

# **Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness**

**2015**

## **Introduction to the Consultation**

This is a consultation version of the revised Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness. It has been up-dated as a result of the Housing (Wales) Act 2014 and other legal and policy changes since 2012. You are invited to respond to the Mailbox on the eight consultation questions.

Mailbox: **HousingCodeConsultation2015@wales.gsi.gov.uk**

The consultation exercise closes 9am on Monday 23 March 2015. The appendices and Case Studies are not contained in the consultation document as they will be shaped by the consultation exercise itself.

These are the consultation questions:

### **Allocation of Accommodation**

1. Are the elements of the Code referring to Allocations clear enough for your use?
2. Are there any areas of the allocations guidance that you would like further clarification or detail on?
3. Have you any more comments to make on the allocations element of the Code of Guidance?

### **Homelessness**

4. Are the elements of the Code referring to homelessness clear in explaining the responsibilities of each party?
5. Do they adequately address the new homelessness duties under the Housing (Wales) Act 2014?
6. Does the Guidance explain adequately how organisations should work together to tackle homelessness?
7. Do you feel the Guidance could be strengthened or made easier to use and if so could you explain how it should be improved?

### **General**

8. Are there any more comments you would like to make about the revised Code?

If you have any queries on the Code of Guidance please contact Louise Jones 0300 062 8562. [Louise.jones3@wales.gsi.gov.uk](mailto:Louise.jones3@wales.gsi.gov.uk)

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# INTRODUCTION

## **About this Code of Guidance**

### **Purpose of Code**

This Code is Guidance issued by the Welsh Ministers. Local Authorities must have regard to this Code when exercising their functions in connection with allocations and homelessness.

### **Target audience**

The Code is specifically for members and staff of Local Authorities to guide them in implementing their functions in connection with allocations and homelessness. It applies to both the housing and to the social services functions of those authorities.

Many of the activities discussed in the Code require joint planning and operational co-operation between Local Authorities and Housing Associations, Local Health Boards, other referral agencies, voluntary sector organisations and the diverse range of bodies working in the housing sector. The Code therefore is also relevant to them.

### **Legal Status of Code**

When exercising their functions under Part 6 (Allocations) of the Housing Act 1996 (the 1996 Act) and Part 2 (Homelessness) of the Housing (Wales) Act 2014 (the 2014 Act), Local Authorities must have regard to any guidance issued by the Welsh Ministers. This Code is Ministerial guidance issued under these provisions.

This Code gives guidance on how Local Authorities should discharge their functions and apply the various statutory criteria in practice. It is not a substitute for legislation and insofar as it comments on the law, it can only reflect the Welsh Government's understanding of the law and relevant court cases at the time of issue. Decisions on allocations and homelessness should always take account of the guidance in this Code, as they can be challenged unless the authority can show that this has been done. However, local authorities also need to be familiar with the statutory provisions, and keep up-to-date on any developments in case law.

This Code replaces the 'Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness' issued by the National Assembly for Wales in April 2012.

### **Structure of Code**

The Code comes in two parts. Part 1 relates to the allocation of accommodation in accordance with Part 6 of the 1996 Act and, although updated to reflect changes in

the law and relevant case law, largely follows the same format as the 2012 edition of the Code.

Part 2 of the Code covers Part 2 of the 2014 Act, which amends and consolidates all previous homelessness legislation. It explains the new legislation, and places it in the context of Welsh Government policy in 2014.

There is also a guide to the Terminology used in the Code, and, at the end of the Code, there will be a Glossary and an Annex with information about the legislative background.

## **Effective Date of the Code**

The effective date of this Code will be Spring 2015.

## **Compliance with Code**

The Wales Audit Office may take into consideration an authority's compliance with this Code under their inspection functions. For example: each Local Authority should have its own published allocations policy available for local people to access which is available electronically and in a range of accessible formats to meet the needs of a diverse range of people.

## **The Legislation in Context**

The responsibilities that Part 6 of the 1996 Act and Part 2 of the 2014 Act give to Local Authorities should be seen in the context of their other functions. Authorities should consider the wider objectives of meeting the area's housing needs, as set out in their Single Integrated Plan. Authorities should consider how their allocation and homelessness policies interact with other areas of welfare provision and what arrangements are required to ensure a smooth relationship with different providers.

## **Terminology**

This Code contains explanations of legal requirements, policy guidance and good practice advice.

Where the word 'must' is used, this refers to a statutory duty which must be implemented.

Where the word 'should' is used, this refers to a level of practice which is not mandatory but would normally be the accepted professional standard.

Where the word 'may' is used, this refers to good practice which Local Authorities and others are asked to consider.

In this Code, "the 1996 Act" means the Housing Act 1996 (as amended) and "the 2014 Act" means the Housing (Wales) Act 2014.

In this Code “Local Authority” means a Welsh County, or County Borough Council. For the purposes of both the 1996 Act and the 2014 Act, such Local Authorities are both Local Housing Authorities and Social Services Authorities.

In this Code “Housing Association” and “Association” mean Registered Social Landlord or Registered Provider of Social Housing which provides social housing in Wales.

## **Code up-dates**

The Code of Guidance is provided in an electronic form only which facilitates dissemination of new or revised guidance. Each time the Welsh Government revises the Code, the housing sector will be advised and the latest version will be available via the Welsh Government’s website. It is recommended that users access the electronic version of the document for the most up-to-date version.

## **Navigating the Code**

Where possible the documents quoted in the Code have been hyperlinked for ease of access by the user. In order to navigate the document, links are included in the contents page. To access the links press the control button on the keyboard and click.

# **PART 1**

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# **ALLOCATIONS**

# CHAPTER 1: INTRODUCTION

## Allocations and the Role of Social Landlords

### Introduction

1.1 The Welsh Government believes that the allocation of housing can play an important role in broader regeneration, sustainability and inclusion.

1.2 For example, allocations can make a contribution towards meeting the objectives set out in a Local Authority's Homelessness Strategy, Housing Strategy and Community Strategy. It recognises that allocation schemes will need to form part of an integrated range of measures and initiatives to address social issues at the local level.

### Overview

1.3 As demand for social housing is very high, in order to achieve their objectives it is important that Local Authorities work in partnership with a wide range of stakeholders in the local community to ensure that the needs of all groups are addressed and people feel that their views have been heard.

1.4 Local Authorities have many statutory duties and functions in connection with housing. It is important that local authorities take a strategic approach to meeting housing needs in the district. To do this, they will need to develop close working partnerships - both at strategic and operational levels – with Housing Associations, given their key role in the supply and management of social housing particularly for the areas where stock transfer has occurred. Partnership working will ensure that:

- Best use is made of the available social housing and
- Applicants are offered the widest choice of accommodation.

1.5 Local Authorities and Housing Associations or Registered Social Landlords are often referred to as 'social landlords'. They are distinguished from other landlords by having the principal objective of meeting housing need and, in Wales, being not-for-profit organisations.

1.6 The Welsh Government understands that Housing Associations are not subject to the same legislative framework as Local Authorities. However, Housing Associations need to be aware of the duties on Local Authorities to address housing need. Housing Associations should actively work with Local Authorities to help them fulfil this function and deliver good housing outcomes, particularly as this is a requirement of the regulatory framework in Wales.

1.7 Section 170 of the 1996 Act requires Housing Associations to 'co-operate to such an extent as is reasonable in the circumstances in offering accommodation

to people with priority under the authority's allocations scheme.' The Welsh Government's [Regulatory Framework for Housing Associations Registered in Wales](#) puts a requirement on Housing Associations to ensure that their work supports the Local Authority in the delivery of its strategic housing role. The [Regulatory Framework for Housing Associations Registered in Wales](#) issued under Part 1 of the 1996 Act aims to ensure that Housing Associations provide good quality homes and services to tenants and others who use their services. It does this by ensuring that each Association is well governed, financially viable and delivering high quality services. See [Annex 13](#) for further details on the regulatory framework. **(Annexes are not included in the Consultation document).**

## **Improving Lives and Communities – Homes in Wales**

1.8 The broad direction of Welsh Government policy is contained within the 2010 National Housing Strategy, [Improving Lives and Communities](#) and the Housing White Paper 2012.

1.9 The focus of the Housing Strategy is on improving people's lives and well-being through:

- Providing more housing and better choice
- Improving existing homes and communities, and
- Improving housing related services and support

1.10 The commitments that have particular relevance to homelessness and allocations are:

- Do as much as possible to prevent homelessness but when it occurs, provide efficient services to help people find accommodation
- Provide more housing of the right type and offer more choice
- Improve housing related services and support, particularly for vulnerable people
- Make the best use of the investment in housing.

1.11 Several of these measures have been brought into effect by the Housing (Wales) Act 2014. The key elements of the Housing (Wales) Act are:

- introduction of a compulsory registration and licensing scheme for private rented sector landlords and letting and management agents
- reform of homelessness law, including placing a stronger duty on local authorities to prevent homelessness and allowing them to use suitable accommodation in the private sector

- placing a duty on local authorities to provide sites for Gypsies and Travellers where a need has been identified
- introduction of standards for Local Authorities on rents, service charges and quality of accommodation
- reform of the Housing Revenue Account Subsidy system
- giving Local Authorities the power to charge more than the standard rate of council tax on long-term empty properties and certain types of second homes
- assisting the provision of housing by Co-operative Housing Associations, and
- amendment of the Leasehold Reform, Housing and Urban Development Act 1993.

1.12 The guidance contained in this Code provides a framework within which these aims can be pursued by Local Authorities.

## **Housing White Paper, 2012**

1.13 The Housing White Paper 2012 set out a bold and ambitious programme of action for the remainder of the current term of Government. It described Welsh Government's proposals for new legislation and other, non-legislative, action. Many of the commitments in the Housing White Paper are being taken forward through the Housing Act, the Planning Bill and the Renting Homes Bill. The Ministerial Statement of 2014 has increased the affordable housing target to 10,000 additional affordable homes to be delivered over the current term of Government, on which good progress to meeting the increased target has been made with 6,890 units delivered in the first three years of this administration which is 69% of the revised target.

## **The Renting Homes Bill**

1.14 The Welsh Government has published plans to improve arrangements for renting homes. It covers everyone who rents, from a council, a Housing Association or a private landlord.

1.15 The changes are being put forward because the current law is complex and this can often lead to disputes between tenants and landlords. There will be two main types of contract and both will be written in a way that's easy to understand. The changes are also fairer in that people who rent from Housing Associations will have the same contract and rights as those who rent from their council.

1.16 The Welsh Government is keen to point out that it is still committed to social housing and secure rental contracts. It believes these provide people with the greatest level of protection.

1.17 The new approach will also be better for privately rented accommodation because at present, many people think it has a poor image. Both private landlords and their tenants will benefit from clear rental contracts. Stakeholders were consulted on the layout and format of the contracts between July and October 2014. It is anticipated that the Bill will be introduced in 2015.

<http://wales.gov.uk/topics/housing-and-regeneration/legislation/rentingbill/?lang=en>

## **Affordable Housing Supply**

1.18 Former Housing and Regeneration Minister Carl Sargeant agreed a Housing Supply Pact between Welsh Government and Community Housing Cymru to maximise the potential impact that both government and the Housing Association sector can have. Our Social Housing Grant Programme is at the core of affordable housing delivery and our continued commitment to the programme is a key component of the Housing Supply Pact.

1.19 The Welsh Government is also committed to continuing to innovate to support housing delivery and has already launched the Housing Finance Grant which will fund approximately 1000 affordable homes. Due to its early success we are already developing a second tranche which will support a further 2000 affordable homes.

1.20 Housing Supply helps to tackle poverty through providing much needed homes for people across Wales including those on very low incomes. Housing development supports economic growth and provides jobs and training opportunities.

1.21 The Welsh Government's role is termed as 'stewardship' of the Housing system in Wales, involving consideration of how the housing system works and to intervene where it is sensible and effective to do so. We are committed to even stronger joint working with many organisations that are active in and around the field of housing in the public, private and third sector in order that they can play their part to the full.

## **Communication**

1.22 Local Authorities and Housing Associations should think carefully about the information they provide to the public and ensure that it is up to date. It is in the organisations' and applicants' interest to provide information that is as clear and straight forward as possible. Where this Code mentions the need for written communication, in line with good practice, the Welsh Government requires the information to be clearly written and easy to understand. Clear, simple written communication can lead to efficiency savings as well as better outcomes for service users. Where requested by the applicant or tenant, all written information should be provided in a format suitable for the needs of the individual. This may include translation into another language, communication in other accessible formats for people with both physical and non-physical communication needs, e.g. people with sight loss, learning disabilities, and literacy problems etc. Consideration should be given to providing information that will assist, where required, family members, carers, support workers or staff completing forms on behalf of an applicant.

1.23 In order to provide an inclusive service Local Authorities and Housing Associations should consider using translation services where English or Welsh is not the first language of service users. Language Line Solutions is one example of a telephone translation service used by some Local Authorities.

### [Language Line](#)

1.24 Guidance notes on preparing clear, simple, accessible and inclusive forms of communication are available from the [Office for Disability Issues](#) and a variety of voluntary bodies including the [Plain English Campaign](#).

1.25 Local Authorities should ensure that in communicating with service users they comply with their Welsh Language Schemes under the Welsh Language Act 1993 or, in due course, relevant Welsh Language Standards imposed upon them by the Welsh Language Commissioner under the Welsh Language (Wales) Measure 2011.

## **Financial Inclusion**

1.26 The Welsh Government believes that achieving financial inclusion is vitally important because financial exclusion causes considerable hardship amongst those who are already the most vulnerable and disadvantaged members in society. The current financial and economic climate is having a particularly detrimental effect on the lives of those living on limited incomes.

1.27 Social tenants are particularly vulnerable to financial exclusion. The Welsh Government / Department of Work and Pensions commissioned a report issued in 2010 '[Opening the door to financial freedom](#)' (Financial Inclusion Champions for Wales / Chartered Institute of Housing) which states that it is estimated that 84% of financially excluded households live in social housing.

1.28 The 2010 National Housing Strategy, [Improving Lives and Communities](#) states that action to improve housing and support provided in and around people's homes helps to reduce poverty. Providing financial information and skills to manage income and expenditure can help people tackle problems associated with debt and therefore help them to maintain their tenancies. It can also increase their available income and overcome the anxiety, depression and worry that poverty and financial problems can cause. Housing Services, Supporting People teams and Tenancy Support workers are an important means of reaching people and helping them to overcome the problems that can lead to poverty and failed tenancies.

1.29 The Welsh Government is keen to encourage Local Authorities and Housing Associations to engage with applicants and tenants throughout the application and allocation process. Local Authorities and Housing Associations should consider providing information and support including topics such as covering the cost of moving and running a home, affordable credit and budgeting. Social landlords should also consider referring or signposting applicants and tenants to organisations that can help build their financial capability. This is in order to prevent people on low incomes falling into debt in the first place and to help them plan their

finances more effectively. There are various sources of information available including information from the [Money Advice Service](#), [Shelter](#) and [Citizens' Advice Cymru](#). Alternatively Local Authorities and Housing Associations could consider referring clients to Moneyline Cymru for additional information and examples of good practice. [Moneyline Cymru](#) is a community development finance initiative, part funded by Housing Associations. The aim of Moneyline Cymru is to provide money, advice and credit for people who are usually denied these from the mainstream outlets like banks or credit unions.

## **Care Leavers and persons aged 16 – 17**

1.30 Local Authorities have a range of duties to care leavers who represent a particularly vulnerable group. This is a key group for floating support or other forms of tenancy support to enable tenancies to be maintained. Authorities are reminded that under s.23B of the Children Act 1989, they are required in prescribed circumstances to assist in meeting the accommodation needs of care leavers. A similar provision will be made in the Social Services and Well-being (Wales) Act which will continue to require Social Services and housing to work together to meet the needs of young people in care as they move to independent living.

1.31 Any young person aged 16 or 17 who present themselves to their Local Authority as homeless will have an assessment of their need made by Social Services; Social Services will then work with housing colleagues to ensure that their housing needs are met with the appropriate accommodation being provided.

## **Purpose of Part 1 of Code**

1.32 The Welsh Ministers are issuing the guidance contained in Part 1 of this Code to Local Authorities in Wales under s.169 of the Housing Act 1996. The 1996 Act requires Local Authorities to have regard to this guidance in exercising their functions under Part 6 of the 1996 Act. Insofar as this guidance comments on the law it can only reflect the Welsh Government's understanding of the law at the time of issue.

1.33 The Codes of Practice for England and Scotland do not apply in Wales. English case law may be applicable where the legislation is the same, but should not be referred to where the case is based on English-only legislation or guidance from the English Code. The Localism Act 2011 has meant that there is an increasing divergence in respect of English and Welsh guidance on allocations.

1.34 Part 1 of the Code provides information about the allocation of social housing under Part 6 of the 1996 Act by Local Authorities. This is the conventional route taken by those who wish to access social housing allocated by a Local Authority providing an introductory or secure tenancy or by nominating applicants to a starter (assured short-hold) or assured tenancy with a Housing Association.

## Summary of amendments to Part One of the Code

1.35 It has been two years since the Code of Guidance was last up-dated. The main changes in this new version are:

- Following a major review of the legislation involving a wide range of stakeholders, the Housing (Wales) Bill was introduced in December 2013. The Bill included the most fundamental change to homelessness legislation since 1977, and following thorough scrutiny in the passage of the Bill; it was passed in July 2014 and received Royal Assent in September 2014.
- The Code of Guidance has been up-dated to reflect the changes made by the Housing (Wales) Act 2014, which are fully considered in Part 2.
- The up-dated Code provides a new chapter on eligibility for social housing which aligns Wales with EU and Immigration Law and ups-dates key areas.
- The up-dated Code integrates the Anti-social Behaviour Crime and Policing Act 2014 with other Housing Acts and points out the need to up-date policies on eligibility and eviction on the basis of the new possession orders on absolute grounds for anti-social behaviour.
- The up-dated code aims to draw Local Authorities' attention to the need for flexibility around allocations for people wanting to move across boundaries for work and training opportunities. This can be done through the Hardship reasonable preference ground and we would ask Local Authorities to look at this.
- The Code continues to suggest that Local Authorities and Housing Associations should also give priority to those wishing to down-size for under-occupancy reasons.
- The new Code provides an up-date and strengthening of guidance relating to Care Leavers and Carers with the Social Services Act in mind.

## Effective Date of Part 1 of Code

1.36 The revised Code will come into effect Spring 2015.

## CHAPTER 2: ELIGIBILITY FOR AN ALLOCATION

### Introduction

2.1 This chapter provides guidance on the procedures and principles which Local Housing Authorities must follow in relation to assessing the eligibility of applicants for the allocation of housing accommodation. The Welsh Government's intention is to reflect consistency with UK immigration policy and related European legislation in its regulations on eligibility.

#### The Housing Act 1996 states:

##### **Section 160A – Allocation to eligible persons [Wales]**

(1) A local housing authority [in Wales] shall not allocate housing accommodation—

(a) to a person from abroad who is ineligible for an allocation of housing accommodation by virtue of subsection (3) or (5);

(b) to a person who the authority have decided is to be treated as ineligible for such an allocation by virtue of subsection (7); or

(c) to two or more persons jointly if any of them is a person mentioned in paragraph (a) or (b).

(2) Except as provided by subsection (1), any person may be allocated housing accommodation by a local housing authority [in Wales] (whether on his application or otherwise).

(3) A person subject to immigration control within the meaning of the Asylum and Immigration Act 1996 (c. 49) is (subject to subsection (6)) ineligible for an allocation of housing accommodation by a local housing authority [in Wales] unless he is of a class prescribed by regulations made by the Secretary of State.

(4) No person who is excluded from entitlement to [universal credit or] housing benefit by section 115 of the Immigration and Asylum Act 1999 (c. 33) (exclusion from benefits) shall be included in any class prescribed under subsection (3).

(5) The Secretary of State may by regulations prescribe other classes of persons from abroad who are (subject to subsection (6)) ineligible for an allocation of housing accommodation, either in relation to local housing authorities [in Wales] generally or any particular local housing authority [in Wales].

(6) Nothing in subsection (3) or (5) affects the eligibility of a person who is already—

(a) a secure or introductory tenant;

(b) an assured tenant of housing accommodation allocated to him by a local housing authority [in Wales].

(7) A local housing authority [in Wales] may decide that an applicant is to be treated as ineligible for an allocation of housing accommodation by them if they are satisfied that—

(a) he, or a member of his household, has been guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the authority; and

(b) in the circumstances at the time his application is considered, he is unsuitable to be a tenant of the authority by reason of that behaviour.

(8) The only behaviour which may be regarded by the authority as unacceptable for the purposes of subsection (7)(a) is—

(a) behaviour of the person concerned which would (if he were a secure tenant of the authority) entitle the authority to a possession order under section 84 of the Housing Act 1985 (c. 68) on any ground mentioned in Part 1 of Schedule 2 to that Act (other than ground 8); or

(b) behaviour of a member of his household which would (if he were a person residing with a secure tenant of the authority) entitle the authority to such a possession order.

(9) If a local housing authority [in Wales] decide that an applicant for housing accommodation—

(a) is ineligible for an allocation by them by virtue of subsection (3) or (5); or

(b) is to be treated as ineligible for such an allocation by virtue of subsection (7),

they shall notify the applicant of their decision and the grounds for it.

(10) That notice shall be given in writing and, if not received by the applicant, shall be treated as having been given if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

(11) A person who is being treated by a local housing authority [in Wales] as ineligible by virtue of subsection (7) may (if he considers that he should no longer be treated as ineligible by the authority) make a fresh application to the authority for an allocation of housing accommodation by them.

## Overview

2.2 A Local Authority cannot allocate housing to a person from abroad who is not eligible. There are two categories of person from abroad for these purposes.

2.3 Firstly, persons who are subject to immigration control will not be eligible for an allocation of housing unless they come within a class of person prescribed in regulations made by the Welsh Ministers (sections 160A(1) and (3) of the Act). The term 'person subject to immigration control' means a person who requires leave to enter or remain in the United Kingdom, whether or not such leave has been given (section 13(2) of the Asylum and Immigration Act 1996). Broadly speaking, the term covers:

- nationals of countries which are outside of the European Economic Area and Switzerland; and
- those nationals of countries in the European Economic Area and Switzerland (referred to as European Economic Area nationals) who do not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland

2.4 Secondly, a person who is not subject to immigration control will be eligible for an allocation of social housing unless they come within a class of person prescribed as ineligible by virtue of regulations made by the Welsh Ministers under sections 160A(1) and (5).

2.5 Broadly speaking, these classes affect the eligibility of British nationals returning from a period of residence abroad or coming to the United Kingdom for the first time, and of European Economic Area nationals who have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland which is derived from EU law.

2.6 Section 166(3) of the 1996 Act places an obligation on Local Authorities to consider all applications for social housing that are made in accordance with the procedural requirements of the Local Authority's allocation scheme. In considering applications, however, Local Authorities must ascertain if an applicant is eligible for accommodation or whether he or she is excluded from allocation under Section 160A (1).

2.7 Local 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 Local Authority's duties and responsibilities under equalities legislation (e.g. the Equality Act 2010) and how to deal with applicants in a sensitive manner. Legislation on immigration and related case law is subject to frequent change, with consequential changes for eligibility for homelessness assistance.

2.8 Between 14 March and 9 May 2014, the Welsh Government consulted on up-dating the relevant Regulations relating to eligibility in Wales. There were two sets of Regulations effective in Wales:

- The Homelessness (Wales) Regulations 2006, which relate to the eligibility of homeless applicants for housing assistance under Part 7 of the Housing Act 1996, and,
- The Allocation of Housing (Wales) Regulations 2003, which relate to the allocation of housing under Part 6 of the Housing Act 1996.

2.9 The consultation sought views on a draft set of Regulations, the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 which aimed:

- To consolidate the existing Welsh Regulations and remake them following England's approach. This approach would limit the eligibility of persons for allocation of social housing and the eligibility of homeless applicants for housing assistance under Parts 6 and 7 of the 1996 Act to those who can satisfy the habitual residence test and exclude those whose right to reside is because they are a jobseeker, have an initial right to reside (or family member), or have a derivative right to reside in the UK.
- To remove the provision in both of the Welsh Regulations so that a person who is a national of a State which has ratified the European Convention on Social and Medical Assistance will no longer be eligible. This is being updated because the majority of nationals from those states are now European Economic Area Nationals and fall under the category of 'other persons from abroad'.
- To remove the class of person who is on income based jobseekers allowance or income related employment and support allowance in certain circumstances.

## **Definition of Allocation**

## **The Housing Act 1996 states:**

### **Section 159 – Allocation of housing accommodation**

(1) A local housing authority shall comply with the provisions of this Part in allocating housing accommodation.

(2) For the purposes of this Part a local housing authority allocate housing accommodation when they—

(a) select a person to be a secure or introductory tenant of housing accommodation held by them,

(b) nominate a person to be a secure or introductory tenant of housing accommodation held by another person, or

(c) nominate a person to be an assured tenant of housing accommodation held by a [a private registered provider of social housing or] registered social landlord.

(3) The reference in subsection (2)(a) to selecting a person to be a secure tenant includes deciding to exercise any power to notify an existing tenant or licensee that his tenancy or licence is to be a secure tenancy.

(4) The references in subsection (2)(b) and (c) to nominating a person include nominating a person 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.

(5) The provisions of this Part do not apply to an allocation of housing accommodation [by a local housing authority in Wales] to a person who is already a secure or introductory tenant unless the allocation involves a transfer of housing accommodation for that person and is made on his application.

(7) Subject to the provisions of this Part, a local housing authority may allocate housing accommodation in such manner as they consider appropriate.

## **Allocation to existing tenants and other exemptions from Part 6**

2.10 Section 159(5) of the 1996 Act provides that Part 6 does not apply to allocations to existing secure tenants, unless the allocation is a transfer for which the tenant has applied. For example, Part 6 does not apply to transfers for management purposes.

2.11 Section 160 of the 1996 Act sets out other exemptions from the provisions of Part 6. In summary, these include succession; assignment; transfers as a result of family proceedings; conversion of an introductory tenancy to a secure tenancy; and those rehoused as a result of a compulsory purchase, or from a defective dwelling.

## **Eligible Categories**

2.12 Section 160A of the 1996 Act provides that a Local Authority must not make an allocation, under Part 6, to ineligible persons. The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 are made under sections 160A and section 185 of the 1996 Act. Regulations 3 and 4 are relevant to assessing the eligibility of applicants for an allocation of housing accommodation.

2.13 The following are the main categories of eligible applicants to whom a local authority may allocate accommodation under Part 6, taking account of nationality and immigration status:

- (i) **Existing tenants** - Section 160A(6) of the 1996 Act, provides that none of the provisions relating to the eligibility of tenants with respect to their immigration status is to affect the eligibility of an applicant who is already a secure or introductory tenant or an assured tenant of housing accommodation allocated by a Local Authority. It is therefore the case that where such a tenant applies for an allocation the Local Authority need not question eligibility and an allocation can be made regardless of immigration status or habitual residence.

- (ii) **A person from abroad other than a person subject to immigration control**

A person from abroad other than a person subject to immigration control will include British nationals who arrive from abroad, even in cases where he/she was born in the Common Travel Area. Such British nationals are subject to the same eligibility criteria as European Economic Area nationals. European Economic Area nationals are nationals of the European Union (EU) countries (see below on EU enlargement) plus Iceland, Norway, Liechtenstein and Switzerland (See [Annex 4 \(not attached in this consultation document\)](#)).

All European Economic Area nationals have an initial right to reside in the UK for up to three months, and “qualifying persons” (jobseekers, workers,

self-employed persons, students and people who are self-sufficient) have an extended right to stay.

A person who falls into one of the following categories 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 paragraphs below.
- (ii) a person whose only right to reside in the UK is derived from their status as jobseeker (or family member of a jobseeker)
- (iii) a person whose only right to reside in the UK is an initial right to reside for a period not exceeding three months
- (iv) a person whose only right to reside in the UK is a derivative right to reside\*
- (v) a person whose only right to reside in the Common Travel Area is a right equivalent to paragraphs (ii) to (iv) above.

2.14 The following persons from abroad who are not subject to immigration control are eligible for an allocation of accommodation even if they are not habitually resident in the Common Travel Area:

- (i) a worker
- (ii) self-employed person
- (iii) Croatian nationals who are treated as workers for the purpose of the definition of ‘qualified person’ in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006
- (iv) a family member of a person referred to in paragraph (i) to (iii) above
- (v) a person with a permanent right to reside
- (vi) a person who is in the UK as a result of the person’s deportation, expulsion or other removal by compulsion of law from another country to the UK.

\* These rights were added to reflect the decision of the Court of Justice of the European Union in the case of [C-34/09 Gerardo Ruiz Zambrano v Office national de l’emploi \(ONEm\)](#) and the subsequent Immigration (European Economic Area) (Amendment) (No 2) Regulations 2012 made by the Home Office to confer rights of residence and entry on the primary carer of a British citizen who is residing in the United Kingdom where the denial of such a right would prevent the British citizen from being able to reside in the United Kingdom or in an European Economic Area State.

**(iii). Persons subject to immigration control prescribed as eligible**

Generally, persons subject to immigration control within the meaning of the Asylum and Immigration Act 1996 are not eligible for housing accommodation. A person subject to immigration control requires specific permission to stay in the UK and will usually be subject to conditions attached to that permission. However, under s.160A(3) of the 1996 Act, Welsh Ministers have prescribed classes of person who are to be considered eligible in the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (the Eligibility Regulations). These are:

(a) **Refugees** – A person is granted refugee status until his/her request for asylum is accepted, at which point they will no longer be subject to immigration control

(b) **Exceptional Leave** - A person who has been granted exceptional leave to enter or remain in the UK outside the provisions of the Immigration Rules and whose leave is not subject to a condition requiring that person to maintain or accommodate themselves, and any person who is dependent on that person, without recourse to public funds is eligible for housing assistance;

(c) **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 and the Republic of Ireland**, will be eligible for housing assistance. However, where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the applicant's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK – or the date of the sponsorship undertaking, whichever is the later – for the applicant to be eligible. Where a sponsor died within the first five years, the applicant would be eligible;

(d) **Persons who have been granted Humanitarian Protection** – Humanitarian Protection was introduced on 1 April 2003 and partly replaced the policy on Exceptional Leave to Enter/Remain. Humanitarian Protection is granted to non-European Union citizens who do not meet the strict definition of refugee but who have international protection needs. Humanitarian Protection is granted under the Immigration Rules. The Immigration Rules are issued by the Home Secretary under the Immigration Act 1971 and set out how immigration law shall be administered, and are published on the UK Border Agency website.

Humanitarian Protection is granted for five years. Towards the end of this period leave holders have the opportunity to apply for indefinite leave to remain but there is no presumption that it will be granted.

(e) **An Afghan citizen** who, as a result of serving the UK Government, has been granted permission to relocate to the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, and who is habitually resident in one of those areas will be eligible.

## **EU enlargement**

2.15 In 2007 Bulgaria and Romania acceded to the EU. There were restrictions on the ability of nationals of these countries to reside and work in the UK. These restrictions came to an end on the 31 December 2013. Nationals of Bulgaria and Romania should now be treated in the same way as other EU nationals.

2.16 In 2013, Croatia joined the EU. Croatian Nationals became European Union Citizens and in time will acquire the right to move freely across the Union. There is an accession period during which restrictions are placed on the rights of Croatian Nationals to reside and work in the UK to guard against the disruption of labour markets. These restrictions are due to last until June 2018.

## **Joint Tenancies**

2.17 Under s.160A (1)(c) of the 1996 Act, a local authority shall not allocate housing accommodation to two or more people jointly if any one of them is a person from abroad who is ineligible, or is a person who is being treated as ineligible because of unacceptable behaviour (see paragraphs below on unacceptable behaviour).

## **The Habitual Residence Test**

2.18 When deciding whether a person meets the habitual residence test, consideration must be given to all the facts in a common sense way. There is no statutory definition of "habitual residence" and therefore whether a person is habitually resident or not will be a question of fact to be decided in the circumstances. The most important factors for habitual residence are period of residence, continuity and nature of actual residence.

3.19 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 country. When deciding whether an applicant is habitually resident, local authorities should take account of the applicant's period of residence and its continuity, the applicant's employment prospects, the applicant's reason for coming to the UK, the applicant's future intentions, the applicant's centre of interest and any other fact or circumstance which might be relevant.

2.20 A person who is in stable employment is more likely to be able to establish habitual residence than a person whose employment is, for whatever reason, transitory (for example, an au pair or someone on a fixed or short-term contract). Equally, a person, one of whose apparent aims in coming to the UK is to claim benefits, is less likely to be able to establish habitual residence.

2.21 A person who intends to take up permanent work is more likely to be able to establish habitual residence, as is a person who has immediate family or other ties to the UK.

2.22 While the majority of the categories eligible for housing require the applicant to be habitually resident in the Common Travel Area, most applicants for social housing will not be persons from abroad and there will be no reason to apply the test. It is also likely that persons who have been resident in the Common Travel Area continuously during the two years prior to their housing application will be habitually resident in the Common Travel Area. In such cases, therefore, local authorities may consider it unnecessary to make further enquiries to establish habitual residence, unless there are other circumstances that need to be taken into account. A period of continuous residence in the Common Travel Area might include visits abroad e.g. for holidays or to visit relatives. Where two years continuous residency in the UK is not established, local authorities may need to conduct further enquiries to determine whether the applicant is habitually resident in the Common Travel Area (see [Annex 6 \(not attached in this consultation document\)](#)).

2.23 Whilst habitual residence requires an appreciable period of residence, there is no minimum time limit set for an appreciable period. Case law suggests that in some circumstances 'a month can be an appreciable period of time'. In addition, an applicant who was previously habitually resident can establish this again on arrival. Authorities should note that it is possible to have an intention to reside in the Common Travel Area for an appreciable fixed period; it does not need to be permanent or indefinite. Each case must be decided after taking account of all the relevant circumstances.

2.24 A person cannot claim to be habitually resident in any country unless the person has taken up residence and lived there for a period. There will be cases where the person concerned is not coming to the UK for the first time, but is resuming a habitual residence previously held. [Annex 6 \(not attached in this consultation document\)](#) provides detailed guidance on the factors which a local authority should consider in determining whether an applicant is habitually resident in these circumstances. However, the fact that a person has ceased to be habitually resident in another country does not imply habitual residence in the country to which that person has travelled.

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

2.25 The criteria which determine whether a person from abroad is eligible for an allocation of accommodation are complex and the task of screening applicants extends beyond the normal requirements of evaluating applicants' housing circumstances. Authorities will need to ensure that they have procedures in place to carry out appropriate checks on applicants and ensure they do not discriminate on the basis of race, nationality, ethnic origins or any of the other protected characteristics as defined in the Equality Act 2010. Authorities should monitor their performance in screening housing applicants for immigration status to ensure that members of ethnic minorities who are eligible for an allocation are not denied housing and do not experience unreasonably long delays while their application is

considered. In devising such procedures, authorities should have due regard to the information contained in this Code.

2.26 If there is any uncertainty about an applicant's immigration status, Local Authorities are recommended to contact the UK Border Agency, using the procedures set out in [Annex 5 \(not attached in this consultation document\)](#). Before doing so, the authority should advise the applicant that an inquiry will be made; if at this stage the applicant prefers to withdraw his or her application, no further action will be required.

2.27 Local Authorities should ensure that staff who are required to screen housing applicants about eligibility for an allocation are given training in the complexities of the housing provisions, the local authority's duties and responsibilities under the Equality Act 2010 and how to deal with applicants in a sensitive manner.

2.28 Authorities should ensure that language and interpretation support is available for those applicants who have difficulty speaking or reading English. Consideration should be given to identifying ethnic origin and language of choice, producing information in a variety of minority languages, carefully channelling information so that it reaches its target audience; and employing staff who can speak minority ethnic languages.

## Unacceptable Behaviour

2.29 Most applicants for social housing will not be persons from abroad, and will have been resident in the UK (or elsewhere in the Common Travel Area) for two years prior to their application. Such applicants, together with eligible applicants from abroad may, at the discretion of the authority, be treated as **ineligible** by the Local Authority on the basis of unacceptable behaviour. There is no obligation on Local Authorities to implement these provisions and where they do, robust procedures are needed to ensure compliance with the law, this Code and the fair and consistent treatment of applicants. Policies regarding the application of sanctions on the grounds of unacceptable behaviour should accommodate the broader Welsh Government policy aims of equality of opportunity, social inclusion and sustainability. Therefore, sanctions to exclude people from social housing should be kept to a minimum and support mechanisms developed to maximise opportunities for people to secure social housing. However, in developing sustainable communities the Welsh Government recognises that Local Authorities must also take into account the needs of existing tenants. A decision to treat an applicant as ineligible must be underpinned by compliance with the law and with due regard for this Code, and should be just one of a range of measures used by an authority to address unacceptable behaviour. Further guidance is given in Chapter 3.

### Description

2.30 Under s.160A(7) of the 1996 Act, a Local Authority **may**, where it is satisfied that an applicant (or a member of the applicant's household) is guilty of unacceptable behaviour serious enough to make him or her unsuitable to be a tenant

of the Local Authority, decide to treat the applicant as ineligible for an allocation. Local Authorities should note however, that where they are satisfied that an applicant is unsuitable to be a tenant they are not required to decide that he or she is **ineligible** for an allocation; they may instead proceed with the application and decide to give the applicant **no preference** for an allocation under section 167(2B). It is for each Local Authority to decide whether this provision is applied.

2.31 Section 160A(8) of the 1996 Act provides that the only behaviour which can be regarded as unacceptable for these purposes is behaviour by the applicant or by a member of his or her household that would - if the applicant had been a secure tenant of the local authority at the time - have entitled the Local Authority to a possession order under s.84 of the Housing Act 1985 ("the 1985 Act") in relation to any of the discretionary grounds in Part I of Schedule 2, other than Ground 8 (see [\*\*Annex 10 \(not attached in this consultation document\)\*\*](#) for relevant grounds). These are fault grounds and include behaviour such as non-payment of rent, breach of tenancy conditions, conduct likely to cause nuisance or annoyance, and use of the property for immoral or illegal purposes. Local Authorities should note that it is not necessary for the applicant to have actually been a tenant of the Local Authority when the unacceptable behaviour occurred. The test is whether the behaviour would have entitled the Local Authority to a possession order if, whether actually or notionally, the applicant had been a secure tenant.

### **Test of unacceptable behaviour**

2.32 Where a Local authority has reason to believe that s.160A (7) of the 1996 Act may apply, there is a three stage test that must be applied before an authority can use the power to decide that an applicant is ineligible for allocation or will be given no preference.

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

2.33 Authorities will need to satisfy themselves that there has been unacceptable behaviour which falls within the definition in s160A(8) of the 1996 Act. If a court has already made a possession order on one of the discretionary grounds, then an authority may accept that as evidence of unacceptable behaviour, and proceed to paragraphs (ii) and (iii) below.

- a) **Grounds for Possession:** In considering whether a possession order would be granted in the circumstances of a particular case, where no possession order has been made, the Local Authority must first ask itself whether one of the discretionary grounds for possession (see [\*\*Annex 10 \(not attached in this consultation document\)\*\*](#)), would have been established. This would require the Local Authority proving to the court, on the balance of probabilities, (i.e. it is more likely than not) that, for example, the property was used for immoral or illegal purposes, or the tenant caused a nuisance or annoyance to neighbours. If the Local Authority is not satisfied that, on the information it has about the applicant (or a member of the applicant's household), it would have been able to prove one of the grounds for

possession, the applicant cannot be guilty of unacceptable behaviour as per s.160A (7).

- b) Section 98 of the Anti-social Behaviour, Crime and Policing Act 2014 (the 2014 Act) came in to force in Wales in May 2014 and inserted new provisions into ground 2 of Schedule 2 to the 1985 Act to enable a landlord to seek possession where a tenant (or a person living in or visiting the tenant's home) is guilty of conduct likely to cause nuisance or annoyance to the landlord, or someone employed in connection with the landlord's housing management functions, where the conduct relates to or affects those housing management functions. There is no requirement for this conduct to have taken place within the locality of the tenant's home. Section 160A(8) of the Housing Act 1996 is to be amended to refer to the new absolute ground for possession for serious Anti-social Behaviour in section 84A of the 1996 Act. This will have the effect that a Local Authority will be able to decide that a person is ineligible for an allocation of housing accommodation if that persons' behaviour would be sufficient to entitle the authority to a possession order on the grounds of serious Anti-social Behaviour as set out in section 84A of the 1985 Act.

2.34 **Reasonableness:** If the local authority is satisfied that, on the information it has about the applicant (or a member of the applicant's household), it would have been able to prove one of the grounds for possession, it then has to consider whether the court would have decided that it was reasonable to grant a possession order. The court can only grant a possession order if it considers it reasonable to do so. In deciding whether it is reasonable to grant possession, the court must have regard to the interests and circumstances of the tenant (and their household), the Local Authority and the wider public. If the Local Authority is not satisfied that the court would decide it was reasonable to grant a possession order, the applicant cannot be guilty of unacceptable behaviour as per s.160A(7).

- (ii) **Was the behaviour serious enough to render the applicant or a household member unsuitable to be a tenant?**

2.35 Having concluded that there would be entitlement to an order, the Local Authority will need to satisfy itself that the behaviour is serious enough to make the person unsuitable to be a tenant. It is the Welsh Government's view that to do this; the authority needs to satisfy itself that if a possession order were granted it would have been an outright order. Where an authority has reason to believe that the court would have suspended the order, then such behaviour should not normally be considered serious enough to make the applicant unsuitable to be a tenant.

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

- a) the arrears are relatively modest, and/or
- b) have been caused by delays in housing benefit, and/or

- c) the tenant does not have a history of persistently defaulting on rent payments; and/or
- d) the applicant was not in control of the household's finances or was unaware that rent arrears were accruing or is being held liable for a partner's debts; and/or
- e) the Local Authority has failed to take steps or provide advice to help the tenant pay their rent.

2.37 Similarly, courts are generally inclined to suspend a possession order in respect of Anti-social Behaviour where:

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

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

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

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

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

behaviour. Some applicants may find this process difficult and should be referred to an independent source of housing advice such as [Shelter Cymru](#).

### **Unacceptable behaviour - ineligible or no preference for an allocation?**

2.41 There is no obligation on a Local Authority to treat an applicant as **ineligible** for an allocation (s.160A(7) of the 1996 Act) due to an applicant's or household member's behaviour. If an authority does apply the unacceptable behaviour standard and a person is deemed unsuitable to be a tenant, it may treat them as eligible but reduce the priority that is given to their housing application. By virtue of s.167(2B) and (2C) of the 1996 Act, an allocation scheme may provide that **no preference** is given to an applicant where the Local Authority is satisfied that he/she, or a member of his/her household, has been guilty of unacceptable behaviour serious enough to make him/her unsuitable to be a tenant and the Local Authority is satisfied that, in the circumstances at the time the case is considered, he/she deserves **not** to be treated as a person who should be given reasonable preference.

2.42 By virtue of s.167(2D) of the 1996 Act, the same provisions apply for determining what is unacceptable behaviour for the purposes of deciding whether to give preference to an applicant, as apply to a decision on eligibility (s.160A(8) of the 1996 Act)).

### **Unacceptable Behaviour and Discharge of Duties to people who are Statutorily Homeless**

2.43 It is possible for an authority, where it has determined an applicant to be unintentionally homeless and in priority need, to determine also that they are guilty of unacceptable behaviour serious enough to make them unsuitable to be a tenant and decide to treat them as ineligible for an allocation (s.160A(7) of the 1996 Act); or not afford them any priority for rehousing under their allocation scheme s.167(2B) and (2C) 1996 Act or; give them preference over non-homeless applicants but less preference than other homeless applicants (s.167(2C)(b) 1996 Act. It should be noted however that authorities will still have a statutory duty to secure accommodation for such persons though this need not be through a statutory allocation (s.159 of the 1996 Act), under its allocation scheme. Rather, an authority has the discretion to accommodate such persons in the private sector or by some other means.

### **Housing Associations and unacceptable behaviour provisions**

2.44 To promote consistency in social landlord approaches to dealing with unacceptable behaviour, the Welsh Government is in the process of developing regulatory guidance for Housing Associations expecting them to restrict access to housing only in circumstances which mirror these unacceptable behaviour provisions.

## Policy Considerations

2.45 It is the Welsh Government's view that barriers to social housing should be minimised. Therefore, in developing policies on unacceptable behaviour, Local Authorities should:

- (i) consider their role as social landlords and brokers of social housing. Social housing is subsidised stock and it is incumbent on authorities to allocate tenancies primarily to meet housing need in their areas and to co-operate with other housing providers in so doing.
- (ii) develop 'unacceptable behaviour' policies which are compliant with the law and which have due regard for this Code of Guidance and good practice. They should clearly specify the grounds for determining whether a person is ineligible for an allocation or whether to remove their preference for an allocation and whether such determinations are reasonable. Policies should be supported by robust procedures, which require applications to be considered on a case by case basis and avoid circumstances where an unacceptable behaviour ruling will always be found. Local Authorities should also:
  - a) consider adoption of appropriate terminology. For example, use 'no priority' to reflect decisions of **no preference** for an allocation. The term 'no priority' reflects the position that 'no preference' decisions do not preclude a landlord from making an allocation and so are not a suspension. Where a decision is made to **adjust preference** for an allocation due to unacceptable behaviour under s.167(2A), 'adjusted priority' could be used (see section above on Unacceptable Behaviour for more information).
  - b) set reasonable timescales for periods of restricted access and review such determinations on an individual basis dependent upon their personal circumstances
  - c) introduce appropriate appeal mechanisms (see section on Notification and Appeals to Decisions on Eligibility below)
  - d) ensure procedures are responsive to any relevant change in applicant circumstances
  - e) provide information about the ways in which any restricted access decisions may be reversed (e.g. evidence that an applicant is reducing his or her rent arrears)
- (iii) keep restricted access measures to a minimum to ensure their statutory responsibilities are being met
- (iv) work collaboratively with the Police and Probation Services and other statutory and voluntary agencies in sharing information on sex offenders or other violent applicants and, where appropriate, become involved in the

management of the risk posed by them (see Chapter 4 for further guidance)

- (v) avoid using application requirements which it would be unreasonable to expect housing applicants to meet (e.g. the requirement for young people to have referees and/or guarantors)
- (vi) monitor and evaluate policies and practice on a regular basis to ensure outcomes are compliant with policy objectives, the law and good practice
- (vii) develop common restricting access policies with partner Housing Associations to maximise consistency in approach and improve efficiency in nominations procedures.

2.46 Section 218A of the 1996 Act, as inserted by section 12 of the Anti-Social Behaviour Act 2003 requires social landlords to prepare and publish policies and procedures in relation to Anti-social Behaviour. Social landlords should have due regard for the Welsh Government publication '*Anti-social behaviour: Policies and Procedures – Code of Guidance for local authorities and housing associations*' which is currently available on the Welsh Government's housing web pages. However, the Welsh Government commissioned an Anti-social Behaviour Policy and Practice Review. The conclusions of this review were published in February 2014. A recommendation in this report was to establish a new Welsh Anti-social Behaviour Framework to take account of the findings of the review and the Anti-social Behaviour, Crime and Policing Act 2014. The Framework will be developed to incorporate any Renting Homes Act implementations so it is likely to be in place in late 2016 or early 2017.

### **Anti-social Behaviour, Crime and Policing Act 2014**

2.47 The Anti-social Behaviour, Crime and Policing Act 2014 introduces simpler, more effective powers to tackle Anti-social Behaviour that provide better protection for victims and communities.

2.48 The new community trigger and community remedy empower victims and communities, giving them a greater say in how agencies respond to complaints of Anti-social Behaviour and in out-of-court sanctions for offenders.

2.49 The Welsh Ministers have the power to commence certain specified provisions of the Anti-social Behaviour, Crime and Policing Act 2014 (the Act) in relation to Wales.

2.50 The Anti-social Behaviour, Crime and Policing Act (Commencement No. 1 and Transitory Provisions) (Wales) Order 2014 brought in to force in Wales on 13 May 2014 specified sections in Part 5 of the 2014 Act which added to the discretionary ground for possession in Schedule 2 of the 1996 Act.

2.51 The majority of the Act relating to the new Anti-social Behaviour orders came into force on the 20 October 2014, and the provisions relating to the new

absolute ground for possession were commenced on the 20 and 21 October 2014 in England and Wales respectively. Guidance on all aspects of the Act has been developed by the Home Office. <https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>

## **Notification and Appeals to Decisions on Eligibility**

2.52 Under s.160A(9) and (10) and 167(4A) of the 1996 Act Local Authorities that decide applicants are ineligible, by virtue of:

s.160A (3) 1996 Act (being subject to immigration control)

s.160A (5) 1996 Act (being an ineligible person from abroad)

s.160A (7) 1996 Act (being a person to be treated as ineligible because of unacceptable behaviour)

or not afforded any preference by virtue of:

s.167(2B) and (2C) 1996 Act (being a person not afforded any preference under the allocation scheme because of unacceptable behaviour)

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

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

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

2.55 Under s.167 (4A)(d) of the 1996 Act, applicants have the right to request a review under the allocation scheme of any decision as to eligibility or loss of preference and a right to be informed of the decision on review and the grounds for that decision.

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

- a) ensure that notifications of a decision on eligibility include advice on the right to request a review of it, and the time within which such a request must be made. Notices should also inform applicants that, if they need help or advice about the notice, and what to do about it, they should take

it immediately to a Citizens Advice Bureau, a housing aid centre, a law centre or a solicitor

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

to all the circumstances including any explanation offered for the absence, be able to proceed with the hearing, or give whatever directions they think proper on the conduct of a further review

- j) allow for applicants to be able to apply to request a postponement of a hearing and grant or refuse the request as it sees fit
- k) ensure that the person hearing the review should be able to adjourn the hearing at any time during the hearing on the application of the applicant or their representative, or if the person hearing the review sees fit. If a hearing is adjourned, part-heard and, after the adjournment, the person or persons hearing the review differ from those at the first hearing, proceeding should be by way of a complete rehearing of the case
- l) ensure that where more than one person is conducting the review, he or she should, with the consent of the applicant or their representative but not otherwise, be able to proceed in the absence of one of the persons who is to determine the review
- m) ensure that the applicant is notified of the decision on the review. If the decision is to confirm the original decision, the Local Authority should also notify the applicant of the reasons for the decision
- n) ensure that an unsuccessful applicant is notified of the right to make a fresh application under section 160A(11) if they consider they should no longer be treated as ineligible
- o) ensure that the review is conducted in the applicant's language of choice in line with the authority's Welsh Language Scheme or, in due course, the Welsh Language Standards imposed on the authority.

## **Procedure on absolute ground for possession**

2.57 A new absolute ground for possession for serious Anti-social Behaviour was introduced by the Anti-social Behaviour, Crime and Policing Act 2014 in order to expedite the eviction of landlords' most anti-social tenants and, thereby, bring faster relief to victims and witnesses.

2.58 Section 84A provides that the court will be required to grant possession if any one of the following five conditions is met:

- the tenant, a member of the tenant's household, or a person visiting the property has been convicted of a serious offence (which is one of the offences set out in Schedule 2A to the Housing Act 1985 as inserted by section 94(2) and Schedule 3 to the 2014 Act);
- the tenant, a member of the tenant's household, or a person visiting the property has been found by a court to have breached an injunction obtained under section 1 of the 2014 Act;

- the tenant, a member of the tenant's household, or a person visiting the property has been convicted of an offence under section 30 of the 2014 Act consisting of a breach of a criminal behaviour order;
- the tenant's property has been closed for more than 48 hours under a closure order (under section 80 of the 2014 Act) for Anti-social Behaviour; or,
- the tenant, a member of the tenant's household, or a person visiting the property has been convicted for breaching a noise abatement notice or order in relation to the tenant's property under the Environmental Protection Act 1990.

2.59 Section 85ZA(1) of the Housing Act 1985 (as introduced by section 96 of the 2014 Act) introduces an important safeguard by providing secure tenants of local housing authorities with a right to request a review of the landlord's decision to seek possession under the new ground.

2.60 Where a secure tenant requests such a review, a local housing authority will have an opportunity to reconsider its decision to ensure that it is robust and proportionate prior to court proceedings.

2.61 The Secure Tenancies (Absolute Ground for Possession for Anti-Social Behaviour) (Review Procedure) (Wales) Regulations 2015 will aim to specify and confirm the process to be followed for an internal review by a local housing authority of its decision to seek possession under the new absolute ground for Anti-social Behaviour. This will also ensure that landlords and tenants (or their representatives) understand the process and know what to expect. Welsh Government would expect Housing Associations to provide similar facilities for an internal review of a decision to seek possession.

2.62 All social landlords should up-date their housing and Anti-social Behaviour policies to reflect these changes.

## Residential Criteria

2.63 Section 166(3) of the 1996 Act requires that every application made to a Local Authority for an allocation of housing accommodation shall (if made in accordance with the procedural requirements of the authority's allocation scheme) be considered by the authority. The ability to apply residential criteria therefore no longer applies. However, s.167 (2A) of the 1996 Act provides that allocation schemes may contain provision for determining priorities for reasonable/additional preference categories. The factors that may be taken into account in determining priorities include any local connection (within the meaning of s.199 of the 1996 Act) which exists between a person and the authority's area (see [Annex 7 \(not attached in this consultation document\)](#)). The application of such criteria however must not detract from the local authority giving overall reasonable preference to the categories of person set out in s.167(2) of the 1996 Act.

## **Applications from Owner-Occupiers**

2.64 Local Authorities are expected to consider the housing needs of owner-occupiers in the same way as other applicants. For example, this will ensure that appropriate support is given to elderly people including those from Black and Minority Ethnic communities whose homes are no longer suitable for them to continue to occupy. This is particularly important in the light of the fact that the elderly owner-occupied sector is a growing one. This would also ensure the needs of other groups would be met including families whose homes are in poor condition; families whose homes could not raise sufficient equity to enable them to afford alternative suitable accommodation; and families who have been deserted by the main wage earner following a relationship breakdown and may become homeless.

2.65 The Welsh Government's Rapid Response Adaptations Programme was launched in 2002. The initiative is administered by Care and Repair Cymru and aims to offer a quick service to elderly and disabled owner occupiers by providing small property adaptations to enable them to remain in their homes or be discharged from hospital or longer term care. Further information is available from the Housing Policy Division on request.

## **No Fixed Address**

2.66 Local Authorities must ensure that allocation scheme procedures can accommodate applications from those who do not have a fixed address.

# CHAPTER 3: THE ALLOCATION SCHEME

## Introduction

3.1 This chapter provides guidance on the requirements of housing authorities to have an allocation scheme for determining priorities, and for defining the procedures to be followed in allocating housing accommodation.

3.2 All aspects of the allocation process must be covered in the scheme, including the people by whom decisions are taken.

### The Housing Act 1996 states:

#### **Section 167 – Allocation in accordance with an allocation scheme[: Wales] as abridged**

(1) Every local housing authority in Wales shall have a scheme (their “allocation scheme”) for determining priorities, and as to the procedure to be followed, in allocating housing accommodation.

(1A) The scheme shall include a statement of the authority’s policy on offering people who are to be allocated housing accommodation—

- (a) a choice of housing accommodation; or
- (b) the opportunity to express preferences about the housing accommodation to be allocated to them.

As regards priorities, the scheme shall, subject to subsection (2ZA) be framed so as to secure that reasonable preference is given to—

- (a) people who are homeless (within the meaning of Part 2 of the Housing (Wales) Act 2014);
- (b) people who are owed any duty by a local housing authority under section 66, 73 or 75 of the Housing (Wales) Act 2014;
- (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 disability; and
- (e) people who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others).

The scheme may also be framed so as to give additional preference to particular descriptions of people (being descriptions of people with urgent housing needs).

## Overview

3.3 It is important that the allocation of social housing is linked to a wider housing options approach to meeting housing need, so that people receive consistent advice and information about all the housing options available to them, including:

- Low cost home ownership
- Renting in the private sector
- Schemes which enable applicants to move out of the district
- Mutual exchange options for existing social tenants
- Home improvement schemes or adaptation services which enable applicants to remain in their existing accommodation
- Access to supported housing or support at home
- Access to supported / sheltered housing / extra care for older and disabled people

3.4 The service user must be at the centre of the housing options approach, and be encouraged to understand their options and express their preferences. The option of social housing will be limited for many applicants due to its scarcity, and the applicant needs to understand social housing is one of a range of options available.

3.5 The 1996 Act and the Housing (Wales) Act 2014 provide a framework for Local Authorities based on the principle that priority for social housing should go to those in need. The Welsh Government believes that Local Authorities' allocation schemes should aim to achieve a balance for allocating housing between: the needs and preferences of applicants; the well-being of existing tenants; the community as a whole; and the need to make best use of a publicly funded resource to meet housing need, particularly for those in greatest need where owner occupation or private rented accommodation is not accessible or sustainable. In developing allocation schemes, it is the responsibility of each Local Authority to decide, depending on local housing conditions, how they should discharge their functions under the Housing Act 1996, Part 2 of the Housing (Wales) Act 2014 and also have due regard to this Code and good practice.

## The Requirement to have an Allocation Scheme

3.6 Under s.167 of the 1996 Act, Local Authorities are required to have an allocation scheme that determines the authority's priorities and the procedure to be followed in allocating housing. 'Procedure' includes all aspects of the allocation process, including the people, or descriptions of people, by whom decisions are taken. It is essential that the scheme reflects all the Local Authority's policies and procedures, including information on whether the decisions are taken by elected members or officers acting under delegated powers. Also, under s.167 (1A), the

scheme must include a statement of the Local Authority's policy on offering eligible applicants a choice of accommodation or the opportunity to express preferences about housing accommodation to be allocated to them.

3.7 Local authorities should have a published allocations policy upon which they have consulted locally. They should involve residents in the development of their policy to assist better understanding of the policy and waiting list management. See [Chapter 5](#) for more guidance on who should be involved. Information, guidance and best practice examples on how to involve people can be obtained from a variety of sources including, [Tai Pawb](#), [Tenantiaid Cymru / Welsh Tenants](#) and [TPAS Cymru](#).

3.8 Under section 20 of the 2014 Act, Local Authorities must take their homelessness duties into account in the exercise of their functions. In Wales the requirements in local homelessness strategies are expected to be incorporated into the local housing strategy where this is still prepared. Where a Local Authority still publishes a local homelessness strategy it is important that the allocation scheme is consistent with the housing strategy as a whole.

3.9 Since 2007, the requirement to prepare a stand-alone local housing strategy was removed via plan rationalisation, with the requirement on the strategic housing element being reflected, formerly, in Community Strategies and subsequently in the Single Integrated Plans. Although no longer a requirement, the efficacy of the strategic housing service and retained functions for Local Authorities with transferred stock will be best guided by strategic planning and efficient operational delivery must still be maintained. Local strategic housing policies should ensure that all parts of the community are included. Local Authorities are expected to ensure that they fully engage with all local housing partners.

