Ministry of Housing, Communities & Local Government

Allocation of accommodation: guidance for local housing authorities in England

December 2020
Ministry of Housing, Communities and Local Government

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Ministry of Housing, Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

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December 2020

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Chapter 1
Scope of guidance and definition of an allocation

1.1 This guidance is issued to local housing authorities ('housing authorities') in England under s.169 of the Housing Act 1996 ('the 1996 Act'). Housing authorities are required to have regard to it in exercising their functions under Part 6 of the 1996 Act ('Part 6'). In so far as this guidance comments on the law, it can only reflect the Department's understanding at the time of issue.

1.2 This guidance replaces all previous guidance on social housing allocations.

Definition of an 'allocation'

1.3 For the purposes of Part 6, a housing authority allocates accommodation when it:

- selects a person to be a secure or introductory tenant of accommodation held by that authority
- nominates a person to be a secure or introductory tenant of accommodation held by another housing authority
- nominates a person to be an assured tenant of accommodation held by a Private Registered Provider (or Registered Social Landlord in Wales) (s.159(2))

1.4 The term 'assured tenant' includes a person with an assured shorthold tenancy, including of an Affordable Rent property[1]. 'Secure tenant' includes a person with a flexible tenancy granted under s.107A of the Housing Act 1985[2].

Allocations to existing tenants

1.5 Provisions in relation to existing tenants are contained in s.159(4A) and (4B). These provide that Part 6 does not apply to an allocation of accommodation by a housing authority to a tenant of a local authority or Private Registered Provider unless:

- the allocation involves a transfer made at the tenant's request, and
- the authority is satisfied that the tenant has reasonable preference.

Accordingly, social tenants applying to the housing authority for a transfer who are considered to have reasonable preference for an allocation must be treated on the same basis as new applicants in accordance with the requirements of s.166A(3).

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[1] Affordable Rent is not subject to the national rent regime but is subject to other rent controls that require a rent (including service charges, where applicable) of no more than 80% of the local market rent.

[2] Inserted by s.154 of the Localism Act 2011.

1.6 Transfers at the tenant's request, where the authority is satisfied the tenant does not have reasonable preference, do not fall within Part 6 and housing authorities may set their own transfer policies in relation to these tenants. Authorities should consider how to make the best use of this flexibility. Providing tenants with greater opportunities to move within the social sector can help promote social and economic mobility and make the best use of social housing stock.

1.7 Authorities should consider the importance of giving social tenants who under-occupy their accommodation appropriate priority for a transfer. This will be important in light of the measure in the Welfare Reform Act 2012 which will reduce Housing Benefit entitlement for working age social sector tenants who under-occupy their property (measured in accordance with the Local Housing Allowance size criteria) from April 2013[3]. Authorities should also consider whether there are other provisions that might make it more difficult for under-occupiers to move, such as a prohibition against tenants with minor rent arrears transferring, and the scope for removing or revising these in relation to under-occupiers.

1.8 Housing authorities may decide to operate a separate allocation system for transferring tenants who are not in the reasonable preference categories (with a separate waiting list and lettings policy) or to continue with a single allocation system which covers all applicants but which, for example, rewards transferring tenants with a good tenancy record, or gives a degree of priority to those who want to move for work.

1.9 Transfers that the housing authority initiates for management purposes do not fall within Part 6. These would include a temporary decant to allow repairs to a property to be carried out. The renewal of a flexible tenancy in the same property also does not fall within Part 6; neither do mutual exchanges between existing tenants, including exchanges between secure and assured tenants and those with flexible tenancies (under s.107A of the Housing Act 1985). Other specific exemptions from the provisions of Part 6 are set out in s.160 of the 1996 Act and the Allocation of Housing (England) Regulations 2002 (SI 2002/3264).

[3] The LHA size criteria allow one bedroom for each: adult couple; any other adult (aged 16 or over); two children of the same sex aged 10 or over; two children under 10 regardless of sex; any other child.

Chapter 2
Overview of the amendments to Part 6 made by the Localism Act 2011

2.1 The Localism Act 2011 introduces significant amendments to Part 6. The main policy objectives behind these amendments are to:

- enable housing authorities to better manage their housing waiting list by giving them the power to determine which applicants do or do not qualify for an allocation of social housing. Authorities will be able to operate a more focused list which better reflects local circumstances and can be understood more readily by local people. It will also be easier for authorities to manage unrealistic expectations by excluding people who have little or no prospect of being allocated accommodation

- make it easier for existing social tenants to move by removing the constraints of Part 6 from those social tenants who apply to the housing authority for a transfer, unless they have reasonable preference. Housing authorities will be able to strike a balance between meeting the needs of existing tenants and new applicants for social housing, while making best use of their stock. Part 6 continues to apply to transferring tenants with reasonable preference, ensuring they continue to receive priority under the authority's allocation scheme

- maintain the protection provided by the statutory reasonable preference criteria – ensuring that priority for social housing goes to those in the greatest need

2.2 The detailed changes to Part 6 contained in the Localism Act 2011 are set out in the following paragraphs.

2.3 By virtue of new s.159(4B) the term 'allocation' continues to apply to a transfer at the request of an existing secure, introductory or assured tenant where the authority is satisfied that he or she has 'reasonable preference' for an allocation. Existing secure, introductory and assured tenants seeking a transfer who are not considered to have reasonable preference are now outside the scope of Part 6 (s.159(4A).

2.4 New s.160ZA replaces s.160A in relation to allocations by housing authorities in England. Social housing may only be allocated to 'qualifying persons' and housing authorities are given the power to determine what classes of persons are or are not qualified to be allocated housing (s.160ZA(6) and (7)). These requirements are in addition to the provisions on eligibility in respect of persons from abroad (s.160ZA(2) and (4)) which continue to be set centrally. The power for a housing authority to decide that an applicant is to be treated as ineligible by reason of unacceptable behaviour serious enough to make him unsuitable to be a tenant is redundant and has therefore been repealed.

2.5 New s.166A requires housing authorities in England to allocate accommodation in accordance with a scheme which must be framed to ensure that certain categories of applicants are given reasonable preference. With certain exceptions, s.166A replicates the provisions in s.167 which continues to apply to allocations by housing authorities in Wales. Section 166A(9) includes a new requirement for an allocation scheme to give a right to review a decision on qualification in s.160AZ(9), and to be informed of the decision on the review and the grounds for it. This is in addition to the existing right to review a decision on eligibility. Section 166A(12) is new and provides that authorities must have regard to their homelessness and tenancy strategies when framing their allocation scheme.

