonable for an applicant to continue to occupy accommodation.

CHAPTER 9: ELIGIBILITY FOR ASSISTANCE

GENERAL

- 9.1. Part 7 of the 1996 Act includes provisions that make certain persons from abroad ineligible for housing assistance. 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.
- 9.2. 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.
- 9.3. Local authorities are reminded that Schedule 3 to the *Nationality, Immigration and Asylum Act 2002* provides that certain persons shall not be eligible for support or assistance provided through the exercise of local housing authorities' powers to secure accommodation pending a review (s.188(3)) or pending an appeal to the county court (s.204(4)). See paragraph 9.22 below.

PERSONS FROM ABROAD

- 9.4. A person will not be eligible for assistance under Part 7 if he or she is a person from abroad who is ineligible for housing assistance under s.185 of the 1996 Act. There are two categories of 'person from abroad' for the purposes s.185:
 - (i) *a person subject to immigration control* – such a person is not eligible for housing assistance unless he or she comes within a class prescribed in regulations made by the Secretary of State, and
 - (ii) *a person from abroad other than a person subject to immigration control* – the Secretary of State can make regulations to provide for other descriptions of person from abroad who, although they are not subject to immigration control, are to be treated as ineligible for housing assistance.
- 9.5. The regulations that set out which classes of persons from abroad are eligible or ineligible for housing assistance are the *Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006* (SI 2006 No.1294) ("the Eligibility Regulations"). Persons subject to immigration control are not eligible for housing assistance unless they fall within a class of persons prescribed in **regulation 5** of the Eligibility Regulations. Persons who are not subject to immigration control will be eligible for housing assistance unless they fall within a description of persons who are to be treated as persons from abroad who are ineligible for assistance by virtue of **regulation 6** of the Eligibility Regulations.

PERSONS SUBJECT TO IMMIGRATION CONTROL

- 9.6. The term ‘person subject to immigration control’ is defined in s.13(2) of the *Asylum and Immigration Act 1996* as a person who requires leave to enter or remain in the United Kingdom (whether or not such leave has been given).
- 9.7. Only the following categories of person do **not** require leave to enter or remain in the UK:
- (i) British citizens;
 - (ii) certain Commonwealth citizens with a right of abode in the UK;
 - (iii) citizens of an EEA country, (“EEA nationals”) and their family members, who have a right to reside in the UK that derives from EC law. The question of whether an EEA national (or family member) has a particular right to reside in the UK (or in another Member State e.g. the Republic of Ireland) will depend on the circumstances, particularly the economic status of the EEA national (e.g. whether he or she is a worker, self-employed, a student, or economically inactive etc.). See Annex 12 for further guidance on rights to reside;
 - (iv) persons who are exempt from immigration control under the Immigration Acts, including diplomats and their family members based in the United Kingdom, and some military personnel.

For the purposes of this guidance, “EEA nationals” means nationals of any of the EU member states (excluding the UK), and nationals of Iceland, Norway, Liechtenstein and Switzerland.

- 9.8. Any person who **does not** fall within one of the 4 categories in paragraph 9.7 above will be a person subject to immigration control and will be ineligible for housing assistance unless they fall within a class of persons prescribed by regulation 5 of the Eligibility Regulations (see paragraph 9.10 below).
- 9.9. If there is any uncertainty about an applicant’s immigration status, it is recommended that authorities contact the Home Office Immigration and Nationality Directorate, using the procedures set out in Annex 8. In some circumstances, local authorities may be under a duty to contact the Immigration and Nationality Directorate (see paragraph 9.24).

Persons subject to immigration control who are eligible for housing assistance

- 9.10. Generally, persons subject to immigration control are not eligible for housing assistance. However, by virtue of regulation 5 of the Eligibility Regulations, the following classes of person subject to immigration control are eligible for housing assistance:

- (i) *a person granted refugee status*: a person is granted refugee status when his or her request for asylum is accepted. Persons granted refugee status are granted 5 years' limited leave to remain in the UK. (Prior to 30 August 2005, it was the policy to provide immediate settlement (indefinite leave to remain) for persons granted refugee status.)
- (ii) *a person granted exceptional leave to enter or remain in the UK without condition that they and any dependants should make no recourse to public funds*: this status is granted to persons, including some persons whose claim for asylum has been refused, for a limited period where there are compelling humanitarian and/or compassionate circumstances for allowing them to stay. However, if leave was granted on condition that the applicant and any dependants should not be a charge on public funds, the applicant will not be eligible for homelessness assistance. Since April 2003, exceptional leave to remain (which is granted at the Secretary of State's discretion outside the Immigration Rules) has taken the form of either humanitarian protection or discretionary leave.
- (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 UK, the Channel Islands, the Isle of Man or the Republic of Ireland*: such a person will have indefinite leave to enter (ILE) or remain (ILR) and will be regarded as having settled status. However, where ILE or ILR status was granted as a result of an undertaking that a sponsor would be responsible for the applicant's maintenance and accommodation, the person must have been resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland for five years since the date of entry – or the date of the sponsorship undertaking, whichever is later – for the applicant to be eligible. Where a sponsor has (or, if there was more than one sponsor, all of the sponsors have) died within the first five years, the applicant will be eligible for housing assistance;
- (iv) *a person who left the territory of Montserrat after 1 November 1995 because of the effect on that territory of a volcanic eruption*. (See paragraph 9.19 below.)

Asylum seekers

9.11. Asylum seekers will almost always be persons subject to immigration control.

Asylum seekers who are persons subject to immigration control and whose claim for asylum was made after 2 April 2000 are not eligible for assistance under Part 7 of the 1996 Act. Some asylum seekers whose claim for asylum was made before 3 April 2000 would be eligible for assistance under Part 7 in certain limited circumstances, but the number of persons who fall in these classes is likely to be very small (if any). Annex 9 provides guidance on the limited categories of asylum seekers eligible for assistance under Part 7 of the 1996 Act.

9.12. Under s.186 of the 1996 Act, an asylum seeker who would otherwise be eligible for assistance under the Eligibility Regulations, will be ineligible, if he or she has any accommodation available in the UK for his or her occupation, however temporary.

OTHER PERSONS FROM ABROAD WHO MAY BE INELIGIBLE FOR ASSISTANCE

9.13. By virtue of regulation 6 of the Eligibility Regulations, a person who is not subject to immigration control and who falls within one of the following descriptions of persons is to be treated as a person from abroad who is ineligible for housing assistance:

- (i) a person who is not habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland (subject to certain exceptions – see paragraph 9.14 below);
- (ii) a person whose only right to reside in the UK is derived from his status as a jobseeker (or his status as the family member of a jobseeker). For this purpose, “jobseeker” has the same meaning as for the purpose of regulation 6(1)(a) of the *Immigration (European Economic Area) Regulations 2006* (SI 2006 No. 1003) (“the EEA Regulations”);
- (iii) a person whose only right to reside in the UK is an initial right to reside for a period not exceeding three months under regulation 13 of the EEA Regulations;
- (iv) a person whose only right to reside in the Channel Islands, the Isle of Man or the Republic of Ireland is a right equivalent to one of the rights mentioned in (ii) or (iii) above and which is derived from the Treaty establishing the European Community (“the EC Treaty”).

See Annex 12 for guidance on rights to reside in the UK derived from EC law.

Persons exempted from the requirement to be habitually resident

9.14. Certain persons from abroad (not being persons subject to immigration control) will be eligible for housing assistance even though they are not habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland. Such a person will be eligible for assistance even if not habitually resident, if he or she is:

- (a) an EEA national who is in the UK as a worker (which has the same meaning as it does for the purposes of regulation 6(1) of the EEA Regulations);
- (b) an EEA national who is in the UK as a self-employed person (which has the same meaning as it does for the purposes of regulation 6(1) of the EEA Regulations);
- (c) a person who is an accession state worker requiring registration who is treated as a worker for the purposes of regulation 6(1) of the EEA Regulations, pursuant to the *Accession (Immigration and Worker Registration) Regulations 2004*, as amended;
- (d) a person who is a family member of a person referred to in (a) to (c) above;

- (e) a person with a right to reside permanently in the UK by virtue of regulation 15(c), (d) or (e) of the EEA Regulations (see Annex 12);
- (f) a person who left Montserrat after 1 November 1995 because of the effect of volcanic activity there (see paragraph 9.19 below);
- (g) a person who is in the UK as a result of his or her deportation, expulsion or other removal by compulsion of law from another country to the UK (see paragraph 9.21 below).

On (a) and (b), authorities should note that a person who is no longer working or no longer in self-employment will retain his or her status as a worker or self-employed person in certain circumstances. (See Annex 12 for further guidance.) On (c), authorities should note that accession state workers requiring registration will generally only be treated as a worker when they are actually working and will not retain ‘worker’ status in the circumstances referred to above. (See annexes 12 and 13 for further guidance.) On (d), authorities should note that ‘family member’ does not include a person who is an extended family member who is treated as a family member by virtue of regulation 7(3) of the EEA Regulations (see Annex 12 for further guidance).

The habitual residence test

- 9.15.** The term “habitual residence” is intended to convey a degree of permanence in the person’s residence in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland; it implies an association between the individual and the place of residence and relies substantially on fact.
- 9.16.** The Secretary of State considers that it is likely that applicants who have been resident in the UK, Channel Islands, the Isle of Man or the Republic of Ireland continuously during the 2-year period prior to their housing application will be habitually resident. In such cases, therefore, housing authorities may consider it unnecessary to make further enquiries to determine whether the person is habitually resident, unless there are other circumstances that need to be taken into account. A period of continuous residence in the UK, Channel Islands, the Isle of Man or the Republic of Ireland might include periods of temporary absence, e.g. visits abroad for holidays or to visit relatives. Where two years’ continuous residency has not been established, housing authorities will need to conduct further enquiries to determine whether the applicant is habitually resident.
- 9.17.** A person will not generally be habitually resident anywhere unless he or 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, and is resuming a previous period of habitual residence.
- 9.18.** Annex 10 provides guidance on the factors that a housing authority should consider in determining whether an applicant is habitually resident.

Persons from Montserrat

- 9.19.** The classes of persons (not being persons subject to immigration control) who are not required to be habitually resident in order to be eligible for assistance under Part 7 include a person who left Montserrat after 1 November 1995 because of the effect of volcanic activity there.
- 9.20.** On 21 May 2002 most British overseas territories citizens, including those from Montserrat, became British Citizens. Since their new EU-style passport will not identify that they are from Montserrat, it has been recommended that they should also retain their old British Overseas Citizen passport, to help them demonstrate eligibility for, among other things, housing assistance in the UK.

Persons deported, expelled or removed to the UK from another country

- 9.21.** Persons who are in the UK as a result of their deportation, expulsion or other removal by compulsion of law from another country to the UK will generally be UK nationals. (However, such persons could include EEA nationals, where the UK immigration authorities were satisfied that the person was settled in the UK and exercising EC Treaty rights prior to deportation from the third country.) Where deportation occurs, most countries will signal this in the person's passport and provide them with reasons for their removal. This should enable such persons to identify their circumstances when making an application for housing assistance.

PERSONS INELIGIBLE UNDER CERTAIN PROVISIONS BY VIRTUE OF SCHEDULE 3 TO THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

- 9.22.** Section 54 of, and Schedule 3 to, the *Nationality, Immigration and Asylum Act 2002* have the effect of making certain applicants for housing assistance ineligible for accommodation under s.188(3) (*power to accommodate pending a review*) or s.204(4) (*power to accommodate pending an appeal to the county court*) of the 1996 Act. The following classes of person will be ineligible for assistance under those powers:

- (i) *a person who has refugee status abroad*, i.e. a person:
 - who does not have the nationality of an EEA State, and
 - who the government of an EEA State other than the UK has determined is entitled to protection as a refugee under the Refugee Convention;
- (ii) *a person who has the nationality of an EEA State other than the UK* (but see paragraph 9.23 below);
- (iii) *a person who was (but is no longer) an asylum seeker and who fails to cooperate with removal directions* issued in respect of him or her;

- (iv) *a person who is in the UK in breach of the immigration laws (within the meaning of s.11 of the Nationality, Immigration and Asylum Act 2002) and is not an asylum seeker;*
- (v) *certain persons who are failed asylum seekers with dependent children, where the Secretary of State has certified that, in his opinion, such a person has failed without reasonable excuse to take reasonable steps to leave the UK voluntarily or place himself or herself in a position where he or she is able to leave the UK voluntarily, and that person has received the Secretary of State's certificate more than 14 days previously;*
- (vi) *a person who is the dependant of a person who falls within class (i), (ii), (iii) or (v) above.*

9.23. However, s.54 and Schedule 3 do not prevent the exercise of an authority's powers under s.188(3) and s.204(4) of the 1996 Act to the extent that such exercise is necessary for the purpose of avoiding a breach of a person's rights under the European Convention of Human Rights or rights under the EC Treaties. Among other things, this means that a local authority can exercise these powers to accommodate an EEA national who has a right to reside in the UK under EC law (see Annex 12).

9.24. Paragraph 14 of Schedule 3 provides, among other things, that authorities must inform the Secretary of State where the powers under s.188(3) or s.204(4) apply, or may apply, to a person who is, or may come, within classes (iii), (iv) or (v) in paragraph 9.22 (by contacting the Home Office Immigration and Nationality Directorate).

9.25. For further guidance, local authorities should refer to Guidance to Local Authorities and Housing Authorities about the *Nationality, Immigration and Asylum Act*, Section 54 and Schedule 3, and the *Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002*, issued by the Home Office.

ELIGIBILITY – LIST OF RELATED ANNEXES:

ANNEX 8 HOW TO CONTACT THE HOME OFFICE IMMIGRATION AND NATIONALITY DIRECTORATE

ANNEX 9 ASYLUM SEEKERS

ANNEX 10 THE HABITUAL RESIDENCE TEST

ANNEX 11 EUROPEAN GROUPINGS (EU, A8, EEA, SWITZERLAND)

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CHAPTER 10: PRIORITY NEED

This chapter provides guidance on the categories of applicant who have a priority need for accommodation under the homelessness legislation.

- 10.1.** Under the homelessness legislation, housing authorities must have a strategy for preventing homelessness and ensuring that accommodation and support are available to **anyone** in their district who is homeless or at risk of homelessness. They must also provide advice and assistance on housing and homelessness prevention to anyone in their district, free of charge. Stronger duties to secure accommodation exist for households who have a priority need for accommodation. Since 2002, the priority need categories have embraced a wider range of people whose age or background puts them at greater risk when homeless, including more single people.
- 10.2.** The main homelessness duties in s.193(2) and s.195(2) of the 1996 Act (to secure accommodation or take reasonable steps to prevent the loss of accommodation) apply only to applicants who have a priority need for accommodation. Section 189(1) and the *Homelessness (Priority Need for Accommodation) (England) Order 2002* provide that the following categories of applicant have a priority need for accommodation:
- i) a pregnant woman or a person with whom she resides or might reasonably be expected to reside (see paragraph 10.5);
 - ii) a person with whom dependent children reside or might reasonably be expected to reside (see paragraphs 10.6-10.11);
 - 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 (see paragraphs 10.12-10.18);
 - iv) a person aged 16 or 17 who is not a ‘relevant child’ or a child in need to whom a local authority owes a duty under section 20 of the *Children Act 1989* (see paragraphs 10.36-10.39);
 - v) a person under 21 who was (but is no longer) looked after, accommodated or fostered between the ages of 16 and 18 (except a person who is a ‘relevant student’) (see paragraphs 10.40-10.41);
 - vi) a person aged 21 or more who is vulnerable as a result of having been looked after, accommodated or fostered (except a person who is a ‘relevant student’) (see paragraphs 10.19-10.20);
 - vii) a person who is vulnerable as a result of having been a member of Her Majesty’s regular naval, military or air forces (see paragraphs 10.21-10.23);

viii) a person who is vulnerable as a result of:

- (a) having served a custodial sentence,
- (b) having been committed for contempt of court or any other kindred offence, or
- (c) having been remanded in custody;
(see paragraphs 10.24-10.27)

ix) a person who is vulnerable as a result of ceasing to occupy accommodation because of violence from another person or threats of violence from another person which are likely to be carried out (see paragraphs 10.28-10.29);

x) a person who is vulnerable for any other special reason, or with whom such a person resides or might reasonably be expected to reside (see paragraphs 10.30-10.35);

xi) a person who is homeless, or threatened with homelessness, as a result of an emergency such as flood, fire or other disaster (see paragraph 10.42).

10.3. Inquiries as to whether an applicant has a priority need must be carried out in all cases where the housing authority has reason to believe that an applicant may be homeless or threatened with homelessness, and is eligible for assistance (s.184). 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 interim accommodation, pending a decision on the case (see Chapter 7).

10.4. 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(2)) it cannot – unless the decision is subject to a request for a review – change the decision if the applicant subsequently ceases to have a priority need (e.g. because a dependent child leaves home). Any change of circumstance prior to the decision on the homelessness application should be taken into account. However, once all the relevant inquiries are completed, the housing authority should not defer making a decision on the case in anticipation of a possible change of circumstance. (See Chapter 19 for guidance on reviews.)

PREGNANT WOMEN

10.5. A pregnant woman, and anyone with whom she lives or might reasonably be expected to live, has a priority need for accommodation. This is regardless of the length of time that the woman has been pregnant. Housing authorities should seek normal confirmation of pregnancy, e.g. a letter from a medical professional, such as a midwife, should be adequate evidence of pregnancy. If a pregnant woman suffers a miscarriage or terminates her pregnancy during the assessment process the housing authority should consider whether she continues to have a priority need as a result of some other factor (e.g. she may be vulnerable as a result of an other special reason – see paragraph 10.30).

DEPENDENT CHILDREN

- 10.6.** Applicants have a priority need if they have one or more dependent children who normally live with them or who might reasonably be expected to live with them. There must be actual dependence on the applicant, although the child need not be wholly and exclusively dependent on him or her. There must also be actual residence (or a reasonable expectation of residence) with some degree of permanence or regularity, rather than a temporary arrangement whereby the children are merely staying with the applicant for a limited period (see paragraphs 10.9 and 10.10). Similarly, the child need not be wholly and exclusively resident (or expected to reside wholly and exclusively) with the applicant.
- 10.7.** The 1996 Act does not define dependent children, but housing authorities may wish to treat as dependent 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. The meaning of dependency is not, however, limited to financial dependency. Thus, while children aged 16 and over who are in full-time employment and are financially independent of their parents would not normally be considered to be dependants, housing authorities should remember that such children may not be sufficiently mature to live independently of their parents, and there may be sound reasons for considering them to be dependent. Each case will need to be carefully considered according to the circumstances.
- 10.8.** Dependent children need not necessarily be the applicant's own children but could, for example, be related to the applicant or his or her partner or be adopted or fostered by the applicant. There must, however, be some form of parent/child relationship.
- 10.9.** Housing authorities may receive applications from a parent who is separated from his or her former spouse or partner. In some cases where parents separate, the court may make a residence order indicating with which parent the child normally resides. In such cases, the child may be considered to reside with the parent named in the order, and would not normally be expected to reside with the other parent. However, in many cases the parents come to an agreement themselves as to how the child is to be cared for, and a court order will not be made or required.
- 10.10.** Residence does not have to be full-time and a child can be considered to reside with either parent even where he or she divides his or her time between both parents. However, as mentioned above, there must be some regularity to the arrangement. If the child is not currently residing with the applicant, the housing authority will need to decide whether, in the circumstances, it would be reasonable for the child to do so. An agreement between a child's parents, or a joint residence order by a court, may not automatically lead to a conclusion that it would be reasonable for the child to reside with the parent making the application, and housing authorities will need to consider each case individually. However, housing authorities should remember that where parents separate, it will often be in the best interests of the child to maintain a relationship with both parents.

10.11. Where the applicant's children are being looked after by a social services authority – for example, they are subject to a care order or are being accommodated under a voluntary agreement – and they are not currently living with the applicant, liaison with the social services authority will be essential. Joint consideration with social services will ensure that the best interests of the applicant and the children are served. This may, for example, enable a family to be reunited subject to suitable accommodation being available.

VULNERABILITY

10.12. 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 learning disability (mental handicap) or physical disability;
- iii) having been looked after, accommodated or fostered and is aged 21 or more;
- iv) having been a member of Her Majesty's regular naval, military or air forces;
- v) having been in custody or detention;
- vi) ceasing to occupy accommodation because of violence from another person or threats of violence from another person which are likely to be carried out; or
- vii) any other special reason.

In the case of i), ii) and vii) only, a person with whom a vulnerable person lives or might reasonably be expected to live also has a priority need for accommodation and can therefore make an application on behalf of themselves and that vulnerable person.

10.13. It is a matter of judgement whether the applicant's circumstances make him or her vulnerable. When determining whether an applicant in any of the categories set out in paragraph 10.12 is vulnerable, the local authority should consider whether, when homeless, the applicant would be less able to fend for him/herself than an ordinary homeless person 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.

10.14. Some of the factors which may be relevant to determining whether a particular category of applicant is vulnerable are set out below. The assessment of an applicant's ability to cope is a composite one taking into account all of the circumstances. The applicant's vulnerability must be assessed on the basis that he or she is or will become homeless, and not on his or her ability to fend for him or herself while still housed.

Old age

10.15. Old age alone is not sufficient for the applicant to be deemed vulnerable. However, it may be that as a result of old age the applicant would be less able to fend for him or herself as provided in paragraph 10.13 above. All applications from people aged over 60 need to be considered carefully, particularly where the applicant is leaving tied accommodation. However, housing authorities should not use 60 (or any other age) as a fixed age beyond which vulnerability occurs automatically (or below which it can be ruled out); each case will need to be considered in the light of the individual circumstances.

Mental illness or learning disability or physical disability

10.16. Housing authorities should have regard to any advice from medical professionals, social services or current providers of care and support. In cases where there is doubt as to the extent of any vulnerability authorities may also consider seeking a clinical opinion. However, the final decision on the question of vulnerability will rest with the housing authority. In considering whether such applicants are vulnerable, authorities will need to take account of all relevant factors including:

- i) the nature and extent of the illness and/or disability which may render the applicant vulnerable;
- ii) the relationship between the illness and/or disability and the individual's housing difficulties; and
- iii) the relationship between the illness and/or disability and other factors such as drug/alcohol misuse, offending behaviour, challenging behaviours, age and personality disorder.

10.17. Assessment of vulnerability due to mental health will require close co-operation between housing authorities, social services authorities and mental health agencies. Housing authorities should consider carrying out joint assessments or using a trained mental health practitioner as part of an assessment team. Mental Health NHS Trusts and local authorities have an express duty to implement a specifically tailored care programme (the Care Programme Approach – CPA) for all patients considered for discharge from psychiatric hospitals and all new patients accepted by the specialist psychiatric services (see *Effective care co-ordination in mental health services: modernising the care programme approach*, DH, 1999). **People discharged from psychiatric hospitals and local authority hostels for people with mental health problems are likely to be vulnerable.** Effective, timely, liaison between housing, social services and NHS Trusts will be essential in such cases but authorities will also need to be sensitive to direct approaches from former patients who have been discharged and may be homeless.

10.18. Learning or physical disabilities or long-term acute illnesses, such as those defined by the *Disability Discrimination Act 1995*, which impinge on the applicant's housing situation and give rise to vulnerability may be readily discernible, but advice from health or social services staff should be sought, wherever necessary.

Having been looked after, accommodated or fostered and aged 21 or over

10.19. A person aged 21 or over who is vulnerable as a result of having been looked after, accommodated or fostered has a priority need (other than a person who is a 'relevant student'). The terms 'looked after, accommodated or fostered' are set out in the *Children Act 1989* (s.24) and include any person who has been:

- i) looked after by a local authority (i.e. has been subject to a care order or accommodated under a voluntary agreement);
- ii) accommodated by or on behalf of a voluntary organisation;
- iii) accommodated in a private children's home;
- iv) accommodated for a consecutive period of at least three months:
 - by a health authority, special health authority, primary care trust or local education authority, or
 - in any care home or independent hospital or in any accommodation provided by a National Health Service trust; or
- v) privately fostered.

A 'relevant student' means a care leaver under 24 to whom section 24B(3) of the *Children Act 1989* applies, and who is in full-time further or higher education and whose term-time accommodation is not available during a vacation. Under s.24B(5), where a social services authority is satisfied that a person is someone to whom section 24B(3) applies and needs accommodation during a vacation they must provide accommodation or the means to enable it to be secured.

10.20. Housing authorities will need to make enquiries into an applicant's childhood history to establish whether he or she has been looked after, accommodated or fostered in any of these ways. If so, they will need to consider whether he or she is vulnerable as a result. In determining whether there is vulnerability (as set out in paragraph 10.13 above), factors that a housing authority may wish to consider are:

- i) the length of time that the applicant was looked after, accommodated or fostered;
- ii) the reasons why the applicant was looked after, accommodated or fostered;

- iii) the length of time since the applicant was looked after, accommodated or fostered, and whether the applicant had been able to obtain and/or maintain accommodation during any of that period;
- iv) whether the applicant has any existing support networks, particularly including family, friends or mentor.

Having been a member of the armed forces

- 10.21.** A person who is vulnerable as a result of having been a member of Her Majesty's regular armed forces has a priority need for accommodation. Former members of the armed forces will include a person who was previously a member of the regular naval, military or air forces, including a person who has been released following detention in a military corrective training centre.
- 10.22.** The principal responsibility for providing housing information and advice to Service personnel lies with the armed forces up to the point of discharge and these services are delivered through the Joint Service Housing Advice Office (telephone: 01722 436575). Some people, who have served in the armed forces for a long period, and those who are medically discharged, may be offered assistance with resettlement by Ministry of Defence (MOD) resettlement staff. The MOD issues a *Certificate of Cessation of Entitlement to Occupy Service Living Accommodation* (see examples at Annexes 14 and 15) six months before discharge. Applications from former members of the armed forces will need to be considered carefully to assess whether the applicant is vulnerable as a result of having served in the armed forces.
- 10.23.** In considering whether former members of the armed forces are vulnerable (as set out in paragraph 10.13 above) as a result of their time spent in the forces, a housing authority may wish to take into account the following factors:
- i) the length of time the applicant spent in the armed forces (although authorities should not assume that vulnerability could not occur as a result of a short period of service);
 - ii) the type of service the applicant was engaged in (those on active service may find it more difficult to cope with civilian life);
 - iii) whether the applicant spent any time in a military hospital (this could be an indicator of a serious health problem or of post-traumatic stress);
 - iv) whether HM Forces' medical and welfare advisers have judged an individual to be particularly vulnerable in their view and have issued a Medical History Release Form (F Med 133) giving a summary of the circumstances causing that vulnerability;
 - v) the length of time since the applicant left the armed forces, and whether he or she had been able to obtain and/or maintain accommodation during that time;

- vi) whether the applicant has any existing support networks, particularly by way of family or friends.

Having been in custody or detention

10.24. A person who is vulnerable as a result of having served a custodial sentence, been committed for contempt of court or remanded in custody has a priority need for accommodation. This category applies to applicants who are vulnerable as a result of having:

- i) served a custodial sentence within the meaning of the *Powers of Criminal Courts (Sentences) Act 2000*, s.76. (This includes sentences of imprisonment for those aged 21 or over and detention for those aged under 21, including children.);
- ii) been committed for contempt of court or any other kindred offence (kindred offence refers to statutory provisions for contempt as opposed to the inherent jurisdiction of the court, e.g. under the *Contempt of Court Act 1981*, s.12 (magistrates' court) and *County Court Act 1984*, s.118 (county court)). (Committal may arise, e.g. where an applicant has breached a civil injunction.);
- iii) been remanded in custody within the meaning of the *Powers of Criminal Courts (Sentencing) Act 2000*, s.88(1)(b), (c) or (d), i.e. remanded in or committed to custody by an order of a court; remanded or committed to housing authority accommodation under the *Children and Young Persons Act 1969* and placed and kept in secure accommodation; or, remanded, admitted or removed to hospital under the *Mental Health Act 1983*, ss. 35, 36, 38 or 48.

10.25. Applicants have a priority need for accommodation only if they are vulnerable (see paragraph 10.13 above) as a result of having been in custody or detention. In determining whether applicants who fall within one of the descriptions in paragraph 10.24 are vulnerable as a result of their period in custody or detention, a housing authority may wish to take into account the following factors:

- i) the length of time the applicant served in custody or detention (although authorities should not assume that vulnerability could not occur as a result of a short period in custody or detention);
- ii) whether the applicant is receiving supervision from a criminal justice agency e.g. the Probation Service, Youth Offending Team or Drug Intervention Programme. Housing authorities should have regard to any advice from criminal justice agency staff regarding their view of the applicant's general vulnerability, but the final decision on the question of vulnerability for the purposes of the homelessness legislation will rest with the housing authority;
- iii) the length of time since the applicant was released from custody or detention, and the extent to which the applicant had been able to obtain and/or maintain accommodation during that time;

- iv) whether the applicant has any existing support networks, for example family or friends, and how much of a positive influence these networks are likely to be in the applicant's life.

- 10.26.** In many cases a housing needs assessment may have been completed in respect of offenders by the Probation Service, Prison Services, Youth Offending Team, Criminal Justice Intervention Team or a voluntary organisation acting on behalf of one of these agencies. Where such an assessment identifies an individual as needing help in finding accommodation and judges the individual to be particularly vulnerable and the applicant makes an application for housing assistance, this information will be made available to the relevant housing authority.
- 10.27.** In addition to the question of priority need, when assessing applicants in this client group difficult issues may arise as to whether the applicant has become homeless intentionally. Housing authorities must consider each case in the light of all the facts and circumstances. **Housing authorities are reminded that they cannot adopt a blanket policy of assuming that homelessness will be intentional or unintentional in any given circumstances** (see Chapter 11 for guidance on intentional homelessness).

Having left accommodation because of violence

- 10.28.** A person has a priority need if he or she is vulnerable (as set out in paragraph 10.13 above) as a result of having to leave accommodation because of violence from another person, or threats of violence from another person that are likely to be carried out. It will usually be apparent from the assessment of the reason for homelessness whether the applicant has had to leave accommodation because of violence or threats of violence (see Chapter 8 for further guidance on whether it is reasonable to continue to occupy accommodation). **In cases involving violence, the safety of the applicant and ensuring confidentiality must be of paramount concern.** It is not only domestic violence that is relevant, but all forms of violence, including racially motivated violence or threats of violence likely to be carried out. Inquiries of the perpetrators of violence should not be made. In assessing whether it is likely that threats of violence are likely to be carried out, a housing authority should only take into account the probability of violence, and not actions which the applicant could take (such as injunctions against the perpetrators). See Chapter 6 for further guidance on dealing with cases involving violence.
- 10.29.** In considering whether applicants are vulnerable as a result of leaving accommodation because of violence or threats of violence likely to be carried out, a housing authority may wish to take into account the following factors:
- i) the nature of the violence or threats of violence (there may have been a single but significant incident or a number of incidents over an extended period of time which have had a cumulative effect);
 - ii) the impact and likely effects of the violence or threats of violence on the applicant's current and future well being;

- iii) whether the applicant has any existing support networks, particularly by way of family or friends.

Other special reason

- 10.30.** Section 189(1)(c) provides that a person has a priority need for accommodation if he or she is vulnerable for any “other special reason”. A person with whom such a vulnerable person normally lives or might reasonably be expected to live also has a priority need. The legislation envisages that vulnerability can arise because of factors that are not expressly provided for in statute. Each application must be considered in the light of the facts and circumstances of the case. Moreover, other special reasons giving rise to vulnerability are not restricted to the physical or mental characteristics of a person. Where applicants have a need for support but have no family or friends on whom they can depend they may be vulnerable as a result of another special reason.
- 10.31. Housing authorities must keep an open mind and should avoid blanket policies that assume that particular groups of applicants will, or will not, be vulnerable for any “other special reason”.** Where a housing authority considers that an applicant may be vulnerable, it will be important to make an in-depth assessment of the circumstances of the case. Guidance on certain categories of applicants who may be vulnerable as a result of any “other special reason” is given below. The list below is not exhaustive and housing authorities must ensure that they give proper consideration to every application on the basis of the individual circumstances. In addition, housing authorities will need to be aware that an applicant may be considered vulnerable for any “other special reason” because of a combination of factors which taken alone may not necessarily lead to a decision that they are vulnerable (e.g. drug and alcohol problems, common mental health problems, a history of sleeping rough, no previous experience of managing a tenancy).
- 10.32. *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 are likely to fall within one of the specified categories of priority need) but also because the manifestations or effects of their illness, or common attitudes to it, make it very difficult for them to find and maintain 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 (who may not have any overt signs or symptoms) if the nature of their infection is known.
- 10.33. *Young people.*** The 2002 Order makes specific provision for certain categories of young homeless people (see paragraph 10.2). However, there are many other young people who fall outside these categories but who could become homeless and be vulnerable in certain circumstances. When assessing applications from young people under 25 who do not fall within any of the specific categories of priority need, housing authorities should give careful consideration to the possibility of vulnerability. 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 or who cannot remain

there because they are being subjected to violence or sexual abuse, may lack this back-up network and be less able than others to establish and maintain a home for themselves. Moreover, a young person on the streets without adequate financial resources to live independently may be at risk of abuse or prostitution. See Chapter 12 for further guidance on 16 and 17 year olds.

- 10.34. *People fleeing harassment.*** Authorities should consider whether harassment falls under the general definition of domestic violence (see definition in Chapter 8 and paragraphs 10.28-10.29 above which give guidance on vulnerability as a result of violence). In some cases, however, severe harassment may fall short of actual violence or threats of violence likely to be carried out. Housing authorities should consider carefully whether applicants who have fled their home because of non-violent forms of harassment, for example verbal abuse or damage to property, are vulnerable as a result. Careful consideration should be given to applicants who may be at risk of witness intimidation. In some criminal cases the police may provide alternative accommodation for witnesses, but usually this will apply for the duration of the trial only. Witnesses may have had to give up their home or may feel unable to return to it when the trial has finished.
- 10.35. *Former asylum seekers.*** Former asylum seekers who have been granted refugee status or exceptional leave to remain, humanitarian protection, or discretionary leave will be eligible for homelessness assistance and may be at risk of homelessness as a result of having to leave accommodation that had been provided for them (e.g. by the National Asylum Support Service) in the period before a decision was reached on their asylum claim. They may well have experienced persecution or trauma in their country of origin or severe hardship in their efforts to reach the UK and may be vulnerable as a result. In assessing applications from this client group, housing authorities should give careful consideration to the possibility that they may be vulnerable as a result of another special reason. Authorities should be sensitive to the fact that former asylum seekers may be reluctant to discuss, or have difficulty discussing, their potential vulnerability, if, for example, they have experienced humiliating, painful or traumatic circumstances such as torture, rape or the killing of a family member.