## Transfer Applicants

3.10 Section 159(5) of the 1996 Act does not prevent existing secure, introductory and assured tenants applying for transfer under the allocation scheme to other social housing. This may be in the same area or in another Local Authority area. Transfer applicants can therefore expect to be treated on the same basis as other applicants in accordance with the provisions set out in the Local Authority's allocation scheme. They are entitled to the same 'reasonable preference' (s.167(2)) if they fall into an appropriate category or categories. The House of Lords concluded in the case of *R (on the application of Ahmad) v Newham London Borough Council* (2009) that a Local Authority may give priority to some transfer applicants even if they are not within the reasonable preference categories (see section 3.60 for further details). Local Authorities are strongly encouraged to consider the benefits of transferring social housing tenants who have expressed an interest in moving from under-occupied properties in order to make the best use of housing stock available particularly in light of the welfare benefit changes (see [Annex 3](#) for Reasonable Preference Categories (**not included in the consultation document**)). Housing providers should ensure that transfers for under-occupation take account of any particular difficulties experienced by people with protected characteristics, and provide support where needed.

3.11 Transfer applicants must also be given the same rights to information and to reviews of decisions as other applicants (s.167(4A)). They will also be subject to the same eligibility criteria, and potential exclusion from allocation (s.160A), as new applicants. Mutual exchanges between existing tenants are not allocations within Part 6 of the 1996 Housing Act (see [Annex 1 \(not included in this consultation document\)](#) for exemptions). Neither are transfers that the Local Authority initiates for management purposes, for example, to effect a temporary decant (or re-location of tenants) to allow repairs to a property to be carried out.

## **Civil Partnerships**

3.12 The Civil Partnership Act 2004 changed the housing rights of people who have registered a civil partnership or who are living together as if they were civil partners. This is further consolidated with the Marriage (Same Sex Couples) Act 2013 which enables same sex couples to marry.

3.13 The general effect in relation to tenancies is to give rights to civil partners and their families that are equal to those currently enjoyed by married couples and their families. The Act also equalises the rights of same-sex partners who are living together as if they were civil partners and their families with those of unmarried opposite sex cohabitants and their families.

## **Joint Tenancies**

3.14 The Welsh Government considers that joint tenancies can play an important role in the effective use and equitable allocation of housing. Where household members have long-term commitments to the home, for example, when adults share accommodation as partners, friends or unpaid live-in carers, Local Authorities should normally grant a joint tenancy. In this way the ability of other adult household members to remain in the accommodation on the death of the tenant is not prejudiced. Local Authorities should ensure that there are no adverse implications from the joint tenancy for the good use of their housing stock and for their ability to continue to provide for housing need.

3.15 Local Authorities should ensure that applicants, including existing tenants, are made aware of the option of joint tenancies. When doing so, housing providers should make clear to all individuals the legal and financial implications and obligations of joint tenancies, including the implications for succession rights of partners and children. Where Local Authorities refuse an application for a joint tenancy, clear, written reasons for the refusal should be given.

3.16 If two people register a civil partnership and one is a secure tenant, they may be entitled to add the partner's name to the tenancy by variation from a sole to a joint tenancy.

## Succession

3.17 Section 87 of the Housing Act 1985 sets out who may succeed to a secure tenancy.

3.18 Where a tenant dies and another household member (who does not have succession rights to the tenancy) has:

- (i) been living with the tenant for the year prior to the tenant's demise; or
- (ii) been looking after the tenant; or
- (iii) accepted responsibility for the tenant's dependents,

Local Authorities should, in suitable cases, consider granting a tenancy to the remaining person or persons, either in the same home or in suitable alternative accommodation provided that the allocation has no adverse implications for the good use of the housing stock and has sufficient priority under the allocation scheme. In the case of (i) and (ii), the accommodation in question must be the principal or only residence of the survivor at the time the tenant dies.

## Reasonable Preference

3.19 Local Authorities must ensure that reasonable preference is given to **all of** the following categories of people, as set out in Section 167(2) of the 1996 Act:

- (i) people who are owed a duty by a local authority under section 66, 73 or 75 of the Housing (Wales) Act 2014 (see Part 2 of this Code for detailed guidance),
- (ii) people who are owed a duty by a Local Authority under section 190(2), 193(2) or 195(2) of Part VII of the Housing Act 1996 or who are occupying accommodation secured by any Local Authority under section 192(3). See Part 2 of this Code for detailed guidance,
- (iii) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions,
- (iv) people who need to move on medical or welfare grounds, and
- (v) people who need to move to a particular locality in the area of the Local Authority, where failure to meet that need would cause hardship (to themselves or to others).

3.20 Following the case of R (on the application of Ahmad) v Newham London Borough Council (see section 3.36), there is no requirement for Local Authorities to frame their allocation scheme to provide for cumulative preference, i.e. affording greater priority to applicants who fall into more than one reasonable preference category.

## **Homeless or threatened with homelessness**

3.21 The Welsh Government has developed a definition of homelessness which is broader than the legal definition and recommends that this be used in determining reasonable preference. (See Part 2 of this Code for that definition).

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

3.22 In considering whether an applicant should be given reasonable preference as a result of these factors, a Local Authority should take into account the law governing overcrowding (Parts 10 and 11 of the Housing Act 1985) and current legislation covering houses in multiple occupation (Part 2 of the Housing Act 2004). The Housing Act 2004 also introduced a new system for assessing housing conditions based on the health and safety of the occupants, the Housing Health and Safety Rating System. The Welsh Government issued two sets of statutory guidance to accompany the introduction of Housing Health and Safety Rating System in June 2006. Links to the guidance are included in [Housing Health and Safety Rating System: Operational Guidance](#) and [Housing Condition: Enforcement Guidance](#).

## **Medical and welfare grounds including grounds relating to disability**

3.23 Where it is necessary to take account of medical advice, Local Authorities should contact the most appropriate health professional who has direct knowledge of the applicant's medical condition, as well as the impact their medical condition has on their housing needs. Authorities should be mindful of the potential cost to applicants of securing medical evidence to support their applications and should endeavour to ensure that where the primary need for re-housing is on medical grounds, applicants are not penalised by this.

3.24 'Welfare grounds' is intended to encompass not only care or support needs, but also other social needs which do not require on-going care and support, such as the need to provide a secure base from which a care leaver or other vulnerable person can build a stable life. It would include vulnerable people (with or without care and support needs) who could not be expected to find their own accommodation.

3.25 Where accommodation is allocated to a person who needs to be rehoused on medical or welfare grounds including grounds relating to disability, it is essential to assess any support or care needs. Local Authorities will need to liaise with Social Services, the Supporting People Team, Local Health Boards and other relevant agencies, to help ensure the allocation of appropriate accommodation.

3.26 The Welsh Government believes that it is important that Service Personnel who have been seriously injured or disabled in action and who have an urgent need for social housing should be given high priority within local authorities' allocation schemes in recognition of their service. The Welsh Government's commitment to this was established in "[The Nation's Commitment: Cross-](#)

Government Support to our Armed Forces, their Families and Veterans” which was updated by the Armed Forces Covenant and the Welsh Government’s response to the Covenant as set out in our “Package of Support for the Armed Forces Community in Wales”.

## Hardship grounds

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

3.28 In England, the UK Government is introducing the Right to Move. They intend to bring in regulations to enable existing social tenants who need to move to take up work or training to do so within social housing. In Wales we think this flexibility already exists within the reasonable preference hardship grounds. The Welsh Government would therefore encourage Local Authorities to use the hardship reasonable preference category for social tenants wanting to move within and across Local Authority boundaries to take up or to be nearer to specific work or training or job opportunities. The local connection would have to be disregarded in these cases. Local Authorities and Housing Associations would have to check the jobs and training were bona fide and long-term.

3.29 [Annex 3](#) (not included in this consultation document) provides indicators of the criteria that Local Authorities may use in determining reasonable preference. This is not an exhaustive list and Local Authorities may have other local factors to consider and include as indicators of the categories.

## Additional Preference

3.30 Section 167(2) of the 1996 Act gives Local Authorities the power to frame their allocation schemes so as to give additional preference to particular descriptions of people who fall within the reasonable preference categories and who have **urgent housing needs**. All Local Authorities must consider, in the light of local circumstances, the need to give effect to this provision. Examples of people to whom a Local Authority should consider giving additional preference within their allocation scheme include:

(i) those owed a homelessness duty as a result of violence or threats of violence likely to be carried out and who as a result require urgent rehousing, including :

- victims of domestic or other violence
- victims of hate incidents. A link to the Welsh Government’s Hate Crime Toolkit 2014 is attached. <http://wales.gov.uk/topics/housing-and-regeneration/services-and-support/managing-social-housing/anti-social-behaviour/?lang=en>

- witnesses of crime, or victims of crime, who would be at risk of intimidation amounting to violence or threats of violence if they remained in their current homes. Local Authorities need to have local liaison arrangements with the Police and other criminal justice partners to ensure that allocations can be made quickly and confidentially, where necessary
- (ii) those who need to move because of urgent medical reasons.
- (iii) an applicant with a reasonable prospect of an accommodation offer within a relatively short period who suddenly loses their existing home as a result of a disaster.
- (iv) any applicant who needs to move to suitable adapted accommodation because of a serious injury, medical condition or disability which he or she, or a member of their household, has sustained as a result of service in the Armed Forces.
- (v) people needing accommodation as a result of leaving the Armed Forces and the loss of military accommodation.
- (vi) People under-occupying social housing and wanting to transfer to a smaller property, particularly in light of Welfare Benefit changes and the under-occupancy charge. Households in this situation need detailed advice on their options to help prevent them falling into arrears if they cannot afford the extra rent if they are deemed to have a 'spare room' and cannot move immediately. The UK Government guidance also suggests that people may wish to consider taking a lodger. This needs to be carefully considered and discussed with the social landlord.

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

3.32 It is the responsibility of Local Authorities to decide how they wish to reflect the categories set out in s.167 (2) in their allocation scheme. Possible indicators are given in [Annex 3](#). There is no requirement to give equal weight to each of these categories but Local Authorities will need to be able to demonstrate that, overall, reasonable preference for allocations has been given to applicants in all the reasonable preference categories. This means that an allocation scheme may include other policy priorities such as promoting job related and training related mobility, prioritising under-occupation (given the changes to Welfare Benefit), 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.

## Determining Priorities

3.33 Section 167(2A) of the 1996 Act allows that allocation schemes may make provision for determining priorities in relation to applicants who fall within the reasonable preference categories, and provides that the factors which the scheme may allow to be taken into account include:

- (a) the financial resources available to the applicant to meet his/her housing costs (e.g. a Local Authority would be able to give less priority to an applicant who was financially able to secure accommodation through buying or privately renting)
- (b) any behaviour of the applicant (or a member of his or her household) which affects his/her suitability to be a tenant, which is not a decision of ineligibility or the removal of preference – see section 2.29)
- (c) any local connection (within the meaning of section 81 of the Housing Wales Act 2014) which exists between the applicant and the local authority's area. (Under s.81 a person has a local connection with the area of a local authority if he/she has a connection because of normal residence there (either current or previous) of his/her own choice, employment there, family associations or special circumstances). Where circumstances warrant; housing providers can confirm the local connection claim is valid with the person to whom a connection is claimed. Residence in an area is not of a person's own choice if it is the consequence of being detained in prison. (see [Annex 7, not contained within the consultation document](#)). For the purposes of the 2014 Act, serving members of the Armed Forces, and other persons who normally live with them as part of their household, do establish a local connection with an area by virtue of serving, or having served, there while in the Forces. Local connection policies should comply with the Equality Act 2010 and should not be used in a way so as to detract from giving overall reasonable preference to persons set out in s.167(2) of the 1996 Act. Some Local Authorities may wish to give more priority to local connection so that people who live or work in the area or who have close family connections have a greater chance of being rehoused than most other applicants in need. While Local Authorities cannot exclude people who do not have a local connection, there is nothing to prevent them including local connection as a policy priority within their allocation scheme, provided that overall the scheme continues to meet the reasonable preference requirements in s167(2) of the 1996 Act. This is particularly relevant for Local Authorities operating in rural locations who aim to promote community and Welsh language sustainability.

3.34 It would be good practice for applications to be accepted from those currently living in institutional arrangements where they have a connection with the area and they have a known date for discharge which is not unreasonably distant

from the date of application. This includes people leaving the armed services, prisoners, care-leavers and hospital patients.

**3.35 Homeless households living in leased accommodation** – In the case of *R (Lin) v Barnet London Borough Council* [2007], the Court of Appeal found that it was lawful for an applicant owed a full housing duty under Part 7 of the 1996 Act (s.193(2)) and entitled to a reasonable preference for an allocation under Part 6 (s.167(2) (a) and/or (b)), to be awarded less than full homelessness points until such time as the landlord leasing the property was obliged to return it to the private owner at which time full homeless points would be awarded. Ten points were awarded during the lease period and 300 awarded at lease termination to enable the household to realistically compete for an allocation at that time. The authority's justification for the differential in points was that the household was suitably housed whilst residing in leased accommodation.

**3.36** The Welsh Government is of the view that Local Authority landlords operating a similar approach within their private sector leasing schemes should review their occupant's applications at least annually. The review should consider the housing circumstances of the household and, if the household is keen to move on from the leased accommodation, award the household full homeless points (or equivalent) in order to maximise their chances of securing an allocation under Part 6 of the 1996 Housing Act. Where the applicant is content to remain in the leased accommodation, the Local Authority can defer additional homelessness points until the lease expires. However, Local Authorities should be looking to secure settled accommodation for homeless households within reasonable timescales, and whenever possible in less than a year. If the temporary accommodation meets the longer term needs of the client, consideration should be given as to whether a qualifying offer is appropriate to discharge the duty.

**3.37** There should also be arrangements for determining allocation priorities between two households with similar levels of need. It would be legitimate to employ some indicator that reflects the time spent waiting at a particular level of need. Waiting time should normally run from the date of the original application to the Local Authority, in the case of new applicants; and, in the case of transfer applicants, from the time they applied to the Local Authority to be transferred. Whatever indicators are used, they should be set out clearly in the allocation scheme.

## **Unacceptable behaviour - ineligible or no preference for an allocation?**

**3.38** Chapter 2 contains guidance on the legal requirements and policy considerations regarding **ineligibility** (s.160A(7) of the 1996 Act) and **no preference** (s.167(2B) and (2C)) decisions in cases where the Local Authority is satisfied that an applicant, or household member, has been guilty of unacceptable behaviour serious enough to make them unsuitable to be a tenant.

## Choice and Preference Options

3.39 The requirement under s.167(1A) for a statement to be contained in the scheme as to the Local Authority's policy on offering a choice of accommodation, or giving the applicant an opportunity to express preferences in relation to accommodation, means that the Local Authority must address the matter and take a policy decision on it.

3.40 The Welsh Government is not proposing that one system of allocation is adopted by all Local Authorities. Decisions arising from the legal requirement for authorities to accommodate the choice and preference options and take a policy decision on it, should be informed by local circumstances, debates with housing applicants, partner Housing Associations and other key stakeholders.

3.41 **Good quality information.** Section 166(1) of the 1996 Act requires a Local Authority to ensure advice and information are available free to everyone in its area on how to apply for housing accommodation. Section 166(2) requires a Local Authority to ensure that an applicant is informed that he/she has the rights mentioned in s. 167(4A) (see Chapter 4 for further guidance). Information should be easily accessible, including via the internet, written in plain language and provided in languages suited to local populations and in formats to suit those who have difficulty with written material (for further guidance on written [communication](#) see section in Chapter 1). Information should also be available on alternative housing options that an applicant can consider.

3.42 **Financial inclusion.** Consideration should be given to providing information on the estimated costs of running a home, savings and affordable credit at the earliest opportunity. This is in order to educate and inform applicants of the financial commitment involved in undertaking a tenancy. This is a way of preventing people on low incomes from falling into debt, helping them plan their finances and maintain their tenancies. See the [Financial Inclusion](#) section in Chapter 1 for more information.

3.43 **Support.** Where required, support should be provided to assist applicants to complete forms and where appropriate in the bidding process for properties under Choice-Based Lettings, so that no groups are disadvantaged by the application process.

3.44 **Common housing registers.** These facilitate access to a greater pool of properties and make the process of applying for social housing easier. They also enable the Local Authority to establish a more robust indication of housing need in the area. There have been significant improvements in the number of Common Housing Registers operating in Wales over the last decade and the Welsh Government continues to strongly encourage their development.

3.45 **Common Allocation Frameworks.** These make the allocation process easier to understand across housing providers and enable Local Authorities and Housing Associations to work in partnership to address housing need.

3.46 **Common Allocation Policies.** These are agreed between the Local Authority and Housing Associations generally within a common housing register framework. Common allocation policies make the allocation process easier to understand for applicants as there is a consistent approach between housing providers.

3.47 **Mutual exchange registers.** Choice is also enhanced by facilitating moves either by transfer or by mutual exchange and participation in local, regional or national mobility schemes, such as [Home Swap Direct](#). Social housing providers are strongly encouraged to join national mobility schemes that share data to increase the pool of exchange properties available to their tenants, This will enable tenants to move for employment or training opportunities or to accommodation more suitable for their needs under the Welfare Benefit changes. Housing providers need to collect equalities information about the users of this service. This will allow them to ensure that no one is discriminated against.

3.48 **Feedback from Choice-Based Lettings.** Local Authorities operating an open advertising scheme e.g. Choice-based lettings, whereby applicants can apply for particular properties, would be expected to provide applicants with details about the properties which have been let; for example, what level of priority the successful applicants had, and/or the date they applied for housing. Such feedback is crucial as it enables applicants to assess their chances of success in subsequent applications.

## Simple and transparent systems

3.49 When developing allocation schemes, Local Authorities should take into account the importance of having understandable and open systems of administering and prioritising applications for housing. In 2009 the Welsh Government published a report on '[The effects of recent migration on local authorities' allocation of housing and actions under homelessness legislation](#)'. The research report found that the net pressures created by migration on access to social housing were not as great as public perceptions. It made recommendations on the importance of Local Authorities raising awareness of allocations amongst local communities; producing allocations schemes which are easy to access and understand; advice for applicants about allocation procedures and allocations; and publishing information about lettings.

3.50 It is important that Local Authorities provide regular, accurate and generalised information on how housing is allocated and how waiting lists are managed, working actively to dispel any myths and misconceptions which may arise.

3.51 Engaging with and involving local communities in developing allocation policies will achieve a clearer understanding of the process and the number of properties available. Consultation on the Local Authority's published allocations scheme will help to reduce misunderstanding about the way social housing is allocated. The policies developed should reflect local pressures and priorities and

create a sense among local people that housing is allocated fairly. The consultation should be broad based and use a variety of methods to ensure that it is representative and addresses the needs of people with protected characteristics. Information, guidance and best practice examples on how to involve under represented and seldom reached groups can be obtained from a variety of sources such as, [Tai Pawb](#), [Tenantiaid Cymru / Welsh Tenants](#), [TPAS Cymru](#), Stonewall Cymru, LGBT Excellence Centre, Unique, Press for Change, Disability Wales, Age Cymru, Children's Service, Sure Start, National Childbirth Trust, Gingerbread and [Cymorth Cymru](#). Local Authorities should consider monitoring responses to any consultation in terms of diversity. Social landlords should also undertake tenant profiling.

3.52 Anyone who is affected by or interested in the way social housing is allocated should be included when consulting on changes to the authority's allocation scheme. Authorities are encouraged to engage with a wide range of stakeholders in the statutory and voluntary and community sector, as well as applicants and the general public.

## **Offers and Refusals**

3.53 Under sections 67, 74, and 76 of the Housing Wales Act 2014, local authorities cease to be subject to the duties contained within section 66, 73 and 75 of that Act if the applicant having been informed of the consequence of refusal and of his or her right to request a review of the suitability of accommodation, refuses an offer of accommodation that is deemed suitable by the local authority in accordance with the Suitability of Accommodation Order (Wales) 2015. This would include offers made under Part 6 of the 1996 Act.

3.54 It is the responsibility of each Local Authority to determine its policy on offers and refusals under Part 6 and others not covered by the homelessness duty cessation provision under s.193(7). The policy must take account of section 167(1A) regarding choice and preference options and should include a review mechanism to enable applicants without a legal right to review, redress where penalties are attached to refusing an offer.

## **Offers and management considerations**

3.55 When offer policies are drawn up, Local Authorities should be mindful of management implications of the allocation process including:

- control of empty social housing (voids)
- the cost of temporary accommodation to discharge duties under Part 2 of the 2014 Act to homeless households
- avoidance of approaches which lead to concentrations of vulnerable or homeless people being re-housed, in particular areas, especially low demand areas.

3.56 It would be good practice for authorities to set out their lettings and management objectives and list them according to their priority to ensure that competing objectives are catered for.

### **Period for considering an offer**

3.57 Applicants must be allowed a reasonable period to make a decision about accommodation, particularly where it will bring the homelessness duty to an end whether accepted or refused. There is no statutory time limit but consideration must be given to the personal circumstances of the applicant, whilst recognising there needs to be a balance between the tenants' individual circumstances and the efficient letting of social housing properties. It is important that applicants are given sufficient time for careful deliberation, allowing them the opportunity to consult as appropriate. Applicants who have had the opportunity to make an informed, positive decision to accept an offer are more likely to be committed to making a success of the tenancy.

3.58 Personal circumstances the authority should take into account include:

- (i) difficulty for an applicant who is working or has a child or other care commitments to make arrangements to view the property and/or
- (ii) the property's distance from the applicant's current accommodation and/or
- (iii) where acceptance of the offer would involve a child changing schools or create difficulties for members of the household maintaining work or training
- (iv) need for advocate / support worker to be present at the viewing
- (v) the availability / timings of essential furniture or public funding to enable the applicant to move
- (vi) the individual's circumstances, with consideration for individuals with protected characteristics as defined by the Equality Act 2010.

### **Allocation Scheme Flexibility**

3.59 While Local Authorities will need to ensure that, overall, reasonable preference for allocations is given to applicants in the relevant categories in s.167(2) of the 1996 Act (see this chapter for the reasonable preference categories), these should not be regarded as exclusive. An allocation scheme may allow for other factors than those set out in s167(2) to be taken into account, provided that they do not dominate the scheme and that overall the scheme operates to give reasonable preference to people in the reasonable preference categories. This means that an allocation scheme can include other policy priorities such as job or training-related mobility, the needs of extended families, releasing under-occupied properties or sustaining rural or Welsh speaking communities. The House of Lords confirmed in the Ahmad case that Local Authorities could take account of wider housing management considerations as well as those in the reasonable preference groups,

provided that Local Authorities do not allow their own secondary criteria to dominate schemes at the expense of the statutory preference categories. The latter must be reflected on the face of schemes and be evident when schemes are evaluated over a longer period.

## **R (on application of Ahmad) v. London Borough of Newham [2009] UKHL 14**

3.60 In March 2009 the House of Lords gave judgment in the case of *R(on application of Ahmad) v Newham London Borough Council*. The case has significant implications for the way Local Authorities frame their allocation schemes. In particular the House of Lords found that:

- There is no requirement for Local Authorities to frame their allocation scheme to provide for cumulative preference, i.e. affording greater priority to applicants who fall into more than one reasonable preference category
- An allocation scheme which allows for priority to be determined between applicants in the reasonable preference categories on the basis of waiting time alone is not unlawful or irrational
- An allocation scheme is not unlawful if it allows for a small percentage of lets to be allocated to existing social housing tenants who wish to transfer and who do not fall within any of the reasonable preference categories. In para 17 to 21 of the judgment, Baroness Hale confirms that the council were entitled to allocate 5% of the properties which became available for choice-based letting to voluntary transfers. The Welsh Government considers that the percentage used by Local Authorities is a matter for individual authority consideration on how to best meet the strategic needs of the area, including under-occupation and dealing with the effects of Welfare Reform.
- Where a Local Authority's allocation scheme complies with the requirements of section 167 of the 1996 Act, (reasonable preference categories) and any other statutory requirements, the courts should be slow to interfere on the ground that it is irrational.

3.61 The significance of this judgment is that it is no longer necessary to distinguish between degrees of housing need, or to provide that those applicants who fall within more than one reasonable preference category are given greater priority for an allocation than those who have reasonable preference on a single, non-urgent basis.

3.62 What is important is that an allocation scheme makes a clear distinction between those applicants who fall within the reasonable preference categories and those who do not.

3.63 Removing the requirement to provide for cumulative preference gives Local Authorities scope to develop simpler, more transparent systems of applicant prioritisation which may be easier for applicants to understand and for housing staff to operate.

3.64 In practice, allocation schemes will still need to have some mechanism for determining priorities between applicants with a similar level of need, for example if they are in the same band. Local Authorities may in law use waiting time as a substantial or even sole factor in determining such priority. They will need to take account of strategic needs as well, including the need to discharge their duties to homeless people.

## **Local lettings policies**

3.65 Section 167(2E) of the 1996 Act enables Local Authorities to allocate accommodation to people of a particular description, whether or not they fall within the reasonable preference categories, provided that overall the Local Authority is able to demonstrate compliance with the requirements of s.167. This is the statutory basis for 'local lettings policies'. This could mean setting aside or giving priority to people of a particular description, whether or not they fall within the reasonable preference categories and to certain types of property or those on an estate or within an area.

3.66 Local lettings policies can be used to address a number of issues such as:

- Creating more mixed communities,
- Dealing with a concentration of deprivation,
- Ensuring properties that are particularly suited to being made accessible (e.g. ground floor flats) are prioritised for those with access needs,
- Relocating essential workers such as teachers nurses and police officers within a reasonable travelling distance from their work,
- Supporting people in work, training or volunteering or who are seeking work or to take up volunteering opportunities,
- Dealing sensitively with lettings in rural areas to sustain communities by giving priority to those with a local connection to the local area,
- Sustaining Welsh-speaking communities by giving priority to those in housing need with a local connection to the area,
- Taking account of the needs of mobile workers such as those in the armed forces.
- Child to adult ratio could be lowered on an estate where there is

high child density or, conversely, young single people could be integrated into an estate via this route. Welfare benefit restrictions on under-occupation should be considered and highlighted to potential tenants.

- Under occupancy as a result of the Welfare Reform Act 2012. From April 2013 all working age tenants renting from a Local Authority, Housing Association or other registered social landlord receive Housing Benefit based on the number of people in their household and the size of their accommodation.

3.67 Some Housing Associations in conjunction with Local Authorities have used local lettings policies to allocate new social housing in rural areas to give priority to local people, particularly where the scheme has come about as a result of joint working between partners such as the Local Authorities, Housing Associations, Rural Housing Enablers and or rural community councils.

3.68 Where operating local lettings policies, Local Authorities will need to ensure that, overall the scheme operates to give reasonable preference for allocations to applicants in the reasonable preference categories (s.167(2) of the 1996 Act). This means that an allocation scheme may include other policy priorities such as promoting job-related mobility etc, 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.

3.69 Local lettings policies should have clear aims linked to community sustainability and be supported by clear evidence of the need for the approach. Also, procedures should be in place to ensure that local policies fit with and inform strategic priorities. Where 'sustainability' and 'meeting housing need' objectives or priorities conflict, arrangements should be in place to ensure further consideration of the issue and a decision made in respect of it. Overall however, strategies should set out parameters for local lettings policies that do not prevent a Local Authority from meeting its statutory duties. The Welsh Government recognises that this could produce opposing policy objectives particularly in areas of high demand where an authority may not be able to discharge its statutory duties and have local lettings initiatives. In such circumstances the needs of applicants to whom a duty is owed should take priority over the objectives of local lettings initiatives. Local lettings policies must not discriminate under the equality strands listed in the Equality Act 2010. They should be monitored and reviewed and an equality impact assessment should be carried out prior to the introduction and as part of each review. Further information on equalities is available in Chapter 4 under [Meeting Diverse Needs](#).

3.70 Local letting policies should be published, however as they are often time-limited it may not be practical to include them in the allocation scheme. A way to satisfy this would be to include a statement about the intention to implement local letting policies and to set out details in a separate document or documents which can be revoked or revised as appropriate. Authorities should include an explanation of

the local letting policy which should be based on robust evidence. Where it is intended that the policy is time-limited, it should include an appropriate exit strategy.

3.71 Local lettings policies should be monitored as to their effectiveness and reviewed regularly so that they can be revised or revoked where they are no longer appropriate or necessary.

## **Hard to let properties**

3.72 Local Authorities may need to go outside statutory preference categories in order to fill hard-to-let vacant stock. Providing it is not possible to let a property from the Local Authority's list, then there is no objection to them granting tenancies to whoever is willing to take them. However, decisions about the long-term future of this housing stock may need to be taken if it is not meeting housing need.

## **Mobility**

3.73 Choice is enhanced by facilitating moves either by transfer, or by mutual exchange under section 92 of the Housing Act 1985, and participation in any local, regional or national mobility schemes such as HomeSwap Direct. Where available, social landlords are encouraged to join national mobility schemes that share data. This is to increase the pool of exchange properties available to their tenants.

3.74 The Welsh Government would expect Local Authorities to help tenants to move to different areas where they have a need to move, particularly to help their employment and training prospects and the local economy. This could involve giving some preference in their allocation schemes to those whose skills are needed locally, or to people who need to move to take up training, or employment opportunities. Access to schemes that promote mobility should be available to all. Further information on making services accessible is available in Chapter 4 under [Meeting Diverse Needs](#).

## **Meeting Diverse Needs**

3.75 Social housing exists to meet the needs of a wide range of people, with differing needs. Allocation schemes therefore should be sensitive to meeting a varied range of housing and support requirements. The Equality Act 2010 clearly defines characteristics which are protected by law from all forms of discrimination, including indirect discrimination. Public bodies have a duty to take into account the needs of people with these characteristics when designing and delivering services and take steps to promote equality of opportunity. The duties on public authorities are to take action to meet the general public sector equality duties. The protected characteristics as defined by the Act are:

- Gender (Sex)
- Gender Identity
- Disability
- Ethnicity
- Sexual Orientation

- Religion or Belief
- Age
- Marriage and Civil Partnership
- Pregnancy and Maternity

3.76 Organisations that provide a service to the public need to ensure that they collect equalities information about their service users. This will enable them to understand service users' equalities profiles sufficiently and ensure that no one is discriminated against as a result of policy or service delivery. Individuals should be advised of the reason for collecting equalities data, how it will be used and handled and stored.

3.77 The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 requires (among other things) that Local Authority policies should be equality impact assessed and the impact monitored by the Local Authority to help ensure and show compliance with the equality objectives of the Equality Act 2010. This should be done by identifying any potential impact on people with protected characteristics and an action plan to mitigate this impact. Equality impact assessments may identify impacts on protected characteristic groups as positive, negative or negligible. (Housing Associations should equality impact assess their policies if they are different from the Local Authority.) [Tai Pawb](#) are able to give advice to housing organisations on carrying out equality impact assessments and on equality issues generally.

3.78 The section that follows describes some of the potential needs that allocation schemes should be sensitive to - this is not exhaustive and schemes should be informed by Local Housing Needs Assessments for which Welsh Government guidance is published. Local Housing Market Assessments should be regularly updated. <http://wales.gov.uk/topics/housing-and-regeneration/publications/starhouseassessguide/?lang=en>

3.79 The housing needs of people from all protected characteristic groups should be mainstreamed and accommodated within all relevant housing and related strategies. In line with this, Local Authorities must ensure that their allocations policies and procedures do not discriminate, directly or indirectly, on the grounds of a protected characteristic. They must comply with statutory requirements relating to equal opportunities, and relevant codes of practice including for example, the Commission for Racial Equality's Code of Practice in Rented Housing (2006) (Currently the Equality and Human Rights Commission). Local Authorities should also have in place a formal equal opportunities policy relating to all aspects and stages of the allocation process with the aim of ensuring equality of treatment for all applicants. Local Authorities and their partners should ensure that allocation processes take account of any particular difficulties experienced by people with protected characteristics including harassment or hate crime. The mainstreaming of the public sector equality duties will align with each Local Authority's Strategic Equality Plan.

3.80 We advise that Local Authorities should have a strategy to actively involve and consult local people on their new allocation policy; this should include people and advocates for people from all of the protected characteristic groups. Local

Authorities should use a variety of different formats (including languages) and venues for consultation. Care must be taken to ensure venues are accessible to people from all the protected characteristic groups. Local Authorities should, where relevant, ensure that information on their allocation scheme is available via a wide range of information formats and channels of communication, appropriate to the area. This information should be readily accessible to people with language and physical and non-physical communication needs, as should appropriate advice and assistance for them to apply for housing. Information should be reviewed at least annually. In particular landlords should ensure that they identify the communication needs and choices of local people; consider for example employing staff who can speak minority ethnic languages and/or ensure staff are aware of translation and interpretation services (for example Language Line) and receive relevant awareness training.

3.81 Where relevant, Local Authorities should consider ways to improve awareness of and access to social housing for people who are currently under-represented in social housing. For information or assistance with engaging under-represented and seldom reached groups housing providers should contact organisations such as [Tai Pawb](#), [Tenantiaid Cymru / Welsh Tenants](#) and [TPAS Cymru](#).

## **Asylum Seekers and Refugees**

3.82 Asylum seekers are not eligible for an allocation of accommodation under Part 6 of the 1996 Housing Act. Once they receive a positive decision on their claim for asylum and are awarded refugee status, humanitarian protection or discretionary leave, then they may be entitled to an allocation of accommodation. See Chapter 2 for more information.

3.83 Local Authorities should ensure that the housing and support needs of refugees (and those awarded humanitarian protection and discretionary leave) are catered for in their Local Housing Strategies and their Local and Regional Supporting People Commissioning Plans and that their allocation schemes are sensitive to the particular needs of these groups by, for example, ensuring information is provided in a range of relevant languages. They should explore with Housing Associations and voluntary sector organisations the ways in which they can work together to ensure responsive refugee services are developed and implemented.

## **Gypsies and Travellers**

3.84 Local Authorities are required to assess the accommodation needs of Gypsies and Travellers under section 101 of the Housing (Wales) Act 2014 and meet those needs. The completed accommodation assessments will inform Local Development Plans (LDPs) where Local Authorities are expected to allocate land for Gypsy and Traveller sites and ensure that sites are developed.

3.85 Local Authority allocation schemes should be sensitive to the cultural needs of Gypsies and Travellers wherever possible, by ensuring that the views of these communities are taken into consideration as part of policy development. Allocation schemes should be designed to allow Gypsies and Travellers to register

their need for a mobile home pitch as an alternative to conventional housing, dependent on the choice of the applicant. If community members choose to transition from living in caravans to living in conventional housing, tenancy support should be made available to help.

3.86 Local Authorities may also wish to consider additional allocation criteria for Gypsy and Traveller pitches. For example, priority may additionally be given to:-

- (i) Those currently occupying overcrowded or unsanitary conditions on existing sites;
- (ii) Those with a recognised cultural aversion to conventional housing;
- (iii) Those seeking to move to support elderly and disabled relatives living on the site.

3.87 The Welsh Government has published 'Travelling to a better future' - A Gypsy and Traveller Framework for Action which sets out a number of objectives which aim to ensure that the needs of Gypsies and Travellers are assessed, planned and implemented in a more strategic way and that barriers to accessing services are reduced. Local Authorities should administer separate waiting lists for Gypsy and Traveller mobile home pitches, which will allow them to consult this list in future when assessing accommodation needs and allocating vacant pitches.

## **The Welsh Language**

3.88 The Welsh Language (Wales) Standards will place a duty on Local Authorities, when formulating a new policy, or reviewing or revising an existing policy to assess what effects, if any (whether positive or adverse), the policy decision would have on opportunities for persons to use the Welsh language, and on treating the Welsh language no less favourably than the English language.

3.89 The Welsh Language Strategy 2012-2017, A Living Language – A Language for Living needs to be taken into account by Local Authorities when developing their allocation policies. Details can be found by following the link below. An allocations policy and related local lettings policy may be useful to help sustain Welsh speaking communities.

<http://wales.gov.uk/topics/welshlanguage/publications/wlstrategy2012/?lang=en>

## **Disabled People**

3.90 The Welsh Government understands the difficulties faced by physically disabled people in securing suitable accommodation. It encourages Local Authorities and Housing Associations to adopt information systems that enable them to identify accessible and adapted properties, and match them with the needs and choices of disabled people. [Disability Wales](#) has some examples of good practice in this area. Local Authorities should develop appropriate protocols with Social Services, Local Health Boards and other relevant organisations to ensure that the needs of the individual are considered fully in the allocation process.

3.91 The Welsh Government's Framework for Action on Independent Living for disabled people was published in September 2013. The Framework includes housing as one of the key enablers of independent living. It builds on the Welsh Government's Strategic Equality Plan, which also recognises the importance of improving the planning and management of the local housing stock by Local Authorities and social landlords to better meet people's needs for adapted and accessible housing.

3.92 Local authorities and Housing Associations should consider using specific registers to record the requirements of both individuals needing homes and properties available.

3.93 Accessible Housing Registers are a means of ensuring that the needs of disabled people are met. An Accessible Housing Register is a register that:

- identifies disabled people in need of accessible homes
- identifies accessible properties, their location and characteristics (this can include properties which are capable of being adapted as well as those that have already been adapted,) and
- enables effective matching of people and suitable homes

3.94 Accessible Housing Registers ensure:

- the best use is made of the resources available
- promotion of independent living
- possible budgetary saving through use of Disabled Facilities Grant and Physical Adaptation Grant.

3.95 Registration on an Accessible Housing Register should not preclude applicants from registering on the general waiting list due to the scarcity of adapted properties. Properties that are suitable for adaptation to meet the needs of the individual should also be considered.

3.96 Between July 2012 and December 2012 a review of systems for assessment, recording and matching was undertaken with social landlords across Wales to ascertain the extent of use of Accessible Housing Registers and alternative matching systems. In July 2013 the Welsh Government published the findings of this review (<http://wales.gov.uk/statistics-and-research/accessible-social-housing/?lang=en>)

3.97 The Welsh Government encourages every social landlord to use an Accessible Housing Register to help effectively match accessible housing to disabled people. An Accessible Housing Register Network has been established and is managed by Tai Pawb on behalf of the Welsh Government ([Tai Pawb](#)).

## **People with a mental health problem/ mental illness or a learning difficulties**

3.98 People from other Vulnerable Groups, such as those with mental health problems / mental illness or with learning difficulties may need support to enable them to access and maintain social housing. Local Authorities will need to make arrangements for effective links with Supporting People Teams, Social Services and other agencies such as Health and Probation to ensure that action plans for meeting the housing and support needs of people with a mental illness that cover the planning and commissioning of services, the tailoring of services to meet specific needs and referral systems to ensure the effective pre-planned discharge from institutions.

3.99 The Mental Health (Wales) Measure 2010 (the Measure) came into effect in 2012, and includes the provision of Local Primary Mental Health Services which enables better accesses to services for initial assessment, advice, information and treatment at a primary care level. The Measure also ensures all those receiving secondary mental health services have a holistic care and treatment plan which considers the eight areas of life, one of which is a person's accommodation needs. Local Authorities and housing partners will need to work with care co-ordinators to help meet any housing needs identified in the statutory care plans.

3.100 In October 2012 The Welsh Government launched its new Strategy for Mental Health and Wellbeing in Wales, 'Together for Mental Health'.

<http://wales.gov.uk/topics/health/publications/health/reports/report-2013/?lang=en>

3.101 This strategy has a holistic, cross sector approach which addresses the range of needs which impact on mental health, including housing. The strategy recognises that 'Local Government Housing Services, housing associations and a number of third sector organisations already play a significant role in helping people with mental health needs, delivering a wide range of services and assistance.' The strategy identifies the need for a full range of housing solutions, with support to be available at all stages of the recovery process.

3.102 The Wales Audit Office's report on Housing Services for adults with Mental Health Needs 2010 identified particular difficulties for people with mental health needs in accessing social housing. Local authorities need to ensure they have arrangements in place to take account of mental health needs to help people fully engage with application and assessment processes.

3.103 A number of specific housing actions are included in the Welsh Government Mental Health Delivery Plan that supports the Strategy. Together with the Measure these aim to drive planning and operational improvements in joint working between mental health and housing services. This should be considered by social landlords in the development of allocation policies. A report commissioned by the Effective Service for Vulnerable Groups exploring how integrated public services may better support vulnerable people with mental health problems to find and keep a home can be accessed through the link. The report concentrated on four main themes:

- i. Planning – for accommodation needs;
- ii. Referrals/access to housing;
- iii. Access/re-accessing appropriate support in a crisis; and
- iv. Engagement (primarily between housing and health)

<http://wales.gov.uk/topics/improvingservices/pslg/nwp/effectservices/prevention-through-early-intervention/?lang=en>

3.104 The Welsh Government has also recently published good practice guides for working with tenants and homeless people with Autistic Spectrum Disorders. The housing management guide is linked:

<http://wales.gov.uk/topics/health/nhswales/majorhealth/autism/housing/?lang=en>

and the homelessness guide is linked:

<http://wales.gov.uk/topics/health/nhswales/majorhealth/autism/homeless/?lang=en>.

3.105 Local Authorities and Local Health Boards should develop joint working protocols to help support people with mental health problems where a hospital stay is necessary, to ensure that their housing situation does not undermine their recovery and to ensure that where applicable, existing tenancies are maintained and there is a provision for support upon discharge.

3.106 Local Authorities should maintain awareness of current best practice regarding support and mental health problems.

## **Domestic Violence**

3.107 The Welsh Government 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. In January 2011 the Supreme Court held that “domestic violence” in the Housing Act 1996, s.177(1), is not limited to violence involving physical contact but also includes threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm. The Supreme Court has clarified the law in relation to a Local Authority's housing obligations to victims of domestic violence in *Yemshaw v Hounslow London Borough Council* [2011] UKSC 3.

3.108 Local Authorities must ensure that their allocation policies are sensitive to the needs of victims of domestic violence. Domestic violence is violence, or threats of violence, from a person, who is associated with the victim, which are likely to be carried out. Domestic violence is not confined to instances within the home but extends to violence outside the home. Further information can be obtained from your local Domestic Abuse Coordinator, All-Wales Domestic Abuse and Sexual Violence Helpline, Welsh Women's Aid, Refuge, National Centre for Domestic

Violence, the Welsh Government Website and the Local Authority Supporting People team.

3.109 The Local Authority should be led by wishes and feeling of the victim of domestic violence when determining accommodation arrangements. The first consideration, where appropriate, should be for the perpetrator to be removed from the property to enable the victim to remain in their home. The Local Authority may also consider improving the security of the applicant's home to enable them to continue living there safely. Alternatively, the Local Authority should assist the victim in sourcing alternative accommodation, whether on a permanent or temporary basis.

## Older people

3.110 A commitment in the Welsh Government's '[Strategy for Older People in Wales](#)' is to consider the options for meeting the future housing needs of older people. One of the key objectives should be to encourage housing solutions that promote wellbeing and independence for older people as recommended in the Welsh Governments' report '[Living Well – Living Independent Lives](#)' published in 2009.

3.111 Some of the factors that Local Authorities should take into consideration when assessing the housing needs of older applicants and securing appropriate accommodation are:

- the physical attributes of the property (e.g. its location and accessibility and whether it has appropriate adaptations and/or support)
- the proximity of accommodation to family or other support, facilities or services
- the support available to help isolated or vulnerable and Black and Minority Ethnic people to integrate into the community
- being flexible with any age restrictions that may apply, particularly where an applicant who doesn't meet the age criteria has mobility problems
- whether a pet can be accommodated (see for example, RSPCA guidance '[Housing Pets and People](#)' which can be downloaded from [www.rspca.org.uk](http://www.rspca.org.uk)).

3.112 In addition, when considering options for older applicants wishing to transfer from private to social housing, the Local Authority should consider whether the needs of the individual are actually better served by adaptations to their existing home possibly with assistance from the local Care & Repair Agency. The particular needs of older people from the Black and Minority Ethnic population need to be taken into account. Tai Pawb and Age Cymru have a network looking at the specific needs of Black and Minority Ethnic older people. They can give advice on:

- How to respond to some Black and Minority Ethnic older people's needs to be housed together;
- How to tackle the issue of older Black and Minority Ethnic people not accessing generic housing schemes because they wish to be housed together;
- Effectiveness of mainstream provision in meeting needs of older Black and Minority Ethnic people
- Improving information and advice services for older Black and Minority Ethnic people

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

3.113 Local Authorities and their partners should ensure that allocation processes are sensitive to particular difficulties experienced by lesbian, gay and bisexual people such as homophobic harassment. Further assistance may be obtained from [Stonewall Cymru](#).

## **Children in need**

3.114 Households may include a child with a need for settled accommodation on medical or welfare grounds. Under s.27 of the Children Act 1989, local housing authorities are required to comply with a request for help from a Social Services authority, if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any other of their functions. In Wales, Local Authorities are unitary authorities with both functions, so the Housing and Social Services departments should co-operate. Section 17 of that Act imposes a general duty on Social Services authorities 'to safeguard and promote the welfare of children within their area who are in need'. Consistent with that duty, they must 'promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs'.

3.115 A child in need is defined in the Children Act 1989 as one who 'is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him/her of services by a Local Authority; or if his/her health or development is likely to be significantly impaired, or further impaired, without the provision for him/her of such services; or he/she is disabled'. A child in need may have particular accommodation needs on health or welfare grounds.

3.116 Local Authorities will need to consult with Social Services about the appropriate level of priority for an allocation in such cases, and how any support needs will be met.

## **Carers**

3.117 In making accommodation offers to applicants who receive support from carers who do not reside with them, Local Authorities should take account of the applicant's need for a spare bedroom. However, the recent Welfare Reform changes

around housing benefit mean that any room which is assessed to be spare may incur additional rental income.

3.118 In accordance with s. 167(2) of the 1996 Act, 'reasonable preference' should be given to an applicant who needs to move to be close to a carer to avoid hardship.

3.119 Allocation schemes should also be sensitive to the range of need including an assessment of how an allocation might avoid hardship. This is particularly important in the case of applicants who need to move to a different locality in order to give or receive care or support.

3.120 The Social Services and Well-being (Wales) Act 2014 aims to ensure that carers can secure the support they require

3.121 The Social Services and Well-being (Wales) Act removes the requirement in existing legislation that in order to be eligible for support a carer must 'provide a substantial amount of care on a regular basis'. A carer is defined in the Act simply as a person who provides or intends to provide care for an adult or a disabled child. This means that, for the first time, carers have been given equal rights to support as have those they care for, and many more people can be recognised as providing care and be eligible for support to help them provide that care.

3.122 The Act requires that Local Authorities must carry out an assessment of a carer's needs for support and assess whether the carer has needs for support (or is likely to do so in the future) and if they do, what those needs are or are likely to be. The duty is triggered if it appears to the Local Authority that a carer may have needs for support. The duty to assess applies regardless of the authority's view of the level of support the carer needs or the financial resources he or she has or the financial resources of the person needing care. The assessment must include an assessment of the extent to which the carer is able and willing to provide the care and to continue to provide the care, the outcomes the carer wishes to achieve and the extent to which support, preventative services, or the provision of information, advice or assistance could assist in achieving the identified outcomes.

## **Care Leavers and persons aged 16 – 17**

3.123 Local authorities have a range of duties to care leavers who represent a particularly vulnerable group. Pathway Plans should be prepared for children who are being looked after to ensure they move into suitable accommodation when they leave the care system. It is vital that operation of the accommodation scheme is linked to joint planning arrangements between Housing and Social Services to achieve this. This is a key group for floating support or other forms of tenancy support to enable tenancies to be maintained. Authorities are reminded that under s.23B of the Children Act 1989, they are required in prescribed circumstances to assist in meeting the accommodation needs of care leavers, whether they are homeless or not.

3.124 Local Authority allocation schemes should not impose onerous conditions on the allocation of accommodation to young people such as the requirement for an allocation to be dependent on the young person having a referee or guarantor.

## **Lone parents under 18**

3.125 It is the Welsh Government's view that all 16 and 17 year-old lone parents who cannot live with their parents or partner and who require social housing should be offered accommodation with support. Local Authorities should work with Social Services, Housing Associations and relevant voluntary organisations in their area towards achieving this aim although the support may be provided by family and friends.

3.126 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. Local Authorities must ensure that the accommodation is suitable for babies and young children. Wherever possible, Local Authorities should take account of education and employment needs and opportunities when identifying suitable accommodation.

3.127 The Welsh Government recommends that Local Authorities have arrangements in place to ensure that, where an application for housing is received from a lone parent aged 16 or 17, they can undertake a joint assessment with Social Services or any other relevant agencies, of the applicant's housing, care and support needs. Local Authorities should obtain the consent of the young parent before involving Social Services, unless child protection concerns are present and to seek consent might endanger the welfare of the child and/or of the young parent.

3.128 Where Housing Associations in the area have vacancies in a suitable supported housing scheme, Local Authorities should use their nomination rights unless they have a Common Housing Waiting list with local Housing Associations to secure accommodation for young parents in such accommodation. The Welsh Government believes that this will be the most appropriate form of accommodation in most cases. Support may be provided on site or on a floating basis.

3.129 Where there is no suitable accommodation available, Local Authorities should consider allocating the young parent a place in other similar accommodation where appropriate support is available.

3.130 In exceptional cases, it may be decided that supported housing would not be appropriate. Such a decision should only be made after careful consideration of the housing and support needs of that individual and their views and preferences. In such circumstances, Local Authorities should ensure that the young person is aware of relevant sources of support and advice and how to access them. This might include Social Services, Health Visitors, and relevant voluntary agencies and local providers.

3.131 Local Authorities should also, in consultation with the relevant Housing Associations in their area, make provision for appropriate move-on accommodation

for young parents who have been assessed as ready to leave supported accommodation. In some cases, where the young parent has made good progress, it may be appropriate for them to live independently before they reach the age of 18. When allocating move-on accommodation to a young parent, the Local Authority should consider whether they have any continuing support needs, in consultation with the young person, Social Services and relevant providers.

3.132 If, with the young person's consent, a joint assessment is carried out with Social Services of the housing, care and support needs of a lone parent aged 16 or 17, it may be considered more appropriate for them to be accommodated by Social Services, for example, in foster care.

3.133 Young parents under the age of 16 must always be referred to Social Services so that their social care needs may be assessed.

3.134 Authorities should not allow complications in granting appropriate occupancy rights to persons aged under 18 to inhibit them from offering accommodation. See [Annex 11](#) (not included in this consultation document) for guidance on occupancy agreements for 16 and 17 year olds.

## **Local Authority Duties under the Social Services and Well-being (Wales) Act 2014**

3.135 The Social Services and Well-being (Wales) Act 2014 introduces a new model of delivering care and support for all citizens of Wales: (adults, children, and carers). When it is implemented in April 2016 it will require the promotion of well-being and new arrangements for assessment, determinations of eligibility, and care and support planning.

3.136 Section 21 of the Act requires Local Authorities to assess the needs of a child for care and support where it appears that a child may need care and support in addition to or instead of the care and support provided by the child's family. The regulations stemming from part 4 of the Act require Local Authorities to meet those needs where those needs relate to certain specified outcomes, and are such that if the need is unmet it is likely to have an adverse effect on the child's physical, intellectual, emotional, social or behavioural development – and that the need is one that neither the child, the child's parents or carers are able to meet alone, or with the support of others, or with assistance from services in the community.

3.137 Irrespective of the determination discussed above the Local Authority must meet the needs of children which the Local Authority considers it is necessary to meet in order to protect the child from abuse or neglect or a risk of abuse or neglect or in order to protect the child from other harm or risk of such harm. Throughout the assessment process, the safety of the child must be ensured. A key part of the assessment must be to establish whether there is reasonable cause to suspect that a child is experiencing or is at risk of abuse, neglect or other kinds of harm and whether any action is required to secure the safety of the child. Where there is reasonable cause to suspect that a child is at risk, Local Authorities must act on this immediately and without delay. Where the assessment produces reasonable cause to suspect that a child with needs for care and support (whether or not the

authority is meeting any of those needs) is experiencing or is at risk of abuse or neglect or other kinds of harm, the Local Authority must investigate and make inquiries into the circumstances of that child and, where these inquiries indicate the need, to decide what action, if any, it may need to take to safeguard and promote the child's welfare. This duty is set out in section 47 of the Children Act 1989.

## **Eligibility for Local Authority (provided or arranged) Care and Support**

3.138 People will become eligible for social care when they cannot meet their own well-being needs and need help from the Local Authority in managing the arrangements as part of a care and support plan, or support plan in the case of carers.

3.139 The new eligibility criteria will be flexible and will recognise that people will need help at different times in their lives. The 'eligibility status' is given to the need not to the person. The value of this being that services may be provided to people at certain times of need in their lives, or for certain elements of the care and support that they receive. The draft regulations on eligibility have been structured to specifically identify needs which meet the eligibility criteria for children with needs for care and support and for support if the child is a carer. This includes identifying whether there would be an adverse effect on the development of the child if the need goes unmet.

## **Assessment of Needs for Care and Support**

3.140 Assessment and Care Planning are intrinsically linked to the eligibility criteria. The Social Services and Well-being (Wales) Act 2014 requires that Local Authorities must assess whether a child has needs for care and support and if so, what those needs are. This applies with respect to any child where it appears to that authority that the child may have needs for care and support in addition to, or instead of the care and support provided by the child's family. The draft regulations and code of practice state that in carrying out the assessment the Local Authority must assess the developmental needs of the child, and seek to identify the outcomes that the child wishes to achieve (to the extent it considers appropriate having regard to the child's age and understanding), and the outcomes that the person's with parental responsibility for the child wish to receive in relation to the child (to the extent it considers appropriate having regard to the need to promote the child's well-being).

3.141 There is a duty on the Local Authority to meet the child's needs for care and support (and where the child is disabled, the parents' needs for support) where the needs are such that the individual or family cannot meet them either alone or with the assistance which is available, and whether the needs are of a sort which can be met by care and support provided by the Local Authority.

3.142 In this way the provision of accommodation is a key factor to take into account when establishing how to meet people's needs and the extent to which the Local Authority may need to provide care and support to meet identified needs. Therefore the imperative towards co-operation between housing and social services

is even stronger in this new model of assessing and meeting care and support needs introduced through the Social Services and Well-being (Wales) Act.

## People in or leaving the Armed Forces

3.143 The Welsh Government has given its full commitment to delivering [The Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans](#) (the Service Command Paper) issued by the Ministry of Defence in July 2008. The Service Command Paper sets out a framework of action to remove disadvantage that service personnel may suffer as a result of service in the Armed Forces, particularly as a result of being required to move around the world; and support those existing and former members of the Armed Forces who have been injured in the service of their country.

3.144 The Service Command Paper contains a number of housing-related commitments. Paragraph 2.15 of the paper sets out the Government's view that seriously injured personnel should be given high priority for social housing and contains a commitment to issue statutory guidance to reinforce this message. Paragraph 2.19 of the paper refers to the amendment to the local connection provision in s.199 of the 1996 Act in relation to members of the Armed Forces (as amended by section 315 of the Housing and Regeneration Act 2008).

3.145 The Welsh Government has agreed to the commitments set out in the July 2008 Service Command Paper, [The Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans](#), one of which is making service people a priority group within shared equity, Low Cost Home Ownership and intermediate housing schemes such as Homebuy and Rent First.

3.146 In the light of this, the Welsh Government would also like to see Social Housing Grant funded Do It Yourself Homebuy targeted at service personnel provided they meet the other eligibility criteria for the scheme. However, any lump sums paid to eligible members of the armed forces as a result of illness or injury are to be disregarded when assessing eligibility and sustainability.

3.147 The Forces Help to Buy scheme also enables servicemen and servicewomen to borrow up to 50% of their salary, interest free, to buy their first home or move to another property on assignment or as their families' needs change. <https://www.gov.uk/forces-help-to-buy>

3.147 Local Authorities and Housing Associations should also prioritise (for Low Cost Home Ownership) the partners of service personnel whose housing problems resulted from events linked to service, this includes widows and widowers of personnel who have been killed in service.

## **Seriously injured and disabled servicemen**

3.148 The Welsh Government believes that it is important that service personnel who have been seriously injured or disabled in action and who have an urgent need for social housing should be given high priority within Local Authorities' allocation schemes in recognition of their service.

3.149 Section 167(2) of the 1996 Act provides that, in framing their allocation scheme so as to determine priorities in the allocation of accommodation, Local Authorities must ensure that reasonable preference is given to specified categories of applicants, including people who need to move on medical or welfare grounds . Section 167(2) further provides that Local Authorities may frame their allocation scheme so as to give additional preference to people who fall within the reasonable preference categories and who have urgent housing needs.

3.150 The Welsh Government is of the view that, where an allocation scheme is framed to provide for additional preference to be given to applicants in urgent housing need, Local Authorities should ensure that the categories of applicants to be given additional preference include any applicant who needs to move to suitable adapted accommodation because of a serious injury, medical condition or impairment which he or she, or a member of their household, has sustained as a result of service in the Armed Forces.

## **Armed Forces and Mental Health**

3.151 The stress of working in the Armed Forces can affect the service personnel themselves and their families. Mental health problems can arise as a result of armed forces service and affect the family as well as the service person. The under-lying stress which can be manifested sometime later should also be taken into account by Local Authorities. Family break-up can occur and both parties can remain suffering from mental health issues.

## **Rough sleepers**

3.152 Local Authority Single Integrated Plans have a key role to play in preventing homelessness and rough sleeping and in sustaining the reductions in rough sleeping. Access to housing will be vital for rough sleepers and people at risk of sleeping rough.

3.153 Local Authorities should ensure that allocation schemes make provision to enable access to Local Authority housing and Housing Association accommodation for this client group, linked to the provision of support services as required. Therefore, a person having 'no fixed address' is not a ground for treating such a person as being ineligible for housing. Where appropriate, schemes should also ensure that vulnerable people have access to the assistance they need to apply for housing. Often, people at risk of homelessness will require support, for example to address mental health, alcohol or drug problems, or simply to cope with bill paying

and basic life skills. Allocation schemes should be developed with strong links to such support services provided under local homelessness planning arrangements and Supporting People Operational Plans and any relevant regional strategic plans. In some areas rough sleepers can be housed directly into general needs tenancies through a 'Housing First' approach, provided the person's housing support needs are addressed.

## **Registered sex offenders, violent and other sex offenders and other offenders**

3.154 The above offenders should be allocated accommodation in the light of considered decisions about managing any risks associated with their release from prison into the community, public protection and promoting safer communities. This will necessitate multi-agency arrangements with the Police, Prison, Youth Offending Teams, National Probation Service Wales, Wales Community Rehabilitation Company Social Services, health professionals and other relevant bodies. Local Authorities should have regard to the Multi Agency Public Protection Arrangements (MAPPA) and Duty to Co-operate Guidance issued by the Home Office and local protocols. These underpin the duties under the Criminal Justice and Court Services Act 2000, the Criminal Justice Act 2003 and the Sexual Offences Act 2003, for Police, Prison, the National Probation Service Wales and Wales Community Rehabilitation Company to make joint arrangements for the assessment and management of the risks posed by registered sex offenders, violent and other sex offenders and other offenders who are considered by the responsible authority to pose a risk of serious harm to the public.

3.155 The Duty to Co-operate Guidance states that accommodation is central to the risk management process and local arrangements for inter-agency working should first and foremost be based on information sharing between agencies. Information on all relevant offenders needs to be shared to make risk assessments and re-assess them as necessary. In many cases, the sharing of information for risk assessments will be the only inter-agency action required, with the risk management action taken as a result of the assessment resting with one agency. In critical cases where additional action or resources is needed, cases should be referred to Multi-Agency Public Protection Panels (MAPPP). A Multi-Agency Public Protection Panel is responsible for managing those assessed as being of high or very high risk of causing serious harm and present risks that can only be managed by a plan requiring close co-operation at senior level. Local arrangements should include the criteria for referral to the three levels within the Multi Agency Public Protection Arrangements framework. Police, Prison, National Probation Service Wales and Wales Community Rehabilitation Company will be involved in Multi-Agency Public Protection Panels as a minimum. They will however, often include Social Services, health, Local Authorities, Housing Associations, and other statutory and voluntary agencies as reflected in the Criminal Justice Act 2003 (duty to co-operate) and with local duty to co-operate arrangements.