2.6 The provisions in s.167 which allow for no preference to be given to a person guilty of serious unacceptable behaviour (s.167(2B) – (2D)) are not reproduced in s.166A. However, the power to take behaviour – whether good or poor - into account in determining priorities between people in the reasonable preference categories remains (new s.166A(5)(b)).

2.7 The requirement for an allocation scheme to contain a statement of the authority's policy on offering a choice of accommodation or the opportunity to express preferences about their accommodation is retained (s.166A(2)). However, the requirement to provide a copy of this statement to people to whom they owe a homelessness duty (under s.193(3A) or s.195(3A) of the 1996 Act) is repealed[4].

[4] Section 148(2) and s.149(3) of the Localism Act 2011.

Chapter 3
Eligibility and qualification

3.1 This chapter provides guidance on the provisions relating to an applicant's eligibility and qualification for an allocation of social housing.

3.2 Housing authorities must consider all applications made in accordance with the procedural requirements of the authority's allocation scheme (s.166(3)). In considering applications, authorities must ascertain:

- if an applicant is eligible for an allocation of accommodation, and
- if he or she qualifies for an allocation of accommodation

Eligibility

3.3 An applicant may be ineligible for an allocation of accommodation under s.160ZA(2) or (4). Authorities are advised to consider applicants' eligibility at the time of the initial application and again when considering making an allocation to them, particularly where a substantial amount of time has elapsed since the original application.

Joint Tenancies

3.4 Under s.160ZA(1)(b), a housing authority must not grant a joint tenancy to two or more people if any one of them is a person from abroad who is ineligible. However, where two or more people apply and one of them is eligible, the authority may grant a tenancy to the person who is eligible. In addition, while ineligible family members must not be granted a tenancy, they may be taken into account in determining the size of accommodation which is to be allocated.

Existing Tenants

3.5 The eligibility provisions do not apply to applicants who are already secure or introductory tenants or assured tenants of a Private Registered Provider. Most transferring tenants fall outside the scope of the allocation legislation (s.159(4A)); while those who are considered to have reasonable preference for an allocation are specifically exempted from the eligibility provisions by virtue of s.160ZA(5).

Persons from abroad

3.6 A person may not be allocated accommodation under Part 6 if he or she is a person from abroad who is ineligible for an allocation under s.160ZA of the 1996 Act. There are two categories for the purposes of s.160ZA:

(i) *a person subject to immigration control* - such a person is not eligible for an allocation of accommodation unless he or she comes within a class prescribed in regulations made by the Secretary of State (s.160ZA(2)), and

(ii) *a person from abroad other than a person subject to immigration control* - regulations may provide for other descriptions of persons from abroad who, although not subject to immigration control, are to be treated as ineligible for an allocation of accommodation (s.160ZA(4)).

3.7 The regulations setting out which classes of persons from abroad are eligible or ineligible for an allocation are the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006 No.1294) ('the Eligibility Regulations').

Persons subject to immigration control

3.8 The term 'person subject to immigration control' is defined in s.13(2) of the Asylum and Immigration Act 1996 as a person who under the Immigration Act 1971 requires leave to enter or remain in the United Kingdom (whether or not such leave has been given).

3.9 The provisions of section 7(1) of the Immigration Act 1988 and the Asylum and Immigration Act 1996 have been saved for the purpose of housing legislation to protect the rights of EEA nationals, and their family members, who have citizens' rights pursuant to the Withdrawal Agreement.

This will ensure that EEA nationals, and their family members, who

1) have acquired limited leave to enter and remain in the UK (also known as pre-settled status) by virtue of Appendix EU of the Immigration Rules ("the EU Settlement Scheme");
2) were frontier working in the UK prior to 31 December 2020; or
3) are lawfully residing in the UK by 31 December 2020, but have still to apply to, or acquire status under, the EU Settlement Scheme before the deadline of 30 June 2021, and are covered by the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (SI 2020/1209) ("Grace Period SI")

will continue to be treated as 'persons not subject to immigration control' in the instances where they would previously have been, so that their eligibility for the allocation of social housing can be judged on the basis of Regulation 4 of the Eligibility Regulations as was the case prior to 31 December 2020.

3.10 EEA nationals, and their family members, who have been granted indefinite leave to enter or remain (also known as settled status) under the EU Settlement Scheme, do not need the savings to apply to them. Their eligibility should be judged on the basis of Class C of Regulation 3 of the Eligibility Regulations, as is the case for persons subject to immigration control who have been granted indefinite leave to remain. In general, they should be eligible provided they can demonstrate habitual residence in the Common Travel Area.

For the purpose of this guidance references to "the Withdrawal Agreement" in this note are to the "Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01)". Equivalent provisions are to be found in separation agreements relating to the European Economic Area/European Free Trade Agreement

and the EU/Swiss Free Movement of Persons Agreement, which are also given effect in domestic law by the European Union (Withdrawal Agreement) Act 2020.

3.11 The following categories of persons 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) Irish citizens, who are not subject to immigration control in the UK because the Republic of Ireland forms part of the Common Travel Area (see paragraph 3.14 (iii) below) with the UK which allows free movement

(iv) by operation of the savings provisions referred to in paragraph 3.9 above, EEA nationals, and their family members, who have established citizens' rights in accordance with Part 2 of the Withdrawal Agreement, i.e. those who were residents and exercised a right to reside in the UK derived from European Union law or any provision under section 2(2) of the European Communities Act 1972, and those who were frontier working, before 31 December 2020. Whether an EEA national (or family member) has exercised a particular right to reside in the UK or rights to be treated as a frontier worker will depend on their circumstances, at that particular time. For example, whether the EEA national is, for the purposes of the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052) ('the EEA Regulations') (as preserved by the savings provisions) a jobseeker, a worker, a self-employed person and so on. This would include those who are protected under the 'Grace Period' (see para 3.22 below).

(v) persons who are exempt from immigration control under the Immigration Acts, including diplomats and their family members based in the UK, and some military personnel.

For the purpose of this guidance, 'EEA nationals' means nationals of any of the EU member states, and nationals of Iceland, Norway, Liechtenstein and Switzerland.

3.12 Any person who does not fall within one of the four categories in paragraph 3.11 will be a person subject to immigration control and will be ineligible for an allocation of accommodation unless they fall within a class of persons prescribed by regulation 3 of the Eligibility Regulations (see paragraph 3.14 below).

3.13 If there is any uncertainty about an applicant's immigration status, it is recommended that authorities contact the Home Office.