16 AND 17 YEAR OLDS

- 10.36.** All 16 and 17 year old homeless applicants have a priority need for accommodation except those who are:
- i) a relevant child, or
 - ii) a child in need who is owed a duty under s.20 of the *Children Act 1989*.

Relevant child or child in need owed a duty under s.20 of the 1989 Act

- 10.37.** A relevant child is a child aged 16 or 17 who has been looked after by a local authority for at least 13 weeks since the age of 14 and has been looked after at some time while 16 or 17 and who is not currently being looked after (i.e. an ‘eligible child’ for the purposes of paragraph 19B of Schedule 2 to the *Children Act 1989*). In addition, a child is also a relevant child if he or she would have been looked after by the local authority as an eligible child but for the fact that on his or her 16th birthday he or she was detained through the criminal justice system, or in hospital, or if he or she has returned home on family placement and that has broken down (see the *Children Act 1989*, s.23A and the *Children (Leaving Care) Regulations 2001* regulation 4).
- 10.38.** The *Children Act 1989* (s.20(3)) places a duty on children’s services authorities to provide accommodation for a child in need aged 16 or over whose welfare is otherwise likely to be seriously prejudiced if they do not provide accommodation; and s.20(1) places a duty on children’s services authorities to provide accommodation for children in need in certain other circumstances.
- 10.39.** Responsibility for providing suitable accommodation for a relevant child or a child in need to whom a local authority owes a duty under s.20 of the *Children Act 1989* rests with the children’s services authority. In cases where a housing authority considers that a section 20 duty is owed, they should verify this with the relevant children’s services authority. In all cases of uncertainty as to whether a 16 or 17 year old applicant may be a relevant child or a child in need, the housing authority should contact the relevant children’s services authority and, where necessary, should provide interim accommodation under s.188, pending clarification. A framework for joint assessment of 16 and 17 year olds will need to be established by housing and children’s services authorities (and housing and children’s services departments within unitary authorities) to facilitate the seamless discharge of duties and appropriate services to this client group.

See Chapter 12 for more detailed guidance on 16 and 17 year olds.

HAVING BEEN LOOKED AFTER, ACCOMMODATED OR FOSTERED AND AGED UNDER 21

- 10.40.** A person under 21 who was (but is no longer) looked after, accommodated or fostered between the ages of 16 and 18 has a priority need for accommodation (other than a person who is a ‘relevant student’). The terms ‘looked after’, ‘accommodated’ or ‘fostered’ are set out in the *Children Act 1989* (s.24) and include any person who has been:
- i) looked after by a local authority (i.e. has been subject to a care order or accommodated under a voluntary agreement);
 - ii) accommodated by or on behalf of a voluntary organisation;

- iii) accommodated in a private children's home;
- iv) accommodated for a consecutive period of at least three months:
 - by a health authority, special health authority, primary care trust or local education authority, or
 - in any care home or independent hospital or in any accommodation provided by a National Health Service trust; or
- v) privately fostered.

A 'relevant student' means a care leaver under 24 to whom section 24B(3) of the *Children Act 1989* applies, and who is in full-time further or higher education and whose term-time accommodation is not available during a vacation. Under s.24B(5), where a social services authority is satisfied that a person is someone to whom s.24B(3) applies and needs accommodation during a vacation they must provide accommodation or the means to enable it to be secured.

- 10.41.** Housing authorities will need to liaise with the social services authority when dealing with homeless applicants who may fall within this category of priority need.

HOMELESS AS A RESULT OF AN EMERGENCY

- 10.42.** Applicants have a priority need for accommodation if they are homeless or threatened with homelessness as a result of an emergency such as fire, flood or other disaster. To qualify as an "other disaster" the disaster must be in the nature of a flood or fire, and involve some form of physical damage or threat of damage. Applicants have a priority need by reason of such an emergency whether or not they have dependent children or are vulnerable for any reason.

CHAPTER 11: INTENTIONAL HOMELESSNESS

- 11.1.** This chapter provides guidance on determining whether an applicant became homeless, or threatened with homelessness, *intentionally or unintentionally*.
- 11.2.** The duty owed towards those who are homeless, or threatened with homelessness, and who have a priority need for accommodation will depend upon whether they became homeless, or threatened with homelessness, intentionally or unintentionally. Section 191 defines the circumstances in which an applicant is to be regarded as having become homeless intentionally. Section 196 frames the same definitions in regard to someone who is threatened with homelessness.
- 11.3.** The duty owed to applicants who have a priority need for accommodation but have become homeless, or threatened with homelessness, intentionally is less than the duty owed to those who have a priority need for accommodation and have become homeless, or threatened with homelessness, unintentionally. This recognises the general expectation that, wherever possible, people should take responsibility for their own accommodation needs and ensure that they do not behave in a way which might lead to the loss of their accommodation.
- 11.4.** Where a housing authority finds an applicant to be homeless, or threatened with homelessness, intentionally they have a duty to provide the applicant (or secure that the applicant is provided) with advice and assistance in any attempts he or she may make to secure that accommodation becomes available (or does not cease to be available) for his or her occupation. Before this advice and assistance is given, the authority must assess the applicant's housing needs. The advice and assistance must include information about the likely availability in the authority's district of types of accommodation appropriate to the applicant's housing needs (including, in particular, the location and sources of such types of accommodation). Authorities should consider what best advice and assistance the authority could provide, for example, providing information about applying for social housing, local lettings in the private rented sector, rent deposit schemes or housing benefit eligibility – to help the applicant avoid homelessness or secure accommodation (see Chapter 2 for further guidance on preventing homelessness). Where such an applicant also has a priority need for accommodation the authority will also have a duty to secure accommodation for such period as will give the applicant a reasonable opportunity of securing accommodation for his or her occupation. See Chapter 14 for guidance on the main duties owed to applicants on completion of inquiries.

- 11.5.** It is for housing authorities to satisfy themselves in each individual case whether an applicant is homeless or threatened with homelessness intentionally. Generally, it is not for applicants to “prove their case”. The exception is where an applicant seeks to establish that, as a member of a household previously found to be homeless intentionally, he or she did not acquiesce in the behaviour that led to homelessness. In such cases, the applicant will need to demonstrate that he or she was not involved in the acts or omissions that led to homelessness, and did not have control over them.
- 11.6. 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 – see paragraph 11.14).** 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.

DEFINITIONS OF INTENTIONAL HOMELESSNESS

- 11.7.** Sections 191(1) and 196(1) provide that a person becomes homeless, or threatened with homelessness, intentionally if:
- i) he or she deliberately does or fails to do anything in consequence of which he or she ceases to occupy accommodation (or the likely result of which is that he or she will be forced to leave accommodation),
 - ii) the accommodation is available for his or her occupation, and
 - iii) it would have been reasonable for him or her to continue to occupy the accommodation.

However, for this purpose, an act or omission made in good faith by someone who was unaware of any relevant fact must not be treated as deliberate (see paragraph 11.20).

- 11.8.** 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.

WHOSE CONDUCT RESULTS IN INTENTIONAL HOMELESSNESS?

- 11.9.** Every applicant is entitled to individual consideration of his or her application. This includes applicants where another member of their family or household has made, or is making, a separate application. It is the **applicant** who must deliberately have done or failed to do something which resulted in homelessness or threatened homelessness. Where a housing authority has found an applicant to be homeless intentionally, nothing in the 1996 Act prevents another member of his or her household from making a separate application. Situations may arise where one or more members of a household found to be intentionally homeless were not responsible for the actions or omissions that led to the homelessness. For example, a person 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. However, where applicants were not directly responsible for the act or omission which led to their family or household becoming homeless, but they acquiesced in that behaviour, then they may be treated as having become homeless intentionally themselves. In considering whether an applicant has acquiesced in certain behaviour, the Secretary of State recommends that the housing authority take into account whether the applicant could reasonably be expected to have taken that position through a fear of actual or probable violence.

CESSATION OF OCCUPATION

- 11.10.** For intentional homelessness to be established there must have been actual occupation of accommodation which has ceased. However, occupation need not necessarily involve continuous occupation at all times, provided the accommodation was at the disposal of the applicant and available for his or her occupation. The accommodation which has been lost can be outside the UK.

CONSEQUENCE OF A DELIBERATE ACT OR OMISSION

- 11.11.** For homelessness, or threatened homelessness, to be intentional it must be a consequence of a deliberate act or omission. Having established that there was a deliberate act or omission, the housing authority will need to decide whether the loss of the applicant's home, or the likelihood of its loss, is the reasonable result of that act or omission. This is a matter of cause and effect. An example would be where a person voluntarily gave up settled accommodation that it would have been reasonable for them to continue to occupy, moved into alternative accommodation of a temporary or unsettled nature and subsequently became homeless when required to leave the alternative accommodation. Housing authorities will, therefore, need to look back to the last period of settled accommodation and the reasons why the applicant left that accommodation, to determine whether the current incidence of homelessness is the result of a deliberate act or omission.

11.12. 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. Whether accommodation is settled will depend on the circumstances of the particular case. Factors such as security of tenure and length of residence will be relevant. 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 the earlier intentional homelessness. However, a period in settled accommodation is not necessarily the only way in which a link with the earlier intentional homelessness may be broken: some other event, such as the break-up of a marriage, may be sufficient.

Probability of violence

11.13. In cases where there is a probability of violence against an applicant if they continue, or had continued, to occupy their accommodation, and the applicant was aware of measures that could have been taken to prevent or mitigate the risk of violence but decided not to take them, their decision cannot be taken as having caused the probability of violence, and thus, indirectly, having caused the homelessness. Authorities must not assume that measures which could have been taken to prevent actual or threatened violence would necessarily have been effective.

Ex-offenders

11.14. Some ex-offenders may apply for accommodation or assistance in obtaining accommodation following a period in custody or detention because they have been unable to retain their previous accommodation, due to that period in custody or detention. In considering whether such an applicant is homeless intentionally, the housing authority will have to decide whether, taking into account all the circumstances, there was a likelihood that ceasing to occupy the accommodation could reasonably have been regarded at the time as a likely consequence of committing the offence.

Former members of the armed forces

11.15. Where service personnel are required to vacate service quarters as a result of taking up an option to give notice to leave the service, and in so doing are acting in compliance with their contractual engagement, the Secretary of State considers that they should not be considered to have become homeless intentionally.

DELIBERATE ACT OR OMISSION

11.16. For homelessness to be intentional, the act or omission that led to homelessness must have been deliberate, and applicants must always be given the opportunity to explain such behaviour. An act or omission should not generally be treated as deliberate, even where deliberately carried out, if it is forced upon the applicant through no fault of their own. Moreover, an act or omission made in good faith where someone is genuinely ignorant of a relevant fact must not be treated as deliberate (see paragraph 11.24).

11.17. Generally, an act or omission should not be considered deliberate where:

- i) the act or omission was non-payment of rent which was the result of housing benefit delays, or financial difficulties which were beyond the applicant's control;
- ii) the housing authority has reason to believe the applicant is incapable of managing his or her affairs, for example, by reason of age, mental illness or disability;
- iii) the act or omission was the result of limited mental capacity; or a temporary aberration or aberrations caused by mental illness, frailty, or an assessed substance abuse problem;
- iv) the act or omission was made when the applicant was under duress;
- v) imprudence or lack of foresight on the part of an applicant led to homelessness but the act or omission was in good faith.

11.18. An applicant's actions would not amount to intentional homelessness where he or she has lost his or her home, or was obliged to sell it, because of rent or mortgage arrears resulting from significant financial difficulties, and the applicant was genuinely unable to keep up the rent or mortgage payments even after claiming benefits, and no further financial help was available.

11.19. Where an applicant has lost a former home due to rent arrears, the reasons why the arrears accrued should be fully explored. Similarly, in cases which involve mortgagors, housing authorities will need to look at the reasons for mortgage arrears together with the applicant's ability to pay the mortgage commitment when it was taken on, given the applicant's financial circumstances at the time.

11.20. Examples of acts or omissions which may be regarded as deliberate (unless any of the circumstances set out in paragraph 11.17 apply) include the following, where someone:

- i) chooses to sell his or her home in circumstances where he or she is under no risk of losing it;

- ii) has lost his or her home because of wilful and persistent refusal to pay rent or mortgage payments;
- iii) could be said to have significantly neglected his or her affairs having disregarded sound advice from qualified persons;
- iv) voluntarily surrenders adequate accommodation in this country or abroad which it would have been reasonable for the applicant to continue to occupy;
- v) is evicted because of his or her anti-social behaviour, for example by nuisance to neighbours, harassment etc.;
- vi) is evicted because of violence or threats of violence by them towards another person;
- vii) 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 (but note paragraph 11.15).

AVAILABLE FOR OCCUPATION

11.21. For homelessness to be intentional the accommodation must have been available for the applicant and anyone reasonably expected to live with him or her. Further guidance on “availability for occupation” is provided in Chapter 8.

REASONABLE TO CONTINUE TO OCCUPY THE ACCOMMODATION

11.22. An applicant cannot be treated as intentionally homeless unless it would have been reasonable for him or her to have continued to occupy the accommodation. Guidance on “reasonable to continue to occupy” is provided in Chapter 8. It will be necessary for the housing authority to give careful consideration to the circumstances of the applicant and the household, in each case, and with particular care in cases where violence has been alleged.

11.23. Authorities are reminded that, where the applicant has fled his or her home because of violence or threats of violence likely to be carried out, and has failed to pursue legal remedies against the perpetrator(s) which might have prevented the violence or threat of violence, although these decisions (to leave the home and not pursue legal remedies) may be deliberate, the homelessness would not be intentional if it would not have been reasonable for the applicant to continue to occupy the home.

ACTS OR OMISSIONS IN GOOD FAITH

- 11.24.** Acts or omissions made in good faith where someone was genuinely unaware of a relevant fact must not be regarded as deliberate. Provided that the applicant has acted in good faith, there is no requirement that ignorance of the relevant fact be reasonable.
- 11.25.** A general example of an act made in good faith would be a situation where someone gave up possession of accommodation in the belief that they had no legal right to continue to occupy the accommodation and, therefore, it would not be reasonable for them to continue to occupy it. This could apply where someone leaves rented accommodation in the private sector having received a valid notice to quit or notice that the assured shorthold tenancy has come to an end and the landlord requires possession of the property, and the former tenant was genuinely unaware that he or she had a right to remain until the court granted an order and warrant for possession.
- 11.26.** Where there was dishonesty there could be no question of an act or omission having been made in good faith.
- 11.27.** Other examples of acts or omissions that could be made in good faith might include situations where:
- i) a person gets into rent arrears, being unaware that he or she may be entitled to housing benefit or other social security benefits;
 - ii) an owner-occupier 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) 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.

In (iii) although the housing authority may consider that it would have been reasonable for the tenant to continue to occupy the accommodation, the act should not be regarded as deliberate if the tenant made the decision to leave the accommodation in ignorance of material facts, e.g. the general pressure on the authority for housing assistance.

APPLICANT ENTERS INTO AN ARRANGEMENT

- 11.28.** Housing authorities will need to be alert to the possibility of collusion by which a person may claim that he or she is obliged to leave accommodation in order to take advantage of the homelessness legislation. Some parents and children, for example, may seek to take advantage of the fact that 16 and 17 year old applicants have a priority need for accommodation. Collusion is not confined to those staying with friends or relatives but can also occur between landlords and tenants. Housing authorities, while relying on experience, nonetheless need to be satisfied that collusion exists, and must not rely on hearsay or unfounded suspicions. For collusion to amount

to intentional homelessness, s.191(3) specifies that there should be no other good reason for the applicant's homelessness. Examples of other good reasons include overcrowding or an obvious breakdown in relations between the applicant and his or her host or landlord. In some cases involving collusion the applicant may not actually be homeless, if there is no genuine need for the applicant to leave the accommodation. See paragraphs 8.9-8.12 for further guidance on applicants asked to leave by family or friends.

FAMILIES WITH CHILDREN UNDER 18

- 11.29.** It is important that social services are alerted as quickly as possible to cases where the applicant has children under 18 and the housing authority considers the applicant may be homeless, or threatened with homelessness, intentionally. Section 213A(2) therefore requires housing authorities to have arrangements in place to ensure that all such applicants are invited to agree to the housing authority notifying the social services authority of the essential facts of their case. The arrangements must also provide that, where consent is given, the social services authority are made aware of the essential facts and, in due course, of the subsequent decision on the homelessness case. See Chapter 13 for further guidance on section 213A.

FURTHER APPLICATIONS FOR ASSISTANCE

- 11.30.** There is no period of disqualification if someone wants to make a fresh application after being found intentionally homeless. Where a person whose application has just been decided makes a fresh application, the authority will need to decide whether there are any new facts in the fresh application which render it different from the earlier application. If no new facts are revealed, or any new facts are of a trivial nature, the authority would not be required to consider the new application. However, where the fresh application does reveal substantive new facts, the authority must treat the fresh application in the same way as it would any other application for accommodation or assistance in obtaining accommodation. Therefore, if the authority have reason to believe that the person is homeless or threatened with homelessness, the authority must make inquiries under s.184 and decide whether any interim duty is owed under s.188(1). See Chapter 6 for guidance on inquiries and Chapter 7 for guidance on the interim duty.

CHAPTER 12: 16 & 17 YEAR OLDS

12.1. This chapter provides guidance on specific duties towards 16 and 17 year old applicants.

Priority need

12.2. All 16 and 17 year old homeless applicants have a priority need for accommodation except those who are:

- i) a relevant child, or
- ii) a child in need who is owed a duty under s.20 of the *Children Act 1989*.

See Chapter 10 for more detailed guidance on priority need.

Relevant child or child in need owed a duty under s.20 of the 1989 Act

12.3. A relevant child is a child aged 16 or 17 who has been looked after by a local authority for at least 13 weeks since the age of 14 and has been looked after at some time while 16 or 17 and who is not currently being looked after (i.e. an 'eligible child' for the purposes of paragraph 19B of Schedule 2 to the *Children Act 1989*). In addition, a child is also a relevant child if he or she would have been looked after by the local authority as an eligible child but for the fact that on his or her 16th birthday he or she was detained through the criminal justice system, or in hospital, or if he or she has returned home on family placement and that has broken down (see the *Children Act 1989*, s.23A and the *Children (Leaving Care) Regulations 2001*, Regulation 4).

12.4. The *Children Act 1989* (s.20(3)) places a duty on children's services authorities to provide accommodation for a child in need aged 16 or over whose welfare is otherwise likely to be seriously prejudiced if they do not provide accommodation; and s.20(1) places a duty on children's services authorities to provide accommodation for children in need in certain other circumstances.

12.5. Responsibility for providing suitable accommodation for a relevant child or a child in need to whom a local authority owes a duty under s.20 of the *Children Act 1989* rests with the children's services authority. In cases where a housing authority considers that a s.20 duty is owed, they should verify this with the relevant children's services authority.

12.6. In all cases of uncertainty as to whether a 16 or 17 year old applicant may be a relevant child or a child in need, the housing authority should contact the relevant children's services authority and, where necessary, should provide interim accommodation under s.188, pending clarification. A framework for joint assessment of 16 and 17 year olds will need to be established by housing and children's services

authorities (and housing and children's services departments within unitary authorities) to facilitate the seamless discharge of duties and appropriate services to this client group.

Family relationships

- 12.7.** The Secretary of State considers that, generally, it will be in the best interests of 16 and 17 year olds to live in the family home, unless it would be unsafe or unsuitable for them to do so because they would be at risk of violence or abuse. It is not unusual for 16 and 17 year olds to have a turbulent relationship with their family and this can lead to temporary disagreements and even temporary estrangement. Where such disagreements look likely to lead to actual or threatened homelessness the housing authority should consider the possibility of reconciliation with the applicant's immediate family, where appropriate, or the possibility of him or her residing with another member of the wider family.

Reconciliation

- 12.8.** In all cases involving applicants who are 16 or 17 years of age a careful assessment of the young person's circumstances and any risk to them of remaining at home should be made at the first response. Some 16 and 17 year olds may be at risk of leaving home because of a temporary breakdown in their relationship with their family. In such cases, the housing authority may be able to effect a reconciliation with the family. In some cases, however, relationships may have broken down irretrievably, and in others it may not be safe or desirable for the applicant to remain in the family home, for example, in cases involving violence or abuse.
- 12.9.** Therefore, any mediation or reconciliation will need careful brokering and housing authorities may wish to seek the assistance of social services in all such cases.

Collusion

- 12.10.** Where homelessness can not be avoided, local authorities should work with 16 and 17 year olds, and their families where appropriate, to explore alternative housing options. Where the main homelessness duty is owed young people need to be given the chance to consider a range of housing options including but not limited to any accommodation to be offered under s.193. Clear and accurate information is essential to allow young people to identify the right housing solution for them.
- 12.11.** Some parents and children may seek to take advantage of the fact that 16 and 17 year old applicants have a priority need for accommodation. Housing authorities will therefore need to be alive to the possibility of collusion when assessing applications from this client group. Section 191(3) (intentional homelessness) will apply in cases where there is no genuine basis for homelessness and parents have colluded with a child and fabricated an arrangement under which the child has been asked to leave the family home (see Chapter 11 for guidance on intentional homelessness).

Care and support needs

- 12.12.** Where young people actually become homeless and are provided with accommodation, local authorities should consider whether they have any care or support needs. Many young people who have experienced homelessness may lack skills in managing their affairs and require help with managing a tenancy and operating a household budget. Those estranged from their family, particularly care leavers, may lack the advice and support normally available to young people from family, friends and other mentors. 16 and 17 year olds who are homeless and estranged from their family will be particularly vulnerable and in need of support.
- 12.13.** Housing authorities will need to recognise that accommodation solutions for this client group are likely to be unsuccessful if the necessary support is not provided. Close liaison with social services, the Supporting People team and agencies working with young people will be essential. Most 16 and 17 year old applicants are likely to benefit from a period in supported accommodation before moving on to a tenancy of their own, but housing authorities should consider the circumstances of each case.
- 12.14.** **Housing authorities are reminded that Bed and Breakfast (B&B) accommodation is unlikely to be suitable for 16 and 17 year olds who are in need of support. Where B&B accommodation is used for this group it ought to be as a last resort for the shortest time possible and housing authorities will need to ensure that appropriate support is provided where necessary.** See Chapter 17 on the suitability of accommodation for further guidance on the use of B&B accommodation.
- 12.15.** 16 and 17 year olds (including lone parents) who apply for housing assistance may also have care and support needs that need to be assessed. **The Secretary of State recommends that housing authorities and social services authorities (and the relevant departments within unitary authorities) have arrangements in place for joint assessments of such young people's needs, whether the application is made initially to the housing department or social services department.** In all cases where an applicant may have care, health or other support needs, it is recommended that the housing authority liaise with the social services authority, the Supporting People team and other agencies (for example, the Primary Care Trust, Criminal Justice Services, and voluntary and community organisations), as appropriate, as part of their inquiries. A joint consideration of an applicant's housing and support needs may be crucial to assist the authority in establishing whether the applicant has a priority need for accommodation and any non-housing support needs (see Chapter 4 for guidance on securing support services and Chapter 5 for guidance on joint working).

Lone teenage parents under 18

- 12.16.** The provision of suitable accommodation with support for lone parents under 18 is a key part of the Government's Teenage Pregnancy Strategy. Providing accommodation with support for 16 and 17 year old lone parents is important for a very vulnerable group at risk of social isolation. It increases the likelihood of them making a successful transition to an independent tenancy and reduces the risk of subsequent homelessness.

12.17. The Government's objective is that all 16 and 17 year old lone parents who cannot live with their parents or partner should be offered accommodation with support. Housing authorities should work with social services, RSLs, the local teenage pregnancy co-ordinator and relevant voluntary organisations in their district to ensure that the Government's objective is met. 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. Young parents under the age of 16 must always be referred to social services so that their social care needs may be assessed. Housing authorities may find it helpful to refer to *Guidelines for Good Practice in Supported Accommodation for Young Parents*, separate guidance published jointly by DTLR and the Teenage Pregnancy Unit in September 2001 (available from www.teenagepregnancyunit.gov.uk).

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CHAPTER 13: CO-OPERATION IN CERTAIN CASES INVOLVING CHILDREN

- 13.1.** This chapter provides guidance on the duty housing authorities and social services authorities have to co-operate in certain cases involving children.
- 13.2.** Section 10 of the *Children Act 2004* establishes a duty on county level and unitary authorities¹ to make arrangements to promote co-operation between the authority, relevant partners (including district authorities) and other persons or bodies engaged in activities in relation to children, to improve the well-being of children and young people in the authority's area. Relevant partners are required to co-operate with the authority. Section 11 of the 2004 Act requires a range of agencies – including county level and unitary authorities and district authorities where there are two tiers of local government – to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children. See Chapter 5 for guidance on joint working.
- 13.3.** Where an applicant is eligible for assistance and unintentionally homeless, and has a priority need because there is one or more dependent child in his or her household, the housing authority will owe a main homelessness duty to secure that accommodation is available to them. However, not all applicants with dependent children will be owed a main homelessness duty. Applicants who are found to be ineligible for assistance are not entitled to homelessness assistance under Part 7 of the 1996 Act. Where an applicant with a priority need is found to be eligible but homeless intentionally, s.190(2) requires the housing authority to secure accommodation for such period as will give the applicant a reasonable opportunity to secure accommodation for him/herself and to ensure that the applicant is provided with advice and assistance in any attempts he or she may make to secure accommodation for his or her occupation. Where an applicant with a priority need is found to be eligible but threatened with homelessness intentionally, s.195(5) requires the housing authority to ensure that the applicant is provided with advice and assistance in any attempts he or she may make to secure that accommodation does not cease to be available for his or her occupation. See Chapter 14 for guidance on the main duties owed to applicants on completion of inquiries, including the duty to provide advice and assistance.
- 13.4.** In each of the above cases, there is a possibility that situations could arise where families may 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 might become children in need, within the meaning of the term as set out in s.17 of the *Children Act 1989*.

¹ Section 65 of the *Children Act 2004* uses the term 'children's services authority' to define these authorities as: a county council in England; a metropolitan district council; a non-metropolitan district council for an area where there is no county council; a London borough council; the Common Council of the City of London and the Council of the Isles of Scilly.

13.5. In such cases, it is important that local authority children's services are alerted as quickly as possible because the family may wish to seek assistance under Part 3 of the *Children Act 1989*, in circumstances in which they are owed no, or only limited, assistance under the homelessness legislation. This will give local authority children's services the opportunity to consider the circumstances of the child(ren) and family, and plan any response that may be deemed by them to be appropriate.

13.6. Section 213A of the 1996 Act applies where a housing authority has reason to believe that an applicant for assistance under Part 7 with whom a person under the age of 18 normally resides, or might reasonably be expected to reside:

- a) may be ineligible for assistance;
- b) may be homeless and may have become so intentionally; or
- c) may be threatened with homelessness intentionally.

In these circumstances, a housing authority is required to have arrangements in place to ensure that the applicant is invited to consent to the referral of the essential facts of his or her case to the social services authority² for the district (or, in the case of a unitary authority, the social services department of the authority). The arrangements must also provide that, where consent is given, the social services authority or department is made aware of the essential facts and, in due course, of the subsequent decision in relation to the homelessness case.

13.7. The requirement to obtain the applicant's consent to the referral of the essential facts of his or her case under section 213A(2) or (3) does not affect any other power for the housing authority to disclose information about a homelessness case to the social services authority or department. For example, even where consent is withheld, the housing authority should disclose information about a homelessness case to the social services authority if they have reason to believe that a child is, or may be, at risk of significant harm, as laid out in Chapter 5 of *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children* (2006). *Working Together* was recently revised to reflect developments in legislation, policy and practice. It was published in April 2006 and can be found on the *Every Child Matters* website at <http://www.everychildmatters.gov.uk/socialcare/safeguarding/workingtogether/>

13.8. Where a family with one or more children has been found ineligible for assistance under Part 7 or homeless, or threatened with homelessness, intentionally and approaches the social services authority, that authority will need to 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 in accordance with the *Framework for the Assessment of Children in Need and their Families* (2000), Department of Health. The findings of the assessment should provide the basis for the decision as to whether the child is a

² "Social services authority" is the term used in S.213A of the *Housing Act 1996*, and defined in S.217 of the *Housing Act 1996*. Such authorities are often now referred to as "children's services authorities". See footnote 1.

‘child in need’ and what, if any, services should be offered to the child in order to safeguard and promote his/her welfare. 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. The social services authority might wish to consider, for example, whether the best way of meeting the child’s needs would be by assisting the family to obtain accommodation, for example by providing temporary accommodation or a rent deposit, as part of the exercise of its duty set out in s.17 of the *Children Act 1989*. *Local Authority Circular 2003(13): Guidance on accommodating children in need and their families* provides further guidance to social services authorities on the effect of s.17.

- 13.9.** Where a social services authority has been made aware of a family found to be ineligible for assistance or homeless, or threatened with homelessness, intentionally 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. Under s.213A(5), 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 housing authority is not under a duty to provide accommodation for the family in these circumstances.
- 13.10.** Section 213A(6) requires unitary 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.
- 13.11.** Housing authorities may also wish to consider alerting social services authorities to cases where an applicant whose household includes a child has refused an offer of accommodation which the authority is satisfied is suitable, and the authority has made a decision that it has discharged its homelessness duty under Part 7. In such cases the household could find itself without accommodation and any prospect of further assistance from the housing authority. The applicant would, however, need to consent to the housing authority notifying the social services authority of the essential facts of his or her case (unless the housing authority has any other powers to disclose the information without consent).

CHAPTER 14: MAIN DUTIES OWED TO APPLICANTS ON COMPLETION OF INQUIRIES

- 14.1.** This chapter provides guidance on the main duties owed to applicants where the housing authority has completed its inquiries and is satisfied that an applicant is eligible for assistance and homeless or threatened with homelessness. The chapter also provides guidance on the circumstances that will bring the s.193(2) duty ('the main homelessness duty') to an end.
- 14.2.** In many cases early, effective intervention can prevent homelessness occurring. The Secretary of State considers that housing authorities should take steps to prevent homelessness wherever possible, and offer a broad range of advice and assistance to those who face the prospect of losing their current home. However, where a housing authority has completed inquiries made under s.184 (see Chapter 6 for guidance on applications) and is satisfied that an applicant is eligible for assistance and homeless or threatened with homelessness, then one or more of the duties outlined in this chapter will apply under Part 7.
- 14.3.** No duty is owed under Part 7 to applicants who are ineligible for assistance or not homeless or threatened with homelessness. However, homelessness strategies should aim to prevent homelessness amongst all households in the district and under s.179 advice and information about homelessness and the prevention of homelessness must be available free of charge to any person in the district, including these applicants. Housing authorities may also choose to offer other assistance to help them obtain accommodation, such as a rent deposit.

DUTIES TO PROVIDE ADVICE AND ASSISTANCE

- 14.4.** Housing authorities have a duty to ensure that the applicant is provided with advice and assistance in a number of different circumstances, and these are dealt with below. These duties 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, and should inform the provision of appropriate advice and assistance for that particular applicant. Among other things, the Secretary of State considers 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 whether English is not a first language. In particular, housing authorities are advised to 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.

DUTIES OWED TO APPLICANTS WHO ARE THREATENED WITH HOMELESSNESS

- 14.5.** Under s.175(4), a person is “threatened with homelessness” if he or she is likely to become homeless within 28 days. However, the Secretary of State considers that housing authorities should not wait until homelessness is a likelihood or is imminent before providing advice and assistance. Early intervention may enable homelessness to be prevented, or delayed sufficiently to allow for a planned move to be arranged. However, where a housing authority has completed its inquiries under s.184 and is satisfied that an applicant is eligible for assistance and threatened with homelessness, then the specific duties outlined in paragraphs 14.6 – 14.9 below will apply.

Unintentionally threatened with homelessness and has priority need (s.195(2))

- 14.6.** Where the authority are satisfied that an applicant is threatened with homelessness unintentionally, eligible for assistance and has a priority need for accommodation, it has a **duty** under s.195(2) *to take reasonable steps to secure that accommodation does not cease to be available for the applicant’s occupation.*
- 14.7.** Such reasonable steps may include for example, 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 any pressures that may 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 actions that the housing authority or other organisations can take, for example, addressing rent arrears due to delays in housing benefit payments or providing mediation services through the voluntary sector, that can prevent the threat of homelessness being realised. See Chapter 2 for further guidance on preventing homelessness.
- 14.8.** Under s.195(3A), as soon as an authority has become subject to a duty under s.195(2), the authority must give the applicant a copy of the statement included in their allocation scheme about their policy on offering choice to people allocated housing accommodation under Part 6. Authorities are required to include such a statement in their allocation scheme by virtue of s.167(1A) of the 1996 Act.

- 14.9. Where the housing authority is under a duty under s.195(2) and they are unable to prevent the applicant losing his or her current accommodation, the authority will need to secure alternative suitable accommodation for the applicant. Authorities should not delay; arrangements to secure alternative accommodation should begin as soon as it becomes clear that it will not be possible to prevent the applicant from losing their current home. Section 195(4) provides that, where alternative suitable accommodation is secured, the provisions of s.193(3) to (9) will apply in relation to the duty under s.195(2) as they apply in relation to the duty under s.193(2) (see paragraphs 14.17 to 14.24 below).