3.156 When working with victims of sexual or violent offenders, where the victim previously resided with the perpetrator, allocation processes should take account of the risk to the victim in continuing to reside in an address known to both the

perpetrator and the family of the perpetrator. Reallocation of accommodation should be considered in all such instances.

3.157 Local Authorities will have a duty to work with prisoners prior to release under section 66 of the Housing (Wales) Act 2014 and Housing Associations will have a duty to co-operate with Local Authorities under section 95 of the Act. Housing Associations are expected to work with Local Authorities to help prevent homelessness of prisoners upon release by supporting the resettlement process.

## **Agricultural Workers**

3.158 The Rent (Agriculture) Act 1976 (the 1976 Act) requires Local Authorities to use their best endeavours to provide accommodation for displaced agricultural workers. S. 27 of the 1976 Act requires the Local Authority to be satisfied that:

- (i) the dwelling-house from which the worker is displaced is needed to accommodate another agricultural worker;
- (ii) the farmer cannot provide suitable alternative accommodation for the displaced worker; and
- (iii) they need to re-house the displaced worker in the interests of efficient agriculture.

3.159 If the Local Authority is satisfied that the applicant's case is substantiated, it is their duty under s.28 of the 1976 Act to use their best endeavours to provide suitable alternative accommodation for the displaced worker. In assessing the application's priority the Local Authority is required to consider (a) the case's urgency; (b) the competing claims on the accommodation; and (c) their resources.

3.160 There is discretion on the Local Authority to consult the Agricultural Dwelling House Advisory Committee. Where that discretion is exercised and advice obtained, the Local Authority must then consider the advice provided by the committee. The Agricultural Dwelling House Advisory Committee would convene on the request of any Local Authority to give advice on whether the interests of efficient agriculture are served by re-housing the worker, and on the application's urgency. There is no committee in place in Wales at present due to lack of demand. In Wales, no request has been received for an Agricultural Dwelling House Advisory Committee since 2006. The abolition of the Agricultural Dwelling House Advisory Committee is currently under consideration by the Welsh Government.

3.170 A Local Authority would not be properly discharging duty under section 28 of the 1976 Act if they refused, on the grounds of the displaced worker having insufficient priority under the allocation scheme, to offer that person suitable alternative accommodation. There must be proper consideration of all relevant s.28 factors in the light of the Agricultural Dwelling-House Advisory Committees' advice. It is important, therefore, for Local Authorities to include in their allocation schemes a policy statement in respect of cases arising under the 1976 Act.

## **Move On**

3.171 Local Authorities will need to consider how they enter into partnerships to establish move-on arrangements from temporary supported housing projects, to enable the resettlement of occupants in accordance with the objectives of the project. In a number of areas multi-agency move-on panels are convened by the Local Authority to ensure that as far as possible people are able to move on in accordance with their needs. Housing Associations should work in partnership with the Local Authority in order to ensure they are able to meet the housing needs of vulnerable groups.

## **Housing Related Support and Supporting People**

3.172 The Welsh Government recognises that some individuals will need help and support with accessing and maintaining housing. It is recommended that:

- Assessments of support needs for individuals should be completed with housing applications, particularly where applicants are assessed as being vulnerable.
- Housing Management and Homelessness Teams will need to contribute to Local Authority commissioning arrangements for supporting people services to ensure local support services reflect the needs of the community.

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

3.173 Many authorities use quota systems of anticipated allocations for groups with particular characteristics, and in some cases allocate the accommodation on the basis of referrals from Social Services departments, welfare bodies or specialised agencies dealing with groups such as rough sleepers. Establishing quotas can form part of an authority's strategy to integrate the provision of housing with other social policies, for example, to enable individuals to move on from a hostel or women's refuge providing temporary accommodation. It is inherent in the provisions of s.167(2) of the 1996 Act that authorities retain this discretion, provided that the persons who are subject to such arrangements fall within one (or more) of the reasonable preference categories.

3.174 However, it is important that such arrangements are not seen as a substitute for affording additional priority to people in urgent need in the authority's mainstream allocation criteria. It would not be acceptable for authorities to delay consideration of such needs on the grounds that a quota had been filled. Authorities should ensure that any such arrangements form part of their allocation scheme; that the qualifications for falling within a quota are clearly set out; and that allocations made on the basis of a quota go to persons who are eligible for a housing allocation.

3.175 Where a group of authorities have common arrangements for receiving referrals from an outside agency, they will need to ensure that their individual

allocation schemes are mutually compatible. The Welsh Government would particularly encourage authorities to consider the use of quotas on a collective basis with neighbouring authorities to contribute to addressing the needs of groups with significant housing needs, but who may not be long term residents of a particular area e.g. rough sleepers. Housing Associations should work in partnership with the Local Authority in order to ensure they are able to meet the housing needs of vulnerable groups.

## **Low Cost Home Ownership (LCHO) and Intermediate Rent**

3.176 Local Authorities need to give consideration to applicants whose level of need may not be appropriate for social rented housing but may qualify for other affordable housing options like Low Cost Home Ownership. Consideration needs to be given to the eligibility criteria for applicants who may qualify for these schemes. Local Authorities may keep a separate list for these applicants or may award separate criteria so these individuals can be identified from the general waiting list. For Local Authorities, new affordable housing policies must be equality impact assessed and evidence gathered on who is accessing these schemes. For information or assistance with engaging under represented and seldom reached groups, housing providers should contact organisations such as [Tai Pawb](#), [Tenantiaid Cymru / Welsh Tenants](#) and [TPAS Cymru](#).

3.177 Low Cost Home Ownership is a generic term for affordable home ownership. Shared ownership is also sometimes used as a generic term for all types of low cost home ownership. However, shared ownership is specifically a part-buy, part-rent product. In all cases the homeowner is responsible for repair and maintenance of their property.

3.178 The Welsh Government withdrew grant support for shared ownership (part rent / part buy) schemes in 1999-2000 in recognition that this arrangement can be, at times, uneconomical for owners in terms of outgoings on rent and mortgage payments and favoured a shared equity approach as it is more affordable. Some Housing Associations still offer their own self-funded shared ownership.

3.179 All of the following housing options operate within the current Code of Guidance but have different eligibility criteria. We refer here to the main Welsh Government schemes but it should be noted that Local Authorities and Housing Associations may have their own Low Cost Home Ownership or Intermediate Rent schemes which may vary.

## **Homebuy**

3.180 The Welsh Government supports shared equity via the Homebuy scheme where Housing Associations can provide an equity loan to assist with home ownership. The equity loan will normally be for 30% of the value of the property being purchased, but this may be increased up to a maximum of 50% in certain circumstances e.g. rural areas. All owners under the Welsh Government's Homebuy scheme will therefore have a minimum investment of 50%. Local Authorities can allocate Social Housing Grant funding to Homebuy where they view it as a strategic priority.

3.181 Under the Welsh Government's Homebuy scheme, the homeowner raises and pays for the mortgage element (normally 70% of the value of the property). The remaining Homebuy loan (normally 30%) will be secured on the property; no rent or interest is paid on the loan by the homeowner. When a Homebuy property is sold (or bought outright), the amount repaid is based on the market value of the property at the time. For example, if the loan was originally 30%, the amount repaid is 30% of the property's value at the time of repayment.

3.182 Further guidance is available on the Welsh Government's website on [Revised interim guidance on Social Housing Grant funded Homebuy](#).

### **Intermediate Rent – including Rent First**

3.183 Intermediate rent could offer more flexibility as regards tenure and therefore more choice in housing options. It can be used to expand housing supply and may provide further choice for people on housing waiting lists and those in housing need. Some intermediate rent approaches seek to provide access to home ownership after a period of time.

3.184 The Welsh Government has issued guidance for [Rent First – Intermediate Rent](#) which can be accessed on the Welsh Government website, where details of eligibility criteria can be accessed. This guidance provides Local Authorities and Housing Associations access to Social Housing Grant to support intermediate rent properties that meet particular requirements. A potential future purchase of properties by tenants is provided as an option if the provider chooses to include it. .

### **People in or leaving the armed forces**

3.185 The Welsh Government has agreed to the commitments set out in the July 2008 Service Command Paper [The Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans](#) one of which is making service people a priority group within shared equity, Low Cost Home Ownership and intermediate housing schemes such as Homebuy and Rent First.

3.186 In the light of this, the Welsh Government would also like to see Social Housing Grant funded Homebuy targeted at service personnel provided they meet the other eligibility criteria for the scheme. However, any lump sums paid to eligible members of the armed forces as a result of illness or injury are to be disregarded when assessing eligibility and sustainability.

3.187 Local Authorities and Housing Associations should also prioritise (for Low Cost Home Ownership) the partners of service personnel whose housing problems resulted from events linked to service This includes widows and widowers of personnel who have been killed in service.

## Tenure Neutral

3.188 Tenure Neutral is affordable housing for which the tenure is not pre-determined but can vary according to the needs, means and preferences of the households to whom the housing would be offered. Properties should not be designated a tenure in advance e.g. 10 units for rent, 10 units for low cost home ownership. There is no legal obligation on Local Authorities or Housing Associations to designate schemes as Tenure Neutral.

3.189 Where a scheme is designated as Tenure Neutral, properties are allocated by the Housing Association or Local Authority according to waiting list priorities. Applicants will be given the option of renting or part-buying through Homebuy. The final tenure mix will not be known until the properties are allocated.

3.190 Applicants do not have to become tenants first - they can purchase the property through the Homebuy scheme immediately as long as they are eligible and can afford to do so. Equally, there is no right to Homebuy for tenants.

## Advice and Information

### Making applications

3.191 Applications for housing should be made on a standard form, and not by letter or verbal enquiry. This does not apply to written requests for referrals from recognised agencies. Application forms should be accompanied by guidance notes that are easy to understand and in plain language. Translations of all forms and notes should, wherever possible, be available for applicants whose first language is not Welsh or English. Alternatively, authorities might wish to provide applicants with access to translation or interpreting services. Help to complete forms should be provided for people with low literacy levels. Other accessible formats should also be made available to cater for people with various communication needs (see Chapter 1 for advice on [communication](#)).

3.192 Section 166(1) of the 1996 Act, requires a Local Authority to ensure free advice and information is available to everyone in its area on how to apply for housing accommodation. If they are likely to have difficulty in making an application without assistance, then any necessary assistance they require must be made available to them free of charge.

### The right to request general information

3.193 S.166(2), requires Local Authorities to inform applicants that they have the right to certain general information contained in s.167(4A)(a), that is information:

- (i) that will enable them to assess how their application is likely to be treated under the scheme, and, in particular, whether they are likely to fall within the reasonable preference categories; and

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

3.194 This duty should be implemented within the context of a constructive housing options approach, so that applicants will understand their prospects of being rehoused into the accommodation they are seeking.

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

3.195 Section 167(4A) also requires Local Authorities to inform applicants that they have the following rights about decisions which are taken in respect of their application:

- (i) the right to be notified in writing of any decision not to give an applicant any preference under the scheme because of unacceptable behaviour serious enough to make him/her (or a member of his/her household) unsuitable to be a tenant (see Chapter 1 for guidance on [communication](#));
- (ii) the right, on request, to be informed of any decision about the facts of the applicant's case which has been, or is likely to be, taken into account in considering whether to make an allocation to him/her; and
- (iii) the right, on request, to review a decision mentioned in paragraph (i) or (ii) above or in respect of s.160A(9) regarding those who are ineligible or who may be treated as such on the grounds of unacceptable behaviour. The applicant also has the right to be informed of the decision on the review and the grounds for it (see Chapter 1 for guidance on [communication](#)).

### **Confidentiality**

3.196 Section 166(4) of the 1996 Act prohibits Local Authorities from divulging to other members of the public that a person is an applicant for social housing, unless they have the applicant's consent and therefore personal information about individual applicants should always be kept confidential.

# CHAPTER 4: ALLOCATION SCHEME MANAGEMENT

## Introduction

### The Housing Act 1996 states:

#### Section 168 – Information about allocation scheme

- A local housing authority shall publish a summary of their allocation scheme and provide a copy of the summary free of charge to any member of the public who asks for one.
- The authority shall make the scheme available for inspection at their principal office and shall provide a copy of the scheme, on payment of a reasonable fee, to any member of the public who asks for one.
- When the authority makes an alteration to their scheme reflecting a major change of policy, they shall within a reasonable period of time take such steps as they consider reasonable to bring the effect of the alteration to the attention of those likely to be affected by it.

## Overview

4.1 In framing their allocation scheme, Local Authorities need to ensure that it is compatible with the requirements of the Equality Act 2010 including the Welsh Specific Duties, and that the scheme and any changes to it are subject to an equality impact assessment and monitoring. The Welsh specific duties are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and place specific duties on the Welsh Government and other specified authorities to publish a Strategic Equality Plan. Allocations schemes should also seek to incorporate key areas of the UN Convention of the Rights of Persons with Disabilities; in particular article 19 (Living independently and being part of the community) and 28 (Adequate standard of living and social protection).

4.2 Local Authorities should bear in mind that the general public sector duty in the Equality Act will mean that they will need, when carrying out their allocation functions and reviewing and revising their allocation policies, to consider the impact of their decision on people with protected characteristics of age, race, disability, sex, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief or non-belief, gender re-assignment. Where Local Authorities have delegated authorities or similar for specialised housing provision, including Accessible Housing Registers, it would be best practice to ensure those providers are fully compliant with this also. With regard to all types of housing it should be possible to extract information relating to protected characteristics.

4.3 Local Authorities must monitor letting outcomes under the allocation scheme and must ensure that this information is regularly made publicly available. This will help clarify who is being allocated social housing. This information should

be published on the website and in newsletters to residents. This should apply to all housing provision, including Accessible and Adapted Housing.

## **Housing Registers**

4.4 While there is no legal requirement to keep a housing register, it is unlikely that any Local Authority in Wales would be effective without a list of applicants containing some information about their housing needs and preferences. Housing waiting lists should be regularly up-dated by contacting the applicant and seeing if they still wish to be considered for housing or if their requirements have changed. This way a more accurate record of housing need can be kept.

## **Accessible Housing Registers**

4.5 The Welsh Government is committed to the concept and use of Accessible and Adapted Housing Registers in Wales. We believe they are a key tool to help ensure effective and appropriate use of homes which are suitable for disabled people. This is reflected in our commitments outlined in the Framework for Action on independent Living.

4.6 It is good practice for authorities to be able to identify different types of properties (e.g. older person's accommodation, sheltered accommodation, adapted accommodation) and the attributes it has through their current IT systems and/or to set up new databases of property, this need should be born in mind when procuring new IT systems also. When considering accessible and adapted housing it is useful to keep detailed records of both the needs of applicant and the attributes of the property (including physical access into and around the property).

4.7 The Welsh Government encourages Local Authorities and Housing Associations to set up Accessible Housing Registers which include both people and property databases. Their primary objective is to assist the matching of available property with the needs of people with disabilities seeking housing. In addition, they have the potential to enable the authority to make best use of existing resources (i.e. the adapted property), avoid unnecessary spending on adaptations and assist planning of future housing.

4.8 In 2013 the Welsh Government published a research report called Accessible Social Housing – a Review of Systems for Assessment, Recording and Matching.

<http://wales.gov.uk/statistics-and-research/accessible-social-housing/?lang=en>

4.9 Accessible housing registers assist an authority's ability to make an effective contribution to care and support planning. By identifying needs and mapping provision, they will help authorities to meet the challenges of the Wales Programme for Improvement. See the publication 'A perfect Match – Good Practice Guide to Disability Housing Registers' for further information.

4.10 For details of 'The Cardiff Accessible Homes project please see:

[Cardiff Accessible Homes](#).

4.11 Tai Pawb's website is also useful and [Tai Pawb](#) run an Accessible Housing Register Network.

4.12 Where a Local Authority makes use of an Accessible Housing Register (or similar approach) disabled people must remain entitled to be eligible for housing which is not included on this register (general needs non adapted housing). Local Authorities must not significantly disadvantage the housing opportunities of disabled people by refusing to adapt a non-adapted property where no suitable alternative exists and it is reasonable to do so. This is a reflection of Article 19 of the UN Convention on the Rights of Persons with Disabilities.

### **Common Housing Registers and Common Allocation Frameworks**

4.13 The Welsh Government strongly encourages the development of common housing registers and authorities are urged to consider the benefits of establishing one with Housing Associations operating in their areas, on the basis of full consultation with partner organisations. The Welsh Government would recommend consideration of incorporating an Accessible Housing Register provision within the common housing register approach. Common registers have certain advantages:

- (i) they provide a single point of access for clients to all social housing in the area
- (ii) they help improve joint working between an authority and Housing Associations and help in meeting strategic housing objectives
- (iii) they support the development of more strategically planned and integrated lettings schemes in an area
- (iv) they give a better understanding of the pattern of local housing needs
- (v) they can reduce void levels.

4.14 Ease of access and improved economic mobility for applicants to social housing can be further enhanced by cross-boundary or sub-regional lists across Local Authorities. The Welsh Government is currently part-funding the North East Wales Single Access Route to Housing.

4.15 Where there are no cross-boundary waiting lists, consideration should be given to applications from individuals where Local Authority borders divide natural communities as these individuals may have more of a local connection to the area than someone living in the same county but a greater distance away.

4.16 Potentially disabled people who require accessible or adapted properties may find securing suitable accommodation within the Private Rented Sector more difficult than those who do not have a disability. Therefore, consideration should be given to the inter-play between local connection and the need for disabled people to move to retain or take up employment.

4.17 Authorities setting up common registers are reminded that the Welsh Government requires Housing Associations to retain responsibility for their own allocations i.e. allocations are made in accordance with the Housing Associations' policies and the Welsh Government's.

#### [Regulatory Framework for Housing Associations Registered in Wales](#)

4.18 However, effective partnership working can lead to common allocations frameworks and common allocation policies. Authorities should adopt clearly specified management arrangements set out in formal agreements which allow for joint control and management of a common register.

4.19 Where a local authority has transferred its stock to a transfer organisation it is important that the Local Authority and new Housing Association have a clear nomination agreement and effective arrangements for allocations as the new Housing Association will be the Local Authority's primary, but not only, means of discharging its housing duty. Further information is available from the Welsh Government's [Regulatory Framework for Housing Associations Registered in Wales](#) and the Welsh Government's [Housing Transfer Guidelines 2009](#)

#### **Welsh Government Policy on pets in social housing**

4.20 The Welsh Government has not developed a specific published policy on pets in social housing; however, we would ask social landlords to work towards a balance between the preferences of the individual and the needs of the wider community.

4.21 A flexible and common sense approach is required on all sides. Tenants should always seek the permission of the social landlord before they commit themselves to a pet.

4.22 Landlords should set out their policies in respect of pets clearly in tenancy agreements. Conditions should be set in respect of some pets, eg having an enclosed garden, clearing up after dogs, and other relevant conditions depending on the type of pet proposed. Some pets such as fish may not affect the local community and may only require a small amount of management. However, some dogs and exotic pets may have more of an impact on neighbours and the local area.

4.23 Some homeless people have animals and hostels are asked to take this into account.

4.24 Pets may be an area of particular importance for older people.

## Allocation Scheme Consultation

### The Housing Act 1996 states:

Section 168 - Information about allocation scheme.

A local housing authority shall publish a summary of their allocation scheme and provide a copy of the summary, free of charge, to any member of the public who asks for one.

The authority shall make the scheme available for inspection at the principal office and shall provide a copy of the scheme, on payment of a reasonable fee, to any member of the public who asks for one.

When the authority make an alteration to their scheme reflecting a major change of policy, they shall within a reasonable period of time [take such steps as they consider reasonable to bring the effect of the alteration to the attention of those likely to be affected by it.

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

4.22 Under s.168(3) of the 1996 Act, when an alteration is made to a scheme reflecting a major change of policy, an authority must ensure that those likely to be affected by the change are notified of it within a reasonable period, and explain, in general terms, the effect of the change.

4.23 A major policy change would include any amendment that affects the relative priority of a large number of people being considered for social housing. It might also include a significant alteration to procedures. Only where Local Authorities are adopting a major policy change is it necessary for each potential applicant to be informed personally by letter. Allocation schemes can be subject to frequent amendments that reflect changing local circumstances and national requirements. Therefore it would be unrealistic to inform every applicant of every policy change, as this would entail disproportionate costs.

4.24 An authority must ensure that organisations representing people with the various protected characteristics and marginalised groups are engaged and the needs of these people are addressed (groups such as substance misusers, Gypsies and Travellers, ex-offenders, people with physical and non-physical disabilities). Local Authorities can also consider informing or consulting existing tenants through their current consultation arrangements under the s.105 of the Housing Act 1985.

4.25 Consulting with a wide variety of stakeholders in the statutory, voluntary and community sectors as well as applicants, their advocates, local community councils, Local Service Boards, Supporting People teams and the wider community will provide the opportunity to have people's views heard and allow the local authority to raise awareness about the pressures on social housing and ensure that

people have a better understanding of why certain groups are prioritised for social housing. Engagement at this level ensures that the Local Authority's allocation scheme reflects local priorities and issues.

4.26 Engaging with and involving local communities in the development of allocation policies will contribute to:

- better awareness among local people of the facts around social housing, including a clearer understanding of the amount of housing available
- reduced opportunities for misunderstandings and myths about the ways in which social housing is allocated
- local allocation policies which better reflect local pressures and priorities
- a greater sense among local people that housing is allocated fairly
- stronger community cohesion.

4.27 Engaging with local communities in the development of allocation policies can involve a variety of techniques including questionnaires, surveys, citizen panels and focus groups. Social media is now a recognised method of involvement and should be fully utilised. Local authorities should also consider drawing on good practice from within the housing sector and more broadly. Information, guidance and best practice examples on how to involve people can be obtained from a variety of sources including, [Welsh Tenants](#) and [TPAS Cymru](#).

4.28 Local authorities need to consider how they will feed back the outcomes of the involvement or consultation to the groups or individuals involved. They should make it clear how the input to consultation and involvement has contributed to the published allocation scheme.

4.29 Consultation on allocation priorities needs to be set firmly within the context of the Local Authority's overarching strategic priorities.

4.30 Consultation responses should be monitored in terms of diversity to ensure that protected groups are represented.

### **Consultation period**

4.31 When consulting on an allocation scheme Local Authorities will need to work to a time frame. The Welsh Government usually allows 12 weeks as the minimum time for written consultation periods by Welsh Government departments, their agencies and partners.

## Publicising the Allocation Scheme

4.32 Local Authorities should take positive steps to publicise widely their access to housing policies, to ensure as far as possible that all people in housing need are aware of the services available to them. Section 168(1) of the 1996 Act requires Local Authorities to publish a summary of their scheme and to provide a copy of the summary free of charge to any member of the public who requests one. An authority is also required, under s.168(2), to make the scheme available for inspection at their principal office and to provide a copy of the scheme, on payment of a reasonable fee, to any member of the public who requests one. As the internet is increasingly being used as a source of information; Local Authorities must publicise their allocations policy on their websites and should also include a plain language summary version. Information on applying for housing should also be available via their websites.

4.33 It is good practice for marketing and publicity policies to refer to the means by which a Local Authority will endeavour to publicise its housing services to those who need social housing and/or who are under represented in its tenant profile.

## Elected Member and Board Member Involvement in Allocation Decisions

4.34 Section 167 of the 1996 Act enables the Welsh Government to make regulations setting down principles within which Local Authorities' allocation procedures must be framed. *The Local Housing Authorities (Prescribed Principles for Allocation Schemes) (Wales) Regulations 1997* (SI 1997 No. 45) restrict a Local Authority's elected members' involvement in allocation decisions in certain specified circumstances. They prevent an elected member from being part of a decision-making body (i.e. the Local Authority or any sub-committee) at the time the allocation decision is made, when either the:

- (i) accommodation concerned is situated in their electoral ward; or
- (ii) the person subject to the decision has their sole or main residence in the member's electoral ward.

4.35 The regulations do not prevent elected members' involvement in allocation decisions where the above-mentioned circumstances do not apply. They do not prevent a ward member from seeking or providing information on behalf of their constituents, or from participating in the decision making body's deliberations prior to its decision. However, the elected member should be careful to ensure compliance with their authority's Code of Conduct, when doing this. In particular, members should consider whether the Code of Conduct requires them to declare an interest before participating in such deliberations. If in any doubt, the advice of the authority's Monitoring Officer should be obtained. Improperly conferring or attempting to confer an advantage on any person (such as, for instance, influencing housing allocations unfairly to benefit one's relatives or friends) would amount to a breach of the Code. Elected members remain responsible for determining allocation policies that are compliant with the 1996 Act (as amended), this Code and The Equality Act 2010. They are also responsible for monitoring allocation scheme

implementation to ensure the operation of open and accountable systems that are compliant with policy objectives. The regulations do not prevent elected members' involvement in policy decisions that affect the generality of a particular electoral ward's housing accommodation; for example, that allocation of units in a certain block of flats should not be let to older persons or to households including young children.

4.36 The Welsh Government recommends that Housing Association Board Members are not involved in allocation decisions. [Community Housing Cymru](#) can assist Housing Associations when drafting Codes of Conduct for Board Members. Tai Pawb has also prepared a toolkit to assist with board diversity. The Regulatory Framework for Housing Associations in Wales can also assist with advice to Boards. See [Tai Pawb toolkits](#).

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

4.37 Section 171 of the 1996 Act (false statements and withholding information) makes it an offence for anyone seeking assistance from a Local Authority under Part 6 of the 1996 Act, to:

- (i) knowingly or recklessly give false information; or
- (ii) knowingly withhold information which the Local Authority have reasonably required the applicant to give.

4.38 A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the [standard scale of fines for summary offences](#).

4.39 It is for individual Local Authorities to determine when these provisions apply and when to institute criminal proceedings. However, the circumstances in which an offence is committed could include:

- (i) any false information given on an application form for social housing;
- (ii) any false information given in response to subsequent review letters or other updating mechanisms; or
- (iii) any false information given or submitted by applicants during the proceedings of a review.

4.40 Ground 5 of Schedule 2 to the Housing Act 1985 enables a Local Authority to seek possession of a tenancy which they have granted as a result of a false statement by the tenant or a person acting at the tenant's instigation.

4.41 The Welsh Government commenced the Prevention of Social Housing Fraud Act 2013 in Wales in November 2013. The Act aims to enable social landlords to take a tougher approach on social housing fraud. <http://www.legislation.gov.uk/ukpga/2013/3/contents/enacted>

4.42 There are various different types of tenancy fraud; this Act is primarily concerned with strengthening the powers of social landlords to tackle tenants who sublet the whole of their dwellings for a profit. The policy rationale behind the Act is to ensure that social housing is occupied by those in the greatest housing need. The Act creates offences and makes other provisions relating to sub-letting and parting with possession of social housing.

4.43 A copy of the Legislative Consent Motion agreed by the National Assembly is available at: [Social Housing Tenancy Fraud Legislative Consent Motion](#)

4.44 The Social Landlords' Crime and Nuisance website, [SLCNG](#) holds useful information about the Act (SLCNG are now known as Resolve Anti Social Behaviour).

### **Data Protection**

4.45 In administering allocation schemes, Local Authorities must comply with the provisions of the Data Protection Act 1998. The 1998 Act refers to the processing and storage of personal information held either manually or on computer. The 1998 Act also gives the 'Right of Subject Access' which allows individuals to find out what information is held about them on computer and on some paper records. Information can also be obtained from the Information Commissioner's Office.

[Information Commissioner's Office](#)

### **Public Services Ombudsman for Wales**

4.46 Applicants for Local Authority and Housing Association housing may complain to the Public Services Ombudsman for Wales if they consider they have been treated unfairly, or received a bad service through some failure on the part of the organisation. However, they need to go through the complaints procedure of their social landlord in the first instance. It is only if they are not satisfied with this outcome that they can go to the Ombudsman. Local Authorities and Housing Associations are obliged by law to inform applicants of their rights to complain to the Public Services Ombudsman for Wales. Complaints will be investigated independently and impartially, and if upheld, the Ombudsman will say what the organisation should do to address systemic failings and weaknesses identified during an investigation, how they should make amends to the complainant and impress the need for improvement in its standard of service in the future.

4.47 Further information about the Public Services Ombudsman for Wales can be found at [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk).

## Monitoring and Evaluation

4.48 Local Authorities and Housing Associations must monitor allocations to determine, for example, the success of lettings plans and whether they are meeting equal opportunities obligations.

4.49 It is recommended that authorities, in conjunction with their Housing Association partners, draw up systems to monitor information about persons applying for and being allocated social housing accommodation. Local Authorities and Housing Associations that operate choice-based or mid-way/hybrid schemes may also consider monitoring information on applicants who bid for properties. All of this evidence can be used as a basis for policy review and development and to help establish whether practice outcomes are in line with allocation scheme objectives. Robust equality monitoring systems such as tenant profiling will provide Local Authorities and Housing Associations with the necessary data to carry out equality impact assessments.

4.50 The information gathered can be used to evidence that the allocation schemes developed do not directly or indirectly discriminate against anybody with protected characteristics.

4.51 Allocations policies and procedures should be reviewed on a cyclical basis to ensure they are compliant with the law and good practice, including guidance for socially excluded groups such as the [National Service Framework for Adult Mental Health](#). Ongoing monitoring of significant case law is necessary, as well as review of the impact of schemes in relation to local strategic objectives, and it would be good practice to review allocation policies at least every two years.

# **PART 2**

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# **HOMELESSNESS**

## INTRODUCTION

This part of the Code covers Part 2 of the Housing Act 2014, which amends and consolidates all previous homelessness legislation. It explains the new legislation, and places it in the context of Welsh Government policy in 2014.

The Welsh Government's long term approach to tackling homelessness in Wales is set out in the Ten Year Homelessness Plan 2009-19. This document describes the causes of homelessness and the need to address the issue through cross-sector working with the focus on prevention. The Plan identified the need to review homelessness legislation to ensure it supported the aims of the Plan through a much greater emphasis on prevention.

The Housing (Wales) Act 2014 introduces new legislation which will ensure a much greater emphasis on prevention and will deliver more help to more people.

The Code of Guidance has been redrafted to support these changes. Key features of the new legislation include:

- A new duty to help anyone threatened with homelessness within the next 56 days
- A duty to provide help to any homeless person to help them secure a home
- A power rather than a duty to apply the intentionality test
- New powers for Local Authorities to discharge their homelessness duties through finding accommodation in the private rented sector
- Stronger duties on Housing Associations to support Local Authorities in carrying out their homelessness duties

The purpose of the legislation is to achieve:

- fewer households experiencing the trauma of homelessness
- better, more targeted, prevention work
- increased help, advice and information for households who receive limited assistance under the current legislation
- more focus on the service user, helping them to address the causes of homelessness and make informed decisions on finding solutions to their housing problem.
- more effective use of the private rented sector as a solution to homelessness;
- a stronger emphasis on co-operation and multi agency working, and
- greater protection provided for children in households who are homeless or threatened with homelessness as well as additional help for children leaving care.

The main changes to homelessness legislation will take effect from April 2015. Additional resources are being provided for Local Authorities to support the transition to the more prevention-focused approach. We have reviewed our current homelessness grant programme to ensure it is targeted at services and support that

complement the aims of the new legislation. Our Supporting People programme also plays a significant role in preventing homelessness, and we expect Local Authorities and Regional Collaborative Committees to ensure closer working links between the Programme and homelessness services and activities. We are developing a range of approaches to measure implementation, including evaluation, which will assess the impact of the legislation over the next three years.

The effectiveness of the new legislation will depend upon the commitment of Local Authorities and their partners to achieve its aims. The aims are consistent with a broader approach to focus on the prevention of problems rather than processing people through crises. This is reflected in other legislation which is broadly concurrent, including the Social Services and Wellbeing (Wales) Act 2014 and Bills on domestic abuse, renting homes and public health.

The housing context remains very challenging, with continuing pressure on public finances, rising costs of living and increasing demands on the available affordable housing. This guidance is intended to support legislation which will drive the prevention of homelessness and reduce the numbers of people affected by this serious social problem.

# CHAPTER 5: STRATEGIC PLANNING OF HOMELESSNESS SERVICES AND PARTNERSHIP WORKING

## Introduction

5.1 This chapter provides detailed guidance regarding the planning of homelessness services under s.50 to s.52 of the Housing (Wales) Act 2014.

5.2 The chapter also provides guidance on the involvement of other services and partners in preventing and tackling homelessness, including duties of co-operation under s.95.

5.3 The intention of this part of the legislation is to ensure that Local Authorities work systematically with partners to assess the nature and extent of homelessness in their areas and to plan service provision to prevent and relieve homelessness.

## The Act states

Section 50 - Duty to carry out a homelessness review and formulate a homelessness strategy

(1) A local housing authority must (periodically, as required by this section)—  
(a) carry out a homelessness review for its area, and  
(b) formulate and adopt a homelessness strategy based on the results of that review.

(2) The authority must adopt a homelessness strategy in 2018 and a new homelessness strategy in every fourth year after 2018.

(3) The Welsh Ministers may amend subsection (2) by order.

(4) A council of a county or county borough in Wales must take its homelessness strategy into account in the exercise of its functions (including functions other than its functions as local housing authority).

(5) Nothing in subsection (4) affects any duty or requirement arising apart from this section.

(6) In this Chapter “homeless” has the meaning given by section 55 and “homelessness” is to be interpreted accordingly.

## Guidance

5.4 Local Authorities must continue to meet their current statutory duties to have local homelessness strategies, which will need to be met within the local planning framework, particularly the Single Integrated Plan. Current strategies will need to be reviewed to reflect the new legislation.

5.5 The main elements required for homelessness strategies are based on the review and planning of activities to:

- prevent homelessness

- secure accommodation for people who are homeless or threatened with homelessness
- provide support

5.6 This Chapter sets out more fully how the duty to plan homelessness services should be met. The following chapter on partnership working will need to be read in this context.

## **Ten Year Homelessness Plan**

5.7 The strategic approach at the local level should reflect the Welsh Government's Ten Year Homelessness Plan which sets out the long term policy direction for tackling homelessness. This should include the main themes in the Ten Year Plan, with organisations working together to prevent homelessness as early as possible, taking account of the individual needs of the household.

## **Local Service Planning Context**

5.8 The Homelessness Strategy should place homelessness firmly within its wider objectives and plans for meeting the housing needs of its citizens. Tackling homelessness should be a priority, and Local Authorities will need to evidence how this will be addressed within the broader context of Supporting People commissioning, wider housing services and social inclusion. This will need to involve social services, health, criminal justice and other statutory and voluntary partners. All of this strategic planning will be framed within the context of the Single Integrated Plans. Guidance on Single Integrated Plans is set out in "Shared Purpose – Shared Delivery", issued in 2012.

5.9 The legislation and this guidance apply to all Local Authorities, including those who transfer their stock. In such circumstances the Authority will need to be extremely careful to ensure that the contractual arrangements do not have any negative effect on its ability to meet these duties. Local Authorities, housing associations and voluntary sector support providers should be working together using long-term strategic partnerships such as Regional Collaborative Committees and local planning groups to address housing need in the region and local area.

## **A Corporate Approach**

5.10 Preventing and tackling homelessness requires Local Authorities to take a corporate approach, embracing related services such as housing benefit, children's services, health and education. The priority needs to be firmly on prevention and recognising the complex links between wider agendas including children and younger people, health and social care as well as Community Safety Strategies. Services should be organised and linked to others within and outside the Authority, such as Police and Crime Commissioners and Local Health Boards. The priority needs to be firmly on prevention, with the aim of identifying those at most risk as early as possible, and intervening to enable people to avoid homelessness. This requires a proactive approach. People who are threatened with homelessness need to be given constructive advice and support to identify and secure the best option

available to them. Local Authorities need to co-ordinate their approach to homelessness prevention across the range of services and programmes, including Communities First, Families First, and the Intensive Family Support Service.

- a. Local Authorities will take the lead, in consultation with the voluntary sector and other partners. However, the duty to produce a strategy to prevent and tackle homelessness is imposed corporately on the whole Authority, and not simply the housing service. The Authority will need to take a strong corporate lead to ensure that all relevant departments and planning processes are co-ordinated in the preparation and implementation of homelessness planning. This planning will form an important element of the local housing strategy or equivalent document, and will need to link closely with a range of other service strategies under the overarching Single Integrated Plan.
- b. The provisions on planning of social care needs and prevention services under s.14 and s.15 of the Social Services and Well-being (Wales) Act 2014 are particularly relevant in this context. Section 14 of the Act requires that Local Authorities and Local Health Boards must jointly carry out an assessment of people who have needs for care and support, and the support needs of carers in the Local Authority's area. This assessment must also identify:
  - the extent to which those needs are not being met;
  - the range and level of services required to meet those needs; and
  - the range and level of services required to deliver the preventative services required in s.15 of the Act.

5.11 The purpose of this population assessment is to ensure that Local Authorities and Local Health Boards jointly produce a clear and specific evidence base in relation to care and support needs and carers' needs to inform various planning and operational decisions. This will ensure services are planned and developed to meet the needs of people in an efficient and effective way by public sector partners. It will also underpin resource and budget decisions in order to ensure services are sustainable.

5.12 It will be important that the overall approach to preventing homelessness involves all appropriate departments within a Local Authority. Functions which should normally contribute will include:

- Housing
- Social Services
- Planning
- Education
- Social Inclusion
- Finance
- Environmental Health, and
- Chief Executive's/Corporate Policy
- Equality and Diversity

5.13 It will be important to involve the Finance Department/budget holders early in the process so that they can approve the resources necessary to carry out the action required.

## Service Focus in the Context of the Housing (Wales Act) 2014

5.14 The intention behind the changes to homelessness legislation is to set a new framework which focuses on the needs of each household rather than the processing of applications. This places the citizen at the centre of service delivery. The new legislative framework should ensure that everyone in need gets the help they need to keep or find a home. A proactive approach to identifying people at risk and working with them to prevent homelessness is particularly important. This requires a casework system where responsibility will normally lie with a key worker within the team who will need to assess the applicant's circumstances and help them find a solution to their housing problem. For many Local Authorities this requires a cultural shift to a more intensive and individualised approach.

5.15 The service user must be at the heart of this work. They are also expected to take responsibility within their capacity to seek solutions to their problems. Their experiences and views are the basis for the delivery of the duties. Homelessness services need to be built around the needs of service users and this needs to be reflected in the way services are designed. This requires empathy, objectivity, motivation and professionalism, as well as good access to services and clear communication. See **xxx** on involvement of service users within the planning process.

### Homelessness reviews

#### The Act states

##### Section 51 - Homelessness reviews

- (1) A homelessness review under section 50 must include a review of—
- (a) the levels, and likely future levels, of homelessness in the local housing authority's area;
  - (b) the activities which are carried out in the local housing authority's area for the achievement of the following objectives (or which contribute to their achievement)—
    - (i) the prevention of homelessness;
    - (ii) that suitable accommodation is or will be available for people who are or may become homeless;
    - (iii) that satisfactory support is available for people who are or may become homeless;
  - (c) the resources available to the authority (including the resources available in exercise of functions other than its functions as local housing authority), other public authorities, voluntary organisations and other persons for such activities.
- (2) After completing a homelessness review, a local housing authority must publish the results of the review by—
- (a) making the results of the review available on its website (if it has one);
  - (b) making a copy of the results of the review available at its principal office for inspection at all reasonable hours, without charge, by

members of the public;  
(c) providing (on payment if required by the authority of a reasonable charge) a copy of those results to any member of the public who asks for one.

## **Review of homelessness planning**

5.16 Local Authorities are advised to adopt a process for frequent review of their progress on addressing homelessness, within their wider housing planning framework. This will need to include measuring trends and outcomes and assessing the impact of services on people at risk, to ensure that resources are applied most effectively.

5.17 Analysis will be required of:

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

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

## **Customer research**

5.19 The views of homeless people are important to developing a successful strategic approach to homelessness. They should be consulted about:

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

## **Main Causes**

5.20 The review and strategy should examine the main causes of homelessness as identified through its data returns, and how these causes will be addressed. This will

need to include family breakdown, domestic abuse, debt, private and social landlord decisions to repossess, and discharge from institutions.

## Definitions

5.21 It will be important for partners involved in developing the homelessness review and strategy to agree a common definition of homelessness that they are seeking to address. Under s.55 and s-66 of the Housing (Wales) Act 2014, a person is homeless if he or she has no accommodation in the UK or elsewhere which is available for his or her occupation and which that person has a legal right to occupy. A person will also be homeless where he or she has accommodation but cannot secure entry to it, or where he or she has accommodation that is a moveable structure (such as a caravan or house boat) and there is no place where it can be placed in order to provide accommodation. A person who has accommodation is to be treated as homeless where it would not be reasonable for him or her to continue to occupy it. The Welsh Government recommends the following broader definition of 'homelessness' for service planning purposes:

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

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

- sleeping rough
- living in insecure/temporary housing (excluding assured/assured shorthold tenants)
- living in short term hostels, night shelters, direct access hostels
- living in bed and breakfasts
- moving frequently between relatives/friends
- squatting
- unable to remain in, or return to, housing due to poor conditions, overcrowding, affordability problems, domestic violence, harassment, mental, physical and/or sexual abuse, unsuitability for physical needs etc.
- threatened with losing their home and without suitable alternative accommodation for any reason, e.g. domestic abuse
- leaving hospitals, police custody, prisons, the armed forces and other institutions or supported housing without a home to go to,
- required to leave by family or friends or due to relationship breakdown,
- within 56 days of the end of tenancy, facing possession proceedings or threat of eviction.

5.22 As well as agreeing a definition of homelessness, partner organisations will need to agree other definitions of terms used in the strategy that will be appropriate to the strategy, e.g. 'excluded', 'young people', 'rough sleeping', etc.

5.22 The Welsh Government recommends the following definition of 'rough sleeping':

'People who are sleeping, or bedded down, in the open air; people in buildings or other places not designed for habitation'.

This definition will include for example, people sleeping on the streets, in doorways, in parks, in bus shelters, or buildings not designed for habitation, such as barns, sheds, car parks, cars, derelict boats, stations, squats, tents, or makeshift shelters.

## **Sources of information**

5.23 The development of homelessness planning must be underpinned by good information. The Local Authority should take the lead in drawing together this information, from both its own sources and from partner organisations.

5.24 Local Authorities should collate and analyse the information they provide to the Welsh Government, as well as other information/data that they hold (e.g. waiting list data). New information systems will need to be developed with partners to identify non-statutory homelessness. This will need to include analysis of the effectiveness of prevention work for people at risk and of 'help to secure' interventions for people at risk. Local Authorities should also develop systems for measuring outcomes for service users and their views of the quality of the service provided.

5.25 Non-statutory as well as statutory sources should therefore be approached for relevant information. The information gathering process will need to include general consultation with organisations and people who work with or have experience of homelessness. This will require a high level of co-ordination between agencies to develop and sustain common monitoring systems.

5.26 Statistical measurement and monitoring of homelessness, including the statistics provided in the returns to the Welsh Government, will be of particular importance. Clarification will be required on the time period over which statistical comparisons are made and the level of detail required. Local Authorities will need to work with partners to ensure that national statistical returns to the Welsh Government are implemented correctly and effectively, particularly in relation to prevention. They should be analysed regularly to identify trends and causal factors, and compared with other Authorities to identify success factors and problem areas.

5.27 Local Authorities are collecting and collating a range of information on accommodation-related support needs through Supporting People Operational Planning mechanisms. This will be an important source of information for the review.

## **Profiling homelessness**

5.28 Local homelessness strategies will need to summarise the profile of homelessness in the area, based on the analysis of the problem in terms of its extent, location, causes, household types, protected characteristics, recurrence and trends. Local analysis of homelessness should be broken down by client groups (e.g. young single people, lone parents, families etc.) and should be compared with the housing and support services available to each group.

5.29 Homelessness will vary across Local Authority areas, and thus information should be provided on the geography of homelessness within a Local Authority area, identifying any particular issues in localities. This will be particularly important in rural

areas and it is important that rural housing enablers incorporate homelessness into their assessment and identification of local housing need.

5.30 Other partners within the area, e.g. Local Health Boards, Probation and the voluntary sector will have useful information that should be fed into the research process on people who may be leaving institutional care or who may have a need for particular support.

## **Risk groups**

5.31 Homelessness planning should cover all groups affected by homelessness. In addition to those groups highlighted in the legislation, Authorities will need to consider other risk groups such as people suffering harassment or abuse from outside the home, alcohol and drugs misuse, debt problems, and refugees with traumatic backgrounds.

5.32 The Local Authority should have regard to the groups of people who do not fall within the Priority Need categories (as defined by the Housing (Wales) Act 2014) and ensure that their needs are considered in developing their strategies. In particular, the Local Authority are recommended to have a specific strategic focus on rough sleeping. This will need to involve joint planning with partners the problem and for carrying out counts as well as continuous monitoring arrangements. Local Authorities are strongly advised to ensure that outreach services and emergency accommodation are available to meet the identified need.

5.33 The Welsh Government has a long term objective to end the need for anyone to sleep rough. It is essential that specific efforts are made to identify the extent of rough sleeping and enable people to have access to emergency accommodation and help with resettlement. Local Authorities are expected to measure rough sleeping using a combination of continuous monitoring data collection and snapshot counts where appropriate, in accordance with Welsh Government guidance. The data collection process used in 2014 will provide the foundation for further monitoring of rough sleeping. The Welsh Government expects Local Authorities and other partners to work strategically across Local Authority boundaries to address the needs of rough sleepers, preventing it wherever possible. Services should be designed to help people move away from rough sleeping with the clear objective of progression into settled accommodation. In order to mitigate the worst effects of rough sleeping all Local Authorities should have a written cold weather plan stating their arrangements to give assistance in periods of cold and/or severe weather.

5.34 It will also be important to identify numbers and causes of repeat presenters and vulnerable groups (e.g. ex-prisoners, persons leaving the armed forces etc.), as well as identifying any trends/ issues in the reasons given for presenting as homeless.

5.35 Local Authorities are expected to assess the local availability of affordable housing for young people and other vulnerable groups seeking accommodation as part of their Housing Market Needs Assessment.

## Resources available to prevent and tackle homelessness

5.36 Services and other resources available to homeless/potentially homeless people within the area should be identified. This should cover those services provided by the voluntary and private sectors and other partners, in addition to those provided by the various departments of the Local Authority itself. Projects funded directly by Welsh Government will be expected to work closely with Local Authorities, who will need to be involved in the monitoring of those services.

5.37 Local Authority homelessness budgets will need to be set to ensure they can meet all their statutory duties. This includes resources to meet their duties to take reasonable steps to help prevent homelessness and secure housing, providing at least the minimum expected services (cross-reference) in all cases.

5.38 Resources available for preventing and tackling homelessness include:

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

## Preparing the Homelessness Strategy

### The Act states:

#### Section 52 - Homelessness strategies

- (1) A homelessness strategy under section 50 is a strategy for achieving the following objectives in the local housing authority's area—
- (a) the prevention of homelessness;
  - (b) that suitable accommodation is and will be available for people who are or may become homeless;
  - (c) that satisfactory support is available for people who are or may become homeless.
- (2) A homelessness strategy may specify more detailed objectives to be pursued, and action planned to be taken, in the exercise of any functions of the authority (including functions other than its functions as local housing authority).
- (3) A homelessness strategy may also include provision relating to specific action which the authority expects to be taken—

(a) by any public authority with functions which are capable of contributing to the achievement of any of the objectives mentioned in subsection (1), or

(b) by any voluntary organisation or other person whose activities are capable of contributing to the achievement of any of those objectives.

(4) The inclusion in a homelessness strategy of any provision relating to action mentioned in subsection (3) requires the approval of the body or person concerned.

(5) In formulating a homelessness strategy the authority must consider (among other things) the extent to which any of the objectives mentioned in subsection (1) can be achieved through action involving two or more of the bodies or other persons mentioned in subsections (2) and (3).

(6) A homelessness strategy must include provision relating to action planned by the authority to be taken in the exercise of its functions, and specific action expected by the authority to be taken by public authorities, voluntary organisations and other persons within subsection (3), in relation to those who may be in particular need of support if they are or may become homeless, including in particular—

(a) people leaving prison or youth detention accommodation,

(b) young people leaving care,

(c) people leaving the regular armed forces of the Crown,

(d) people leaving hospital after medical treatment for mental disorder as an inpatient; and

(e) people receiving mental health services in the community.

(7) A local housing authority must keep its homelessness strategy under review and may modify it.

(8) Before adopting or modifying a homelessness strategy a local housing authority must consult such public or local authorities, voluntary organisations or other persons as it considers appropriate.

(9) After adopting or modifying a homelessness strategy, a local housing authority must publish the strategy by—

(a) making a copy of the strategy available on its website (if it has one);

(b) making a copy of the strategy available at its principal office for inspection at all reasonable hours, without charge, by members of the public;

(c) providing (on payment if required by the authority of a reasonable charge) a copy of the strategy to any member of the public who asks for one.

(10) If the authority modifies its homelessness strategy, it may publish the modifications or the strategy as modified (as it considers most appropriate).

(11) Where the authority decides to publish only the modifications, the references to the homelessness strategy in paragraphs (a) to (c) of subsection (9) are to be interpreted as references to the modifications.

## Guidance

### Strategic Planning for Homelessness

#### Strategic Vision and Principles

5.39 The following themes underpin the Ten Year Homelessness Plan, and these ought to be taken account of in planning homelessness services:

- preventing homelessness wherever possible
- working across organisational and policy boundaries
- placing the service user at the centre of service delivery
- ensuring social inclusion and equality of access to services

5.40 In preparing their strategic approach to tackle homelessness, Local Authorities and partners should consider how they will address the main elements of the homelessness service i.e. prevention, securing accommodation and support:

- Prevention, including information and advice, tenancy and crisis support, debt counselling, family mediation and housing benefit service.
- Securing availability of accommodation, including housing needs
- assessment, mapping housing supply and demand, emergency and other temporary housing, lettings policies and move-on arrangements.
- Securing access to support services, to prevent homelessness where possible,
- Assessment, provision of Supporting People and other support services, resettlement and outreach work,
- How they can collaborate with NHS, Criminal Justice and Community Safety agencies to meet the needs of people and households who are at risk of homelessness and

**Cross-reference here to Prevention Chapter.**

5.41 The empowerment of service users should lie at the heart of all homelessness planning. They should as far as possible be given the information, support and opportunities to find the most suitable and sustainable housing. Services should be designed around the needs of users, so that they are accessible, flexible and responsive to the needs of each homeless household. This means that service users should be involved in the planning of services and how they are delivered. The Welsh Government is supporting the development of good practice in this area, including the “Equal Ground” Standard developed by Shelter Cymru.

#### Prevention

5.42 Strategic planning should prioritise the need for prevention. Therefore, adequate consideration and resources should be devoted to the range of preventative services that are required to meet the needs present within the Local Authority area, e.g. information and advice, short term support, mediation. The approach and range of activities are set out more fully in the section on Prevention. It

will be important to ensure that all household types and vulnerable groups are considered.

5.43 The availability of a range of information and advice services is fundamental to prevention of homelessness. This will include Local Authority and independent housing advice, and also related areas such as money advice and debt counselling. All Local Authority advice services should provide people at risk with information on all the housing options available to them, and promote this approach through their websites and other public information. See Advice section for further detail.

5.44 There will be a need to ensure that other policies work to prevent homelessness occurring, particularly through housing management in the areas of rent arrears and anti-social behaviour. Housing management services should explicitly recognise the prevention of homelessness as one of its key objectives, and be geared to early intervention and multi-agency working to help tenants sustain their tenancies wherever possible, this may include contributing to wider strategic documents such as Supporting People Local Commissioning/Strategic Plans, Local Housing Market Needs Assessments and Homelessness and Vulnerable Groups Action Plans.

5.45 The importance of an efficient and fair housing benefit service in the prevention of homelessness needs to be recognised. The Welsh Government considers housing benefits services to be an essential element of action to mitigate the impact of welfare reforms on homelessness. These services need to have close links with homelessness services. The use of Discretionary Housing Payments is particularly important and ought to be prioritised to where it can be used most effectively to prevent homelessness. Housing benefit services should have protocols and service standards which are monitored to assess their impact on homelessness.

5.46 Local Authorities must also consider the need for additional services for preventing homelessness by providing more protection to tenants in private sector accommodation, particularly by the use of projects promoting access to the private rented sector and access to Supporting People services in the sector.

## **Securing accommodation**

5.47 Local Authorities are already expected to be carrying out housing market assessments, which involve the mapping of existing services and gaps. The housing strategy can use these to identify shortages of provision and to prioritise new projects which will reduce homelessness. These priorities can then be reflected in capital programmes.

5.48 The strategic needs assessments and resulting capital programmes will need to include emergency and other dedicated temporary accommodation as appropriate. Planning for temporary accommodation should be based on the aim of using it only for emergency and assessment purposes and where it is most appropriate for the needs of the users, and for no longer than necessary. The strategic needs assessments should be based on statistics of homeless people across a range of profiles and needs, taking account of the views of homeless people themselves. In

particular the use of bed and breakfast accommodation should be kept to an absolute minimum.

5.49 Strategies to tackle homelessness will need to incorporate move-on planning to ensure that: homeless people are able to move into permanent accommodation as soon as possible once they are ready to move on, taking account of any further support needs they may have. Move-on planning is of critical importance, and this can best be supported by multi-agency move-on panels where partners agree the appropriate timing and priority for securing accommodation.

5.50 Some individuals with challenging behaviours and backgrounds can pose particular difficulties for Local Authorities in securing accommodation. They will usually need to work with other services and agencies, and many Authorities have developed inclusion panels to identify the best solution for the person.

5.51 Strategic planning on homelessness must reflect the critical role played by the private rented sector, both in the context of prevention/tenancy sustainment and move on. This ought to form part of a strategic approach to joint working with the sector, linked to support and regulation. Local Authorities will need to work proactively with the sector to increase access to affordable, well-managed accommodation. This will need to involve a package of incentives to offer landlords including continuing support for the good management of the tenancies.

## **Securing Housing Related support**

5.52 Strategic planning on homelessness must aim for securing support services for homeless people with support needs in partnership with Supporting People Regional Collaborative Committee arrangements. The current commissioning guidance can be found on the Welsh Government Housing web pages <http://wales.gov.uk/topics/housing-and-regeneration/services-and-support/supporting-people/?lang=en>). This planning process will include consideration of community safety, social services and Local Health Boards, probation and youth justice services, and must take place in partnership with voluntary sector organisations. In this context a broad definition of support should be used to reflect the inter-related needs of homeless people which need to be met in order for them to establish a settled lifestyle and sustain their homes.

5.53 Homelessness and supported housing planning arrangements ought to jointly consider how Supporting People funded services may contribute to the prevention agenda and consider developments such as:-

- Gateway schemes to ensure peoples needs are effectively met and resources are used effectively,
- Locating floating support workers in housing advice services
- The balance of preventative vs resettlement services.

5.54. The Supporting People Local Commissioning Plans will form a core element of the strategy in respect of support for homeless people. They will identify the priorities for support services which can be provided through the Supporting People

specifications, and which will help people in the qualifying groups to maintain and resettle into sustainable tenancies. The existing pattern of Supporting People services are expected to be reviewed in regard to its effectiveness in preventing homelessness. Services should be re-modelled where appropriate to focus on prevention, and such proposals will be supported by the Welsh Government.

5.55 The Supporting People Local Commissioning Plans will not be sufficient in themselves to deliver all the support elements required. Social Services in particular should be contributing to the assessment of needs and to helping people sustain their homes. This is especially the case where people are owed a duty under social services legislation e.g. in the case of children in need, elderly people, people with physical or learning disabilities and mental health needs,. Similarly, Domestic Abuse Coordinators, Families First teams and Local Health Boards should be involved with housing departments in planning to ensure that homeless people and their families receive appropriate and continuing health, support and care services. Joint planning involving housing, social services and health will be essential, and this process should be strengthened through the mechanisms for the Single Integrated Plans.

5.56 In addition it is essential that the homelessness planning reflects the contributions to be made by voluntary and other statutory organisations in providing support for homeless people, including those which are not funded through Supporting People. These will include,

- tenancy support schemes
- private rented sector access services such as social lettings agencies
- home adaptations for people with physical disabilities
- furniture schemes
- Social Fund loans
- drug and alcohol services
- Employment Service
- Police
- refugee organisations
- education and youth services
- prison, probation and youth justice services
- Local Health Boards

5.57 The strategy will need to bring a particular focus to the process of resettling homeless people, both in terms of preparing them for and helping them resettle in to permanent accommodation. Resettlement is more than assisting with housing issues alone, and needs to include helping people to engage with other essential services, such as health and welfare benefits, as well as promoting stability through meaningful activity, particularly through training, employment and positive social networks.

## **Access to homelessness services**

5.58 Authorities will need to ensure that services are fully accessible to people who are homeless or threatened with homelessness, including a proactive approach to publicising the services and people's rights. They will need to recognise the diversity

amongst homeless people, and the particular needs they are likely to have. Outreach services are likely to be particularly appropriate for the street homeless. Office based services should be fully accessible for people with physical disabilities. Authorities should take account of the local linguistic profile in providing services in Welsh, English or other languages. The needs of people from diverse ethnic backgrounds and refugees will need to be taken account of, ensuring that communication and cultural barriers do not prevent anyone from using the services. Authorities should also consider the ability of the person and structure its advice accordingly.

5.59 Service planning for homelessness should identify how statutory homelessness services will work with social services, health, community safety, voluntary homelessness and advice services, social housing providers, and other essential services.

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

5.60 Access to all essential services is made much more difficult for homeless people if they have no contact address. Without this it is difficult for them to make progress with housing, health, benefits, employment, education and other services, and thus lack of an address reinforces the problems associated with homelessness. Authorities are strongly encouraged to secure arrangements for homeless people to have a contact address, which can often be achieved in partnership with the voluntary sector. See the following Chapter on partnership working.

### **Equality and diversity**

5.61 Homelessness services are expected to be sensitive to the particular difficulties facing homeless people from diverse backgrounds and take account of the Equality Act 2010 and the 9 protected characteristics. In particular, the needs of the following groups must be addressed:

- **Ethnic Diversity.** Services should meet the cultural and linguistic needs of the different communities, and work proactively to address homelessness in groups where it may normally be hidden. Further advice can be obtained from Tai Pawb. This may require local research to identify the needs of particular communities.
- **Lesbian, gay and bisexual people.** Experiences of stigma and harassment very often cause and exacerbate the problems of homelessness, and access to specialist advice may be needed. Further advice on assessing these needs may be obtained from Shelter Cymru.
- **Women.** Women are more likely to suffer domestic violence, and have difficulty in resolving the consequent problems of child support and financial/ property rights. Homelessness services are sometimes seen as male-focused and unsuitable for women. Reviews should ensure that appropriate advice and housing services are in place which can meet their emergency and resettlement needs. Further advice can be obtained from Welsh Women's Aid
- **People with disabilities.** Homelessness services should be accessible to people with disabilities, and enable them to obtain appropriately designed and

located accommodation. Further advice can be obtained from the Equalities and Human Rights Commission.

- Older homeless people. Older homeless people often have a low profile, and are reluctant to use services even where they may have a statutory entitlement to help. At the same time they are very vulnerable to the health consequences of living rough or in unsuitable accommodation. Reviews should take account of the needs of this group, and ensure they are enabled to resettle into appropriate accommodation.