Persons subject to immigration control who are eligible for an allocation of social housing

3.14 Regulation 3 of the Eligibility Regulations provides that the following classes of persons subject to immigration control are eligible for an allocation of accommodation:

i) a person granted refugee status: normally granted 5 years' limited leave to remain in the UK;

ii) a person granted exceptional leave to enter or remain in the UK granted outside the provisions of the Immigration Rules; and whose leave to enter and remain is not subject to a condition requiring them to maintain and accommodate themselves, and any person who is dependent on them, without recourse to public funds. Exceptional leave to remain now usually takes the form of '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 (the Common Travel Area): such a person will have indefinite leave to enter or remain and will be regarded as having settled status. However, where indefinite leave to enter or remain was granted as a result of an undertaking that a sponsor would be responsible for the applicant's maintenance and accommodation, the applicant must have been resident in the Common Travel Area for five years since the date of entry - or the date of the sponsorship undertaking, whichever is later – in order to be eligible. Where the 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 an allocation of accommodation;

iv) a person who has humanitarian protection granted under paragraphs 339C – 344C of the Immigration Rules;

v) a person who is habitually resident in the Common Travel Area and who has limited leave to enter the United Kingdom as a relevant Afghan citizen under paragraph 276BA1 of the Immigration Rules;

vi) a person who has limited leave to enter or remain in the United Kingdom on family or private life grounds under Article 8 of the Human Rights Act, such leave granted under paragraph 276BE (1), paragraph 276DG or Appendix FM of the Immigration Rules, and who is not subject to a condition requiring that person to maintain and accommodate themselves, and any person dependent upon them, without recourse to public funds;

vii) a person who is habitually resident in the Common Travel Area and who has been transferred to the United Kingdom under section 67 of the Immigration Act 2016 and has limited leave to remain under paragraph 352ZH of the Immigration Rules;

viii) a person who is habitually resident in the Common Travel Area and who has Calais leave to remain under paragraph 352J of the Immigration Rules. (Effective from 1 November 2018);

ix) a person who is habitually resident in the Common Travel Area and who has limited leave to remain in the UK as a stateless person under paragraph 405 of the Immigration Rules;

x) a person who has limited leave to enter and remain in the UK as the family member of a 'relevant person of Northern Ireland' by virtue of Appendix EU of the Immigration Rules.

Other persons from abroad who may be ineligible for an allocation

3.15 By virtue of regulation 4 of the Eligibility Regulations, a person who is not subject to immigration control and who falls within one of the following descriptions is to be treated as a person from abroad who is ineligible for an allocation of accommodation:

(i) a person who is not habitually resident in the Common Travel Area (subject to certain exceptions - see paragraph 3.17 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). 'Jobseeker' has the same meaning as in regulation 6(1) of 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 UK is a derivative right to reside to which they are entitled under regulation 16(1) of the EEA Regulations, but only in a case where the right exists under that regulation because the applicant satisfies the criteria in regulation 16(5) of those Regulations;

(v) a person whose only right to reside in the Common Travel Area is a right equivalent to one of those mentioned in sub-paragraph (ii) to (iv) above.

3.16 For the purposes of determining eligibility for an allocation of social housing, a person who is not subject to immigration control and who falls within categories (ii) or (iii) in paragraph 3.15 above should be treated as ineligible. This is regardless of whether such person has been granted limited leave to enter or remain in the UK by virtue of Appendix EU of the Immigration Rules, or a family permit issued under the EU Settlement Scheme granting them limited leave to enter the UK by virtue of the Immigration (Leave to Enter and Remain) Order 2000.

Persons exempted from the requirement to be habitually resident

3.17 The following persons from abroad are eligible for an allocation of accommodation even if they are not habitually resident in the Common Travel Area:

(i) an EEA national who is in the UK as a worker (which has the same meaning as in regulation 6(1) of the EEA Regulations)

(ii) an EEA national who is in the UK as a self-employed person (which has the same meaning as in regulation 6(1) of the EEA Regulations)

(iii) a person who is treated as a worker for the purpose of the definition of 'qualified person' in regulation 6(1) of the EEA Regulations pursuant to regulation 5 of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (as amended), (right of residence of an accession State national subject to worker authorisation);

(iv) a person who is a family member of a person referred to in (i) to (iii) above

(v) a person with a right to reside permanently in the UK by virtue of regulation 15(c), (d) or (e) of the EEA Regulations. EEA nationals who have established citizens' rights in accordance with Part 2 of the Withdrawal Agreement would be able to rely on this right to reside up to the point they apply to, and are granted, leave under the EU Settlement Scheme before the deadline of 30 June 2021

(vi) a person who is in the UK as a result of their deportation, expulsion or other removal by compulsion of law from another country to the UK.

(vii) a person who is in the United Kingdom as a frontier worker for the purpose of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (SI 2020/1213) (as defined in paragraph 3.18 below); and

(viii) a person who is a family member of a person referred to in (vii) above and has a right to reside by virtue of having been granted limited leave to enter or remain in the United Kingdom, as a family member of a relevant EEA national, under the Immigration Act 1971 by virtue of Appendix EU to the Immigration Rules made under section 3 of that Act.

3.18 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. 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 been 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.

3.19 EEA nationals who have established citizens' rights in accordance with Part 2 of the Withdrawal Agreement can be joined by close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) who live in a different country at any point in the future, if the relationship existed before/on 31 December 2020 and still exits when the family member wishes to join the EEA national in the UK. The family member will have 3 months from their date of arrival, or the end of the Grace Period on 30 June 2021, to apply to the EU Settlement Scheme (whichever is later). If the family member is a third country national, they can apply for an EU Settlement Scheme family permit or EEA family permit. Information relevant to this can be found at: https://www.gov.uk/family-permit/. '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. When considering the eligibility of a family member, housing authorities should consider whether the person has acquired indefinite leave to remain in the UK in their own right, for example, a family member at the point they are eligible and are granted settled status under the EU Settlement Scheme.

The Habitual Residence Test

3.20 The term 'habitual residence' is intended to convey a degree of permanence in the person's residence in the Common Travel Area; it implies an association between the individual and the place of residence and relies substantially on fact.

3.21 Applicants who have been resident in the Common Travel Area continuously during the two year period prior to their housing application are likely to be habitually resident (periods of temporary absence, e.g. visits abroad for holidays or to visit relatives may be disregarded). 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 (see Annex 2 for further guidance).

Managing applications for social housing from 1 January 2021 – 30 June 2021

3.22 When EEA applicants, alongside their family members, make an application to their local authorities from 1 January 2021, they will need to provide evidence of their immigration status. Those who have applied and been granted status under the EUSS will be able to use their digital status to demonstrate their entitlement to access social housing. Generally,

- EEA citizens, and their family members, granted settled status (also known as indefinite leave to enter or remain) will be eligible for an allocation of social housing under provisions in Regulation 3 of the Eligibility Regulations); and

- EEA citizens, and their family members granted, pre-settled status (also known as limited leave to enter or remain), and EEA citizens frontier working in the UK will be eligible for an allocation of social housing on broadly the same terms as was the case prior to the end of the Transition Period 31 December 2020 under provisions 4 of the Eligibility Regulations).