Unintentionally threatened with homelessness, no priority need (s.195(5) and s.195(9))

- 14.10. Where the housing authority are satisfied that an applicant is threatened with homelessness, eligible for assistance and does not have a priority need for accommodation, it has a **duty** under s.195(5) *to ensure that the applicant is provided with advice and assistance in any attempts he or she may make to secure that accommodation does not cease to be available for his or her occupation.*
- 14.11. In addition, where the housing authority are satisfied that an applicant is threatened with homelessness unintentionally, it has a **power** under s.195(9) *to take reasonable steps to secure that accommodation does not cease to be available for the applicant's occupation.* See Chapter 2 for guidance on preventing homelessness and paragraph 14.7 above.

Intentionally threatened with homelessness and has priority need (s.195(5))

- 14.12. Where the authority are satisfied that an applicant is threatened with homelessness intentionally, eligible for assistance and has a priority need for accommodation, the housing authority has a **duty** under s.195(5) *to ensure that the applicant is provided with advice and assistance in any attempts he or she may make to secure that accommodation does not cease to be available for his or her occupation.* See Chapter 2 for guidance on preventing homelessness.

DUTIES OWED TO APPLICANTS WHO ARE HOMELESS

- 14.13. Under s.175 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. Where a housing authority has completed its inquiries under s.184 and is satisfied that an applicant is eligible for assistance and homeless then the specific duties outlined below will apply.

Unintentionally homeless and has priority need (s.193(2))

- 14.14.** Where an applicant is unintentionally homeless, eligible for assistance and has a priority need for accommodation, the housing authority has a **duty** under s.193(2) *to secure that accommodation is available for occupation by the applicant* (unless it refers the application to another housing authority under s.198). This is commonly known as ‘the main homelessness duty’. In all cases, the accommodation secured must be available for occupation by the applicant together with any other person who normally resides with him or her as a member of his or her family, or any other person who might reasonably be expected to reside, with him or her, and must be suitable for their occupation. See Chapter 16 for guidance on discharging the duty to secure accommodation and Chapter 17 for guidance on suitability of accommodation.
- 14.15.** Acceptance of a duty under s.193(2) does not prevent 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. Under s.193(3A), as soon as an authority has become subject to a duty under s.193(2), the authority must give the applicant a copy of the statement included in their allocation scheme about their policy on offering choice to people allocated housing accommodation under Part 6. Authorities are required to include such a statement in their allocation scheme by virtue of s.167(1A) of the 1996 Act.
- 14.16.** If the housing authority has notified the applicant that it proposes to refer the case to another housing authority, the authority has a duty under s.200(1) to secure that accommodation is available for the applicant until he or she is notified of the decision whether the conditions for referral of his case are met. The duty under s.200(1) is therefore an interim duty only. 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. See Chapter 18 for guidance on referrals to another housing authority.

How the s.193(2) duty ends (this also applies where alternative accommodation has been secured under s.195(2))

- 14.17.** The housing authority will cease to be subject to the duty under s.193(2) (the main homelessness duty) in the following circumstances:
- i) *the applicant accepts an offer of accommodation under Part 6 (an allocation of long term social housing) (s.193(6)(c))*: this would include an offer of an assured tenancy of a registered social landlord property via the housing authority’s allocation scheme (see current guidance on the allocation of accommodation issued under s.169 of the 1996 Act);
 - ii) *the applicant accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord (s.193(6)(cc))*: this could include an offer of an assured tenancy made by a registered social landlord;

- iii) *the applicant accepts a qualifying offer of an assured shorthold tenancy from a private landlord (s.193(7B)).* The local authority must not approve an offer of an assured shorthold tenancy for the purposes of s.193(7B), unless they are satisfied that the accommodation is suitable and that it would be reasonable for the applicant to accept it (s.193(7F)) (see paragraph 14.25 below);
- iv) *the applicant refuses a final offer of accommodation under Part 6 (an allocation of long term social housing):* the duty does not end unless the applicant is informed of the possible consequences of refusal and of his or her right to ask for a review of the suitability of the accommodation (s.193(7)), the offer is made in writing and states that it is a final offer (s.193(7A)), and the housing authority is satisfied that the accommodation is suitable and that it would be reasonable for the applicant to accept it (s.193(7F)) (see paragraph 14.25 below);
- v) *the applicant refuses an offer of accommodation to discharge the duty which the housing authority is satisfied is suitable for the applicant (s.193(5)):* the duty does not end unless the applicant is 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 housing authority must also notify the applicant that it regards itself as having discharged its duty before it can end;
- vi) *the applicant ceases to be eligible for assistance as defined in s.185 of the 1996 Act;*
- vii) *the applicant becomes homeless intentionally from accommodation made available to him or her under s.193 or s.195;* see Chapter 11 for guidance on determining whether an applicant became homeless intentionally;
- viii) *the applicant otherwise voluntarily ceases to occupy as his or her principal home accommodation made available under s.193 or s.195.*

14.18. The Secretary of State recommends that applicants are given the chance to view accommodation before being required to decide whether they accept or refuse an offer, and before being required to sign any written agreement relating to the accommodation (e.g. a tenancy agreement). Under s.202(1A), an applicant who is offered accommodation can request a review of its suitability whether or not he or she has accepted the offer. See Chapter 17 for guidance on suitability and Chapter 19 for guidance on reviews.

Qualifying offer of an assured shorthold tenancy

14.19. An offer of an assured shorthold tenancy is a qualifying offer if:

- i) it is made, with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority's duty under s.193 to an end;

- ii) it is for a fixed term within the meaning of Part 1 of the *Housing Act 1988* (i.e. not a periodic tenancy) and
- iii) it is accompanied by a written statement that states the term of the tenancy being offered and explains in ordinary language that there is no obligation on the applicant to accept the offer, but if the offer is accepted the housing authority will cease to be subject to the s.193 duty.

14.20. 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

14.21. 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 (s.193(7F)) (see Chapter 17 for guidance on 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 is required to take up the offer (s.193(8)).

14.22. Housing authorities must allow applicants a reasonable period for considering offers of accommodation 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

14.23. Under s.193(6) the housing authority will also cease to be subject to the duty under s.193 in the following circumstances:

- i) *the applicant ceases to be eligible for assistance as defined in s.185 of the 1996 Act;*
- ii) *the applicant becomes homeless intentionally from accommodation made available to him or her under s.193 or s.195: see Chapter 11 for guidance on determining whether an applicant became homeless intentionally;*
- 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.*

Further applications

- 14.24.** Under s.193(9) a person who ceases to be owed a duty under s.193(2) can make a fresh application for accommodation or assistance in obtaining accommodation (see Chapter 6 for guidance on applications).

Unintentionally homeless and has no priority need (s.192(2) and s.192(3))

- 14.25.** Where an applicant is unintentionally homeless, eligible for assistance and does not have a priority need for accommodation, the housing authority has a **duty** under s.192(2) *to ensure that the applicant is provided with advice and assistance in any attempts he or she may make to secure that accommodation becomes available for his or her occupation.* The housing authority might, for example, provide assistance with a rent deposit or guarantee to help the applicant to obtain accommodation in the private rented sector, or advice on applying for an allocation of accommodation through the social housing waiting list or through another social landlord (see Chapter 2 for guidance on advisory services).
- 14.26.** In addition, housing authorities have a **power** under s.192(3) *to secure that accommodation is available for occupation by the applicant.* Authorities should consider whether to use this power in all relevant cases.

Intentionally homeless and has priority need (s.190(2))

- 14.27.** Where an applicant is intentionally homeless, eligible for assistance and has a priority need for accommodation, the housing authority has a **duty** under s.190(2) to:
- a) *secure that accommodation is available for the applicant's occupation for such period as it considers will give him or her a reasonable opportunity of securing accommodation for his or her occupation (s.190(2)(a)); and*
 - b) *provide the applicant, or secure that the applicant is provided with, advice and assistance in any attempts he or she may make to secure that accommodation becomes available for his or her occupation (s.190(2)(b)).*
- 14.28.** The accommodation secured must be suitable. Housing authorities must consider each case on its merits when determining the period for which accommodation will be secured. A few weeks may provide the applicant with a reasonable opportunity to secure accommodation for him or herself. However, some applicants might require longer, and others, particularly where the housing authority provides pro-active and effective advice and assistance, might require less time. 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.

14.29. In addition to securing accommodation, the housing authority must ensure the applicant is provided with advice and assistance to help him or her secure accommodation for him/herself. This might include, for example, assistance with a rent deposit or guarantee to help the applicant to obtain accommodation in the private rented sector, or advice on applying for an allocation of long term social housing or accommodation through another social landlord. See Chapter 2 for guidance on advisory services.

Intentionally homeless and has no priority need (s.190(3))

14.30. Where an applicant is intentionally homeless, eligible for assistance and does not have a priority need for accommodation, the housing authority has a **duty** under s.190(3) *to ensure that the applicant is provided with advice and assistance in any attempts he or she may make to secure that accommodation becomes available for his or her occupation.* This might include, for example, assistance with a rent deposit or guarantee to help the applicant to obtain accommodation in the private rented sector, or advice on applying for an allocation of long term social housing accommodation or through another social landlord. See Chapter 2 for guidance on advisory services.

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CHAPTER 15: DISCRETIONARY POWERS TO SECURE ACCOMMODATION

- 15.1.** This chapter provides guidance on the discretionary *powers* housing authorities have to secure accommodation for a household where they do not have a *duty* to secure accommodation for that household (see Chapter 16 for guidance on discharge of duties to secure accommodation).
- 15.2.** Housing authorities have powers to secure accommodation for:
- i) applicants who are eligible for assistance, unintentionally homeless and do not have a priority need for accommodation;
 - ii) applicants who request a review of the housing authority's decision on their case and who satisfy the relevant conditions, pending a decision on the review; and
 - iii) applicants who appeal to the county court against the housing authority's decision and who satisfy the relevant conditions, pending the determination of the appeal.
- 15.3.** The fact that a housing authority has decided that an applicant is ineligible for housing assistance under Part 7 does not preclude it from exercising its powers to secure accommodation pending a review or appeal. However, housing authorities should note that s.54 of, and Schedule 3 to, the *Nationality, Immigration and Asylum Act 2002* prevent them from exercising their powers to accommodate an applicant pending a review or appeal to the county court, where the applicant is a person who falls within one of a number of classes of person specified in Schedule 3. See paragraphs 9.20 – 9.23 in Chapter 9 on eligibility for assistance for further details.

WAYS OF SECURING ACCOMMODATION

- 15.4.** A housing authority may only discharge its housing functions under Part 7 in the following ways:
- a) by securing that suitable accommodation provided by them is available for the applicant (s.206(1)(a));
 - b) by securing that the applicant obtains suitable accommodation from some other person (s.206(1)(b)); or
 - c) by giving the applicant such advice and assistance as will secure that suitable accommodation is available from some other person (s.206(1)(c)).

See Chapter 17 for guidance on the suitability of accommodation and Chapter 8 for guidance on when accommodation is available for occupation. In so far as is reasonably practicable, accommodation should be secured within the authority's own district (s.208(1)).

POWER TO SECURE ACCOMMODATION FOR APPLICANTS WHO ARE UNINTENTIONALLY HOMELESS AND DO NOT HAVE PRIORITY NEED

- 15.5.** Under s.192(3), housing authorities may secure that accommodation is made 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 it will still have a duty under s.192(2) to provide advice and assistance to the applicant in any attempts that he or she may make to secure accommodation for him/herself. See Chapter 14 for guidance on this duty.
- 15.6.** By virtue of paragraph 4 of Schedule 1 to the *Housing Act 1985*, a tenancy granted under the power in s.192(3) will not be a secure tenancy. Housing authorities are reminded that all secure and introductory tenancies must be allocated in accordance with their allocation scheme, as framed under Part 6.
- 15.7.** Housing authorities should consider using this power in all relevant cases. Any exercise of, or decision not to exercise, a power may be open to challenge by way of judicial review. In considering the use of this power, housing authorities must have regard to the legitimate expectations of others in housing need who have applied for an allocation of housing under Part 6, and to any need for accommodation to meet their obligations under Part 7.
- 15.8.** Housing authorities should, in particular, consider exercising the s.192(3) power in circumstances where to do so would enable compliance with the obligations imposed on them by virtue of s.6 of the *Human Rights Act 1998* and where not doing so would mean acting in a way that may be incompatible with the applicant's Convention rights. The same is true of the power in s.195(8) (see paragraph 15.17 below).
- 15.9.** Housing authorities may also wish to consider exercising the s.192(3) power to provide accommodation for a limited period to applicants such as key workers who are unintentionally homeless but do not have priority need under Part 7, or priority for an allocation under Part 6. This would be particularly appropriate where it would be in the interests of the local community for such persons to be accommodated in the district.
- 15.10.** Non-secure tenancies will generally be suitable for a limited period only. They 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.
- 15.11.** 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.

POWERS TO ACCOMMODATE PENDING A REVIEW

15.12. Under s.202, applicants have the right to ask for a review of a housing authority's decision on a number of issues relating to their case (see Chapter 19 for guidance on reviews). Housing authorities have three powers to accommodate applicants pending a decision on the review. The relevant powers are found in s.188(3), s.195(8)(b) and s.200(5).

15.13. Under s.188(1), housing authorities must secure that accommodation is available for occupation by an applicant who they have reason to believe is:

- (a) homeless,
- (b) eligible for assistance, and
- (c) in priority need,

pending their decision as to what duty, if any, is owed to that applicant under Part 7. See Chapter 7 for further guidance on this interim duty. Under s.188(3), if the applicant requests a review of the housing authority's decision on the duty owed to them under Part 7, the authority has the power to secure that accommodation is available for the applicant's occupation pending a decision on the review.

15.14. Section 188(3) includes a power to secure that accommodation is available where the applicant was found to be intentionally homeless and in priority need and:

- (a) a duty was owed under s.190(2)(a),
- (b) the s.190(2)(a) duty has been fully discharged; and
- (c) the applicant is awaiting a decision on a review.

15.15. In considering whether to exercise their s.188(3) power, housing authorities will need to balance the objective of maintaining fairness between homeless persons in circumstances where they have decided that no duty is owed to them against proper consideration of the possibility that the applicant might be right. The Secretary of State is of the view that housing authorities should consider the following, although other factors may also be relevant:

- (a) the merits of the applicant's case that the original decision was flawed and the extent to which it can properly be said that the decision was one which was either contrary to the apparent merits or was one which involved a very fine balance of judgment;
- (b) whether any new material, information or argument has been put to them which could alter the original decision; and
- (c) the personal circumstances of the applicant and the consequences to him or her of a decision not to exercise the discretion to accommodate.

The Secretary of State considers that when determining the merits of the applicant's case that the original decision was flawed, housing authorities should take account of whether there may have been procedural irregularities in making the original decision which could have affected the decision taken.

15.16. Housing authorities should give applicants reasonable notice to vacate accommodation provided under s.188(3) following an unsuccessful s.202 review. The Secretary of State considers that reasonableness should be judged against the particular applicant's circumstances. The applicant will require time to enable him or her to make alternative accommodation arrangements and housing authorities should take account of the fact that this may be easier for some applicants than others. Housing authorities may also require time to consider whether they should exercise their discretion under s.204(4) where the applicant appeals to the county court under s.204(1) (see paragraph 15.21).

15.17. Under s.195(5)(b), where a housing authority is satisfied that an applicant is:

- (a) threatened with homelessness,
- (b) eligible for assistance, and
- (c) has a priority need, but
- (d) became threatened with homelessness intentionally,

the authority is under a duty to provide the applicant (or secure that he or she is provided with) advice and assistance so that accommodation does not cease to be available for his or her occupation. Under s.195(8)(b), if the applicant requests a review of the housing authority's decision and, pending a decision on the review, becomes homeless, the housing authority may secure that accommodation is available for his or her occupation.

15.18. Under s.200(1), where a housing authority notifies another authority of its opinion that the conditions for the referral of an applicant's case to that authority are met, the authority has a duty to secure that accommodation is available for occupation by the applicant until a decision on the referral is reached. See Chapter 18 for guidance on local connection and referrals. If the applicant subsequently requests a review of the decision reached on the referral of his or her case, the notifying authority has the power under s.200(5) to secure that accommodation is available for the applicant's occupation pending the decision on that review.

15.19. Where, generally, only a small proportion of requests for a review are successful, it may be open to housing authorities to adopt a policy of deciding to exercise their powers 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 its particular facts. In deciding whether there were exceptional circumstances, the housing authority would need to take account of all material considerations and disregard all those which were immaterial.

- 15.20.** Where an applicant is refused accommodation pending a review, he or she may seek to challenge the decision by way of judicial review.

POWER TO ACCOMMODATE PENDING AN APPEAL TO THE COUNTY COURT

- 15.21.** Applicants have the right to appeal to the county court on a point of law against a housing authority's decision on a review or, if they are not notified of the review decision, against the original homelessness decision (see Chapter 19 for guidance on appeals). Under s.204(4), housing authorities have the power to accommodate certain applicants:

- (a) during the period for making an appeal against their decision, and
- (b) if an appeal is brought, until it and any subsequent appeals are finally determined.

This power may be exercised where the housing authority was previously under a duty to secure accommodation for the applicant's occupation 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). The power may also be exercised 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.

- 15.22.** The power under s.204(4) may be exercised whether or not the housing authority has exercised its powers to accommodate the applicant pending a review.
- 15.23.** In deciding whether to exercise this power, 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 15.12).
- 15.24.** Under s.204A, applicants have a right to appeal to the county court against a decision not to secure accommodation for them pending their main appeal. In deciding a s.204A appeal, the court must apply the principles that would be applied by the High Court on an application for judicial review. The county court 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.

CHAPTER 16: SECURING ACCOMMODATION

- 16.1. This chapter provides guidance on the different ways in which housing authorities can ensure that suitable accommodation is available for applicants. In the case of the main homelessness duty the obligation to secure such accommodation will continue until such time as the duty ends in accordance with s.193.**

WAYS OF SECURING ACCOMMODATION

- 16.2.** Section 206(1) provides that a housing authority may only discharge its housing functions under Part 7 in the following ways:
- (a) by securing that suitable accommodation provided by them is available for the applicant (s.206(1)(a));
 - (b) by securing that the applicant obtains suitable accommodation from some other person (s.206(1)(b)); or
 - (c) by giving the applicant such advice and assistance as will secure that suitable accommodation is available from some other person (s.206(1)(c)).
- 16.3.** Accommodation secured must be available for occupation by the applicant and any other person who normally resides with them as a member of their family, or might reasonably be expected to reside with them. The accommodation must also be suitable for their occupation. See Chapter 8 for guidance on when accommodation is available for occupation and Chapter 17 for guidance on the suitability of accommodation.
- 16.4.** In deciding what accommodation needs to be secured housing authorities will need to consider whether the applicant has any support needs. Housing authorities will therefore need to make arrangements for effective links with the Supporting People team, the social services authority or other bodies (for example, Primary Care Trusts, Criminal Justice Services, RSLs and voluntary and community organisations) to ensure that a joint assessment of an applicant's housing and support needs can be made where necessary. See Chapter 4 for guidance on securing support services.
- 16.5.** Where a housing authority has a duty under s.193(2) to secure accommodation for an applicant ('the main homelessness duty'), the Secretary of State recommends that the authority considers, where availability of suitable housing allows, securing settled (rather than temporary) accommodation that will bring the duty to an end in the immediate or short term. For example, an offer of accommodation under the housing authority's allocation scheme or a qualifying offer of an assured shorthold tenancy from a private landlord. See Chapter 14 for guidance on bringing the s.193(2) duty to an end.

- 16.6.** The Secretary of State considers that, generally, it is inappropriate for social housing to be used as temporary accommodation for applicants other than for short periods (see paragraph 16.18 below). Except in limited circumstances where social housing is only going to be available for use for a short period, where an authority has placed a household in social housing as a temporary arrangement to fulfil a duty under s.193(2), the Secretary of State recommends that the authority considers offering the household a settled home under the terms of its allocation scheme as soon as possible.

ACCOMMODATION SECURED OUT OF DISTRICT

- 16.7.** Section 208(1) requires housing authorities to secure accommodation within their district, in so far as is reasonably practicable. Housing authorities should, therefore, aim to secure accommodation within their own district wherever possible, except where there are clear benefits for the applicant of being accommodated outside of the district. This could occur, for example, where the applicant, and/or a member of his or her household, would be at risk of domestic or other violence in the district and need to be accommodated elsewhere to reduce the risk of further contact with the perpetrator(s) or where ex-offenders or drug/alcohol users would benefit from being accommodated outside the district to help break links with previous contacts which could exert a negative influence.
- 16.8.** Where it is not reasonably practicable for the applicant to be placed in accommodation within the housing authority's district, and the housing authority places the applicant in accommodation elsewhere, s.208(2) requires the housing authority to notify the housing authority in whose district 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.

The notice must be given in writing within 14 days of the accommodation being made available to the applicant.

- 16.9.** The Secretary of State considers that applicants whose household has a need for social services support or a need to maintain links with other essential services within the borough, for example specialist medical services or special schools, should be given priority for accommodation within the housing authority's own district. In particular,

careful consideration should be given to applicants with a mental illness or learning disability who may have a particular need to remain in a specific area, for example to maintain links with health service professionals and/or a reliance on existing informal support networks and community links. Such applicants may be less able than others to adapt to any disruption caused by being placed in accommodation in another district.

ACCESS TO SUPPORT SERVICES

16.10. The Secretary of State recommends that housing authorities consider what arrangements need to be in place to ensure that households placed in temporary accommodation, within their district or outside, are able to access relevant support services, including health, education and social services. The Secretary of State considers that all babies and young children placed in temporary accommodation, for example, should have the opportunity to receive health and developmental checks from health visitors and/or other primary health care professionals. See Chapter 4 for further guidance on securing support services.

ACCOMMODATION PROVIDED BY THE HOUSING AUTHORITY

16.11. Housing authorities may secure accommodation by providing suitable accommodation for the applicant themselves (s.206(1)(a)), in which case 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.

Housing authority's own stock

16.12. In considering whether to provide accommodation from their own stock, housing authorities will need to balance the requirements of applicants owed a duty under Part 7 against the need to provide accommodation for others who have priority for an allocation under Part 6 of the 1996 Act. **The Secretary of State considers that, generally, it is inappropriate for social housing to be used as temporary accommodation for applicants other than for short periods.**

16.13. Paragraph 4 of Schedule 1 to the *Housing Act 1985* provides that a tenancy granted by a housing authority in pursuance of any function under Part 7 is not a secure tenancy unless the housing authority notifies the tenant that it is such. Housing authorities are reminded that the allocation of secure and introductory tenancies must be made in accordance with their allocation scheme framed under the provisions of Part 6.

Housing authority hostels

- 16.14.** Some housing authorities operate their own hostels and may wish to use these to accommodate certain applicants, particularly where they consider an applicant would benefit from a supported environment. See paragraphs 16.25 and 16.26 for further guidance on the use of hostel accommodation.

Accommodation leased from a private landlord

- 16.15.** Accommodation leased from a private landlord can provide housing authorities with a source of good quality, self-contained accommodation which can be let to applicants. Where there is a need for temporary accommodation, housing authorities are encouraged to maximise their use of this type of leasing, in so far as they can secure cost-effective arrangements with landlords.
- 16.16.** Under the prudential capital finance system (introduced by the *Local Government Act 2003* on 1 April 2004) local authorities are free to borrow without Government consent, provided that they can service the debts without extra Government support. The authority must determine how much it can afford to borrow. The new system ended the former financial disincentives to use leasing (and other forms of credit). Consequently, there is no longer any need for special concessions relating to leases of property owned by private landlords where that property is used to accommodate households owed a duty under Part 7. When entering into leases, as when borrowing, the capital finance rules simply require authorities to be satisfied that the associated liabilities are affordable.

ACCOMMODATION SECURED FROM ANOTHER PERSON

- 16.17.** Housing authorities may secure that the applicant obtains suitable accommodation from some other person (s.206(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 outline a number of options for securing accommodation from another landlord, which are available to housing authorities.

Registered social landlords

- 16.18.** 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 housing from RSLs. Under s.213 of the 1996 Act, 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. Housing Corporation regulatory guidance, issued with the consent of the Secretary of State under s.36 of the 1996 Act, requires RSLs, on request, to provide a proportion of their stock for nominations and as temporary accommodation for people owed a homelessness duty under Part 7 of the 1996 Act – to such extent as is reasonable in the circumstances. **The Secretary of State considers that, generally,**

it is inappropriate for social housing to be used as temporary accommodation other than for short periods (see paragraph 16.6 above). Where a longer-term stay occurs or seems likely, the authority and RSL should consider offering an assured tenancy to bring the main homelessness duty to an end. See Annex 5 for further guidance on RSL co-operation with housing authorities.

- 16.19.** Housing authorities may wish to consider contracting with RSLs for assistance in discharging their housing functions under arrangements whereby the RSL lease and/or manage accommodation owned by private landlords, which can be let to households owed a homelessness duty and nominated by the housing authority. A general consent under s.25 of the *Local Government Act 1988 (The General Consent under Section 25 of the Local Government Act 1988 for Financial Assistance to Registered Social Landlords or to Private Landlords to Relieve or Prevent Homelessness 2005)* 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.

Private lettings

- 16.20.** Housing authorities may seek the assistance of private sector landlords in providing suitable accommodation direct to applicants. A general consent under s.25 of the *Local Government Act 1988 (The General Consent under Section 25 of the Local Government Act 1988 for Financial Assistance to Registered Social Landlords or to Private Landlords to Relieve or Prevent Homelessness 2005)* allows housing authorities to provide financial assistance to private landlords in order to secure accommodation for people who are homeless or at risk of homelessness. This could involve, for example, the authority paying the costs of leases; making small one-off grants (“finders’ fees”) to landlords to encourage them to let dwellings to households owed a homelessness duty; paying rent deposits or indemnities to ensure accommodation is secured for such households; and making one-off grant payments which would prevent an eviction. There is no limit set on the amount of financial assistance that can be provided, however authorities are obliged to act reasonably and in accordance with their fiduciary duty to local tax and rent payers. Housing authorities may also make Discretionary Housing Payments (DHP) to a private landlord to meet a shortfall between the rent and the amount of housing benefit payable to a person who is homeless or at risk of homelessness. DHPs are intended to provide extra financial assistance where there is a shortfall in a person’s eligible rent and the housing authority consider that the claimant is in need of further financial assistance. They are governed by the *Discretionary Housing Payment (Grant) Order 2001*. Housing authorities should also consider working with private landlords to arrange qualifying offers of assured shorthold tenancies which would bring the main homelessness duty to an end if accepted by the applicant. See paragraph 14.19 for guidance on qualifying offers.

Tenancies granted by private landlords and registered social landlords to assist with interim duties

- 16.21.** Section 209 governs security of tenure 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), s.200(1) or 204(4). Any such accommodation is exempt from statutory security of tenure until 12 months from the date on which the applicant is notified of the authority's decision under s.184(3) or s.198(5) or from the date on which the applicant is notified of the decision of any review under s.202 or an appeal under s.204, unless the landlord notifies the applicant that the tenancy is an assured or assured shorthold tenancy.
- 16.22.** Where a private landlord or RSL lets accommodation directly to an applicant 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.

Other social landlords

- 16.23.** Under s.213 other social landlords, i.e. new town corporations and housing action trusts, have a duty to co-operate, as far as is reasonable in the circumstances, with a housing authority in carrying out their housing functions under Part 7 of the 1996 Act, if asked to do so.

Lodgings

- 16.24.** 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 district, and to liaise with social services who may operate supported lodgings schemes for people with support needs.

Hostels

- 16.25.** Some applicants may benefit from the supportive environment which managed hostels can provide. 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. 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 request 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, particularly in relation to young people, people with mental health problems and those who have experienced violence and/or abuse. In addition, where hostel accommodation is used to accommodate vulnerable young people or families with children, the Secretary of State considers that it would be inappropriate to accommodate these groups alongside adults with chaotic behavioural problems.

16.26. Housing authorities will need to take into account that some 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.

Women's refuges

16.27. Housing authorities should develop close links with women's refuges within their district, and neighbouring districts, to ensure they have access to emergency accommodation for women applicants 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 generally 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.

Bed and breakfast accommodation

16.28. Bed and Breakfast (B&B) accommodation caters 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, where possible, housing authorities should avoid using B&B hotels to discharge a duty to secure accommodation for applicants, unless, in the very limited circumstances where it is likely to be the case, it is the most appropriate option for an applicant. The Secretary of State considers B&B hotels as particularly unsuitable for accommodating applicants with family commitments and applicants aged 16 or 17 years who need support. See paragraphs 17.23 *et seq* in Chapter 17 for guidance on suitability and Chapter 12 for more detailed guidance on 16 and 17 year olds.

Accommodation provided by other housing authorities

16.29. Other housing authorities experiencing less demand for housing may be able to assist a housing authority by providing temporary or settled accommodation for homeless applicants. This could be particularly appropriate in the case of applicants who would be at risk of violence or serious harassment in the district of the housing authority to whom they have applied for assistance. Other housing authorities may also be able to provide accommodation in cases where the applicant has special housing needs and the other housing authority has accommodation available which is appropriate to those needs. 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 are encouraged to consider entering into reciprocal and co-operative arrangements under these provisions. See Chapter 5 for guidance on the statutory provisions on co-operation between authorities.

Mobile homes

16.30. Although mobile homes may sometimes provide emergency or short-term accommodation, e.g. to discharge an interim duty, housing authorities will need to be satisfied that the accommodation is suitable for the applicant and his or her household, paying particular regard to their needs, requirements and circumstances and the conditions and facilities on the site. Caravans designed primarily for short-term holiday use should not be regarded as suitable as temporary accommodation for applicants.

Tenancies for minors

16.31. There are legal complications associated with the grant of a tenancy to a minor because a minor cannot hold a legal estate in land. However, if a tenancy is granted it is likely to be enforceable as a contract for necessities (ie. the basic necessities of life) under common law. In some circumstances, social services authorities may consider it appropriate to underwrite a tenancy agreement for a homeless applicant who is under 18.

ADVICE AND ASSISTANCE THAT WILL SECURE ACCOMMODATION FROM ANOTHER PERSON

16.32. Housing authorities may secure accommodation by giving advice and assistance to an applicant that will secure that accommodation becomes available for him or her from another person (s.206(1)(c)). However, where an authority has a duty to secure accommodation, they will need to ensure that the advice and assistance provided results in suitable accommodation actually being secured. Merely assisting the applicant in any efforts that he or she might make to find accommodation would not be sufficient if suitable accommodation did not actually become available.

16.33. 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.

16.34. One option to help people into home ownership is shared equity schemes (e.g. part buy/part rent or equity loans to assist with purchase). These schemes are mainly funded by the Housing Corporation and generally offered by RSLs. The Housing Corporation publishes booklets (available from their publication section) giving further details of the existing shared ownership and Homebuy schemes. A new HomeBuy scheme offering further opportunities for home ownership and building on the current schemes commenced on 1st April 2006.

16.35. In other cases, applicants may have identified suitable accommodation but need practical advice and assistance to enable them to secure it, for example the applicant may require help with understanding a tenancy agreement or financial assistance with paying a rent deposit.

- 16.36.** Housing authorities should bear in mind that the advice and assistance must result in suitable accommodation being secured, and that applicants who wish to pursue this option may need alternative accommodation until this result is achieved.

APPLICANTS WHO NORMALLY OCCUPY MOVEABLE ACCOMMODATION (E.G. CARAVANS, HOUSEBOATS)

- 16.37.** Under s.175(2) applicants are homeless if the accommodation available for their occupation is a caravan, houseboat, or other movable structure 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 is not required to make equivalent accommodation available (or provide a site or berth for the applicant's own accommodation). However, the authority must consider whether such options are reasonably available, particularly where this would provide the most suitable solution to the applicant's accommodation needs.

Gypsies and Travellers

- 16.38.** The circumstances described in paragraph 16.37 will be particularly relevant in the case of Gypsies and Travellers. Where a duty to secure accommodation arises but an appropriate site is not immediately available, the housing authority may need to provide an alternative temporary solution until a suitable site, or some other suitable option, becomes available. Some Gypsies and Travellers may have a cultural aversion to the prospect of 'bricks and mortar' accommodation. In such cases, the authority should seek to provide an alternative solution. However, where the authority is satisfied that there is no prospect of a suitable site for the time being, there may be no alternative solution. Authorities must give consideration to the needs and lifestyle of applicants who are Gypsies and Travellers when considering their application and how best to discharge a duty to secure suitable accommodation, in line with their obligations to act consistently with the *Human Rights Act 1998*, and in particular the right to respect for private life, family and the home.

Temporary to settled accommodation

- 16.39.** Housing authorities are encouraged to test new approaches that would enable temporary accommodation to become settled accommodation. This would reduce the uncertainty and lack of security that households in temporary accommodation can face, and provide them with a settled home more quickly. Such approaches could be developed with housing associations through a range of "temporary to settled" housing initiatives.
- 16.40.** Each year approximately a quarter to a third of all leases of private sector accommodation held by social landlords expire. This presents an opportunity for the leased accommodation to be converted from use as temporary accommodation to the provision of settled housing, through negotiation with the landlord and the tenant

during the final months of the lease. Where the household would be content to remain in the accommodation when the lease ends if it could be provided on a more settled basis, and the landlord would be prepared to let directly to the household, the local authority may wish to arrange for the landlord to make a 'qualifying offer' of an assured shorthold tenancy, for the purposes of s.193(7B). See paragraph 14.19 for guidance on 'qualifying offer'.

- 16.41.** Where scope for conversion of temporary accommodation to settled accommodation is explored, the interests of the household must take priority, and the household should not be pressured to accept offers of accommodation that would bring the homelessness duty to an end.
- 16.42.** There may also be limited potential for converting temporary accommodation leased from the private sector to a qualifying offer of an assured shorthold tenancy at the beginning or mid-point of a lease. However, this would probably require the lease to include a break clause to facilitate early termination.
- 16.43.** While the local authority holds the lease of accommodation owned by a private sector landlord, the accommodation would not be capable of being offered to a household as a qualifying offer of an assured shorthold tenancy under s.193(7B). However, where a registered social landlord held such a lease, the accommodation may be capable of being offered to a household as a qualifying offer of an assured shorthold tenancy under s.193(7B) during the period of the lease, if all the parties agreed and the qualifying offer met the terms of s.193(7D).