## **Planning Resources and Budgets**

5.62 Local Authorities will need to plan sufficient resources to meet their homelessness duties based on a realistic budget and commitments from other services. These resources will include those of other services as well as the Local Authority's homelessness services.

## **Action Planning**

5.63 Local Authorities are required by s.52 (6) to include the actions they plan to take within their strategies. This is a logical necessity and will be essential to achieving clarity on delivery. The action plan will need to set out what specifically needs to be done, lead responsibility and timescales.

Local Authorities are required in particular to include actions in relation to address the following groups:

- people leaving prison or youth detention. This will need to take account of youth pathway planning arrangements and the homelessness prevention pathway being developed for adult prisoners
- young people leaving care. This will need to involve close working with social services as part of pathway planning for care leavers. Local Authorities have a corporate parenting responsibility for care leavers. Lead responsibility will rest with social/children's services, but it is essential they have a fully corporate and multi-agency strategic approach to planning the accommodation of care leavers, and this will need to be reflected in the homelessness strategy.
- people leaving the regular armed forces of the Crown. Liaison with the Joint Services Housing Liaison Office and the Veterans Service will enable appropriate referrals and applications from leavers who are at risk of homelessness
- people leaving hospital after medical treatment for mental disorder as an inpatient. Hospital services should identify people who have no home to return to or are at risk of homelessness, and ensure they are referred to housing services for help to find accommodation. Public Health Wales is developing a framework for local hospital discharge protocols which will help the design of local arrangements.
- people receiving mental health services in the community. Arrangements are expected to be in place with Community Mental Health Teams to refer people at risk of homelessness to housing services. This should include people with co-morbidity needs and outreach for those sleeping rough.

## **Target Outcomes**

5.64 Local Authorities will need to set their own outcome measures and performance monitoring arrangements, taking account of data provided to the Welsh Government on homelessness and Supporting People. The Welsh Government and its partners will continue to promote good practice in this area to support Authorities.

## **Monitoring and evaluation**

5.65 The Welsh Government will expect Local Authorities to establish a framework for monitoring and evaluating implementation of homelessness planning. This should incorporate consultation and joint planning with partners.

## **Continuing review and improvement**

5.66 Any change which is likely to significantly affect homelessness or how it is tackled, such as stock transfer, will require modifications to strategy on homelessness. Services should be clearly planned to provide a sustained service which meets its statutory duties and this Code, and the Welsh Government will consider closely the proposed arrangements prior to transfer.

# CHAPTER 6: PARTNERSHIP WORKING WITH OTHER ORGANISATIONS

## Introduction

6.1 Co-operation between Local Authorities and their partners is a core theme of the Housing (Wales) Act 2014. The Act strengthens the duty to co-operate on specified public bodies. In addition to this particular change, the new statutory framework is predicated upon highly developed collaboration between Local Authorities and their partners to achieve its objectives on early intervention and assistance to find the best available solution as quickly as possible.

6.2 This partnership approach requires mutual collaboration, within a local planning framework led by Local Authorities.

## The Act states

### Section 95 - Co-operation

(1) A council of a county or county borough in Wales must make arrangements to promote co-operation between the officers of the authority who exercise its social services functions and those who exercise its functions as the local housing authority with a view to achieving the following objectives in its area—

- (a) the prevention of homelessness;
- (b) that suitable accommodation is or will be available for people who are or may become homeless;
- (c) that satisfactory support is available for people who are or may become homeless; and
- (d) the effective discharge of its functions under this Part.

(2) If a local housing authority requests the co-operation of a person mentioned in subsection (5) in the exercise of its functions under this Part, the person must comply with the request unless the person considers that doing so would—

- (a) be incompatible with the person's own duties, or
- (b) otherwise have an adverse effect on the exercise of the person's functions.

(3) If a local housing authority requests that a person mentioned in subsection (5) provides it with information it requires for the purpose of the exercise of any of its functions under this Part, the person must comply with the request unless the person considers that doing so would—

- (a) be incompatible with the person's own duties, or
- (b) otherwise have an adverse effect on the exercise of the person's functions.

(4) A person who decides not to comply with a request under subsection (2) or (3) must give the local housing authority who made the request written reasons for the decision.

(5) The persons (whether in Wales or England) are—

- (a) a local housing authority;

- (b) a social services authority;
- (c) a registered social landlord;
- (d) a new town corporation;
- (e) a private registered provider of social housing;
- (f) a housing action trust.

(6) The Welsh Ministers may amend subsection (5) by order to omit or add a person, or a description of a person.

(7) An order under subsection (6) may not add a Minister of the Crown.

(8) In this section—

“housing action trust” (“ymddiriedolaeth gweithredu tai”) means a housing action trust established under Part 3 of the Housing Act 1988;

“new town corporation” (“corfforaeth tref newydd”) has the meaning given in Part 1 of the Housing Act 1985;

“private registered provider of social housing” (“darparwr tai cymdeithasol preifat cofrestredig”) has the meaning given by Part 2 of the Housing and Regeneration Act 2008;

“registered social landlord” (“landlord cymdeithasol cofrestredig”) has the meaning given by Part 1 of the Housing Act 1996.

## Guidance

### Duty to Co-operate

6.3 The new s.95 is a significant strengthening of the duty to co-operate under the Housing Act 1996, and covers both strategic and operational functions. The presumption is now placed clearly on the other service to co-operate unless it can demonstrate that the proposed action would be incompatible with its duties. Their reasons would have to be given in writing and it would not be sufficient to say that there were other priorities that had to take precedence.

1.1 This means that the default position will be that the partner organisation will co-operate to meet a request for assistance. Local Authorities and partners will be expected to have established mechanisms for ensuring collaboration and addressing any areas of difficulty before the need for the legislation to be invoked.

### Partnership Working

#### Building successful partnerships

6.5 The successful development and delivery of the strategy will be dependent upon strong partnership arrangements with other statutory and voluntary sector organisations as well as the private rented sector. It may be appropriate to develop these partnerships within existing partnership arrangements, provided that there is a strong and distinct focus on homelessness, and that it includes relevant representation from each sector. This includes Regional Collaborative Committees, on which statutory homelessness services ought to be represented.

6.6 The partnership should have a continuing dialogue with a broad range of representative groups and interests, many of which will not be directly represented on the group. Partner organisations should be kept informed of progress in the

development of homelessness strategy and planning. It is particularly important that the views of service users are represented through these arrangements.

6.7 Local Authorities will need to have clear strategic and operational objectives to shape these partnership arrangements. This is not just a reporting and information sharing relationship, but one where vigorous challenge is required to ensure that resources are being used most effectively to prevent and reduce homelessness.

## **Working with Housing Associations**

6.8 S.95 places a duty on Registered Social Landlords and Private Registered Providers of Social Housing ('housing associations') to co-operate with the Local Authority in exercising their homelessness duties. They are essential partners and have a vital role to play in preventing and alleviating homelessness and supporting the Local Authority in the delivery of its strategic housing role.

6.9 A framework for co operation between Local Authorities and housing associations is set out in legislation. However, it is important that the Local Authority has comprehensive agreements in place with each of its housing association partners covering the range of its expectations.

6.10 Partnership working with Local Authorities on homelessness has not always been maximised. Housing association's social housing stock already makes a central contribution to tackling homelessness, and there are many other examples where housing associations have initiated action to support Local Authorities in tackling homelessness. With the new legislation and increasing pressures on available housing resources, it is now essential that Local Authorities and housing associations work exhaustively and systematically to enhance their collaboration to meet the new homelessness duties.

6.11 In 2013 Community Housing Cymru commissioned research funded by Welsh Government and supported by WLGA into the effectiveness of partnership working on homelessness. The final report of the research, published in March 2014, found many examples of good practice across Wales where the sectors were working constructively together to prevent and relieve homelessness. However, the situation varied between areas and organisations, with both sectors failing in some cases to make the most of the opportunities for partnership working.

6.12 The report highlighted a range of activities which are or should be considered when planning homelessness services:

- review and implementation of the homelessness strategy
- homelessness prevention through tenancy sustainment
- provision of temporary accommodation
- allocation of housing through partnership arrangements such as common housing registers and common allocation schemes
- provision of affordable housing including social lettings
- (good practice examples to follow)

## **Partnership Working across Policy Areas**

6.13 The Strategy may include specific action on homelessness that the Local Authority expects to be undertaken by other public and voluntary organisations (s. 52(3) of the 2014 Act). Where the Strategy includes such provision, the Local Authority must obtain the consent of that organisation (s. 3(4)). The Authority can consider whether objectives can be met by the joint working of two or more organisations (s. 3(5)). The Housing Strategy will need to demonstrate joint working arrangements with other statutory and Voluntary Sector organisations, to meet the multi-disciplinary needs of the client group and to provide a more holistic approach to homelessness. At the very least these should include the involvement of:

- Local Health Boards (including colleagues in Public Health);
- Domestic Abuse Co-ordinators
- Probation, Prison and Youth Justice Services;
- Children and Young Peoples Strategy Groups;
- Community Safety Partnerships;
- Registered Social Landlords;
- Accredited Support Providers; and
- Housing Advice Services.
- Private Rented Sector representatives

6.14 The authority are advised to consider whether its objectives could be met by the joint working of two or more organisations (e.g. Local Health Boards, Probation Service and other government departments). Specific liaison arrangements should be put in place at a regional level with criminal justice agencies to ensure that prisoners are given housing advice on existing and future tenancy options following entry to prison and prior to release. Local Authorities are encouraged to take a broad view and consider the benefits of cross-boundary and regional co-operation. This will be particularly important in relation to service planning for more specialist needs, and where services or the lack of them are likely to induce people to move across boundaries, such as for rough sleepers and people at risk of domestic abuse. It is also essential that Authorities participate in good practice with other Authorities, particularly through the Local Authority Homelessness Network.

## **Working with Supporting People Providers**

6.15 Authorities will need to consider how best to maintain a strong relationship between the homelessness strategic functions and the operational planning tasks of local Supporting People teams. Local Authorities are expected to focus Supporting People services on the objective of preventing homelessness, and the monitoring of the impact of these services should be linked to homelessness prevention monitoring. As stated above, Regional Collaborative Committees should reflect this focus in their work, and prioritise resources accordingly.

6.16 Supporting People Regional Collaborative Committees comprise a range of service providers and commissioners who are working with people who are homeless or at risk of homelessness. The Regional Collaborative Committees are

responsible for advising support commissioners on the pattern of preventative services within the local and regional areas and as such are a forum which will need to be consulted and informed by the local homelessness strategy.

## **Domestic Abuse**

6.17 Domestic abuse is an area where partnership working is essential. Community Safety Partnerships (CSPs) in Wales are key to the delivery of 'The Right to be Safe'. Taken together, there is a myriad of work ongoing amongst CSPs in Wales to address Domestic Abuse locally. The coordination of Domestic Abuse activity within Local Authorities and CSPs has been greatly enhanced by the creation of Domestic Abuse Coordinator posts within every Local Authority in Wales. One of the principle roles of Domestic Abuse Coordinators is to coordinate local Domestic Abuse Forums which develop the domestic abuse strategies and plans for the local area. Domestic abuse co-ordinators and fora are vital resources for planning services to prevent and relieve homelessness caused by domestic abuse.

6.18 The Gender-based Violence, Domestic Abuse and Sexual Violence Bill will drive further work in this area which housing organisations need to be fully engaged with. This will be shaped by a national work programme including National Training Framework for relevant staff.

6.19 Homelessness services play a key role in helping to provide support and protection to victims of Domestic Abuse and their families when they are at their most vulnerable. Support may include provision of information and advice, securing accommodation or accessing other available support.

Given that 22% of all homelessness applications in Wales are due to the breakdown of a relationship as a result of Domestic Abuse, effective partnership working between Local Authority Homelessness services and Gender-based Violence, Domestic Abuse and Sexual Violence services is vital. Services are expected to engage with Community Safety Partnerships and Third sector frontline services to identify how best to support individuals in this situation, and where appropriate feed into existing care pathways.

## **Health Partnerships**

6.20 There are inextricable links between homelessness and poor health, with homeless people both more likely to suffer ill health and have difficulties in accessing health services.

Duties of cooperation between Local Health Boards and Local Housing Authorities:

S.12(3) of the National Health Service (Wales) Act 2006 read together with s.82 of the National Health Service Act 2006 places Local Health Boards under a duty to co-operate with Local Authorities and allows Welsh Ministers to give direction, through guidance.

S.82 of the National Health Service Act 2006.\* provides that:-

'In exercising their respective functions NHS bodies (on the one hand) and Local Authorities (on the other) must co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.'

S.12(3) of the National Health Services (Wales) Act 2006\* provides that:-

'The Welsh Ministers may give directions to a Local Health Board about its exercise of any functions.'

The intention is for Welsh Ministers to issue joint guidance on the duties of cooperation expected between Local Health Boards and Local Authorities with regard to homeless persons.

6.21 The Welsh Government's 'Standards for Improving the Health and Well-being of Homeless People and Specific Vulnerable Groups', published in April 2013, sets out expectations for joint working in this area, including the development of Homeless People and Vulnerable Groups' Health Action Plans (HaVGHAPs) to ensure the needs of homeless people and specific vulnerable groups were addressed.

## **Criminal Justice**

6.22 Local Authorities need to work in partnership with criminal justice agencies and Community Safety Partnerships in taking a strategic approach to tackling homelessness and crime. A clear understanding of local and regional links and responsibilities needs to be in place with prison and probation services under the National Offender Management Service with the aim of delivering the Homelessness Prevention Pathway for Prisoners. These connections also need to be clarified with voluntary agencies working with offenders.

## **People in custody**

6.23 All Local Authorities have a responsibility to reduce re-offending in their local communities which can be complemented by the successful integration and implementation of this Code of Practice.

6.24 S.5 to s.7 of the Crime and Disorder Act 1998 requires local areas to fully understand offender profiles, the ways in which services can address the needs of offenders and critically, where resources should be targeted to achieve a reduction in reoffending. The Act requires Local Authorities to formulate and implement a strategy to reduce reoffending as a 'responsible Authority within Community Safety Partnerships.

6.25 This section of the Code seeks to bring together the range of Local Authority responsibilities into an integrated approach with other key partners with the aim of making a significant impact in reducing the causal factors associated with offending behaviour and provide the most appropriate provision for both the individual and the community.

6.26 A key partner in enabling the delivery of this code of guidance is the National Offender Management Service (NOMS). NOMS is an executive agency of the Ministry of Justice and responsible on behalf of the Secretary of State for Justice for commissioning and delivering prison and probation services in England and Wales.

6.27 Under the Ministry of Justice (MoJ) Transforming Rehabilitation reforms, NOMS in Wales Directorate has been established and has responsibility for:

- All prisons in Wales
- the National Probation Service (NPS) in Wales - which is responsible for risk assessments of all offenders and management of offenders who pose the highest risk of serious harm to the public and those who have committed the most serious offences and
- the contract management of the Wales Community Rehabilitation Company which is responsible for delivering community requirements for medium and low risk offenders.

6.28 For the purpose of this Code the use of NOMS in Wales will generically apply to include prison and probation services in Wales. The term probation services in this Code will mean both NPS and Wales CRC.

## **Resettlement Prisons and the role of the Community Rehabilitation Companies**

6.29 The Wales CRC will be responsible for supervising and rehabilitating low and medium risk offenders in Wales. Offenders who are high risk of harm will continue to be offender managed by the National Probation Service. CRCs will also be responsible for the resettlement planning for prisoners in liaison with both the relevant criminal justice agencies and community agencies.

6.30 CRCs will be expected, where appropriate, to manage the employment, accommodation and financial needs of the offenders to be resettled, together with signposting to specialist services to address the needs of those who have previously been a sex worker or a victim of domestic abuse. In addition, they will be able to deliver further interventions that they believe will enhance the likelihood of preventing reoffending. This will mean that offenders returning to communities in Wales will have access to a package of pre-release activity and resettlement services delivered by the Wales CRC.

6.31 The vast majority of prisoners resettling back to Wales will be held at or transferred to a designated resettlement prison in Wales three months prior to release. Currently these are:

Drafting Note; List to be updated

Name	
HMP Cardiff	Adult male local
HMP Swansea	Adult male local
HMP/YOI Parc	Adult male trainer
HMP/YOI Prescoed	Adult male open prison
HMP Altcourse	Adult male local

HMP Stoke Heath	Adult male trainer
HMP Eastwood Park	Female
HMP Styal	Female

Youth Offending Teams are already based on a partnership model, and also need to be supported with clear pathway arrangements for young offenders.

Further detail on this can be found in the Prevention Chapter.

### **Armed Forces Veterans**

6.32 In support of the UK Government's Armed Forces Covenant, the Welsh Government has developed a package of support for the Armed Forces, their families and veterans in Wales. This package includes support for people in areas such as healthcare, education and housing, including priority status in the Homebuy scheme, Disabled Facilities Grants (DFGs) for disabled ex-servicemen and priority need status under s.70 of the Housing (Wales) Act 2014.

# CHAPTER 7: ELIGIBILITY

## Introduction

7.1 The purpose of this section is to explain which persons from abroad are eligible to receive the services associated with certain duties in Chapter 2 of Part 2 of the Housing (Wales) Act 2014 by virtue of section 61 and Schedule 2 of that Act, and the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (“the eligibility Regulations”).

## The Act States

### Section 61 – Eligibility for help under this Chapter

Schedule 2 has effect for the purposes of determining whether an applicant is eligible for help under the following provisions of this chapter.

AND

### Schedule 2 – Eligibility for help under Chapter 2 of Part 2

#### *Persons not eligible for help*

- (1) A person is not eligible for help under section 66, 68, 73 or 75 if he or she is a person from abroad who is ineligible for housing assistance.
- (2) A person who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is not eligible for housing assistance unless the person falls within a class of persons prescribed by regulations made by the Welsh Ministers or the Secretary of State.
- (3) No person who is excluded from entitlement to universal credit or housing benefit by section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) may be included in any class prescribed under sub-paragraph (2).
- (4) The Welsh Ministers or the Secretary of State may by regulations provide for other descriptions of persons who are to be treated for the purposes of Chapter 2 of Part 2 as persons from abroad who are ineligible for housing assistance.
- (5) A person who is not eligible for housing assistance is to be disregarded in determining for the purposes of Chapter 2 of Part 2 whether a person falling within sub-paragraph (6) –
  - a) is homeless or threatened with homelessness, or
  - b) has a priority need for accommodation.
- (6) A person falls within this subsection if the person –
  - a) falls within a class prescribed by regulations made under sub-paragraph (2), and
  - b) is not a national of an EEA State or Switzerland.

*Asylum-seekers and their dependants: transitional provision*

- (1) Until the commencement of the repeal of section 186 of the Housing Act 1996 (asylum-seekers and their dependants), that section applies to Chapter 2 of Part 2 of this Act as it applies to Part 7 of that Act.
- (2) For this purpose, in section 186 of the Housing Act 1996 –
  - a) the reference to section 185 of that Act is to be interpreted as a reference to paragraph 1, and
  - b) the reference to “this Part” is to be interpreted as a reference to Chapter 2 of Part 2 of this Act and not Part 7 of that Act.

#### *Provision of information by Secretary of State*

- (1) The Secretary of State must, at the request of a local housing authority, provide the authority with such information as it may require –
  - a) as to whether a person is a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies, and
  - b) to enable it to determine whether such a person is eligible for help under Chapter 2 of Part 2.
- (2) Where that information is given otherwise than in writing, the Secretary of State must confirm it in writing if a written request is made to the Secretary of State by the authority.
- (3) If it appears to the Secretary of State that any application, decision or other change of circumstances has affected the status of a person about whom information was previously provided to a local housing authority under this paragraph, the Secretary of State must inform the authority in writing of that fact, the reason for it and the date on which the previous information become inaccurate.

## **Overview**

7.2 When it comes to providing support under the main duties of the 2014 Act (s.66, s.68, s.73 & s.75), Local Authorities will need to satisfy themselves that applicants are eligible before providing housing assistance. The provisions on eligibility are complex and Local Authorities will need to ensure that they have procedures in place to carry out appropriate checks on housing applicants.

7.3 Local 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 Local Authority’s duties and responsibilities under equalities legislation (e.g. the [Equality Act 2010](#)) and how to deal with applicants in a sensitive manner. Legislation on immigration and related case law is subject to frequent change, with consequential changes for eligibility for housing assistance under the Act.

7.4 The Welsh Government’s intention is to reflect consistency with UK immigration policy and related European legislation in its regulations on eligibility. The main principles within the Act and the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (the eligibility Regulations) which relate to eligibility for

homelessness are set out below (regulations 5 and 6 are relevant to the discharge of the main duties under Part 2 of the 2014 Act). These eligibility Regulations are subject to amendment by the Welsh Ministers and therefore an up to date version of the eligibility Regulations should always be used to assess eligibility. These principles include: persons subject to immigration control are not generally eligible for homelessness assistance other than as provided for in exceptions set out in the eligibility Regulations; other persons from abroad not subject to immigration control are eligible other than as provided for in exceptions set out in the eligibility Regulations; and persons who have no right to reside in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland are ineligible for assistance.

## Providing information, advice and assistance

7.5 In accordance with s.60 of the Housing (Wales) Act 2014, Local Authorities have a statutory duty to provide information, advice and assistance in accessing help to anyone in its area, or with a local connection to its area, who present to them for assistance, including people who are ineligible for other housing assistance under Chapter 2 of Part 2 of the Act.

7.6 Please see chapter xx for guidance on providing advice.

## Eligible Categories

7.7 The following are the main categories of eligible applicants to whom a Local Authority may allocate accommodation under Part 2 of the Housing (Wales) Act 2014, taking account of nationality and immigration status:

### Persons Subject to Immigration Control Prescribed as Eligible

7.8 Generally persons subject to immigration control are not eligible for housing assistance other than the duty to provide information, advice and assistance in accessing help. Regulation 5 of the eligibility Regulations sets out the categories of people subject to immigration control who are eligible to receive housing assistance under s.66, s.68, s.73 or s.75 of the Housing (Wales) Act 2014:

- (i) **Refugees** – A person is granted refugee status until his/her request for asylum is accepted, at which point they will no longer be subject to immigration control;
- (ii) **Exceptional Leave** - A person who has been granted exceptional leave to enter or remain in the UK outside the provisions of the Immigration Rules and whose leave is not subject to a condition requiring that person to maintain or accommodate themselves, and any person who is dependant on that person, without recourse to public funds is eligible for housing assistance;
- (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 and the Republic of Ireland**, will be eligible for housing assistance. However, where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the applicant's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK – or the date of the sponsorship

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

- (iv) **Persons who have been granted Humanitarian Protection** – Humanitarian Protection was introduced on 1 April 2003 and partly replaced the policy on Exceptional Leave to Enter/Remain. Humanitarian Protection is granted to non-European Union citizens who do not meet the strict definition of refugee but who have international protection needs. Humanitarian Protection is granted under the Immigration Rules. The Immigration Rules are issued by the Home Secretary under the Immigration Act 1971 and set out how immigration law shall be administered, and are published on the UK Border Agency website.

Humanitarian Protection is granted for five years. Towards the end of this period leave holders have the opportunity to apply for indefinite leave to remain but there is no presumption that it will be granted.

- (v) **Asylum Seekers:** An asylum seeker whose claim was made on or after 3 April 2000 will not be eligible for assistance. Some asylum seekers whose claim for asylum was made before 3 April 2000 may be eligible for assistance; and
- (vi) **An Afghan citizen** who, as a result of serving the UK Government, has been granted permission to relocate to the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, and who is habitually resident in one of those areas will be eligible.

## **Other Persons from Abroad who are Ineligible**

7.9 In general, other persons from abroad who are not subject to immigration control are eligible for housing assistance unless prescribed in regulations by the Welsh Ministers. Regulation 6 of the eligibility Regulations provides that, a person will be ineligible if they are not habitually resident in the United Kingdom, the Channel Island, the Isle of Man, or the Republic of Ireland, (subject to certain exceptions). Those exceptions are set out in regulation 6(2) and provide that a worker, a self employed person, a Croatian national working in accordance with their work permit, a family member of those persons, a person with a specified permanent right to reside, or a person who is in the United Kingdom as a result of that person's deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom, do not have to satisfy the habitual resident test.

7.10 All European Economic Area nationals have an initial right to reside in the UK for up to three months, and "qualifying persons" (jobseekers, workers, self-employed persons, students and people who are self-sufficient) have an extended right to stay.

7.11 A person who falls into one of the following categories 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 \*\* below.
- (ii) a person whose only right to reside in the UK is derived from their status as jobseeker (or family member of a jobseeker)

- (iii) a person whose only right to reside in the UK is an initial right to reside for a period not exceeding three months
- (iv) a person whose only right to reside in the UK is a derivative right to reside\*
- (v) a person whose only right to reside in the Common Travel Area is a right equivalent to paragraphs (ii) to (iv) above.

\* These rights were added to reflect the decision of the Court of Justice of the European Union in the case of C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm) and the subsequent Immigration (European Economic Area) (Amendment) (No 2) Regulations 2012 made by the Home Office to confer rights of residence and entry on the primary carer of a British citizen who is residing in the United Kingdom where the denial of such a right would prevent the British citizen from being able to reside in the United Kingdom or in an EEA State.

7.12 The following persons from abroad who are not subject to immigration control are eligible for an allocation of accommodation even if they are not habitually resident in the Common Travel Area:

- (i) a worker
- (ii) self-employed person
- (iii) Croatian nationals who are treated as workers for the purpose of the definition of 'qualified person' in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006
- (iv) a family member of a person referred to in paragraph (i) to (iii) above
- (v) a person with a permanent right to reside
- (vi) a person who is in the UK as a result of the person's deportation, expulsion or other removal by compulsion of law from another country to the UK.

## **The Habitual Residence Test**

7.13 While the majority of the categories eligible for housing require the applicant to be habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, most applicants for social housing will not be persons from abroad and there will be no reason to apply the test. The conditions and general principles pertaining to the Habitual Residence Test can be found in Chapter 2 – Eligibility for an Allocation.

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

7.14 Authorities will need to ensure that they have procedures in place to carry out appropriate checks on applicants and ensure they do not discriminate on the basis of race, nationality, ethnic origins or any of the other protected characteristics as defined in the Equality Act 2010. Authorities should monitor their performance in screening housing applicants for immigration status to ensure that members of ethnic minorities who are eligible for assistance are not denied housing and do not experience unreasonably long delays while their application is considered. In

devising such procedures, Authorities should have due regard to the information contained in this Code.

7.15 If there is any uncertainty about an applicant's immigration status, Local Authorities are recommended to contact the UK Border Agency. Contact details are at **Annex x**. 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.

7.16 Local Authorities should ensure that staff who are required to screen housing applicants about eligibility for an allocation are given training in the complexities of the housing provisions, the Local Authority's duties and responsibilities under the Equality Act 2010 and how to deal with applicants in a sensitive manner.

7.17 Local Authorities should ensure that language and interpretation support is available for those applicants who have difficulty speaking or reading English. Consideration should be given to identifying ethnic origin and language of choice, producing information in a variety of minority languages, carefully channelling information so that it reaches its target audience; and employing staff who can speak minority ethnic languages.

## **Transitional provisions**

7.18 *The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014* came into force on 31 October 2014. All applications made before this date will still be subject to the contents of the *Homelessness (Wales) Regulations 2006*.

7.19 Once Part 2 of the 2014 Act comes into force, it is intended that regulations 5 and 6 of the eligibility Regulations will apply as if they were made under paragraph 1 of Schedule 2 to the 2014 Act.

# CHAPTER 8: DEFINITION OF HOMELESSNESS AND THREATENED WITH HOMELESSNESS

## Introduction

8.1 The purpose of this section is to explain the definition of homelessness and threatened with homelessness for the purpose of the duties in the Act.

## The Act states

### Section 55 - Meaning of homeless and threatened homelessness

- (1) A person is homeless if there is no accommodation available for the person's occupation, in the United Kingdom or elsewhere, which the person—
- (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
  - (b) has an express or implied licence to occupy, or
  - (c) occupies as a residence by virtue of any enactment or rule of law giving the person the right to remain in occupation or restricting the right of another person to recover possession.
- (2) A person is also homeless if the person has accommodation but—
- (a) cannot secure entry to it, or
  - (b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where the person is entitled or permitted both to place it and to reside in it.
- (3) A person is not to be treated as having accommodation unless it is accommodation which it would be reasonable for the person to continue to occupy.
- (4) A person is threatened with homelessness if it is likely that the person will become within 56 days.

## Guidance

### Homelessness

8.2 Under s.55 (1)-(3) Housing Act (Wales) 2014 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 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.

8.3 Under s.55 (4) of the 2014 Act, a person is threatened with homelessness if they are likely to become homeless within 56 days.

## **Threatened with Homelessness**

8.4 A person is threatened with homelessness if it is likely that they will become homeless within the next 56 days. In practice, most applicants will be threatened with homelessness when they apply for help, rather than actually homeless. Authorities must act immediately to assess their housing needs and render assistance if they are eligible. The new legislation is based on the assumption that most applicants will be assisted at this stage, so it is vital that Authorities engage proactively with people at risk of homelessness, and seek to identify them as early as possible.

8.5 In many cases it will not be clear exactly when the person may lose their home, particularly if they only have a licence to occupy. If it is unclear when the right to occupy may be withdrawn, but that it is a realistic threat in the near future, Authorities should assume that the duty to act under threatened with homelessness is triggered. Where legal action for repossession is pending, Authorities should not assume that legal delays mean that the person is not threatened with losing their home within 56 days, but rather that their home is under threat and that the duty to help prevent applies.

## **Accommodation Available for Occupation**

8.6 S.56 of the 2014 Act provides that accommodation is available for a person to occupy only if it is available for occupation by him or her together with:

- a. any other person who normally resides with him or her as a member of the family, or
- b. any other person who might reasonably be expected to reside with him or her.

8.7 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, that 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.

8.8 It is for the Local Authority to assess whether any other person might reasonably be expected to live with the applicant and there will be a range of situations which 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, 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**

8.9 There are three categories of legal right to occupy accommodation:

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

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

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

8.11 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 Local Authority will need to consider carefully whether the applicant's licence to occupy the accommodation has in fact been revoked. Local Authorities would be acting unlawfully if they insisted that the applicant obtain a letter confirming that they have been asked to leave before they entertain offering homeless assistance. Local 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.

8.12 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 through mediation, and providing the applicant with an opportunity to plan their future accommodation and pursue various housing options with assistance from the Local Authority. However, Local 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 abuse, or reasonable for them to remain where the relationship has irretrievably broken down.

8.13 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. The hosts may not be prepared for the applicant to remain due to the stress on their own position. In some cases external support, or the promise of assistance with alternative housing, may help to reduce tension and allow more time for alternative accommodation to be found to prevent homelessness. The use of family mediation services may assist here.

8.14 People who have been occupying accommodation as a tenant and who have received a valid notice to quit or a notice that the landlord intends to begin possession proceedings would have the right to remain in occupation until the date specified in an order for possession granted by the court (except those with resident landlords and certain other tenants who do not benefit from the Protection from Eviction Act 1977). However, the fact that a tenant has the 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 a court order, the Authority will need to consider whether it would be reasonable for him or her to continue to occupy the accommodation pending proceedings (see paragraph xx below).

8.15 Homeless applicants may include those who are no longer entitled to occupy accommodation because their landlord has defaulted on the mortgage of the property of which they are tenants. Where a mortgage lender starts possession proceedings, the County Court Rules require the lender to send written notice of the proceedings to the occupiers of the property. The notice must be given after issue of the possession summons and at least 14 days before the court hearing (Mortgage Repossessions (Protection of Tenants etc.) Act 2010).

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

8.16 Under s.55(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:

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

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

### **Instances where there may be no Legal Right to Occupy Accommodation consisting of moveable structures**

8.18 S.55(2)(b) provides that a person is homeless if he or she has accommodation available for his or her occupation which is a moveable structure (e.g. a caravan or houseboat) and there is nowhere that he or she can legally place it and reside in it. The site or mooring for the structure does not have to be permanent in order to avoid homelessness. Some gypsies, travellers and other people with an itinerant lifestyle (e.g. travelling show people) may move regularly between authorised sites which allow access for a limited period only.

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

8.19 S.57 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. Reasonableness to occupy has no correlation to security of tenure, so it is possible for a home owner, or a tenant with security of tenure either in the private or social rented sectors, to become homeless if it is, or becomes, no longer reasonable for them to continue to occupy their accommodation.

8.20 There are some factors which must be taken into account when considering reasonableness, as defined in the following paragraphs, but there is no simple test of reasonableness. It is for the Authority to make a judgement on the facts of each case.

## **Domestic abuse or other abuse**

8.21 S.57(1) provides that it is not reasonable to continue to occupy accommodation if it is probable that this will lead to the person, or a member of their household, being subjected to domestic abuse or abuse from a person with whom the person being abused is not associated.

S.58(1) provides that abuse in this context means physical violence, threatening or intimidating behaviour, and any other form of abuse which may give rise to harm. Domestic abuse is not confined to instances within the home but extends to abuse outside the home.

8.22 The new Act reflects the position under current law as confirmed in the case of *Yemshaw v Hammersmith*, where the Supreme Court found 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.

8.23 The likelihood of a threat of abuse being carried out should not be based on whether there has been actual abuse in the past. Assessment should be based on the facts of the case, to determine whether the abuse or threatened abuse is the cause of the homelessness. Inquiries into cases where abuse is alleged should be handled carefully and with sensitivity.

8.24 In cases involving abuse, Authorities may wish to inform applicants of the option of seeking an injunction, but there is no obligation for the applicant to do so. If applicants wish to pursue this they should be advised to obtain independent advice as an injunction may be ill-advised in some circumstances. Injunctions ordering a person not to molest, or enter the home of, an applicant will not necessarily deter that person, and applicants should not be expected to return home on the strength of an injunction. Applicants who have experienced actual or threatened abuse should

be informed of appropriate organisations in the area who can provide appropriate support and specialist advice.

8.25 When dealing with cases involving abuse or threat of abuse from outside the home, Authorities should consider with the applicant whether steps to prevent homelessness by supporting them in their current home or alternative accommodation are appropriate, such as target hardening, housing-related support or personal protection arrangements. Local 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 Local Authority, police and voluntary sector may provide a victim with the confidence to remain in their home. When dealing with domestic abuse within the home, Authorities should consider the scope for removing the perpetrator and allowing the victim to remain in their home. However where there would be a probability of abuse if the applicant continued to occupy his or her present accommodation, the Local Authority must treat the applicant as homeless and should not expect him or her to return to the accommodation.

8.26 A refuge may be suitable as emergency accommodation for some victims of domestic abuse although this should not be a precondition for being accepted as homeless. Each case should be considered on an individual basis as to whether this is the right accommodation for the applicant. Applicants are not required to remain in the refuge for a minimum period of time before an application for re-housing will be considered.

8.27 All other forms of abuse or threats of abuse likely to be carried out towards the applicant or members of his or her household will need to be taken into account when considering whether it would be reasonable for him or her to continue to occupy accommodation. Authorities will need to liaise with local race equality councils and the Welsh Government to ensure that they have appropriate arrangements for responding to hate incidents and hate crime.

## **General housing circumstances**

8.28 S.59 (3) provides that in determining whether it is reasonable for a person to continue to occupy accommodation due to its suitability, Local Authorities may have regard to the general housing circumstances prevailing in the area. This could include;

- (i) **physical conditions:** Authorities will need to consider after inspection whether the condition of the property is such as to render it unsuitable for human habitation or so bad in comparison with other accommodation in the area that it would not be reasonable to expect someone to continue to live there. The Health and Safety Rating System should be used to assess the risk and suitability to the household who are to be offered the accommodation, taking account of their particular needs, particularly for people with physical disabilities and/or children;

(ii) **overcrowding:** Authorities may wish to refer to Part 10 of the Housing Act 1985. Although statutory overcrowding, by itself, is not sufficient to determine whether it is unreasonable for the applicant to continue to live in accommodation, it can be a key factor which suggests unreasonableness. Overcrowding will need to be considered in relation to general housing conditions in the area;

(iii) **type of accommodation:** some types of accommodation are intended to provide temporary accommodation in a crisis, for example, women's refuges, direct access or limited stay hostels and night shelters, and it should not be regarded as reasonable for someone to continue to occupy such accommodation in the longer term.

8.29 The House of Lords judgment on the cause of R (Aweys and Others) v Birmingham City Council and Moran v Manchester City Council [2009], debated the definition of 'accommodation' and 'reasonable to occupy' specifically with regards to 'overcrowding or unsanitary conditions' and 'refuge' accommodation. During this debate, suitability was linked to the time that a person is expected to live in the accommodation. 'What is suitable for occupation in the short term may not be suitable for occupation in the medium term and what is suitable for accommodation in the medium term may not be suitable for accommodation in the longer term'. In considering whether or not a person is homeless because they have accommodation but it would be unreasonable to expect them to continue to occupy that accommodation, Local Authorities will need to consider if it would be reasonable for a person to continue to occupy accommodation which is available to him or her for as long as they would have to if the Local Authority did not intervene. In other words, if it would be acceptable for the applicant to remain there for a short while, but not over the longer term, then it is likely that they should be considered to be homeless.

## **Affordability**

8.30 One factor that **must** be considered in all cases is **affordability**. S.59 (2) in particular requires the Local Authority to have regard to whether or not the accommodation is affordable for that person.

In carrying out this duty Local Authorities should take account of:

- a) the financial resources available to him or her;
- b) the costs in respect of the accommodation;
- c) maintenance payments (in respect of ex-family members); and
- d) his or her other reasonable living expenses.

8.31 The numerous changes in housing benefit taking place from April 2011 may lead to an increased number of households struggling to meet their housing costs. Consideration should be given to the changes in their level of local housing allowance/housing benefit. Households should not be penalised for the loss of accommodation where it was due to an unavoidable change in their welfare benefits that led to the accommodation becoming unaffordable. In these circumstances they should be regarded as homeless or threatened with homelessness, and they should

be assisted at the earliest point to maintain the accommodation if appropriate through available resources or provided with assistance to look for alternative accommodation.

8.32 Other factors that **may** be relevant include:

**a) Tenant given notice of intention to recover possession**

Where the applicant is a tenant who has been given a valid notice to quit or a notice that the landlord intends to begin proceedings for possession, Local Authorities should consider scope for preventing homelessness through consulting the landlord at an early stage to explore the possibility of the tenancy continuing or allowing the tenant to remain for a reasonable period to provide an opportunity for alternative accommodation to be found. If the landlord does not agree, the Local 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.

In determining whether it would be reasonable for an applicant to continue to occupy accommodation, the Authority will need to consider all relevant factors and decide the weight that individual matters should attract. As well as the factors set out in s.59 of the Act, other factors which may be relevant include the general cost to the Authority, the position of the tenant, the position of the landlord, the likelihood that the landlord will actually proceed, and the burden on the courts of unnecessary proceedings where there is no defence to a possession claim.

The Welsh Government considers that where:

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

then it is unlikely to be reasonable for the applicant to continue to occupy the accommodation beyond the date given in the s.21 notice, unless the Local Authority are taking steps to persuade the landlord to withdraw the notice or delay applying to court for possession to allow the Local Authority time to make alternative arrangements for accommodation.

**b) Former armed forces personnel required to leave service accommodation**

The Ministry of Defence recognises that Local 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 8). These certificates indicate the date on

which entitlement to occupy service accommodation ends, and Local 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.

# CHAPTER 9: DUTY TO PROVIDE INFORMATION, ADVICE AND ASSISTANCE IN ACCESSING HELP

## Introduction

9.1 The legislation embraces the following key principles:

- Access to housing advice and information plays a key role in helping people make informed decisions, enforce or defend their rights and can prevent housing problems from escalating into homelessness. Thus, ensuring there is adequate provision of free, quality assured and impartial housing advice and information accessible to everyone with a housing need ought to be the cornerstone of homelessness strategies.
- To be at its most effective the provision of housing advice and information will need to be delivered within a framework that incorporates the whole range of social welfare advice and information services. A housing advice service, which includes initial contact being managed through an appropriately resourced triage service that has direct links to, debt and welfare benefit advice; training and employment services; health and social care advice, private rented sector teams, mediation services, etc, will tend to deliver the most positive and sustainable outcomes for people with housing problems. Therefore, Local Housing Authorities, when planning their housing advice and information services, ought to develop links with complementary strategies and plans e.g. Advice and Financial Inclusion Strategies, Tackling Poverty Action Plans, etc. and consider partnership working with the stakeholders who are delivering the advice and information provision within these plans to maximise the use of resources as effectively as possible.
- The impacts upon a person's health and wellbeing, which are generated through successful advice interventions, are positive and well documented, for example, these may improve mental health and raise living standards. Research on the economic value of advice services is now also providing evidence that the positive outcomes from advice and information services provide a positive contribution towards reducing public expenditure upon all statutory services. Therefore, when considering the budgetary implications of the provision of housing advice and information services, a Local Housing Authority and key stakeholders could adopt a cost benefit analysis of the level of housing advice and information and the complementary social welfare advice service provision that will be delivered within their locality.

9.2 This section of the Code will provide guidance to Local Housing Authorities on planning, developing, funding and delivering their housing advice and information service.

## The Act states

Section 60 - Duty to provide information, advice and assistance in accessing help

(1) A local housing authority must secure the provision, without charge, of a service providing people in its area, or people who have a local connection with its area, with —

- (a) information and advice relating to preventing homelessness, securing accommodation when homeless, accessing any other help available for people who are homeless or may become homeless, and
- (b) assistance in accessing help under this Chapter or any other help for people who are homeless or may become homeless.

(2) In relation to subsection (1)(a), the service must include, in particular, the publication of information and advice on the following matters—

- (a) the system provided for by this Chapter and how the system operates in the authority's area;
- (b) whether any other help for people who are homeless or may become homeless (whether or not the person is threatened with homelessness within the meaning of this Chapter) is available in the authority's area;
- (c) how to access the help that is available.

(3) In relation to subsection (1)(b), the service must include, in particular, assistance in accessing help to prevent a person becoming homeless which is available whether or not the person is threatened with homelessness within the meaning of this Chapter.

(4) The local housing authority must, in particular by working with other public authorities, voluntary organisations and other persons, ensure that the service is designed to meet the needs of groups at particular risk of homelessness, including in particular—

- (a) people leaving prison or youth detention accommodation,
- (b) young people leaving care,
- (c) people leaving the regular armed forces of the Crown,
- (d) people leaving hospital after medical treatment for mental disorder as an inpatient, and
- (e) people receiving mental health services in the community.

(5) Two or more local housing authorities may jointly secure the provision of a service under this section for their areas; and where they do so—

- (a) references in this section to a local housing authority are to be read as references to the authorities acting jointly, and
- (b) references in this section to a local housing authority's area are to be read as references to the combined area.

(6) The service required by this section may be integrated with the service required by section 17 of the Social Services and Well-being (Wales) Act 2014.

## Guidance

9.3 The Local Housing Authority is required to ensure that accessible, quality assured, advice and information about homelessness and the prevention of homelessness is available free of charge. The service is to be made accessible and available, not just to people owed a main statutory duty under Part 2 of the Housing (Wales) Act 2014, but to everyone in housing need approaching the Local Housing Authority. This includes people who are not in priority need, those who are intentionally homeless and persons from abroad who do not otherwise qualify for housing assistance. Furthermore, the Local Housing Authority must, by working with other public authorities, voluntary organisations and other persons, ensure that the advice and information service is designed to meet the needs of groups who are at particular risk of homelessness.

9.4 The outcomes from effective housing advice and information interventions generate positive economic, social and health benefits. For example, for the individual concerned, stressors are reduced which will improve their mental health and their income can be maximised which will improve their living standards, whilst for the Local Housing Authority, there will be cost savings through the prevention of their housing problems escalating. The Welsh Government strongly urge Local Housing Authorities to give serious and significant attention to the scale and scope of services they provide in order to fulfill their Section 60 duties, and the provision of housing advice and information ought to form the foundation for an Authority's homelessness strategy.

9.5 Good quality advice and information services can enable people, particularly those with complex problems or from a group which is at a particular risk of homelessness, i.e. ex-offenders, care leavers, etc., to fully explore the range of options available to them and achieve the most favourable and sustainable outcome to their housing difficulties.

9.6 Often a housing need will have underlying links to other financial or personal problems a person is experiencing. For example, a person struggling to pay their rent or mortgage and who is, or may become, at a risk of losing their home because of rent or mortgage arrears will need advice on their housing rights and also advice on maximising their household income, managing debts, etc. For some people the provision of the appropriate advice and information will be sufficient to enable them to resolve the underlying problem/s that has created their housing need. However, for many people, for example, those whose problems are more complex or who are vulnerable, will require more than the advice on their social welfare rights, they will also need practical assistance and support to claim welfare benefits, negotiate with creditors, or develop their personal budgeting skills, etc.

9.7 Therefore, the Welsh Government recommend that Local Housing Authorities consider the value of enhancing their housing advice and information services through ensuring people have a holistic assessment to identify any underlying issues that may be contributing to their housing problems and have ease of access to a range of social welfare advice and support services.

9.8 Through planning their advice services with key partners, Local Housing Authorities can ensure that all appropriate services adopt a similar holistic person centered approach and enable a clear pathway to be developed through which people at a risk of homelessness can have ease of access to proactive advice and support that will help them resolve their problems, enforce their housing rights and prevent them becoming homeless. [\(hyperlink to prevention chapter\)](#).

## **Who Provides the Advisory Service?**

9.9 As the legislation does not specify how an Authority should meet the requirement to secure the provision of advisory services, Local Housing Authorities can choose to meet this duty in a number of ways. For example, through providing the service themselves, commissioning another organisation to provide the service, or providing the service in collaboration with another organisation.

9.10 Collaboration with other providers will assist the Local Housing Authority to make informed decisions on the scale and scope of their advice service. Local Housing Authorities will also determine decisions on the extent of the housing advice and information service provision after taking into account other factors, such as, local housing circumstances, available resources, the effectiveness of different methods of delivery and the level of service provision required. Where there is a wide range of housing conditions and communities within a single authority area, the Authority may wish to consider securing the provision of a variety of types of advisory services with a range of delivery systems.

9.11 Decisions about how to provide advisory services are matters for Local Housing Authorities. However, Local Housing Authorities will be very aware that there will be occasions where a person will need to challenge the legality of a decision made by the Authority. Thus, the availability of independent housing advice will help to minimise the potential for concerns around conflicts of interest arising when the authority solely provides the housing advisory services. However, Authorities are urged to recognise that, whatever type of provision is made, they should ensure that the advice and information service is viewed as being impartial, available, and accessible to everyone in the locality. These factors ought to be recognised in agreements whether or not a Local Housing Authority funds an independent provider to deliver services. Therefore, Local Housing Authorities are encouraged to establish explicit Service Level Agreements or protocols with independent advice providers, which clarify roles and defines how services will work together to achieve shared objectives.

9.12 The Welsh Government suggest Local Housing Authorities work collaboratively with key stakeholders to ensure the advisory service delivered under s.60 of the Housing Act (Wales) 2014 is planned on a strategic basis and has strong links with other complementary strategies that include the delivery of advice and information services.

## **Funding Voluntary Sector Agencies**

9.13 In considering how to meet their s.60 duties, Local Housing Authorities may also want to review and evaluate the current funding arrangements for voluntary

sector advice services in their area. Frequently, the funding of advice and information services will not be solely a matter for the Local Housing Authority. Therefore, they should work in partnership with other stakeholders who commission and/or fund advice and information services to maximise available resources and reduce the potential for duplication of effort.

9.14 Local Housing Authorities ought to develop a co-ordinated approach to funding of advice and information services between the various departments within their Authorities. Not only will this promote the effective use of available resources it will also help towards engendering a better understanding across the Authority of the wider statutory homelessness duties within the Housing Act (Wales) 2014 and a corporate approach to the fulfilment of these duties.

9.15 In some areas, it may be appropriate for a Local Housing Authority to fund or provide a service jointly with neighbouring Authorities. Such an approach may reduce budgetary costs for each participating authority and provide a better resourced service for the people that generates improved and sustainable outcomes.

9.16 The Welsh Government's Review of Advice Services (2013) makes a series of recommendations related to the funding of social welfare advice services. One of the recommendations is that the funding for social welfare advice services should be '*outcome focused*' and, where practical, be '*made on a longer term basis*' to enable a provider to plan their services more effectively. In funding the voluntary sector, reference ought to be made to the Welsh Government's 'Code of Practice for Funding the Voluntary (Third) Sector'. An updated version of the Code of Practice was published in January 2014.

## Assessing Advice Provision

9.17 In order to demonstrate that the requirements of s.50 of the Housing (Wales) Act 2014, '*duty to carry out a homelessness review and formulate a homelessness strategy*' ([hyperlink to homeless strategies chapter](#)), are being fully met, Local Housing Authorities will need to periodically assess the provision of housing advice and information services in their area. Regular assessment, perhaps as a part of their housing strategy or within a wider review of all advice service provision within their locality, would give Authorities the opportunity to consider which services they continue to provide and/or commission. Reviewing current service provision could also help to:

- determine the nature of the provision and the role(s) of the agency(ies);
- analyse the need/demand for services, map all available resources and identify any gaps or duplication in provision;
- establish the needs of particular groups;
- make clear the role which the Local Authority themselves will play in the provision of the advice and information service and what implications this may have for Third/voluntary sector agencies;
- develop and implement effective partnership arrangements with key stakeholders for the strategic planning, funding, and joint delivery of advisory services;

- make projections for future service provision based upon current and emerging trends; and
- objectively appraise the quality and effectiveness of services being provided.

## **What Service should be offered?**

9.18 It is important that the Local Housing Authority proactively publicise their housing advice and information service to ensure that people and service providers within their area are made aware of the service, how it is accessed, and the scale and scope of the help that can be obtained by accessing the service.

9.19 Advice and information is not defined in the legislation, however, Local Housing Authorities are required to design a housing advice and information service that is able to demonstrate that it is providing services that meet the specific needs of groups who are at a particular risk of homelessness, e.g. ex-offenders, people with mental health problems, etc.

9.20 A Local Housing Authority will be required to provide a housing advice and information service that is free, impartial, confidential, and where required by the user, free of any conflict of interest, real or perceived. The delivery of the advice and information service should be made available through multiple channels (face-to-face, telephone, web based) and be equally accessible to all users regardless of their communication requirements and/or their locality, i.e., urban or rural.

9.21 Regardless of whether the advice and information service is provided directly by the Local Housing Authority or by another provider, it is important that the service being delivered conform to publicly recognised quality standards (Advice Quality Standards, Specialist Quality Mark, etc) applicable to the type of service being provide, i.e., advice or advice with casework, etc.

9.22 In the Welsh Government's Review of Advice Services (2013) assuring service standards throughout the advice and information sector was highlighted as being a key area for development in order *"to promote greater consistency across the sector and enable greater partnership working, based on trust, understanding and respect for different working practices"*. The review went on to recommend that the *"Welsh Government should support the development of National Standards for Information and Advice, working with the advice sector, and based upon existing standards and frameworks"*.

9.23 To be at its most effective, particularly in the prevention of homelessness, Local Housing Authorities ought to deliver the provision of housing advice and information within a framework that incorporates the whole range of social welfare advice and information services. A person-centred housing advice service and has direct links to, debt and welfare benefit advice; training and employment services; health and social care advice, private rented sector teams, mediation and counselling services, etc, will deliver the most positive and sustainable outcomes for people with housing problems.

9.24 The Welsh Government recommend that a Local Housing Authority adopt a strategic approach to the planning of the housing advice and information services

that ensures effective partnerships and collaborative working with relevant statutory and non-statutory service providers. The strategic planning will also seek to establish connections between local advice and information providers to encourage partnership working between providers and the sharing of resources/best practices.

9.25 In the Review of Advice Services (2013), a recommendation was made for the Welsh Government to establish “a National Advice Network to ensure strategic coordination of advice services, increase shared learning and make best use of available resources. The Welsh Government strongly supports this recommendation as proactive and efficient networking between advice and information providers will help to manage the problems being created through the ‘increase in demand for access to advice services during a period where there is a decrease in available funding for such services’.

## **What Advice and Information?**

9.26 The legislation enables a Local Housing Authority to determine, based upon local housing circumstances and an assessment of local needs, etc, the scale and scope of the housing advice and information service within their locality. However, the service must primarily be about homelessness and the prevention of homelessness and designed to meet the needs of specific groups who are at particular risk of homelessness.

9.27 The list below provides some examples of the type of information and advice that will be sought by a person seeking assistance, particularly when the advice is required to prevent homelessness.

- local housing opportunities, including private sector options and low cost home ownership;
- Local Authority and RSL housing registers and allocations policies;
- landlords and letting agents;
- housing status, security and rights of occupation;
- discrimination, harassment and illegal eviction;
- possession proceedings;
- consequences of relationship breakdown, and implications for homelessness;
- domestic abuse;
- income maximisation - welfare benefits, housing benefit;
- rent levels;
- Private Rented Sector access services;
- rent deposits, and how to retrieve them;
- rent and mortgage arrears, and other money or debt issues which could lead to homelessness;
- Local Authority duties towards homeless households;
- housing conditions, improvements, adaptations, grants and repairs;
- leaseholders rights and service charges, and mortgage disputes;
- the needs of particular households including young single people, people from diverse ethnic backgrounds, people with disabilities, women, older people and lesbian, gay and bisexual people;
- supported housing projects; and,

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

9.28 The above list is for illustrative purposes only and is not intended to be a full list of the type of advice and information services that should be provided. ([hyperlink to prevention chapter](#)).

9.29 To maximise the use of available resources, a Local Housing Authority may wish to consider the merits of designing their housing advice and information service to include an appropriately resourced triage at the point of initial contact. An effective triage will enable all the person's problems (and the potential solutions) to be identified at the earliest juncture and allow the person to be seamlessly referred to other advice services, which will assist in the implementation of solutions and alleviate, as far as practical, the housing problem.

9.30 Increasingly, Local Housing Authorities are also considering to co-locate services in order to provide a holistic advice service to people seeking assistance on a housing problem and ensure that there is ease of access to complementary services, which will offer positive support to the alleviation of their housing problem. For example, a Local Authority may consider delivering the provision of housing advice services alongside welfare benefits and money advice services, employment and training services, etc.

## Standards

9.31 The Welsh Government recommends that housing advice and information services ought to be designed around the needs of service users, particularly those from groups at most risk of experiencing homelessness to ensure they are accessible, effective and person-centred. Therefore, whether providing the housing advice and information service themselves or, securing it from another provider, Local Housing Authorities ought to consult with local people/service users in a manner that encourages and enables their engagement so they can help shape the delivery of the housing advice and information service.

9.32 Shelter Cymru has developed the "Equal Ground" Service User Standard Framework. The Framework will guide Local Housing Authorities on the principles, which constitute good practice about providing a good quality service, and will help shape the involvement of service users in development of their services.

9.33 To promote the most effective use of available resources and a customer focused service delivery, it is important that people seeking assistance are not sent back and forth between various departments/agencies and that they are not referred inappropriately. The Welsh Government recommends the Local Housing Authority to develop close liaison with internal departments, i.e., Social Services and external advice providers and implement formal referral arrangements to ensure that people receive assistance as seamlessly and timely as possible.

9.34 Local Housing Authorities will need to ensure that effective monitoring and evaluation procedures are in place, to monitor the quality and the outcome of information and advice (e.g. through quality audits and customer surveys) and to

evaluate performance against the objectives within service plans. To enable the Local Housing Authority to properly monitor the service provision it is essential that the Authority ensures the advice provider/s have appropriate measures in place that allows them to accurately record all advice given and outcomes that are obtained, etc.

9.35 A Local Housing Authority ought to keep the effectiveness of the service under review, and to measure outcomes and customer satisfaction levels, to ensure the service is meeting the needs of all sections of the community and is providing a customer focused and accessible service. A service provider who is delivering services within a quality assured framework will be required to demonstrate they are complying with such factors and will therefore have information available to the Local Authority. However, Local Housing Authorities may also want to establish their own monitoring procedures to measure performance of providers.

9.36 The Welsh Government realise that service standards can only be maintained if advice and information services are suitably resourced. This ought to include access to updated legal and good practice information, as well as resources for training and for promoting the service. When implemented, the Welsh National Advice Network will be a valuable means of enabling providers to share good practice, etc, as the network aims to *“increase shared learning across the advice and information sector and allow services to make best use of their available resources”*.

## **Accessibility**

9.37 The Local Housing Authority will need to ensure that the housing advice and information service is accessible to all those who may have need of the service. Therefore, effectively promoting the housing advice and information service is of importance and Local Housing Authorities, together with partner organisations if appropriate, ought to employ the most efficient means of publicising the service and ensuring that accessible information is widely disseminated across the locality. For example, people will need to know how to access the service and that the service is available not only to homeless people but to any person seeking information about housing problems. The Local Housing Authority, together with its partners, may also want to publicise other homelessness prevention initiatives, for example, court duty schemes, where a solicitor/housing advisor is present at court to give on-the-spot assistance to people subject to possession proceedings, etc.

9.38 Local Housing Authorities ought to ensure that the advice and information services are delivered through appropriate channels, which ensure the services being provided are accessible. For example, an Authority may wish to consider the contribution that information technology and a telephone advisory service can make to ensure a service is widely available and easily accessible, particularly in rural areas.

9.39 Authorities will also need to ensure that the information provided is accurate, up to date and accessible, for example, in a range of relevant languages, and in Braille and/or on tape for people with a visual impairment. The advice services must also be available in Welsh where this is required by the Authority's Welsh language scheme.

9.40 It is important that Local Housing Authorities work proactively to deliver its services to people with diverse needs and this equally applies with the delivery of the housing advice and information service. Therefore, the delivery arrangements of the service ought to be tailored accordingly to ensure it is accessible to meet the requirements of all people within the locality. This will require delivery through outreach surgeries and other initiatives that aim to target specific groups, such as people from different ethnic backgrounds, ex-offenders, etc. Local Housing Authorities may find it beneficial to work locally and regionally with the youth and Third/voluntary sectors to ensure that services meet the particular needs of young people, disabled people and other groups with particular needs.

9.41 Services should be designed to be customer-friendly for all groups, particularly those people who find communication problematic. Local Housing Authorities may find it appropriate to work with specialist services to augment the main housing advice service, perhaps on a regional level and they ought to make use of available information and guidance on delivering services to particular groups, for example, the Welsh Government has published guidance on providing housing advice to people with an Autistic Spectrum Disorder.

9.42 The premises from where the housing advice and information service is to be delivered will need to be accessible to people with physical or sensory disabilities. Where this is not possible, an alternative, accessible venue for the delivery of service will need to be identified, or, if appropriate, the offer of a home visit should be considered. However, the offer of a home visit will need to be handled sensitively, as the person may not always wish to discuss their housing situation within their home environment.

9.43 Local Housing Authorities can encourage more people within their locality to access housing advice by increasing awareness of free telephone and on-line advice and information services, which are available. These include:

- Shelter Housing Advice Freephone Line - **0845 075 5005**
- Shelter Cymru, On line Advice Service  
[www.sheltercymru.org.uk/get/advice](http://www.sheltercymru.org.uk/get/advice)
- Housing Debt Helpline Wales - **0800 1071340**  
Website: [www.housing-debt-helpline-wales.org.uk](http://www.housing-debt-helpline-wales.org.uk)

## **Groups at Particular Risk**

9.44 Local Authorities are required to ensure that advice services are designed to meet the needs of vulnerable groups, in particular,

- a) People leaving prison or youth detention accommodation
- b) Young people leaving care
- c) People leaving the regular armed forces of the Crown
- d) People leaving hospital after medical treatment for mental disorder as an inpatient
- e) People receiving mental health services in the community

9.45 This means that they will need to ensure that information, advice and assistance is particularly tailored to meet the needs of these groups. That can best be achieved by working in partnership with the relevant Local Health Board, criminal justice services, social services and armed forces welfare advice agencies.