3.23 For those EEA citizens and their family members (including family members moving to the UK to join their sponsor EEA citizen) who are eligible to apply to the EU Settlement Scheme but have yet to do so before the deadline of 30 June 2021, local housing authorities will need to satisfy themselves that the applicant(s):

- was exercising a qualifying EU right to reside immediately before 31 December 2020 (or the family member has joined their sponsor EEA citizen between 1 January to 30 June 2021, and both have yet to apply to the EU Settlement Scheme). This evidence is required in order for the applicant to demonstrate whether they are covered by the **Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations** and their rights are protected by the Withdrawal Agreement; and
- meets the relevant eligibility criteria at the time of the initial application for social housing and again when considering making an allocation to them, particularly where a substantial amount of time has elapsed since the original application.

3.24 Housing authorities can signpost applicants who have yet to apply to the EU Settlement Scheme gov.uk web page at: www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status; or suggest they contact the EU Settlement Resolution Centre, either online or by calling 0300 123 7379, for questions about how to apply.

3.25 Those EEA citizens who miss the 30 June 2021 deadline and who do not have a different form of UK immigration status will be considered to have no lawful basis for remaining in the UK. They will need to obtain status under the EU Settlement Scheme or another UK immigration status to resolve this. In line with the Withdrawal Agreements, late applications to the EU Settlement Scheme will be accepted where there are reasonable grounds for missing the 30 June 2021 deadline.

3.26 Newly arriving EEA citizens and their family members who move to the UK from 1 January 2021 will (unless they are eligible to apply to the EUSS in another capacity, such as being a joining family member) come under the new points-based immigration system. Under that system, access to social housing will be the same for EEA and non-EEA citizens. They will generally be considered eligible after indefinite leave to remain is granted, usually after five years of continuous residence; unless they are within one of the exempted categories under Regulation 3 of the Eligibility Regulations.

Qualification

3.27 Housing authorities may only allocate accommodation to people who are defined as 'qualifying persons' (s.160ZA(6)(a)). Subject to the requirement not to allocate to persons from abroad who are ineligible and the exception for members of the Armed and Reserve Forces in paragraph 3.36 below, a housing authority may decide the classes of people who are, or are not, qualifying persons.

3.28 Housing authorities are encouraged to adopt a housing options approach as part of a move to a managed waiting list. A strong and pro-active housing options approach brings several benefits: people are offered support to access the housing solution which best meets their needs (which might be private rented housing, low cost home ownership or help to stay put); expectations about accessing social housing are properly managed; and social housing is focused on those who need it most. A lower waiting list can also be a by-product.

3.29 In framing their qualification criteria, authorities will need to have regard to their duties under the equalities legislation, as well as the requirement in s.166A(3) to give overall priority for an allocation to people in the reasonable preference categories.

3.30 Housing authorities should avoid setting criteria which disqualify groups of people whose members are likely to be accorded reasonable preference for social housing, for example on medical or welfare grounds. However, authorities may wish to adopt criteria which would disqualify individuals who satisfy the reasonable preference requirements.

This could be the case, for example, if applicants are disqualified on a ground of antisocial behaviour.

3.31 When deciding what classes of people do not qualify for an allocation, authorities should consider the implications of excluding all members of such groups. For instance, when framing residency criteria, authorities may wish to consider the position of people who are moving into the district to take up work or to escape violence, or homeless applicants or children in care who are placed out of borough.

3.32 The Government believes that authorities should avoid allocating social housing to people who already own their own homes. Where they do so, this should only be in exceptional circumstances; for example, for elderly owner occupiers who cannot stay in their own home and need to move into sheltered accommodation.

3.33 There may be sound policy reasons for applying different qualification criteria in relation to existing tenants from those which apply to new applicants. For example, where residency requirements are imposed, authorities may wish to ensure they do not restrict the ability of existing social tenants to move to take up work or to downsize to a smaller home. Authorities may decide to apply different qualification criteria in relation to particular types of stock, for example properties which might otherwise be hard to let.

3.34 Whatever general criteria housing authorities use to define the classes of persons who do not qualify for social housing, there may be exceptional circumstances where it is necessary to disapply these criteria in the case of individual applicants. An example might be an intimidated witness[5] who needs to move quickly to another local authority district. Authorities are encouraged to make explicit provision for dealing with exceptional cases within their qualification rules.

3.35 As with eligibility, authorities are advised to consider whether an applicant qualifies for an allocation at the time of the initial application and when considering making an allocation, particularly where a long time has elapsed since the original application.

Members of the Armed Forces and the Reserve Forces

3.36 We have made regulations to provide that authorities must not disqualify the following applicants on the grounds that they do not have a local connection[6] with the authority's district:

(a) members of the Armed Forces and former Service personnel, where the application is made within five[7] years of discharge

[5] 'Intimidated witnesses include Protected Persons as specified in Section 82 and schedule 5 of the Serious Organised Crime and Police Act 2005.'

[6] As defined by s.199 of the 1996 Act.

[7] 5 years reflects guidelines, issued by the local authorities organisations in England, Scotland and Wales, which propose a working definition of normal residence for the purposes of establishing a local connection (see paragraph 10.7 of the Homelessness Code of Guidance 2018).

(b) bereaved spouses and civil partners of members of the Armed Forces leaving Services Family Accommodation following the death of their spouse or partner

(c) serving or former members of the Reserve Forces who need to move because of a serious injury, medical condition or disability sustained as a result of their service

3.37 These provisions recognise the special position of members of the Armed Forces (and their families) whose employment requires them to be mobile and who are likely therefore to be particularly disadvantaged by local connection requirements; as well as those injured reservists who may need to move to another local authority district to access treatment, care or support.

Joint tenants

3.38 In the case of an allocation to two or more persons jointly, at least one of the persons must be a qualifying person (s.160ZA(6)(b)) and all of them must be eligible.

Fresh applications

3.39 Applicants who have previously been deemed not to qualify may make a fresh application if they consider they should now be treated as qualifying, but it will be for the applicant to show that his or her circumstances have changed (s.160ZA(11)).