CHAPTER 17: SUITABILITY OF ACCOMMODATION

- 17.1.** This chapter provides guidance on the factors to be taken into account when determining the suitability of temporary accommodation secured under the homelessness legislation. Key factors include: the needs, requirements and circumstances of each household; space and arrangement; health and safety considerations; affordability, and location. Annex 16 sets out the statutory definition of overcrowding and Annex 17 sets out the minimum recommended standards for Bed and Breakfast accommodation.
- 17.2.** Section 206 provides that where a housing authority discharges its functions to secure that accommodation is available for an applicant the accommodation 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). The accommodation must be suitable in relation to the applicant and to 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.
- 17.3.** Suitability of accommodation is governed by s.210. Section 210(2) provides for the Secretary of State to specify by order the circumstances in which accommodation is or is not to be regarded as suitable for someone, and matters to be taken into account or disregarded in determining whether accommodation is suitable for someone.
- 17.4.** Space and arrangement will be key factors in determining the suitability of accommodation. However, consideration of whether accommodation is suitable will require an assessment of all aspects of the accommodation in the light of the relevant needs, requirements and circumstances of the homeless person and his or her family. The location of the accommodation will always be a relevant factor (see paragraph 17.41).
- 17.5.** Housing authorities will need to consider carefully the suitability of accommodation for applicants whose household has particular medical and/or physical needs. The Secretary of State recommends that physical access to and around the home, space, bathroom and kitchen facilities, access to a garden and modifications to assist sensory loss as well as mobility need are all taken into account. These factors will be especially relevant where a member of the household is disabled.
- 17.6.** Account will need to be taken of any social considerations relating to the applicant and his or her household that might affect the suitability of accommodation. Any risk of violence or racial harassment in a particular locality must also be taken into account. Where domestic violence is involved and the applicant is not able to stay in the current home, housing authorities may need to consider the need for alternative accommodation whose location can be kept a secret and which has security measures and staffing to protect the occupants. For applicants who have suffered domestic violence who are accommodated temporarily in hostels or bed and breakfast accommodation, the accommodation may need to be gender-specific as well as have security measures.

- 17.7. Accommodation that is suitable for a short period, for example bed and breakfast or hostel accommodation used to discharge an interim duty pending inquiries under s.188, may not necessarily be suitable for a longer period, for example to discharge a duty under s.193(2).
- 17.8. As the duty to provide suitable accommodation is a continuing obligation, housing authorities must keep the issue of suitability of accommodation under review. If there is a change of circumstances of substance the authority is obliged to reconsider suitability in a specific case.

STANDARDS OF ACCOMMODATION

- 17.9. Section 210(1) requires a housing authority to have regard to the following provisions when assessing the suitability of accommodation for an applicant:
- Parts 9 and 10 of the *Housing Act 1985* (the “1985 Act”) (slum clearance and overcrowding), and
 - Parts 1 to 4 of the *Housing Act 2004* (the “2004 Act”) (housing conditions, licensing of houses in multiple occupation, selective licensing of other residential accommodation and additional control provisions in relation to residential accommodation.)

Fitness for habitation

- 17.10. Part 1 of the *Housing Act 2004* (the “2004 Act”) contains provisions that replace the housing fitness regime in s.604 of the 1985 Act. From 6th April 2006, the fitness standard in the 1985 Act is replaced by a new evidence-based assessment of risks to health and safety in all residential premises (including HMOs), carried out using the Housing Health and Safety Rating System (HHSRS). Part 9 of the 1985 Act is retained, with amendments, to deal with hazards for which demolition or area clearance is the most appropriate option.

Housing Health and Safety Rating System (HHSRS)

- 17.11. Action by local authorities is based on a three-stage consideration: (a) the hazard rating determined under HHSRS; (b) whether the authority has a duty or power to act, determined by the presence of a hazard above or below a threshold prescribed by Regulations (Category 1 and Category 2 hazards); and (c) the authority’s judgment as to the most appropriate course of action to deal with the hazard.
- 17.12. The purpose of the HHSRS assessment is to generate objective information in order to determine and inform enforcement decisions. HHSRS allows for the assessment of twenty nine categories of housing hazard and provides a method for rating each hazard. It does not provide a single rating for the dwelling as a whole or, in the case of HMOs, for the building as a whole. A hazard rating is expressed through a numerical score which falls within a band, ranging from Band A to J. Scores in Bands A to C are Category 1 hazards. Scores in Bands D to J are Category 2 hazards. If a housing

authority considers that a Category 1 hazard exists on any residential premises, they have a duty under the 2004 Act to take appropriate enforcement action in relation to the hazard. They also have a power to take particular kinds of enforcement action in cases where they consider that a Category 2 hazard exists.

- 17.13.** The HHSRS assessment is based on the risk to the *potential occupant who is most vulnerable to that hazard*. For example, stairs constitute a greater risk to the elderly, so for assessing hazards relating to stairs they are considered the most vulnerable group. The very young as well as the elderly are susceptible to low temperatures. A dwelling that is safe for those most vulnerable to a hazard is safe for all.
- 17.14.** Housing authorities should be familiar with the principles of the HHSRS and with the operational guidance issued under s.9 of the 2004 Act.
- 17.15.** **The Secretary of State recommends that when determining the suitability of accommodation secured under the homelessness legislation, local authorities should, as a minimum, ensure that all accommodation is free of Category 1 hazards.** In the case of an out of district placement it is the responsibility of the placing authority to ensure that accommodation is free of Category 1 hazards.

Overcrowding

- 17.16.** Part 10 of the 1985 Act is intended to tackle the problems of overcrowding in dwellings. Section 324 provides a definition of overcrowding which in turn relies on the room standard specified in s.325 and the space standard in s.326 (the standards are set out in Annex 17).
- 17.17.** A room provided within an HMO may be defined as a “dwelling” under Part 10 of the 1985 Act and the room and space standards will therefore apply. Housing authorities should also note that ‘crowding and space’ is one of the hazards assessed by the HHSRS. Any breach of the room and space standards under Part 10 is likely to constitute a Category 1 hazard.

Houses in Multiple Occupation (HMOs)

- 17.18.** Parts 2, 3 and 4 of the 2004 Act – which came into force on 6 April 2006 – contain provisions to replace Part 11 of the 1985 Act which relates to HMOs.
- 17.19.** The 2004 Act introduces a new definition of an HMO. A property is an HMO if it satisfies the conditions set out in sections 254(2) to (4), has been declared an HMO under s.255 or is a converted block of flats to which s.257 applies.
- 17.20.** Privately owned Bed and Breakfast or hostel accommodation that is used to accommodate a household pursuant to a homelessness function, and which is the household’s main residence, will fall within this definition of an HMO. Buildings managed or owned by a public body (such as the police or the NHS), local housing authority, registered social landlord or buildings which are already regulated under other legislation (such as care homes or bail hostels) will be exempt from the HMO

definition. Buildings which are occupied entirely by freeholders or long leaseholders, those occupied by only two people, or by a resident landlord with up to two tenants will also be exempt. Most student accommodation (housing students undertaking a course in higher or further education) will also be exempt if it is managed and controlled by the establishment in accordance with a code of management practice.

- 17.21.** From 6 April 2006, local authorities have been required to undertake the mandatory licensing of all privately rented HMOs (except converted blocks of flats to which s.257 applies) of three or more storeys and occupied by five or more people who form two or more households. Local authorities will also have discretionary powers to introduce additional licensing schemes covering smaller HMOs. In order to be a licence holder, a landlord will have to be a “fit and proper” person, as defined in s.89 of the Act and demonstrate that suitable management arrangements are in place in their properties.
- 17.22.** In addition a local authority will have to be satisfied that the HMO is suitable for the number of occupants it is licensed for and meets statutory standards relating to shared amenities and facilities, e.g. that it has an adequate number, type and quality of shared bathrooms, toilets and cooking facilities. These standards are set out in Schedule 3 to the *Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006* (SI No 2006/373). These ‘amenity standards’ will run alongside the consideration of health and safety issues under HHSRS. *The Housing (Management of Houses in Multiple Occupation) Regulations 1990* are to be replaced by the *Management of Houses in Multiple Occupation (England) Regulations 2006* (SI 2006/372). Neither the amenity standards nor the new management regulations apply to HMOs that are converted blocks of flats to which s.257 applies. It is intended that separate regulations will be made by July 6th to modify Part 2 of the 2004 Act (which deals with mandatory licensing) in so far as it relates to these types of HMO, and to extend, with modifications, the application of the new amenity standards and management regulations to these types of HMO. Until then they will continue to be subject to the registration schemes made under Part 11 of the 1985 Act. Transitional arrangements have been in place since April 2006 so that most HMOs that are registered in a 1985 scheme will automatically be licensed under the 2004 Act.
- 17.23.** Local authorities also have discretion to extend licensing to privately rented properties in all, or part of, their area to address particular problems, such as low housing demand or significant incidence of anti-social behaviour. However, licensing in these selective circumstances is concerned only with property management and not the condition of the property.

BED AND BREAKFAST ACCOMMODATION

- 17.24.** Bed and Breakfast (B&B) accommodation caters 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, where possible, housing authorities should avoid using B&B hotels to discharge a duty to secure accommodation for homeless applicants, unless, in the very limited circumstances where it is likely to be the case, it is the most appropriate option for the applicant.
- 17.25.** Living in B&B accommodation can be particularly detrimental to the health and development of children. Under s.210(2), the Secretary of State has made the *Homelessness (Suitability of Accommodation) (England) Order 2003* (SI 2003 No. 3326) (“the Order”). The Order specifies that when accommodation is made available for occupation under certain functions in Part 7, B&B accommodation is not to be regarded as suitable for applicants with family commitments.
- 17.26.** Housing authorities should, therefore, use B&B hotels to discharge a duty to secure accommodation for applicants with family commitments only as a last resort. Applicants with family commitments means an applicant -
- (a) who is pregnant;
 - (b) with whom a pregnant woman resides or might reasonably be expected to reside; or
 - (c) with whom dependent children reside or might reasonably be expected to reside.
- 17.27.** For the purpose of the Order, B&B accommodation means accommodation (whether or not breakfast is included):
- (a) which is not separate and self-contained premises; and
 - (b) in which any of the following amenities is shared by more than one household:
 - (i) a toilet;
 - (ii) personal washing facilities;
 - (iii) cooking facilities.

B&B accommodation does not include accommodation which is owned or managed by a local housing authority, a registered social landlord or a voluntary organisation as defined in section 180(3) of the *Housing Act 1996*.

17.28. B&B accommodation is not to be regarded as suitable for applicants with family commitments (except as specified in paragraph 17.29 below) for the purpose of discharging a duty under the following duties:

- section 188(1) (interim duty to accommodate in case of apparent priority need);
- section 190(2)(a) (duties to persons becoming homeless intentionally);
- section 193(2) (duty to persons with priority need who are not homeless intentionally);
- section 200(1) (duty to applicant whose case is considered for referral or referred); and
- section 195(2) (duties in cases of threatened homelessness) where the accommodation is other than that occupied by the applicant at the time of making his or her application.

17.29. The Order provides that if no alternative accommodation is available for the applicant the housing authority may accommodate the family in B&B for a period, or periods, not exceeding six weeks in result of a single homelessness application. **Where B&B accommodation is secured for an applicant with family commitments, the Secretary of State considers that the authority should notify the applicant of the effect of the Order, and, in particular, that the authority will be unable to continue to secure B&B accommodation for such applicants any longer than 6 weeks, after which they must secure alternative, suitable accommodation.**

17.30. When determining whether accommodation other than B&B accommodation is available for use, housing authorities will need to take into account, among other things, the cost to the authority of securing the accommodation, the affordability of the accommodation for the applicant and the location of the accommodation. An authority is under no obligation to include in its considerations accommodation which is to be allocated in accordance with its allocation scheme, published under s.167 of the 1996 Act.

17.31. If there is a significant change in an applicant's circumstances that would bring the applicant within the scope of the Order (e.g. a new pregnancy), the six week period should start from the date the authority was informed of the change of circumstances not the date the applicant was originally placed in B&B accommodation.

17.32. If the conditions for referring a case are met and another housing authority accepts responsibility for an applicant under s.200(4), any time spent in B&B accommodation before this acceptance should be disregarded in calculating the six week period.

17.33. B&B accommodation is also unlikely to be suitable for 16 and 17 year olds who are in need of support. Where B&B accommodation is used for this group it ought to be as a last resort for the shortest time possible and housing authorities will need to ensure that appropriate support is provided where necessary. See Chapter 12 for guidance on the use of B&B for 16 and 17 year olds.

17.34. The Secretary of State considers that the limited circumstances in which B&B hotels may provide suitable accommodation could include those where:

- (a) emergency accommodation is required at very short notice (for example to discharge the interim duty to accommodate under s.188); or
- (b) there is simply no better alternative accommodation available and the use of B&B accommodation is necessary as a last resort.

17.35. The Secretary of State considers that where housing authorities are unable to avoid using B&B hotels to accommodate applicants, they should ensure that such accommodation is of a good standard (see paragraphs 17.36–17.38 below) and is used for the shortest period possible. The Secretary of State considers that where a lengthy stay seems likely, the authority should consider other accommodation more appropriate to the applicant's needs.

Standards of B&B accommodation

17.36. Where housing authorities are unable to avoid using B&B hotels to accommodate applicants they should ensure that such accommodation is of a suitable standard. Where a B&B hotel is used to accommodate an applicant and is their main residence, it falls within the definition of an HMO. Paragraphs 17.18 – 17.23 above explain the legislation that applies to HMOs with regard to health and safety and overcrowding. Since April 2006, local authorities have a power under the 2004 Act to issue an HMO Declaration confirming HMO status where there is uncertainty about the status of a property.

17.37. The Government recognises that living conditions in HMOs should not only be healthy and safe but should also provide acceptable, decent standards for people who may be unrelated to each other and who are sharing basic facilities. As noted at paragraph 17.22 above, the Government has set out in regulation the minimum 'amenity standards' required for a property to be granted an HMO licence. These standards will only apply to 'high-risk' HMOs covered by mandatory licensing or those HMOs that will be subject to additional licensing, and will not apply to the majority of HMOs. However, housing authorities (or groups of authorities) can adopt their own local classification, amenity specification or minimum standards for B&B and other shared accommodation provided as temporary accommodation under Part 7. In London, for example, boroughs have, since 1988, had a code of practice on the use of B&B and other shared temporary accommodation used to accommodate households under Part 7. This establishes clear benchmarks for standards across the Capital. Under the code of practice, properties are graded from A to E, with the grading dependent upon a wide range of considerations and factors relating to the facilities and services provided by an establishment. Placements are expected to be made only in those properties that meet the required standard. Setting the Standard (STS), a new automated system administered by the Greater London Authority (GLA), assists boroughs to comply with the code of practice. It collects and collates information from environmental health officers' annual inspections of properties and then makes this easily accessible to relevant borough officers across London. For

further information on STS contact STS@london.gov.uk. The Secretary of State welcomes these arrangements and encourages other housing authorities to consider adopting similar systems to support the exchange of information and improve standards of temporary accommodation.

- 17.38.** The Government considers that the size and occupancy levels of rooms, the provision and location of cooking, toilet and bathing facilities, and management standards are particularly important factors for determining whether B&B accommodation is suitable for accommodating households under Part 7. The Secretary of State therefore recommends that housing authorities have regard to the recommended minimum standards set out in Annex 17 when assessing whether B&B accommodation is suitable.

AFFORDABILITY

- 17.39.** Under s.210(2), the Secretary of State has made the *Homelessness (Suitability of Accommodation) Order 1996* (SI 1996 No. 3204). The 1996 Order 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:

- (a) the financial resources available to him or her (*i.e. all forms of income*), including, but not limited to:
 - i) salary, fees and other remuneration (*from such sources as investments, grants, pensions, tax credits etc.*);
 - ii) social security benefits (*such as housing benefit, income support, income-based Jobseekers Allowances or Council Tax benefit etc.*);
 - iii) payments due under a court order for the making of periodical payments to a spouse or a former spouse, or to, or for the benefit of, a child;
 - iv) payments of child support maintenance due under the *Child Support Act 1991*;
 - v) pensions;
 - vi) 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 his or her 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*);
 - vii) financial assistance towards the costs in respect of the accommodation, including loans, provided by a local authority, voluntary organisation or other body;

- viii) benefits derived from a policy of insurance (*such as cover against unemployment or sickness*);
 - ix) 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*);
- (b) the costs in respect of the accommodation, including, but not limited to:
- i) payments of, or by way of, rent (*including rent default/property damage deposits*);
 - ii) payments in respect of a licence or permission to occupy the accommodation;
 - iii) mortgage costs (*including an assessment of entitlement to Income Support Mortgage Interest (ISMI)*);
 - iv) payments of, or by way of, service charges (*e.g. maintenance or other costs required as a condition of occupation of the accommodation*);
 - v) mooring charges payable for a houseboat;
 - vi) where the accommodation is a caravan or a mobile home, payments in respect of the site on which it stands;
 - vii) the amount of council tax payable in respect of the accommodation;
 - viii) payments by way of deposit or security in respect of the accommodation;
 - ix) payments required by an accommodation agency;
- (c) 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
- (d) his or her other reasonable living expenses.

17.40. In considering an applicant's residual income after meeting the costs of the accommodation, the Secretary of State recommends that housing authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be 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 they would need to resort to claiming benefit to meet the costs of that accommodation, and to consider opportunities to secure accommodation at affordable rent levels where this is likely to reduce perceived or actual disincentives to work.

LOCATION OF ACCOMMODATION

- 17.41.** 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. Where, for example, applicants are in paid employment account will need to be taken of their need to reach their normal workplace from the accommodation secured. The Secretary of State recommends that local authorities take into account the need to minimise disruption to the education of young people, particularly at critical points in time such as close to taking GCSE examinations. Housing authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities, and, wherever possible, secure accommodation that is as close as possible to where they were previously living, so they can retain established links with schools, doctors, social workers and other key services and support essential to the well-being of the household.

HOUSEHOLDS WITH PETS

- 17.42.** Housing authorities will need to be sensitive to the importance of pets to some applicants, particularly elderly people and rough sleepers who may rely on pets for companionship. Although it will not always be possible to make provision for pets, the Secretary of State recommends that housing authorities give careful consideration to this aspect when making provision for applicants who wish to retain their pet.

ASYLUM SEEKERS

- 17.43.** Since April 2000 the National Asylum Support Service (NASS) has had responsibility for providing support, including accommodation, to asylum seekers who would otherwise be destitute, whilst their claims and appeals are being considered. Some local authorities may still be providing accommodation to asylum seekers who applied for asylum prior to April 2000 and whose cases have not yet been resolved. However, the number of these cases, if any, will be small and declining.

17.44. Section 210(1A) provides that, in considering whether accommodation is suitable for an applicant who is an asylum seeker, housing authorities:

- (a) shall also have regard to the fact that the accommodation is to be temporary pending the determination of the applicant's claim for asylum; and
- (b) shall 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.

RIGHT TO REQUEST A REVIEW OF SUITABILITY

17.45. Applicants may ask for a review on request 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 or she 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 19 for guidance on reviews). Housing authorities should note that although there is no right of review of a decision on the suitability of accommodation secured under s.188 or s.200(1), such decisions could nevertheless be subject to judicial review in the High Court.

CHAPTER 18: LOCAL CONNECTION AND REFERRALS TO ANOTHER HOUSING AUTHORITY

- 18.1.** This chapter provides guidance on the provisions relating to an applicant's "local connection" with an area and explains the conditions and procedures for referring an applicant to another housing authority.
- 18.2.** Where a housing authority ("the notifying authority") decide that s.193 applies to an applicant (i.e. the applicant is eligible for assistance, unintentionally homeless and has a priority need) but it considers that the conditions for referral of the case to another housing authority are met, they may notify the other housing authority ("the notified authority") of their opinion.
- 18.3.** Notwithstanding that the conditions for a referral are apparently met, it is the responsibility of the notifying authority to determine whether s.193 applies before making a reference. **Applicants can only be referred to another authority if the notifying authority is satisfied that the applicant is unintentionally homeless, eligible for assistance and has a priority need.** Applicants cannot be referred while they are owed only the interim duty under s.188, or any duty other than the s.193 duty (e.g. where they are threatened with homelessness or found to be homeless intentionally).
- 18.4.** **Referrals are discretionary only: housing authorities are not required to refer applicants to other authorities. Nor are they, generally, required to make any inquiries as to whether an applicant has a local connection with an area.** However, by virtue of s.11 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*, housing authorities will need to consider local connection in cases where the applicant is a former asylum seeker:
- i) who was provided with accommodation in Scotland under s.95 of the *Immigration and Asylum Act 1999*, and
 - ii) whose accommodation was not provided in an accommodation centre by virtue of s.22 of the *Nationality, Immigration and Asylum Act 2002*.

In such cases, by virtue of s.11(2)(d) and (3) of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*, local connection to a district in England, Wales or Scotland will be relevant to what duty is owed under s. 193. (See paragraph 18.21 below.)

- 18.5.** Housing authorities may have a policy about how they may exercise their discretion to refer a case. This must not, however, extend to deciding in advance that in all cases where there is a local connection to another district the case should be referred.

- 18.6.** The Local Government Association (LGA) has issued guidelines for housing authorities about procedures for referring a case. These include guidance on issues such as local connection and invoking the disputes procedure when two housing authorities are unable to agree whether the conditions for referral are met. (A copy of the LGA guidelines is at Annex 18 for information).

CONDITIONS FOR REFERRAL

- 18.7.** Sections 198(2) and (2A) describe the conditions which must be satisfied before a referral may be made. A notifying authority may refer an applicant to whom s.193 applies to another housing authority if all of the following are met:

- i) neither the applicant nor any person who might reasonably be expected to live with him or her has a local connection with its district; and
- ii) at least one member of the applicant's household has a local connection with the district of the authority to be notified; and
- iii) none of them will be at risk of domestic or non-domestic violence, or threat of domestic or non-domestic violence which is likely to be carried out, in the district of the authority to be notified.

LOCAL CONNECTION

- 18.8.** When a housing authority makes inquiries to determine whether an applicant is eligible for assistance and owed a duty under Part 7, it may also make inquiries under s.184(2) to decide whether the applicant has a local connection with the district of another housing authority in England, Wales or Scotland.

- 18.9.** Section 199(1) provides that a person has a local connection with the district of a housing authority if he or she has a connection with it:

- 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; or
- iii) because of family associations there; or
- iv) because of any special circumstances.

- 18.10.** For the purposes of (i), above, residence in temporary accommodation provided by a housing authority under s.188 can constitute normal residence of choice and therefore contribute towards a local connection. With regard to (ii) the applicant should actually work in the district: it would not be sufficient that his or her employers' head office was located there. For the purposes of (iii), where the applicant raises family associations, the Secretary of State considers that this may extend beyond parents,

adult children or siblings. They may include associations with other family members such as step-parents, grandparents, grandchildren, aunts or uncles provided there are sufficiently close links in the form of frequent contact, commitment or dependency. Family associations may also extend to unmarried couples, provided that the relationship is sufficiently enduring, and to same sex couples. With regard to (iv), special circumstances might include the need to be near special medical or support services which are available only in a particular district.

- 18.11.** The grounds in s.199(1) should be applied in order to establish whether the applicant has the required local connection. However, the fact that an applicant may satisfy one of these grounds will not necessarily mean that he or she has been able to establish a local connection. For example, an applicant may be “normally resident” in an area even though he or she does not intend to settle there permanently or indefinitely, and the local authority could therefore determine that he or she does not have a local connection. The overriding consideration should always be whether the applicant has a real local connection with an area – the specified grounds are subsidiary to that overriding consideration.
- 18.12.** In assessing whether an applicant’s household has a local connection with either its district or a district to which the case might be referred, a housing authority should also consider whether any person who might reasonably be expected to live with the applicant has such a connection.
- 18.13.** A housing authority may not seek to transfer responsibility to another housing authority where the applicant has a local connection with their district but they consider there is a stronger local connection elsewhere. However, in such a case, it would be open to a housing authority to seek assistance from the other housing authority in securing accommodation, under s.213.
- 18.14.** Where a person has a local connection with the districts of more than one other housing authority, the referring housing authority will wish to take account of the applicant’s preference in deciding which housing authority to notify.

Ex-service personnel

- 18.15.** Under s.199(2) and (3), 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 a district by virtue of serving, or having served, there while in the forces.

Ex-prisoners and detainees under the Mental Health Act 1983

- 18.16.** Similarly, detention in prison (whether convicted or not) does not establish a local connection with the district the prison is in. However, any period of residence in accommodation prior to imprisonment may give rise to a local connection under s.199(1)(a). The same is true of those detained under the *Mental Health Act 1983*.

Former asylum seekers

18.17. Sections 199(6) and (7) were inserted by section 11 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*. Section 199(6) provides that a person has a local connection with the district of a housing authority if he or she was (at any time) provided with accommodation there under s.95 of the *Immigration and Asylum Act 1999* (“s.95 accommodation”).

18.18. Under s.199(7), however, a person does not have a local connection by virtue of s.199(6):

- (a) if he or she has been subsequently provided with s.95 accommodation in a different area. Where a former asylum seeker has been provided with s.95 accommodation in more than one area, the local connection is with the area where such accommodation was last provided; or
- (b) if they have been provided with s.95 accommodation in an accommodation centre in the district by virtue of s.22 of the *Nationality, Immigration and Asylum Act 2002*.

18.19. A local connection with a district by virtue of s.199(6) does not override a local connection by virtue of s.199(1). Thus, a former asylum seeker who has a local connection with a district because he or she was provided with accommodation there under s.95 may also have a local connection elsewhere for some other reason, for example, because of employment or family associations.

Former asylum seekers provided with s.95 accommodation in Scotland

18.20. Under Scottish legislation, a person does not establish a local connection with a district in Scotland if he or she is resident there in s.95 accommodation. Consequently, if such a person made a homelessness application to a housing authority in England, and he or she did not have a local connection with the district of that authority, the fact that he or she had been provided with s.95 accommodation in Scotland would not establish conditions for referral to the relevant local authority in Scotland.

18.21. Sections 11(2) and (3) of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* provides that where a housing authority in England or Wales is satisfied that an applicant is eligible for assistance, unintentionally homeless and in priority need and:

- i) the applicant has been provided with s.95 accommodation in Scotland at any time;
- ii) the s.95 accommodation was not provided in an accommodation centre by virtue of s.22 of the *Nationality, Immigration and Asylum Act 2002*;
- iii) the applicant does not have a local connection anywhere in England and Wales (within the meaning of s.199 of the 1996 Act); and

- iv) the applicant does not have a local connection anywhere in Scotland (within the meaning of s.27 of the *Housing (Scotland) Act 1987*);

then the duty to the applicant under s.193 (the main homelessness duty) shall not apply. However, the authority:

- (a) may secure that accommodation is available for occupation by the applicant for a period giving him or her a reasonable opportunity of securing accommodation for his or her occupation; and
- (b) may provide the applicant (or secure that he or she is provided with) advice and assistance in any attempts he or she may make to secure accommodation for his or her occupation.

When dealing with an applicant in these circumstances, authorities will need to take into account the wishes of the applicant but should consider providing such advice and assistance as would enable the applicant to make an application for housing to the Scottish authority in the district where the s.95 accommodation was last provided, or to another Scottish authority of the applicant's choice. If such a person was unintentionally homeless and in priority need, it would be open to them to apply to any Scottish housing authority and a main homelessness duty would be owed to them.

No local connection anywhere

- 18.22.** If an applicant, or any person who might reasonably be expected to live with the applicant, has no local connection with any district in Great Britain, the duty to secure accommodation will rest with the housing authority that has received the application.

RISK OF VIOLENCE

- 18.23.** 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 housing authority is under a positive duty to enquire whether the applicant would be at such a risk and, if he or she would, it should not be assumed that the applicant will take steps to deal with the threat.

- 18.24.** Section 198(3) defines violence as violence from another person or threats of violence from another person which are likely to be carried out. This is the same definition as appears in s.177 in relation to whether it is reasonable to continue to occupy accommodation and the circumstances to be considered as to whether a person runs a risk of violence are the same.

18.25. Housing authorities should be alert to the deliberate distinction which is made in s.198(3) between actual violence and threatened violence. A high standard of proof of actual violence in the past should not be imposed. The threshold is that there must be:

- (a) no risk of domestic violence (actual or threatened) in the other district; and
- (b) no risk of non-domestic violence (actual or threatened) in the other district.

Nor should “domestic violence” be interpreted restrictively (see definitions in the introduction to this Code).

DUTIES WHERE CASE REFERRED TO ANOTHER HOUSING AUTHORITY

18.26. 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 (s.184(4)). At that point, the notifying authority would cease to be subject to the interim duty to accommodate under s.188(1) 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.

18.27. Under s.200(4), if the referral is accepted by the notified authority they will be under a duty to secure accommodation for the applicant under s.193(2). Regardless of whether the notified authority had reached a different decision on a previous application, it is not open to it to re-assess the notifying authority’s decision that the applicant is eligible, unintentionally homeless and in priority need. Nor may the notified authority rely on an offer of accommodation which was refused having been made in pursuance of a previous application to it.

18.28. Under s.200(3), if it is decided that the conditions for referral are not met, the notifying authority will be under a duty to secure accommodation for the applicant under s.193(2).

18.29. When the question of whether the conditions for referral to the notified 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 decision. However, where the applicant does request a review the notifying authority has a power under s.200(5) to secure that accommodation is available pending the review decision. (See Chapter 15 for guidance on powers to secure accommodation).

- 18.30.** 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

- 18.31.** Applicants have the right to request a review of various decisions relating to local connection and referrals (see Chapter 19 for further guidance). There is not a right to request a review of a housing authority's decision not to refer a case, although a failure by a housing authority to consider whether it has the discretion to refer an applicant may be amenable to challenge by way of judicial review. The same is true of an unreasonable use of the discretion.
- 18.32.** The question of whether the conditions for referral are met in a particular case should be decided by agreement between the housing authorities concerned. If they cannot agree, the decision should be made in accordance with such arrangements as may be directed by order of the Secretary of State (s.198(5)).
- 18.33.** 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 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).
- 18.34.** The arrangements are set out in the Schedule to the Order. Broadly speaking, they provide that in the event of two housing authorities being unable to agree whether the conditions for referral are met, they must agree on a person to be appointed to make the decision for them. If unable to agree on that, they should agree to request the LGA to appoint someone. In default of this, the notifying housing authority must make such a request of the LGA. In all cases the appointed person must be drawn from a panel established by the LGA for the purpose. The Local Government Association has issued guidelines for housing authorities on invoking the disputes procedure (a copy is at Annex 18 for information).
- 18.35.** The arrangements set out in the Schedule to SI 1998 No.1578 apply where a housing authority in England, Wales or Scotland seek to refer a homelessness case to another housing authority in England or Wales, and they are unable to agree whether the conditions for referral are met. A similar Order, the *Homelessness (Decisions on Referrals) (Scotland) Order 1998*, SI 1998 No.1603 applies under the Scottish homelessness legislation. The arrangements in the latter apply in cases where a housing authority in England, Wales or Scotland refer a homelessness case to a housing authority in Scotland, and they are unable to agree whether the conditions for referral are met.

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- 18.36.** Where an English or Welsh housing authority seek to refer a case to a Scottish housing authority, a request to the local authority association to appoint an arbitrator should be made to the Convention of Scottish Local Authorities.
- 18.37.** A notified authority which wishes to refuse a referral because it disagrees on a finding as to the application of s.193 to the applicant must challenge the notifying authority's finding (for example as to intentionality) by way of judicial review.

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CHAPTER 19: REVIEW OF DECISIONS AND APPEALS TO THE COUNTY COURT

19.1. This chapter provides guidance on the procedures to be followed when an applicant requests the housing authority to review their decision on the homelessness case.

RIGHT TO REQUEST A REVIEW

19.2. Applicants have the right to request the housing authority to review their decisions on homelessness cases in some circumstances. If the request is made in accordance with s.202 the housing authority must review the relevant decision.

19.3. When a housing authority have completed their inquiries into the applicant's homelessness case they must notify the applicant of:

- (a) their decision and, if any decision is against the applicant's interest, the reasons for it;
- (b) the applicant's right to request a review; and
- (c) the time within which such a request must be made.

Housing authorities should also advise the applicant of his or her right to request a review of the suitability of any accommodation offered as a discharge of a homelessness duty, whether or not the offer is accepted. Authorities should also advise the applicant of the review procedures.

19.4. Under s.202 an applicant has the right to request a review of:

- (a) 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);
- (b) any decision of a housing authority as to what duty (if any) is owed to him or her under s.190, s.191, s.192, s.193, s.195 and s.196 (duties owed to applicants who are homeless or threatened with homelessness);
- (c) any decision of a housing authority to notify another housing authority under s.198(1) (i.e. a decision to refer the applicant to another housing authority because they appear to have a local connection with that housing authority's district and not with the district where they have made the application);
- (d) 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));

- (e) 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);
 - (f) 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) (allocation under Part 6). Under s.202(1A), applicants can request a review of the suitability of accommodation whether or not they have accepted the offer.
- 19.5.** An applicant must request a review before the end of the period of 21 days beginning with the day on which he or she is notified of the housing authority's decision. The housing authority may specify, in writing, a longer period during which a review may be requested. Applicants do not have a right to request a review of a decision made on an earlier review.
- 19.6.** In reviewing a decision, housing authorities will need to have regard to any information relevant to the period before the decision (even if only obtained afterwards) as well as any new relevant information obtained since the decision.

THE REVIEW REGULATIONS

- 19.7.** The *Allocation of Housing and Homelessness (Review Procedures) Regulations 1999* (SI 1999 No.71) set out the procedures to be followed by housing authorities in carrying out reviews under Part 7.