# CHAPTER 10: DUTY TO ASSESS AND MAKE APPLICATIONS

## Introduction

10.1 Good assessment is a complex activity which involves not just the gathering of facts but an understanding of what information is needed, why it is needed and a rigorous and methodical analysis of the material in order to determine effective intervention.

10.2 It is important that the assessment is considered in the overall context of providing a service to those in housing need. Staff should adopt a person-centred, non-judgemental, proactive approach that focuses on finding solutions to housing problems. It is essential that the assessment enables a Local Housing Authority and the applicant to work in partnership to identify the most suitable reasonable steps to take to prevent homelessness or help to secure accommodation.

10.3 A Local Housing Authority's staff must be equipped with the necessary skills, training and knowledge for an assessment to be effective. It must ensure that members of its staff are confident that they have the right skills for the tasks they must undertake and are fully supported in their role. Staff will need to be fully versed on the homelessness legislation so that they apply it correctly and provide clients with accurate legal advice and information on their housing rights as well as having the skills to conduct person-centred assessments that help people to find solutions that work for them. Staff will need to be aware of the local services available in their area so they are able to signpost applicants appropriately. The Welsh Government recommends the development of a regional service directory which can help officers and applicants identify available support.

10.4 Key to a thorough assessment will be joint working with other Local Authority departments such as social services and education and other organisations such as housing associations, probation, local health boards, voluntary organisations, local support service providers, independent advice agencies and credit unions. Protocols for sharing information on the housing and other needs of applicants who are homeless or threatened with homelessness are essential as well as developing appropriate support planning systems, which clearly define roles and responsibilities to meet those needs.

10.5 The priority is that the assessment and the decision are correct. However, it is the view of the Welsh Government that wherever possible, Local Authorities should aim to complete each stage of the assessment and notify the applicant of their decision within 10 working days.

10.6 This section of the Code will provide guidance on when and what a Local Housing Authority must assess, and the need to keep the assessment under review.

## When a local housing authority must assess.

### The Act states

#### Section 62 Duty to Assess

- (1) A local housing authority must carry out an assessment of a person's case if—
- (a) the person has applied to a local housing authority for accommodation or help in retaining or obtaining accommodation,
  - (b) it appears to the authority that the person may be homeless or threatened with homelessness, and
  - (c) subsection (2) does not apply to the person.
- (2) This subsection applies if the person has been assessed by a local housing authority under this section on a previous occasion and the authority is satisfied that—
- (a) the person's circumstances have not changed materially since that assessment was carried out, and
  - (b) there is no new information that materially affects that assessment.
- (3) In this Chapter, "applicant" means a person to whom the duty in subsection (1) applies.

### Guidance

10.7 S.62(1)(a) and (b) state if it appears to an Authority that a person may be homeless or threatened with homelessness and the person has applied for accommodation or help in retaining or obtaining accommodation then a Local Housing Authority must carry out an assessment of the person's case. Under s.62(5) and (6) this includes the person's circumstances, housing need, the support needed by the applicant or any person with whom the applicant lives or who might reasonably be expected to live to retain accommodation and seek to identify the outcome the applicant wishes to achieve from the Authority's help.

10.8 Applications can be made by anyone 16 or over, to any department of the Local Housing Authority and expressed in any form, they need not be expressed as explicitly seeking assistance under Part 2 of the 2014 Act. Applications could be in person or over the phone, verbal or written. Applications can 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 where the applicant is unable to make the application themselves provided they have given permission or evidence is provided that they do not have capacity to make an application themselves.

10.9 So long as there is a request for accommodation, or help in retaining or obtaining accommodation, and the information provided gives the Local Housing Authority a reason to believe that the applicant **may** be homeless or threatened with homelessness within 56 days, then the duty under section 62 arises and a deemed application for homelessness assistance has been made. As soon as an application

has been made, the Local Housing Authority has a duty to complete an assessment in accordance with s.62 of the 2014 Act.

10.10 If there is any doubt as to whether or not the applicant may be homeless or threatened with homelessness within 56 days, then the Local Housing Authority should err on the side of caution and begin the assessment process in order to determine whether or not the Authority has any duty to the applicant under the provisions of the Act.

10.11 S.62(1)(c) the Act says that the Local Housing Authority does not have to carry out an assessment if s.62(2)(a) and (b) apply.

10.12 S.62(a) and (b) state that where an applicant has previously been assessed and the applicant's circumstances have not changed materially since that assessment was carried out and there is no new information that materially affects the assessment then a new assessment is not required.

10.13 The decision to not complete a new assessment should not be based on a defined period of disqualification. It is for the Local Housing Authority 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 retaining or obtaining accommodation. In *Rikha Begum v Tower Hamlets* 2005 the Court of Appeal confirmed that where any change of circumstances which amounted to an 'intensification' of homelessness had occurred since the original decision, a new application can be made even if that aspect of the original decision had not directly led to the ending of the original application. Therefore, if the Authority has reason to believe that the person is homeless, or threatened with homelessness, the Authority should carry an assessment under s.62 and decide whether any duty is owed under the 2014 Act.

## **Assessing if the applicant is eligible for help.**

### **The Act states**

#### Section 62 Duty to Assess

(4) The authority must assess whether or not the applicant is eligible for help under this Chapter

And

(7) A local housing authority may carry out its assessment of the matters mentioned in subsections (5) and (6) before it has concluded that the applicant is eligible for help under this Chapter.

## Guidance

10.14 Local Housing Authorities have a statutory duty to assess applications from people who may be homeless and who seek help in retaining or obtaining housing, in order to decide whether any duty to provide assistance is owed to that person. Schedule 2 of the 2014 Act includes provisions that deny eligibility for housing assistance to certain groups of person from abroad. Local Authorities will therefore need to satisfy themselves that applicants are eligible before providing homelessness assistance. The provisions on eligibility are complex and Local Authorities will need to ensure that they have procedures in place to carry out appropriate checks on housing applicants. [Hyperlink to chapter on eligibility](#)

10.15 S.62(7) allows for a Local Housing Authority to carry out its assessment of the applicant's circumstances, housing need, the support needed by the applicant or any person with whom the applicant lives or who might reasonably be expected to live to retain accommodation and wishes, before a conclusion has been reached on the applicant's eligibility for help. The provisions on eligibility are complex and may take some time to assess. It is therefore in the best interest of both the applicant and the Local Housing Authority to seek as full an understanding of the applicant's circumstances, housing and related support needs and wishes as early as possible so that once eligibility is confirmed prevention and/or relief can commence immediately. If the applicant is found ineligible they must still be provided with information, advice and assistance.

### What an Authority must assess.

#### The Act states

##### Section 62 Duty to Assess

- (5) If the applicant is eligible for help under this Chapter, the assessment must include an assessment of—
- (a) the circumstances that have caused the applicant to be homeless or threatened with homelessness;
  - (b) the housing needs of the applicant and any person with whom the applicant lives or might reasonably be expected to live;
  - (c) the support needed for the applicant and any person with whom the applicant lives or might reasonably be expected to live to retain accommodation which is or may become available;
  - (d) whether or not the authority has any duty to the applicant under the following provisions of this Chapter.
- (6) In carrying out an assessment, the local housing authority must—
- (a) seek to identify the outcome the applicant wishes to achieve from the authority's help, and
  - (b) assess whether the exercise of any function under this Chapter could contribute to the achievement of that outcome.
- (7) A local housing authority may carry out its assessment of the matters mentioned in subsections (5) and (6) before it has concluded that the applicant is eligible for help under this Chapter.

## Guidance

10.16 A thorough assessment of the circumstances that have caused the applicant to be homeless or threatened with homelessness and their housing needs must take place in order to determine what duty, if any, is owed to an applicant. The assessment should be person-focused and seek to identify if any support is needed by the applicant and their family in order to retain the accommodation they are currently living in or any accommodation that may become available to them as a result of the duty owed. The outcome that the applicant wishes to achieve must also be sought and the Authority must assess if it can help to achieve that outcome. Contact with the applicant should be conducted in such a way that allows the applicant to participate in discussions and processes that affect them, enabling them to make informed choices and encouraging them to take ownership and responsibility for decisions that are made. The applicant should be provided with a realistic outline of the options available and what can be provided given the local housing market, the current waiting times for appropriate social housing, and the cost of private renting in the areas of their choice including whether this could be affordable to them.

10.17 The Welsh Government recommends that Local Housing Authorities sign up to a Customer Service Standards Charter. Shelter Cymru, in participation with service users, have produced the “Equal Ground” a service Standard Framework (attached at annex ?) which a Local Housing Authority is recommended to adopt (see 9.32). The Welsh Government recognises that some Local Authorities will already have corporate standards that staff must adhere to.

10.18 The range of circumstances and needs of people using a Local Housing Authority’s homeless services is varied. Applicants must be assessed in a consistent way. To ensure this, and that decisions reached are fair, it is important that the findings and outcome of all assessments are documented. Assessments should be quality checked by Team Leaders to ensure consistent practice and quality across the service.

10.19 A recommended template for the assessment is included in the Annexes. A Local Housing Authority can choose to use or adapt this template or choose to develop one specific to them. If the Local Authority chooses to develop their own, they must ensure that it covers all the required elements of the duty.

10.20 The Welsh Government strongly recommends that the outcome of the assessment is then used to inform a housing plan detailing the steps to be taken both by the Authority and individual to address the situation. A recommended template for the housing plan is included in the Annexes. A Local Housing Authority can choose to use or adapt this template or to develop one specific to their requirements.

10.21 Applicants must be given some indication of the length of time the application process will take, and should be kept well informed of the progress of their application, and what inquiries the Local Authority will make at each stage of the process.

## Assessment of circumstances

10.22 The assessment should be based on the facts of the case. Authorities will need to take into account all of the circumstances surrounding the case and consider all of the information available to it when reaching a decision. Applicants must be given the opportunity to fully explain the circumstances that have led to their application. Local Housing Authorities must take account of any factors that may make it difficult for the applicant to explain their situation fully such as health problems, disabilities and whether Welsh or English is not a first language or where, because of the circumstances of the applicant's homelessness such as they are a victim of domestic abuse, it is particularly difficult for them to discuss. The circumstances surrounding an applicant's case may be complex and a Local Housing Authority must be prepared to consider a number of factors before they are satisfied that they have the facts of the case before them.

10.23 The obligation to complete a thorough assessment, and satisfy itself whether a duty is owed, rests with the Local Housing Authority and it is not for applicants to "prove their case". The burden of proof lies with the Authority. It is important that the applicant has been 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 or they are not priority.

## Assessment of housing needs

10.24 The Local Housing Authority has a duty to assess the housing needs of the applicant and any person with whom the applicant lives or might reasonably be expected to live. In practice this means that a Local Housing Authority must take account of factors such as any medical and/or physical needs, and any social considerations which might affect the decision they are reaching. In particular a thorough assessment of the applicant's housing needs will inform the reasonable steps used by the Local Housing Authority in the carrying out of its duty under s.66 duty to help prevent homelessness ([hyperlink](#)) and s.73 duty to help secure accommodation ([hyperlink](#)) and s.75 duty to secure accommodation ([hyperlink](#)).

10.25 The discharge of these duties are dependent on the offer of suitable accommodation. The Local Housing Authority will, therefore, need to ensure that any identified housing need is taken fully into account when discharging its duty. ([hyperlink to suitability of accommodation chapter](#)).

## Assessment of support needs

10.26 The Local Housing Authority has a duty to assess whether any support is needed by the applicant and their family in order to retain accommodation which is or may become available. As this part of the assessment is particularly concerned with helping an applicant to retain their accommodation or if new accommodation is provided to sustain that accommodation, it is important that the Local Housing Authority assess if an applicant has, or could have, a particular difficulty in sustaining a tenancy. Factors that should be taken into account include poverty, outstanding debt, physical or mental ill health or physical or mental disability or where there is a

history of rough sleeping. In some circumstances an applicant's homelessness is caused not by a structural factor such as loss of a job or the end of a private rented tenancy but by an unmet support need which if not addressed is likely to lead to repeat homelessness. Identification of an unmet support need may also indicate what type of accommodation would be appropriate.

10.27 All Local Authorities should have a mechanism for assessing housing support needs. Officers should be trained to look for triggers that would indicate that an applicant may benefit from some degree of housing support in the short or longer term. This should be built into the assessment.

10.28 Close links with Supporting People funded services and in particular Tenancy Support Units that offer both generic and specialist floating support are particularly important. Local Housing Authorities should consider embedding support services and staff within their Housing Options team.

### **Assessment of duty owed**

10.29 In carrying out an assessment the Local Housing Authority will need to use the information gathered in order to decide if any duty is owed to the applicant under any of the provisions of the Chapter. The specifics of the duties can be found in other areas of the Guidance, see the links below.

- S.66 Duty to help to prevent an applicant from becoming homeless ([hyperlink](#))
- S.68 Interim duty to secure accommodation for homeless applicants in priority need ([hyperlink](#))
- S.70 Priority need for accommodation ([hyperlink](#))
- S.73 Duty to help secure accommodation for homeless applicants ([hyperlink](#))
- S.75 Duty to secure accommodation for applicants in priority need when the duty in s.73 ends ([hyperlink](#))

10.30 The analysis of the information gathered on the housing and support needs of the applicants and their household as well as their wishes will then inform how the identified duty should be met.

### **Assessment of the applicant's wishes**

10.31 The assessment should include a consideration of the outcome that the applicant wishes to achieve. This could include a wish to be in a specific location that is close to family, work or a specialist facility such as a hospital or special school, employment, or caring responsibilities or other desired outcomes such as cultural needs, links with a particular community and the services available in the area, services being received from adult care or child and family. The Local Housing Authority should make the applicant aware of the realistic options available to them which will enable the applicant to have a reasonable expectation of what can be done.

The assessment should be designed to engage the service user in the process. It should reflect their own views and understanding as participation tends to encourage

individuals to take more ownership and responsibility for decisions that are made. The Welsh Government recommends the use of a personal housing plan which details the applicant's desired outcome, the housing support needs of the applicant, the reasonable steps to be taken and an agreement on the actions the applicant and the Local Housing Authority, or an organisation on behalf of the local housing authority, are expected to undertake. A recommended template for the housing plan is included in the Annexes. A Local Housing Authority can choose to use or adapt this template or to develop one specific to their requirements.

10.32 In order to be person-centred, consistent and transparent, a Local Housing Authority should develop its own procedure to be followed by all staff for conducting an assessment of an individual and their families. As a guide the checklist below may be useful:

- Explain the process of the assessment clearly
- Describe its purpose
- Recognise the applicant's current circumstances
- Recognise the applicant's housing and related support needs
- Recognise the applicant's wishes
- Be aware of any cultural, social & racial issues
- Avoid jargon or over reliance on legal terms and phrases without giving a full explanation
- Explain what duty, if any, is owed to the applicant and the responsibility of the Local Housing Authority
- Describe any restrictions on choice imposed by the legislation or local policy and a realistic outline of options and what can be provided given the local housing market, the current waiting times for the appropriate social housing and the cost of private renting in the areas of their choice
- Explain what contribution the Authority can make to the applicant's wishes
- Explain the responsibilities of the applicant in the process
- Explain and discuss confidentiality and agree who has access to the assessment.
- Obtain permission to share information
- Agree timescales for agreed actions to take place
- Require the signature of the officer and the applicant
- Make available a copy of the outcome of the assessment and resulting plan
- Review the assessment and plan on a regular basis

**Whether the exercise of any function under this Chapter could contribute to the achievement of the outcome the applicant wishes to achieve.**

10.33 Once the Local Housing Authority has identified the outcome that the applicant wishes to achieve then it must further assess whether the application of any of the duties under the provisions in the Chapter can contribute to the achievement of the outcome.

10.34 The Act is clear that there is no expectation that the Authority must meet the wishes of the applicant unless it is able to do so within the functions detailed in

the Chapter and within the constraints of the local housing market and their own resources.

10.35 Much of the contribution that can be given to applicants to help them realise the outcome that they want will be based on the reasonable steps that the Authority must use when fulfilling its duties under this Chapter ([hyperlink to prevention chapter](#)).

10.36 It will be important for the Authority, where possible, to link the wishes of the applicant to the reasonable steps taken. This will provide proof that the applicant's wishes have been considered both from the position of engaging the applicant in the process and from the Authority's legal obligation to provide evidence of the work it has completed.

## **Applications to more than one Authority**

10.37 In some cases, applicants may apply to more than one Local Authority simultaneously and Authorities will need to be alert to cases where an applicant is doing this. Where a Local Authority has reason to believe that the applicant may be homeless or threatened with homelessness, it may wish to contact the other Authorities involved, to agree which Local Authority will take responsibility for conducting inquiries and if necessary providing interim accommodation. Where another Local Authority has previously made decisions about an applicant's circumstances, a Local Authority considering a fresh application may wish to have regard to those decisions. However, Local Authorities should not rely solely on decisions made by another Local 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 2 of the Housing (Wales) Act 2014.

## **Keeping the assessment under review.**

### **The Act States**

#### Section 62 Duty to Assess

(8) A local housing authority must keep its assessment under review during the period in which the authority considers that it owes a duty to the applicant under the following provisions of this Chapter or that it may do so.

(9) A local housing authority must review its assessment in the following two cases—

Case 1 - where an applicant has been notified under section 63 that a duty is owed to the applicant under section 66 (duty to help to prevent an applicant from becoming homeless) and subsequently it appears to the authority that the duty under section 66 has or is likely to come to an end because the applicant is homeless;

Case 2 - where an applicant has been notified under section 63 that a duty is owed to the applicant under section 73 (duty to help to secure accommodation for homeless applicants) and subsequently it appears to the authority that the duty in section 73 has or is likely to come to an end in circumstances where a duty may be owed to the applicant under

section 75 (duty to secure accommodation for applicants in priority need when the duty in section 73 ends).

(10) The duty in subsection (5)(c) does not require a local housing authority to assess whether or not a duty would be owed to the applicant under section 75 unless and until it reviews its assessment in accordance with subsection (9) in the circumstances described in case 2 of that subsection; but it may do so before then.

(11) Subsections (9) and (10) do not affect the generality of subsection (8).

## Guidance

10.38 The duties owed to applicants who are homeless or threatened with homelessness under the Housing (Wales) Act 2014 can change as their circumstances change see s.62(9). For this reason, an applicant's assessment must be kept under review.

10.39 For all applicants there will be at least a two stage assessment if the steps taken under s.73 do not relieve the homelessness. Firstly, an assessment will be made to see if a duty is owed under s.73 duty to help secure accommodation ([hyperlink](#)) and when this duty is concluded a review of the assessment to decide if the s.75 duty to secure accommodation ([hyperlink](#)) is owed.

10.40 Where applicants have been assessed to see if the section 66 duty to help prevent homelessness ([hyperlink](#)) is owed and unsuccessful action is taken to prevent homelessness, if they then become homeless their assessment will need to be reviewed in order to inform what further reasonable steps can be taken under the s.73 duty to help secure accommodation.

10.41 Should an applicant request interim accommodation whilst they are owed the s.73 duty to help secure accommodation the assessment will need to be reviewed in order to determine if they are in priority need and therefore entitled to it.

10.42 It is important to note that an applicant cannot be assessed on first contact for the s.75 duty to secure accommodation ([hyperlink](#)), since they will always need to be assessed for the s.73 duty to help secure accommodation duty first and in some cases an assessment for the s.66 duty to help prevent homelessness will have also been carried out.

10.43 The assessment process and the form used will be key to ensuring that officers are not repeating assessments but are able to build on information and decisions already made. It is essential that the Authority has a clear process in place for their officers to follow and a comprehensive assessment form which allows information gathered and decisions reached to be recorded, plans to be clearly laid out and the assessment to be reviewed at the key stages.

## Not able to change decision when made

10.44 Once a Local Authority has notified an applicant that he or she is entitled to one of the duties under this Chapter, they cannot normally – unless the decision is subject to a request for a review – change their decision. The duty under s.62(8) to

keep the assessment under review is only applicable as set out above and is not for a Local Authority to change a decision once made.

10.45 Loss of priority need after acceptance of the duty under s.75 duty to secure accommodation does not entitle an Authority to make a new decision that no further duty is owed. Instead, the duty must be brought to an end in one of the ways set out in s.76. **Case example needed**

10.46 There are some recognised exceptions

- i) Where an applicant has deliberately misled an Authority;
- ii) Where there has been a fundamental mistake of fact;
- iii) Where there has been a decision adverse to the applicant's interests and an Authority wishes to re-open the decision, e.g. because new information has come to light.

## Notice of outcome of assessment

### The Act states

#### Section 63 Notice of the outcome of assessment

(1) The local housing authority must notify the applicant of the outcome of its assessment (or any review of its assessment) and, in so far as any issue is decided against the applicant's interests, inform the applicant of the reasons for its decision.

(2) If the authority decides that a duty is owed to the applicant under section 75, but would not have done so without having had regard to a restricted person, the notice under subsection (1) must also—

- (a) inform the applicant that its decision was reached on that basis,
- (b) include the name of the restricted person,
- (c) explain why the person is a restricted person, and
- (d) explain the effect of section 76(5).

(3) If the authority has notified or intends to notify another local housing authority under section 80 (referral of cases), it must at the same time notify the applicant of that decision and inform him or her of the reasons for it.

(4) A notice under subsection (1) or (3) must also—

- (a) inform the applicant of his or her right to request a review of the decision and of the time within which such a request must be made (see section 85), and
- (b) be given in writing and, if not received, is to be treated as having been given if it is made available at the authority's office for a reasonable period for collection by the applicant or on the applicant's behalf.

(5) In this Chapter, "a restricted person" means a person—

- (a) who is not eligible for help under this Chapter,
- (b) who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996, and
- (c) who either—
  - (i) does not have leave to enter or remain in the United

Kingdom, or  
(ii) has leave to enter or remain in the United Kingdom subject to a condition to maintain and accommodate himself or herself and any dependants, without recourse to public funds.

## Guidance

10.47 When a Local Housing Authority has completed an assessment under s.62 of the 2014 Act, they must notify the applicant in writing of their decision as to whether he or she is eligible for assistance and whether any duty is owed (and if so, which duty) under Part 2 of the 2014 Act.

10.48 The priority is that the assessment and the decision is correct. However it is the view of the Welsh Government that wherever possible, Local Housing Authorities aim to complete each stage of the assessment and notify the applicant of their decision within 10 working days.

10.49 The notification must be given in writing and must include:

- a clear explanation of the reasons for any decision which is against the interest of the applicant and the factors were taken in to account when making that decision e.g. that he or she is not eligible for assistance, is not homeless, is not in priority need or is homeless intentionally;
- a clear explanation of the reasons for a decision to refer the applicant to another Authority and the factors were taken in to account when making that decision (ss 80 to s.82);
- information about the applicant's right to request a review of the decisions made, and the period within which a request for a review must be made (s.85);
- information on how to obtain independent housing advice
- Authorities should also advise applicants about the procedure to be followed on a review(s.86).

10.50 In accordance with s.63(4)(b), where the notification cannot be sent to the applicant, or where the Authority believes that it may not have been received by him or her, the Authority should make available at its office a written statement of its decisions, and the reasons for them, to enable the applicant, or someone who represents the applicant, to collect within a reasonable period.

10.51 Authorities must notify applicants in writing as soon as decisions are made on their case. The Authority will need to ensure the notification explains clearly and fully the reasons for the decisions and what, if anything, the Authority will now do to assist the applicant. It is important to ensure that the applicant fully understands the nature of any housing duty that is owed and the reasonable steps that will be carried out by the applicant, the Local Authority and relevant partners or agencies. Where possible, a Local Housing Authority should try to explain decisions in person as well as in writing, this is particularly important when an applicant may have difficulty understanding the consequence of any decision.

## Restricted person

### The Act states

#### Section 63 Notice of the outcome of assessment

- (2) If the authority decides that a duty is owed to the applicant under section 75, but would not have done so without having had regard to a restricted person, the notice under subsection (1) must also—
- (a) inform the applicant that its decision was reached on that basis,
  - (b) include the name of the restricted person,
  - (c) explain why the person is a restricted person, and
  - (d) explain the effect of section 76(5).
- (5) In this Chapter, “a restricted person” means a person—
- (a) who is not eligible for help under this Chapter,
  - (b) who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996, and
  - (c) who either—
    - (i) does not have leave to enter or remain in the United Kingdom, or
    - (ii) has leave to enter or remain in the United Kingdom subject to a condition to maintain and accommodate himself or herself and any dependants, without recourse to public funds.

### Guidance

10.52 Under s.63(2) and (5), a Local Housing Authority must have regard to whether an applicant’s household contains a restricted person. A restricted person is subject to immigration control with either no, or conditioned, leave to remain. If there is a restricted person in the household **for further guidance on eligibility see Chapter XXX (hyperlink to chapter)**

### Withdrawn applications

10.53 It is recommended that Local Authorities have procedures in place for dealing with applications that are withdrawn or where someone fails to maintain contact with the Local Housing Authority after making an application. It is good practice for applications to be considered for closure if there has been no contact with the applicant for more than three months. Any further approach from the applicant after this time may need to be considered as a fresh application. Where an applicant renews contact within three months, the Authority will need to consider any change of circumstances that may affect the application.

# CHAPTER 11: INTERIM DUTY TO PROVIDE TEMPORARY ACCOMMODATION

## Introduction

11.1 This chapter provides detailed guidance regarding the circumstances in which accommodation should be provided, consideration of factors when providing accommodation and how the interim duty to accommodate is brought to an end.

11.2 The chapter also provides guidance on the protection of property for persons who are provided accommodation under the interim duty to accommodate.

## The Act states

Section 68 Interim duty to secure accommodation for homeless applicants in priority need

(1) The local housing authority must secure that suitable accommodation is available for the occupation of an applicant to whom subsection (2) or (3) applies until the duty comes to an end in accordance with section 69.

(2) This subsection applies to an applicant who the authority has reason to believe may -

- a) be homeless
- b) be eligible for help, and
- c) have a priority need for accommodation,

in circumstances where the authority is not yet satisfied that the applicant is homeless, eligible for help and in priority need for accommodation.

(3) This subsection applies to an applicant –

- a) who the authority has reason to believe or is satisfied has a priority need or whose case has been referred from a local housing authority in England under section 198(1) of the Housing Act 1996, and
- b) to whom the duty in section 73 (duty to help to end homelessness) applies.

(4) The duty under this section arises irrespective of any possibility of the referral of the applicant's case to another local housing authority (see section 80 to 82).

## Guidance

11.3 If a Local Authority has reason to believe that an applicant may be eligible for assistance, homeless and may have a priority need, the Authority will have an immediate duty under s.68 of the 2014 Act to ensure that suitable accommodation is available for the applicant (and his or her household) pending the completion of its enquiry on whether the person is owed a duty under s.73 (Duty to help to secure) under Part 2 of the 2014 Act. The threshold for the duty is low because 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.

Authorities are reminded that ‘having reason to believe’ is a lower test than ‘being satisfied’. If the Authority is in any doubt about whether or not the applicant meets any of these criteria, then it must accept an interim duty to accommodate pending completion of its enquires into whether a person is homeless and eligible (R (on the application of IA) v City of Westminster Council [2013] EWHC 1273 (QB)).

11.4 When a person is found to be homeless because it is not reasonable to continue to occupy accommodation, then that accommodation should not be regarded as suitable to discharge the s.68 duty of the 2014 Act. There can be an agreement reached between the Local Authority and the homeless person if the homeless person wants to opt to remain in the accommodation currently available to them (family member / friend / or accommodation considered unreasonable by the Housing Authority that triggers homelessness) until more suitable accommodation can be found, provided that the applicant is well informed and freely consents to the arrangement. This does not result in the Authority ceasing to be subject to the duty in the event the applicant requires alternative accommodation under section 68.

11.5 The s.68(1) of the 2014 Act duty applies even where the Authority considers the applicant may not have a local connection with the Local Authority area and may have a connection with another Local Authority. Applicants cannot be referred to another Local Authority unless the Local Authority dealing with the application is satisfied that s.73 of the Act applies and the conditions for referral are met (i.e. the applicant is eligible for assistance, unintentionally homeless and has a priority need).

### **Other circumstances where accommodation must or may be provided under section 68**

11.6 Accommodation must be provided to any person that may be homeless, eligible and in priority need. In the event that the case is being considered for referral to another Local Authority in England or Wales, accommodation must be provided until the notification of acceptance of the referral from the receiving Authority has been received. Once the notified Authority confirms receipt of the notification, the duty under section 68 will cease for the notifying Authority and become the duty of the notified Authority.

11.7 Accommodation may be provided to an applicant pending the outcome of a review requested under s.85 and s.88.

11.8 In the event the Local Authority does not exercise its power to accommodate pending review, the applicant can appeal under s.89. The Authority must notify the applicant in writing with the reasons why it is not exercising its power to accommodate pending appeal / review and their right to appeal under section 89.

### **Need for support**

11.9 In deciding what accommodation needs to be secured Local Authorities will need to consider whether the applicant has any support needs. Local Authorities will therefore need to have well-developed effective links between their Homelessness / Housing Options / Solutions team, Supporting People team, the Social Services Authority or other bodies (for example, local health Boards, Criminal Justice

Services, housing associations and voluntary sector organisations) to ensure that a joint assessment of an applicant's housing and support needs can be made where necessary. Such assessments will also assist in considering options for the provision of more settled accommodation that will bring the duties under s.73 and s.75 to an end.

## **Standards and charges**

11.10 Authorities must ensure that all accommodation provided as a discharge of a homelessness duty complies with relevant legislation and regulations on health and safety standards, and arrange appropriate inspections. This must include compliance with the Homelessness (Suitability) (Wales) Order 2015.

11.11 Where Authorities secure that accommodation is available for an applicant, they may, if they wish, require him or her, under s.90 of the Act, to:

- i) pay reasonable charges in respect of accommodation which they make available themselves or
- ii) pay a reasonable amount towards the costs payable by the Authority for accommodation made available by another person.

In setting charges, Authorities will need to bear in mind that accommodation secured for applicants must be affordable for them (see s.59(2)).

## **Protection of property**

11.12 Section 93 of the 2014 Act provides that where the authority has become subject to a duty under specified provisions of Part 2 and it has reason to believe that:

- (i) there is danger of loss of, or damage to, the property by reason of the applicant's inability to protect it or deal with it, and
- (ii) no other suitable arrangements have been, or are being made,

the Local Authority will have a duty to protect the property.

11.13 The specified provisions are:

- (i) s.66 (duty to help to prevent an applicant from becoming homeless) in the case of an applicant in priority need;
- (ii) s.68 (interim duty to accommodate applicants in priority need);
- (iii) s.75 (duty to secure accommodation for applicant in priority need when duty in section 73 ends);
- (iv) s.82 (duties to applicant whose case is considered for referral or referred) in the case of an applicant in priority need.

11.14 Applicants may be unable to protect their property if, for example, they are ill, or are unable to afford to have it stored themselves. In order to protect an applicant's property, an Authority can enter the applicant's current or former home and deal with the property in any way which seems reasonably necessary (s.94(1) of

the 2014 Act). They may store the property or arrange for it to be stored. This may be appropriate where the applicant is accommodated by the Authority in furnished accommodation for a period. In some cases, where the applicant's previous home is not to be occupied immediately, it may be possible for the property to remain there, if it can be adequately protected.

11.15 The applicant may request the Authority to move their property to a particular location. If the Authority considers that the request is reasonable, s. 94(4) provides they may discharge their responsibilities by doing as the applicant asks. Where such a request is met, the Authority will have no further duty or power to protect the applicant's property, and they must inform the applicant of this consequence before complying with the request (s.94(8)).

11.16 Authorities may impose certain conditions on the assistance they provide. These may include making a reasonable charge for storage of property and reserving the right to dispose of property in certain circumstances specified by the Authority e.g. if the applicant loses touch with them and cannot be traced after a certain period or the property is perishable (s.93(4)).

11.17 S.94(6) of the 2014 Act provides that where a request to move property to another location either is not made or is not carried out, the duty or power to take any action under s.93 ceases when the Authority believes there is no longer any serious risk of loss or damage to the property. This may be the case, for example, where an applicant recovers from illness or finds accommodation where he or she is able to place his or her possessions, or becomes able to afford the storage costs him/herself. However, where an Authority has discharged the duty under s.93 by placing property in storage, they may continue to keep the property in storage, if they wish. Where they do so, any conditions imposed by the Authority continue to apply and may be modified as necessary.

11.18 Where an Authority ceases to be under a duty, or ceases to have a power, to protect an applicant's property under s.93 of the 2014 Act they must notify the applicant of this and give the reasons for it. The notification must be delivered to the applicant or sent to his or her last known address (s.94(8)(9)).

## **Households with Pets**

11.19 Authorities should be sensitive to the accommodation needs of applicants with pets, in the event that accommodation cannot be provided that would accept an applicant's pet, Authorities should have arrangements in place to ensure the safeguarding of the pet. Authorities may wish to consider developing links with local kennelling / cattery services.

11.20 Where an applicant is dependant on the companionship provided by a pet, Authorities should in the first instance aim to provide accommodation that is suitable for a pet owner. Where this is not immediately available, Authorities should continue to aim to provide pet-friendly accommodation as soon as possible.

11.21 Where a applicant does have a pet, they should be encouraged to seek arrangements with either a member of family or a friend or alternatively the

kennelling/ cattery services because the Authority would be entitled to make a reasonable charge under the protection of property provisions since pets are considered to be personal property.

# CHAPTER 12: DUTY TO HELP TO PREVENT HOMELESSNESS

## Introduction

12.1 The prevention of homelessness is a key priority of the Ten Year Homelessness Plan. It is now embedded in legislation as a result of the provisions included in the Housing (Wales) Act 2014. The Act places a duty on Local Authorities to work with people who are threatened with homelessness within 56 days in order to help prevent them from becoming homeless.

12.2 Preventing homelessness in the first place can help avoid the significant negative impacts homelessness can have, for example, on a person's health, education, employment opportunities and social well-being. Early intervention is therefore not only beneficial to those threatened with homelessness, but can also result in direct cost savings for Local Authorities and other public services. Local Authorities are urged to be aware of the benefits in identifying and working with an applicant as soon as possible and potentially much earlier than the minimum 56 days set out in legislation.

12.3 This section of the Code provides guidance to Local Authorities on how to fulfil their duty to take reasonable steps to people threatened with homelessness.

## The duty to help to prevent an applicant from becoming homelessness

### The Act states

#### Section 66 – Duty to help to prevent an applicant from becoming homeless

(1) A local housing authority must help to secure that suitable accommodation does not cease to be available for occupation by an applicant if it is satisfied that the applicant is

- a) threatened with homelessness, and
- b) eligible for help.

(2) Subsection (1) does not affect any right of the authority, whether by virtue of a contract, enactment or rule of law, to secure vacant possession of any accommodation.

## Guidance

12.4 When a Local Authority, following an assessment under s.62, deems an applicant to be threatened with homelessness within 56 days, it is obliged to help an eligible applicant to prevent them becoming homeless, by either directly meeting their housing need or by assisting them in one or more of the following ways,

- To remain in their current accommodation;

- To delay a need to move out of current accommodation in order to allow a planned move into alternative accommodation;
- To find alternative accommodation; and/or
- To sustain independent living.

12.5 In helping to secure that suitable accommodation does not cease to be available for occupation, Local Authorities might find it beneficial to work in partnership to not only identify, at the earliest opportunity, the factors associated with the risk of homelessness, but also work in partnership to deliver the services required to prevent homelessness.

12.6 Once an assessment has been carried out (separate guidance on the assessment can be found at Chapter xx and guidance on eligibility at Chapter xx) to determine the threat of homelessness and the immediacy of that threat, a Local Authority will need to investigate the reasons behind the threat and develop a deeper understanding of the applicant's housing situation.

## Meaning of help to secure

### The Act states

#### Section 65 – Meaning of help to secure

Where a local housing authority is required by this Chapter to help to secure (rather than “to secure”) that suitable accommodation is available, or does not cease to be available, for occupation by an applicant, the authority –

- (a) is required to take reasonable steps to help, having regard (among other things) to the need to make the best use of the authority's resources;
- (b) is not required to secure an offer of accommodation under Part 6 of the Housing Act 1996 (allocation of housing);
- (c) is not required to otherwise provide accommodation.

### Guidance

12.7 Where the s.66 duty applies, the Local Authority must help an applicant to secure or retain suitable accommodation. This does not mean that the Local Authority has a duty to secure accommodation and it is vital that the applicant co-operates in the development of a housing solution.

#### 12.8 Guidance on suitability can be found at chapter 19

12.9 In relation to the range of ‘reasonable steps’, more detailed guidance is provided below. It is by no means an exhaustive list, nor is it a prescriptive set of minimum interventions to be offered to each applicant. Local Authorities are expected to consider the most appropriate intervention or range of interventions on a case-by-case basis, which are most likely to result in a positive outcome.

12.10 This should be done following an investigation of the causes behind the applicant's particular housing issues and should lead to the Authority and applicant agreeing a plan, including a list of reasonable steps.

## **Best use of the authority' resources**

12.11 Detailed guidance on when and how a Local Housing Authority can consider the best use of its resources can be found in Chapter XXX ([hyperlink to ending the duties chapter](#)).

## **How to secure or help to secure the availability of accommodation**

### **The Act states**

Section 64 – How to secure or help to secure the availability of accommodation

- (1) The following are examples of the ways in which a local housing authority may secure or help to secure that suitable accommodation is available, or does not cease to be available for occupation by an applicant –
- (a) by arranging for a person other than the authority to provide something;
  - (b) by itself providing something;
  - (c) by providing something, or arranging for something to be provided, to a person other than the applicant.
- (2) The following are examples of what may be provided or arranged to secure or help to secure that suitable accommodation is available, or does not cease to be available, for occupation by an applicant –
- (a) mediation;
  - (b) payments by way of grant or loan;
  - (c) guarantees that payments will be made;
  - (d) support in managing debt, mortgage arrears or rent arrears;
  - (e) security measures for applicants at risk of abuse;
  - (f) advocacy or other representation;
  - (g) accommodation;
  - (h) information and advice;
  - (i) other services, goods or facilities.

### **Guidance**

12.12 S.64 of the Housing (Wales) Act 2014 includes examples of the types of interventions that Local Authorities might consider.

12.13 The following is a list of interventions that Local Authorities ought to have in place as a minimum set of available interventions. Local Authorities have flexibility to provide interventions, including commissioning with other Local Authority areas, but it is paramount that Local Authorities consider the individual needs of the applicant when developing interventions.

- Housing Options Advisors – to provide constructive advice to individuals to help identify and tackle the underlying housing and other needs of the applicant(s) and the factors associated with their threatened homelessness and provide appropriate advice and/or help to secure accommodation;
- Services to resolve disputes between different parties, such as mediation and conciliation – to assist clients to resolve relationship issues via mediation and conciliation services. This might include family, spousal or neighbourly relationships that have resulted in a threatened eviction, etc;
- Financial payments from a homelessness prevention fund – potential financial assistance to assist those with financial issues to clear possible debts and/or assist them to move to other accommodation [this intervention should be considered alongside debt/money advice below to tackle the underlying causes and break the potential for a cycle of debt];
- Specialist advice on welfare/benefit rights and debt/money advice, including access to independent advice – to support an individual to make the appropriate decision in light of benefit entitlements and other financial considerations, support an applicant to downsize, or support an individual to negotiate with lenders and set a realistic household budget;
- Independent housing advice – refer individuals to a relevant local advice service such as Shelter Cymru, which may be the most suitable agency to provide specialist advice;
- Joint working between Local Authorities and RSLs to prevent homelessness – this support could potentially range from helping with an application for social housing, giving them added priority on choice based lettings, to discussing and resolving rent arrears;
- Joint approaches with other services such as Social Care and Health – work in partnership with colleagues both corporately within the Local Authority and with relevant local health boards to assess an applicant's social care, health and other needs in order to develop a holistic plan to prevent their homelessness;
- Domestic abuse services – support to source the most appropriate domestic abuse service, including but not limited to support through personal safety advice, target hardening and help to find a refuge placement if appropriate, considering all the risks to the applicant;
- Crisis intervention – securing accommodation immediately (e.g. through a partner agency, hostel or payment to a landlord);
- Discretionary Housing Payments (DHPs) – support an applicant to access the Local Authority's DHP fund. Support should also be considered to tackle the underlying issue as to why the intervention was required initially;
- Employment and training options advice – where an applicant's housing situation would be improved by enhanced employment and training
- Housing/Tenancy support – supporting people to sustain their accommodation through the help of a Tenancy or a local Housing Support Service, possible via Supporting People funding;
- Specialist welfare services for armed forces personnel//veterans – support armed forces veterans to access the specialised services available to them;
- Action to resolve anti-social behaviour – such as referrals to an ASB preventative support service;

- Working in prisons prior to release in order to prevent homelessness – work proactively with partners such as the Prison, National Probation Service and the Community Rehabilitation Company along with Local Health Boards, third sector organisations, Local Authority Social Services and private landlords to help prisoners to either secure accommodation upon release or help them to retain existing accommodation;
- Options to facilitate access to the Private Rented Sector (PRS) – ensure that suitable PRS options are available locally to applicants. This could be via support to the applicant to access a locally managed private rented sector access service that should be available in every Local Authority area, a well maintained list of PRS opportunities or referral to a house sharing website; this may also include payments for rent in advance or deposit and/or bond scheme;
- Action to intervene with mortgage arrears – help to access local and national programmes to support people at risk of homelessness as a result of mortgage arrears, including mortgage rescue schemes where available;
- Access to supported housing – where a support need is identified, refer and manage a transition to supported housing or placement on a relevant waiting list;
- Arranging accommodation with relatives and friends – help to identify and secure, including mediation where necessary, suitable accommodation with relatives or friends;
- Options for the accommodation of vulnerable people – ensure that all options are considered including the potential for the applicant to be accommodated and supported in housing which is funded, for example, by health, social services, the Supported People programme or through third sector grant funding, etc;

12.14 Although this is a list of minimum interventions that Local Authorities ought to offer, other innovative interventions based on local demand must also be identified and considered in Local Homelessness Strategies. An example might include providing additional financial and debt advice support and employment and training options in an area that has been significantly impacted by a recent major redundancy process, or projects designed to meet the needs of particular groups facing high levels of homelessness in a particular Local Authority area.

12.15 Support for applicants must be on an individual basis and must be developed following an investigation of the causes of the applicant's particular housing situation. Local Authorities must be pro-active in their utilisation of this range of interventions, including looking beyond this list for solutions and applicants must be involved as much as possible to ensure they are fully engaged with the approach.

## **Viable Housing Options**

12.16 Through proactive and effective prevention, the first option to be considered should be for the client to remain at the current accommodation where suitable. Where this is not appropriate, the Local Authority should aim to achieve a planned move into suitable alternative accommodation. The option to wait for social housing should also be explored with clients claiming to be threatened with

homelessness or living in overcrowded conditions, where it is reasonable for them to be expected to continue to occupy that accommodation in accordance with s.57. Allocations practices should not encourage the view that people have to apply as homeless to the Local Authority in order to obtain a social tenancy. Local Authorities should ensure their allocations scheme achieves a balance between giving reasonable preference to homeless people and the priority given to other people in housing need. Clients should be reminded that social housing is also provided by housing associations and encouraged to apply for housing from these organisations as well. It is vital that Local Authorities are vigorous in establishing and implementing nomination arrangements with housing associations which play a full part in housing people who are threatened with homelessness as well as those who are homeless.

12.17 Where the Local Authority or registered social landlord operates low cost home ownership schemes, these should be a consideration when supporting households threatened with homelessness as a viable option. The marketing of these schemes needs to be developed incorporating flexibility within schemes to allow low cost start up rents or low levels of ownership or equity. This can ensure that even people on relatively low incomes can access these schemes.

12.18 In cases of home owners at risk of repossession, Local Authorities and their housing association partners should work with the homeowner to explore options available to them to help them remain in their home. Examples include Mortgage Rescue Schemes, Support for Mortgage Interest and Home Owner Mortgage Support for people who have experienced a temporary decrease in their income. Local Authorities should also consider referring home owners experiencing financial difficulty for debt advice to organisations such as Shelter Cymru debt advice services, Citizens Advice Bureaux, Credit Unions, or the Welsh Government-funded Housing Debt Helpline operated by the Consumer Credit Counselling Service (CCCS).

12.19 Local 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. They should also 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. Local Authorities should assist and work with private rented sector landlords to ensure that tenants are able to manage and sustain their tenancy effectively.

### **Private rented sector (PRS)**

12.20 While concerns over the shortage of housing supply remain, access to the private rented sector is a key priority for Local Housing Authorities in Wales.

12.21 S.76 of the Housing (Wales) Act 2014 allows for the discharge of the duty under s.75 via an offer of suitable accommodation in the private rented sector.

12.22 Greater use of the private rented sector must be made to prevent homelessness from occurring or to provide settled accommodation for people living in temporary accommodation. Local Authorities must develop strong relations with private landlords, for example through landlord forums. It will be essential for Local Authorities to offer a clear package of options to incentivise landlords to make accommodation available to people at risk of homelessness.

12.23 However, Local Authorities need to be aware that PRS housing will not be appropriate for all applicants. In particular, Local Authorities will need to consider the suitability of accommodation for those applicants who require support to accompany their housing.

12.24 In addition, landlords will be more likely to accept a homeless household if they can be assured that appropriate tenancy support measures are in place.

12.25 It is important that applicants are fully aware of availability in the private sector in order for them to make an informed choice as to what tenure would meet their current housing needs most effectively.

12.26 For many, the private sector will offer the only realistic opportunity of finding the type of property they need in their preferred location and Local Authorities should ensure that they fully engage with landlords in order to exploit this significant source of housing.

12.27 Access to the private rented sector can be difficult for people on low incomes so Local Authorities should also ensure initiatives are developed in their local area to enable access to the sector for vulnerable and homeless people. As well as financial support to access the sector, this may also include ongoing tenancy support.

12.28 As a minimum, Local Authorities ought to develop guidance on how to access the private rented sector locally, including details of bond schemes, letting agents, etc. As with all support, Local Authorities will need to consider on a case by case basis, the level of assistance each applicant requires.

[insert examples of PRS landlord engagement practices]

12.29 Guidance on the suitability of PRS accommodation can be found in Chapter xx.

## **Tenant given notice of intention to recover possession**

12.30 Where the applicant is a tenant who has been given a valid notice to quit or a notice that the landlord intends to begin proceedings for possessions, Local Authorities should consider scope for preventing homelessness through consulting the landlord at an early stage to explore the possibility of the tenancy continuing or allowing the tenant to remain for a reasonable period to provide an opportunity for

alternative accommodation to be found. If the landlord does not agree, the Local 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.

## **Housing Benefit Joint Working**

12.31 In tackling homelessness the Local Authority will need to work closely with a wide range of external and internal partners. In particular, close relations must be maintained with the Local Authority's housing benefit section as their role is crucial to cases relating to rent arrears, involving temporary accommodation and other hardship. It is vital that the housing benefit service works quickly and efficiently to respond to claims, and supports partnership working with the private and social rented sectors. This will require agreement on service standards, to ensure that no-one loses their home due to delays in resolving benefit claims.

12.32 The Local Housing Allowance was introduced nationally on the 7<sup>th</sup> April 2008 and is a way of working out housing benefit for private sector tenants. Because Local Housing Allowance rates are published in advance, people can immediately assess the maximum amount of housing benefit that will be paid, depending on the size and make up of their household and the size and location of the property they are seeking to rent. People can therefore make a quick decision on whether or not they can afford to rent a particular property, avoiding any delays that may put them at greater risk of homelessness.

12.33 Through the Local Housing Allowance system, Housing Benefit is paid direct to most tenants, who then pass this on to their landlords. Safeguards are to be put in place for those who are unable to manage their financial affairs, even with support, so that rent can be paid direct to the landlord where it is in the interest of the tenant to do so. Local Housing Benefit sections are responsible for making decisions about who to offer this safeguard to, and the Department for Work and Pensions (DWP) have issued guidance on this. Housing Options teams need to work closely with their counterparts in Housing Benefit to ensure that these safeguards operate effectively so that homelessness can be prevented and no one becomes at risk of homelessness as a result of non-payment of rent. The Local Authority should also work closely with their partner organisations to identify vulnerable people and ensure their rent is paid directly to the landlord, removing the threat of homelessness through eviction due to rent arrears.

In early 2014, the Department for Work and Pensions issued guidance on the administration of the LHA arrangements within Housing Benefit - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/324708/lha-guidance-manual.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324708/lha-guidance-manual.pdf)

12.34 A best practice guide was also published for Local Authorities in order to support them in the operation of safeguards for people who are unable or unlikely to manage their rental payments - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/232360/lha-good-practice-guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/232360/lha-good-practice-guide.pdf)

12.35 The Local Authority can also maximise its resources for tackling homelessness by taking advantage of Discretionary Housing Payments (DHP). Discretionary Housing Payments is a fund made up mainly of a direct grant from the Department for Work and Pensions (DWP) and is often administered by the Benefits section. The DWP allocates a sum of money to each Local Authority to allow councils to help families and individuals find homes or remain in their home – without causing financial hardship. Local Authorities may exceed the amount allocated to them by the DWP, but there is an upper expenditure limit of two and a half times their contribution. The funding for this will need to come from within the Local Authority's budget, though this may lead to an increase in subsequent year's allocation from the DWP. Any unspent portion of the Government contribution must be returned to the DWP. Local Authorities should aim to maximise their use of DHP because if the Local Authority fails to spend their allocation they reduce their opportunities to help homeless people and, they may face a reduced amount the following year.

12.36 It is vital that operational homelessness staff and managers are made aware of the existence of DHP so that they can work closely with benefit officers to successfully utilise the fund to prevent homelessness from occurring. Examples of good practice include the setting up of a panel, to include both homelessness and housing benefit staff, to oversee and make decisions on the spending of this fund. This helps to ensure that this resource is utilised to its maximum benefit in the prevention of homelessness.

12.37 In the spirit of prevention, it is encouraged that operational staff utilise DHP in conjunction with additional support to help prevent further instances of threatened homelessness, tailoring solutions accordingly.

## **Homelessness Prevention Fund**

12.38 In implementing a strategy and action plan geared to prevent homelessness the Local Authority will need to recognise the value of spend to save policies. Every Local Authority committed to tackling and preventing homelessness should have an established homelessness prevention fund. This pot of money will be vital in preventing homelessness or even delaying it in order to allow a household to remain in their home until a settled housing option becomes available. A homelessness prevention fund is in effect a flexible budget available to homelessness and housing advice staff that can be used in whatever way is deemed appropriate to help secure or maintain accommodation for households which would otherwise become homeless.

12.39 There will be cases where having used the prevention fund the applicant goes on to make a homelessness application but this should not deter the Local Authority from making this fund available. It should recognise the merits of those cases where such spend to save has been successful and can be successful as opposed to concentrating on those where it might not. Successful prevention fund schemes are where staff are able to operate in an accountable but supportive culture, operating within clear parameters but have a degree of discretion and flexibility about how best to deploy monies.

## Preventing Homelessness in Specific Circumstances

12.40 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 xx](#) for further guidance on 16 and 17 year olds);
- people from certain ethnic backgrounds;
- people with an institutionalised background, for example where they have spent time in care, in hospital, 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 United Kingdom Border Agency;
- people who have experienced other problems that may increase the risk of homelessness including family/relationship breakdowns; domestic, hate incidents and hate crime or other violence; poor mental or physical health; drug and alcohol misuse; age-related problems and debt.

12.41 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 and working with partners, which can enable them to remain in their current home. Homelessness can also be prevented by ensuring assistance is available prior to known risk points such as discharge from prison, the armed forces or hospital. The table in the prevention chapter gives examples of some of the measures that may help tackle some of the more common causes of homelessness.

## Groups Most at Risk of Homelessness

### Young people

12.42 Advice to help prevent homelessness is particularly relevant for all young people since the introduction of the UK Government's welfare reform proposals which have a particular impact on young single people. The House of Lords judgment, in the case of R (on the application of G) (2009) UKHL 3 All ER 189 v London Borough of Southwark, highlighted the duties of children's services towards homeless young people, aged 16 to 17. This case restated and clarified the established legal position that the duties under section 20 of the Children Act 1989 take precedence over the duties under Part 7 of the Housing Act 1996 (now replaced in Wales by the Housing (Wales) Act 2014). It also reinforces the importance of local housing and social services departments working closely together to prevent young care leavers and other very young people such as 16 and 17 year olds, who will be in priority need, from becoming homeless and ensuring they are not at risk. Further details about the duties of the local housing and social services departments can be found in the Welsh Government's statutory guidance - 'Provision of accommodation for 16 and 17 year old young people who may be homeless'. Authorities are strongly urged to work in a holistic way internally and with partners in the statutory and

voluntary sectors to address not only the housing needs of care leavers, 16 and 17 year olds and other young people but also any support needs such people may have. Local partners, including the Youth Offending Service and voluntary sector agencies, should work together with the housing service to identify as early as possible those young people most at risk of homelessness. A pathway planning approach involving housing, social services and other partners can provide the most comprehensive approach to addressing the needs of the most vulnerable young people, whether or not they are care leavers. In doing so they should pay due regard to young people's views and concerns. Such an approach can help young people to make a successful transition to independent living. Independent advocacy and mediation services will have a role to play in helping young people to stay at home where appropriate, or move on to independence.

12.43 The UK Government's welfare reforms are having a particular impact on young single people given the increase in the age criteria for the single person's allowance from 25 to 35. UK Government advice is that Discretionary Housing Payments could be used in these circumstances. However, while working with those young people affected, Authorities should work on individual basis to find the most suitable resolution.

12.44 For those affected by reductions in housing benefit, Local Authorities might consider encouraging them to consider taking up shared accommodation opportunities, such as with family or friends. Local Authorities in some areas, might also find it beneficial to invest in a shared housing scheme in order to increase the options available to young single people. Local Authorities have particular duties under the Children Act 1989 to assist care leavers. These duties do not rest solely with social services but are instead a corporate responsibility of the whole Authority. In order to meet these duties Local Authorities are required to keep in touch with care leavers, to offer support and accommodation, help with education, training and employment, and in general to assist their transition to adulthood and independent living. The Local Authority is required to draw up a pathway plan, with the full participation of the care leaver. Advice and information about housing options and assistance with accommodation where appropriate will play an important role in enabling an effective, realistic and achievable plan to be formulated. Because access to NHS services is sometimes an issue for this group, Local Authorities and the NHS should make arrangements to ensure easy and equitable access.

### **People from certain ethnic backgrounds;**

12.45 The Equality Act 2010 places obligations on Local Authorities to prevent discrimination in relation to protected characteristics, including race (which refers to people defined by their race, colour, and nationality (including citizenship) ethnic or national origins). When carrying out homeless functions and discharging homelessness duties Authorities must comply with the Act including the General and Specific Welsh Equality Duty.

12.46 Welsh Government statistics<sup>1</sup> show that people from ethnic minority backgrounds are more likely to be owed a homelessness duty.

12.47 Local Authorities need to ensure that their homelessness services pay particular attention to the needs of the ethnic minority communities they serve. Welsh Government funded research into 'Homelessness amongst people from Black and Minority Ethnic populations in Wales' (2014) <sup>2</sup> notes that:

“For settled BME communities, homelessness risk factors tend to echo those of the white Welsh majority, for example: relationship breakdown, unmet support needs, lack of independent living skills and so on. Homelessness risk for settled BME communities, however, is raised by the presence of additional factors including:

- Some BME communities having larger families, placing them at a greater risk of overcrowding and facing a reduced chance of finding suitable accommodation in Wales
- The continuing inequality in issues other than housing such as access to support services, reduced education and employment opportunities and increased poverty; and
- The suitability of housing options in Wales for some BME communities. For example, a lack of adequate site provision for Gypsies and Travellers and the housing of some BME households where they feel unsafe or discriminated against.”

12.48 The research highlighted three key areas Authorities need to consider when addressing homelessness in relation to people from minority ethnic backgrounds:

1. A lack of awareness of housing procedures and rights and a lack of confidence to enforce rights, especially for recently settled migrants and refugees. This barrier is often compounded due to the presence of language barriers. There is also a fear of being viewed as 'a trouble maker' by housing staff.
2. The visibility, accessibility and appropriateness of housing services and support. The barrier in terms of the perceived lack of cultural sensitivity of mainstream housing and related services for BME people. Also identified was a lack of effective signposting between services and the need to address wider support needs that could impact on a person's ability to sustain their tenancy if not addressed.

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<sup>1</sup> Welsh Government. Reduced inequality in housing outcomes for people of different ethnicities. <http://wales.gov.uk/about/programmeforgov/equality/performance?code=OU061%28e%29&lang=en>

<sup>2</sup> Campbell.J.A. Shelter Cymru and Tai Pawb. (2014) . Homelessness amongst people from Black and Minority Ethnic populations in Wales'. <http://bit.ly/1EWN3eJ>

3. The appropriateness of accommodation and access to good quality and affordable housing

12.49 Other issues to note are:

- Hidden homelessness i.e. BME people not presenting at all to services when they find themselves in housing need. It is important to note that people from the Gypsy or Traveller communities might be deterred from approaching the Local Authority for help due to the fear of being placed in bricks and mortar housing.
- A lack of awareness of refugee specific experiences in statutory services.
- A preference for 'own' services (i.e. services delivered by those within their own community) due to perceptions that specialist organisations are more appropriate and sensitive to their culture.
- Fear of racial harassment in social and private rented housing and in temporary accommodation.

12.50 To respond to the above issues it is advised that Local Authorities address the following:

### **Language and Communication**

- Meet potential language needs by ensuring that advice and information about homelessness and the prevention of homelessness is available in a range of community languages appropriate to the area.
- Ensure an adequate and good quality interpretation service is available for service users who require access to housing advice. Ensure all staff are aware of how to deal with different language requirements and how to access interpreting and translation services.
- Ensure general documentation is written in plain English or Welsh and where possible avoid the use of technical language.

There should be ongoing monitoring of local BME and migration data in order to be able to adjust communication in line with local need.

### **Eligibility**

More detailed guidance on eligibility can be found at [chapter xx](#).

- Ensure staff have access to up-to-date guidance on eligibility.
- Ensure procedures in place to carry out appropriate checks on applicants is applied in a manner that does not discriminate on the basis of race, colour, nationality, national or ethnic origins and deals with applicants in a sensitive manner

### **Culturally Sensitive Services**

- It is essential to ensure that homelessness services are culturally sensitive to the needs of different communities.

- When addressing housing need it is important to consider issues relating to being near to places of worship, community facilities and shops. In some cases there may be a need to address concerns about safety and fears of being at risk of racial harassment.
- Services need to be sensitive when dealing with service users who have experienced hate crime.