Reviews of decisions on eligibility and qualification

3.40 For guidance on decisions and reviews see chapter 5.

Chapter 4
Framing an allocation scheme

4.1 Housing authorities are required by s.166A(1) to have an allocation scheme for determining priorities, and for defining the procedures to be followed in allocating housing accommodation; and they must allocate in accordance with that scheme (s.166A(14)). All aspects of the allocation process must be covered in the scheme, including the people by whom decisions are taken. In the Secretary of State's view, qualification criteria form part of an allocation scheme.

4.2 All housing authorities must have an allocation scheme, regardless of whether they own housing stock and whether they contract out the delivery of any of their allocation functions (see further chapter 6). When framing or modifying their scheme, authorities must have regard to their current tenancy and homelessness strategies (s.166A(12)).

Choice and preference options

4.3 An allocation scheme must include a statement as to the housing authority's policy on offering people a choice of accommodation or the opportunity to express preferences about the accommodation to be allocated to them (s.166A). It is for housing authorities to determine their policy on providing choice or the ability to express preferences.

Reasonable preference

4.4 In framing their allocation scheme to determine allocation priorities, housing authorities must ensure that reasonable preference is given to the following categories of people (s.166A(3):

(a) people who are homeless within the meaning of Part 7 of the 1996 Act (including those who are intentionally homeless and those not in priority need)

(b) people who are owed a duty by any housing authority under section 190(2), 193(2) or 195(2) of the 1996 Act (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any housing authority under s.192(3)[8]

(c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions

(d) people who need to move on medical or welfare grounds, including grounds relating to a disability[9], and

[8] Sections 65(2) and 68(2) of the Housing Act 1985 and section 192(3) of the Housing Act 1996 have been repealed.

[9] The words 'including grounds relating to a disability were added by the Housing Act 2004.

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

4.5 In framing their allocation scheme to give effect to s.166A(3), housing authorities should have regard to the following considerations:

- the scheme must be framed so as to give reasonable preference to applicants who fall within the categories set out in s.166A(3), over those who do not
- although there is no requirement to give equal weight to each of the reasonable preference categories, authorities will need to demonstrate that, overall, reasonable preference has been given to all of them
- there is no requirement for housing authorities to frame their scheme to afford greater priority to applicants who fall within more than one reasonable preference category (cumulative preference) over those who have reasonable preference on a single, non-urgent basis[10].

Otherwise, it is for housing authorities to decide how to give effect to the provisions of s.166A(3) in their allocation scheme.

Restricted persons

4.6 Applicants should not be given reasonable preference under paragraph (a) or (b) of s.166A(3) if they would only qualify for reasonable preference by taking into account a 'restricted person' within the meaning of Part 7 (s.166A(4)). A restricted person is a person subject to immigration control who is not eligible for homelessness assistance because he or she does not have leave to enter or remain in the UK or has leave which is subject to a 'no recourse to public funds' condition (s.184(7) of the 1996 Act).

Homeless or owed a homelessness duty

4.7 The requirement for housing authorities to frame their allocation scheme to give reasonable preference to people who are owed certain homeless duties remains the case, notwithstanding the amendments to Part 7 made by the Localism Act which give authorities the power to end the main homelessness duty with an offer of private rented accommodation, without requiring the applicant's consent.

Overcrowding

4.8 The Secretary of State takes the view that the bedroom standard is an appropriate measure of overcrowding for allocation purposes, and recommends that all housing authorities should adopt this as a minimum. The bedroom standard allocates a separate bedroom to each:

- married or cohabiting couple
- adult aged 21 years or more
- pair of adolescents aged 10-20 years of the same sex

[10] (*R (on application of Ahmad) v London Borough of Newham* [2009] UKHL 14, [2009] HLR 31

- pair of children aged under 10 years regardless of sex

Medical and welfare grounds

4.9 The medical and welfare reasonable preference category includes people who need to move because of their disability or access needs, and this includes people with a learning disability as well as those with a physical disability.

4.10 'Welfare grounds' would encompass a wide range of needs, including, but not limited to, the need to:

- provide a secure base from which a care leaver, or a person who is moving on from a drug or alcohol recovery programme, can build a stable life
- provide accommodation, with appropriate care and support, for those who could not be expected to find their own accommodation, such as young adults with learning disabilities who wish to live independently in the community
- provide or receive care or support. This would include foster carers, those approved to adopt, or those being assessed for approval to foster or adopt, who need to move to a larger home in order to accommodate a looked after child or a child who was previously looked after by a local authority. It would also include special guardians, holders of a residence order and family and friends carers who are not foster carers but who have taken on the care of a child because the parents are unable to provide care

Hardship grounds

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

4.12 Possible indicators of the criteria which apply to reasonable preference categories (c) and (d) are given in annex1.

Additional preference

4.13 Section 166A(3) gives housing authorities the power to frame their allocation scheme to give additional preference to particular descriptions of people who fall within the statutory reasonable preference categories and have urgent housing needs. All housing authorities must consider, in the light of local circumstances, the need to give effect to this provision. Examples of people with urgent housing needs to whom housing authorities should consider giving additional preference within their allocation scheme include:

- those who need to move urgently because of a life threatening illness or sudden disability
- families in severe overcrowding which poses a serious health hazard

- those who are homeless and require urgent re-housing as a result of violence or threats of violence, including intimidated witnesses, and those escaping serious anti-social behaviour or domestic violence

Members of the Armed and Reserve Forces

4.14 Subject to parliamentary approval, we will regulate to require authorities to frame their allocation scheme to give additional preference to the following categories of people who fall within one or more of the reasonable preference categories and who have urgent housing needs[11]:

(a) former members of the Armed Forces

(b) serving members of the Armed Forces who need to move because of a serious injury, medical condition or disability sustained as a result of their service

(c) bereaved spouses and civil partners of members of the Armed Forces leaving Services Family Accommodation following the death of their spouse or partner

(d) serving or former members of the Reserve Forces who need to move because of a serious injury, medical condition or disability sustained as a result of their service

Determining priorities between households with a similar level of need

4.15 Authorities may frame their allocation scheme to take into account factors in determining relative priorities between applicants in the reasonable (or additional) preference categories (s.166A(5)). Examples of such factors are given in the legislation: financial resources, behaviour and local connection. However, these examples are not exclusive and authorities may take into account other factors instead or as well as these.

Financial resources available to a person to meet his housing costs

4.16 This would enable a housing authority, for example, to give less priority to owner occupiers (wherever the property is situated).

Behaviour

4.17 This would allow for greater priority to be given to applicants who have been model tenants or have benefited the community, for example.