Who may carry out the review

- 19.8.** A review may be carried out by the housing authority itself or by someone acting as an agent of the housing authority (see Chapter 21 on contracting out homelessness functions). 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 took the original decision.
- 19.9.** 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 (see paragraph 19.15).

Written representations

- 19.10.** 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.
- 19.11.** 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; and
 - 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

- 19.12.** 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:
- (a) that they are so minded and the reasons why; and,
 - (b) 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.
- 19.13.** 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) irrationality or unreasonableness;
- vii) procedural unfairness, e.g. where an applicant has not been given a chance to comment on matters relevant to a decision.

19.14. The reviewer must consider whether there is “something lacking” in the decision, i.e. were any significant issues not addressed or addressed inadequately, which could have led to unfairness.

Period during which review must be completed

19.15. 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).

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

19.16. 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

- 19.17.** 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 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 five working days of the date of the request for a review, the notifying housing authority must request the chairman of the Local Government Association to appoint a person from the panel. The chairman, in turn, must within seven 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 five working days of his or her appointment.
- 19.18.** 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

- 19.19.** Section 203 requires a housing authority to notify the applicant in writing of their decision on the review. The authority must also notify the applicant of the reasons for their decision where it:
- i) confirms the original decision on any issue 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.

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.

At this stage, the authority making the notification should advise the applicant of his or her right to appeal to the County Court against a review decision under s.204 and of the period in which to appeal.

POWERS TO ACCOMMODATE PENDING A REVIEW

19.20. Sections 188(3) and 200(5) give housing authorities powers to secure accommodation for certain applicants pending the decision on a review. See Chapter 15 for guidance on powers to secure accommodation.

APPEALS TO THE COUNTY COURT

19.21. Section 204 provides an applicant with the right of appeal on a point of law to the County Court if:

- (a) he or she is dissatisfied with the decision on a review; or
- (b) he or she is not notified of the decision on the review within the time prescribed in regulations made under s.203.

In the latter case, an applicant will be entitled to appeal against the original decision.

19.22. An appeal must be brought by an applicant within 21 days of:

- (a) the date on which he or she is notified of the decision on review; or
- (b) 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).

19.23. The court may give permission for an appeal to be brought after 21 days, but only where it is satisfied that:

- (a) (where permission is sought within the 21-day period), there is good reason for the applicant to be unable to bring the appeal in time; or
- (b) (where permission is sought after the 21-day period has expired), there was a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for permission.

19.24. On an appeal, the 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.

POWER TO ACCOMMODATE PENDING AN APPEAL TO THE COUNTY COURT

19.25. Section 204(4) gives housing authorities the power to accommodate certain applicants during the period for making an appeal, and pending the appeal and any subsequent appeal. Applicants have a right to appeal against a housing authority's decision not to secure accommodation for them pending an appeal to the County Court (s.204A). Applicants can also appeal against a housing authority's decision to secure accommodation for them for only a limited period which ends before final determination of the appeal. See Chapter 15 for guidance on powers to secure accommodation.

LOCAL GOVERNMENT OMBUDSMAN

19.26. Applicants may complain to a Local Government Ombudsman if they consider that they have been caused injustice as a result of maladministration by a housing 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, maladministration would occur where a housing 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;
- v) gave the applicant the wrong information.

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

- i) matters the applicant knew about more than twelve 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 housing 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.

19.28. 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.

CHAPTER 20: PROTECTION OF PERSONAL PROPERTY

20.1. This chapter provides guidance on the duty and powers housing authorities have to protect the personal property of an applicant.

20.2. Under s.211(1) and (2), where a housing authority has become subject to a duty to an applicant under specified provisions of Part 7 and it has reason to believe that:

i) there is a danger of loss of, or damage to, the applicant's personal property because the applicant is unable to protect it or deal with it, and

ii) no other suitable arrangements have been, or are being, made,

then, whether or not the housing authority is still subject to such a duty, it must take reasonable steps to prevent the loss of, or to prevent or mitigate damage to, any personal property of the applicant.

20.3. The specified provisions are:

- s.188 (interim duty to accommodate);
- s.190, s.193 or s.195 (duties to persons found to be homeless or threatened with homelessness); or
- s.200 (duties to applicant whose case is considered for referral or referred).

20.4. In all other circumstances, housing authorities have a power to take any steps they consider reasonable to protect in the same ways an applicant's personal property (s.211(3)).

20.5. Section 212 makes provisions supplementing s.211. For the purposes of both s.211 and s.212, 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.211(5) and s.212(6)).

20.6. A danger of loss or damage to personal property means that there is a likelihood of harm, not just that harm is a possibility. Applicants may be unable to protect their property if, for example, they are ill or are unable to afford to have it stored themselves.

20.7. Under s.212(1), in order to protect an applicant's personal property, a housing authority can enter, at all reasonable times, the applicant's current or former home, and deal with the property in any way which seems reasonably necessary. In particular, it may store the property or arrange for it to be stored; this may be particularly appropriate where the applicant is accommodated by the housing 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.

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- 20.8.** Where a housing authority does take steps to protect personal property, whether by storing it or otherwise, it must take reasonable care of it and deliver it to the owner when reasonably requested to do so.
- 20.9.** The applicant can request the housing authority to move his or her property to a particular location. If the housing authority considers 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 housing authority will have no further duty or power to protect the applicant's property, and it must inform the applicant of this consequence before complying with the request (s.212(2)).
- 20.10.** Housing authorities may impose conditions on the assistance they provide where they consider these appropriate to the particular case. Conditions may include making a reasonable charge for storage of property and reserving the right to dispose of property in certain circumstances specified by the housing authority – e.g. if the applicant loses touch with them and cannot be traced after a certain period (s.211(4)).
- 20.11.** Where a request to move personal property to another location is either not made or not carried out, the duty or power to take any action under s.211 ends when the housing authority believes there is no longer any danger of loss or damage to the property because of the applicant's inability to deal with or protect it (s.212(3)). 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 the housing authority has discharged the duty under s.211 by placing property in storage, it has a discretionary power to continue to keep the property in storage. Where it does so, any conditions imposed by the housing authority continue to apply and may be modified as necessary.
- 20.12.** Where the housing authority ceases to be under a duty, or ceases to have a power, to protect an applicant's personal property under s.211, it 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 21: CONTRACTING OUT HOMELESSNESS FUNCTIONS

- 21.1.** This chapter provides guidance on contracting out homelessness functions and housing authorities' statutory obligations with regard to the discharge of those functions.
- 21.2.** The *Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996* (SI 1996 No. 3215) ("the Order") enables housing authorities to contract out certain functions under Parts 6 and 7 of the 1996 Act. 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.
- 21.3.** The Order provides that the majority of functions under Part 7 can be contracted out. These include:
- making arrangements to secure that advice and information about homelessness, and the prevention of homelessness, is available free of charge within the housing authority's district;
 - making inquiries about and deciding a person's eligibility for assistance;
 - making inquiries about and deciding whether any duty, and, if so, what duty is owed to a person under Part 7;
 - making referrals to another housing authority;
 - carrying out reviews of decisions;
 - securing accommodation to discharge homelessness duties.
- 21.4.** Where decision-making in homelessness cases is contracted out, authorities may wish to consider retaining the review function under s.202 of the 1996 Act. This may provide an additional degree of independence between the initial decision and the decision on review.
- 21.5.** 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 out 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 housing authority. Any subsisting contract is to be treated as having been repudiated in these circumstances;
- v) shall not prevent the housing authority from exercising themselves the functions to which the contract relates.

21.6. Schedule 2 to the Order lists the homelessness functions in Part 7 that may **not** be contracted out. These are:

- s.179(2) and (3): the provision of various forms of assistance to anyone providing advice and information about homelessness and the prevention of homelessness to people in the district, on behalf of the housing authority;
- s.180: the provision of assistance to voluntary organisations concerned with homelessness; and
- s.213: co-operation with relevant housing authorities and bodies by rendering assistance in the discharge of their homelessness functions.

21.7. Local authorities also **cannot** contract out their functions under the *Homelessness Act 2002* which relate to homelessness reviews and strategies. Chapter 1 provides guidance on homelessness reviews and strategies and outlines the main functions. These include:

- s.1(1): carry out a homelessness review for the district, and formulate and publish a homelessness strategy based on the results of that review;
- s.1(4): publish a new homelessness strategy within 5 years from the day on which their last homelessness strategy was published; and
- 3(6): keep their homelessness strategy under review and modify it from time to time.

Reviews and the formulation of strategies can, however, be informed by research commissioned from external organisations.

21.8. The 1994 Act also provides that the housing 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.

21.9. Where there is an arrangement in force under s.101 of the *Local Government Act 1972* by virtue of which one local 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.

21.10. Where a housing authority has contracted out the operation of any homelessness functions the authority remains statutorily responsible and accountable for the discharge of those functions. This is the case whether a housing authority contracts with a Large Scale Voluntary Transfer registered social landlord, an Arms Length Management Organisation or any other organisation. The authority will therefore need to ensure that the contract provides for delivery of the homelessness functions in accordance with both the statutory obligations and the authority's own policies on tackling and preventing homelessness. The performance of a housing authority's homelessness functions will continue to be part of its Comprehensive Performance Assessment and will need to be covered by Best Value reviews, whether or not it discharges the homelessness functions directly.

21.11. When contracting out homelessness functions, housing authorities will need to ensure that:

- proposed arrangements are consistent with their obligations under the 2002 Act to have a strategy for preventing homelessness and ensuring that accommodation and any necessary support will be available to everyone in their district who is homeless or at risk of homelessness;
- a high quality homelessness service will be provided, in particular the assessment of applicants and the provision of advice and assistance; and
- both short-term and settled accommodation services will be available for offer to all applicants owed the main homelessness duty.

21.12. Housing authorities should also ensure they have adequate contractual, monitoring and quality assurance mechanisms in place to ensure their statutory duties are being fully discharged.

21.13. In deciding whether to contract out homelessness functions, housing authorities are encouraged to undertake an options appraisal of each function to decide whether it would best be provided in-house or by another organisation. *Housing Allocation, Homelessness and Stock Transfer – A guide to key issues (ODPM 2004)* provides guidance on the key issues that housing authorities need to consider when deciding whether to retain or contract out the delivery of their homelessness functions.

ANNEX 1

GOOD PRACTICE/GUIDANCE PUBLICATIONS

DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT

Homelessness prevention: a guide to good practice (2006)

OFFICE OF THE DEPUTY PRIME MINISTER

Homelessness publications

www.communities.gov.uk/index.asp?id=1162505

Sustainable Communities: settled homes, changing lives. A strategy for tackling homelessness (2005)

Tackling homelessness amongst ethnic minority households – a development guide (2005)

Resources for homeless ex-service personnel in London (2004)

Effective Co-operation in Tackling Homelessness: Nomination Agreements and Exclusions (2004)

Achieving Positive Shared Outcomes in Health and Homelessness (2004)

Local Authorities' Homelessness Strategies: Evaluation and Good Practice (2004)

Reducing B&B use and tackling homelessness – What's working: A Good Practice Handbook (2003)

Housing Associations and Homelessness Briefing (2003)

Achieving Positive Outcomes on Homelessness – A Homelessness Directorate Advice Note to Local Authorities (2003)

Addressing the health needs of rough sleepers (2002)

Care leaving strategies – a good practice handbook (2002)

Drugs services for homeless people – a good practice handbook (2002)

Homelessness Strategies: A Good Practice Handbook (2002)

More than a roof: a report into tackling homelessness (2002)

Helping rough sleepers off the streets: A report to the Homelessness Directorate – Randall, G and Brown, S. (2002)

Preventing tomorrow's rough sleepers – Rough Sleepers Unit (2001)

Blocking the fast track from prison to rough sleeping – Rough Sleepers Unit (2000)

Homelessness and Housing Support Directorate Policy Briefings

- Briefing 15: *Summary of Homelessness Good Practice Guidance* (June 2006)
- Briefing 14: *Sustainable Communities: settled homes; changing lives – one year on* (March 2006)
- Briefing 13: *Survey of English local authorities about homelessness* (December 2005)
- Briefing 12: *Hostels Capital Improvement Programme (HCIP)* (September 2005)
- Briefing 11: *Providing More Settled Homes* (June 2005)
- Briefing 10: *Delivering on the Positive Outcomes* (December 2004)
- Briefing 9: *Homelessness Strategies: Moving Forward* (November 2004)
- Briefing 8: *Improving the Quality of Hostels and Other Forms of Temporary Accommodation* (June 2004)
- Briefing 7: *Addressing the Health Needs of Homeless People Policy* (April 2004)
- Briefing 6: *Repeat Homelessness Policy* (January 2004)
- Briefing 5: *Improving Employment Options for Homeless People* (September 2003)
- Briefing 4: *Prevention of Homelessness Policy* (June 2003)
- Briefing 3: *Bed and Breakfast Policy* (March 2003)
- Briefing 2: *Domestic Violence Policy* (December 2002)
- Briefing 1: *Ethnicity and Homelessness Policy* (September 2002)

Supporting People publications

www.spkweb.org.uk

Supporting People: Guide to Accommodation and Support Options for People with Mental Health Problems (2005)

Guide to Housing and Housing Related Support Options for Offenders and People at Risk of Offending (2005)

Supporting People: Guide to Accommodation and Support Options for Homeless Households (2003)

Supporting People: The Support Needs of Homeless Households (2003)

Supporting People: Guide to Accommodation and Support Options for Households Experiencing Domestic Violence (2002)

Reflecting the Needs and Concerns of Black and Minority Ethnic Communities in Supporting People (2002)

Other ODPM publications

www.communities.gov.uk

Sustainable Communities: Homes for All. A Five Year Plan (2005)

Improving the Effectiveness of Rent Arrears Management (2005)

Housing Allocation, Homelessness and Stock Transfer – A guide to key issues (2004)

Guidance on Arms Length Management of Local Authority Housing (2004)

Allocation of Accommodation – Code of Guidance for local housing authorities (2002)

Working together, Connexions and youth homelessness agencies, London, Department for Transport, Local Government and the Regions (DTLR) and Connexions (2001)

Other Government publications

Audit Commission

www.audit-commission.gov.uk

Homelessness: Responding to the New Agenda (2003)

ALMO Inspections. The Delivery of Excellent Housing Management Services (2003)

Housing Services After Stock Transfer (2002)

Department for Education and Skills

www.dfes.gov.uk

Safeguarding Children, The second joint Chief Inspectors' Report on arrangements to Safeguard Children, Commission for Social Care Inspection (2005)

Every Child Matters: Change for Children (2004)

Working with Voluntary and Community Organisations to Deliver Change for Children and Young People (2004)

Department of Health

www.dh.gov.uk/Home/fs/en

Our health, our care, our say: a new direction for community (2006)

Working together to safeguard children (2005)

Government response to Hidden Harm: the Report of an inquiry by the Advisory Council on the Misuse of Drugs (2005)

Making a Difference: Reducing Bureaucracy in Children, Young People and Family Services (2005)

Independence, well-being and choice: Our vision for the future of social care for adults in England (2005)

Commissioning a patient-led NHS (2005)

Health reform in England: update and next steps (2005)

National service framework for mental health: modern standards and service models (1999)

National service framework for children, young people and maternity services (2004)

From Vision to Reality: Transforming Outcomes for Children and Families (2004)

What to do if you're worried a child is being abused (2003)

Tackling Health Inequalities: a programme for action (2003)

Guidance on accommodating children in need and their families – Local Authority Circular 13 (2003)

Children Missing from Care and Home – a guide for good practice published in tandem with the Social Exclusion Unit's report *Young Runaways* (2002)

Getting it Right: good practice in leaving care resource pack (2000)

The framework for assessment of children in need and their families (2000)

Valuing People: A New Strategy for Learning Disability for the 21st Century (2000)

Working Together to Safeguard Children: a guide to interagency working to safeguard and promote the welfare of children (1999) Department of Health, Home Office and Department for Education and Employment

Home Office

www.homeoffice.gov.uk

Advice note on accommodation for vulnerable young people (2001)

Housing Corporation

www.housingcorp.gov.uk

Tenancy management: eligibility and evictions (2004)

Local Authority Nominations. Circular 02/03/Regulation (2003)

Non-Government publications

Centrepont

www.centrepont.org.uk

Joint protocols between housing and social services departments: a good practice guide for the assessment and assistance of homeless young people aged 16 and 17 years, Bellerby, N. London (2000)

Chartered Institute of Housing

www.cih.org

The Housing Manual (2005)

Housing and Support Services for asylum seekers and refugees: a good practice guide, John Perry (2005)

Strategic Approaches to Homelessness; Good Practice Briefing 24 (2002)

Commission for Racial Equality

www.cre.gov.uk

CRE Code of Practice on Racial Equality in Housing (2006)

Disability Rights Commission

www.drc-gb.org/

The Duty to Promote Disability Equality: Statutory Code of Practice (2005)

National Housing Federation

www.housing.org.uk

Level threshold: towards equality in housing for disabled people: good practice guide (2005)

Flexible allocation and local letting schemes (2000)

Homeless Link

www.homeless.org.uk

Hospital admission and discharge: Guidelines for writing a protocol for the hospital admission and discharge of people who are homeless (2006)

Shelter

<http://england.shelter.org.uk/home/index.cfm>

Sexual exclusion: issues and best practice in lesbian, gay and bisexual housing and homelessness (2005)

Youth housing: a good practice guide (2004)

Local authorities and registered social landlords – best practice on joint working (2002)

ANNEX 2

OTHER STRATEGIES AND PROGRAMMES THAT MAY ADDRESS HOMELESSNESS

- Local and Regional Housing Strategy
- Regional Homelessness Strategy
- Regional Economic Development Plan
- Local Strategic Partnership and Community Strategy
- Local Area Agreements
- Supporting People Strategy
- Children and Young People's Plan
- Sure Start
- Connexions
- Education and Employment programmes (e.g. The Princes Trust, New Deal, The Careers Service)
- Progress2work, for drug misusers, and where available, Progress2work-LinkUp for alcohol misusers, offenders and homeless people
- Local health schools programme
- Quality Protects
- NHS Local Delivery Plan
- Teenage Pregnancy Strategy
- Drug Action Team Plan
- Crime and Disorder Strategy
- Regional Reducing Reoffending Strategy
- Domestic Violence Strategy
- Anti-Social Behaviour Strategy
- Anti-Poverty Strategy
- Social Inclusion Strategy
- Valuing People Plan
- Town Centre Management Strategy
- Voluntary and community sector plans
- Gypsy and Traveller Accommodation Strategy (where required by s. 225 *Housing Act 2004*)

ANNEX 3

OTHER AUTHORITIES, ORGANISATIONS AND PERSONS WHOSE ACTIVITIES MAY CONTRIBUTE TO PREVENTING/TACKLING HOMELESSNESS

- Registered social landlords
- Private landlords
- Lettings agencies
- Self build groups
- Housing Co-operatives
- Housing Corporation
- Supported housing providers
- Home improvement agencies
- Primary Care Trusts, health centres and GP practices
- NHS Trusts – Acute and Mental Health
- Local mental health organisations (e.g. Mind)
- Local disability groups
- Care Services Improvement Partnership Regional Development Centres
- Learning Disability Partnership Boards
- Children's Trusts
- Youth Services and youth advice groups
- Education Welfare Services
- LEA Pupil Referral Units
- Schools
- Sure Start
- Connexions
- Youth Offending Team
- Police
- Crime and Disorder Reduction Partnerships
- Drug Action Teams

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- National Offender Management Service (incorporating The Prison and Probation Services)
 - Victim support groups
 - Anti-Social Behaviour Team
 - Street Wardens
 - Jobcentre Plus
 - Learning and Skills Councils
 - Environmental Health Team
 - Housing Management Team
 - Housing Benefits Team
 - Armed Forces resettlement services
 - National Asylum Support Service
 - Refugee Community Organisations
 - Law Centres
 - Advice/advocacy services (e.g. Citizens Advice Bureaux and Shelter)
 - Local voluntary sector infrastructure bodies (e.g. CVS)
 - Faith groups
 - Women's groups
 - Local domestic violence fora
 - Ethnic minority groups
 - Age groups (e.g. Age Concern, Help the Aged)
 - Lesbian, gay and bisexual groups
 - Emergency accommodation providers (such as the Salvation Army)
 - Day centres for homeless people
 - Refuges
 - The Samaritans
 - Mediation Services
 - Local Strategic Partnerships
 - Local businesses/Chambers of Commerce
 - Regional Housing Board

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- Regional planning bodies
 - People living in insecure accommodation (and their representative bodies)
 - Rough sleepers (and their representative bodies)
 - Residents/tenants organisations
 - Self help/user groups
 - Services supporting sex workers

Archived

ANNEX 4

SPECIFIC OBJECTIVES AND ACTIONS FOR LOCAL AUTHORITIES THAT MIGHT BE INCLUDED IN A HOMELESSNESS STRATEGY

This Annex provides suggestions for objectives and actions that local authorities may wish to consider including in their homelessness strategies.

HOUSING AUTHORITY

- **Facilitate the effective co-ordination of all service providers, across all sectors in the district, whose activities contribute to preventing homelessness and/or meeting the accommodation and support needs of people who are homeless or at risk of homelessness (objective).**
 - establish a homelessness forum to co-ordinate the activities of all the key players, across all sectors, who are contributing to meeting the aims of the homelessness strategy.
 - ensure the homelessness strategy is consistent with other relevant local plans and strategies and that all relevant stakeholders are aware of how they work together.
- **Ensure that people who are at risk of homelessness are aware of, and have access to, the services they may need to help them prevent homelessness (objective).**
 - provide comprehensive advice and information about homelessness and the prevention of homelessness, free to everyone in the district.
 - provide mediation and reconciliation services (e.g. to tackle neighbour disputes and family relationship breakdown).
 - implement an effective tenancy relations service (and good liaison with private landlords).
- **Ensure that the supply of accommodation, including affordable accommodation, in the district reflects estimated housing need (objective).**
 - in conjunction with RSLs operating in the district, maximise the number of social lettings available for people who have experienced homelessness or at risk of homelessness, consistent with the need to meet the reasonable aspirations of other groups in housing need.
 - ensure that provision of specialised and supported accommodation for people who have experienced homelessness or at risk of homelessness (e.g. refuges and wet hostels) reflects estimated need.
 - maximise the provision of affordable housing through planning requirements for new private developments.

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- **Work with the social services authority to ensure that the needs of clients who have both housing and social services support needs are fully assessed and taken into account (objective)**

- develop a framework for effective joint working with the social services authority, including screening procedures to identify at an early stage where there is a need for case specific joint working.
- put in place arrangements for carrying out joint assessments of people with support needs who are homeless or have experienced homelessness.
- establish a protocol for the referral of clients and the sharing information between services.

SOCIAL SERVICES AUTHORITY

- **Work with the housing authority to ensure that the needs of clients who have both housing and social services support needs are fully assessed and taken into account (objective)**

- develop a framework for effective joint working with the housing authority, including screening procedures, to identify at an early stage where there is a need for case specific joint working.
- put in place arrangements for carrying out joint assessments of people with support needs who are homeless or have experienced homelessness.
- establish a protocol for the referral of clients and the sharing information between services.

- **Ensure that, subject to relevant eligibility criteria, vulnerable people who are homeless, or at risk of homelessness, receive the support they need to help them sustain a home and prevent homelessness recurring (objective).**

- provide a reconciliation service for young people estranged from their families.
- exercise powers under the *Children Act 1989* to make payments to assist young people who are homeless or at risk of homelessness to sustain/find accommodation.
- operate a supported lodgings scheme for homeless 16 and 17 year olds who need a supportive environment.
- provide assistance to enable families with children who have become homeless intentionally (or are ineligible for housing assistance) to secure accommodation for themselves (e.g. financial assistance with rent deposit/guarantees).

ANNEX 5

CO-OPERATION BETWEEN REGISTERED SOCIAL LANDLORDS AND HOUSING AUTHORITIES

HOUSING: THE STRATEGIC CONTEXT

1. Housing authorities have a statutory obligation to consider the housing needs of their district (s.8 *Housing Act 1985*). Under the *Homelessness Act 2002* (“the 2002 Act”), they also have a statutory duty to formulate a strategy for preventing homelessness and ensuring that accommodation and support are available for people who are homeless or at risk of homelessness in their district. A homelessness strategy may include actions which the authority expects to be taken by various other organisations, with their agreement.
2. Most social housing is provided by housing authorities and by Registered Social Landlords (RSLs). Virtually all provision of new social housing is delivered through RSLs and, under the transfer programme, ownership of a significant proportion of housing authority stock is being transferred from housing authorities to RSLs, subject to tenants’ agreement. This means that, increasingly, RSLs will become the main providers of social housing. Consequently, it is essential that housing authorities work closely with RSLs, as well as all other housing providers, in order to meet the housing needs in their district and ensure that the aims and objectives of their homelessness strategy are achieved.

STATUTORY FRAMEWORK FOR CO-OPERATION

3. Section 170 of the *Housing Act 1996* (“the 1996 Act”) provides that where an RSL has been requested by a housing authority to offer accommodation to people with priority under its allocation scheme, the RSL must co-operate to such extent as is reasonable in the circumstances. Similarly, s.213 provides that where an RSL has been requested by a housing authority to assist them in the discharge of their homelessness functions under Part 7, it must also co-operate to the same extent. Section 3 of the 2002 Act requires housing authorities to consult appropriate bodies and organisations before publishing a homelessness strategy, and this will inevitably need to include RSLs.

HOUSING CORPORATION REGULATORY GUIDANCE

4. RSLs are regulated by the Housing Corporation which, under s.36 of the 1996 Act, and with the approval of the Secretary of State, has issued guidance to RSLs with respect to their management of housing accommodation. The Housing Corporation’s Regulatory Code and guidance requires housing associations to work with local authorities to enable them to fulfil their statutory duties to, among others, homeless people and people who have priority for an allocation of housing. In particular, RSLs must ensure that:

- their lettings policies are flexible, non-discriminatory and responsive to demand while contributing to inclusivity and sustainable communities;
 - they can demonstrate their co-operation with local authorities on homelessness reviews, homelessness strategies and the delivery of authorities' homelessness functions;
 - when requested, and to such extent as is reasonable in the circumstances, they provide a proportion of their stock (at least 50% – see paragraph 9 below) to housing authority nominations and as temporary accommodation for people owed a homelessness duty;
 - following consultation with local authorities, criteria are adopted for accepting or rejecting nominees and other applicants for housing;
 - applicants are excluded from consideration for housing only if their unacceptable behaviour is serious enough to make them unsuitable to be a tenant; and
 - their lettings policies are responsive to authorities' housing duties, take account of the need to give reasonable priority to transfer applicants, are responsive to national, regional and local mobility and exchange schemes, and are demonstrably fair and effectively controlled.
5. Therefore, the overriding requirement for RSLs in relation to homelessness is to demonstrate that they are co-operating with local authorities to enable them to fulfil their statutory duties.

CO-OPERATION AND PARTNERSHIPS

6. Housing authorities need to draw on these regulatory requirements to form constructive partnerships with RSLs. It is also recommended that authorities refer to the strategic document “A Framework for Partnership” published jointly by the Local Government Association, the National Housing Federation and the Housing Corporation and available at www.lga.gov.uk/Documents/Briefing/framework.pdf
7. Where RSLs participate in choice-based lettings schemes, the Corporation will expect any protocols for joint working with housing authorities to make proper provision to meet the needs of vulnerable groups, and ensure that support is available to enable tenants and applicants to exercise choice. Housing authorities should involve RSLs in the implementation of choice-based lettings schemes at an early stage.

NOMINATION AGREEMENTS

8. Whilst legislation provides the framework for co-operation between housing authorities and RSLs, nomination agreements set out the way in which this co-operation is given effect. It is crucial that a housing authority has a comprehensive nomination agreement with each of its partner RSLs to ensure that both sides know what is expected of them. The need for a robust nomination agreement applies in all circumstances, but will be particularly important where the housing authority has

transferred ownership of its housing stock and is reliant on the transfer RSL (and any other partner RSLs) to provide housing for their applicants. ODPM guidance on *Housing Allocation, Homelessness and Stock Transfer – A Guide to Key Issues (2004)* sets out the policy and operational matters which the nomination agreement between the housing authority and their transfer RSL should cover.

9. RSLs are required to offer at least 50% of vacancies in their stock (net of internal transfers) to housing authority nominations, unless some lower figure is agreed between the two bodies¹. In some circumstances, they may agree a substantially higher figure. However, housing authorities should bear in mind that RSLs are required to retain their independence. They must honour their constitutional obligations under their diverse governing instruments, and will make the final decision on the allocation of their housing, within their regulatory framework.
10. Where requested by a housing authority, RSLs should consider the possible use of a proportion of their own stock to provide temporary accommodation for people owed a homelessness duty under Part 7 of the 1996 Act. This may be necessary in some areas, particularly those where demand for housing is very high and there is a significant number of homeless families with children who need to be placed in temporary accommodation. RSLs and housing authorities will have joint responsibility for determining the appropriate use of settled housing stock for temporary lettings, taking into account that such use will reduce the volume of RSL housing stock available for nominations into long-term tenancies. Housing authorities should ensure that their partnerships take maximum advantage of the flexibility that such arrangements can provide. The Secretary of State expects that, wherever possible, social housing should be allocated on a settled basis rather than used to provide temporary accommodation in the medium to long term. Where medium to long term accommodation is required, the authority and RSL should consider whether it is possible to offer a secure or an assured tenancy under the terms of the authority's allocations scheme.
11. Housing authorities should ensure that the details of nominated households given to RSLs are accurate and comprehensive. Details should include information about the applicant's priority status under the housing authority's policy, as well as indications of vulnerability, support needs and arrangements for support.
12. The Corporation expects that RSLs' approach to exclusions and evictions will generally reflect the principles to which housing authorities work. Housing Corporation Circular 07/04 *Tenancy management: eligibility and evictions* sets out the Corporation's expectations of RSLs when assessing the eligibility of applicants and when working to prevent or respond to breaches of tenancy.

¹ Housing Corporation Regulatory Circular, 02/03 Regulation, February 2003.

EFFECTIVE COLLABORATION

13. It is important that housing authorities foster good partnership working with RSLs, to help them prevent and tackle homelessness in the district. The housing management and care and support approaches undertaken by RSLs are key to sustaining tenancies, reducing evictions and abandonment, and preventing homelessness. To ensure effective collaboration between themselves and partner RSLs operating in their district, housing authorities should consider the following:

nominations agreements: housing authorities should ensure that they have a formal nominations agreement with all partner RSLs and that there are robust arrangements in place to monitor effective delivery of the terms of the agreement. These should be clearly set out, and should include the proportion of lettings that will be made available, any conditions that will apply, and how any disputes about suitability or eligibility will be resolved. Housing authorities should negotiate for the maximum number of lettings that will be required to enable them to discharge their housing functions and which would be reasonable for the RSL to deliver.

exclusion criteria: when negotiating nominations agreements housing authorities should aim for any exclusion criteria (that may be applied to nominees by the RSL) to be kept to a minimum. To prevent new tenancies from failing and to minimise the likelihood of exclusion, housing authorities should also ensure that adequate support packages are in place for vulnerable applicants before a nominee is expected to take up their tenancy.

eviction policies: to help prevent homelessness, housing authorities should encourage RSLs to seek to minimise any need for eviction of their tenants by employing preventative strategies and taking early positive action where breaches of tenancy agreement have occurred. Associations should act to support and sustain, rather than terminate, a tenancy.

In cases involving anti-social behaviour eviction should, where possible, be used as a last resort, although in particularly serious cases or where perpetrators refuse to co-operate it may be necessary. A number of measures have been introduced which may be used to tackle anti-social behaviour without removing the perpetrator from their home and moving the problem to somewhere else. These include Acceptable Behaviour Contracts, Anti-Social Behaviour Orders, housing injunctions and demotion. Further information on the tools and powers available to tackle anti-social behaviour can be found on the TOGETHER website, a resource for practitioners working to tackle anti-social behaviour (www.together.gov.uk).

Similarly, in cases involving rent arrears eviction should, where possible, be used as a last resort. RSLs should employ strategies to maximise their income and to prevent and manage rent arrears. Where arrears have accrued they should seek early intervention through personal contact with the tenant(s) offering support and advice. They should offer practical ways for recovering the arrears through debt management plans, referrals to debt advice agencies and ensuring that tenants are claiming all the benefits to which they are entitled. ODPM published guidance for local authorities and RSLs on *Improving the Effectiveness of Rent Arrears Management* (June 2005).

Supporting People programme: housing authorities should ensure they work closely with RSLs in implementing the Supporting People programme to ensure that housing-related support can be delivered, where appropriate, for people who would be at risk of homelessness without such support.

mobility: housing authorities should work with RSLs in considering the scope for mobility – including moves to other areas, moves to other tenures, and joint action to reduce under-occupation and over-crowding – in meeting housing need and reducing homelessness. Larger RSLs, which operate in a number of different areas, may be uniquely placed to facilitate cross-boundary moves, including voluntary moves from high demand areas to areas of lower demand.

ODPM, in conjunction with the Housing Corporation, National Housing Federation and Local Government Association, published a good practice guide for local authorities and housing associations on *Effective Co-operation in Tackling Homelessness: Nomination Agreements and Exclusions* (2004).

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ANNEX 6

HOMELESSNESS STRATEGY: SPECIFIC ACTION THAT MIGHT BE EXPECTED TO BE TAKEN BY OTHERS

PUBLIC SECTOR

Registered social landlords

- ensure allocation policies meet the needs of people accepted as homeless including specialist provision for vulnerable groups, e.g. drug misusers;
- ensure allocation policies are inclusive, defensible and do not operate 'blanket bans' for particular groups;
- ensure arrears policies take into account the aims of the homelessness strategy (and facilitate early access to money and housing advice).

Primary Care Trusts

- develop health services for homeless people, (e.g. Personal Medical Service pilots, walk-in centres, GP service that visits hostels and day centres);
- ensure access to primary health care for all homeless people including rough sleepers and those using emergency access accommodation;
- liaise with social services and special needs housing providers to ensure access to dependency and multiple needs services where needed;
- ensure that hospital discharge policies and protocols are developed and put in place for those leaving hospital who are in housing need;
- ensure access to mental health services, including counselling and therapy where needed.