**People with an institutionalised background, for example where they have spent time in care, in hospital, prison or in the armed forces;**

**Armed Forces Personnel**

12.51 The majority of armed services personnel are not home owners, and this combined with the relatively short nature of a service career means that a significant number of ex-services personnel will look to Local Authorities for accommodation on leaving the Armed Forces. Although not all will qualify for assistance as homeless under the Housing (Wales) Act 2014, Authorities will need to offer them advice and information, and need to consider how they may access social housing in the area in which they make an application for housing assistance, even where they may not have a local connection. The provisions of s.315 of the Housing and Regeneration Act 2008 amended s.199 of the Housing Act 1996. This section now has no exemption for employment in the armed forces and thus requires Local Authorities to consider periods of time spent by an applicant in their area in the armed forces as relevant to the assessment of their local connection to that area in relation to their application for homelessness assistance or social housing.

12.52 The resettlement services of the Ministry of Defence advise service personnel to consider their future accommodation arrangements and where they intend to live well before discharge. In particular the Joint Services Housing Advice Office (JSHAO), contact details below, aims to provide information and advice on housing options well in advance of discharge and recommends individuals to liaise with Authorities well in advance of discharge, to help prevent homelessness among ex-service personnel and their families. Service households approaching discharge will generally need timely and comprehensive advice on the housing options open to them and where appropriate Authorities should co-operate with the services resettlement service, the Joint Services Housing Advice Office and the Defence Housing Executive (DHE) to ensure that all appropriate advice is available to all service personnel who require it.

Joint Services Housing Advice Office  
 Floor 1 Zone 1  
 Montgomery House  
 Queens Avenue  
 Aldershot  
 GU11 2JN

Email [aws-jshao-mailbox@mod.uk](mailto:aws-jshao-mailbox@mod.uk)

12.53 The Ministry of Defence recognises that Local Authorities will often require proof that entitlement to occupy service quarters is coming to an end before they will consider an application for homelessness assistance. Authorities should not insist upon a court order for possession in such cases, and should instead accept Certificates of Cessation of Entitlement to Occupy a Service Quarter and of Impending Homelessness produced by the appropriate Area Office of the Defence Housing Executive. These certificates are usually issued six months before discharge.

12.54 While people leaving the armed forces will be eligible for the duty to secure accommodation should they be homeless or threatened with homeless, Local Authorities still have a duty to work with applicants up to 56 days before their discharge and/or homelessness in order to fulfil the duty to prevent homelessness.

12.55 In the same way as the Joint Services Housing Advice Office provides information and advice to service personnel and their dependants, the Soldiers, Sailors and Airmen's Families Association Forces Help have a housing information cell co-located with the Joint Services Housing Advice Office. This service provides housing information and advice to ex-service personnel and their dependants in preparation for discharge. The Veterans Welfare Service with the support of the Welsh Government and Cymorth Cymru has developed a database of homelessness services for veterans which can be found at [services.cymorthcymru.org.uk](http://services.cymorthcymru.org.uk).

12.56 More information can be obtained from the Ministry of Defence website - <https://www.gov.uk/housing-for-service-personnel-and-families>

## **Veterans**

12.57 Local Authorities working with their partners across Wales are signed up to Community Covenants, which encourage providers from all sectors to offer targeted support for their Armed Forces community. Under s.70 of the Housing (Wales) Act 2014, Armed Forces personnel who have formerly served in the regular Armed Forces of the Crown and who have been homeless since leaving those forces, are recognised as being in priority need.

12.58 Veterans may also experience difficulties post-discharge, in adjusting to civilian life. This may include, late onset of trauma, mental health difficulties, problems associated with physical injury and substance misuse. These issues may then result in difficulties in adapting to their new life and in some cases involvement with the criminal justice system.

12.59 More guidance on working with veterans can be found at section **xx** of this chapter.

## **Hospital patients**

12.60 People risk losing their home during a protracted stay in hospital if they cannot maintain their rent or mortgage payments. Where the Authority has early

warning of this, it can aim to ensure that appropriate arrangements are made either to retain or to terminate the tenancy/residence of the accommodation in order to prevent rent or mortgage arrears building up. In rented housing it will be essential for the landlord to first contact the relevant social worker or key worker before a decision to evict should be taken. Where a head of a household enters hospital, the Authority might refer their household for advice on any benefits to which they may be entitled and how the change in household circumstances affects the household's housing rights. In such circumstances in order to avoid homelessness Authorities may want to consider whether they are able to transfer the tenancy to another household member.

12.61 Authorities will need to consider the arrangements for preparing people in hospital for discharge. Where someone is leaving hospital advice about housing options at an early stage, before discharge, may help to ensure that homelessness does not occur. Close liaison between the Local Authority, the advice service and the Local Health Authority should be put in place to ensure that people received appropriate assistance to ensure a planned discharge into appropriate accommodation. Local Authorities will have an s.66 or s73 duty to anyone in hospital who is at risk of homelessness on discharge, and should develop arrangements with hospitals to identify people in this position. People leaving hospital, and who have no home to go to, will have a priority need if they are vulnerable by reason of their illness or impairment.

12.62 The 'Standards for Improving the health and Well-being of Homeless and Specific Vulnerable Groups, published in 2013, sets out the need for hospital discharge protocols to be in place for safe and appropriate discharge from secondary care for homeless people and specific vulnerable groups. Further advice on this can be obtained from Public Health Wales.

## **People in custody returning to communities in Wales**

12.63 Getting ex-prisoners into stable housing can act as a gateway to effective resettlement. Home Office research has found that prisoners who have accommodation arranged for their release are more likely to have employment, education or training arranged than those who do not have accommodation in place.

12.64 To support the successful resettlement of offenders, Local Authorities will need to proactively liaise with probation and prison services, as well as others, to ensure that prisoners have full and equal access to the range of accommodation services as early as possible to, where possible, retain existing accommodation upon reception to custody and of course prevent homelessness upon release. The Welsh Government has published a Welsh National Standard for providing housing support to prisoners (Annex X), which sets out the resettlement pathway for supporting prisoners, including the roles of Local Authorities, criminal justice agencies and third sector partners.

Identification of housing need can be undertaken by a number of agencies, from the prison service, probation, a third sector provider or by the Local Authority (or by representation) working proactively with the prison. Local Authorities ought to

engage with all relevant partners to develop a streamlined approach to accept referrals.

## **On reception**

12.65 Where retention of existing accommodation is possible (this will be of particular relevance for prisoners on remand and for those serving short sentences), prisoners should be informed of their options in order to allow the applicant to agree a suitable approach to retaining a tenancy for those expected to be detained for 13 weeks or less. Where retention of a tenancy is deemed appropriate, the applicant should receive support to ensure that the tenancy can be retained. This might include liaison with statutory agencies to maintain housing benefit claims during the sentence, or reach an agreement over arrears with the landlord.

12.66 For those serving a longer sentence, identification of a possible future housing need at reception is also important as retention of accommodation will not always be possible. Local Authorities should advise the prisoner of the possible implications of allowing the accommodation to be reclaimed by the landlord/mortgage provider. Where release of tenancy or sale of property is agreed as the best option, the Local Authority should begin the process of planning for accommodation on release, including potentially encouraging prisoners to open credit union accounts with the possibility of accruing enough savings to cover some or all of the cost of a bond/first month's rent. The length of sentence will determine the urgency of this work and the frequency of appointments.

12.67 When developing reasonable steps, Local Authorities must ensure that all prisoners, and probation services, are aware of the facts of the likely accommodation context well before their release.

## **Prior to release**

12.68 Following identification and at least 56 day period prior to release, Local Authorities must work with the prisoner to help to secure that accommodation will be available upon release, using the reasonable steps outlined above. For prison leavers, accommodation is a key element to a successful resettlement, but not the only element so during the process of developing the accommodation plan, provision for any necessary integrated support must be considered on a case by case basis with the probation services and discussed with the prisoner concerned. Welsh Government also recommends that work starts even earlier than 56 days to increase the chances of a successful resettlement and could be linked to the 90 days that each prisoner should spend in a local resettlement prison prior to release.. This doesn't necessary mean that additional work is required on behalf of the Local Authority, but an earlier commencement will increase the options and increase the chances of a successful outcome.

12.69 The issue of data sharing is often cited as a barrier to effective partnership working. Local Authorities should work with relevant partners to identify alternative approaches if necessary. Local Authorities should also be mindful of section 115 of the Crime and Disorder Act 1998, which allows for the transfer of data where there is a public safety concern. To ensure the safe transfer of data between partners, Local Authorities might also find it useful to identify a single contact within the council and arrange for them to have a secure email address.

12.70 Many prisoners will leave prison with one or more characteristics that will make it more challenging for them to source accommodation. Housing and support assessments and plans must be prepared with all identified prisoners threatened with homelessness prior to release. These plans should be agreed in sufficient time for the prisoner's release date and it is recommended that Local Authorities engage with the Offender Supervisor and probation services who will be responsible for the resettlement planning of all prisoners.

12.70 In assessing the suitability of accommodation, Local Authorities ought to take account of both the vulnerability of the applicant and the prisoner's risk to the community to which they will be returning. This should be looked at in terms of the risk of re-offending and also the risk of harm to the community.

12.71 While Local Authorities retain the responsibility for determining an applicant's priority need status (see chapter xx for more guidance on the Duty to Secure), it is important that discussions about a person's possible status are dealt with on a case by case basis and also involve the Offender Supervisor at the prison, the probation services and other relevant agencies involved in the management of the case. For example this could include Police, Integrated Offender Management, substance misuse treatment providers and health professionals.

12.72 Access to the Private Rented Sector (PRS) for prison leavers can be more difficult than other homeless people due not only to the stigma and sometimes the nature of their original crime, but also the additional support needs required in many cases. That is not to say that the PRS is not a viable option, but whether a package of support is required in addition to the accommodation ought to be considered for all prisoners referred to the PRS.

12.73 Placing prisoners into Bed & Breakfast accommodation or other multi occupancy arrangement with other prisoners has shown not to be suitable accommodation for a successful resettlement and must not be the default housing solution. If it is to be used the Local Authority should record an explanation of why B&B has been used, keep probation services fully informed and begin planning move on arrangements immediately.

## **Post-release and offenders in the community**

12.74 If accommodation has been secured for a prisoner, which will be available for them immediately on release, then Local Authorities should take a view as to whether a prison pick up service would be beneficial to the resettlement of the prisoner. Where a prison pick up is desirable, a risk assessment should be carried out to determine its appropriateness.

12.75 In considering post-release support, Local Authorities should have regard to their possible future responsibility under the new legislation to people who lose their accommodation or risk losing their accommodation. A further package of support may also be required to enable the individual to maintain their accommodation and refrain from reoffending and this should be negotiated with suitable service providers such as probation services, particularly through IOM Cymru partnership arrangements.

12.76 This is also relevant to those who lose or are at risk of losing their accommodation as a result of their offending behaviour while in the community. These people will be eligible for the same prevention services and assistance to help to secure accommodation using reasonable steps.

12.77 A Local Authority might also find it of benefit to maintain contact with some former prisoners in the early weeks after release with the aim of possibly providing further support to help overcome any issues relating to their accommodation should they arise. This could include the extension of floating support provision.

## **Resettlement of Women Prisoners**

12.78 It is acknowledged that female prisoners are one of the most difficult groups to support. Evidence suggests that women are:

- Much more likely (than men) to have been the victim of physical or sexual abuse;
- More likely to demonstrate depression, anxiety and self-harm in custody; and
- More likely to demonstrate a prevalence of substance misuse issues which poses particular difficulties for effective resettlement.

12.79 In addition, the absence of a female custodial establishment or approved premises in Wales impacts on home connections during sentence and results in Welsh female prisoners travelling some distance on release to resettle in their home communities. The fact that women are far more likely to be primary carers on their intake into custody, and will often try to re-establish connections with their children on release, should also be taken into account.

12.80 Given these challenges, Local Authorities will need to develop an alternative approach to support the resettlement and accommodation needs of female prisoners resettling back to Wales. It will be important for Local Authorities to be involved in developing and delivering the multi-agency Integrated Offender Management (IOM) Cymru: Women's Pathfinder model to help women manage their vulnerabilities and to reduce the risk of offending behaviour.

12.81 Local Authorities must also be sensitive to the case details of the applicant when undertaking an assessment and/or developing reasonable steps. This includes careful and sensitive handling when investigating accusations of domestic abuse, establishing support needs, and the appropriateness of re-establishing family and partner relationships.

## **MAPPA and High Risk of Harm cases**

12.82 Multi-Agency Public Protection Arrangements (MAPPA) are designed to protect the public, including previous victims of crime, from serious harm by sexual and violent offenders. They require the local criminal justice agencies and other bodies dealing with offenders to work together in partnership in dealing with these offenders. MAPPA is not a statutory body in itself but is a mechanism through which agencies can better discharge their statutory responsibilities and protect the public in a co-ordinated manner.

12.83 The Responsible Authority consists of police, probation and prisons. Other bodies have a statutory Duty to Co-operate (DTC). Their contribution plays an important role in protecting the public by sharing information which improves the assessment and management of the risk of harm presented by individual offenders. Additionally, helping offenders to resettle in the community and reduce offending-related problems contributes to the work to help them avoid reoffending. This could involve work to address accommodation problems, improve employment prospects or tackle substance misuse.

12.84 The Local Authority is listed as an agency with a duty to co-operate with MAPPA. As such the Local Authority should be represented on the local MAPPA Strategic Management Board (SMB) and a memorandum of understanding should be in place to outline how the Local Authority as a DTC will work with MAPPA and those offenders subject to MAPPA.

12.85 Clear guidelines will need to be in place around the sharing and disclosure of information when working with the resettlement needs of offenders subject to MAPPA. Clear lines of communication between all those involved with the offender subject to MAPPA improves the quality of the overall risk assessment and risk management plan for the individual offender, and ultimately enhances public protection.

12.86 MAPPA eligible offenders are managed by the National Probation Service, and not by the Community Rehabilitation Companies (CRCs). However, whilst CRCs are not a Duty to Co-operate agency, they should co-operate with MAPPA where they have relevant information, or are involved in delivering services to an offender.

## **Referrals from BASS Properties and Approved Premises**

12.87 The accommodation provided to people in Approved Premises and in properties under the National Offender Management Service's Bail Accommodation and Support Scheme will by its nature be temporary and will not be appropriate for a discharge of duty. Local Authorities must retain responsibility for managing the accommodation needs of people leaving this type of accommodation and for supporting their community resettlement via a move on plan.

## **Former asylum seekers who have been given permission to stay in the UK and are no longer being accommodated by the United Kingdom Border Agency;**

12.88 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. Some Local Authorities treat all new refugees as vulnerable and in priority need, due to these factors (for example Swansea) whilst others have more restricted criteria.

12.89 In working with applications from this client group, Local 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 and may need support to do so..

12.90 Examples of good practice approaches can be seen in Appendix 2 of Shelter Cymru's and Tai Pawb's 'Homelessness amongst people from Black and Minority Ethnic populations in Wales'<sup>3</sup>

### **Further sources of information and guidance:**

12.91 In 2005, the Office of the Deputy Prime Minister published a Development Guide for Local Authorities on *Tackling Homelessness Amongst Ethnic Minority Households* (see Annex **xx**).

12.92 In 2012 the Housing and Migration Network produced *Housing and Migration, A UK guide to issues and solutions* - <http://bit.ly/1wELJqN>

12.93 The CIH and HACT Housing Rights website aims to provide accurate information to recent arrivals and to advisers about entitlements to housing, based on people's immigration status - <http://www.housing-rights.info/index.php>

**People who have experienced other problems that may increase the risk of homelessness including family/relationship breakdowns; domestic, hate incidents and hate crime or other violence; poor mental or physical health; drug and alcohol misuse; age-related problems and debt.**

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<sup>3</sup> Campbell.J.A. Shelter Cymru and Tai Pawb. (2014) . Homelessness amongst people from Black and Minority Ethnic populations in Wales'. <http://bit.ly/1EWN3eJ>

## **People with mental impairment/learning disabilities**

12.94 People with mental disability/learning disabilities can be particularly vulnerable to homelessness if their needs are not identified and addressed through the statutory care framework. In particular, people whose disability is not easily identified may have difficulties seeking assistance and explaining their problems. It is important that Local Authority homelessness services are sensitive to people in this situation and provide appropriate assistance. Local Authority housing services will need to work closely with social services, the Local Health Boards and the NHS in helping people with mental impairment/learning disabilities who are at risk of losing their homes. There are a number of agencies which could assist the Local Authority in their duty to provide advice and information. These agencies include Local Authority Community Adult Learning Disability Teams, day care providers and voluntary sector organisations concerned with supporting people with learning difficulties or with mental health conditions, and the statutory providers of help, including professional providers such as the individual's key worker. One of the most important elements in preventing homelessness among this vulnerable group is to ensure that the various agencies who may, and should be, involved in providing services and support, work effectively together and take joint responsibility for the client.

## **People with Mental Health Needs**

12.95 People with mental health needs may also be vulnerable to homelessness, which in itself can aggravate or lead to mental ill health. It is essential that Local Authority homelessness teams have joint working arrangements with Community Mental Health Teams in order to support people with mental health problems find appropriate accommodation.

12.96 The Mental Health Strategy for Wales, 'Together for Mental Health', published in October 2012, is founded on a "recovery and re-ablement" approach, and aims to draw services together to support service users. The Strategy will be supported by an action plan which will include commitments for housing. The Strategy builds on the Mental Health (Wales) Measure 2010 and accompanying statutory guidance, with extending access to primary mental health services and introducing a more holistic, personalised approach to secondary care through personal pathway plans which address housing and other needs. It is vital that housing services collaborate with health and social services at strategic and operational level to enable access to primary care and ensure these pathway plans are implemented effectively.

12.97 Further guidance on working specifically with prisoners with a mental health condition 'Policy Implementation Guidance: Mental Health Services for Prisoners', was published May 2014. This should be considered when supporting prisoners close to release who are undergoing primary or secondary care via their local health board.

## **People with a substance misuse problem**

12.98 Substance misuse undermines the ability of people to maintain settled lives and often leads to and exacerbates homelessness. Local Authorities will need to liaise with specialist teams within Substance Misuse Area Planning Boards to ensure that people with substance misuse problems who are homeless or at risk of homelessness are referred to appropriate treatment and support services, and have access to housing which enables work on harm minimisation. The Welsh Government issued a Good Practice Framework for the Provision of Substance Misuse Services to Homeless People and those with Accommodation Problems. This framework sets out the expectations on local statutory and voluntary services in making services accessible for people with substance misuse problems.

## **People experiencing domestic disputes, abuse, violence or harassment**

12.99 In cases involving violence or harassment, victims should be offered support and legal advice as quickly as possible, including a range of legal remedies such as injunctions. The likely effectiveness of legal action will need to be discussed with the victim. Local Authorities should discuss with the victim the option of securing the person's home to enable them to continue living in the property, where that is an option they wish to pursue and where it is safe to do so. A fast response combined with support from the police, Local Authority and voluntary sector may provide the victim with the confidence to remain in the home. Good practice in homelessness prevention in cases of domestic abuse should be based on joint working. At the local level this should include services which provide advice and assistance to enable the victim to remain in their home.

12.100 In some cases homelessness will arise because of a domestic dispute. Local Authorities should ensure that advice and assistance as well as emergency accommodation where necessary are available to people who would be threatened with violence or abuse if they were to remain in their current accommodation. Authorities should not discourage someone from making a homelessness application even if they have not made use of alternative approaches, such as counselling or the use of injunctions, to try to resolve their situation

12.101 Where a Local Authority housing services becomes aware that a young person under 18 is the victim of abuse, or sexual exploitation, they must alert social services to the case. If that young person is homeless as a result of the abuse then the duties on social services within the Southwark Judgement apply. In this respect Local Authority housing services should be aware of the duties of their social services and certain other specified Authorities under s.20 and s.27 of the Children Act 1989. An approach to social services might also be directed at relieving tension within the household to enable members to continue to live together. Social services may be able to offer counselling and support or provide advice on other local services and agencies which might provide specialist help.

12.102 Where there is threatened or actual domestic violence, applicants will be in priority need. Local Authorities should work closely with the police and Women's Aid Groups to ensure that victims have access to the appropriate advice and support services, and enable them to remain in their home where they wish to do so.

12.103 Not all relationship breakdowns involve domestic violence. Relationships can still break down irretrievably in the absence of violence or threats of violence, and Authorities should not require violence to have occurred to demonstrate breakdown of the relationship. Each case should be treated on its merits and careful consideration given to what information is needed to establish whether there is homelessness as a result of relationship breakdown. In order to reduce the distress caused to applicants, Local Authorities must be sensitive in the way in which investigations are undertaken as well as determining appropriate solutions.

12.104 People suffering or at risk of other forms of violence will also need support to resolve their problems. Local Authorities and social landlords should establish specific procedures and help for people suffering racial harassment, hate crime and incidents taking account of the guidance in '*Tackling Racial Harassment: Code of Guidance for Public Sector Landlords*'. Further detailed guidance on good practice can be found on the Lemos & Crane Race Action Net website ([www.raceactionet.co.uk](http://www.raceactionet.co.uk)). Tai Pawb is also able to provide advice and support ([www.taipawb.org](http://www.taipawb.org)).

## **Preventing homelessness recurring**

12.105 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.

12.106 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 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 housing related support services and partners such as the NHS) 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. Local Authorities must establish mechanisms to identify people experiencing repeat homelessness, and focus support services to intervene and break this cycle with multi-agency casework.

12.107 Sustaining accommodation 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. Whilst sustaining accommodation is the eventual objective, some individuals may find it particularly difficult to sustain accommodation due to personal circumstances, for example mental health or substance misuse difficulties.

## People affected by redevelopment or who are otherwise displaced

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

## Making referrals

12.109 Guidance on how to proactively refer; providing additional support to vulnerable applicants to follow up referrals is contained at Chapter xx.

## Common causes of homelessness

12.110 Causes of homelessness can be varied and sometimes unique. Below is a list of the more common causes of homelessness.

12.111 Local Authorities should consider which reasonable steps would best meet the needs of the applicant based on the identified cause of the threat to their accommodation. Local Authorities need to be aware of each applicant's unique situation and circumstances.

<b>Cause</b>	<b>Example action/reasonable steps</b>
Parents, relatives or friends not being able or willing to provide accommodation	Mediation and conciliation services – perhaps contracted out by the Local Authority to, for example, Llamau, Youth Crime prevention and parenting programmes; actions to resolve anti social behaviour; and employment and training options advice.
Relationship breakdown, including domestic violence	Mediation and conciliation services, domestic abuse service, including '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, prison, residential treatment/care	Early planning for discharge between institutional staff and local housing providers, including assessing support needs. Proactive provision of advice by Local Authority on housing options (prior to discharge and on initial reception).
Discharge from remand or custody	Engage in joint assessment and referral system to help identify those prisoners with a housing need and also to help prisoners to either retain or manage the appropriate release of their accommodation upon reception.
End of tenancy or licence 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
Landlord action and court orders	Independent housing advice, services to resolve disputes between different parties such as mediation and conciliation.
Mortgage arrears	Support applicants with mortgage arrears to help applicants to either manage or downsize.
Anti-social behaviour	Action to resolve anti-social behaviour (such as referral to ASB prevention support) and services to resolve disputes between different parties, such as mediation and conciliation.
Person ill-equipped to sustain a tenancy	Tenancy support and 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, advice and signpost to relevant services.

## **Monitoring Prevention**

12.112 It is vital that Local Authorities and partners monitor the effectiveness of their prevention practises. To coincide with the implementation of the Housing (Wales) Act 2014, Welsh Government has introduced a new prevention data return. Authorities will need to use this and other management information to fine tune their services in accordance with best practice in order to measure the effectiveness of their service.

## **Case study examples**

To be provided later.

# CHAPTER 13: DUTY TO HELP TO SECURE ACCOMMODATION FOR HOMELESS APPLICANTS

## Introduction

13.1 The duty to help to secure accommodation for homeless applicants is intended to help people where the duty to prevent homelessness has been unsuccessful or they have approached the Local Authority already homeless.

This duty is owed to all applicants who are eligible and homeless and emphasis should be placed by Local Housing Authorities on proactively working in partnership with the applicant to identify reasonable steps that will help them to find a solution to their housing need.

13.2 This section of the Code will provide guidance for Local Authorities on the reasonable steps that may be used to support people who are homeless and the ways in which this duty can come to an end.

## The duty to help to secure accommodation for homeless applicants

### The Act states

#### Section 73 - Duty to help to secure accommodation for homeless applicants

(1) A local housing authority must help to secure that suitable accommodation is available for occupation by an applicant, if the authority is satisfied that the applicant is—

- (a) homeless, and
- (b) eligible for help.

(2) But the duty in subsection (1) does not apply if the authority refers the application to another local housing authority (see section 80)..

### Guidance

13.3 If following the assessment under s.48 an applicant is deemed to be eligible and homeless the Local Authority has a duty to help secure accommodation for them. **This does not mean that the Local Authority has a duty to secure accommodation.** In helping to secure accommodation the Local Housing Authority will need to work in partnership with the applicant to identify appropriate reasonable steps to be taken.

13.4 Guidance on eligibility can be found in Chapter **xx**

### Local connection

13.5 Where a Local Housing Authority decide that an applicant would be owed the s.73 duty to help to secure accommodation but considers that the conditions for referral of the case to another Authority are met, that is they have a local connection

with the area of another Local Housing Authority and no connection with the area they have applied to, they have a priority need and they are unintentionally homeless then the Local Housing Authority is able to consider making a local connection referral.

13.6 Guidance on local connection and making a local connection referral can be found in Chapter [xx](#).

## Taking reasonable steps

### Local Authorities' duties in helping to secure accommodation

#### The Act states

##### Section 65 - Meaning of help to secure

Where a local housing authority is required by this Chapter to help to secure (rather than "to secure") that suitable accommodation is available, or does not cease to be available, for occupation by an applicant, the authority –

- (a) is required to take reasonable steps to help, having regard (among other things) to the need to make the best use of the authority's resource;
- (b) is not required to secure an offer of accommodation under Part 6 of the Housing Act 1996 (allocation of housing);
- (c) is not required to otherwise provide accommodation.

#### Guidance

13.7 The Local Housing Authority must ensure that reasonable steps are taken to help an individual to secure or retain suitable accommodation. Much of the work to be undertaken by the Local Authority and the applicant regarding reasonable steps under s.66 duty to help prevent an applicant from becoming homeless and s.73 duty to help secure accommodation for homeless applicants will be similar. Therefore detailed guidance on reasonable steps can be found in the chapter on prevention Chapter XXX ([hyperlink to reasonable steps in prevention chapter](#)).

13.8 Where, as a result of being owed the s.66 duty to help prevent an applicant from becoming homeless, a number of reasonable steps have already tried in partnership with the applicant, and despite this they have become homeless, the Local Housing Authority must review their assessment of the applicant and explore whether there are any further reasonable steps that can now be pursued.

#### Best use of the Authority's resources

13.9 Detailed guidance on when and how a Local Housing Authority can consider the best use of its resources can be found in Chapter XXX ([hyperlink to ending the duties chapter](#)).

## Help to secure (rather than “to secure”) that suitable accommodation is available

13.10 Applicants should be made aware that the duty to help secure accommodation does not mean that the Local Authority is obliged to secure them either an allocation of Local Authority accommodation via Part 2 of the Housing Act or to secure them any other form of accommodation.

## How to secure or help to secure the availability of accommodation

### The Act states

Section 64 How to secure or help to secure the availability of accommodation

- (1) The following are examples of the ways in which a local housing authority may secure or help to secure that suitable accommodation is available, or does not cease to be available for occupation by an applicant –
- (a) by arranging for a person other than the authority to provide something;
  - (b) by itself providing something;
  - (c) by providing something, or arranging for something to be provided, to a person other than the applicant.
- (2) The following are examples of what may be provided or arranged to secure or help to secure that suitable accommodation is available, or does not cease to be available, for occupation by an applicant –
- (a) mediation;
  - (b) payment by way of grant or loan;
  - (c) guarantees that payments will be made;
  - (d) supporting in managing debt, mortgage arrears or rent arrears;
  - (e) security measures for applicants at risk of abuse;
  - (f) advocacy or other representation;
  - (g) accommodation;
  - (h) information and advice;
  - (i) other services, goods or facilities.

13.11 S.64 of the Housing (Wales) Act 2014 above includes examples of the types of interventions that Local Authorities might consider.

13.12 A more comprehensive list of interventions that Local Authorities might wish to consider and which they have to put in place as a minimum set of interventions available can be found in the Chapter [XX \(hyperlink to reasonable steps in prevention chapter\)](#).

13.13 The following is a list of interventions that may be more applicable to the s.73 duty to help secure accommodation.

- Supported Housing – the provision of supported housing with move on accommodation provided as part of an exit strategy such as a ‘Move On

scheme' – excluding night shelters, crisis short-stay accommodation or interim accommodation

- Shared housing and/or houses of multiple occupation – the provision of shared accommodation through a managed scheme, shared accommodation is particularly important for applicants who would be subject to the single rent occupancy rate for Housing Benefit;
- Accommodation arranged with friends and family –, where appropriate, through the provision of mediation with friends or family, to enable the applicant to remain in or return to accommodation that is suitable and sustainable for a minimum of 6 months and not just for example a temporary arrangement on a sofa;
- Supported lodgings – the provision of a supported lodging scheme which will provide supported accommodation, particularly for young people aged up to 25, that will continue to be available to them until they are ready to move to fully independent living. This is distinct from Nightstop schemes which are intended to be short term crisis accommodation;
- Social housing – the provision of social housing should be considered whether through the Local Authority or a Registered Social Landlord (Part 6 Housing Act 1996 allocation or nomination)
- Private rented accommodation-enabling suitable accommodation to be accessed through services such as private rented sector access services and social letting agencies.

13.14 Local Housing Authorities have the flexibility to provide intervention through working in partnership with voluntary organisations, other Local Authority services and across regional areas. Interventions should be based on a sound knowledge of local issues and demand which should be reflected in the Local Homelessness Strategy ([hyper link to chapter on homelessness strategy](#)).

## Rough Sleepers

13.15 People who are sleeping rough are likely to be vulnerable for an 'other special reason' due to the health and social implications of their situation. Authorities need to be proactive in ensuring that rough sleepers can access the housing and support services that they need, so that no one needs to have to sleep rough. Appropriate assessment and the provision of services that can meet housing and support needs would need to be available to people in this situation. Many people who have been homeless long term have multiple needs, often including mental health and substance misuse problems. Someone may be vulnerable not from a single need but from a combination of needs. Statutory and voluntary sector services should be co-ordinated to identify and address multiple needs in a joined-up and flexible way.

13.16 When Authorities are considering the range of reasonable steps that may be actioned to assist rough sleepers, consideration must be given to circumstances of the individual. Some people who may have had a transient / chaotic life style may not be able to cope with permanent accommodation and the dramatic change this may bring to their lives.

13.17 Authorities ought to give appropriate weighting to the reasons that a person who has had a significant period without accommodation in the event that accommodation is declined or lost due to their inability to cope with such a provision. Those individuals who have had a significant period of rough sleeping may not fit well into a supported housing setting and a housing first approach may wish to be considered resources permitting.

13.18 For those individuals with chaotic lifestyles, a judgement will need to be made whether a 'Housing First' approach with support in the community can be applied or if they need intermediate specialist accommodation which is more intensively managed. Some rough Sleepers can be hard to engage, and Authorities may wish to consider an individual budget approach to increase engagement and tackle some of the root causes of homelessness.

## **Pets**

13.19 Due to the isolation that comes with being homeless and particularly street homeless, many people often have pets as a form of companionship. When meeting the accommodation needs of this group Authorities ought to have consideration of this relationship between the applicant and his/ her companion / pet and where possible aim to help to secure / secure accommodation that would enable this relationship to continue. In the event that this type of accommodation cannot be provided Authorities should be discouraged from ending their duties particularly where the pet has a positive effect on the applicants' health and wellbeing.

## **Case study examples**

13.20 To be provided later.

# CHAPTER 14: DUTY TO SECURE ACCOMMODATION FOR APPLICANTS IN PRIORITY NEED

## Introduction.

14.1 S.75 of the Housing (Wales) Act 2014 places a duty on Local Housing Authorities to provide secure accommodation for applicants in priority need where the duty in s.73 (help to secure accommodation) has ended. This duty will **always** follow the s.73 duty and at times the s.66 duty to help prevent will have been owed first. The reasonable steps taken under s.66 and s.73 will mean that for many applicants considerable work will have been completed and a successful solution found. Thus the s.75 duty to secure accommodation should only be required for a limited number of applicants.

14.2 The s.75 duty is an absolute duty to secure that suitable accommodation is available for occupation by the applicant. When securing accommodation for applicants the priority for Local Housing Authorities must be to minimise the risk of homelessness recurring in order to allow applicants to establish, or re-establish, a settled way of life.

14.3 The s.75 duty can be discharged in a number of ways. These include an offer of accommodation through Part 6 of the Housing Act 1996, an offer of an assured tenancy including through a Registered Social landlord, or an assured short hold tenancy which normally means accommodation in the private rented sector.

14.4 Which ever method is used to discharge the duty Local Authorities should always seek to secure long-term solutions to homelessness. This should include consideration of the wide range of factors which may impact on resettlement, in particular the household's requirements in terms of proximity to family and friends and the accessibility of healthcare, employment, education and training and support providers.

This section of the Code will provide guidance for Local Authorities on the duty to secure accommodation for applicants in priority need where the duty in s.73 has ended.

## When to assess if the section 75 duty is owed.

### The Act states

Section 75 - Duty to secure accommodation for applicants in priority need when the duty in section 73 ends

(1) When the duty in section 73 (duty to help secure suitable accommodation for a homeless applicant) comes to an end in respect of an applicant in the circumstances mentioned in subsection (2) or (3) of section 74, the local housing authority must secure that suitable accommodation is available for

occupation by the applicant if subsection (2) or (3) (of this section) applies.

## Guidance

14.5 When the s.73 duty to help to secure accommodation comes to an end either because the period of 56 days has expired or because before the end of the 56 days the Local Housing Authority is satisfied that reasonable steps have been taken to help to secure that suitable accommodation is available for the applicant but accommodation that is likely to last for a period of at least 6 months is not available to the applicant ([hyperlink to s.74 circumstances in which the duty in s.73 ends](#)) the Local Housing Authority must review the applicant's assessment to determine if they now owe the s.75 duty to secure accommodation ([s62 hyperlink to duty to assess](#)).

## Who the Section 75 duty applies to.

### The Act states

Section 75 - Duty to secure accommodation for applicants in priority need when the duty in section 73 ends

- (2) This subsection applies where the local housing authority—
- (a) is satisfied that the applicant—
    - (i) does not have suitable accommodation available for occupation, or
    - (ii) has suitable accommodation, but it is not likely that the accommodation will be available for occupation by the applicant for a period of at least 6 months starting on the day the applicant is notified in accordance with section 84 that section 73 does not apply,
  - (b) is satisfied that the applicant is eligible for help,
  - (c) is satisfied that the applicant has a priority need for accommodation, and
  - (d) if the authority is having regard to whether or not the applicant is homeless intentionally (see section 77), is not satisfied that the applicant became homeless intentionally in the circumstances which gave rise to the application;

## Guidance

14.6 The s.75 duty is owed to applicants who meet specific criteria.

i) **not have suitable accommodation available for occupation that is likely to last for a period 6 months:** the Local Housing Authority must be satisfied that, having taken reasonable steps, the applicant has no suitable accommodation available to them that it is likely to last for a period of at least 6 months. For the purpose of determining the 6 month period it starts on the day the applicant is notified that he or she is no longer entitled to the s.73 duty ([hyperlink to suitable accommodation, hyperlink to s.73 duty to help to secure accommodation](#))

ii) **be eligible for help:** at this stage eligibility should already have been determined through the assessment of whether the applicant was entitled to help under the s.66 help to prevent of s.73 help to secure accommodation duties one or both of which will always precede determination of this duty ([hyperlink to chapter on eligibility](#))

iii) **have a priority need for accommodation:** during the assessment of an applicant's entitlement to the s.73 duty to help to secure the Local Housing Authority will also need to establish if they have **reason to believe** that there is a priority need as this will entitle the applicant to interim accommodation, for the purposes of s.75 the Local Housing Authority will be able to use the evidence already gathered during the ongoing assessment but at this stage will need to be **satisfied** that the applicant is in a priority need category ([hyperlink to chapter of priority need](#)). Local Housing Authorities are reminded that where age is the determining factor for priority need the date of the application is used not the date of the assessment of entitlement to s.75

iv) **be unintentionally homeless:** the Local Housing Authority, if they intend to investigate intentionality under s.78 (deciding to have regard to intentionality) for the category of priority need that is applicable to the applicant, must be satisfied that the applicant did not make themselves intentionally homeless. It is likely that during an earlier stage of the assessment the Local Housing Authority will have formed an opinion as to whether the applicant may be intentionally homeless or not. In line with the Welsh Government's recommendation the Local Housing Authority should already have informed the applicant by letter that they are minded to find him or her intentionally homeless and what the consequence of that decision could be. For the purposes of determining if the s.75 duty is owed the Local Authority must be **satisfied** that the applicant is intentionally homeless ([hyperlink to intentional homelessness chapter](#)).

## The Act States

Section 75 - Duty to secure accommodation for applicants in priority need when the duty in section 73 ends

- (3) This subsection applies where the local housing authority is having regard to whether or not the applicant is homeless intentionally and is satisfied that—
- (a) the applicant became homeless intentionally in the circumstances which gave rise to the application,
  - (b) the applicant—
    - (i) does not have suitable accommodation available for occupation, or
    - (ii) has suitable accommodation, but it is not likely that the accommodation will be available for occupation by the applicant for a period of at least 6 months starting on the day on which the applicant is notified in accordance with section 84 that section 73 does not apply,
  - (c) the applicant is eligible for help,
  - (d) the applicant has a priority need for accommodation,
  - (e) the applicant is—

- (i) a pregnant woman or a person with whom she resides or might reasonably be expected to reside,
  - (ii) a person with whom a dependent child resides or might reasonably be expected to reside,
  - (iii) a person who had not attained the age of 21 when the application for help was made or a person with whom such a person resides or might reasonably be expected to reside, or
  - (iv) a person who had attained the age of 21, but not the age of 25, when the application for help was made and who was looked after, accommodated or fostered at any time while under the age of 18, or a person with whom such a person resides or might reasonably be expected to reside, and
- (f) the authority has not previously secured an offer of accommodation to the applicant under this section following a previous application for help under this Chapter, where that offer was made—
- (i) at any time within the period of 5 years before the day on which the applicant was notified under section 63 that a duty was owed to him or her under this section, and
  - (ii) on the basis that the applicant fell within this subsection.
- (4) For the purpose of subsections (2)(a)(ii) and (3)(b)(ii), the applicant is to be treated as notified on the day the notice is sent or first made available for collection.

## Guidance

14.7 The intention is that from 2019 onwards the duties owed to an applicant who is found intentionally homeless will be extended if he or she falls into one of the categories as specified above. The relevant provisions of the 2014 Act have not yet been commenced but Local Authorities ought to be aware of, and preparing for, implementation including development of services. Further guidance on this section will be provided before implementation.

# CHAPTER 15: ENDING THE DUTIES

## Introduction

15.1 The Local Housing Authority has a number of duties under Part 2 of the Housing (Wales) Act 2014 towards applicants who are in housing need. For each of the duties a specific circumstance or set of circumstance will bring the duty to an end.

At all stages of the process the Local Housing Authority will have been working proactively and in partnership with the applicant to help them find a solution to their housing need. The Local Housing Authority will also have been working in partnership with other organisations to deliver interventions that can help an applicant resolve their housing need.

When bringing a duty to an end the Local Housing Authority will need to be able to draw on information and evidence from all parties that everything that could be done to help the applicant within the requirements of Part 2 of the Housing (Wales) Act has been considered and, where appropriate, carried out.

The Welsh Government considers it is as important for a Local Housing Authority to work closely with an applicant when considering bringing a duty to an end as it is to work closely with an applicant when assessing and identifying what, if any, duty is owed.

This section of the Code will provide guidance for Local Authorities on the specific circumstance or set of circumstances in which a duty can be brought to an end and the way in which an applicant must be notified.

### Key terminology used in this section

#### Suitable accommodation

15.2 A Local Housing Authority must be satisfied that accommodation offered to an applicant in the discharge of any of the duties in Part 2, Chapter 2, of the Housing 2014 is suitable.

15.3 A number of factors such as support needs, location, cultural needs, size including numbers of bedrooms and affordability must be considered when a Local Housing Authority is deciding whether accommodation is suitable.

15.4 Detailed guidance on what constitutes suitable accommodation can be found in chapter XXX. [\(hyperlink to chapter on suitable accommodation\)](#).

#### Accommodation likely to be available for a period of at least six months

15.5 Local Authorities must be satisfied that accommodation offered to an applicant in the discharge of the s.66 duty to help to prevent homelessness and the s.73 duty

to help to secure accommodation is likely to be available for occupation by the applicant for a period of at least 6 months.

15.6 Where an applicant has returned home or gone to stay with friends or extended family, as an example through the use of mediation or negotiation by the housing options worker, it is the responsibility of the Local Housing Authority to satisfy itself that there is a realistic expectation that this solution will last for 6 months and that it is not intended by the family, friends, extended family or the applicant to be a temporary arrangement.

15.7 Where an applicant has accepted a private rented assured shorthold tenancy, a secure tenancy or assured tenancy then it would be reasonable for the Local Authority to expect this accommodation to be **available** for the minimum necessary period and therefore meet the duty..

15.8 A Local Housing Authority must take into account the support needs and vulnerability of an applicant which will have been identified as part of the assessment (hyperlink to s.62). As long as these have been considered, the Local Housing Authority can reasonably expect that an applicant will adhere to any rules when determining the likelihood of accommodation **lasting** for at least 6 months, including those set out in a tenancy agreement and not through their behaviour cause themselves to lose the accommodation.

15.9 The period of 6 months s.67 (5) and s.74 (7) begins on the day the notice under s.84 (notice that duties have ended) is sent or first made available for collection. Local Housing Authorities cannot determine that the duty has ended unless the accommodation is actually available to the applicant. In the case of a private rented shorthold assured tenancy, a secure tenancy or assured tenancy the accommodation must be available for the applicant to move into. It is not enough for the Local Housing Authority to have secured the promise of accommodation from a private landlord or to have helped an applicant to make a waiting list application for a secure tenancy.

## **Refusal or acceptance of an offer of accommodation**

15.10 Local Authorities must allow applicants a reasonable period for considering offers of accommodation that will bring the duties under Part 2 of the Housing (Wales) Act 2014 to an end. There is no set reasonable period. Longer periods may be required where the applicant is in hospital or temporarily absent from the district. In deciding what a reasonable period is, Local Authorities must take into account the applicant's circumstances in each case.

15.11 Applicants should be given the opportunity 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 the accommodation (eg, a tenancy agreement).

15.12 The Local Housing Authority must ensure that the applicant is fully aware that the refusal of an offer of suitable accommodation, whether this is through a private rented shorthold assured tenancy, a secure tenancy or assured tenancy or through

securing accommodation with immediate family, friend or extended family can result in the ending of any duty to them under Part 2 of the Housing Act 2014. The Authority must also notify the applicant that it regards itself as having discharged its duty, before it can end.

15.13 When the Local Housing Authority determines that a duty can be brought to an end and informs the applicant under s.84 notice that duties have ended they must include information on the right of the applicant to ask for a review of the decision (further guidance of s84 can be found at the end of this chapter.). Guidance on s85 the right to request a review can be found in Chapter (hyperlink).

## **Reviewing progress and closing the case**

15.14 Once the Local Authority and applicant agree a plan for addressing the applicant's homelessness or threat of homelessness, that plan must be kept under review. The frequency of review meetings will be dictated by the nature of the applicant's particular housing situation, but a Local Authority will be expected to demonstrate that continuing dialogue with the applicant has taken place before it can justify ending its duty. The purpose of this dialogue is to be able to nimbly address any changes in circumstances, while also reviewing general progress to date.

## **Best use of resources**

15.15 When taking reasonable steps under s.66 duty to help to prevent and s.73 duty to help to secure a Local Authority may have regard to making best use of the Authority's resources.

15.16 Each Local Authority will need to be committed corporately to tackling homelessness if it is to be prevented effectively. Homelessness needs to be a high priority both in political and operational terms when targeting and allocating resources. Local Authorities should be aware of the potential cost savings at a corporate level, to fully resourcing a dedicated homelessness prevention service.

15.17 Local Authorities must ensure that resources are allocated effectively and efficiently to ensure that all clients have the ability to receive a tailored core service of key interventions which can best meet their individual needs.

15.18 Where a Local Authority has made disproportionate reductions in their homelessness budget when compared to their full funding settlement, any decisions to discharge their duty on the best use of resources can expect to be subject to additional scrutiny and an increased likelihood of challenge. In addition, it is the Welsh Government's opinion that redirection of budget from homelessness services to other statutory services, although potentially of indirect benefit, will not be considered a justifiable reason for a disproportionate reduction in budget.

15.19 It is recommended that budgets are set based on the likely annual take up which is drawn from a mix of estimated demand for the new year and the number of presentations in the last two financial years.

15.20 Some interventions will be more costly than others. In some cases, a single intervention, such as clearing a family's mortgage arrears, could cost significantly more than a range of interventions for someone else.

15.21 It is not appropriate for a Local Authority to consciously allocate additional resources to applicants likely to be eligible for the s.75 duty during either s.66 or s.73. Local Authorities must work to provide a consistent service to all applicants who are eligible for either duty, but within the context of an individualised service. It is accepted, however, that someone who would be eligible for the s.75 duty is highly likely to require additional support, and therefore resources, in order to secure accommodation.

15.22 It is recommended that resources are monitored closely throughout the year to ensure expenditure is consistent with both spend profiles and client numbers. Where an applicant presents towards the end of the financial year, it is not appropriate for them to be disadvantaged in relation to the reasonable steps taken based purely due to the exhaustion of resources.

15.23 Where an applicant's threat of homelessness fails to be prevented while being supported via s.66 and they have moved through to the Duty to Help to Secure duty (s.73), a Local Authority must consider the reasonable steps in the context of the applicant's new situation and, on a case by case basis, consider the likely success and cost effectiveness of revisiting the same reasonable steps as used under s.66. For example a private rented sector placement, although not available to date, might become available during s.73 and an Authority should consider retaining it as an option. However, an Authority might be justified in removing some steps on the basis that they are no longer appropriate or are highly unlikely to be successful. These could be continuing family mediation where it is apparent that the relationship has deteriorated beyond the point of repair within 56 days.

15.24 Where an Authority discharges the s.73 duty ahead of the 56 day period based on having undertaken reasonable steps, they need to be aware of the possibility of challenge.

15.25 When a Local Authority discharges their duty on the basis of having undertaken reasonable steps within the best use of resources, they must communicate the decision in writing to the applicant outlining the specific rationale behind the decision to discharge the duty.

## **Duty to help prevent homelessness (s66)**

### **Circumstances in which the duty in s.66 ends**

#### **The Act states**

##### **Section 67 - Circumstance in which the duty in section 66 ends**

(1) The duty to an applicant under section 66 comes to an end in any of the circumstances described in subsections (2), (3) or (4), if the applicant has

been notified in accordance with 84.

(2) The circumstances are that the local authority is satisfied that the applicant has become homeless.

(3) The circumstances are that the local authority is satisfied (whether as a result of the steps it has taken or not) that-

- a) the applicant is no longer threatened with homelessness, and
- b) suitable accommodation is likely to be available for occupation by the applicant for a period of at least 6 months.

(4) The circumstances are that –

- a) the applicant, having been notified in writing of the possible consequences of refusal or acceptance of the offer, refuses an offer of accommodation from any person which the authority is satisfied is suitable for the applicant, and
- b) the authority is satisfied that the accommodation offered is likely to be available for occupation is satisfied that the accommodation offered is likely to be available for occupation by the applicant for a period of at least 6 months.

(5) The period of 6 months mentioned in subsections (3)(b) and (4)(b) begins on the day the notice under section 84 is sent or first made available for collection.

(6) See Section 79 for further circumstances in which the duty in section 66 comes to an end.

## The Act requires

15.26 That the Local Housing Authority has a continuing duty to an eligible applicant who is threatened with homelessness, to help to prevent homelessness under s.66 until a specific circumstance or set of circumstance is reached which brings the duty to an end. S.67 of the 2014 Housing (Wales) 2014 Act lists those circumstances.

## Guidance

### **Section 67 (2) the Local Authority is satisfied that the applicant has become homeless**

15.27 Where a Local Authority has reason to believe that an applicant may have become homeless or that the applicant has re-presented as homeless, the Local Authority must assess to satisfy itself whether the applicant is eligible for continued assistance; and what duty, if any, is owed.

15.28 Guidance on working with people either homeless or suspected of being homeless can be found at Chapter [xx](#).

### **Section 67(3)(a) and (b) the local housing authority is satisfied that the applicant is no longer threatened with homelessness**

15.29 The Local Authority must have due regard to the outcome of the initial assessment and the statutes regarding the legal right to occupy and accommodation available for occupation [chapter [xx](#)].

15.30 Local Authorities may need to interview parents, carers or friends to establish the facts behind a possible change of situation for the applicant. Authorities are encouraged to be sensitive to situations where parents, carers or friends may have been providing a home for a family member or friend with support needs (for example a person with learning disabilities) 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.

### **Section 67(4)(a) and (b) applicant refuses an offer of accommodation**

15.31 The Local Housing Authority can bring the duty in S66 to end having notified the applicant of the possible consequences of refusal or acceptance of an offer of accommodation if the applicant refuses (please see XXX for guidance on refusing or accepting and offer of accommodation).

15.32 The accommodation must be suitable and likely to be available to the applicant for a period of 6 months (please XXXX or guidance on suitable accommodation and likely to last for a period of 6 months see XXXX)

### **Section 67(6) see section 79 for further circumstance in which the duty in section 66 comes to an end**

15.33 Guidance on the further circumstance in which the s.66 duty can be brought to an end can be found XXXX

### **Interim duty to secure accommodation for homeless applicants in priority need (s.68)**

#### **Circumstance in which the duty in s.68 ends The Act states**

Section 69 - Circumstances in which the duty in section 68 ends

(1) The duty to an applicant under section 68 comes to an end in any of the circumstances described in subsection (2), (3) (subject to subsection (4) and (5)), (7), (8) or (9) if the applicant has been notified in accordance with section 84.

(2) The circumstances are that the local housing authority has decided that no duty is owed to the applicant under section 73 and the applicant is notified of that decision.

(3) In the case of an applicant to whom section 68(3) applies, the circumstances are that the local housing authority has—

(a) decided that the duty owed to the applicant under section 73 has come to an end and that a duty is or is not owed to the applicant under section 75, and

(b) notified the applicant of that decision; but this is subject to

subsections (4) and (5).

(4) Subsection (5) applies where a local housing authority has decided that no duty is owed to the applicant under section 75 on the basis that the authority—

(a) is satisfied that the applicant became homeless intentionally in the circumstances which gave rise to the application, or

(b) has previously secured an offer of accommodation of the kind described in section 75(3)(f).

(5) The duty under section 68 does not come to an end in the circumstances described in subsection (3) until the authority is also satisfied that the accommodation it has secured under section 68 has been available to the applicant for a sufficient period, beginning on the day on which he or she is notified that section 75 does not apply, to allow the applicant a reasonable opportunity of securing accommodation for his or her occupation.

(6) The period mentioned in subsection (5) is not sufficient for the purposes of that subsection if it ends on a day during the period of 56 days beginning with the day on which the applicant was notified that the duty in section 73 applied.

(7) The circumstances are that the applicant, having been notified of the possible consequence of refusal, refuses an offer of accommodation secured under section 68 which the local housing authority is satisfied is suitable for the applicant.

(8) The circumstances are that the local housing authority is satisfied that the applicant has become homeless intentionally from suitable interim accommodation made available for the applicant's occupation under section 68.

(9) The circumstances are that the local housing authority is satisfied that the applicant voluntarily ceased to occupy as his or her only or principal home suitable interim accommodation made available for the applicant's occupation under section 68.

(10) The duty comes to an end in accordance with this section even if the applicant requests a review of any decision that has led to the duty coming to an end (see section 85).

(11) The authority may secure that suitable accommodation is available for the applicant's occupation pending a decision on a review.

(12) See section 79 for further circumstances in which the duty in section 68 comes to an end.

## The Act requires

15.34 That the Local Housing Authority has an interim duty to an eligible, homeless applicant who they have reason to believe has a priority need to secure accommodation under s.68 until a specific circumstance or set of circumstances are reached which brings the duty to an end. S.69 of the 2014 Housing (Wales) 2014 Act lists those circumstances.

15.35 It has been established that, as a general rule, accommodation provided pending homelessness inquiries does not create a tenancy or a licence protected by the Protection from Eviction Act 1977. The courts have applied this principle in cases where the accommodation provided was accommodation in a Bed and Breakfast

hotel and where it was a self contained flat. Consequently, where this general rule applies, Local 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 Local Authority and the applicant, or if the occupation of the accommodation is allowed to continue on more than a transient basis.

15.36 The duty under s.68 will end when the Authority has satisfied itself that the person does not have a duty owed to them under s.73 or if the duty applies to the household under section 73 comes to an end.

15.37 When the duty under s.73 ends and the applicant is subject to the duty under s.75, accommodation must be secured for while the s.75 duty lasts. The accommodation provided under s.68 can continue to be used as interim accommodation for the purposes of s.75 so long as the accommodation remains suitable for the household and any other person reasonably expected to reside with them.

15.38 In the event that the duty under s.73 comes to an end as a result of s.74(2) and (3), and the Authority is satisfied that the provisions under s.75 do not apply because the household remains eligible, homeless, in priority need but is intentionally homeless, the accommodation must continue to be provided for a sufficient period for the household to attempt to secure housing for their occupation with the help of the Local Authority. This period would not be considered sufficient if ended within 56 days of acceptance of the s.73 duty. Also the period of accommodation granted after the ending of the s.73 duty must be of a reasonable time frame.

*For example.*

15.39 Applicant accepts accommodation under the interim duty. The Authority accepts the s.73 duty (DAY 1). The Authority is satisfied it has discharged the duty after taking reasonable steps and is unable to find a solution (Day 14). The Authority are satisfied the applicant is not owed the s.75 duty and notifies the person that they are intentionally homeless based on the circumstances that gave rise to the application and in priority need. The interim accommodation will continue for a reasonable period, which will be a minimum of 56 days from DAY 1.

*Or*

15.40 Applicant accepts accommodation under the interim duty. The Authority accepts the s.73 duty (DAY 1). The Authority is satisfied it has been unable to help to secure housing and after 56 days the duty ends. The Authority is satisfied the applicant is not owed the s.75 duty and notifies the person that they are intentionally homeless based on the circumstances which gave rise to the application and in priority need. The interim accommodation will continue for reasonable period as determined by the Local Authority from the notification that s.75 does not apply.

15.41 S.75 duties may apply to specified household types under s.75(e) that the Local Authority has determined to be intentionally homeless. Additional guidance will

be produced before the commencement of these provisions which is expected to be 2019.

## **Section 69(12) see s.79 for further circumstances in which the duty in s.68 comes to an end**

15.42 Guidance on the further circumstance in which the s.68 interim duty can be brought to an end can be found **XXXX**

### **Duty to help to secure accommodation (s.73)**

#### **Circumstances in which the duty in s.73 ends**

#### **The Act states**

##### **Section 74 - Circumstances in which the duty in section 73 ends**

(1) The duty to an applicant under section 73 comes to an end in any of the circumstances described in subsections (2), (3), (4), or (5), if the applicant has been notified in accordance with section 84.

(2) The circumstances are the end of a period of 56 days.

(3) The circumstances are that before the end of a period of 56 days the local housing authority is satisfied that reasonable steps have been taken to help to secure that suitable accommodation is available for occupation by the applicant.

(4) The circumstances are that the local housing authority is satisfied (whether as a result of the steps it has taken or not) that—

(a) the applicant has suitable accommodation available for occupation, and

(b) the accommodation is likely to be available for occupation by the applicant for a period of at least 6 months.

(5) The circumstances are that—

(a) the applicant, having been notified of the possible consequence of refusal or acceptance of the offer, refuses an offer of accommodation from any person which the authority is satisfied is suitable for the applicant, and

(b) the authority is satisfied that the accommodation offered is likely to be available for occupation by the applicant for a period of at least 6 months.

(6) The period of 56 days mentioned in subsections (2) and (3) begins on the day the applicant is notified under section 63 and for this purpose the applicant is to be treated as notified on the day the notice is sent or first made available for collection.

(7) The period of 6 months mentioned in subsection (4)(b) and (5)(b) begins on the day the notice under section 84 is sent or first made available for collection.

(8) See section 79 for further circumstances in which the duty in section 73 comes to an end.

## The Act requires

15.43 That the Local Housing Authority has a continuing duty to an eligible and homelessness applicant to help to secure accommodation under s.73 until a specific circumstance or set of circumstances is reached which brings the duty to an end. S.74 of the 2014 Housing (Wales) 2014 Act lists those circumstances.

## Guidance

### Section 74 (2) the end of the period of 56 days.

15.44 Under s.62 ([hyperlink](#)) a Local Housing Authority must assess whether an applicant is eligible for help under Part 2 Chapter 2 of the Housing Act 2014. Under s.63 ([hyperlink](#)) the applicant must then be notified of the outcome the assessment.

15.45 For those applicant's found to be eligible and homeless and owed the s.73 duty to help secure accommodation, they must be notified that this duty will continue for a maximum of 56 days from the date of notification of the outcome of the assessment.

15.46 During the 56 day period the Local Housing Authority must identify the reasonable steps that it will take in partnership with the applicant to try to secure accommodation.

15.47 The Local Housing Authority must not simply wait out the 56 days. When it brings the duty to an end it will be required under s.84(2) ([hyperlink](#)) to notify the applicant of the reasons why it considers the duty has come to an end. This must include the reasonable steps it identified during assessment, the assistance it offered the applicant in order to pursue those steps and the reason/s why those reasonable steps have failed.

15.48 If the Local Housing Authority is unable to evidence that it used the 56 days to ensure that reasonable steps were taken, then it could be subject to a challenge from the applicant under s.85 (right to request a review). If the applicant is dissatisfied with the decision on the review, then an appeal to the county court may be made under s.88 (right of appeal to the county court on point of law).

### Section 74(3) before the end of a period of 56 days

15.49 The s.73 duty can last for a maximum of 56 days. However, there may be circumstances where a Local Housing Authority has exhausted all reasonable steps and is able to evidence that there is no further action that can be taken to help to secure accommodation. This may be particularly applicable in circumstances where the Authority has already pursued a number of reasonable steps with the applicant under the s.66 duty to help prevent an applicant from becoming homeless and therefore limited options remain available to meet the s.73 duty to help secure accommodation.

15.50 The Local Housing Authority should be cautious when bringing the s.73 duty to an end before the end of the 56 day period. They must be satisfied that there was no likely expectation that further reasonable steps could have become available within the period.

15.51 If the Local Housing Authority brings the duty to an end under s.74(3) it will be required under s.84(2) [\(hyperlink\)](#) to notify the applicant of the reasons why it considers the duty has come to an end. This must include the reasonable steps it identified during assessment, the assistance it offered the applicant in order to pursue those steps, and the reason(s) why those reasonable steps have failed.

### **The 56 day period.**

15.52 For both subsection (2) and (3), the 56 days begins on the day that the applicant is notified of the outcome of the assessment [\(hyperlink to s.63\)](#). There are a number of different outcomes and/or duties that may result from an assessment and it is important that an applicant who is owed the s.73 duty to help secure accommodation is made aware from the outset that this duty is time limited. This will enable them to make informed, realistic choices about the reasonable steps that are identified and the outcome that they wish to achieve.