Local connection

4.18 Local connection is defined by s.199 of the 1996 Act. A person has a local connection because of normal residence (current or previous) of their own choice,

[11] The Housing Act 1996 (Additional Preference for Armed Forces) (England) Regulations 2012 (SI 2012/2989) came into force on 30 November 2012

employment, family associations, or special circumstances. Residence is not of a person's choice if it is the consequence of being detained in prison or in hospital under the Mental Health Act. As a result of changes to s.199 introduced in 2008[12] a person serving in the Armed Forces can establish a local connection with a local authority district through residence or employment there, in the same way as a civilian.

Including local priorities alongside the statutory reasonable preference categories

4.19 As the House of Lords made clear in the case of *R (on application of Ahmad) v. Newham LBC*[13], s.166A(3)[14] only requires that the people encompassed within that section are given 'reasonable preference'. It 'does not require that they should be given absolute priority over everyone else'[15]. This means that an allocation scheme may provide for other factors than those set out in s.166A(3) to be taken into account in determining which applicants are to be given preference under a scheme, provided that:

- they do not dominate the scheme, and
- overall, the scheme operates to give reasonable preference to those in the statutory reasonable preference categories over those who are not

The Secretary of State would encourage authorities to consider the scope to take advantage of this flexibility to meet local needs and local priorities.

4.20 The House of Lords also made clear that, where an allocation scheme complies with the reasonable preference requirements and any other statutory requirements, the courts should be very slow to interfere on the ground of alleged irrationality[16].

Local lettings policies

4.21 Section 166A(6)(b) of the 1996 Act enables housing authorities to allocate particular accommodation to people of a particular description, whether or not they fall within the reasonable preference categories, provided that overall the authority is able to demonstrate compliance with the requirements of s.166A(3). This is the statutory basis for so-called 'local lettings policies' which may be used to achieve a wide variety of housing management and policy objectives.

[12] Amendment to s.199 of the 1996 Act made by s.315 of the Housing and Regeneration Act 2008.
[13] [2009] UKHL 14
[14] Previously s.167(2), which continues to apply to allocations by housing authorities in Wales.
[15] Baroness Hale at para [18]
[16] Lord Neuberger at para [55]

Households affected by the under-occupation measure

4.22 When framing the rules which determine the size of property to allocate to different households and in different circumstances, housing authorities are free to set their own criteria, provided they do not result in a household being statutorily overcrowded. However, in setting these criteria, authorities will want to take account of the provision in the Welfare Reform Act 2012 which will reduce Housing Benefit to under-occupiers.

4.23 Social tenants affected by the under-occupation measure may choose to move to more suitably sized accommodation in the private rented sector. One way to encourage tenants to consider this option might be to ensure they are given some degree of preference for an allocation if they apply for a new social tenancy at a later date.

Members of the Armed Forces

4.24 Authorities are also strongly encouraged to take into account the needs of all serving or former Service personnel when framing their allocation schemes, and to give sympathetic consideration to the housing needs of family members of serving or former Service personnel who may themselves have been disadvantaged by the requirements of military service and, in particular, the need to move from base to base[17]. This would be in line with terms of the Government's Armed Forces Covenant published in May 2011.

4.25 Examples of ways in which authorities can ensure that Service personnel and their families are given appropriate priority, include:

- using the flexibility within the allocation legislation to set local priorities alongside the statutory reasonable preference categories so as to give preference, for example, to those who have recently left, or are close to leaving, the Armed Forces[18] (see paragraph 4.19 above)

- using the power to determine priorities between applicants in the reasonable preference categories, so that applicants in housing need who have served in the Armed Forces are given greater priority for social housing over those who have not (see paragraph 4.15 above)

- if taking into account an applicant's financial resources in determining priorities between households with a similar level of need (see paragraph 4.16 above), disregarding any lump sum received by a member of the Armed Forces as compensation for an injury or disability sustained on active service

[17] Housing authorities are referred to the statutory guidance Improving access to social housing for members of the Armed Forces which was published on 27 June 2020.
[18] MoD issues a Certificate of Cessation of Entitlement to Occupy Service Living Accommodation 6 months before discharge.

- setting aside a proportion of properties for former members of the Armed Forces under a local lettings policy (see paragraph 4.21 above)

4.26 A number of organisations provide specialist housing and support for veterans, such as the Royal British Legion, Stoll, Haig Homes, Alabare and Norcare, and housing authorities are encouraged to liaise with them to ensure that former Service personnel are able to access the housing option which best suits their needs.

Households in work or seeking work

4.27 Local authorities are urged to consider how they can use their allocation policies to support those households who want to work, as well as those who – while unable to engage in paid employment - are contributing to their community in other ways, for example, through voluntary work. The flexibilities which authorities are encouraged to make use of to meet the needs of Service personnel would apply equally here. This might involve, for example, framing an allocation scheme to give some preference to households who are in low paid work or employment-related training, even where they are not in the reasonable preference categories; or to give greater priority to those households in the reasonable preference categories who are also in work or who can demonstrate that they are actively seeking work. Alternatively, it might involve using local lettings policies to ensure that specific properties, or a specified proportion of properties, are allocated to households in particular types of employment where, for example, skills are in short supply.

4.28 Authorities should also consider how best they can make use of the new power to offer flexible tenancies to support households who are in low paid work, and incentivise others to take up employment opportunities.

Carers

4.29 In making accommodation offers to applicants who receive support from carers who do not reside with them but may need to stay overnight, housing authorities should, wherever possible, take account of the applicant's need for a spare bedroom.

Prospective adopters and foster carers

4.30 When considering housing applications from prospective foster carers or adopters who would require an extra bedroom to accommodate a foster or adoptive child, authorities will wish to weigh up the risk that the application to foster or adopt may be unsuccessful (leading to the property being under-occupied), against the wider benefits which would be realised if the placement was successful.

4.31 Children's services have a duty under s.22G of the Children Act 1989 to ensure sufficient accommodation to meet the needs of the looked after children in their area.

Authorities should work together with children's services to best meet the needs of prospective and approved foster carers and adopters, so that children's services can meet their s.22G duty. One way to strike an appropriate balance would be to set aside a quota of properties each year for people who need to move to larger accommodation in order to foster or adopt a child on the recommendation of children's services.

4.32 The advice in paragraph 4.22 is particularly relevant in relation to prospective foster carers, as foster children are not taken into account in determining the household size for the purposes of the under-occupation measure in the Welfare Reform Act. However, current and prospective foster carers affected by the measure may be eligible to apply for a Discretionary Housing Payment.

General information about particular applications

4.33 Under s166A(9), allocation schemes must be framed so as to give applicants the right to request from housing authorities general information that will enable them to assess:

(a) how their application is likely to be treated under the scheme and, in particular, whether they are likely to have reasonable preference

(b) whether accommodation appropriate to their needs is likely to be made available and, if so, how long it is likely to be before such accommodation becomes available

Notification about decisions and the right to a review of a decision

4.34 An allocation scheme must be framed so as to give applicants the right to be informed of certain decisions and the right to review certain decisions (s.166A(9)). For further advice on decisions and reviews, see chapter 5.