Children's Trusts

- ensure children's services and housing strategies are integrated to achieve better outcomes for children.

Youth and Community Services

- develop peer support schemes;
- raise awareness of homelessness issues with young people at risk.

National Offender Management Service

- complete a basic housing needs assessment on entry to custody in all local establishments;
- share information with other agencies on risk of harm, potential homelessness and vulnerability;

-
- develop local protocols regarding dealing with potentially homeless offenders and information sharing;
 - as part of the local Supporting People Commissioning bodies, provide specialist knowledge to help commission new services for vulnerable offender and victim groups.

Regional Offender Managers

- ensure regional strategic representation of the needs of offenders in custody and the community.

Community Safety Team/Anti-social Behaviour Team

- develop steps/interventions to reduce anti-social behaviour and therefore reduce the risk of evictions.

Youth Offending Team

- work with children and young people to prevent their offending, effectively integrate them and their families within the community and ultimately prevent evictions.

Drug Action Team

- consider the need to commission treatment for homeless people, or whether mainstream services can be extended to meet their needs;
- develop accommodation options for substance misusers including such provision as Rent Deposit Schemes;
- develop, in collaboration with Supporting People teams, specialist housing provision for substance misusers;
- ensure that the children of adults with substance misuse problems are taken into account when planning services.

Jobcentre Plus

- ensure that clients are helped to find and keep a job;
- ensure that clients claim and receive the benefits they are entitled to.

Connexions Service

- provide advice and information on housing and related benefits (or referral to other agencies where appropriate) to all 13 to 19 year olds who need it;
- ensure vulnerable young people have access to a personal adviser with the aim of preventing those young people becoming homeless.

National Asylum Support Service (NASS)

- ensure NASS accommodation providers notify local authorities of the planned withdrawal of NASS accommodation within two days of a positive asylum decision;

-
- encourage NASS accommodation providers to help prevent homelessness amongst new refugees (e.g. via tenancy conversion or delaying evictions);
 - ensure that homelessness and housing pressures are taken into account by Regional Strategic Co-ordination Meetings when decisions are taken on future asylum seeker dispersal areas.

VOLUNTARY SECTOR

- Provision of a range of services including:
 - 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;
 - Day Centres;
 - Outreach to those sleeping rough;
 - Provision of emergency accommodation (e.g. night shelters);
 - Hostels;
 - Foyers;
 - Resettlement services (including pre-tenancy, move-on accommodation and tenancy sustainment);
 - Mental health services;
 - Peer support, self-help and user groups;
 - Meaningful occupation/personal development work/job training/skills for employment/work placements;
 - Support for parents of young people at risk of homelessness;
 - Support for victims of crime.

PRIVATE SECTOR

- provision of hostels;
- making lettings available to people who are homeless or at risk of homelessness (e.g. through landlord accreditation schemes);
- working with tenants to address rent arrears.

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ANNEX 7

TACKLING COMMON CAUSES OF HOMELESSNESS

1. This annex provides guidance on how authorities might tackle some of the more common causes of homelessness at an early stage.

Parents, relatives or friends not being able to provide accommodation

2. Housing authorities are advised to consider a range of approaches aimed at avoiding the crisis of homelessness, resolving problems in the long-term or providing respite and time for a planned, and often more sustainable move. Home visits and mediation services can play an important role in delaying or preventing homelessness by helping people find solutions and resolve difficulties.
3. Family tensions can make living conditions intolerable for young people and their parents. Housing authorities are advised to work closely with children's trusts at strategic level to ensure that housing need and homelessness prevention are included in the strategic planning process through the Children and Young People's Plan. They are also advised to work closely with children's trusts at delivery level as part of local multi-agency teams that provide joined up services focusing on improving outcomes for children and young people. As part of this work, they may consider developing partnerships with key agencies in the voluntary sector who work with young people at risk of homelessness. Trained staff and peer mentors can often help young people in difficult relationships restore some links to their families or supporters, resolve family conflict or facilitate planned moves into alternative accommodation.

Relationship breakdown

4. Relationships may often be strained or break down due to periods of separation, e.g. long-term hospital or drug treatment or because of the behaviour of family members, e.g. offending or violence. Local authorities should develop systems for assessing appropriate forms of intervention and the assessment of risks to vulnerable family members to inform decisions about intervention, e.g. where domestic violence or child safety is involved.
5. Local authorities should consider the use of home visits, mediation and counselling services to help couples and families reconcile their differences or facilitate planned moves to alternative accommodation.
6. Housing authorities are advised to consider the provision of specialist advice targeted at young people at risk of homelessness. Local Connexions services, for example, can play a key role in reaching vulnerable young people; helping them access information and advice, providing one-to-one support or brokering appropriate specialist support from key services such as welfare, health, substance and/or alcohol misuse services, education and employment. Housing authorities might also consider working with local schools in order to provide young people with information about the implications of leaving home and the housing choices available to them.

Domestic violence

7. As well as being a direct and underlying cause of homelessness, it is becoming increasingly apparent that domestic violence is a major factor among people who experience “repeat” homelessness. In many cases, the provision of advice and outreach services to support people who experience domestic violence before they reach crisis point, for example on ex-partner rent arrears, tenancy agreements and property rights, can help to prevent homelessness.
8. Housing authorities are encouraged to offer people who have experienced domestic violence a range of accommodation and support options. For some, escaping domestic violence will involve leaving their home, often as a last resort, and those who have experienced domestic violence may be placed in a refuge or another form of appropriate temporary accommodation where necessary. Many people who have experienced domestic violence would, however, prefer to remain in their own homes with their social and support networks around them. From 1 April 2005 local authorities have been strongly encouraged to develop, launch and promote a sanctuary type scheme in order to meet part of the revised domestic violence Best Value Performance Indicator 225. The scheme provides security measures to allow those experiencing domestic violence to remain in their own homes where they choose to do so, where safety can be assured and where the perpetrator no longer lives within the accommodation.
9. It is important that when developing policies, strategies and practice-based interventions, housing authorities work with all relevant bodies. For example, when considering the safety, security and confidentiality of people who have experienced domestic violence and their children, especially those children who may be vulnerable and/or at risk, housing authorities will need to work with Crime and Disorder Reduction Partnerships, the Local Domestic Violence Fora and with the Local Safeguarding Children Board. BVPI 225 encourages further work in this area.

End of an assured shorthold tenancy

10. The use of home visits, landlord-tenant mediation services and tenancy sustainment services may enable tenants who have been asked to leave their home to remain with their existing private landlords, through negotiation, mediation and the offer of practical solutions, such as clearing a debt, providing the tenant with advice on managing budgets or fast-tracking a Housing Benefit claim.
11. Housing authorities should also establish services to provide tenants in housing difficulties with advice and information about available housing options and, where necessary, assistance to help them access alternative accommodation. Advice might include, for example, advice about private landlords and letting agents, including any accreditation schemes, within the district; the availability of rent guarantee or rent deposit schemes; or how to apply for social housing through the local authority housing waiting list or from other social landlords).

Rent and mortgage arrears

12. Early intervention by the housing authority could help prevent difficulties with rent or mortgage arrears from triggering a homelessness crisis for tenants or home owners.

Options might include:

- personal contact with tenants or homeowners to offer support and advice;
 - mediation with private landlords;
 - welfare benefits advice and assistance with making claims;
 - debt counselling and money advice (either in-house or through referrals to specialist advice agencies);
 - advice on practical ways of recovering rent arrears through debt management plans, attachment to earnings or benefits orders or by referrals to a debt advice agencies.
13. Many approaches to the prevention and management of rent arrears among tenants can apply equally whether the landlord is a social sector or a private sector landlord. ODPM published guidance for local authorities and RSLs on *Improving the Effectiveness of Rent Arrears Management* (June 2005).
 14. In some cases rent arrears may be the result of an underlying problem such as alcohol or drug misuse, death of a partner, relationship breakdown, change in employment status, or physical or mental health problems. In such cases the housing authority may wish to contact the appropriate health and social services departments and other relevant agencies for advice, assistance and specialist support. The Secretary of State considers that housing authorities should always consult the Children's Trust before considering the eviction of a family with children. Vital work helping vulnerable children can be affected if families with children are forced to move out of the local area. Effective, ongoing liaison arrangements and collaborative working will be important in such instances.

Housing Benefit administration

15. Rent arrears can arise from delays in the calculation and payment of housing benefit. It is therefore in housing authorities' interests to develop prompt and efficient systems for the payment of benefit in order to avoid a risk of homelessness arising as a result of such delays. Where the administration of housing benefit and the provision of housing assistance are dealt with by different departments of the local authority, it will be necessary for the authority to ensure that effective liaison arrangements are in place. Efficient housing benefit payments systems can also help to increase the confidence of private sector landlords in letting accommodation to tenants who may rely on benefits to meet their rent costs.

Anti-Social Behaviour and Offending

16. Tenants may be at risk of becoming homeless as a result of their own or others' anti-social or offending behaviour. Housing authorities are urged to contact tenants in these

circumstances at the earliest possible stage where they have received a complaint or where it has been brought to their attention that a tenant is causing a nuisance or annoyance. This will enable them to inform such tenants of the possible consequences of continuing with the reported behaviour and may prevent homelessness resulting in some instances. Authorities will need to be aware of the need for discretion about the source of any complaint, particularly where there is concern about threatening or aggressive behaviour.

17. In cases where a housing authority is satisfied that there is a substantive complaint of anti-social behaviour they will need to consider a range of options to address the problem with the tenant before embarking on action to terminate the tenancy. Housing authorities are advised, where possible, to use eviction as a last resort, although in particularly serious cases or where perpetrators refuse to co-operate it may be necessary.
18. Mediation services may help to resolve neighbour disputes which have led to complaints of anti-social behaviour. A number of measures have been introduced which may be used to tackle anti-social behaviour without removing the perpetrator from their home and simply moving the problem somewhere else. These include: Acceptable Behaviour Contracts, Anti-Social Behaviour Orders, housing injunctions and demotion. Further information can be found on the TOGETHER website, a resource for practitioners working to tackle anti-social behaviour (www.together.gov.uk).
19. Where local authority tenants are at risk of homelessness as a result of other tenants' anti-social behaviour, authorities should be aware of the powers they have to take action against the perpetrators and make urgent housing transfers to protect victims of violence or harassment, where requested.
20. Housing authorities will need to work closely with the National Offender Management Service (NOMS) and their partners in the voluntary and community sector to manage the housing arrangements of offenders in the community, and ensure they receive any support necessary to avoid a risk of homelessness. Where an authority may be considering the eviction of an offender, it will need to consult closely with NOMS to ensure this can be avoided wherever possible. This will also help reduce re-offending and promote community safety.

Leaving an institutional environment

21. People leaving an institutional environment can be particularly at risk of homelessness and may seek assistance from the housing authority to obtain accommodation when they move on. Authorities should have systems in place to ensure that they have advance notice of such people's needs for accommodation in such circumstances to allow them to take steps well in advance to ensure that arrangements are in place to enable a planned and timely move.

Young people leaving care

22. It is important that, wherever possible, the housing needs of care leavers are addressed before they leave care. All care leavers must have a pathway plan prepared by appropriate staff of the authority responsible for their care, setting out the support they will be provided with to enable them make a successful transition to a more independent lifestyle. Making arrangements for accommodation and ensuring that, where necessary, care leavers are provided with suitable housing support will be an essential aspect of the pathway plan. Where care leavers may require social housing, their housing and related support needs should be discussed with the appropriate agencies. Where necessary, arrangements will need to be made for joint assessment between social services and housing authorities, as part of a multi-agency assessment necessary to inform the pathway plan of individual young people.
23. Consideration of an individual care leaver's housing needs should take account of their need for support and reasonable access to places of education, employment, training and health care. As far as possible, pathway plans should include contingency plans in the event of any breakdown in the young person's accommodation arrangements. It is recommended that housing and social services authorities (and relevant departments within unitary authorities) develop joint protocols for meeting the needs of care leavers to ensure that each agency (or department) plays a full role in providing support to – and building trust with – this client group.

Custody or detention

24. Around a third of prisoners lose their housing on imprisonment, so it is important that prisoners receive effective advice and assistance about housing options, either prior to or when being remanded or sentenced to custody. Assessing an offender's housing needs at this point will help to identify those prisoners who may require assistance to bring to an end, sustain or transfer an existing tenancy, make a claim for Housing Benefit to meet rent costs while in prison, or to help a prisoner transfer or close down an existing tenancy appropriately. Local authorities are advised to assist the Prison Service in providing advice to prisoners and taking action to ensure they can sustain their accommodation while in custody.
25. It is recommended that housing advice be made available to offenders throughout the period of custody or detention to ensure that any housing needs are addressed. It is important that early planning takes place between prison staff and housing providers to identify housing options on release, to prevent homelessness and enable them to make a smooth transition from prison, or remand, to independent living.
26. All prisoners in local prisons and Category C prisons have access to housing advice. And, from April 2005 all local prisons have been required to carry out a housing needs assessment for every new prisoner, including those serving short sentences. Local authorities are advised to assist the Prison Service in delivering these services.
27. All Youth Offending Teams (YOTs) now have named accommodation officers. YOTs can offer both practical support to children, young people and their families and can

increasingly play a key strategic role in ensuring that young offenders are effectively resettled through accessing mainstream provision and services.

28. Joint working between the National Offender Management Service/Youth Offending Teams and their local housing authorities is essential to help prevent homelessness amongst offenders, ex-offenders and others who have experience of the criminal justice system. Options might include:
- having a single contact point within the housing authority to provide housing advice and assistance for those who have experience of the criminal justice system;
 - Probation staff offering information on securing or terminating tenancies prior to custody;
 - running housing advice sessions in local prisons to further enable prisoners to access advice on housing options prior to their release;
 - prisons granting prisoners Release On Temporary Licence to attend housing interviews with landlords;
 - developing tenancy support services for those who have experienced the criminal justice system.

Armed forces

29. Members of Her Majesty's regular naval, military and air forces are generally provided with accommodation by the Ministry of Defence (MOD), but are required to leave this when they are discharged from the service. The principal responsibility for providing housing information and advice to Service personnel lies with the armed forces up to the point of discharge and these services are delivered through the Joint Service Housing Advice Office (telephone: 01722 436575). Some people, who have served in the armed forces for a long period, and those who are medically discharged, may be offered assistance with resettlement by Ministry of Defence (MOD) resettlement staff. The MOD issues a *Certificate of Cessation of Entitlement to Occupy Service Living Accommodation* (see examples at Annexes 14 and 15) six months before discharge.
30. Housing authorities that have a significant number of service personnel stationed in their area will need to work closely with relevant partners, such as the Joint Service Housing Advice Office and MOD's resettlement services, to ascertain likely levels of need for housing assistance amongst people leaving the forces and plan their services accordingly. In particular, housing authorities are advised to take advantage of the six-month period of notice of discharge to ensure that service personnel receive timely and comprehensive advice on the housing options available to them when they leave the armed forces. Authorities may also wish to consider creating links with the employment and business communities to assist people leaving the armed forces to find work or meaningful occupation, enabling them further to make a successful transition to independent living in the community.

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31. The Veterans Agency should be the first point of contact for all former armed forces personnel who require information about housing issues. The agency provide a free help line (telephone: 0800 169 2277) which offers former armed forces personnel advice and signposting to ex-Service benevolent organisations who may be able to offer assistance with housing matters.

Hospital

32. Some people who are admitted to hospital – even for a short time – may be in housing need or at risk of homelessness. And some people who may not be in housing need when they are admitted may become at risk of losing their home during a protracted stay in hospital, for example, if they are unable to maintain their rent or mortgage payments. This can apply, in particular, to people admitted to hospital for mental health reasons and for whom family, tenancy or mortgage breakdown is an accompanying factor to the admission to hospital.
33. Housing authorities are advised to work closely with social services and NHS Trusts in order to establish good procedures for the discharge of patients, and to ensure that former patients are not homeless or at risk of homelessness on leaving hospital. This could involve agreeing joint protocols for hospital admissions and discharge of patients to ensure that the housing and support needs of inpatients are identified as early as possible after admission, and that arrangements are put in place to meet the needs of patients in good time prior to discharge. Measures might include, for example, setting up a multi-agency discharge team as part of the homelessness strategy action plan or funding a dedicated post to support patients who may be at risk of homelessness when discharged from hospital.
34. Further guidance is provided in Department of Health publications on *Achieving timely simple discharge from hospital: A toolkit for the multi-disciplinary team* (2004) and *Discharge from hospital: pathway, process and practice* (2003).

Accommodation provided by National Asylum Support Service (NASS)

35. Asylum seekers who receive leave to remain in the UK must move on from their NASS accommodation within 28 days of the decision on their case. Former asylum seekers will therefore have little time to find alternative accommodation and are unlikely to have had any experience of renting or buying accommodation in the UK, or experience of related matters such as claiming benefits or arranging essential services such as gas, water and electricity. These difficulties are likely to be compounded by the fact that many former asylum seekers may face cultural barriers such as language.
36. In order to prevent these factors leading to homelessness amongst former asylum seekers, housing authorities are advised to develop protocols with NASS accommodation providers, refugee support services and NASS regional managers to ensure that, where possible, a planned and timely move to alternative accommodation or the sustainment of existing accommodation can take place. Housing benefit, rent deposits, homeless prevention loans and discretionary housing benefit payments can all help to fund temporary extensions of the NASS notice period or longer-term tenancy conversion through the establishment of assured shorthold tenancies.

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37. Former asylum seekers will need effective and timely advice on the range of housing options available. It is vital that housing authorities ensure that this advice and information can be readily translated into community languages and delivered in locations accessible to asylum seekers and refugees. Authorities are also advised to consider whether there may be a need for ongoing resettlement support in order to maximise the chances of tenancy sustainment. As standard, authorities are advised to ensure that new refugees are made fully aware of the steps that they need to take to maintain a UK tenancy.
38. Authorities may wish to refer to *Housing and Support Services for asylum seekers and refugees: a good practice guide (2005)* published by the Chartered Institute of Housing.

Ethnic minority populations

39. Statistics provided by local authorities show that people from ethnic minority backgrounds are around three times more likely to be accepted as owed a main homelessness duty than their White counterparts. This pattern is found across all regions in England and the reasons are varied and complex. It is therefore critical that housing authorities and their partner agencies develop comprehensive strategies to better prevent and respond to homelessness among people from ethnic minority communities.
40. ODPM published *Tackling homelessness amongst ethnic minority households – a development guide (2005)* to assist local authorities and their partner agencies in the development of inclusive, evidence-based and cost-effective homelessness services for their local ethnic minority populations.

Drug Users

41. Drug use can both precede and occur as a result of homelessness. Between half and three quarters of single homeless people have in the past been problematic drug misusers. Many have a wide range of support needs, which reinforce each other and heighten the risk of drug use and homelessness. For those who are engaging in drug treatment, or have stabilised their use, homelessness increases their chances of relapse and continued problematic drug use. Housing authorities are advised to work closely with Drug Action Teams (multi-agency partnerships who co-ordinate the drug strategy at the local level) to ensure that housing and homelessness strategies are aligned with DAT treatment plans and Supporting People strategies help address the needs of homeless drug users as a shared client group.

ANNEX 8

HOW TO CONTACT THE HOME OFFICE IMMIGRATION AND NATIONALITY DIRECTORATE

1. The Home Office's Immigration and Nationality Directorate (IND) will exchange information with 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 housing authorities to confirm the immigration status of an applicant from abroad (Non-Asylum Seekers). In order to take advantage of the service, housing authorities first need to register with the Evidence and Enquiries Unit, Immigration and Nationality Directorate, 12th Floor Lunar House, Croydon, CR9 2BY either by letter or **Fax: 020 8196 3049**
3. Registration details required by the EEU's Local Authorities' Team are:
 - (a) Name of enquiring housing authority on headed paper;
 - (b) Job title/status of officer registering on behalf of the local housing authority; and
 - (c) Names of housing authority staff and their respective job titles/status who will be making enquiries on behalf of the housing authority.
4. Once the housing authority is registered with the EEU, and this has been confirmed, then the authorised personnel can make individual enquiries by letter or fax, but replies will be returned by post.
5. The EEU will not usually indicate that someone is an asylum seeker unless the applicant has signed a disclaimer and it is attached to the enquiry or if the enquirer has specifically asked about asylum.
6. If a response indicates that the applicant has an outstanding asylum claim, or there are any queries regarding an ongoing asylum case, enquiries should be made to NASS LA Comms on 020 8760 4527. Local authorities will also need to be registered with this team before any information can be provided.
7. The Home Office (IND) can only advise whether an EEA/foreign national has a right of residence in the United Kingdom. IND does not decide whether an EEA/Foreign national qualifies for benefits or for local authority housing.

ANNEX 9

ASYLUM SEEKERS

OVERVIEW

1. Generally, asylum seekers can be expected to be *persons subject to immigration control* who have been given *temporary admission* but have not been granted leave to enter or remain in the UK.
2. **Asylum seekers who are *persons subject to immigration control* and whose claim for asylum was made after 2 April 2000 are not eligible for assistance under Part 7.** However, some asylum seekers who are *persons subject to immigration control* and whose claim for asylum was made before 3 April 2000 may be eligible (see below).
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 only 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 Home Office Immigration and Nationality Directorate, using the procedures set out in Annex 8. 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 *Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006* (SI 2006 No.1294) ("the Eligibility Regulations") provide that asylum seekers who are *persons subject to immigration control* and who claimed asylum before 3 April 2000 are eligible for assistance under Part 7 in certain circumstances (set out below). However, by virtue of s.186(1), 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.

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7. Subject to s.186(1), such asylum seekers are 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 United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland; **or**
 - ii) the claim for asylum was made within 3 months of a declaration by the Secretary of State that he would not normally order the return of a person to the country of which he or she is a national because of a fundamental change of circumstances in that country, and the asylum seeker was present in Great Britain on the date the declaration was made; **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 under regulation 7A of the *Housing Benefit (General) Regulations 1987*.
8. Generally, a person ceases to be an asylum seeker for the purposes of the Eligibility Regulations when his claim for asylum is recorded by the Secretary of State as having been decided (other than on appeal) or abandoned. However, a person does not cease to be an asylum seeker in these circumstances for the purposes of paragraph 7(iii) if he continues to be eligible for housing benefit by virtue of:
- regulation 10(6) of the *Housing Benefit Regulations 2006* (SI 2006 No. 213), or
 - regulation 10(6) of the *Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006* (SI 2006 No. 214).
- as amended by the *Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006* (SI 2006 No.217).

FORMER ASYLUM SEEKERS

9. Where an asylum claim is successful – either initially or following an appeal – the claimant will normally be granted refugee status. If a claim is unsuccessful, leave to remain in the UK may still be granted, in accordance with published policies on Humanitarian Protection and Discretionary Leave. Former asylum seekers granted refugee status, or those granted Humanitarian Protection or Discretionary Leave which is not subject to a condition requiring him to maintain and accommodate himself without recourse to public funds will be eligible for homelessness assistance.

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10. Prior to April 2003, Exceptional Leave to Remain was granted rather than Humanitarian Protection or Discretionary Leave. Those with Exceptional Leave to Remain which is not subject to a condition requiring him to maintain and accommodate himself without recourse to public funds will also be eligible for homelessness assistance.

INFORMATION

11. Under s.187 of the *Housing Act 1996*, the Home Office Immigration and Nationality Directorate (IND) will, on request, provide local 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 (eg. a decision on the asylum claim) will be notified to the authority by the IND. The procedures for contacting the IND are set out in Annex 8.

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ANNEX 10

THE HABITUAL RESIDENCE TEST

1. In practice, when considering housing applications from persons who are subject to the habitual residence test, it is only necessary to investigate habitual residence if the applicant has arrived or returned to live in the UK during the two year period prior to making the application.

DEFINITION OF HABITUALLY RESIDENT

2. The term 'habitually resident' is not defined in legislation. Local authorities should always consider the overall circumstances of a case to determine whether someone is habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland.

GENERAL PRINCIPLES

3. 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;
 - a person who is not resident somewhere cannot be habitually resident there. 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;
 - the most important factors for habitual residence are the length, continuity and general nature of actual residence rather than 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;
 - established habitual residents who have periods of temporary or occasional absence of long or short duration may still be habitually resident during such absences.

ACTION ON RECEIPT OF AN APPLICATION

Applicant came to live in the UK during the previous two years

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

Factors to consider

5. The applicant's stated reasons and intentions for coming to the UK will be relevant to the question of whether he or she is habitually resident. 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.
6. To decide whether an applicant is habitually resident in the UK, authorities should consider the factors set out below. However, these do not provide an exhaustive check list of the questions or factors that need to be considered. Further enquiries may be needed. The circumstances of each case will dictate what information is needed, and all relevant factors should be taken into account.

Why has the applicant come to the UK?

7. If the applicant is returning to the UK after a period spent abroad, and it can be established that the applicant was previously habitually resident in the UK and is returning to resume his or her former period of habitual residence, **he or she will be immediately habitually resident**.
8. In determining whether an applicant is returning to resume a former period of habitual residence authorities should 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?
9. 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 or her reasons for coming to the UK, and in particular to the factors set out below.

Applicant is joining family or friends

10. If the applicant has come to the UK to join or rejoin family or friends, authorities should consider:
- has the applicant sold or given up any property abroad?
 - has the applicant bought or rented accommodation or is he or she staying with friends?
 - is the move to the UK intended to be permanent?

Applicant's plans

11. Authorities should consider the applicant's plans, e.g.:
- if the applicant plans to remain in the UK, is the applicant's stated plan consistent with his or her actions?
 - were any arrangements made for employment and accommodation (even if unsuccessful) before the applicant arrived in the UK?
 - did the applicant buy a one-way ticket?
 - did the applicant bring all his or her belongings?
 - is there any evidence of links with the UK, eg membership of clubs?
12. 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 disposal of property abroad, may indicate that the applicant is habitually resident in the UK.
13. An applicant who intends to reside in the UK for only a short period, for example for a holiday or to visit friends is unlikely to be habitually resident in the UK.

Length of residence in another country

14. Authorities should consider the length and continuity of an applicant's residence in another country:
- how long did the applicant live in the previous country?
 - does the applicant have any remaining ties with his or her former country of residence?
 - has the applicant stayed in different countries outside the UK?
15. 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

16. An applicant is likely to be habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland, despite spending time abroad, if his or her centre of interest is located in one of these places.
17. People who maintain their centre of interest in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland, for example a home, a job, friends, membership of clubs, are likely to be habitually resident there. People who have retained their centre of interest in another country and have no particular ties with the UK, the Channel Islands, the Isle of Man or the Republic of Ireland, are unlikely to be habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland.
18. Authorities should take the following into account when deciding the centre of interest:
 - home;
 - family ties;
 - club memberships;
 - finance accounts
19. If the centre of interest appears to be in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland but the applicant has a home somewhere else, authorities should consider the applicant's intentions regarding the property.
20. In certain cultures, e.g. the Asian culture, it is quite common for a person to live in one country but have property abroad that they do not intend to sell. Where such a person has lived in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland for many years, the fact that they have property elsewhere does not necessarily mean that they intend to leave, or that the applicant's centre of interest is elsewhere.

ANNEX 11

EUROPEAN GROUPINGS

(EU, A8, EEA, SWITZERLAND)

THE EUROPEAN UNION (EU)

Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, the United Kingdom and the A8 or Accession States.

THE “A8” or “ACCESSION STATES”

The 8 eastern European States that acceded to the EU in 2004 (and whose nationals may be subject to the UK Worker Registration Scheme for a transitional period):

the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

THE EUROPEAN ECONOMIC AREA (EEA)

All EU countries, plus: Iceland, Norway and Liechtenstein

SWITZERLAND

Note: Although not an EEA State, Switzerland should be treated as an EEA State for the purpose of this guidance. (See the *Immigration (European Economic Area) Regulations 2006* (S.I. 2006 No. 1003), regulation 2(1).)

ANNEX 12

RIGHTS TO RESIDE IN THE UK DERIVED FROM EC LAW

1. EEA nationals and their family members who have a right to reside in the UK that derives from EC law are not persons subject to immigration control. This means that they will be eligible for assistance under Part 7 of the *Housing Act 1996* (“housing assistance”) unless they fall within one of the categories of persons to be treated as a person from abroad who is ineligible for assistance by virtue of regulation 6 of the *Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006* (“the Eligibility Regulations”).

GENERAL

Nationals of EU countries

2. Nationals of EU countries enjoy a number of different rights to reside in other Member States, including the UK. These rights derive from the EC Treaty, EC secondary legislation (in particular *Directive 2004/38/EC*) and the case law of the European Court of Justice.
3. Whether an individual EU national has a right to reside in the UK will depend on his or her circumstances, particularly his or her economic status (e.g. whether employed, self-employed, seeking work, a student, or economically inactive etc.).

The accession states

4. A slightly different regime applies to EU nationals who are nationals of the accession states. For the purposes of this guidance, ‘the accession states’ are the 8 eastern European countries that acceded to the EU on 1 May 2004: Poland, Lithuania, Estonia, Latvia, Slovenia, Slovakia, Hungary and the Czech Republic.

The Immigration (European Economic Area) Regulations 2006

5. The *Immigration (European Economic Area) Regulations 2006* (“the EEA Regulations”) implement into UK domestic law EC legislation conferring rights of residence on EU nationals. Broadly, the EEA Regulations provide that EU nationals have the right to reside in the UK without the requirement for leave to remain under the *Immigration Act 1971* for the first 3 months of their residence, and for longer, if they are a “qualified person” or they have acquired a permanent right of residence.

Nationals of Iceland, Liechtenstein and Norway.

6. The EEA Regulations extend the same rights to reside in the UK to nationals of Iceland, Liechtenstein and Norway as those afforded to EU nationals (The EU countries plus Iceland, Liechtenstein and Norway together comprise the EEA.)

Nationals of Switzerland

7. The EEA Regulations also extend the same rights to reside in the UK to nationals of Switzerland.
8. For the purposes of this guidance, “EEA nationals” means nationals of any of the EU member states (excluding the UK), and nationals of Iceland, Norway, Liechtenstein and Switzerland.

INITIAL 3 MONTHS OF RESIDENCE

9. Regulation 13 of the EEA Regulations provides that EEA nationals have the right to reside in the UK for a period of up to 3 months without any conditions or formalities other than holding a valid identity card or passport. Therefore, during their first 3 months of residence in the UK, EEA nationals will not be subject to immigration control (unless the right to reside is lost following a decision by an immigration officer in accordance with regulation 13(3) of the EEA Regulations).
10. However, regulations 6(1)(b)(i) and (c) of the Eligibility Regulations provide that a person who is not subject to immigration control is not eligible for housing assistance if:
 - (i) his or her **only** right to reside in the UK is an initial right to reside for a period not exceeding 3 months under regulation 13 of the EEA Regulations, or
 - (ii) his or her **only** right to reside in the Channel Islands, the Isle of Man or the Republic of Ireland is a right equivalent to the right mentioned in (i) above which is derived from the Treaty establishing the European Community.

On (ii), article 6 of *Directive 2004/38/EC* provides that EU citizens have the right of residence in the territory of another Member State (e.g. the Republic of Ireland) for a period of up to 3 months without any conditions or formalities other than holding a valid identity card or passport.

RIGHTS OF RESIDENCE FOR ‘QUALIFIED PERSONS’

11. Regulation 14 of the EEA Regulations provides that ‘qualified persons’ have the right to reside in the UK so long as they remain a qualified person. Under regulation 6 of the EEA Regulations, ‘qualified person’ means:
 - a) a jobseeker,
 - b) a worker,
 - c) a self-employed person,
 - d) a self-sufficient person,
 - e) a student.

Jobseekers

12. For the purposes of regulation 6(1)(a) of the EEA Regulations, ‘jobseeker’ means a person who enters the UK in order to seek employment and can provide evidence that he or she is seeking employment and has a genuine chance of being employed.
13. Accession state nationals who need to register to work (see paragraph 20 below) do not have a right to reside in the UK as a jobseeker (see regulation 5(2) of the Accession Regulations, as amended). However, accession state nationals seeking work may have a right to reside by virtue of another status, e.g. as a self-sufficient person.
14. Although a person who is a jobseeker for the purposes of the definition of “qualified person” in regulation 6(1)(a) of the EEA Regulations is not subject to immigration control, regulation 6 of the Eligibility Regulations provides that a person is not eligible for housing assistance if:
 - (i) his or her only right to reside in the UK is derived from his status as a jobseeker or the family member of a jobseeker, or
 - (ii) his or her only right to reside in the Channel Islands, the Isle of Man or the Republic of Ireland is a right equivalent to the right mentioned in (i) above which is derived from the Treaty establishing the European Community.

Workers

15. In order to be a worker for the purposes of the EEA Regulations, a person must be employed, that is, the person is obliged to provide services for another person in return for monetary reward and who is subject to the control of that other person as regards the way in which the work is to be done.
16. Activity as an employed person may include part-time work, seasonal work and cross-border work (i.e. where a worker is established in another Member State and travels to work in the UK). However, the case law provides that the employment must be effective and genuine economic activity, and not on such a small scale as to be regarded as purely marginal and ancillary.
17. Provided the employment is effective and genuine economic activity, the fact that a person’s level of remuneration may be below the level of subsistence or below the national minimum wage, or the fact that a person may be receiving financial assistance from public benefits, would not exclude that person from being a ‘worker’. Housing authorities should note that surprisingly small amounts of work can be regarded as effective and genuine economic activity.
18. Applicants in the labour market should be able to confirm that they are, or have been, working in the UK by providing, for example:
 - payslips,
 - a contract of employment, or
 - a letter of employment.