### **Section 74(4) the applicant has suitable accommodation that is likely to be available to them for a period of 6 months.**

15.53 The Local Housing Authority can bring the duty in s.73 to an end if it is satisfied that the applicant is no longer homeless because they have suitable accommodation available for their occupation which is likely to be available to the applicant for a period of at least 6 months [\(for guidance on suitable accommodation and likely to last for a period of 6 months see XXXX\)](#)

### **Section 74(5)(a) and (b) the applicant refuses an offer of suitable accommodation that is likely to be available to them for a period of 6 months.**

15.54 The Local Housing Authority can bring the duty in s.73 to an end having notified the applicant of the possible consequences of refusal or acceptance of an offer of accommodation if the applicant refuses [\(please see XXX for guidance on refusing or accepting and offer of accommodation\)](#).

15.55 The accommodation must be suitable and likely to be available to the applicant for a period of 6 months [\(please XXXX or guidance on suitable accommodation and likely to last for a period of 6 months see XXXX\)](#)

### **Section 74(8) see section 79 further circumstance in which the duty in section 73 comes to an end**

15.56 Guidance on the further circumstance in which the s.74 duty can be brought to an end can be found [XXXX](#)

## The duty to secure accommodation for applicants in priority need

### Circumstance in which the duty in section 75 ends.

#### The Act states

##### Section 76 - Circumstances in which the duty in section 75 ends

(1) The duty to an applicant under section 75(1) comes to an end in any of the circumstances described in subsections (2), (3), (6) or (7), if the applicant has been notified in accordance with section 84.

(2) The circumstances are that the applicant accepts—

(a) an offer of suitable accommodation under Part 6 of the Housing Act 1996 (allocation of housing), or

(b) an offer of suitable accommodation under an assured tenancy (including an assured shorthold tenancy).

(3) The circumstances are that the applicant, having been given notice in writing of the possible consequence of refusal or acceptance of the offer, refuses—

(a) an offer of suitable interim accommodation under section 75,

(b) a private rented sector offer, or

(c) an offer of accommodation under Part 6 of the Housing Act 1996, which the authority is satisfied is suitable for the applicant.

(4) For the purposes of this section an offer is a private rented sector offer if—

(a) it is an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is available for the applicant's occupation,

(b) 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 section 75 to an end, and

(c) the tenancy being offered is a fixed term tenancy for a period of at least 6 months.

(5) In a restricted case, the local housing authority must, so far as reasonably practicable, bring its duty to an end by securing a private rented sector offer; for this purpose, a "restricted case" means a case where the local housing authority would not be satisfied as mentioned in section 75(1) without having regard to a restricted person (see section 63(5)).

(6) The circumstances are that the local housing authority is satisfied that the applicant has become homeless intentionally from suitable interim accommodation made available for the applicant's occupation—

(a) under section 68 and which continues to be made available under section 75, or

(b) under section 75.

(7) The circumstances are that the local housing authority is satisfied that the applicant has voluntarily ceased to occupy as his or her only or principal home, suitable interim accommodation made available for the applicant's occupation—

(a) under section 68 and which continues to be made available under

section 75, or

(b) under section 75.

(8) See section 79 for further circumstances in which the duty in section 75(1) comes to an end.

(9) In this section “fixed term tenancy” has the meaning given by Part 1 of the Housing Act 1988.

## **The Act requires**

15.57 That the Local Housing Authority has a continuing duty to applicants who are owed a duty under s.75 until a specific circumstance or set of circumstances is reached which brings the duty to an end. S.76 of the 2014 Housing Act lists those circumstances.

## **Guidance**

### **Section 76(2) accepts an offer**

- i. Accepts an offer of suitable accommodation under Part 6 of the Housing Act 1996.**

15.58 the applicant accepts an offer of accommodation under Part 6 (an allocation of social housing) : this would include an offer of a secure tenancy from the Authority or an assured tenancy from a Registered Social Landlord via the Authority's allocation scheme (for guidance on allocating accommodation under Part 6 see Code of Guidance Allocations);

- ii. Accepts an offer of suitable accommodation under an assured tenancy (including an assured shorthold tenancy)**

15.59 The applicant accepts an offer of an assured tenancy (including an assured shorthold tenancy): this would include an offer of an assured (shorthold) tenancy made by a Registered Social Landlord or the offer of an assured shorthold tenancy from a private rented sector landlord for a period of at least of 6 months.

### **Section 76(3) refuses an offer**

- i. Section 76(3) refuses an offer of interim accommodation**

15.60 The applicant refuses an offer of suitable interim accommodation offered under s.75: the duty does not end unless the applicant is informed in writing (s.76(3)) of the possible consequence of refusal or acceptance, and of his or her right to ask for a review of the suitability of the accommodation (s.85(3)), and no other suitable accommodation is available to them pending an offer under i. and ii. above.

- ii. Refuses an offer of suitable private rented sector accommodation**

15.61 the applicant refuses a private rented sector offer: the duty does not end

unless the applicant is informed in writing (s.76(3)) of the possible consequence of refusal or acceptance and of his or her right to ask for a review of the suitability of the accommodation (s.85(3)). The applicant should also be given a written offer, which should state that it is a final offer, and the Authority is satisfied that the accommodation is suitable, would be available for a minimum of 6 months and that it would be reasonable for the applicant to accept it.

### **iii. Refuses an offer of accommodation under Part 6 of the Housing Act 1996**

15.62 the applicant refuses an offer of long-term social housing including a secure tenancy from the authority or an assured tenancy with a Registered Social Landlord which the Local Authority is satisfied is suitable for the applicant (s.76(3)): the duty does not end unless the applicant is informed in writing of the possible consequences of refusal and of his or her right to ask for a review of the suitability of the accommodation (s.85(3)). The applicant should also be given a written offer, which should state that it is a final offer, and the Authority is satisfied that the accommodation is suitable and that it would be reasonable for the applicant to accept it.

15.63 Applicants should be 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.85(3) 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 xx** for guidance on suitability and **Chapter xx** for guidance on reviews.

## **Section 76(4) private rented sector**

15.64 A private rented sector offer is an assured shorthold tenancy made by a private landlord to the applicant. This offer 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.75 to an end. The tenancy must be a fixed term tenancy for a period of at least 6 months.

15.65 It is vital for Local Authorities, partners, other organisations and applicants to recognise the private rented sector as an important source of accommodation to meet permanent housing needs. For many applicants the private sector will offer a realistic opportunity of finding the type of property they want in their preferred location. Local Housing Authorities are encouraged to develop private sector access services and build strong relationships with private sector landlords, for example through landlord fora.

15.66 Local Housing Authorities are reminded that when securing accommodation for applicants the priority must be to minimise the risk of homelessness recurring in order to allow applicants to establish, or re-establish, a settled way of life.

15.67 Private rented accommodation must meet the standards set out for suitable accommodation in **chapter XXX** and in particular, when using the private rented sector to end the s.75 duty the Local Housing Authority must be satisfied that the

accommodation is affordable to the applicant. Many private sector landlords require bonds and rents in advance. The Welsh Government recommends that Local Housing Authorities develop a rent deposit or guarantee scheme in order to allow homeless people to access private sector rented housing more easily.

15.68 More guidance on what constitutes suitable private rented accommodation including affordability, physical condition of the property, health and safety matters, landlord behaviour and good management can be found in the chapter of suitability of accommodation ([hyperlink](#))

15.69 A range of good practice has been developed in this area including an improvement toolkit which has been published by the Welsh Local Government Association (WLGA).

### **Section 76 (5) Restricted Case**

15.70 S.63(5) of the Housing Act 2014 defines a restricted person as some one who is not eligible for help under Part 2, Chapter 2, because they are subject to immigration control within the meaning of the Asylum and Immigration Act and they either do not have leave to remain in the United Kingdom or have leave to enter or remain subject to conditions to maintain and accommodate himself or herself or any dependents without recourse to public fund.

15.71 Where an eligible applicant has a 'restricted person' as a member of their household and the Local Housing Authority has a duty to re-house the household under s.75 but only due to the priority need status of the restricted person, this duty should be discharged through an offer of private sector rented accommodation, so far as reasonably practicable. (See Chapter xx for further guidance about eligibility for homelessness assistance.)

### **Section 76(6) intentionally homeless from interim accommodation**

15.72 the applicant becomes homeless intentionally from interim accommodation made available to him or her under s.68 and which continues under s.75, or under s.75; see Chapter 15 for guidance on determining whether an applicant became homeless intentionally;

### **Section 76(7) voluntarily cease to occupy interim accommodation**

15.73 the applicant voluntarily ceases to occupy as his or her principal home interim accommodation made available under s.68 and which continues under s.75, or under s.75.

### **Section 76(8) see section 79 for further circumstances in which the duty in section 75(1) comes to an end**

15.74 Guidance on the further circumstance in which the s.75 (1) duty can be brought to an end can be found below .XXXX

## **Further circumstances in with the duties in section 66, 68, 73 and 75 end**

### **The Act states**

Section 79 - Further circumstances in which the duties to help applicants end

- (1) The duties in sections 66, 68, 73 and 75 come to an end in the circumstances described in subsection (2), (3), (4) or (5), if the applicant is notified in accordance with section 84.
- (2) The circumstances are that the local housing authority is no longer satisfied that the applicant is eligible for help.
- (3) The circumstances are that the local housing authority is satisfied that a mistake of fact led to the applicant being notified under section 63 that the duty was owed to the applicant.
- (4) The circumstances are that the local authority is satisfied that the applicant has withdrawn his or her application.
- (5) The circumstances are that the local housing authority is satisfied that the applicant is unreasonably failing to co-operate with the authority in connection with the exercise of its functions under this Chapter as they apply to the applicant.

### **The Act requires**

15.75 That the Local Housing Authority has a continuing duty to applicants who are owed a duty under s.66, s.68, s.73 or s.75 until a specific circumstance or set of circumstances is reached which brings the duty to an end. S.79 of the 2014 Housing Act lists further circumstances that can bring the duties to an end.

### **Guidance**

#### **Section 79(2) no longer eligible for help**

15.76 The duties in s.66, s.68, s.73 and s.75 come to an end if the Local Authority is satisfied that the applicant is no longer eligible for help under schedule 2 of the Housing Act 2014 ([hyper link to chapter on eligibility](#)).

#### **Section 79(3) a mistake of fact**

15.77 If the Authority is satisfied that a mistake of fact has led to the applicant being notified that a duty was owed to them, the Authority can withdraw this duty once the mistake has been identified.

15.78 Applicants must be reminded at the point of application that it is an offence (under s.97) for a person with intent to induce a Local Authority to believe in connection with its exercise of its functions under the homelessness chapter of the Act that a person or another person is entitled to help in accordance with the provisions of Part 2. To induce can include knowingly or recklessly making a statement which is false or withholding information that is reasonably required from

the person by the Authority in connection to the exercise of the functions contained within Part 2 or failure to notify the Local Housing Authority with change in facts that are material to the application.

15.79 A person guilty of the above offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale (2014 £2500).

15.80 Where an applicant has deliberately falsified information in order to benefit from the duties, Authorities should seek legal advice.

### **Section 79(4) withdrawn applications**

15.81 It is recommended that Local Authorities have procedures in place for dealing with applications that are withdrawn or where someone fails to maintain contact with the Local Authority after making an application. It is good practice for applications to be considered for closure if there has been no contact with the applicant for more than three months. Any further approach from the applicant after this time may need to be considered as a fresh application. Where an applicant renews contact within three months the Authority will need to consider any change of circumstances that may affect the application.

### **Section 79(5) unreasonably failing to co-operate**

15.82 A Local Housing Authority can bring a duty to an end if it is satisfied that an applicant is unreasonably failing to co-operate. The Local Housing Authority must be satisfied that the applicant is not failing to co-operate because they are vulnerable or have an unmet support need. As long as they are satisfied that the applicant is not vulnerable or has no unmet support needs it would not be unreasonable of the Local Housing Authority to bring the duty to an end in the circumstances listed below (this is not an exhaustive list)

- having agreed to the reasonable steps the applicant then fails to co-operate in their implementation, as an example the applicant and their family may have agreed to mediation which the applicant, with no good reason, then fails to engage with;
- despite every effort on behalf of the Local Housing Authority the applicant unreasonably fails to co-operate in the identification of reasonable steps to take, for example, by providing necessary information on their circumstances;
- the Local Housing Authority is satisfied that it has identified reasonable steps to prevent or help secure accommodation but the applicant unreasonably fails to agree to those steps, such as approaching an agency which might help them.

15.83 Local Authorities should not invoke s.79(5) until they have made every effort to obtain the co-operation of the applicant and explained the consequences of not doing so.

15.84 Where a Local Authority is considering invoking s.79(5), they should explain their reasons to the applicant and give them all reasonable opportunity an applicant has become uncooperative, the Local Authority should inform the to co-operate.

15.85 Where an Authority have discharged their duty, it is considered good practice for them to exercise discretion to continue to offer limited assistance to applicants on the basis that it will help the household to avoid repeat presentations.

## Carrying out the assessment

The obligation to carry out an assessment of needs lies with the Local Authority and it is not for applicants to “prove their case”, provided that they co-operate in identifying needs and how they can be addressed.

An Authority must then make a decision on the basis of its assessment. A decision making flowchart on statutory duties to homeless people is contained in [Annex XX](#). Authorities should remember that any delegation to officers, committees or others must comply with s.101 of the Local Government Act 1972 (which also Authorities to make arrangement for the discharge of their functions by a committee, sub-committee, an officer or another Authority).

Wherever possible, it is recommended that Local Authorities aim to complete their assessment and notify the applicant of their decision within [28 working days](#). In many case it should be possible for Authorities to complete the assessment significantly earlier. However the priority is for the assessment and decision to be correct which may take longer.

## Notification that duties have ended.

### Section 84 - Notice that duties have ended

(1) Where a local housing authority concludes that its duty to an applicant under section 66, 68, 73 or 75 has come to an end (including where the authority has referred the applicant’s case to another authority or decided that the conditions for referral are met), it must notify the applicant—

- (a) that it no longer regards itself as being subject to the relevant duty,
- (b) of the reasons why it considers that the duty has come to an end,
- (c) of the right to request a review, and
- (d) of the time within which such a request must be made.

(2) Where a notice under subsection (1) relates to the duty in section 73 coming to an end in the circumstances described in section 74(2) or (3), it must include notice of the steps taken by the local housing authority to help to secure that suitable accommodation would be available for occupation by the applicant.

(3) Notice under this section must be in writing.

(4) Where a notice is not received by an applicant, the applicant may be treated as having been notified under this section if the notice is made available at the authority’s office for a reasonable period for collection by the applicant or on the applicant’s behalf.

## The Act requires

15.86 In order to bring any of the duties found in Part 2 of the Housing Act 2014 to an end the Local Housing Authority must notify the applicant.

## Guidance

15.87 The notification must be given in writing and must include where appropriate:

- a clear statement that it no longer regards itself as being subject to any **or** all of the following duties
  - ✓ s.66 Duty to help prevent applicants from becoming homeless
  - ✓ s.68 interim duty to secure accommodation for homeless applicants in priority need
  - ✓ s.73 duty to help secure accommodation for homeless applicants
  - ✓ s.75 duty to secure accommodation for applicants in priority need when the duty is s.73 ends;
- a clear explanation of the reasons why it considers the duty/duties have come to an end, including the reasonable steps it has taken and the outcome of those reasonable steps s.84 (2);
- a clear statement that it is satisfied that any accommodation offered is suitable for the applicant and likely to last for at least 6 months and the reasons why it believes this;
- the reasons for any decision which is against the interest of the applicant and the factors that were taken in to account when making that decision e.g. that he or she is not eligible for assistance, is not homeless, is not in priority need or is homeless intentionally;
- a clear explanation of the reasons for a decision to refer the applicant to another Authority and the factors that were taken in to account when making that decision s.82(2);
- information about the applicant's right to request a review of the decisions made, and the period within which a request for a review must be made s.84(1);
- Authorities should also advise applicants about their procedures on the right of review at this stage.
- Applicants should be informed that they can seek independent legal or other advice on the decision if dissatisfied, and also independent representation in review procedures

15.88 It is important to ensure that the applicant fully understands why the duty has come to an end. Where possible, a Local Housing Authority should try to explain the decision in person as well as in writing, this is particularly important when an applicant may have difficulty understanding the consequence of the ending of the duty and their right to request a review.

15.89 In accordance with s.84(4) where the notification cannot be sent to the applicant, or where the Authority believes that it may not have been received by

him or her, the Authority should make it available at its office to enable the applicant, or someone who represents the applicant, to collect within a reasonable period.

15.90 Where an Authority has decided to discharge the duty by securing accommodation outside their area, s.91 of the 2014 Act requires that they notify the Authority in whose area the accommodation is located.

### **Case study examples**

To be provided later.

# CHAPTER 16: PRIORITY NEED FOR ACCOMMODATION

## Introduction

16.1 The Housing Act 2014 places an emphasis on Local Housing Authorities working in partnership with applicants to prevent or help to secure accommodation by assisting them to identify and take reasonable steps to help to secure suitable accommodation. The duty to prevent homelessness (s.66) or help to secure accommodation (s.73) is for all applicants who are eligible and either threatened with homelessness or homeless. They do not need to have been assessed as being in one of the priority need groups.

The determination of priority need will need to take place at key points in the assessment and review of the applicant's situation (see chapter for more guidance on the duty to assess) and should be regarded as a safety net for those applicants deemed to be most in need e.g. pregnant woman, households with children, applicants who are subject to domestic abuse, young people. etc.

This section of the Code will set provide guidance on the categories of applicants who have priority need and the meaning of vulnerability for the purposes of this section of the Housing Act 2014.

## Categories of applicants who have priority need.

### Guidance

16.2 The duties at s.68 and s.75 only apply to those applicants who the Local Housing Authority has reason to believe or who they are satisfied have priority need.

### The following categories of persons have a priority need

#### Section 70 – Priority need for accommodation

- (1) The following persons have a priority need for accommodation for the purpose of this Chapter -
- (a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside.

### Guidance

16.3 A pregnant woman, together with anyone with whom she lives (or might reasonably be expected to live) has a priority need for accommodation. Authorities are reminded that this is regardless of the length of time she has been pregnant. The normal letter of confirmation of pregnancy from the medical services issued to pregnant women or a midwife's letter should be adequate evidence of pregnancy. If a pregnant woman suffers a miscarriage or terminates her pregnancy during the assessment process, the Authority may need to consider whether she continues to

have a priority need (e.g. on the basis that she is vulnerable for another special reason, see below).

Section 70 – Priority need for accommodation

(1)

(b) a person with whom a dependent child resides or might reasonably be expected to reside

## Guidance

16.4 Applicants have a priority need if they have one or more dependent children living with them or who might reasonably be expected to live with them. The 2014 Act does not define dependent children, but Authorities should treat as dependant all children under 16, and all children aged 16-18 (up to their 19th birthday) who are in, or are about to begin, full-time education (including further but not higher education) or training, or who for other reasons are unable to support themselves and who live at home. Children between the age of 16 and their 18th birthday who are financially independent of their parents would not normally be considered to be dependants, although they could be if they were dependent on them in other ways: some children in this position may not be ready to live independently of their parents.

16.5 Dependent children need not necessarily be the applicant's own children but could be, for example, related to the applicant or his or her partner or adopted or fostered by the applicant. There must, however, be a dependant relationship akin to that of a parent-child.

16.6 Authorities may receive homelessness applications from a parent who is separated. In some cases where the parents of a child separate the Court may make a residence order which will indicate which parent the child lives with. In such cases, the parent named in the order may be considered to have care of the child, and the child may be considered to be dependent on that parent. However, in many cases the parents will come to an agreement between themselves as to which of them has care of the child, and a court order will not be made or required. In these cases, to satisfy itself whether the child is dependent on the parent making the homelessness application, the Authority will need to consider all the circumstances, taking into account the arrangements made between the parents themselves. A child may be dependent on an applicant even though he or she does not live with him or her at all times but divides his or her time between parents or others. And there may be cases where the child does not reside with the applicant for want of suitable accommodation. Authorities need to take care that each case is fully assessed on its individual circumstances.

16.7 More guidance in this area can be found by viewing the judgment of the House of Lords, in *Holmes-Moorehouse v Richmond Upon Thames London Borough Council* [2009]. In this, the House of Lords ruled that 'where a court in family proceedings makes a shared residence order providing for children to spend alternate weeks with each parent, and one parent is homeless, a Local Authority is not obliged on account of that order to regard the homeless parent as having priority need on the ground that he was the person with whom dependent children might reasonably be expected to reside.'

16.8 Where the applicant's children are being looked after by a Local Authority, i.e. are subject to a care order or are accommodated under a voluntary agreement, and are not currently living at home, liaison with the social services department will be essential in determining the nature and degree of the children's dependency, particularly since Local Authorities are required to take steps to settle the children back with their family and to encourage contact between them (unless either of these things would be contrary to the children's best interests). A joint approach with the social services department will be necessary to ensure that the best interests of the applicant and the children are served.

#### Section 70

(1)

(c) a person—

(i) who is vulnerable as a result of some special reason (for example: old age, physical or mental illness or physical or mental disability), or

(ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;

### Guidance

16.9 It is a matter of judgement whether the applicant's circumstances make him or her vulnerable. When determining whether an applicant is vulnerable, the Local Housing Authority should refer to s.71 meaning of vulnerable in s.70 ([hyperlink to s.71 guidance further on in chapter](#)).

### Vulnerable as a result of some special reason.

16.10 Being vulnerable due to some special reason is not restricted to the physical or mental characteristics of a person. What matters here is the degree of severity of the circumstances, or combination of circumstances, which render the person less able than others to fend for him or herself as defined in s.71 meaning of vulnerable in s.70 ([hyperlink](#)).

16.11 To be able to make a decision on the level of vulnerability of an applicant, or a member of their household, due to a 'special reason' Local Housing Authorities must ensure that a thorough assessment is conducted gathering all the relevant facts and placing the identified needs of the applicant and their household at the centre of the decision.

16.12 Authorities must keep an open mind and should avoid blanket policies which assume that particular groups of applicants will, or will not, be vulnerable for a special reason.

16.13 An Authority should have regard to any advice from other professionals such as medical professionals, social services, providers of care and support and specialist voluntary organisation who may have significant and relevant information about the applicant. In cases where there is doubt as to the extent of any vulnerability Authorities may also consider seeking a clinical opinion.

16.14 The burden of proof lies with the Local Authority, though applicants can be expected to provide written consent to gathering or inspecting any medical or other relevant information held about them.

16.15 The final decision on the question of vulnerability rests with the Authority.

16.16 The Act gives an example list of special reasons that could be considered in determining vulnerability. The example list is not intended to be exhaustive. Some of the factors which may be relevant to determining whether a particular category of applicant is vulnerable are set out below.

### **Old age:**

16.17 While age alone may not necessarily be sufficient for the applicant to be deemed vulnerable, the Authority should consider whether it is a factor which makes the applicant less able to fend for him or herself. Applications from people aged over 60 need to be considered carefully, particularly where the applicant is leaving tied accommodation and Authorities should normally consider applicants over 60 to be vulnerable. However, Authorities should not use 60 (or any other age) as a fixed age beyond which vulnerability occurs automatically, or below which it is ruled out; each case will need to be considered on its individual circumstances.

### **Mental and physical illness and mental and physical disability:**

16.18 Mental or physical impairment, such as those defined by the Equality Act 2010, which impinge on the applicant's housing situation and give rise to vulnerability may be readily ascertainable, but advice from health or social services staff should be sought, if necessary.

16.19 The assessment of vulnerability will need to take into account any medical information given in support of the application. It is for the Local Authority to make any further inquiries it deems necessary with any health professionals involved in the provision of any treatment.

16.20 Local Authorities may seek the opinion of a medical or other relevant professional not directly involved in the provision of treatment, where this will enable Local Authorities to develop a better understanding of the nature of the condition and how this affects the ability of the person with the medical condition to fend for themselves. Where the opinions of the medical professional directly involved in providing treatment differ from that provided by professionals not directly involved, then the Local Authority will need to show how they have reconciled this difference, taking into account the quality of the information provided, the level of knowledge of the applicant's condition and any other particular expertise. The final decision on level of vulnerability must rest with the Local Authority, who are not bound by the information provided by any medical professional opinion given, though they must show that this has been taken into consideration and the reasons why it has not led to a decision that the applicant is in priority need.

16.21 Factors which an Authority will need to consider include:

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

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

### **People in receipt of psychiatric services:**

16.22 Local health boards have an express duty to implement a specifically tailored care programme for all patients considered for discharge from psychiatric hospitals and all new patients accepted by the specialist psychiatric services. People discharged from psychiatric hospitals and Local Authority hostels for those with mental health problems are likely to be vulnerable. Effective liaison between housing, social services and local health boards will assist in such cases but Authorities also need to be sensitive to direct approaches from discharged patients who are homeless. Local Authorities will need to work within the statutory guidance on the Mental Health (Wales) Measure 2010 in planning the discharge of people from hospitals. They will also need to collaborate with mental health services on implementing the needs assessments of people in secondary care under the care pathway planning arrangements

### **Chronically sick people:**

16.23 People in this group may be vulnerable not only because their illness has progressed to the point of physical or mental impairment but also because the manifestations or effects of their illness, or common attitudes to it, make it very difficult for them to find stable or suitable accommodation.

### **Victims of abuse :**

16.24 Persons of any gender and of any age may be subject to abuse. Authorities should consider whether applicants who have suffered, or who are at risk of, for example, hate incidents or hate crime on account of their gender, physical or mental disability, race, colour, ethnic or national origin, religion or sexual orientation are vulnerable as defined in s.71 (meaning of vulnerable in s.70).

## **Rough Sleepers:**

16.25 People who are sleeping rough are likely to be vulnerable due to the health and social implications of their situation. Authorities need to be proactive in ensuring that rough sleepers can access the housing and support services that they need, in accordance with their needs, to be able to find sustainable solutions to address their circumstances, so that no one needs to have to sleep rough.

Appropriate assessment and the provision of services that can meet housing and support needs would need to be available to people in this situation. Many people, who have been homeless long term, have multiple needs, often including mental health and substance misuse problems. Someone may be vulnerable not from a single need but from a combination of needs. Statutory and voluntary sector services should be co-ordinated to identify and address multiple needs in a joined-up and flexible way.

## **Former asylum seekers:**

16.26 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 United Kingdom Border Agency) in the period before a decision was reached on their asylum claim.

16.26 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. They are likely to have poor English language skills, have little knowledge or understanding of the cultural, social and economic customs and less likely to have any social networks on which they can call on for support.

16.27 In assessing applications from this client group, Local Authorities should give careful consideration to the possibility that they may be vulnerable due to the reasons given above. 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.

### **SECTION 70**

(1)

(d) a person-

- (i) who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster, or
- (ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;

## Guidance

16.28 An applicant has a priority need if he or she is homeless or threatened with homelessness as a result of an emergency such as fire, flood or other disaster. A person has a priority need by reason of such an emergency whether or not he or she has dependent children or is vulnerable for one of the other reasons described above.

### SECTION 70

(1)

(e) a person-

(i) who is homeless as a result of being subject to domestic abuse or

(ii) with whom a person who falls within sub-paragraph (i) resides (other than the abuser) or might reasonably be expected to reside:

## Guidance

16.29 Abuse is defined in the act at s.58 (1) as meaning physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm: abuse is domestic abuse where the victim is associated with the abuser.

16.30 Domestic abuse can occur in same gender as well as mixed gender relationships. S.58 (2) sets out the meaning of a person being 'associated' with another.

16.31 In cases involving domestic abuse, the safety of the applicant and ensuring confidentiality will be of paramount importance. Authorities should not seek confirmation of domestic abuse from the alleged perpetrator. Victims of domestic abuse may wish to remain in their homes. Authorities should consider what reasonable steps they can take to assist with this wish.

16.32 Authorities must acknowledge the need for a person to move between Local Authority areas to escape domestic abuse, and are reminded that under the provisions of s.80(3)(c), they must not refer any applicant to another authority where the person would run a risk of domestic abuse in that area.

**16.33 More guidance can be found within the Duty to Prevent Chapter.**

## Section 70

(1)

(f) a person—

- (i) who is aged 16 or 17 when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, or
- (ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;

## Guidance

16.34 Authorities must treat 16 or 17 year olds as being in priority need. It is important to note that a person who is 16 or 17 at the time they apply to a Local Housing Authority for accommodation or help in obtaining or retaining accommodation retains their priority need should they turn 18 at any point during the assessment and whilst any identified duty is undischarged.

16.35 Local Authorities must ensure that there is a coordinated response to young people aged 16 and 17 who are homeless or threatened with homelessness and should have protocols in place to ensure the best outcomes for the young person accessing their services. As well as having a priority need under the Housing Act 2014 these children also fall under s.28 of the Children Act 2004 which states that Local Authorities must make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children (including 16 and 17 year olds). *R (G) v Southwark* [2009] restates and clarifies the legal position that the duty within the Children Act 1989 under s.17 (child in need) and s.20 (the duty to provide accommodation for a child in need) takes precedence over the duties to the homeless. From April 2016 the new provisions of the Social Services and Wellbeing Act 2014 will take effect. Further guidance on this legislation will be provided in due course but the lead responsibilities will remain with Children's Services for people aged under 18.

16.36 Where a 16 or 17 year old presents as homeless, Local Authorities should work with other agencies which provide specialist services for young people where these can help to address the causes of homelessness.

16.37 It is in the best interest of most 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. Local Authorities should recognise this and work pro-actively with young people and their families to identify and resolve the issues which have led to the homelessness crisis and should consider the possibility of reconciliation through mediation.

16.38 For further guidance please see WAG guidance, "Provision of accommodation for 16 & 17 year old young people who may be homeless and/or require accommodation 2010".

## Section 70

(1)

(g) a person—

- (i) who has attained the age of 18, when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, but not the age of 21, who is at particular risk of sexual or financial exploitation, or
- (ii) with whom a person who falls within sub-paragraph (i) resides (other than an exploiter or potential exploiter) or might reasonably be expected to reside;

## Guidance

16.39 Priority need also arises when a young person 18 or over but under the age of 21 is deemed to be at particular risk of sexual or financial exploitation. This could include a person who is:-

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

16.40 It is important to note that a person who is 18 but under the age of 21 when they apply to a Local Housing Authority for accommodation or help in obtaining or retaining accommodation and is deemed to be in priority need for the purpose of s.70(1)(g) retains their priority need should they turn 21 at any point during the assessment and whilst any identified duty is undischarged.

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

16.42 Where young persons have a history of being sexually or financially exploited, they should normally be regarded as vulnerable and in priority need, unless there is strong evidence that they are no longer at risk. The Welsh Government considers it is not good practice for Authorities to always expect evidence of sexual or financial exploitation.

## Section 70

(1)

(h) a person—

- (i) who has attained the age of 18, when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, but not the age of 21, who was looked after, accommodated or fostered at any time while under the age of 18, or
- (ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;

## Guidance

16.43 Priority need arises when an applicant is over 18 but under 21 and at any time whilst still a child;

- (a) was looked after by a Local Authority (within the meaning of s.58 of the Social Service and Well-Being (Wales) Act 2014 or s.22 of the Children's Act 1989) or
- (b) was accommodated by or on behalf of a voluntary organisation; or
- (c) was accommodated in a private children's home; or
- (d) was accommodated for a continuous period of at least three months—
  - (i) by a Special Health Authority or Primary Care Trust or by a authority in the exercise of education functions (within the meaning given by the s.579(1) of the Education Act 1996; or
  - (ii) in any care home or independent hospital or in any accommodation provided by an NHS Trust or
  - (iii) privately fostered.

16.44 It is important to note that a person who has attained the age of 18 but not the age of 21 and is priority need because of s.70(1)(h) at the time they apply to a Local Housing Authority for accommodation or help in obtaining or retaining accommodation retains their priority need should they turn 21 at any point during the assessment and whilst any identified duty is undischarged.

16.45 Authorities should be aware that a young person is in priority need for the purpose of the Act if he or she has spent any time, however short, during their childhood in care.

16.46 Young people who have been in care, or are leaving care, are often highly vulnerable and are too often placed in unsuitable housing with no support and little prospect for independent living. This Order makes specific provision for care leavers under the age of 21. However Authorities should continue to give careful consideration to homelessness applications from care leavers who are over 20 who are likely to be vulnerable as a result of being in care and not having a network of family to fall back on for housing support. This could be a 'special reason under s.70(1)(c).

16.47 It is particularly important that Authorities make arrangements for joint assessments between social service departments and Local Authorities in respect of care leavers and other vulnerable young people. Any consideration of housing needs should take account of the young persons need for support, education, employment training and health care. It is a statutory requirement that care leavers have up to date pathway plans and support from a Young Person's Advisor. Regard should be given to the plan and where appropriate the Young Person's Advisor should be involved in helping to identify the housing and support needs of the care leaver and the most suitable response. This planning process should begin before the young person leaves care, and consider a range of accommodation options with support, including in some cases remaining with or returning to foster carers. Care leavers will need continuing access to support and Local Authorities and partners should have flexible policies to enable young people to have alternative accommodation if their housing situation breaks down.

16.48 Under the provisions of the Children Act 1989, as amended by the Children (Leaving Care) Act 2000, from 1st October 2001 the responsibility of Local Authorities for dealing with care leavers extends to the age of 21, and in the case of those in continuing further education, up to 24. Authorities are reminded that under s.23B of the Children Act, they are required (in the circumstances prescribed) to assist in meeting the accommodation needs of care leavers, whether or not they fall within the provisions of the Order.

16.49 In meeting their housing responsibilities toward care leavers, Authorities will need to take careful account of the statutory guidance issued by the National Assembly for Wales on the Children (Leaving Care) Act 2000.

#### Section 70

(1)

(i) a person—

(i) who has served in the regular armed forces of the Crown who has been homeless since leaving those forces, or

(ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;

### Guidance

16.50 Priority need arises where a person formerly serving in the regular Armed Forces of the Crown has been homeless since leaving those forces. Persons included in this definition mean the Royal Navy, the regular forces as defined by s.225 of the Army Act 1955, the regular Air Force as defined by s. 223 of the Air Forces act 1955 and Queen Alexandra's Royal Naval Nursing Service.

16.51 Since the majority of armed forces personnel are not homeowners, a significant number of service personnel might present as homeless on leaving the armed forces.

16.52 Authorities should accept Certificates of Cessation of Entitlement to occupy a Service Quarter and of Impending Homelessness produced by the appropriate Area

Office of the Defence Housing Executive as sufficient evidence - these certificates are usually issued six months before discharge.

16.53 Authorities should recognise that priority need arises where the applicant has failed to secure suitable permanent accommodation and has therefore been unable to establish stable accommodation since leaving the armed forces. 'Suitable permanent accommodation' is defined for the purposes of this clause as being accommodation provided by a social landlord (an introductory, a secure or an assured tenancy), a private landlord (assured (shorthold) tenancy), or an accredited supported housing provider, or permanently settled with family or friends as part of their household.

16.54 When considering degree of permanence, in addition to considering suitability of accommodation, as described in Chapter regard must be made of the original intention of the arrangement when the applicant took up occupation of the accommodation. For example, if the applicant moved in with friends to accommodation which became overcrowded as a result and where this was only ever intended to be a temporary measure until they found alternative accommodation, then this may not be considered as 'settled'. No time limit should be placed on eligibility following discharge, if no suitable permanent accommodation has been found in the interim.

16.55 Authorities will need to consider whether former armed service personnel who have been housed following discharge, but later become homeless, are vulnerable due to some special reason. They will need to take account of their service background which may lead to vulnerability, particularly if they have post traumatic stress disorder.

16.56 Employment in the armed forces requires a Local Authority to consider periods of time spent by the applicant in their area whilst serving as relevant to the assessment of local connection.

## Section 70

(1)

- (j) a person who has a local connection with the area of the local housing authority and who is vulnerable as a result of –
- (i) having served a custodial sentence within the meaning of section 76 of the {Powers of Criminal Courts (Sentencing) Act 2000
  - (ii) having been remanded in or committed to custody by an order of the court,
- or
- (iii) having been remanded in youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

or a person with whom such a person resides or might reasonably be expected to reside.

## Guidance

16.56 In order to determine if a former prisoner has a priority need for accommodation they must be found to be vulnerable as a result of having been in custody or detention as defined by the Act. In making this determination a Housing Authority may wish to take into account the following factors:

- 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);
- whether any traumatic episodes have been experienced during their most recent spell in custody or detention;
- whether the applicant is receiving supervision from a criminal justice agency e.g. the Probation Service, Community Rehabilitation Company, 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 Local Housing Authority;
- 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
- 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
- whether the applicant has received an assessment and is in receipt of care
- whether the applicant is in receipt of services under the Mental Health Measure 2010.

16.57 For this category of priority need the applicant must also have a local connection with the area of the Local Housing Authority. Residence in prison does not in itself establish a local connection with an area.

16.58 Local Authorities should give regard to information provided by the Probation Service, the Community Rehabilitation Company, Prison Service, Youth Offending Service, Criminal Justice Intervention Team, Local Health Board, Local Authority or a voluntary organisation acting on behalf of one of these agencies.

16.59 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. If the Local Housing Authority is having regard to intentionality for this category of applicant then it 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.

16.60 Prisoner leavers may have particular reasons for wishing to be re-housed in a certain area outside of the area in which they have a local connection in order to give

themselves the greatest chance of rebuilding a new life. They may not wish to return to the area in which they resided prior to receiving a prison sentence in order to distance themselves from known associates. They also may be prevented from returning to their home area due to the terms of their licence. Local Authorities may wish to consider having arrangements in place where such requests can be accommodated, possibly on a reciprocal basis with other Local Authorities.

16.61 When considering former prisoners in general, the prevention chapter provides more information. In addition, Authorities should also consider the National Pathway for Homelessness Services to Prisoners issued by the Welsh Government.

16.62 Authorities are reminded that a former prisoner is eligible for any of the other priority need categories and Local Authorities are required to disregard the fact they have been a prisoner in that respect.

## Meaning of Vulnerability

### Section 71 - Meaning of vulnerable in section 70

(1) A person is vulnerable as a result of a reason mentioned in paragraph (c) or (j) of section 70(1) if, having regard to all the circumstances of the person's case,—

(a) the person would be less able to fend for himself or herself (as a result of that reason) if the person were to become street homeless than would an ordinary homeless person who becomes street homeless, and

(b) this would lead to the person suffering more harm than would be suffered by the ordinary homeless person;

this subsection applies regardless of whether or not the person whose case is being considered is, or is likely to become, street homeless.

(2) In subsection (1), “street homeless” (“digartref ac ar y stryd”), in relation to a person, means that the person has no accommodation available for the person's occupation in the United Kingdom or elsewhere, which the person—

(a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,

(b) has an express or implied licence to occupy, or

(c) occupies as a residence by virtue of any enactment or rule of law giving the person the right to remain in occupation or restricting the right of another person to recover possession;

and sections 55 and 56 do not apply to this definition.

## Guidance

### Meaning of vulnerable

16.63 It is a matter of judgement whether the applicant's circumstances make him or her vulnerable and in order to make that judgement the Local Authority must ensure that a thorough assessment is conducted gathering all the relevant facts and placing the identified needs of the applicant and their household at the centre of the decision.

16.64 When determining whether an applicant, in any of the categories set out in s.70(1)( c) or (j), is vulnerable, the Local Housing Authority must ensure that consideration is given to whether the reason in s.70(1)( c) or (j) results in the applicant being less able to protect themselves from harm when street homeless, than an ordinary homeless person who becomes street homeless and as a result he or she will suffer more harm, in circumstances where an ordinary homeless person would be able to cope.

16.65 The Welsh Government's view is that when a Local Housing Authority is using the comparator of an ordinary homeless person who becomes street homeless in order to determine an applicant's vulnerability, they should not equate that person (the ordinary homeless person who become street homeless) to a chronic rough sleeper with the associated social, mental and physical health problems that they can display.

16.66 The assessment of an applicant's ability to cope is a composite one taking into account all of the circumstances including the level of support available to the applicant if he or she were to become street homeless.

### **Meaning of street homeless**

16.67 A person is street homeless when they have no accommodation available to them that they have a legal right to occupy, whether this is

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

### **Case study examples**

To be provided later.

# CHAPTER 17: INTENTIONAL HOMELESSNESS

## Introduction

17.1 A Local Authority has the power to decide to have regard to intentionality for any category of applicant specified by the Welsh Ministers. The Welsh Ministers have specified these categories via a secondary order. The Local Authority must in turn publish a notice of its decision to have regard to intentionality and which of the allowed specific categories it will consider. This notice will give the reason/s why the Local Housing Authority has decided to have regard to intentionality for the each of the categories specified. The Welsh Government has chosen to put the onus on Local Authorities to opt into having regard to intentionality rather than opt out as it is hoped that Local Authorities will eventually move away from the use of intentionality

The use of intentionality is intended to discourage households from giving up accommodation which is suitable for their needs and available to them. It recognises the expectation that, where possible, people ought to take responsibility for their actions and ensures they do not behave in a way which could cause them to lose accommodation.

Where a Local Authority has decided to have regard to intentionality the use of it is only appropriate once a Local Authority is sure that it has have taken all reasonable steps to help prevent homeless and/or help to secure accommodation. The Local Authority ought to make every effort to advise an applicant if during the assessment process it appears that there is a possibility that he or she could be found intentionally homeless and ought to advise the applicant of the possible consequence.

A Local Authority must consider a person's vulnerability when making a decision on intentionality and must have regard to the definition of vulnerability set out at s.71 ([hyperlink to section](#)). For some applicants an unmet support need may have led to circumstances that are so difficult as to render their behaviour not unreasonable when considering the circumstances of them losing their home. In addition, Local Authorities ought to take into consideration what advice and support was made available to the applicant to help them avoid becoming homeless. It is for the Local Authority to take into consideration any mitigating circumstance, including support needs, before reaching the conclusion that the applicant has become homeless intentionally.

This section of the Code will provide guidance on what intentionally homeless means, when it can be used and how it relates to the provision of interim accommodation.

## Deciding to have regard to intentionality

### The Act states

#### SECTION 78 - Deciding to have regard to intentionality

(1) The Welsh Ministers must, by regulations, specify a category or categories of applicant for the purpose of this section.

(2) A local housing local authority may not have regard to whether or not an applicant has become homeless intentionally for the purposes of sections 68 and 75 unless—

(a) the applicant falls within a category specified under subsection (1) in respect of which the local authority has decided to have regard to whether or not applicants in that category have become homeless intentionally, and

(b) the authority has published a notice of its decision under paragraph (a) which specifies the category.

(3) Subsection (4) applies where a local housing local authority has published a notice under subsection (2) unless the local authority has—

(a) decided to stop having regard to whether or not applicants falling into the category specified in the notice have become homeless intentionally, and

(b) published a notice of its decision specifying the category.

(4) For the purposes of section 68 and 75, a local housing local authority must have regard to whether or not an applicant has become homeless intentionally if the applicant falls within a category specified in the notice published by the local authority under subsection (2).

### Guidance

17.2 The Welsh Ministers have via the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015, prescribed categories of applicants that a Local Authority may have regard to when considering intentionality. These categories of applicants fall within the priority need categories.

- A pregnant woman;
- A person with whom a dependent child resides;
- A person who is vulnerable as a result of some special reason (for example: old age, physical or mental illness or physical or mental disability);
- A person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster
- A person who is homeless as a result of being subject to domestic abuse;
- A person who is aged 16 or 17;
- A person who has attained the age of 18, but not the age of 21, who is at particular risk of sexual or financial exploitation;

- A person who has attained the age of 18, but not the age of 21, who was looked after, accommodation or fostered at any time while under the age of 18;
- A person who has served in the regular armed forces of the Crown who has been homeless since leaving those forces;
- A person who has a local connection with the area of the Local Housing Authority and who is vulnerable as a result of one of the following reasons:
  - Having served a custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) act 2000,
  - Having been remanded in or committed to custody by an order of a court, or
  - Having been remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

17.3 When considering whether to have regard to intentionality the Local Authority ought to consider to what categories of applicants, as prescribed, it continues to feel necessary to apply intentionality. It may be that a Local Authority would want to gradually phase out considering intentionality and would choose to begin with certain groups such as young people, pregnant woman and/or families. The Local Authority is able to amend its notice to either add or remove categories of applicants so long as they fall within the list published by the Welsh Ministers.

17.4 The Local Housing Authority must inform the Housing Minister in writing which categories it intends to have regard to and give a reason for why each of the specified categories is included. The Housing Minister must be informed of any subsequent amendments to the notice. The notice, and any subsequent amendments, will be published on the Welsh Government website. The Local Housing Authority must publish the notice, and any subsequent amendments, on its own website and by any other appropriate method to ensure that key stakeholders, clients and people in their area have access to it.

17.5 The notice must be published on the website of the Local Housing Authority at least 14 days prior to the implementation of the revised list of categories.

17.6 In order to reduce the bureaucracy and uncertainty for applicants, Local Authorities will only be allowed to revise their list of categories twice in a rolling 12 month period.

17.7 Where a Local Authority has regard to a category or categories, any on-going applications will not be subject to a negative impact. Therefore if a category is withdrawn, then all affected applicants would immediately not be liable to an intentionality test. However, where an Authority has added a category, any affected ongoing applications would not be subject to the revised approach.

## Meaning of intentionality

### The Act states

#### Section 77 - Meaning of intentionally homeless

(1) A person is intentionally homeless for the purpose of this Chapter if subsection (2) or (4) apply.

(2) This subsection applies if the person deliberately does or fails to do anything in consequence of which the person ceases to occupy accommodation which is available for the person's occupation and which it would have been reasonable for the person to continue to occupy.

(3) For the purposes of subsection (2) an act or omission in good faith on the part of a person who was unaware of any relevant fact may not be treated as deliberate.

(4) This subsection applies if—

(a) the person enters into an arrangement under which the person is required to cease to occupy accommodation which it would have been reasonable for the person to continue to occupy, and

(b) the purpose of the arrangement is to enable the person to become entitled to help under this Chapter,

and there is no other good reason why the person is homeless.

### Guidance

17.8 Local Authorities must make inquiries to satisfy themselves in each case whether an applicant is homeless or threatened with homelessness intentionally. It is not for the applicant to 'prove their case'. Decisions on intentionality must be based on investigations carried out in each individual case. Local Authorities must not have general policies which assume particular types of applicants will be found intentionally homeless, e.g. prisoners. However, they must act consistently between applicants where the circumstances causing the homelessness are the same. Where it is clear the circumstances demonstrate intentionality and the applicant is in one of the specified categories then the applicant must be found intentionally homeless.

17.9 Where an applicant is the member of a household previously found to be intentionally homeless the Local Housing Authority must satisfy itself that the applicant acquiesced in the behaviour that led to the homelessness in order to find them intentionally homeless.

### Available for occupation

17.10 For intentional homelessness to be established there must have been actual occupation of accommodation which has ceased. The accommodation must have been available for the applicant and anyone reasonably expected to reside with them.

## Deliberate Act or Omission

17.11 For homelessness to be intentional the act or omission that led to homelessness must have been deliberate. The Local Authority must satisfy itself that any actions or omissions were deliberate. Local Authorities must clearly identify what the act or omission was that caused the applicant to cease, or to have to cease, to occupy accommodation, as well as linking this act to the consequent loss of accommodation. An act or omission made in good faith where someone is genuinely ignorant of a relevant fact ought to not be treated as deliberate.

17.12 Applicants ought to be given an opportunity to explain an act or omission. It would be good practice to allow an applicant to do this during a face to face interview.

17.13 Generally, an act or omission ought not to 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 applicants control;
- ii) the Local Authority have reason to believe the applicant is incapable of managing their affairs, for example, due to age, physical or mental illness or physical or mental disability;
- iii) particular acts or omissions were the result of a vulnerability as defined by section 71 ([hyper link to section 71](#)). The appropriate partner agency should be consulted before a conclusion on the applicant's intentionality status is reached.
- iv) imprudence or lack of foresight on the part of an applicant led to homelessness but the act or omission was in good faith.

17.14 An applicant's actions would not amount to intentional homelessness if he or she has lost their home, or had to sell, because of rent or mortgage arrears resulting from significant financial difficulties, and as a consequence were unable to keep up the rent or mortgage payments.

17.15 Where an applicant has lost a former home due to rent or mortgage arrears, the reasons why the arrears accrued ought to be fully explored. The applicant's ability to pay their rent or mortgage, when it was taken on, given the applicants financial situation at that time, ought to be taken into account. Authorities must take into account the affordability of the former accommodation. The Local Housing Authority must make reference to the Homelessness (Suitability of Accommodation Order (Wales)2015) which specifies that in determining whether it would be, or would have been, reasonable for a person to occupy accommodation that is considered suitable, a Local Authority must take into account whether the accommodation is affordable by him or her. ([hyperlink to chapter on suitability](#))

17.16 Local Authorities would be advised to seek advice from their Legal Departments on individual cases where appropriate.

## **Vulnerable applicants**

17.17 Local Authorities must consider a person's 'vulnerability' when making a decision on intentionality. In determining a person's vulnerability in this context, reference **should not** be made to s.71 (meaning of vulnerable in s.70) which is specific to the context of determining priority need.

17.18 For some applicants, an unmet support need may have led to circumstances that are so difficult as to render their behaviour not unreasonable when considering the circumstances of them losing their home. Local Housing Authorities ought to ensure that during the assessment they pay particular attention to the identification of support needs that where unmet have led to difficulty in sustaining a tenancy and could, if they remain unmet, contribute to repeat homelessness. Factors that ought to be taken into account may include are physical or mental ill health, physical or mental disability, substance misuse or where there is a history of rough sleeping. This is not an exhaustive list.

17.20 Local Authorities must consider what advice and support was made available to a person who could be deemed vulnerable before he or she became homeless. Local Authorities will need to consider what efforts were made to prevent the applicant becoming homeless and why these failed. Where advice and support is offered and every effort is made to help the applicant accept and engage with the support to avoid becoming homeless, but the applicant disregards or does not act on this and becomes homeless as a result, then the Local Authority may be minded to consider the person homeless intentionally.

17.21 Where the vulnerable person was not offered advice and support to help prevent them becoming homeless, then the Local Authority may be minded to decide he or she became homeless because he or she were unable to manage without support and were therefore not homeless intentionally.

## **Acts or omissions which may be regarded as deliberate include**

- i) where someone chooses to sell their home where there is no risk of losing it;
- ii) where someone has lost their home due to wilful and persistent refusal to pay rent or mortgage payments;
- iii) where someone could be said to have significantly neglected their affairs having disregard to sound advice from qualified persons;
- iv) where someone voluntarily surrenders adequate accommodation in this country or abroad which it would have been reasonable to continue to occupy;
- v) where someone is evicted because of anti-social behaviour, for example, nuisance to neighbours, harassment etc.;
- vi) where someone is evicted because of violence or threats of violence by them;

- vii) where someone leaves a job with tied accommodation and the circumstances indicate that it would have been reasonable for them to continue in the employment and reasonable to continue to occupy the accommodation.
- viii) Where an applicant has previously applied for help under this Chapter and has been entitled to the s.66 prevention of homelessness duty or the s.73 help to secure accommodation duty and he or she has failed to engage in the reasonable steps and this is not due to an unmet support need. Applicants should be made aware from the outset that if they fail to engage in the agreed reasonable steps they may be found intentionally homeless.

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

17.22 Acts or omissions in good faith where someone was genuinely unaware of relevant facts must not be regarded as deliberate.

17.23 An act made in good faith would be a situation where someone gives up possession of accommodation in the belief that he or she has no legal right to continue to occupy the accommodation and it would therefore not be reasonable for them to continue to occupy. For example, where someone leaves accommodation in the private sector after receiving a valid notice to quit or notice that the assured shorthold tenancy has come to an end and was genuinely unaware that he or she had a right to remain until the court granted an order and warrant for possession.

17.24 Other examples of acts or omissions in good faith may include situations where;

- i) someone gets into rent arrears, being unaware that he or she may be entitled to housing benefit or other 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. Although the Local Authority may consider that it would have been reasonable for the tenant to continue to occupy the accommodation, the tenant would not have become homeless deliberately if he or she had taken a contrary view in ignorance of material facts, e.g. the general pressure on the Local Authority for housing assistance.

## **Other circumstances in which the applicant's actions may not amount to intentional homelessness include;**

- i) Where an applicant has fled their home because of domestic violence, intimidation or harassment, or threats of such, and the applicant has failed to pursue all legal remedies against the perpetrator because of fear of reprisal.
- ii) Where an applicant has a priority need and is a prison leaver , s.70 (hyperlink) and the prison sentence has led to loss of their

accommodation, the Welsh Government considers that the actions that caused the person to be imprisoned ought not be considered as grounds for regarding them intentionally homeless. However if the offence which resulted in the prison sentence was a direct cause of the homelessness, for example breach of a tenancy agreement which led to repossession of the property, then it would be legitimate to consider whether that person was homeless intentionally.

- iii) Where it is unreasonable to expect the applicant to remain in the accommodation due to a breakdown in relationship with the host, or where the behaviour of the host has been unreasonable. Where the surrender of accommodation is due to unreasonable behaviour of the applicant, this may be considered as intentionally homeless. The situation may arise where the applicant was not fully responsible for the loss of accommodation due to the actions of other. The reasonableness of the applicant's actions will need to be considered by the Local Authority in light of the alternative action he or she could reasonably have taken.
- iv) Where the applicant's homelessness has been caused by an unmet need, please refer to the section above on vulnerable applicants. ([hyperlink](#)).

## **Enters into an arrangement**

17.25 Local Authorities will need to be alert to the possibility of collusion by which a person may claim that he or she are obliged to leave accommodation in order to take advantage of the homelessness legislation. Collusion is not confined to those staying with friends or relatives but can also occur between landlords and tenants. Local Authorities need to use their experience and knowledge to identify possible collusion but must be aware that he or she will need to be 'satisfied' that it exists, and not merely rely on hearsay or unfounded suspicions. For collusion to amount to intentional homelessness, the 2014 Act also requires that 'no other good reason exists' for the homelessness. Examples of other good reasons would include overcrowding or an obvious breakdown in relationships between the applicant and the 'host' household. Written confirmation of a requirement to leave accommodation occupied on licence may be sufficient, but a home visit may help to determine whether collusion has taken place. The Local Authority must have some objective evidence to justify a conclusion that collusion has taken place and thus deciding that the applicant is intentionally homeless.

## **When can someone Re-apply?**

17.26 There is no period of disqualification if someone wants to re-apply as homeless after he or she has been found intentionally homeless. When an applicant reapplies, the Local Authority can initially limit their assessment to whether or not there has been any intervening settled accommodation or other factual change.

17.27 Where there has been intervening settled accommodation or other factual change, then the Local Authority will need to complete an assessment to determine what if any duty is owed.

17.28 If there has not been any intervening settled accommodation or other factual change, then the Local Authority can rely on their original investigations and findings of intentionality.

## **When to consider intentionality**

### **Guidance**

17.29 If a Local Housing Authority is having regard to intentionality then in the determining of an applicant's entitlement to certain duties a Local Housing Authority must make a decision on whether an applicant is intentionally or unintentionally homeless.

17.30 The Act does not say that a Local Housing Authority is not allowed to look at intentionality at any point during its assessment. As such it may become clear to the Authority that the applicant could be found to be intentionally homeless before the point where it is required to determine it. Where this is the case the Welsh Government recommends that the applicant is notified by letter that the Local Authority is minded to find them intentionally homeless when the appropriate stage of the assessment of duties owed is reached and what the consequence of that decision could be for them. This will allow the applicant time to provide any further explanation or evidence they have and for them to make informed, realistic choices.

17.31 Until the Local Housing Authority is required to determine intentionality it should not spend time investigating to the detriment of focussing on problem solving through the use of reasonable steps to help the applicant to prevent homelessness or to help secure accommodation.

## **When a Local Housing Authority cannot consider intentionality to determine if a duty is owed.**

### **Guidance**

17.32A Local Housing Authority is not able to use intentionality as a determining factor in deciding if an applicant is entitled to the s.66 duty to help prevent homelessness or s.73 duty to help to secure.

## **When a local housing authority must consider intentionality to determine if a duty is owed.**

### **Guidance**

17.33 If a Local Housing Authority is having regard to intentionality it must consider if an applicant is intentionally homeless when it is determining if the s.75 duty to accommodate an applicant in priority need is owed.

17.34 In order for a Local Housing Authority to make a local connection referral the applicant must be in priority need, unintentionally homeless and have a local

connection with the area of another Local Housing Authority in England or Wales (hyperlink to chapter on local connection). A referral can be made as long as the applicant meets all of the conditions above and is entitled to the s.73 help to secure accommodation duty. If the Local Housing Authority wishes to make a local connection referral it must, therefore, consider intentionality.

## **Interim duty and Intentionality**

Section 68 - Interim duty to secure accommodation for homeless applicants in priority need

- (3) This subsection applies to an applicant—
- (a) who the local authority has reason to believe or is satisfied has a priority need or whose case has been referred from a local housing local authority in England under section 198(1) of the Housing Act 1996, and
  - (b) to whom the duty in section 73 (duty to help to end homelessness) applies

And

Section 69 - Circumstances in which the duty in section 68 ends

- (3) In the case of an applicant to whom section 68(3) applies, the circumstances are that the local housing local authority has—
- (a) decided that the duty owed to the applicant under section 73 has come to an end and that a duty is or is not owed to the applicant under section 75, and
  - (b) notified the applicant of that decision;

but this is subject to subsections (4) and (5).

(4) Subsection (5) applies where a local housing local authority has decided that no duty is owed to the applicant under section 75 on the basis that the local authority—

- (a) is satisfied that the applicant became homeless intentionally in the circumstances which gave rise to the application, or
- (b) has previously secured an offer of accommodation of the kind described in section

(5) The duty under section 68 does not come to an end in the circumstances described in subsection (3) until the local authority is also satisfied that the accommodation it has secured under section 68 has been available to the applicant for a sufficient period, beginning on the day on which he or she is notified that section 75 does not apply, to allow the applicant a reasonable opportunity of securing accommodation for his or her occupation.

(6) The period mentioned in subsection (5) is not sufficient for the purposes of that subsection if it ends on a day during the period of 56 days beginning with the day on which the applicant was notified that the duty in section 73 applied.

## Guidance

17.35 With regard to intentionality and the provision of interim accommodation the parts of the 2014 Act above are relevant and should be read with reference to each other.

17.36 Where an applicant is eligible, homeless and the Local Housing Authority has reason to believe they may have a priority need the Local Authority must secure that suitable interim accommodation is available for their occupation.

17.37 If the Local Housing Authority ends the s.73 duty to help to secure accommodation and then determines, because the applicant is intentionally homeless, that he or she is not entitled to the s.75 duty to secure accommodation for applicants in priority need then the Authority must provide the applicant with suitable accommodation for a sufficient time in order to allow them a reasonable opportunity to secure their own accommodation.

17.38 The sufficient period cannot end within 56 days of the acceptance of s.73 (duty to help secure accommodation). If the section 73 duty is brought to an end because 56 days have passed since the acceptance of the duty and the household does not qualify for section 75 because they have been determined to be intentionally homeless and have a priority need, the Authority must provide interim duty accommodation for a reasonable period of time.. The sufficient / reasonable period does not begin until the applicant is notified that he or she does not qualify for the s.75 duty.