Chapter 5
Allocation scheme management

Publishing and consulting on allocation schemes

5.1 Housing authorities must publish a summary of their allocation scheme and, if requested, provide a free copy of it (s.168(1)). They must also make the full scheme available for inspection at their principal office and, if requested, provide a copy of it on payment of a reasonable fee (s.168(2)).

5.2 When an alteration is made to a scheme reflecting a major change of policy, an authority must ensure within a reasonable time that those likely to be affected by the change have the effect brought to their attention, taking such steps as the housing authority considers reasonable (s.168(3)). A major policy change would include, for example, any amendment affecting the relative priority of a large number of applicants or a significant alteration to procedures. Housing authorities should be aware that they still have certain duties under s.106 of the Housing Act 1985.

5.3 Section 166A(13) requires authorities, before adopting an allocation scheme, or altering a scheme to reflect a major change of policy, to:

- send a copy of the draft scheme, or proposed alteration, to every Private Registered Provider[19] with which they have nomination arrangements, and
- ensure they have a reasonable opportunity to comment on the proposals

Advice and information

5.4 Housing authorities must ensure that advice and information is available free of charge to everyone in their district about the right to apply for an allocation of accommodation (s.166(1)(a)). This would include general information about application procedures; as well as information about qualification and prioritisation criteria.

5.5 If a person is likely to have difficulty making an application without assistance, the authority must secure that any necessary assistance is available free of charge (s.166(1)(b)).

5.6 Housing authorities must inform applicants that they have the right to the following general information (s.166(1A)):

- information that will enable them to assess how their application is likely to be treated under the authority's allocation scheme, and, in particular, whether they are likely to fall within the reasonable preference categories, and

[19] And, where relevant, every Registered Social Landlord in Wales with which they have nomination arrangements.

- information about whether accommodation appropriate to their needs is likely to be made available to them and, if so, how long it is likely to be before such accommodation becomes available. Maintaining a database of housing suitable for applicants with access needs would assist with this.

5.7 Section 166(4) prohibits housing authorities from divulging to other members of the public that a person is an applicant for social housing, unless they have the applicant's consent. Furthermore, authorities should process any personal data they hold about applicants consistently with the Data Protection Act 2018. If authorities are unclear about their obligations and responsibilities under the Data Protection Act they should contact the Information Commissioner.

Elected Members' Involvement in Allocation Decisions

5.8 The Allocation of Housing (Procedure) Regulations 1997 (SI 1997/483) prevent an elected Member from being part of a decision-making body at the time an allocation decision is made, when either:

- the accommodation concerned is situated in their division or electoral ward, or
- the person subject to the decision has their sole or main residence there

5.9 The regulations do not prevent an elected Member from representing their constituents in front of the decision making body, or from participating in the decision making body's deliberations prior to its decision. The regulations also do not prevent elected Members' involvement in policy decisions that affect the generality of housing accommodation in their division or electoral ward rather than individual allocations; for example, a decision that certain types of property should be prioritised for older people.

Offences related to information given or withheld by applicants

5.10 Section 171 makes it an offence for anyone, in connection with the exercise by a housing authority of its functions under Part 6, to:

- knowingly or recklessly give false information
- knowingly withhold information which the housing authority has reasonably required the applicant to give in connection with the exercise of those functions

5.11 The circumstances in which an offence is committed could include providing false information:

- on an application form for social housing
- in response to a request for further information in support of the application • during review proceedings

5.12 Ground 5 in Schedule 2 to the Housing Act 1985 (as amended by s.146 of the 1996 Act) enables a housing authority to seek possession of a tenancy granted as a result of a false statement by the tenant or a person acting at the tenant's instigation.

Fraudulent or incorrect allocations

5.13 Authorities may also wish to take action to minimise the risk of staff allocating incorrectly or even fraudulently, for example to applicants who do not have sufficient priority under the allocation scheme or do not meet the authority's qualification criteria. Appropriate steps might include vetting staff who take allocation decisions or providing for decisions to be validated by employing senior staff to undertake random checks.

Decisions and reviews

Information about decisions and reviews

5.14 Housing authorities must inform applicants that they have the right to information about certain decisions which are taken in respect of their application and the right to review those decisions (s.166(1A)).

5.15 By virtue of s.160ZA (9) and (10) housing authorities must notify an applicant in writing of any decision that he or she:

- is ineligible for an allocation of accommodation under s.160ZA(2) or (4), or
- is not a qualifying person under s.160ZA(7).

5.16 The notification must give clear grounds for the decision based on the relevant facts of the case. Section 160ZA(10) 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. Where an authority considers that an applicant may have difficulty in understanding the implications of a decision on ineligibility or disqualification, it would be good practice to make arrangements for the information to be explained verbally in addition to providing a written notice.

5.17 Applicants also have the right, on request, to be informed of any decision about the facts of their case which has been, or is likely to be, taken into account in considering whether to make an allocation to them (s.166A(9)(b)).

5.18 Under s.166A(9)(c) applicants have the right to request a review of any of the decisions mentioned in paragraphs 5.15 and 5.17 above and to be informed of the decision on the review and the grounds for it.

Procedures on review

5.19 Review procedures should be clearly set out, including timescales for each stage of the process, and must accord with the principles of transparency and fairness. Failure to put in place a fair procedure for reviews, which allows for all relevant factors to be considered, could result in a judicial review of any decision reached. The following are general principles of good administrative practice:

i. Applicants should be notified of the timescale within which they must request a review. 21 days from the date the applicant is notified of the decision is well-established as a reasonable timescale. A housing authority should retain the discretion to extend this time limit in exceptional circumstances.

ii. Applicants should be notified that the request for review should be made in writing, and that it would also be acceptable for the request to be submitted by a representative on their behalf. Applicants should also be advised of the information which should accompany the request.

iii. Authorities should consider whether to advise that provision can be made for verbal representations, as well as written submissions, to be made.

iii. The review should be carried out by an officer who is senior to the person who made the original decision. Alternatively, authorities may wish to appoint a panel to consider the review. If so, it should not include any person involved in the original decision.

v. The review should be considered on the basis of the authority's allocation scheme, any legal requirements and all relevant information. This should include information provided by the applicant on any relevant developments since the original decision was made – for instance, the settlement of arrears or establishment of a repayment plan, or departure of a member of the household responsible for anti-social behaviour

vi. Reviews should be completed wherever practicable within a set deadline. Eight weeks is suggested as a reasonable timescale. The applicant should be notified of any extension to this deadline and the reasons for this

viii. Applicants must be notified in writing of the outcome of the review. The notification must set out the reasons for the decision. This will assist the applicant and the authority if, for example, the applicant is not satisfied with the outcome and decides to seek a judicial review or to take their case to the Local Government Ombudsman.