Retention of worker status

- 19.** A person who is no longer working does not cease to be treated as a ‘worker’ for the purpose of regulation 6(1)(b) of the EEA Regulations, if he or she:
- (a) is temporarily unable to work as the result of an illness or accident; or
 - (b) is recorded as involuntarily unemployed after having being employed in the UK, provided that he or she has registered as a jobseeker with the relevant employment office, and:
 - (i) was employed for one year or more before becoming unemployed, or
 - (ii) has been unemployed for no more than 6 months, or
 - (iii) can provide evidence that he or she is seeking employment in the UK and has a genuine chance of being engaged; or
 - (c) is involuntarily unemployed and has embarked on vocational training; or
 - (d) has voluntarily ceased working and embarked on vocational training that is related to his or her previous employment.

Accession state workers requiring registration who are treated as workers

- 20.** By virtue of the *Accession (Immigration and Worker Registration) Regulations 2004* (SI 2004/1219) (“the Accession Regulations”), accession state nationals (with certain exceptions) are required to register their employment in the UK until they have accrued a period of 12 months’ continuous employment. The exceptions are set out in Annex 13.
- 21.** An accession state national requiring registration is only treated as a worker if he or she is actually working and:
- (a) has registered his or her employment and is working in the UK for an authorised employer (see regulation 5(2) of the Accession Regulations, as amended), or
 - (b) is not registered for employment, but has been working for an employer for less than one month (regulation 7(3) of the Accession Regulations), or
 - (c) has applied to register under the Worker Registration Scheme and is working for the employer with whom he or she has applied to register (regulation 7(2)(b) of the Accession Regulations).

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22. To demonstrate eligibility for housing assistance, accession state workers requiring registration should be able to:
- (a) provide a valid worker registration card, and a valid worker registration certificate showing their current employer (see Annex 13 for specimens of these documents), or
 - (b) (where the accession state worker has applied to register but not yet received the registration certificate) provide a copy of their application to register, or
 - (c) show they have been working for their current employer for less than one month.
23. Authorities may need to contact the employer named in the registration certificate, to confirm that the applicant continues to be employed.
24. See Annex 13 for guidance on the Worker Registration Scheme.
25. A person who is a 'worker' for the purposes of the definition of a qualified person in regulation 6(1) of the EEA Regulations is not subject to immigration control, and is eligible for housing assistance whether or not he or she is habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland.

Self-employed persons

26. 'Self-employed person' means a person who establishes himself in the UK in order to pursue activity as a self-employed person in accordance with Article 43 of the Treaty establishing the European Union.
27. A self-employed person should be able to confirm that he or she is pursuing activity as a self-employed person by providing documents relating to their business such as:
- a) invoices,
 - b) tax accounts, or
 - c) utility bills.
28. A person who is no longer in self-employment does not cease to be treated as a self-employed person for the purposes of regulation 6(1)(c) of the EEA regulations, if he or she is temporarily unable to pursue his or her activity as a self-employed person as the result of an illness or accident.
29. Accession state nationals are not required to register in order to establish themselves in the UK as a self-employed person.
30. A person who is a self-employed person for the purposes of the definition of a qualified person in regulation 6(1) of the EEA Regulations is not subject to immigration control, and is eligible for housing assistance whether or not he or she is habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland.

Self-sufficient persons

31. Regulation 4(1)(c) of the EEA regulations defines 'self-sufficient person' as a person who has:
- (i) sufficient resources not to become a burden on the social assistance system of the UK during his or her period of residence, and
 - (ii) comprehensive sickness insurance cover in the UK.
32. By regulation 4(4) of the EEA Regulations, the resources of a person who is a self-sufficient person or a student (see below), and where applicable, any family members, are to be regarded as sufficient if they exceed the maximum level of resources which a UK national and his or her family members may possess if he or she is to become eligible for social assistance under the UK benefit system.
33. Where an EEA national applies for housing assistance as a self-sufficient person and does not appear to meet the conditions of regulation 4(1)(c), the housing authority will need to consider whether he or she may have some other right to reside in the UK.
34. Where the applicant does not meet the conditions of regulation 4(1)(c) but has previously done so during his or her residence in the UK, the case should be referred to the Home Office for clarification of their status.
35. A person who is a self-sufficient person for the purposes of the definition of a qualified person in regulation 6(1) of the EEA Regulations is not subject to immigration control, but must be habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland to be eligible for housing assistance.

Students

36. Regulation 4(1)(d) of the EEA regulations defines 'student' as a person who :
- (a) is enrolled at a private or public establishment included on the Department of Education and Skills' Register of Education and Training Providers, or is financed from public funds, for the principal purpose of following a course of study, including vocational training, and
 - (b) has comprehensive sickness insurance cover in the UK, and
 - (c) assures the Secretary of State, by means of a declaration or such equivalent means as the person may choose, that he or she (and if applicable his or her family members) has sufficient resources not to become a burden on the social assistance system of the UK during his or her period of residence.
37. A person who is a student for the purposes of the definition of a qualified person in regulation 6(1) of the EEA Regulations is not subject to immigration control. The eligibility of such a person for housing assistance should therefore be considered in accordance with regulation 6 of the Eligibility Regulations.

PERMANENT RIGHT OF RESIDENCE

- 38.** Regulation 15 of the EEA Regulations provides that the following persons shall acquire the right to reside in the UK permanently:
- (a) an EEA national who has resided in the UK in accordance with the EEA regulations for a continuous period of 5 years;
 - (b) a non-EEA national who is a family member of an EEA national and who has resided in the UK with the EEA national in accordance with the EEA regulations for a continuous period of 5 years;
 - (c) a worker or self-employed person who has ceased activity (see regulation 5 of the EEA Regulations for the definition of worker or self-employed person who has ceased activity);
 - (d) the family member of a worker or self-employed person who has ceased activity;
 - (e) a person who was the family member of a worker or self-employed person who has died, where the family member resided with the worker or self-employed person immediately before the death and the worker or self-employed person had resided continuously in the UK for at least 2 years before the death (or the death was the result of an accident at work or an occupational disease);
 - (f) a person who has resided in the UK in accordance with the EEA regulations for a continuous period of 5 years, and at the end of that period was a family member who has retained the right of residence (see regulation 10 of the EEA Regulations for the definition of a family member who has retained the right of residence).

Once acquired, the right of permanent residence can be lost through absence from the UK for a period exceeding two consecutive years.

- 39.** A person with a right to reside permanently in the UK arising from (c), (d) or (e) above is eligible for housing assistance whether or not he or she is habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland. Persons with a permanent right to reside by virtue of (a), (b), or (f) must be habitually resident to be eligible.

RIGHTS OF RESIDENCE FOR CERTAIN FAMILY MEMBERS

The right to reside

- 40.** Regulation 14 of the EEA Regulations provides that the following family members are entitled to reside in the UK:
- (i) a family member of a qualified person residing in the UK;
 - (ii) a family member of an EEA national with a permanent right of residence under regulation 15; and

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- (iii) a family member who has retained the right of residence (see regulation 10 of the EEA Regulations for the definition).
41. A person who has a right to reside in the UK as the family member of an EEA national under the EEA Regulations will not be subject to immigration control. The eligibility of such a person for housing assistance should therefore be considered in accordance with regulation 6 of the Eligibility Regulations.
42. When considering the eligibility of a family member, local authorities should consider whether the person has acquired a right to reside in their own right, for example a permanent right to reside under regulation 15 of the EEA Regulations (see paragraph 38 above).

Who is a 'family member'?

43. Regulation 7 of the EEA regulations provides that the following persons are treated as the family members of another person (with certain exceptions for students – see below):
- (a) the spouse of the person;
 - (b) the civil partner of the person (part of a registered partnership equivalent to marriage);
 - (c) a direct descendant of the person, or of the person's spouse or civil partner, who is under the age of 21;
 - (d) a direct descendant of the person, or of the person's spouse or civil partner, who is over 21 and dependent on the person, or the spouse or civil partner;
 - (e) an ascendant relative of the person, or of the person's spouse or civil partner, who is dependent on the person or the spouse or civil partner.
 - (f) a person who is an extended family member and is treated as a family member by virtue of regulation 7(3) of the EEA regulations (see below).

Family members of students

44. Regulation 7(2) of the EEA regulations provides that a person who falls within (c), (d) or (e) above shall not be treated as a family member of a student residing in the UK after the period of 3 months beginning on the date the student is admitted to the UK unless:
- (i) in the case of paragraph 43 (c) and (d) above, the person is the dependent child of the student, or of the spouse or civil partner, or
 - (ii) the student is also a qualified person (for the purposes of regulation 6(1) of the EEA regulations) other than as a student.

Extended family members

45. Broadly, extended family members will be persons who :
- (a) do not fall within any of the categories (a) to (e) in paragraph 43 above, and
 - (b) are either a relative of an EEA national (or of the EEA national's spouse or civil partner) or the partner of an EEA national, and
 - (c) have been issued with an EEA family permit, a registration certificate or a residence card which is valid and has not been revoked.

Family members' eligibility for housing assistance

Relationship with other rights to reside

46. This section concerns the eligibility of an applicant for housing assistance whose right to reside is derived from his or her status as the family member of an EEA national with a right to reside. In some cases, a family member will have acquired a right to reside in his or her own right. In particular, a person who arrived in the UK as the family member of an EEA national may have subsequently acquired a permanent right of residence under regulation 15 of the EEA Regulations, as outlined in paragraph 38(a) – (f) above. The eligibility for housing assistance of those with a permanent right of residence is discussed at paragraph 39.

Family members who must be habitually resident

47. For family members with a right to reside under regulation 14 of the EEA Regulations, the following categories of persons must be habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland in order to be eligible for housing assistance:
- a) a person whose right to reside derives from their status as a family member of an EEA national who is a self-sufficient person for the purposes of regulation 6(1)(d) of the EEA regulations;
 - b) a person whose right to reside derives from their status as a family member of an EEA national who is a student for the purposes of regulation 6(1)(e) of the EEA regulations;
 - c) a person whose right to reside is dependent on their status as a family member of an EEA national with a permanent right to reside;
 - d) a person whose right to reside is dependent on their status as a family member who has retained the right of residence.

Family members who are exempt from the habitual residence requirement

48. A person with a right to reside under regulation 14 as a family member of an EEA national who is a worker or a self-employed person for the purposes of regulation 6(1) of the EEA regulations is exempted from the requirement to be habitually resident by regulation 6(2)(d) of the Eligibility Regulations. However, authorities should note that an extended family member (see above) is not counted as a family member for the purposes of regulation 6(2)(d) of the Eligibility Regulations (see regulation 2(3) of the Eligibility Regulations).

Family members of UK nationals exercising rights under the EC Treaty

49. There are some limited cases in which the non-EEA family member of a UK national may have a right to reside under EU law. Under regulation 9 of the EEA Regulations, the family member of a UK national should be treated as an EEA family member where the following conditions are met:
- (i) the UK national is residing in an EEA State as a worker or self-employed person, or was so residing before returning to the UK; and
 - (ii) if the family member of the UK national is his spouse or civil partner, the parties are living together in the EEA State, or had entered into a marriage or civil partnership and were living together in that State before the UK national returned to the UK.
50. Where the family member of a UK national is to be treated as an EEA family member by virtue of regulation 9 of the EEA Regulations, that person is not subject to immigration control, and his or her eligibility for housing assistance should therefore be determined in accordance with regulation 6 of the Eligibility Regulations.

ANNEX 13

WORKER REGISTRATION SCHEME

Introduction

1. On 1 May 2004, 10 new countries acceded to the European Union: Cyprus, Malta, Poland, Lithuania, Estonia, Latvia, Slovenia, Slovakia, Hungary and the Czech Republic.
2. Nationals of all of these countries have the right to move freely among all member states. Nationals of 2 of the Accession countries – Malta and Cyprus – enjoyed full EU Treaty rights from 1 May 2004. These include the right to seek work and take up employment in another Member State.
3. However, under the EU Accession Treaties that apply to the other 8 Accession states (“the A8 Member States”), existing Member States can impose limitations on the rights of nationals of the A8 Member States to access their labour markets (and the associated rights of residence), for a transitional period. (The EU Accession Treaties do not allow existing Member States to restrict access to their labour markets by nationals of Malta or Cyprus.)
4. Under the *Accession (Immigration and Worker Registration) Regulations 2004* (SI 2004/1219) as amended (“the Accession Regulations”), nationals of the A8 Member States (with certain exceptions) are required to register with the Home Office if they work in the UK during the transitional period. While looking for work (or between jobs) their right to reside will be conditional on them being self-sufficient and not imposing an unreasonable burden on the UK social assistance system. These conditions cease to apply once they have worked in the UK continuously for 12 months.

The Accession (Immigration and Worker Registration) Regulations 2004

5. The *Accession (Immigration and Worker Registration) Regulations 2004* provide that, from 1 May 2004, nationals of the A8 Member States can take up employment in the UK provided they are authorised to work for their employer under the Worker Registration scheme.
6. The Accession Regulations also give workers from the A8 Member States the right to reside in the UK. Workers from the A8 Member States who are working lawfully have the same right to equal treatment as other EEA workers while they are working.

The Worker Registration scheme

7. The Worker Registration scheme applies only to nationals of: Poland, Lithuania, Estonia, Latvia, Slovenia, Slovakia, Hungary and the Czech Republic (the A8 Member States). It is a transitional scheme under which the UK Government allows nationals of the A8 Member States access to the UK labour market provided they comply with the registration scheme.
8. The derogation from EC law allowed by the Treaties of Accession does not apply to nationals of existing EEA states. Workers from those states, therefore, have an EC right to work and reside in the UK.
9. The Worker Registration scheme is a transitional measure. The *Accession (Immigration and Worker Registration) Regulations 2004* provide for the registration scheme to operate for up to five years from 1 May 2004 (i.e. until 30 April 2009). The Government reviewed the scheme within its first two years of operation and decided that the scheme will continue beyond 1 May 2006, and may continue throughout the second phase of the transitional arrangements. However, the need to retain the scheme during the whole of the second phase will be kept under review.
10. Nationals of A8 Member States who are self-employed are not required to register. (Under the Accession Treaties, there is no derogation from the right of EU citizens to establish themselves in another Member State (including the UK) as self-employed persons.) However, nationals of A8 Member States who are self-employed cannot take paid employment unless they register (unless they are exempt from registration, see below).

Registration under the scheme

11. Nationals of A8 Member States (except those who are exempt from the scheme, see below) must apply to register with the Home Office as soon as they start work in the UK, and within one month of taking up employment at the very latest. They will be issued with a **worker registration card** and a **worker registration certificate**, authorising them to work for the employer concerned.
12. If they change employers they will have to apply for a new **registration certificate** authorising them to work for their new employer. They will then be provided with a new certificate for that employer. If they change employer or have a break in employment and resume working for the same employer, they must apply for a new registration certificate.
13. Workers from the A8 Member States have the same right to equal treatment as other EEA workers while they are working.
14. After 12 months' uninterrupted work in the UK, a worker from an A8 Member State will acquire full EU Treaty rights, and will be free from the requirement to register to work. At that stage, they will be able to apply to the Home Office for an EEA residence permit to confirm their right to equal treatment on the same basis as other EEA nationals.

15. The Worker Registration Team issues applicants with a secure **worker registration card** containing:

- Name;
- Date of Birth;
- Nationality;
- Date of issue;
- Unique identification number;
- A facial identifier (photograph);

and

a **certificate** (on secure paper) which states:

- Worker's name;
- Worker's Date of Birth;
- Nationality;
- Worker's unique identification number;
- Name and address (head or main office) of employer;
- Job title;
- Start date;
- Date of issue.

16. The **registration card** is a secure document that provides applicants with a unique identification reference number. This is valid for as long as the applicant requires registration under the scheme.
17. The **registration certificate** is specific to a particular employer. The certificate expires as soon as the person stops working for that employer. If the person changes employers or has a break in employment and resumes working for the same employer, he or she must apply for a new registration certificate.
18. Specimen copies of the registration card and registration certificate are provided at the end of this annex.

12 months' uninterrupted work

19. A worker from an A8 Member State (who is subject to the registration scheme) must not be out of work more than a total of 30 days in a 12-month period, in order to establish "12 months' uninterrupted work".
20. If a national of an A8 Member State has worked for a period of less than 12 months when the employment comes to an end, he or she will need to find another job within 30 days to be able to count the first period of work towards accruing a period of 12 months' uninterrupted employment.

-
21. If the worker's second (or subsequent) employment comes to an end before he or she has accrued a period of 12 months' uninterrupted employment, he or she must ensure that there has been no more than a total of 30 days between all of the periods of employment. If more than 30 days between periods of employment occur before a 12-month period of uninterrupted employment is established, a fresh period of 12 months' uninterrupted employment would need to commence from that point.
 22. The Worker Registration scheme is based on continuity of employment – there is no restriction on the number of different jobs (or employers) that a worker can have during a 12-month period of continuous employment.
 23. When an A8 Member State worker has worked for 12 months without interruption he or she can apply to the Home Office for an EEA residence permit. Evidence of 12 months' uninterrupted employment would include the worker registration card, registration certificates for each of the jobs they have undertaken, letters from employers and pay slips.

A8 nationals who must register

24. The Worker Registration Scheme applies to nationals of the following accession states: Poland; Lithuania; Estonia; Latvia; Slovenia; Slovakia; Hungary; and the Czech Republic.
25. Nationals of A8 Member States need to apply for a registration certificate under the Worker Registration Scheme, if they are a citizen of one of the countries listed above and they:
 - start a new job on or after 1 May 2004;
 - have been working in the UK before 1 May 2004 without authorisation or in breach of their immigration conditions;
 - are working on a short-term or temporary basis; or
 - are a student who is also working.

A8 nationals exempt from registration

26. The following are the categories of nationals of an A8 Member State who are not required to register under the Worker Registration Scheme:
 - those working in a self-employed capacity;
 - those who have been working with permission in the UK for 12 months or more without interruption;
 - those who have been working with permission in the UK for their current employer since before 1 May 2004;
 - those who have leave to enter the UK under the *Immigration Act 1971* on 30 April 2004 and their leave was not subject to any condition restricting their employment;

-
- those who are providing services in the UK on behalf of an employer who is not established in the UK;
 - those who are a citizen of the UK, another EEA state (other than an A8 state) or Switzerland;
 - those who are a family member (spouse, civil partner, or child under the age of 21 or dependant) of a Swiss or EEA national (other than an A8 national) who is working in the UK;
 - those who are a family member (spouse, civil partner or dependant child) of a Swiss or EEA national who is in the UK and is a student, self-employed, retired, or self-sufficient.

Archived

[First Name] [Surname]
[House Number] [Street Name]
[Town]
[County]
[Post Code]

DATE OF ISSUE : [Issue Date]
REFERENCE No : [URN]
WORK CARD SERIAL No : [REDACTED]
TELEPHONE : 0114 207 6022

Accession State Worker Registration Scheme

Thank you for your application to register on the Accession State Worker Registration scheme. I am pleased to inform you that we have approved your application and that you are now registered.

Your worker registration card is attached below. If you have any queries about this document, then please contact Work Permits (UK) on the telephone number above.

Accession State Worker Registration Scheme Registration Card

SURNAME : [Surname]
FORENAME(S) : [First Name]
DATE OF BIRTH : [Date of Birth]
NATIONALITY : [Nationality]
REFERENCE No : [URN]
DATE OF ISSUE : [Issue Date]



This worker registration card should be retained as evidence of your registration with the Accession State Worker Registration Scheme.

PLEASE DO NOT LOSE - REPLACEMENTS MAY NOT BE ISSUED

WORK CARD SERIAL No [REDACTED]

[First Name] [Surname]
[House Number] [Street]
[Town]
[County]
[Post Code]

Date of Issue: [Issue Date]

ACCESSION STATE WORKER REGISTRATION SCHEME REGISTRATION CERTIFICATE

Thank you for your application to register on the Accession State Worker Registration Scheme. I am pleased to inform you that we have approved your application.

This is your worker registration certificate. It authorises you to work for the employer specified in this certificate.

This certificate ceases to be valid if you are no longer working for the employer specified in this certificate on the date on which it is issued.

This certificate expires on the date you cease working for the specified employer.

This certificate should be retained with your worker registration card.

Name : [First Name] [Surname]

Date of Birth : [Date of Birth]

Nationality : [Nationality]

Unique Reference Number: [URN]

Job start date : [Date Started Employment]


Employer's Name : [Employer Name]

Employer's Address : [Unit Number] [Street Name]
[Town]
[County]
[Post Code]



ANNEX 14

MOD CERTIFICATE: CERTIFICATE OF CESSATION OF ENTITLEMENT FOR SINGLE PERSONNEL TO OCCUPY SERVICE LIVING ACCOMMODATION

	MINISTRY OF DEFENCE	MOD Form 1166 Introduced 5/97 Revised 4/03
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CERTIFICATE OF CESSATION OF ENTITLEMENT FOR SINGLE PERSONNEL TO OCCUPY SERVICE LIVING ACCOMMODATION

I certify that	(Name)	<input style="width: 95%;" type="text"/>
	(Rank & Number)	<input style="width: 95%;" type="text"/>
Of	(Unit)	<input style="width: 95%;" type="text"/>
Will cease to be entitled to occupy Service Living Accommodation	(Address)	<input style="width: 95%;" type="text"/>
From	(Date)	<input style="width: 95%;" type="text"/>
By reason of	<input style="width: 95%;" type="text"/>	

An application for housing was made to Housing Authority/Housing Association on (copy of letter attached)

The person has the following special circumstances


.....

Signed	UNIT STAMP
Name	
Position	
Date	

1. This certificate provides evidence of cessation of entitlement to occupy Service Living Accommodation.
2. The certificate should be completed by the unit admin authority 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.
3. Copies of this form are published in the Homelessness Code of Guidance For Local Authorities issued by DCLG, and in guidance issued by the Welsh Assembly and Scottish Executive.

ANNEX 15

CERTIFICATE OF CESSATION OF ENTITLEMENT TO OCCUPY SERVICE FAMILIES ACCOMMODATION OR SUBSTITUTE SERVICE FAMILIES ACCOMMODATE (SFA/SSFA)

	MINISTRY OF DEFENCE	MOD Form Introduced 4/03
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CERTIFICATE OF CESSATION OF ENTITLEMENT TO OCCUPY SERVICE FAMILIES ACCOMMODATION OR SUBSTITUTE SERVICE FAMILIES ACCOMMODATION(SFA/SSFA)

I certify that (Name)

(Rank & Number) #

Of (Unit) #

(# Omit if only family involved)

Will cease to be entitled to occupy (Address of SFA or SSFA)

From (Date)

By reason of loss of entitlement to occupy Service Families Accommodation.

An application for housing was made to Housing Authority/
 Housing Association on (copy of letter attached)

The following special circumstances apply

The household is as follows

Signed	DHE STAMP
Name	
Designation	
Date	

1. This certificate provides evidence of cessation of entitlement to occupy Service Families Accommodation or Substitute Service Families Accommodation. Authorities should not insist on a Court Order for possession to establish a threat of homelessness.
2. The certificate should be completed by the Licences Officer of the Defence Housing Executive 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 Families Accommodation will cease.
3. A period of at least six months notice should normally be allowed so that the appropriate arrangements can be made.
4. Copies of this form are published in the Homelessness Code of Guidance For Local Authorities issued by DCLG, and in guidance issued by the Welsh Assembly and Scottish Executive.

ANNEX 16

DEFINITION OF OVERCROWDING

Under s.324 of the *Housing Act 1985* a dwelling is overcrowded when the number of persons sleeping in the dwelling is such as to contravene –

- (a) the standard specified in s.325 (the room standard), or
- (b) the standard specified in s.326 (the space standard).

a) The room standard

- (1) The room standard is contravened when the number of persons sleeping in a dwelling and the number of rooms available as sleeping accommodation is such that two persons of opposite sexes who are not living together as husband and wife must sleep in the same room.
- (2) For this purpose –
 - (a) children under the age of ten shall be left out of account, and
 - (b) a room is available as sleeping accommodation if it is of a type normally used in the locality either as a bedroom or as a living room.

b) The space standard

- (1) The space standard is contravened when the number of persons sleeping in a dwelling is in excess of the permitted number, having regard to the number and floor area of the rooms of the dwelling available as sleeping accommodation.
- (2) For this purpose –
 - (a) no account shall be taken of a child under the age of one and a child aged one or over but under ten shall be reckoned as one-half of a unit, and
 - (b) a room is available as sleeping accommodation if it is of a type normally used in the locality either as a living room or as a bedroom.
- (3) The permitted number of persons in relation to a dwelling is whichever is the less of –
 - (a) the number specified in Table I in relation to the number of rooms in the dwelling available as sleeping accommodation, and
 - (b) the aggregate for all such rooms in the dwelling of the numbers specified in column 2 of Table II in relation to each room of the floor area specified in column 1.

No account shall be taken for the purposes of either Table of a room having a floor area of less than 50 square feet.

Table I

<i>Number of rooms</i>	<i>Number of persons</i>
1	2
2	3
3	5
4	7½
5 or more	2 for each room

Table II

<i>Floor area of room</i>	<i>Number of persons</i>
110 sq ft or more	2
90 sq ft or more but less than 110 sq ft	1½
70 sq ft or more but less than 90 sq ft	1
50 sq ft or more but less than 70 sq ft	½

- (4) The Secretary of State may by regulations prescribe the manner in which the floor area of a room is to be ascertained for the purposes of this section; and the regulations may provide for the exclusion from computation, or the bringing into computation at a reduced figure, of floor space in a part of the room which is of less than a specified height not exceeding eight feet.
- (5) Regulations under subsection (4) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A certificate of the local housing authority stating the number and floor areas of the rooms in dwelling, and that the floor areas have been ascertained in the prescribed manner, is prima facie evidence for the purposes of legal proceedings of the facts stated in it.

ANNEX 17

RECOMMENDED MINIMUM STANDARDS FOR BED AND BREAKFAST ACCOMMODATION

The Secretary of State recommends that housing authorities apply the standards set out below as minimum standards in deciding whether Bed and Breakfast accommodation is suitable for an applicant for the purposes of Part 7 of the Housing Act 1996 ('the homelessness legislation') in the very limited circumstances where an authority may use such accommodation for this purpose.

Space Standards for Sleeping Accommodation

1. *Room sizes where cooking facilities provided in a separate room/kitchen*

<i>Floor Area of Room</i>	<i>Maximum No of Persons</i>
Less than 70 sq ft (6.5 m ²)	Nil persons
Not less than 70 sq ft (6.5 m ²)	1 person
Not less than 110 sq ft (10.2 m ²)	2 persons
Not less than 160 sq ft (14.9 m ²)	3 persons
Not less than 210 sq ft (19.6 m ²)	4 persons
Not less than 260 sq ft (24.2 m ²)	5 persons

Room sizes where cooking facilities provided within the room

<i>Floor Area of Room</i>	<i>Maximum No of Persons</i>
Less than 110 sq ft (10.2 m ²)	Nil persons
Not less than 110 sq ft (10.2 m ²)	1 person
Not less than 150 sq ft (13.9 m ²)	2 persons
Not less than 200 sq ft (18.6 m ²)	3 persons
Not less than 250 sq ft (23.2 m ²)	4 persons
Not less than 300 sq ft (27.9 m ²)	5 persons

- In no case should a room be occupied by more than 5 persons. The standard is to be applied irrespective of the age of the occupants. The sharing of rooms in bed and breakfast accommodation is not desirable, but it is accepted that where accommodation is not self-contained families may find it preferable to share.
- No persons of the opposite sex who are aged 12 and over should have to share a room unless they are living together as partners and both are above the age of consent or are lawfully married.
- All rooms must have a minimum floor to ceiling height of at least 7 feet (2.14 metres) over not less than 75% of the room area. Any floor area where the ceiling height is less than 5 feet (1.53 metres) should be disregarded.
- Separate kitchens, bathrooms, toilets, shower rooms, communal rooms and en-suite rooms are deemed unsuitable for sleeping accommodation.

Installation for Heating

6. The premises should have adequate provision for heating. All habitable rooms and baths or shower rooms should be provided with a fixed space-heating appliance. The appliance must be capable of efficiently maintaining the room at a minimum temperature of 18°C when the outside temperature is –1°C. “Fixed space heating appliance” means fixed gas appliance, fixed electrical appliance or an adequate system of central heating, operable at all times.

Facilities for the Storage, Preparation and Cooking of Food and Disposal of Waste Water

7. Wherever practicable, each household should have exclusive use of a full set of kitchen facilities including:
 - cooking facilities – a gas or electric cooker with a four-burner hob, oven and grill. In single person lettings, a cooker with a minimum of two burners, oven and grill is permissible. Where the establishment caters for fewer than 6 persons, a small guest house for example, a microwave may be substituted for a gas or electric cooker for periods of stay not exceeding 6 weeks for any homeless household;
 - sink and integral drainer – with a constant supply of hot and cold water and properly connected to the drainage system;
 - storage cupboard, minimum capacity 0.4 m³ (400 litres/15 ft³). This provision is in addition to any base unit cupboards provided below the sink/drainer;
 - refrigerator – minimum capacity 0.14 m³ (140 litres/5 ft³);
 - electrical power sockets – minimum of two double 13 amp sockets situated at worktop height. These are in addition to electrical power sockets provided elsewhere in the letting;
 - worktop – minimum surface area 1000 mm x 600 mm.
8. There may be circumstances where the housing authority is satisfied that the provision of kitchen facilities for exclusive use is not practicable or appropriate. These circumstances could, for example, include where a property is very small, no more than two or three letting rooms, or where the overall standard of the property is considered reasonable in all other respects and the costs of provision of exclusive use kitchens would be prohibitive or detrimentally affect the remaining amenity space. In circumstances such as these, the following standards for communal kitchens may be applied.
9. Kitchen facilities may be provided in the ratio of no less than one set for every 10 persons, irrespective of age. Such kitchen facilities should comprise a minimum of shared:
 - gas or electric cooker with four burners, oven and grill. Where the establishment caters for fewer than 6 persons, a small guest house for example, a microwave may be substituted for a gas or electric cooker for periods of stay not exceeding 6 weeks for any homeless household;

- sink and integral drainer – with a constant supply of hot and cold water and properly connected to the drainage system;
 - storage cupboard, minimum capacity 0.4 m³ (400 litres/15 ft³). This provision is in addition to any base unit cupboards provided below the sink/drainers;
 - electrical power sockets – minimum of two double 13 amp sockets situated at worktop height. These are in addition to electrical power sockets provided elsewhere in the letting;
 - worktop – minimum surface area 1000 mm x 600 mm;
 - lockable storage cupboards, minimum capacity 0.14 m³ (140 litres/5 ft³) for each bedroom whose occupants use the kitchen. In calculating the required provision of storage cupboards, base unit cupboards below sinks/drainers should be discounted.
- 10.** In addition, the following facilities should be provided within each bedroom, or within the total accommodation occupied exclusively by each household:
- worktop – minimum surface area 1000 mm x 600 mm;
 - refrigerator – minimum capacity 0.14 m³ (140 litres/5 ft³);
 - storage cupboard – minimum capacity 0.4 m³ (400 litres/15 ft³).
- 11.** The kitchen used by management to provide breakfast may be included when calculating the one in ten ratio, unless it is not available, does not meet the conditions above or is deemed unsuitable for use by residents because:
- of the size of the kitchen and the equipment provided in it. In a commercial kitchen some equipment may be dangerous or unsatisfactory for use by residents; or
 - the unsatisfactory location of the kitchen in relation to the accommodation it is supposed to serve.
- 12.** In schemes providing a mix of kitchens for shared and exclusive use, one set of kitchen facilities should be provided for every 10 persons sharing. The number of persons who have kitchen facilities provided for their exclusive use should not be included in the calculations. Again, the kitchen used by management to provide breakfast may be included in the one in ten calculation subject to the above conditions.
- 13.** Cooking facilities which are provided should be reasonably located in relation to the room(s) occupied by the person(s) for whom they are provided and in any event not more than one floor distant from these rooms. Please note the exception for smaller establishments described below.
- 14.** In smaller establishments of not more than three storeys and not more than 30 bed spaces, communal cooking facilities may be provided in one area of the premises more than one floor distant from some bedrooms. In such cases, these kitchens must be provided in association with a suitable dining room or dining rooms of adequate size calculated on the basis of 1 m² per bed space. This should include one area of at least 15 m². Only effective usable space will be considered when calculating the areas

for the purpose of this requirement. Dining room facilities should be provided with adequate seating provision.

15. Kitchen facilities should be made available for use 24 hours per day, subject to any representation from the owner/manager, which must be agreed by the receiving and placing authorities.

Toilet and personal washing facilities

16. One internal water closet should be provided for every five persons irrespective of age. The water closet must be within a reasonable distance from its users and not more than one floor distant and, where practicable, a water closet should not be situated within a bathroom. At least 50% of the water closets that are required to be provided should be situated in separate accommodation. The number of persons occupying a bedroom where this facility is provided for their exclusive use should not be included in the calculations.
17. A suitable wash hand basin (minimum dimensions 500 mm x 400 mm) with constant hot and cold water supplies, should be provided in every bedroom, except where an en suite bathroom is available, when the wash hand basin may be provided in that bathroom.
18. Each separate water closet compartment and bathroom should be provided with a suitable wash hand basin (minimum dimensions 500 mm x 400 mm), together with constant supplies of hot and cold running water. A tiled splashback (minimum 300 mm high) is to be provided to each wash hand basin.
19. One bath (minimum dimensions 1700 mm x 700 mm) or one shower (minimum dimensions 800 mm x 800 mm) should be provided for every eight persons, irrespective of age. These facilities must be within a reasonable distance of each user and not more than one floor distant. The number of persons having the exclusive use of a bath or shower should not be included in the calculations.
20. Where the operator chooses to provide showers for the exclusive use of each separate household or the majority of households, a minimum provision of baths, rather than showers will always be required. In such circumstances a minimum of one communal bath should be provided for every 20 persons, irrespective of age, with a minimum of one bath per property. These facilities must be within a reasonable distance of each user and ideally no more than one floor distant.

Other facilities

21. In the case of families with young children, the facilities should include a safe play area(s) that is located away from sleeping accommodation and cooking areas.