Chapter 6
Private Registered Providers and contracting out

Working with Private Registered Providers

6.1 Private Registered Providers have a duty under s.170 to cooperate with housing authorities – where the authority requests it - to such extent as is reasonable in the circumstances in offering accommodation to people with priority under the authority's allocation scheme. Similarly, s.213 provides that, where a Private Registered Provider has been requested by a housing authority to assist them in the discharge of their homelessness functions under Part 7, it must cooperate to the same extent.

6.2 Housing authorities must comply with the requirements of Part 6 when they nominate an applicant to be the tenant of a Private Registered Provider. A housing authority nominates for these purposes when it does so 'in pursuance of any arrangements (whether legally enforceable or not) to require that housing accommodation, or a specified amount of housing accommodation, is made available to a person or one of a number of persons nominated by the authority' (s.159(4)).

6.3 Nomination agreements should set out the proportion of lettings that will be made available; any criteria which the Private Registered Provider has adopted for accepting or rejecting nominees; and how any disputes will be resolved. Housing authorities will want to put in place arrangements to monitor effective delivery of the nomination agreement so they can demonstrate they are meeting their obligations under Part 6.

6.4 The Secretary of State expects that Affordable Rent homes will be allocated in the same way as social rent properties and that existing lettings arrangements operated by housing authorities and Private Registered Providers will continue to apply. The statutory and regulatory framework for allocations provides scope for local flexibility, and authorities and Private Registered Providers may wish to exercise this discretion in relation to Affordable Rent in order to meet local needs and priorities effectively.

Contracting Out

6.5 The *Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996* (SI 1996/3205) – made under s.70 of the Deregulation and Contracting Out Act 1994 ('the 1994 Act') – enables housing authorities to contract out certain functions under Part 6. In essence, it allows the contracting out of administrative functions, leaving the responsibility for strategic decisions with the housing authority.

6.6 Schedule 1 to the Order lists allocation functions which may not be contracted out:

- adopting or altering the allocation scheme, including the principles on which the scheme is framed, and consulting Private Registered Providers,
- making the allocation scheme available at the authority's principal office

6.7 The Order therefore provides that the majority of functions under Part 6 may be contracted out. These include:

i) making enquiries about and deciding a person's eligibility for an allocation
ii) carrying out reviews of decisions
iii) securing that advice and information is available free of charge on how to apply for housing
iv) securing that assistance is available free of charge to people likely to have difficulty in making a housing application without such assistance, and v) making individual allocations in accordance with the allocation scheme

6.8 The 1994 Act provides that a contract:

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, for example 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 authority from exercising the functions to which the contract relates

6.9 The 1994 Act also provides that the authority is responsible for any act or omission of the contractor in exercising functions under the contract, except where:

- the contractor fails to fulfil conditions specified in the contract relating to the exercise of the function
- criminal proceedings are brought in respect of the contractor's act or omission

6.10 Where a housing authority has delegated or contracted out the operation of its allocation functions to an external contractor, the contractor must be made aware of the provisions of Part 6 and advised how the legislation and this guidance apply to them.

6.11 Where there is an arrangement in force under s.101 of the Local Government Act 1972 by virtue of which one authority exercises the functions of another, the 1994 Act provides that the authority exercising the function is not allowed to contract it out without the principal authority's consent.

Annex 1
Indicators of criteria in reasonable preference categories (c) & (d)

Housing authorities may devise their own indicators of the criteria in the reasonable preference categories. The following list is included for illustrative purposes and to assist housing authorities in this task. It is by no means comprehensive or exhaustive, and housing authorities may have other, local factors to consider and include as indicators of the categories.

Insanitary, overcrowded and unsatisfactory housing conditions
Lacking bathroom or kitchen
Lacking inside WC
Lacking cold or hot water supplies, electricity, gas, or adequate heating
Lack of access to a garden for young children
Sharing living room, kitchen, bathroom/WC
Property in disrepair
Poor internal or external arrangements
Young children in flats above ground floor

People who need to move on medical or welfare grounds (criteria may apply to any member of the household)
A mental illness or disorder
A physical or learning disability
Chronic or progressive medical conditions (e.g. MS, HIV/AIDS)
Infirmity due to old age
The need to give or receive care
The need to recover from the effects of violence or threats of violence, or physical, emotional or sexual abuse
Ability to fend for self restricted for other reasons
Young people at risk
People with behavioural difficulties
Need for adapted housing and/or extra facilities, bedroom or bathroom
Need for improved heating (on medical grounds)
Need for sheltered housing (on medical grounds)
Need for ground floor accommodation (on medical grounds)
Need to be near friends/relatives or medical facility on medical grounds
Need to move following hospitalisation or long term care

Annex 2
Habitual residence

1. In practice, when considering housing applications from persons 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 habitual residence

2. The term 'habitual residence' is not defined in legislation. Housing authorities should always consider the overall circumstances of a case to determine whether someone is habitually resident in the Common Travel Area.

General principles

3. When deciding whether a person is habitually resident, 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 person receiving short term medical treatment is not resident
- the most important factors for habitual residence are 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 the applicant left the UK
- how long the applicant lived in the UK before leaving
- why the applicant left the UK
- how long the applicant intended to remain abroad
- why the applicant returned
- whether the applicant's partner and children, if any, also left the UK
- whether the applicant kept accommodation in the UK
- if the applicant owned property, whether it was let, and whether the lease was timed to coincide with the applicant's return to the UK
- what links the applicant kept with the UK
- whether there have been other brief absences
- why the applicant has come back 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:

- whether the applicant has sold or given up any property abroad
- whether the applicant has bought or rented accommodation or is staying with friends
- whether the move to the UK is 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, whether their stated plan is consistent with their actions
- whether any arrangements were made for employment and accommodation (even if unsuccessful) before the applicant arrived in the UK
- whether the applicant bought a one-way ticket
- whether the applicant brought all their belongings
- whether there is evidence of links with the UK, e.g. 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:

- whether the applicant has any remaining ties with his or her former country of residence
- whether 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 Common Travel Area 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 Common Travel Area 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 Common Travel Area are unlikely to be habitually resident.

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 Common Travel Area but the applicant has a home somewhere else, authorities should consider the applicant's intentions regarding the property.

20. It is not uncommon 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 Common Travel Area 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.