Management Standards

22. In any B&B accommodation, suitability for the purposes of Part 7 will depend upon the management standards operated within an establishment as well as the adequate provision of basic amenities. The minimum management standards set out below should apply and it is the responsibility of the housing authority to monitor the management of the property.
- Operators are required to ensure the property complies with all relevant statutory and regulatory requirements especially in relation to fire, gas and electrical safety. The supply of gas or electricity to any resident should never be interfered with.
 - A clear emergency evacuation plan should be in place setting out action upon hearing the fire alarm, escape routes and safe assembly points. The manager must ensure that each person newly arriving at the premises is told what to do in the event of a fire and about the fire precautions provided.
 - Residents should have access to their rooms at all times except when rooms are being cleaned. Provision should be made to accommodate residents at these times.
 - Refuse and litter should be cleared from the property and not allowed to accumulate in, or in the curtilage, of the property, except in adequately sized and suitable bulk refuse container(s).
 - All communal areas (including, hallways, kitchens, bathrooms/showers, WCs, dining areas, lounges if provided) should be regularly cleaned.
 - Appropriate officers of the authority in whose area the premises are situated should have access to inspect the premises as and when they consider necessary, to ensure that the requirements are being complied with. The manager should allow such inspections to take place, if necessary without notice.
 - Officers of the health authority, local authority and authorised community workers for the area in which the premises are situated should have access to visit the occupiers of the premises and interview them in private in the room(s) they occupy.
 - A manager with adequate day to day responsibility to ensure the good management of the property should be contactable at all times. A notice giving the name, address and telephone number of the manager should be displayed in a readily visible position in the property.
 - Procedures should be in place to deal with any complaints relating to harassment on racial, sexual or other discriminatory grounds by either residents or staff.
 - There should be a clear complaints procedure for the resolution of disputes between residents and/or staff.
 - There should be available within the premises a working telephone available for use by the occupiers and a notice should be displayed by the telephone with information on the address and telephone numbers of: the local Environmental Health Department, Fire Brigade, Gas Company, Electricity Company, Police Station and local doctors.

ANNEX 18

This is not guidance issued by the Secretaries of State.

PROCEDURES FOR REFERRALS OF HOMELESS APPLICANTS ON THE GROUNDS OF LOCAL CONNECTION WITH ANOTHER LOCAL AUTHORITY

GUIDELINES FOR LOCAL AUTHORITIES AND REFEREES

AGREED BY

ASSOCIATION OF LONDON GOVERNMENT (ALG)
CONVENTION OF SCOTTISH LOCAL AUTHORITIES (CoSLA)
LOCAL GOVERNMENT ASSOCIATION (LGA)
WELSH LOCAL GOVERNMENT ASSOCIATION (WLGA)
("the local authority associations")

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STANDARD NOTIFICATION FORM

PROCEDURES FOR REFERRALS OF HOMELESS APPLICANTS ON THE GROUNDS OF LOCAL CONNECTION WITH ANOTHER LOCAL AUTHORITY

GUIDELINES FOR LOCAL AUTHORITIES ON PROCEDURES FOR REFERRAL

AGREED BY

**ASSOCIATION OF LONDON GOVERNMENT (ALG)
CONVENTION OF SCOTTISH LOCAL AUTHORITIES (CoSLA)
LOCAL GOVERNMENT ASSOCIATION (LGA)
WELSH LOCAL GOVERNMENT ASSOCIATION (WLGA)
(“the local authority associations”)**

This procedure concerns the situation where, under Part 7 of the *Housing Act 1996*, a housing authority is satisfied that a housing applicant is eligible for assistance, homeless and has a priority need for accommodation, is not satisfied that the applicant is homeless intentionally and the authority consider that the conditions for referral of the case to another housing authority are met, and notifies the other housing authority of its opinion. Referrals are discretionary only. Housing authorities are not required to make inquiries as to whether an applicant has a local connection with another district, and where they decide to do so, there is no requirement to refer applicants to another authority, if the conditions for referral are met. Authorities may have a policy about how they may exercise their discretion. However, they cannot decide in advance that a referral will be made in all cases where an applicant who is eligible for assistance, unintentionally homeless and in priority need may have a local connection with another district.

1 PURPOSE OF THE GUIDELINES

1.1 For English and Welsh authorities s.198 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. However, s.8 of the *Homelessness (Scotland) Act 2003* gives Scottish ministers the power to suspend or vary the circumstances under which a homeless applicant may be referred by a Scottish local authority to another authority in Scotland. Please note any future orders made will need to be taken into account.
- 1.3 The ALG, CoSLA, LGA and the WLGA, the local authority associations in England, Scotland and Wales, have agreed guidelines for referrals which they recommend to local housing authorities. Section 198 *Housing Act 1996* and s.33 *Housing (Scotland) Act 1987* lay down the general procedures to be followed where it appears that s.192(2) (England and Wales) or s.31 (Scotland) applies to the applicant and the applicant does not have a local connection with the area of the authority receiving the housing application but does have one with another area in England, Scotland or Wales. There are, however, considerable areas of possible disagreement and dispute in determining whether the conditions of referral are met in any particular case. Although, in the last resort, disagreements can only be resolved by the courts, the associations are anxious to avoid, as far as possible, legal disputes between local authorities. The associations therefore issue these agreed guidelines on the procedures and criteria to be followed, and recommend them for general adoption by all their members. **These Guidelines are without prejudice to the duty of local authorities to treat each case on its merits and to take into account existing and future case law.** Furthermore, these Guidelines only apply to the issues of local connection and whether the conditions for referral are met for the purposes of Part 7 of the *Housing Act 1996* (England and Wales) and s.33 of the *Housing (Scotland) Act 1987*.
- 1.4 *In Re Betts (1983) the House of Lords considered the application of the referral arrangements agreed between the local authority associations. Their Lordships decided that a rigid application of the arrangements would constitute a fetter on an authority's discretion. The agreement could be taken into account, and applied as a guideline, provided its application to each case is given individual consideration.*

2 DEFINITIONS

- 2.1 All references in this agreement to an “applicant” are to be taken as references to a housing applicant to whom s.193 of the *Housing Act 1996* (England and Wales) or s.28 *Housing (Scotland) Act 1987* or s.31 *Housing (Scotland) Act 1987* would apply but for the decision to refer the case to another authority. For the purposes of this agreement the 1996 Act and 1987 (Scotland) Act definitions apply.
- 2.2 The authority to whom the applicant applies for accommodation or assistance (for the purposes of s.183 *Housing Act 1996* or s.28 *Housing (Scotland) Act 1987*) and which decides to refer the case to another authority is the “notifying authority”.
- 2.3 Where the notifying authority consider that neither the applicant nor any person who might reasonably reside with the applicant, has a local connection with its district but does have one with another local authority district and notifies the other local authority of its opinion, the authority which they notify is known as the “notified authority”.

- 2.4 Section 199 *Housing Act 1996* and s.27 *Housing (Scotland) Act 1987* set out the circumstances when a person may have a “local connection” with a district. These guidelines provide a framework within which the local connection referral procedures may be applied.

3 CRITERIA FOR NOTIFICATION

- 3.1 Before a local authority can consider referring an applicant to another local authority it must first be satisfied that the applicant is:

- (i) eligible for assistance
- (ii) homeless, and
- (iii) in priority need,
- (iv) not homeless intentionally.

- 3.2 Before making a referral the notifying authority must be satisfied that the conditions of referral are met. Broadly, the conditions for referral will be met if:

- (a) neither the applicant nor any person who might reasonably be expected to reside with the applicant has a local connection with the district of the authority receiving the application,
- (b) either the applicant or any person who might reasonably be expected to reside with the applicant has a local connection with the district of another authority in England, Scotland or Wales
- (c) neither the applicant nor any person who might reasonably be expected to reside with the applicant would run the risk of domestic violence/domestic abuse (Scotland) or face a probability of other violence in the district of the other authority (Refer to s.198 of the 1996 Act as amended by s.10 subsection (2&3) *Homelessness Act 2002* (England and Wales)). However, there are exceptions to these conditions, for example, where an applicant applies to an English or Welsh authority for assistance and has been provided with NASS support in Scotland
- (d) **For Welsh authorities only**, the conditions for referral to another authority will also be met if the applicant was placed in accommodation in the district of the notifying authority by the other authority as a discharge of a duty to secure accommodation under Part 7 of the 1996 Act following an application to the other authority made within the last five years. The period of 5 years is prescribed by the *Homelessness (Wales) Regulations 2000 SI 2000 No.1079.*)

- 3.3 3.2(a)(b) and (c) above apply to Scottish authorities. 3.2(d) above does not apply in Scotland.

- 3.4** In deciding whether or not to make a referral authorities should also consider the court judgment in the case of *R v LB 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 decision that the applicant was intentionally homeless) as well as any other material considerations, which should include the general housing circumstances prevailing in the district of the notifying authority and in the district of the notified authority. The notifying authority should also consider whether it is in the public interest to accept a duty to secure accommodation under s.193(2) (England and Wales)
- 3.5** Should a local authority wish to accept a duty to secure accommodation for an applicant who does not have a local connection with its district, nothing in this agreement shall prevent the authority from providing such assistance. The decision to make a referral is discretionary and could be challenged if the discretion was considered to have been exercised unreasonably.
- 3.6** Under s.202 of the 1996 Act, housing applicants in England and Wales have the right to request a review of certain decisions made by the local authority about their application, including a decision to notify another authority under s.198 and a decision that the conditions are met for referral of the case. The equivalent right to review in Scotland is set out in s.4 of the *Housing (Scotland) Act 2001*.

4 LOCAL CONNECTION

- 4.1** The relevant date for deciding whether or not a local connection has been established is not the date when the application for housing assistance was made but the date of the decision or, if there is a review, the date of the review decision (cf. House of Lords' judgment in *Mohamed v Hammersmith and Fulham London Borough Council* 2001). Moreover, if inquiries prior to a decision have been prolonged, the notifying authority should also consider whether there may have been any material change in circumstances that might affect the question of whether a local connection has been established. A local connection may be established where the following grounds apply, subject to the exceptions outlined in paragraph 4.2:
- (i) the applicant or a person who might reasonably be expected to reside with the applicant is, or in the past was, normally resident in the district. 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 period taken into account should be up to the date of the authority's decision. This should include any periods living in temporary accommodation secured by the authority under s.188 (interim duty pending inquiries);
 - (ii) the applicant or a person who might reasonably be expected to reside with the applicant is at present employed in the district. 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 person who might reasonably be expected to reside with the applicant has family associations in the district. Family associations normally arise where an applicant or a person who might reasonably be expected to reside with the applicant has parents, adult children or brothers or sisters who have been resident in the district for a period of at least 5 years at the date of the decision, 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 dependent children in a different district from their parents would not be residence of their own choice and therefore would not establish a local connection with that district. However, a referral should not be made to another local authority on the grounds of a local connection because 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 s.83 of the *Housing (Scotland) Act 1987* as amended.

(iv) there are special circumstances which the authority considers establish a local connection with the district. This may be particularly relevant where the applicant has been in prison or hospital and his or her circumstances do not conform to the criteria in (i) – (iii) above. Where, for example, an applicant seeks to return to a district where he or she was brought up or lived for a considerable length of time in the past, there may be grounds for considering that the applicant has a local connection with that district because of special circumstances. An authority must exercise its discretion when considering whether special circumstances apply.

4.2 A notifying authority should not refer an applicant to another authority on grounds of a local connection because of special circumstances without the prior consent of the notified authority. Alternatively, authorities may come to an informal arrangement in such cases on a reciprocal basis, subject to the agreement of the applicants.

4.3 There are certain circumstances where a local connection is not established because of residence or employment in a district. For these purposes:

- (i) a person is not employed in a district if he or she is serving in the Regular Armed Forces of the Crown; and
- (ii) residence in a district is not of a person’s own choice if he or she (or anyone who might reasonably be expected to reside with them) becomes resident there because he or she is serving in the Regular Armed Forces of the Crown or is detained under the authority of any Act of Parliament (e.g. held in prison, or a secure hospital).

4.4 **For Welsh authorities only** the conditions for referral to another authority are met if the applicant was placed in accommodation in the district of the notifying authority by the other authority as a discharge of a duty to secure accommodation under Part 7 of the 1996 Act following an application to the other authority made within the last five years. This is without prejudice to whether or not the applicant may have established a local connection with a particular district.

- 4.5 Former asylum seekers (England and Wales).** Broadly, s.199(6) of the 1996 Act (inserted by s.11 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* (“the 2004 Act”)) (England and Wales) provides that a person has a local connection with the district of a local housing authority if that person was provided with accommodation there under s.95 of the *Immigration and Asylum Act 1999* (NASS accommodation). Where a person has been provided with NASS accommodation in more than one area, the local connection is with the area where accommodation was last provided. A local connection with a district by virtue of s.199(6) does not override a local connection by virtue of s.199(1). So, a former asylum seeker who has a local connection with a district because he or she was provided with NASS accommodation there could also have a local connection elsewhere for some other reason, for example, because of employment or family associations.
- 4.6 Former asylum seekers (Scotland).** Under s.27(2)(a)(iii) of the *Housing (Scotland) Act 2001*, as inserted by s.7 of the *Homelessness etc (Scotland) Act 2003*, residence in accommodation provided in pursuance of s.95 of the *Immigration and Asylum Act 1999* does not constitute a local connection as it is deemed to be residence which is not of the applicant’s own choice. A local connection could be formed for other reasons, such as family association.
- 4.7 Former asylum seekers (cross-border arrangements).** If a former asylum seeker who was provided with asylum support in England or Wales seeks homelessness assistance in Scotland the Scottish local authority could refer the application to another area where a local connection is established, if there was no local connection with the authority applied to. However under Scottish legislation, a local connection would not be formed by virtue of residence in accommodation provided in pursuance of s.95 of the *Immigration and Asylum Act 1999*.
- 4.8** This paragraph explains the position where a former asylum seeker who was provided with asylum support in Scotland seeks homelessness assistance in England or Wales. The provisions of s.11(2) and (3) of the 2004 Act provide that where a local housing authority in England or Wales are satisfied that an applicant is eligible for assistance, unintentionally homeless and in priority need, the s.193 duty to secure accommodation does not apply if the authority are satisfied that the applicant: has been provided with s.95 accommodation in Scotland at any time and does not have a local connection anywhere in England and Wales (within the meaning of s.199(1) of the 1996 Act) or anywhere in Scotland (within the meaning of s.27 of the *Housing (Scotland) Act 1987*). However, the authority may secure that accommodation is available for the applicant for a period giving him a reasonable opportunity of securing accommodation for himself, and provide the applicant (or secure that he is provided with) advice and assistance in any attempts he may make to secure accommodation for himself.
- 4.9** Subject to paragraphs 4.6 to 4.9 above (former asylum seekers), once the local authority is satisfied that the applicant is eligible, unintentionally homeless, falls within a priority need category, and does not have a local connection with the district , the authority may notify another authority under s.198 *Housing Act 1996* or s.33 *Housing (Scotland) Act 1987*, provided it is satisfied that all the conditions for referral set out in paragraph 3.3 above are met.

- 4.10** Once the local authority has established that the applicant is eligible, homeless, in a priority need category, not intentionally homeless and does not have any local connection in its own area it may notify another authority under s.198 *Housing Act 1996* or s.33 *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 or threat 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 Homelessness Code of Guidance.
- 4.11** The notifying authority must consider that neither the applicant nor any person who might reasonably be expected to reside with the applicant has **any** local connection with its own district but **does** have a local connection with another local authority district in England, Scotland or Wales, in accordance with the criteria and exceptions listed above. The strength of local connection is irrelevant except where an applicant has no local connection with the notifying authority's district but has a local connection with more than one other local authority district. In such a scenario, the notifying authority must weigh up all the relevant factors in deciding to which authority it would be appropriate to refer the applicant.
- 4.12** Any relevant changes in an applicant's circumstances, e.g. obtaining employment, will need to be taken into account in determining whether the applicant has a local connection. Authorities should always consider whether special circumstances may apply.

5 PROCEDURES PRIOR TO MAKING A REFERRAL

- 5.1** If an authority considers that the conditions for referral s.198 *Housing Act 1996* or s.33 *Housing (Scotland) Act 1987* are likely to be met in a particular case it should make any necessary enquiries in the area/s where there may be a local connection. This should be undertaken as soon as possible. An authority that is considering making a referral must investigate all the circumstances of the case with the same thoroughness as if it were not considering a referral.
- 5.2** The notifying authority has a duty under s.200(1)(England and Wales) or s.34 *Housing (Scotland) Act 1987* to ensure that suitable accommodation is available for occupation by the applicant until the question of whether the conditions for referral are met have been decided.
- 5.3** Under section 184(4) *Housing Act 1996* or s.34 *Housing (Scotland) Act 1987*, if a housing authority notify, or intend to notify another authority that they consider that the conditions for referral of a case are met, the authority must notify the applicant of this decision, and the reasons for it, at the same time. For English and Welsh authorities, under s.184(5) of the 1996 Act, the notice must also inform the applicant of his right, under s.202, to request a review of the decision and that any request must be made within 21 days (or such longer period as the authority allows in writing). Regulations made under s.203 of the 1996 Act set out the procedure to be followed when making a review and the period within which a request for review must be carried out and the decision made. The *Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 (SI 1999 No. 71)* establishes for England and

Wales the period within which the review must be carried out and the decision made. For England and Wales s.204 of the 1996 Act gives applicants the right to appeal to the county court on a point of law if dissatisfied with the decision on the review (or the initial decision, if a review decision is not made within the prescribed time limit).

- 5.4** Scottish local authorities have a duty to review homelessness decisions under s. 35A of the *Housing (Scotland) Act 1987* as amended by s. 4 of the *Housing (Scotland) Act 2001*. This process does not affect the rights of a homeless applicant to seek judicial review or to seek the redress of the Scottish Public Services Ombudsman.
- 5.5** Once the notifying authority has decided that the applicant is eligible, unintentionally homeless, and in priority need, there is no provision for the notified authority to challenge the decision other than judicial review in the High Court. The local authority associations' disputes procedure should be used only where there is a disagreement over the question of whether the conditions for referral are met and not for resolving disagreement on any other matter.

6 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 the conditions for referral are met, it should not wait for the receipt of written confirmation of notification before making appropriate arrangements to secure accommodation for the applicant and his or her 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 normally accept the facts of the case relating to residence, employment, family associations etc., as stated by the notifying authority, unless they have clear evidence to the contrary. It is the notifying authority's duty to make inquiries into the circumstances of homelessness with the same degree of care and thoroughness before referring a case to another authority 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 it is agreed that the conditions for referral are met two authorities involved could agree, subject to the applicants' 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. Authorities are reminded that there is no requirement to refer applicants to another authority even where it is agreed that the conditions for referral are met.

- 6.5** Once written confirmation of notification has been received the notified authority should, within 10 days, reply to the notifying authority. If, despite reminders, there is an unreasonable delay by the notified authority in formally responding to the notification, the notifying authority may ask its local authority association to intercede on its behalf.

7 ARRANGEMENTS FOR SECURING ACCOMMODATION

- 7.1** As soon as the notifying authority has advised the applicant that it intends to notify, or has already notified, another authority that it considers that the conditions for referral are met, the notifying authority has a duty (under s.200 (1) of the 1996 Act) (England and Wales) and s.34 *Housing (Scotland) Act 1987* to secure accommodation until the applicant is informed of the decision whether the conditions for referral are met. During this period, the notifying authority also has a duty (under s.211) (England and Wales) and s.36 of the *Housing (Scotland) Act 1987* to take reasonable steps for the protection of property belonging to the applicant or anyone who might reasonably be expected to reside with the applicant.
- 7.2.1** When it has been decided whether the conditions for referral are met the notifying authority must inform the applicant of the decision and the reason for it (s.200(2), England and Wales or s.34 of the *Housing (Scotland) Act 1987*). The applicant must also be informed of his right to ask for a review of the decision and that any request must be made within 21 days or such longer period as the authority may allow in writing
- 7.2.2** If it is decided that the conditions for referral are not met, under s.200(3) England and Wales or s.34(2) of the *Housing (Scotland) Act 1987* the notifying authority will be subject to the s.193 duty (England and Wales) or s.31 of the *Housing (Scotland) Act 1987* and must ensure that suitable accommodation is available for the applicant.
- 7.2.3** If it is decided that the conditions for referral are met, under s.200(4) or s.34(2) of the *Housing (Scotland) Act 1987*, the notified authority will be subject to the s.193 duty (England and Wales) s.31 of the *Housing (Scotland) Act 1987* and must ensure that suitable accommodation is available for the applicant.
- 7.3** The local authority associations recommend that once a notified authority has accepted that the conditions of referral are met 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 when the notifying authority had reason to believe that the applicant may be homeless or threatened with homelessness and commenced inquiries under s.184, (England & Wales), s.28 of the *Housing (Scotland) Act 1987*, should be considered as constituting undue delay.

8. RIGHT OF REVIEW OF REFERRAL DECISIONS (*England and Wales*)

- 8.1** Under s.202(1)(c) *Housing Act 1996*, applicants in England and Wales have the right to request a review of any decision by the authority to notify another authority of its opinion that the conditions for referral are met. And, under s.202(1)(d), applicants in England and Wales have the right to request a review of any decision whether the conditions for referral are met. In Scotland (under s.34(3A) and s.35A(2)(b) of the *Housing (Scotland) Act 1987*) as inserted by s.4 of the *Housing Scotland Act 2001* the applicant must be notified that they can request a review of any decision to refer their case to another authority, any determination reached following referral and the time within which this request should be made – the authority should also notify the applicant of advice and assistance available to him in connection with this review. In both cases the request for review will be made to the notifying authority.

9 STATUTORY PROCEDURE ON REVIEW

- 9.1 Review procedure for England** – The procedural requirements for a review are set out in the *Allocation of Housing and Homelessness (Review Procedures) Regulations 1999* (SI 1999 No.71).
- 9.2** The notifying authority shall notify the applicant:
- (i) that the applicant, or someone acting on the applicant's behalf, may make written representations,
 - (ii) of the review procedures
- 9.3** If the reviewer acting for the notifying authority 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 reviewer shall notify the applicant:
- (i) that the reviewer is so minded, and the reasons why
 - (ii) that the applicant, or someone acting on the applicant's behalf, may make further written or oral representations.
- 9.4** In carrying out a review the reviewer shall:
- (i) consider any representations made by, or on behalf of, the applicant,
 - (ii) consider any further written or oral representations made by, or on behalf of, the applicant in response to a notification referred to in paragraph 9.2 (b) above
 - (iii) make a decision on the basis of the facts known at the date of the review.
- 9.5** The applicant should be notified of the decision on a review within: eight weeks from the date on which a request for review was made under s.202(1)(c), ten weeks from the date on which a request for review was made under s.202(1)(d), or such longer period as the applicant may agree in writing.
- 9.6 Review procedure for Scotland** – Procedures are set out in s.35A and s.35B of the *Housing (Scotland) Act 1987*. Good practice guidance on the procedures is set out in Chapter 11 of the Code of Guidance on Homelessness.

- 9.7 Review Procedure for Wales.** The procedures are set out in *The Allocation of Housing and Homelessness (Review Procedures) Regulations 1999* (SI 1999 No 71).
- 9.8** Where the decision under review is a joint decision by the notifying housing authority and the notified housing authority s202 (4) requires that the review should be carried out jointly by the two housing authorities.
- 9.9** The notifying authority shall notify the applicant:
- (i) that the applicant, or someone acting on the applicant's behalf, may make written representations,
 - (ii) of the review procedures
- 9.10** If the reviewer acting for the notifying authority 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 reviewer shall notify the applicant:
- (i) that the reviewer is so minded, and the reasons why
 - (ii) that the applicant, or someone acting on the applicant's behalf, may make further written and/or oral representations.
- 9.11** In carrying out a review the reviewer shall:
- (i) consider any representations made by, or on behalf of, the applicant,
 - (ii) consider any further written or oral representations made by, or on behalf of, the applicant in response to a notification referred to in paragraph 9.9 (ii) above
 - (iii) make a decision on the basis of the facts known at the date of the review.
- 9.12** The applicant should be notified of the decision on a review within:
- (i) eight weeks from the date on which a request for review, where the original decision was made by the housing authority,
 - (ii) ten weeks from the date on which a request for review was made where the decision was made jointly by two housing authorities
 - (iii) twelve weeks, where the decision is taken by a person appointed pursuant to the Schedule to the *Homelessness (Decisions on Referrals) Order 1998* (SI 1998 No.1578).

In all these cases it is open to the reviewer to seek the applicant's agreement to an extension of the proscribed period; any such agreement must be given in writing.

10 DISPUTES BETWEEN AUTHORITIES

- 10.1** *The Homelessness (Decisions on Referrals (Scotland) Order 1998* and the *Homelessness (Decisions on Referrals) Order 1998* (SI 1998 No.1578) (England and Wales) set out the arrangements for determining whether the conditions for referral are met, 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 LGA.

- 10.2** Where a notified authority considers the conditions for referral are not met it should write to the notifying authority giving its reasons in full, within 10 days. The letter should contain all the reasons for its opinion, to avoid delaying the appointment of a referee and to minimise any inconvenience for the applicant.
- 10.3** Where two authorities cannot reach agreement on whether the conditions for referral are met they must seek to agree on a referee who will make the decision. CoSLA and the LGA have jointly established an independent panel of referees for this purpose. A referee should be appointed within 21 days of the notified authority receiving the notification.
- 10.4** Authorities invoking the disputes procedure should, having first agreed on the proposed referee, establish that he or she is available and willing to accept the case. Each authority is then responsible for providing the referee with such information as he or she 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 disputes procedure.
- 10.5** Authorities invoking the disputes procedure should be bound by the decision of the referee, including the apportionment of fees and expenses, subject to a further decision by a referee where the applicant asks for a review of the initial decision.
- 10.6** If the authorities are unable to agree on the choice of a referee, 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 10.8 below.
- 10.7** If a referee 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 10.8 below.
- 10.8** Where two authorities fail to agree on the appointment of a referee CoSLA (if the dispute is between Scottish authorities) or the LGA (if the dispute is between English or Welsh authorities) may appoint a referee from the panel. 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.
- 10.9** 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.

PROCEDURES FOR REFERRALS OF HOMELESS APPLICANTS ON THE GROUNDS OF LOCAL CONNECTON WITH ANOTHER LOCAL AUTHORITY

GUIDELINES FOR INVOKING THE DISPUTES PROCEDURE

AGREED BY

ASSOCIATION OF LONDON GOVERNMENT (ALG)
CONVENTION OF SCOTTISH LOCAL AUTHORITIES (CoSLA)
LOCAL GOVERNMENT ASSOCIATION (LGA)
WELSH LOCAL GOVERNMENT ASSOCIATION (WLGA)
("the local authority associations")

11 DETERMINING DISPUTES

- 11.1** 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 s.198 *Housing Act 1996* (England and Wales). In Scotland the provisions of s.33 *Housing (Scotland) Act 1987* apply.
- 11.2** For the purpose of this Disputes procedure, arbitrators are referred to as "referees". Referees will not normally be entitled to apply the criteria set out in this agreed procedure without the consent of the local authorities involved in the dispute. Where the issues in the case are evenly balanced, referees may have regard to the wishes of the applicant.
- 11.3** In determining disputes referees will need to have regard to:
- a) for English and Welsh authorities
- Part VII *Housing Act 1996*
 - regulation 6 of the *Homelessness Regulations 1996* (SI 1996 No. 2754) for Wales
 - 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)
 - *Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness 2003 (Wales)* – currently under review
 - *Homelessness Code of Guidance for Local Authorities 2006 (England)*

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)
- *Homelessness etc (Scotland) Act 2003*
- *Code of Guidance on Homelessness: Guidance on legislation, policies and practices to prevent and resolve homelessness 2005 (Scotland)*

c) for all authorities

- the *Procedures for s.198 (Local Connection) Homeless Referrals: Guidelines for Local Authorities and Referees* produced by the local authority associations
- *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*

11.4 Where there is a cross border dispute between a Scottish authority and an English or Welsh authority then the legislation relevant to the location of the *notified* authority should be applied in determining whether the conditions for referral are met.

11.5 Scottish authorities need to be aware of any orders exercised by s.8 of the *Homelessness (Scotland) Act 2003* that may effect referrals between Scottish authorities in the future.

12 ARRANGEMENTS FOR APPOINTING REFEREES

12.1 Referees will be approached by the authorities in dispute, both of which must agree that the referee should be invited to accept the appointment, 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 10 of the Guidelines for Local Authorities on Procedures for Referral.

12.2 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 whether the conditions for referral are met.

12.3 A referee must not have any personal interest in the outcome of the dispute and should not accept the appointment if he or she is, or was, employed by, or is a council tax payer in, one of the disputing local authorities, or if he or she has any connection with the applicant.

13 PROCEDURES FOR DETERMINING THE DISPUTE

- 13.1 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). (England and Wales) and SI 1998 No.1603 (*Scotland*). It is recommended that the following, more detailed, procedures are applied to *all* cases.
- 13.2 Following 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 considered necessary.
- 13.3 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. Where the referee invites representations from a person they may be made by another person acting on the person's behalf, whether or not the other person is legally qualified.
- 13.4 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/her decision.
- 13.5 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 and comments from the notifying and notified authority. This period will commence at the end of the process described in point 13.2. In the last resort, a referee may determine a dispute on the facts before him/her if one authority has, after reminders, failed to present its case without reasonable cause.

14 ORAL HEARINGS

- 14.1 Where an oral hearing is necessary or more convenient (e.g. where the applicant is illiterate, English is not his/her 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.
- 14.2 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.

- 14.3** 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.

15 NOTIFICATION OF DETERMINATION

- 15.1** 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 ask for a review of the decision under s.202 of the 1996 Act (and possible right of appeal to the county court on a point of law under s.204). The statutory right to review does not apply to Scottish legislation.

16 COSTS OF DETERMINATION

- 16.1** 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.

17 CIRCULATION OF DETERMINATION

- 17.1** 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.
- 17.2** The notifying authority should inform the applicant of the outcome promptly.

18 PAYMENT OF FEES AND COSTS

- 18.1** The local authority associations recommend a flat rate fee of **£500** per determination (including determinations made on a 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 s/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.
- 18.2** 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.

- 18.3** 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**.

19 REOPENING A DISPUTE

- 19.1** Once a determination on a dispute is made, a referee is not permitted to reopen the case, even though new facts may be presented to him or her, unless a fresh determination is required to rectify an error arising from a mistake or omission.

20 RIGHT OF REVIEW OF REFEREE'S DECISION

- 20.1** Section 202(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.
- 20.2** If an applicant asks for a review of a referee's decision the notifying and notified authority must, within five working days, appoint another referee ("the reviewer") from the panel. This applies even if the original referee was appointed by the LGA. The reviewer must be a different referee from the referee who made the initial decision. If the two authorities fail to appoint a reviewer within this period then the notifying authority must, within five working days, request the LGA to appoint a reviewer and the LGA must do so within seven days of the request.
- 20.3** The authorities are required to provide the reviewer with the reasons for the initial 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 reviewer's decision, once received.

21 STATUTORY PROCEDURE ON REVIEW

- 21.1** The procedural requirements for a review are set out in the *Allocation of Housing and Homelessness (Review Procedures) Regulations 1999* (SI 1999 No.71).
- 21.2** The reviewer is required to:
- (i) notify the applicant that he or she, or someone acting on his or her behalf, may make written representations,
 - (ii) notify the applicant of the review procedures, and
 - (iii) send copies of the applicant's representations to the two authorities and invite them to respond.

21.3 If the reviewer 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 reviewer shall notify the applicant:

- (a) that the reviewer is so minded and the reasons why, and
- (b) that the applicant, or someone acting on his behalf, may make further written or oral representations.

21.4 In carrying out a review, the reviewer is required to:

- (i) consider any representations made by, or on behalf of, the applicant,
- (ii) consider any responses to (i) above,
- (iii) consider any further written or oral representations made by, or on behalf of, the applicant in response to a notification referred to in paragraph 21.3 (b), and
- (iv) make a decision on the basis of the facts known at the date of the review.

21.5 The applicant should be notified of the decision on a review within twelve weeks from the date on which the request for the review was 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.

Archived

PROCEDURES FOR REFERRALS OF HOMELESS APPLICANTS ON THE GROUNDS OF LOCAL CONNECTON WITH ANOTHER LOCAL AUTHORITY

STANDARD NOTIFICATION FORM

AGREED BY

**ASSOCIATION OF LONDON GOVERNMENT (ALG)
CONVENTION OF SCOTTISH LOCAL AUTHORITIES (CoSLA)
LOCAL GOVERNMENT ASSOCIATION (LGA)
WELSH LOCAL GOVERNMENT ASSOCIATION (WLGA)
("the local authority associations")**

A NOTIFYING AUTHORITY DETAILS

Contact Name _____

Authority _____

Telephone Number _____ Fax Number _____

E-mail _____

Address for Correspondence _____

B APPLICANT DETAILS

Name of Main Applicant _____ Date of Birth _____

Current Address _____

C FAMILY MEMBERS

Name	Relationship	Date of Birth

D ADDRESSES IN LAST 5 YEARS (include dates and type of tenure)

E PRESENT/PREVIOUS EMPLOYMENT DETAILS

Employer _____ Tel No _____

Address _____

Contact Name _____ Job Title _____

Previous Employer _____

Date from _____ Date to _____

Address _____

F REASONS FOR HOMELESSNESS

H PRIORITY NEED CATEGORY

I LOCAL CONNECTION DETAILS

J WISHES OF THE APPLICANT(S) (in the context of the referral)

K THE NOTIFYING AUTHORITY CONSIDER THE CONDITIONS FOR REFERRAL ARE MET BECAUSE:

**L ANY SUPPLEMENTARY INFORMATION
(attach supporting documentation if relevant)**

I confirm that, in accordance with s.198 *Housing Act 1996*, this authority considers that neither the applicant nor any person who might reasonably be expected to reside with the applicant would run the risk of domestic violence or face a probability of other violence in the district of your authority, if this referral is made.

Signed _____ Date _____

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Archived

ISBN 10: 1-85112-860-0
13: 978-1-85112-860-0

£18.00

ISBN 978185112860-0