## Sufficient period

17.39 Local Authorities must consider each case on its merits when determining the sufficient 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. Local 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. Where there is a local private rented sector access service, consideration ought to be taken of the length of time it may take to secure accommodation, for example an application for a bond could take a week, and any prospective property would need to be inspected, with no guarantee that that property will pass the inspection. The sufficient time needs to include consideration of elements out of the household's control.

17.40 The Welsh Government would expect the Local Housing Authority to continue to offer advice to the applicant in order to help him secure accommodation. 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.

## Families with Children under 18

### The Act states

#### Section 96 - Co-operation in certain cases involving children

- (1) This section applies where a local housing local authority has reason to believe that an applicant with whom a person under the age of 18 normally resides, or might reasonably be expected to reside—
- (a) may be ineligible for help,
  - (b) may be homeless and that a duty under section 68, 73 or 75 is not likely to apply to the applicant, or
  - (c) may be threatened with homelessness and that a duty under section 66 is not likely to apply to the applicant.
- (2) A local housing local authority must make arrangements for ensuring that—
- (a) the applicant is invited to consent to the referral to the social services department of the essential facts of his or her case, and
  - (b) if the applicant has given that consent, the social services department is made aware of those facts and of the subsequent decision of the local authority in respect of his or her case.
- (3) Nothing in subsection (2) affects any power apart from this section to disclose information relating to the applicant's case to the social services department without the consent of the applicant.
- (4) A council of a county or county borough must make arrangements for ensuring that, where it makes a decision as local housing local authority that an applicant is ineligible for help, became homeless intentionally or became threatened with homelessness intentionally, its housing department provides the social services department with such advice and assistance as the social services department may reasonably request.
- (5) In this section, in relation to the council of a county or county borough—
- “the housing department” (“yr adran dai”) means those persons responsible for the exercise of its functions as local housing local authority;
  - “the social services department” (“yr adran gwasanaethau cymdeithasol”) means those persons responsible for the exercise of its social services functions under Part 3 of the Social Services and Well-Being (Wales) Act 2014.

### Guidance

17.41 S.96 requires Local Authorities to have arrangements in place to ensure that social services are alerted as quickly as possible to cases where the applicant has children under 18 and the Local Authority considers that the applicant is homeless or threatened with homelessness but will not be offered assistance under the following duties because they are ineligible or intentionally homeless:

- under s.66 (*Duty to help prevent an applicant from becoming homeless*)
- under s.68 (*Interim duty to secure accommodation for homeless applicants in priority need*),
- under s.73 (*Duty to help secure accommodation for homeless applicants*)
- under s.75 (*Duty to secure accommodation for applicants in priority need when the duty in s.73 ends*).

17.42 Local Authorities ought in most circumstances to seek the consent of the applicant before making a referral to social services. However, the Local Authority must have regard to the child's welfare and a referral to social services must be made where they have concerns regardless of whether consent has been given.

**Duty to applicants with children under 18, 16 and 17 year old applicants, persons up to the age of 21 and persons up to the age of 25 if they have been looked after or fostered, from 2019 onwards.**

**The Act states**

Section 75 - Duty to secure accommodation for applicants in priority need when the duty in section 73 ends

(1) When the duty in section 73 (duty to help secure suitable accommodation for a homeless applicant) comes to an end in respect of an applicant in the circumstances mentioned in subsection (2) or (3) of section 74, the local housing authority must secure that suitable accommodation is available for occupation by the applicant if subsection (2) or (3) (of this section) applies.

(3) This subsection applies where the local housing authority is having regard to whether or not the applicant is homeless intentionally and is satisfied that—

- (a) the applicant became homeless intentionally in the circumstances which gave rise to the application,
- (b) the applicant—
  - (i) does not have suitable accommodation available for occupation,
  - (ii) has suitable accommodation, but it is not likely that the accommodation will be available for occupation by the applicant for a period of at least 6 months starting on the day on which the applicant is notified in accordance with section 84 that section 73 does not apply, or
- (c) the applicant is eligible for help,
- (d) the applicant has a priority need for accommodation,
- (e) the applicant is—
  - (i) a pregnant woman or a person with whom she resides or might reasonably be expected to reside,
  - (ii) a person with whom a dependent child resides or might reasonably be expected to reside, or
  - (iii) a person who had not attained the age of 21 when the application for help was made or a person with whom such a person resides or might reasonably be expected to reside,

(iv) a person who had attained the age of 21, but not the age of 25, when the application for help was made and who was looked after, accommodated or fostered at any time while under the age of 18, or a person with whom such a person resides or might reasonably be expected to reside, and

(f) the authority has not previously secured an offer of accommodation to the applicant under this section following a previous application for help under this Chapter, where that offer was made—

(i) at any time within the period of 5 years before the day on which the applicant was notified under section 63 that a duty was owed to him or her under this section, and

(ii) on the basis that the applicant fell within this subsection.

(4) For the purpose of subsections (2)(a)(ii) and (3)(b)(ii), the applicant is to be treated as notified on the day the notice is sent or first made available for collection.

## **Guidance**

17.43 The intention is that from 2019 onwards the duties owed to an applicant who is found intentionally homeless will be extended if he or she falls into one of the categories as specified above.

17.44 The relevant provisions of the 2014 Act have not yet been commenced but Local Authorities ought to be aware of, and preparing for, implementation including development of services. Further guidance on this section will be provided before implementation.

## **Case study examples**

To be provided later.

# CHAPTER 18: Local connection and Referrals

## Introduction

18.1 To ensure that Local Authorities are not unfairly burdened, they will have discretion to apply a local connection test for the purposes of ensuring that their local resources are utilised on local persons and persons who may not be from the local area but where it is unreasonable to return to their home area.

This only applies when a applicant is homeless as defined within s.55(1), (2) and (3).

## The Act states

### Section 80 - Referral of case to another local housing authority

(1) Subsection (2) applies where—

- (a) a local housing authority considers that the conditions for referral to another local housing authority (whether in Wales or England) are met (see subsection (3)), and
- (b) the local housing authority would, if the case is not referred, be subject to the duty in section 73 in respect of an applicant who is in priority need of accommodation and unintentionally homeless (duty to help to secure accommodation for homeless applicants).

(2) The local housing authority may notify the other authority of its opinion that the conditions for referral are met in respect of the applicant.

(3) The conditions for referral of the case to another local housing authority (whether in Wales or England) are 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 area of the authority to which the application was made,
- (b) the applicant or a person who might reasonably be expected to reside with the applicant has a local connection with the area of that other authority, and
- (c) neither the applicant nor any person who might reasonably be expected to reside with the applicant will run the risk of domestic abuse in that other area.

(4) But the conditions for referral mentioned in subsection (3) are not met if—

- (a) the applicant or any person who might reasonably be expected to reside with the applicant has suffered abuse (other than domestic abuse) in the area of the other authority, and
- (b) it is probable that the return to that area of the victim will lead to further abuse of a similar kind against him or her.

(5) The question of whether the conditions for referral of a case are satisfied is to be decided—

- (a) by agreement between the notifying authority and the notified authority, or
- (b) in default of agreement, in accordance with such arrangements—
  - (i) as the Welsh Ministers may direct by order, where both authorities are in Wales, or

(ii) as the Welsh Ministers and the Secretary of State may jointly direct by order, where the notifying authority is in Wales and the notified authority is in England.

(6) An order under subsection (5) may direct that the arrangements are to 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 Welsh Ministers or, in the case of an order under subsection (5)(b)(ii), to the Welsh Ministers and the Secretary of State to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as they think appropriate.

(7) In subsection (6), “relevant authority” means a local housing authority or a social services authority; and it includes, in so far as that subsection applies to arrangements under subsection (5)(b)(ii), such authorities in Wales and England.

(8) The Welsh Ministers may by order specify other circumstances in which the conditions are or are not met for referral of the case to another local housing authority.

## Guidance

### Conditions for Referral from Welsh Local Authorities to Welsh Local Authorities.

18.2 Where an Authority decide that an applicant would be owed a duty under s.73 of the 2014 Act to help to secure accommodation, but considers that the conditions for referral of the case to another Authority are met, (Local Connection is another area, has a priority need and is unintentionally homeless) they may notify the other Authority of their opinion (s.80(2)). An applicant can be considered for referral only when an Authority would be under the duty under s.73 if the local connection was established with the Authority completing an assessment under s.62. Referral is not an option where an applicant is owed the interim duty under s.68, or any other duty (e.g. where they are threatened with homelessness or found to be homeless intentionally). The decisions to make enquiries in regard to local connection and to seek to refer the applicant are discretionary; an Authority can decide not to do so, if they wish. Detailed Guidance on referrals is available from the WLGA.

18.3 If an Authority is not having regard to intentionality, this only applies to cases who may qualify for the s.75 duty. An Authority that is considering a referral to another area based on local connection they will need to be satisfied that the household is unintentionally homeless.

## Local Connection

### The Act States

#### Section 81 – Local connection

- (1) This section applies for the purposes of this Chapter.
- (2) A person has a local connection with the area of a local housing authority in Wales or England if the person has a connection with it—
  - (a) because the person is, or in the past was, normally resident there, and that residence is or was of the person's own choice,
  - (b) because the person is employed there,
  - (c) because of family associations, or
  - (d) because of special circumstances.
- (3) Residence in an area is not of a person's own choice if the person, or a person who might reasonably be expected to reside with that person, becomes resident there because the person is detained under the authority of an enactment.
- (4) The Welsh Ministers may by order specify circumstances in which—
  - (a) a person is not to be treated as employed in an area, or
  - (b) residence in an area is not to be treated as of a person's own choice.
- (5) A person has a local connection with the area of a local housing authority in Wales or England if the person was (at any time) provided with accommodation in that area under section 95 of the Immigration and Asylum Act 1999 (support for asylum seekers).
- (6) But subsection (5) does not apply—
  - (a) to the provision of accommodation for a person in an area of a local housing authority if the person was subsequently provided with accommodation in the area of another local housing authority under section 95 of that Act, or
  - (b) to the provision of accommodation in an accommodation centre by virtue of section 22 of the Nationality, Immigration and Asylum Act 2002 (use of accommodation centres for section 95 support).

18.4 A Local Authority may refer an applicant to whom s.73 applies to another Local Authority if:

- i) neither the applicant nor any person who might reasonably be expected to live with him or her has a local connection with their area, and
- ii) at least one member of the applicant's household has a local connection with the area of the other Local Authority; and
- iii) none of them will be at risk of abuse, or threat of abuse which is likely to be carried out, in the area of the other Local Authority.

The conditions for referral are also met if:

- i) the applicant was placed in accommodation in the area of the Local Authority to which his or her application is now made;

- ii) the accommodation was provided in discharge of a homelessness duty arising from a previous application made to another Local Authority; and
- iii) the placement occurred within a prescribed period of the present application.

The prescribed period (see The Homelessness (Wales) Regulations 2000 No. 1079) is the aggregate of:

- i) years, and
- ii) the length of time between:
  - a) the date the previous application was made to the other Housing Authority; and
  - b) the date when accommodation was first made available to
  - c) discharge the previous duty (under s.193(2) or s.195(4) of the 1996 Act).

18.5 Thus, where a Local Authority accept a duty to help to secure that accommodation is available (under s.73) and place the household in accommodation which is outside their area, the placing Authority retains “responsibility” for that household in the event of a further application for assistance under Part 2 of the 2014 Act within a period of 5 years of the date when accommodation was first made available under the initial duty.

18.6 When an Authority makes inquiries to determine whether an applicant is eligible for assistance and owed any duty under Part 2, they may also make inquiries to decide whether the applicant has a local connection with the area of another Local Authority in England, Wales or Scotland, if they wish

18.7 The more detailed description of local connection is found in the ‘Guide For Local Authorities on Procedures for Referral agreed by the Welsh Government Association (WLGA)’. This description applies to cases that are being referred to other another Authority where the applicant has a local connection. It should not be used to determine whether an applicant is eligible for advice and assistance.

18.8 There is no set period that an applicant has to live in an area to be regarded as having a local connection. Local Authorities need to consider all the circumstances and decide whether the applicant is clearly settled and if not, whether they have a clear connection elsewhere.

18.9 In the case of young people in the looked after system who have been placed out of area, where they are leaving care and wish to return to the area to which they were originally connected they should be accepted as having a connection with that area, even where they have been placed for a considerable time elsewhere. In assessing whether an applicant’s household has a local connection with their area, an Authority should also consider whether any person who might reasonably be expected to live with the applicant has such a connection.

18.10 An Authority may not seek to transfer responsibility to another authority where the applicant has a local connection with their area but the Authority can consider there is a stronger local connection elsewhere. However, in such a case, it would be open to an Authority to seek assistance from the other Authority in securing

accommodation, under S.95 of the 2014 Act (co-operation) Where a person has a local connection with more than one other Authority, the referring Authority will wish to take account of the applicant's preference in deciding which Authority to notify.

## **Ex-service personnel**

18.11 For the purposes of the 2014 Act, serving members of the Armed Forces, and other persons who normally live with them as part of their household, do establish a local connection with an area by virtue of serving, or having served, there while in the Forces.

## **Ex-prisoners**

18.12 Residence in prison does not itself establish a local connection with an area. However, any period of residence in accommodation prior to imprisonment may give rise to a local connection

## **No local connection anywhere**

18.13 If an applicant, or anyone who might reasonably be expected to live with him or her, has no local connection with any area in Great Britain, then the duty to help to secure accommodation will rest with the Authority to which his or her application has been made. This may apply to people who have had an unsettled way of life for many years.

## **Abuse**

18.14 A Local Authority cannot refer an applicant to another Local Authority if that person or any person who might reasonably be expected to reside with him or her would be at risk of abuse in that other area. The conditions for referral are not met if the applicant or any person who might reasonably be expected to reside with them has suffered abuse in the district of the other Authority and it is probable that the return to that district will lead to further abuse of a similar kind. Authorities should take 'similar kind' to mean any abuse forming a pattern of conduct against them, even where the individual perpetrators may vary.

S.58(1) defines abuse as physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm.

## **Duties to applicant whose Case is considered for referral or referred**

### **The Act states**

Section 82 0 Duties to applicant whose case is considered for referral or referred

(1) Where a local housing authority notifies an applicant in accordance with

section 84 that it intends to notify or has notified another local housing authority in Wales or England of its opinion that the conditions are met for the referral of the applicant's case to that other authority—

(a) it ceases to be subject to any duty under section 68 ( interim duty to secure accommodation for homeless applicants in priority need), and

(b) it is not subject to any duty under section 73 ( duty to help to secure accommodation for homeless applicants);

but it must secure that suitable accommodation is available for occupation by the applicant until the applicant is notified of the decision whether the conditions for referral of the case are met.

(2) When it has been decided whether the conditions for referral are met, the notifying authority must notify the applicant in accordance with section 84.

(3) If it is decided that the conditions for referral are not met, the notifying authority is subject to the duty under section 73 (duty to help to secure accommodation for homeless applicants).

(4) If it is decided that those conditions are met and the notified authority is an authority in Wales, the notified authority is subject to the duty under section 73 (duty to help to secure accommodation for homeless applicants); for provision about cases where it is decided that those conditions are met and the notified authority is an authority in England, see section 201A of the Housing Act 1996 (cases referred from a local housing authority in Wales).

(5) The duty under subsection (1) ceases as provided in that subsection even if the applicant requests a review of the authority's decision (see section 85).

(6) The authority may secure that suitable accommodation is available for the applicant's occupation pending the decision on a review.

(7) If notice required to be given to an applicant under this section is not received by the applicant, it is to be treated as having been given if it is made available at the authority's office for a reasonable period for collection by the applicant or on the applicant's behalf.

## Guidance

18.15 If a Local Authority decide to refer a case to another Authority in Wales, they will need to notify the other Local Authority that they believe the conditions for referral are met (s.80) They must also notify the applicant that they have notified, or intend to notify, another Local Authority that they consider that the conditions for referral are met. At that point, the Local Authority would cease to be subject to the interim duty to accommodate under s.68) but will owe a duty under s.82 (1) to secure that accommodation is available for the applicant until the question of whether the conditions for referral are met is decided.

18.16 if the referral is accepted by the other Local Authority, they will be under a duty to help to secure accommodation under s.73 and the provision of interim accommodation for the applicant under s.68. It is not open to a receiving Authority to re-assess whether the applicant is homeless, unintentionally homeless and in priority need.

18.17 When the question of whether the conditions for referral to another Local Authority are met has been decided, the notifying Authority must notify the applicant of the decision and the reasons for it (s.84). 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. Where the applicant requests a review under s.85, the Authority may secure suitable accommodation pending the outcome of the review if it feels appropriate based on the circumstances of the individual.  
S.69(11)

18.18 The Welsh Government recommends that applicants who may have a priority need are provided with temporary accommodation whilst their review is being considered.

18.19 Notifications to the applicant must be provided in writing and copies made available at the Authority's office for collection by the applicant, or his or her representative, for a reasonable period.

## **Disputes between Authorities**

18.20 The question of whether the conditions for referral are met in a particular case should be decided by agreement between the Authorities concerned, but if they cannot agree, the decision should be made in accordance with such arrangements as may be directed by order of the Welsh Ministers s.80(5) for Wales and s.80(6) for England

18.21 The Homelessness (Decisions on Referrals) Order 1998 (SI 1998 No. 1578) directs that the arrangements to be followed in such a dispute are the arrangements which have been agreed between the Local Authority Associations (i.e. the Local Government Association, the Convention of Scottish Local Authorities, the Welsh Local Government Association and the Association of London Government). Contact the WLGA for further details.

18.22 Broadly speaking, the arrangements provide that in the event of two Authorities being unable to agree whether the conditions for referral are met, they must seek to agree on a person to be appointed to make the decision for them. If unable to agree on who should be the appointed person, they may wish to seek advice from the Welsh Local Government Association.

The arrangements set out in the Schedule to The Homelessness (Decisions on Referrals) Order 1998 No. 1578 apply in all cases where a Local Authority in England or Wales seeks to refer a homelessness case to another authority in England or Wales, and the two authorities are unable to agree whether the conditions for referral are met.

## **Referrals to English Local Housing Authorities.**

18.23 Where a Local Authority is satisfied that an applicant has a local connection in England, and they intend to refer the case to that Authority, they must refer under section 80 Housing (Wales ) Act 2014. (Cases in priority need and unintentionally homeless)

18.24 The Authority will need to make enquires to satisfy itself that the applicant has a local connection to an area in England and that there is no risk of abuse if they

returned to the area, the Authority must be satisfied that the applicant is eligible, homeless, has a priority need (in accordance with **Housing (Wales) Act 2014**) and is unintentionally homeless.

18.25 The process for referral is identical to cases referred within Wales.

## **Cases referred from a Local Housing Authority in England**

### **The Act states**

#### Section 83 – Cases referred from a local housing authority in England

(1) This section applies where an application has been referred by a local housing authority in England to a local housing authority in Wales under section 198(1) of the Housing Act 1996 (referral of case to another local housing authority).

(2) If it is decided that the conditions in that section for referral of the case are met the notified authority is subject to the following duties in respect of the person whose case is referred—

(a) section 68 ( interim duty to secure accommodation for homeless applicants in priority need);

(b) section 73 (duty to help to secure accommodation for homeless applicants);

for provision about cases where it is decided that the conditions for referral are not met, see section 200 of the Housing Act 1996 (duties to applicant whose case is considered for referral or referred).

(3) Accordingly, references in this Chapter to an applicant include a reference to a person to whom the duties mentioned in subsection (2) are owed by virtue of this section.

### **Guidance**

18.26 Referrals received from England under section 198 Part VII Housing Act 1996 act if accepted will be owed a duty under section 68 (interim) and s.73 (duty to help to secure) and following the discharge of s.73, S.75 may apply. Cases will only be referred under this section in the event that the applicant has a local connection to the Authority receiving the referral, is homeless, eligible, has a priority need and is unintentionally homeless.

Any dispute arising from such a referral will need to be dealt with through s.80 (5) (b) Housing Act 2014.

# CHAPTER 19: Suitability of Accommodation

## Introduction

19.1 This chapter provides detailed guidance regarding what is considered suitable in relation to accommodation provided / sourced for the purposes of the prevention / interim / help to secure / duty to secure duties.

19.2 The chapter provides the requirements for private as well as social sector housing and the use of shared housing such as bed and breakfast style short term accommodation

## Assessment of Suitability

### The Act states

#### Section 59 - Suitability of accommodation

(1) In determining whether accommodation is suitable for a person, a local housing authority must have regard to the following enactments—

- (a) Part 9 of the Housing Act 1985 (slum clearance);
- (b) Part 10 of the Housing Act 1985 (overcrowding);
- (c) Part 1 of the Housing Act 2004 (housing conditions);
- (d) Part 2 of the Housing Act 2004 (licensing of houses in multiple occupation);
- (e) Part 3 of the Housing Act 2004 (selective licensing of other residential accommodation);
- (f) Part 4 of the Housing Act 2004 (additional control provisions in relation to residential accommodation);
- (g) Part 1 of this Act (regulation of private rented housing).

(2) In determining whether accommodation is suitable for a person, a local housing authority must have regard to whether or not the accommodation is affordable for that person.

(3) The Welsh Ministers may by order specify—

- (a) circumstances in which accommodation is or is not to be regarded as suitable for a person, and
- (b) matters to be taken into account or disregarded in determining whether accommodation is suitable for a person.

## Guidance

19.3 Accommodation must be considered suitable and reasonable to occupy.

19.4 Any attempt to discharge s.66, s.68, s.73, or s.75 by way of an offer of accommodation must be considered suitable for the applicant's occupation and any other person reasonably expected to reside with them.

19.5 S.67(4), s.74(5) and s.76(4) of the Housing (Wales) Act 2014 provides that Local Authorities may discharge their functions to secure that accommodation is available for applicants in one of three ways (temporary, Social and Private Sector).

In all cases the accommodation secured for the applicant must be suitable. This applies in respect of all powers and duties to secure accommodation under Part 2 of the 2014 Act, including interim duties such as those under s.68 and temporary arrangements under section 75.

19.6 S.59 requires that, in assessing suitability, Authorities must have regard to s.47 (slum clearance declarations), sections 5 to 10 (housing standards) and s.55 to s.78 (Licensing of Houses in Multiple Occupation) of the Housing Act 2004. These sections should be read in conjunction with any relevant regulations including the Suitability (Accommodation) Order (Wales) 2014

19.7 Part 1 of the Housing Act 2004 (“the Act”) is specifically concerned with dwelling houses or houses in multiple occupation that present a danger to their occupants because of the existence of hazards that are a danger to health and safety. Hazards are grouped into either Category 1, where the Local Authority has a statutory duty to take action to remedy the hazard, or Category 2 where the Authority has discretion to deal with the hazard. Before any establishment is used as temporary accommodation for a homeless household, the placing Authority should give careful consideration to the existence of hazards in the establishment and the effect they may have on the health and safety of the potential occupants.

19.8 Part 1 of the Housing Act 2004 specifically deals with housing standards and s.5 to s.10 will have a specific bearing on issues relating to the size of accommodation and its suitability for the number of potential occupants. If temporary accommodation does not seem appropriate because of its limited size, it will be for the Authority to show that the accommodation nevertheless remains suitable.

19.9 Part 2 of the 2004 Act deals with licensing of houses in multiple occupation (HMO) and separate regulations have been produced by the Welsh Government covering management and amenity standards in houses in multiple occupation . Local Authorities should have regard to this documentation when considering the suitability of accommodation for homeless households.

19.10 Authorities will also need to ensure that accommodation offered to homeless people meets its statutory requirements for dwellings, including regulations on gas and electricity appliances and the provisions of the Furniture and Furnishings (Fire Safety) Regulations 1988 and their subsequent amendments. Inspection of properties is an essential element of ensuring that accommodation is suitable. Local Authorities will need to establish an inspection process which involves assessment of properties against all the statutory criteria. Inspections will need to be carried out by staff with the requisite skills in property inspection. Each property should be inspected before it is first offered to an applicant, and then re-inspected before it is offered to a different applicant if it has been occupied since the last inspection. Authorities are urged to incorporate spot checks into their monitoring systems, based on a risk assessment of the properties and landlords.

19.11 The accommodation must be suitable in relation to the applicant and all members of his or her household, who normally reside with him or her, or who might reasonably be expected to reside with them. Authorities should therefore have regard to the relevant circumstances of the applicant and his or her household.

Authorities also need to take account of any medical and/or physical needs, and any social considerations which might affect the suitability of accommodation. For example, accommodation may be unsuitable for disabled applicants because of its location (e.g. in hilly areas), and some disabled applicants may require certain facilities to be close at hand (e.g. an exercise area for a guide dog or a parking space for a car on which they rely). Authorities should also consider factors such as access to schools and other services and facilities (e.g. GPs and informal support networks) with a view to maintaining stability for the household, particularly in respect of children's schooling, wherever possible. Authorities should be aware of cultural factors in addressing suitability of accommodation (R [Price] v Carmarthenshire County Council, (2003)). Any risk of violence or hate crime should also be taken into account.

19.12 The duty to secure suitable accommodation is subject to a test of reasonability. Where it is not realistically possible to find housing for an applicant within a preferred location, accommodation should be secured as close as possible. Location of accommodation is relevant to suitability.

## **Location**

19.13 The suitability of the location for all members of the household must be considered by the Authority.

19.14 Where it is not possible to secure accommodation within district and an Authority has secured accommodation outside their district, the Authority is required to take into account the distance of that accommodation from the district of the Authority. Where accommodation which is otherwise suitable and affordable is available nearer to the Authority's district than the accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the Authority has a justifiable reason or the applicant has specified a preference.

19.15 Generally, where possible, Authorities should try to secure accommodation that is as close as possible to where an applicant was previously living unless the applicant's preferences are to be relocated and there are reasonable justification for this request. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Local Authorities are required to take into account the significance of any disruption with specific regard to employment, caring responsibilities or education of the applicant or members of their household. Where possible the Authority should seek to enable the applicant to retain established links with schools, doctors, social workers and other key services and support.

19.16 In assessing the significance of disruption to employment, account will need to be taken of their need to reach their normal workplace from the accommodation secured.

19.17 In assessing the significance of disruption to caring responsibilities, account will need to be taken of the type and importance of the care household members provide and the likely impact the withdrawal would cause. Authorities may want to consider the cost implications of providing care where an existing care arrangement becomes unsustainable due to a change of location.

19.18 Authorities should also take into account the need to minimise disruption to the education of young people, particularly at critical points in time such as leading up to taking GCSE (or their equivalent) examinations.

19.19 Account will also need to be taken of medical facilities and other support currently provided for the applicant and their household. Housing Authorities should consider the potential impact on the health and well being of an applicant or any person reasonably expected to reside with them, were such support removed or medical facilities were no longer accessible. They should also consider whether similar facilities are accessible and available near the accommodation being offered and whether there would be any specific difficulties in the applicant or person residing with them using those essential facilities, compared to the support they are currently receiving. Examples of other support might include support from particular individuals, groups or organisations located in the area where the applicant currently resides, for example essential support from relatives or support groups which would be difficult to replicate in another location

19.20 Housing Authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities unless absolutely necessary.

19.21 Cultural and religious factors need to be considered when offering suitable accommodation.

19.22 Whilst Authorities should, as far as is practicable, aim to secure accommodation within their own district, they should also recognise that there can be clear benefits for some applicants to be 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. 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, Local 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.

19.23 Similarly there may also be advantages in enabling some applicants to access employment opportunities outside of their current district. The availability, or otherwise, of employment opportunities in the new area may help to determine if that area is suitable for the applicant.

19.24 Where, exceptionally, suitable accommodation is secured outside of the Local Authority area, the discharging Local Authority must give written notice to the Local Authority where the accommodation is situated. This is particularly important for applicants who may require additional statutory services such as adult care, children services, education, health etc.

## Affordability

19.25 S.59(2) of the Housing (Wales) Act 2014 specifies that in determining whether it would be, or would have been, reasonable for a person to occupy accommodation that is considered suitable, a Local Authority must have regard to whether the accommodation is affordable by him or her. In particular, the Authority should take account of:

- (i) The financial resources available to him or her (i.e. all forms of income), including, but not limited to:
  - a. salary, fees and other remuneration (from such sources as investments, grants and pensions etc.);
  - b. social security benefits (such as housing benefit, income support, income based Jobseekers allowances or council tax benefit etc.);
  - c. payments due under a court order for the making of periodical payments to a spouse, or to, or for the benefit of, a child;
  - d. payments of child support maintenance due under the Child Support Act 1991;
  - e. pensions;
  - f. contributions to the costs in respect of the accommodation which are or were made or which might reasonably be expected to be, or have been, made by other members of the household (most members can be assumed to contribute, but the amount depends on various factors including their age and income. Other influencing factors can be drawn from the parallels of their entitlement to housing benefit and income support in relation to housing costs. Current rates should be available from Local Authority benefit sections)
  - g. financial assistance towards the costs in respect of the accommodation, including loans, provided by a Local Authority, voluntary organisation or other body;
  - h. benefits derived from a policy of insurance (such as cover against unemployment or sickness);
  - i. Savings and other capital sums (which may be a source of income or might be available to meet accommodation expenses. However, it should be borne in mind that, again drawing from the parallel social securities assistance, capital savings below a threshold amount are disregarded for the purpose of assessing a claim);
  
- (ii) the costs in respect of the accommodation, including, but not limited to:
  - a) payments of, or by way of, rent (including rent default/property damage deposits, rent top up due to under occupancy charge);
  - b) payments in respect of a licence or permission to occupy the accommodation;
  - c) mortgage costs (including an assessment of entitlement to Income Support Mortgage Interest covering repairs/improvements, service charges, ground rent etc.);

- d) payments of, or by way of, service charges (e.g. maintenance or other costs required as a condition of occupation of the accommodation);
- e) the expected utilities cost for the property based on EPC rating
- f) mooring charges payable for a houseboat;
- g) where the accommodation is a caravan or a mobile home, payments in respect of the site on which it stands;
- h) the amount of council tax payable in respect of the accommodation;
- i) payments by way of deposit or security in respect of the accommodation;
- j) payments required by an accommodation agency;

(iii) payments which that person is required to make under a court order for the making of periodical payments to a spouse or former spouse, or to, or for the benefit of, a child and payments of child support maintenance required to be made under the Child Support Act 1991; and

(iv) his or her other reasonable living expenses, including special circumstances that may impact on expenditure such as essential dietary requirements, costs for essential medical appointments

19.26 Local Authorities should have access to independent financial advisors or alternatively have in-house provision to assess household budgets to ensure that accommodation is affordable

19.27 In considering an applicant's residual income after meeting the costs of the accommodation, the Welsh Government recommends that Local Authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be significantly less than the level of income support or income-based Jobseekers allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit. This amount will vary from case to case, according to the circumstances and composition of the applicant's household. A current tariff of applicable amounts in respect of such benefits should be available within the Authority's housing benefit section. Local Authorities will need to ensure that the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, **utilities**, transport and other essentials.

19.28 Applicants may challenge the suitability of accommodation offered by seeking a review of the Authority's decision (under s.85(3)) Where such a review is sought, the applicant should be allowed to accept the offer subject to a review of its suitability. If the review confirms the original decision, the applicant should be allowed to retain the accommodation, if he or she wishes to do so. Applicants should be given information on the standards of suitability required under the law, and their right to challenge the suitability of the accommodation offered.

## **Inspection**

19.29 Inspections are a vital aspect of ensuring that properties are suitable for the discharge of duties to provide temporary and permanent accommodation. Local Authorities should inspect all properties used to meet their duties before they are

offered to applicants, and then be re-inspecting them for succeeding offers if the property has been occupied since the last inspection. The inspection should be carried out in accordance with a standard assessment process, to ensure the assessment covers each of the statutory criteria, including the Health and Safety Rating System. This will require inspection by staff who have been trained to inspect against the statutory standards. It is recommended that social housing landlords ensure that properties are free from defects before allowing a tenancy / license to commence. Authorities should have processes in place to ensure that the supported housing provider / registered social landlord has inspected the accommodation before making it available for the next occupant.

### **Accommodation to end the prevention, help to secure and secure duties.**

19.30 S.66 and s.73 can all be ended through an offer of suitable accommodation which is likely to last for a period of 6 months. This includes private sector housing, social housing or any other accommodation that is considered suitable.

19.31 S.75 can be ended with a minimum fixed term of 6 months in the private sector or an offer of accommodation under Part 6 of the Housing Act 1996

19.32 Authorities will need to ensure that they consider the suitability of any property being used to end the respective duty. Authorities are encouraged to record for each offer their considerations in respect of determining suitability. Comprehensive record keeping will be of utmost importance when dealing with challenges around suitability.

### **Circumstances in which accommodation secured under section 66, 73 and 75 is not to be regarded as suitable for a person**

19.33 This part of the guidance sets out those circumstances in which accommodation is not to be regarded as suitable for a person. The requirements can be grouped under five broad headings.

#### **Physical condition of the property**

19.34 Local Housing Authorities are obliged under s.3 of the Housing Act 2004 to keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under the Housing Health and Safety Ratings System legislation. The Local Housing Authority is also required to keep the housing conditions in their area under review in relation to other powers/duties such as licensing of HMOs.

19.35 S.4 of the 2004 Act provides that an Authority must arrange for an inspection of residential premises in its district with a view to determining whether any category 1 or 2 hazard exists on those premises. Such an inspection is only required if the Authority considers that it would be appropriate for them to be inspected, as a result of any matters of which they have become aware in carrying out their duty under s.3, or for any other reason.

19.36 Authorities should secure accommodation that is in reasonable physical condition and is free from category 1 hazards. Authorities should ensure that the property has been visited by either a Local Authority officer or someone acting on their behalf to determine its suitability before an applicant moves in.

19.37 In determining whether the property is in reasonable physical condition attention should be paid to signs of damp, mould, indications that the property would be cold, for example lack of suitable fixed heating, and any other signs that would indicate the property is not in good physical condition.

## **Health and safety matters**

19.38 Landlords are by law required to ensure that all electrical equipment provided within a property is safe. The Local Authority are required to satisfy themselves that any electrical equipment provided in the property meets the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994.

19.39 Generally speaking, it is likely that a visual inspection of the property, by a person authorised to act on behalf of the Local Authority, that checks for obvious signs of loose wiring, cracked or broken electrical sockets, light switches that do not work and evidence of Portable Appliance Testing will be indicative that the specific regulations have been applied.

19.40 The Fire Safety Order 5 applies to the common or shared parts of multi-occupied residential buildings. As such landlords, owners or managing agents will need to carry out a fire risk assessment of the common parts and implement and maintain appropriate and adequate fire safety measures. As part of their responsibilities, landlords should put in place appropriate management and maintenance systems to ensure any fire safety equipment or equipment which may represent a fire hazard, is maintained in good working order, and in accordance with the manufacturers instructions. Landlords are also required to ensure that furniture and furnishings supplied must comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended).

19.41 Local Authorities and fire and rescue Authorities should work together to ensure the safety of domestic premises including the provision of fire safety advice to households (such as the benefits of a working smoke alarm). Local Authorities will need to satisfy themselves that these regulations have been adhered to.

## **Regulatory Reform (Fire Safety) Order 2005**

19.42 Local Authorities are asked to satisfy themselves that the landlord has taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation, where such a risk exists. Taken together with a valid gas Safety Record, the installation of a carbon monoxide alarm would constitute reasonable precaution to prevent the possibility of carbon monoxide poisoning, where such a risk exists.

19.43 If the accommodation is or forms part of residential property which does not have a valid energy performance certificate as required by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, then it will not be regarded as suitable. Local Authorities should ensure they have had sight of a current certificate to ensure that this requirement has been met.

19.44 Housing Authorities should satisfy themselves that accommodation that is or forms part of relevant premises in accordance with regulation 36 of the Gas Safety (Installation and Use) Regulations 1994 has a current gas safety certificate. A Local Authority can do this by requesting sight of the valid Gas Safety certificate.

## **Landlord behaviour**

19.45 Authorities should satisfy themselves that landlords of accommodation secured under Part 2 of the Housing (Wales) Act 2014 are fit and proper persons to act in the capacity of a landlord. Local Authorities are required to consider any convictions in relation to landlord and tenant law, fraud or other dishonesty, violence or drugs as well as any discrimination and/or sexual offences as set out in the legislation. Most Local Authorities currently do this for Houses in Multiple Occupancy and they can also check their own records for any prosecutions for offences of harassment and illegal eviction brought by the Local Authority. If their record checking does not satisfy them that the landlord is a fit and proper person to act in the capacity of a landlord then the Local Authority can require the landlord to carry out a Disclosure and Barring Service (DBS) check, but they are not required to do this in every case. The Welsh Government recommends that when placing households outside of their district that the Authority liaise with the receiving district to check whether that Authority has taken any enforcement activity against the landlord. Part 1 of the Housing Wales Act covers the requirement for a landlord to be registered. Authorities must ensure that any landlords that may be supplying accommodation in the private sector for the purposes of fulfilling or ending a duty under Part 2 are registered under the provisions of part 1. Initially there will be circumstances following commencement where a landlord is not required to be registered. However, landlords will be required to register and become licensed by September 2016, and Authorities should encourage landlords to register and become licensed as soon as possible once the provisions of Part 1 have come into force before a property can be used for the purposes of Part 2.

## **Elements of good management**

19.46 Part 1 of the Housing Wales Act requires that a person who is responsible for the management of a property is licensed under Part 1 of the 2014 Act. The Local Authority should ensure that the landlord has provided to them or an appointed person a written tenancy agreement which they propose to use for the purposes of a private rented sector offer and which the Local Authority or appointed person considers to be adequate. It is expected that the Local Authority or appointed person should review the tenancy agreement to ensure that it sets out, ideally in a clear and comprehensible way, the tenant's obligations, for example a clear statement of the rent and other charges, and the responsibilities of the landlord, but does not contain

unfair or unreasonable terms, such as call-out charges for repairs or professional cleaning at the end of the tenancy.

19.47 It is strongly recommended that tenants are provided contact details for the Landlord / Managing agent / appointed person, an inventory is provided by the Landlord / managing agent / appointed person to be agreed by the tenant and a rent book is provided where appropriate.

19.48 There will be circumstances following commencement that the licensing provisions may not apply. Authorities should encourage landlords or appointed persons acting on their behalf as managing agents to apply for a license as soon as possible. If the managing agent is not licensed the Authority must be satisfied that the person is fit and proper to act as an agent / tenancy manager / appointed person.

## **Tenancy Deposit Scheme**

19.49 Whilst a Local Authority will not be able to check that a tenant's deposit has been placed in a tenancy deposit protection scheme prior to them taking the tenancy we recommend that Local Authorities remind prospective landlords and tenants of their responsibilities in this area.

19.50 Tenancy deposit protection schemes guarantee that tenants will get their deposits back at the end of the tenancy, if they meet the terms of the tenancy agreement and do not damage the property. Landlords must protect their tenants' deposits using a tenancy deposit protection scheme if they have let the property on an assured shorthold tenancy which started on or after 6 April 2007.

19.51 Where a Local Authority provides a deposit as part of its reasonable steps to help to secure or secure accommodation and this deposit is required to be held with one of the tenancy deposit protection schemes, the Local Authority must ensure that the deposit is registered against the Local Authority and not the tenant, this action should ensure that the resource can be recycled in the future.

## **Shared Housing**

19.52 The same standards apply for assessing suitability for shared housing. Authorities should ensure that any offer of accommodation in a house of multiple occupation should be suitable and that the property is appropriately licensed in accordance with Part 2 Housing Act 2004.

## **Licensing for Houses in Multiple Occupation**

19.53 Accommodation that is in a house of multiple occupation which is subject to licensing under s.55 of the Housing Act 2004 and is not licensed is unsuitable. Accommodation in a house of multiple occupation that is subject to additional licensing under s.56 of the Housing Act 2004 and is not licensed is unsuitable. To confirm whether a property of this type does need a licence the relevant section of the Council who enforces the licensing regime should be consulted.

## **Use of Bed and Breakfast Accommodation.**

19.54 Local 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) (Wales) Order 2015 restricts the use of B&B accommodation by Local Authorities and stipulates the minimum standard the temporary accommodation must meet in order to be used as temporary accommodation for homeless households subject to the duty under s.68 and s.75.

19.55 The Homelessness (Suitability of Accommodation) (Wales) Order 2015 places substantial restrictions on the use of Bed and Breakfast (B&B) accommodation. It should cater 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, Local 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.

19.56 Where bed and breakfast is used as a last resort, Authorities should take steps to ensure that homeless applicants are allowed to use their rooms during the day and have adequate access to cooking facilities. Where breakfasts or other meals are provided by the hotel, Authorities will wish to ensure that the food provided is adequate. Where the authority considers that food provision is inadequate, or applicants do not wish to take meals provided by the hotel, the Authority may wish to negotiate bed only arrangements.

19.57 Authorities should ensure that the standard of bed and breakfast accommodation meets the statutory requirements for houses in multiple occupation as well as the 'Suitability Order'. Authorities may wish to consider co-operating with other Authorities in drawing up guidance to monitor conditions and safety standards in hotels used to discharge homelessness obligations.

## **Homelessness (Suitability of Accommodation) (Wales) Order 2015**

19.58 The Homelessness (Suitability of Accommodation) (Wales) Order 2015 was approved by the National Assembly for Wales in **xxxxx**, to meet our objectives to reduce the use of Bed & Breakfast accommodation for homeless people and to ensure that the form and quality of temporary accommodation meets the needs of the homeless household.

19.59 Although the legislation only applies to the actions Authorities take in respect of their duties to homeless people, every endeavour should be made to ensure all temporary accommodation meets a minimum decent standard. A summary of the Homelessness (Suitability of Accommodation) (Wales) Order 2015 is provided below in relation to temporary accommodation.

## Summary of Homelessness (Suitability of Accommodation) (Wales) Order 2015

19.60 The Order provides that in determining whether it would be reasonable for a vulnerable person to occupy accommodation and in determining whether accommodation is suitable for a vulnerable person, there shall be taken into account the following matters:

- a) the specific health needs of the vulnerable person;
- b) the proximity and accessibility of social services;
- c) the proximity and accessibility of family support or other support services;
- d) any disability of the person.

Bed and breakfast accommodation is defined as accommodation:

- which is not in separate or self- contained premises;
- in which any of the following amenities are shared by more than one household or are not available;
- a toilet;
- personal washing facilities;
- cooking facilities;
- which is provided on a commercial basis.

19.61 B&B is not normally regarded as suitable for families with children, pregnant women and 16 & 17 year olds. The Order includes two standards for B&B establishments. Restrictions and the application of these standards will depend on the size of the establishment and whether the proprietor resides on the premises.

19.62 A “small” establishment is defined as one that has 6 or less bedrooms available for letting and where the proprietor is resident on the premises. The time restrictions set out below include cumulatively any previous periods of placement in Bed and Breakfast establishments by the Local Authority under a continuing duty to provide temporary accommodation.

### Larger establishments (more than 6 bedrooms)

19.63 In the case of larger establishments the use of B&B is restricted to 6 weeks for families with children, pregnant women and 16 & 17 year olds. A 2 week restriction will apply where establishments do not reach the higher standard.

Families with children, pregnant women and 16 & 17 year olds for periods up to a maximum of 2 weeks	Basic standard
Families with children, pregnant women and 16 & 17 year olds for periods in excess of 2 weeks (14 nights)	Higher standard

up to a maximum of 6 weeks	
All other households	Basic standard

19.64 In the case of small establishments the use of B&B for families with children, pregnant women and 16 & 17 year olds may exceed the six week period; however, 2 choice tests must be applied at 2 and 6 weeks if the Authority wishes to allow the household to remain in the accommodation.

Families with children, pregnant women and 16 & 17 year olds for periods up to a maximum of 2 weeks	Basic standard Where the Authority decide to offer the choice at 2 weeks, the household must be offered suitable alternative accommodation (where the establishment already meets the higher standard no choice need be offered). If that alternative accommodation is shared it must meet the higher standard.
Families with children, pregnant women and 16 & 17 year olds for periods in excess of 2 weeks (14 nights) up to a maximum of 6 weeks	Basic or Higher standard (depending on choice of household – see above). At six weeks the household must be offered a further choice, unless the Authority offers the household suitable alternative accommodation. Where the Authority wishes to offer the choice to remain: for families and pregnant women an offer of suitable self- contained accommodation should be made; for 16 & 17 year olds an offer of suitable accommodation with support. The household can then choose to stay in their current B&B.
All other households	Basic standard

19.65 Where the Local Authority owes a duty the Order applies the 2 and 6 week limit as outlined in stage 2 to all priority need groups occupying B&B accommodation. Where choice to remain is offered to the remaining priority need groups not covered in Stage 2, the alternative accommodation may be any suitable accommodation at 2 and 6 weeks.

19.66 The Higher Standard applies to all types of shared temporary accommodation occupied in excess of 14 nights. Where the property does not meet the higher standard and is owned and managed by a Local Authority or housing association, the Authority may offer the household a choice of remaining in the accommodation after two weeks and up to six weeks, subject to an offer of suitable alternative accommodation which meets the Higher Standard.

## **The Standards to be applied**

19.67 Local Authorities will be expected to inspect all B&B premises used as temporary accommodation for homeless households to ensure they meet the required standard. Local Authorities should take account of guidance in 'In Safe Hands', this provides the national framework for the development of local policies, procedures and guidance for the protection of vulnerable adults.

Both the basic and higher standards are minimum standards.

### **Basic Standard**

- All minimum legal requirements are met;
- The manager/ owner is deemed by the Local Authority to be a fit and proper person and can demonstrate their ability to manage B&B accommodations.

### **Higher Standard**

- Basic Standard plus;
- Physical property and management standards, additional to minimum legal requirements relating to licensing.

Fit & Proper Person and Ability to Manage

19.68 This test is based on s.66 of Part 2 of the Housing Act 2004. S.66 sets out the evidence that must be considered in determining whether someone is a fit and proper person to be a licence holder or manager.

19.69 The application of this test is a matter of judgement by the Local Authority, based on all the relevant information. When determining whether the proprietor/manager is a fit and proper person and their ability to manage the 194 property, the Authority will need information about any problems that have arisen in the past. Relevant convictions do not automatically mean that a person cannot be deemed fit and proper but should be declared. These may be considered alongside matters such as a proprietor having undertaken training or accreditation or a record of engagement with initiatives with the Local Authority to improve the sector. We therefore propose to require that:

A. The proprietor/manager must give information concerning any unspent convictions that may be relevant to his application, including in particular:

(a) Any offence involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003.

(b) Any unlawful discrimination on grounds of sex, colour, race,

religion, ethnic or national origins or disability in, or in connection with, the carrying on of any business.

(c) Contravention of any provision of the law relating to housing or of landlord and tenant law; (including any civil proceedings that they have lost).

(d) Contravention of any provision of the law relating to health and safety and food safety.

B. They should also reveal whether they have in the last 5 years:

a) Been in control of any property subject to a control order under s.379 of the Housing Act 1985 in the last 5 years.

b) Been refused a licence or had a licence removed for any property in relation to HMO, additional or selective licensing under the Housing Act 2004.

c) Been found to have breached a condition on a licence for any property in relation to HMO, additional or selective licensing under the Housing Act 2004.

d) Been found by a Local Authority to have acted otherwise than in accordance with any Code of Practice approved under s.233 of the Housing Act 2004.

e) Been in control of any property that has been the subject of any proceedings by a Local Authority (such as breaches of the Environmental Protection Act, planning control of compulsory purchase proceedings).

f) Been in control of any property on which the Local Authority has carried out work in default.

g) Been in control of any property which has been the subject of an Interim or Final Management Order or a Special Interim Management Order under the Housing Act 2004.

19.70 The proprietor/manager should also reveal whether any person associated or formerly associated with them (whether on a personal, work or other basis) has done any of the things set out above, where this is relevant to the question of whether the applicant is a fit and proper person to be the manager of the house.

### **Higher Physical Standards**

1. For the purposes of calculating occupancy numbers and ratios children under 10 count as half).

2. The standards apply only to temporary accommodation where the accommodation is not self-contained.

### **Space standards for sleeping accommodation**

<b>Room sizes where cooking facilities provided</b>	<b>Maximum No of Persons</b>
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**in a separate room/kitchen** Floor Area of Room

Not less than 6.5 m <sup>2</sup>	1 person
Not less than 10.2 m <sup>2</sup>	2 persons
Not less than 14.9 m <sup>2</sup>	3 persons
Not less than 19.6 m <sup>2</sup>	4 persons

19.71 No sharing of rooms for those of opposite genders, over the age of 10 unless they are living together as partners and both are over the age of consent or where a parent or guardian elects to share with an older child.

19.72 All rooms must have a minimum floor to ceiling height of at least 2.1 m over not less than 75% of the room area. Any floor area where the ceiling height is less than 1.5 m shall be disregarded.

19.73 Separate kitchens and bathrooms are unsuitable for sleeping accommodation.

19.74 Habitable rooms and baths or shower rooms shall have a heating system capable of maintaining a minimum temperature of 18°C when the outside temperature is -1° C.

19.75 Storage, preparation and cooking of food within the unit

Food preparation area provided must include;

**19.76 Unit accommodating more than one person**

- 4 hobs, conventional oven and grill or 2 hobs and a microwave with built in oven and grill.
- Sink and integral drainer with a constant supply of hot water and cold drinking water.
- Storage cupboard minimum capacity 0.2 m<sup>3</sup> excluding storage beneath the sink.
- Refrigerator.
- Four 13amp sockets (single or double) over worktop.
- Worktop for food preparation of minimum 1000mm x 600mm.
- A minimum of 1000mm circulation space from facilities to other furniture in the room.

**19.77 Room accommodating one person**

As above but to have a minimum of 2 hobs.

Storage, preparation and cooking of food in shared facility

Where food preparation areas are shared between more than one household there must be one set of facilities for:

Every 3 family households or fewer.

Every 5 single person households or fewer. (For single person households between 6 and 9 an additional oven or microwave required).

Every 10 persons or fewer where there are both family and single person households within the same premises.

(The food preparation area used by management may be included when calculating the ratio provided it meets the criteria for Shared Food Preparation Areas).

Each set of Shared facilities must include:

As Unit accommodating more than one person above except that:

- (a) Cooking facilities must consist of 4 hobs, oven, grill and Microwave.
- (b) Electric kettle and toaster to be provided.

19.78 Where residents have no access to kitchen facilities and the proprietor provides at least a breakfast and evening meal for residents, the requirements for shared kitchen facilities will be deemed to have been met.

19.79 Additional facilities to be provided in each bedroom or within the total accommodation occupied exclusively by each household

- Refrigerator.
- Lockable storage. Alternatively this can be provided elsewhere within the building.

#### Toilet and Washing Facilities

Facilities for exclusive use of occupant or household

This must include:

A bath or shower, wash hand basin with a constant supply of hot and cold water, and water closet either ensuite or in a separate room reserved for the exclusive use of individuals or households.

#### **Shared Facilities**

19.80 The number of persons occupying a unit of accommodation with a water closet facility provided for their exclusive use shall not be included in the ratio calculation).

This must include:

(a) 1 water closet and wash hand basin with a constant supply of hot and cold water within the building for every 5 households or less and not more than 1 floor away from intended users. For the first 5 households the water closet and wash hand basin can be in the shower or bathroom. All additional water closets and wash hand basins for occupancies of 6 households or more must be in a separate compartment.

(b) One bathroom or shower room to be provided for every 5 persons not more than 1 floor distant from intended users.

(c) Minimum of 50% of bathing facilities must contain baths suitable for children where children under the age of 10 are accommodated.

19.81 The entrance door to each unit of accommodation must be lockable and be capable of being unlocked from inside without the use of a key.  
Common Room (s)

19.82 Every premises must have a common room of minimum 12m<sup>2</sup> unless all households have a living area separate from their sleeping area that is available for their exclusive use or the premises are for single person households only.

## **Higher Management Standard**

19.83 This standard will be in addition to other legal standards, including those contained in 'The Housing (Management of Houses in Multiple Occupation) Regulations 1990' or the standards being developed as a result of 'Licensing in the Private Rented Sector – A Consultation Paper on the Implementation of HMO licensing in Wales' published in January 2005.

19.84 Each household should be issued with written 'house rules' which should include how sanctions will be applied. This document to be approved by the Local Authority placing homeless households in the premises.

19.85 Each household should be issued with written information relating to the premises including how to operate all installations, for example heating and hot water appliances and fire fighting equipment.

19.86 Written information should be made available to residents relating to the local area including the location or contact details of local facilities, laundrettes, doctors surgeries, schools.

19.87 The Welsh Government would expect residents to have access to their rooms at all times except when rooms are being cleaned or maintained. Provision should be made to accommodate residents at these times.

19.88 Access is allowed for the appropriate officers of the Authority in whose area the premises are situated, and officers of any Authority placing homeless households in the premises, to inspect the premises as and when they consider necessary, to ensure that the requirements are being complied with; and that the manager will allow such inspections to take place, if necessary without notice.

19.89 Access is allowed for the officers of the area local health board, Local Authority and authorised community workers for the area in which the premises are situated, to visit the occupiers of the premises and interview them in private in the room(s) they occupy.

19.90 A manager with adequate day to day responsibility to ensure the good management of the property can be contacted at all times and that a notice giving the name, address and telephone number of the manager shall be displayed in a readily visible position in the property.

19.91 A clear emergency evacuation plan is in place setting out action upon hearing the fire alarm, escape routes and safe assembly points. The managers must ensure that each person newly arriving at the premises is told what to do in the event of a fire and about fire precautions provided.

19.92 Each household should be issued with a complaint procedure which should detail how to make a complaint. The information should also include where the complainant can obtain further advice and assistance.

# CHAPTER 20:RIGHT OF AN APPLICANT TO REQUEST A REVIEW OF A DECISION AND APPEAL TO COUNTY COURT

## Introduction

20.1 The right of an applicant to request a review is a fundamental part of a balanced system that protects the rights of applicants, while also ensuring that individualised services are made available by Local Authorities. The provisions within the Housing (Wales) Act allow for an applicant to request a review in some circumstances.

This chapter will provide guidance for Local Authorities and applicants on the process and parameters for undertaking a review.

## Right to request review

### The Act states

#### Section 85 – Right to request review

- (1) An applicant has the right to request a review of the following decisions
  - a) A decision of local housing authority as to the applicant's eligibility for help;
  - b) A decision of a local housing authority that a duty is not owed to the applicant under section 66, 68, 73 or 75 (duties to applicants who are homeless or threatened with homelessness);
  - c) A decision of a local housing authority that a duty owed to the applicant under section 66, 68, 73 or 75 has come to an end (including where the authority has referred the applicant's case to another authority or decided that the conditions for referral are met).
- (2) Where the duty owed to an applicant under section 73 has come to an end in the circumstances described in section 74(2) or (3), an applicant has the right to request a review of whether or not reasonable steps were taken during the period in which the duty under section 73 was owed to help to secure that suitable accommodation would be available for his or her occupation.
- (3) An applicant who is offered accommodation in, or in connection with, the discharge of any duty under this Chapter may request a review of the suitability of the accommodation offered to the applicant (whether or not he or she has accepted the offer).
- (4) There is no right to request a review of the decision reached on an earlier review.
- (5) A request for review must be made before the end of the period of 21 days (or such longer period as the authority may in writing allow) beginning with the day on which the applicant is notified of the authority's decision.
- (6) On a request being made to them, the authority or authorities concerned must review their decision.

## Guidance

20.2 That a Local Authority must review their original decision where an applicant has requested a review of:

- a) Any decision of an Authority about his or her eligibility for assistance (whether he or she is considered to be a person from abroad who is ineligible for assistance);
- b) Any decision of an Authority as to what duty (if any) is owed to him or her under s.66, s.68, s.73 or s.75 of the Housing (Wales) Act 2014;
- c) Any decision made on the discharge of s.73 duty following either (a) the end of the 56 day period of support to relieve homelessness; or (b) that the Authority is satisfied that accommodation is available and that the accommodation is likely to be available for at least six months, whether or not reasonable steps were taken;
- d) Any decision of an Authority to notify another Authority under s.80 (2) (i.e. a decision to refer the applicant to the other Authority because they appear to have a local connection with that Authority's area and not with the area where they have made the application);
- e) Any decision under s.80(5) where the conditions are met for the referral of the applicant's case; and
- f) Any decision under s.82(3) or (4) (i.e. a decision as to whether the notified Authority or the notifying Authority owe the duty to secure accommodation in a case considered for referral or referred);
- g) Any decision of an Authority as to the suitability of accommodation offered to the applicant under any of s.66, s.68, s.73 or s.75.

20.3 In reviewing a decision, 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.

20.4 An applicant must make a formal request for a review before the end of 21 days from the date of the original notification of the decision. This can be extended but only as specified by the local Authority.

## Review procedure

### The Act states

#### Section 86 – Procedure on review

- (1) The Welsh Ministers may make provision by regulations as to the procedure to be followed in connection with a review under section 85.
- (2) Regulations under subsection (1) may, for example,-
  - a) Require the decision on review to be made by a person of appropriate seniority who was not involved in the original decision, and
  - b) Provide for the circumstances in which the applicant is entitled to an oral hearing, and whether and by whom the applicant may be

represented at such a hearing, and

c) Provide for the period within which the review must be carried out and notice given of the decision.

(3) The authority, or as the case may be either of the authorities, concerned must notify the applicant of the decision on the review.

(4) The authority must also notify the applicant of the reasons for the decision, if the decision is-

- a) To confirm the original decision on any issue against the interests of the applicant, or
- b) To confirm that reasonable steps were taken.

(5) In any case they must inform the applicant of his or her right to appeal to the county court on a point of law, and of the period within which such an appeal must be made (see section 88).

(6) Notice of the decision is not to be treated as given unless and until subsection (5), and where applicable subsection (4), is complied with.

(7) Notice required to be given to a person under this section must be given in writing and, if not received by that person, is to be treated as having been given if it is made available at the authority's office for a reasonable period for collection by the person or on his or her behalf.

## Guidance

20.5 That Welsh government Ministers have the power to set regulations in relation to the procedure for a review. This has taken place as a result of The **Homelessness (Review Procedures) (Wales) Regulations 2015**, which is set out below.

### Who may carry out the review?

20.6 A review may be carried out by the Authority itself or by someone acting as an agent of the Authority (see **Annex xx** about contracting out). The regulations provide that where the review is to be carried out by an officer of the 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 authority's organisational structure. The seniority provision does not apply where a committee or sub-committee of elected members takes the original decision.

20.7 Where the decision under review is a joint decision by the notifying Authority and the notified Authority as to whether the conditions of referral of the case are satisfied, **xxx** requires that the review should be carried out jointly by the two Authorities. Where the decision under review was taken by a person appointed pursuant to the arrangements set out in the Schedule to the **Homelessness (Review Procedures) (Wales) Regulations 2015**, the review must be carried out by another person appointed under those arrangements.

### Written presentations

20.8 Although not required by the **regulations**, applicants should be invited to make representations in writing in connection with his or her request for a review. The relevant provisions in the Housing (Wales) Act 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 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.

**20.9 Regulation x** of the **Homelessness (Review Procedures) (Wales) Regulations 2015** requires the Authority to notify the applicant that he or she, or someone acting on his behalf, may make written representations in connection with the request for a review. The notice should also advise that applicant of the procedure to be followed in connection with the review (if this information has not been provided earlier).

**Regulation x** also provides that:

- i. Where the original decision was made jointly by the notifying and notified Authorities under s.80(5), the notification should be made by the notifying Authority; and
- ii. Where the original decision was made by a person appointed pursuant to the **Homelessness (Review Procedures) (Wales) Regulations 2015** the notification should be made by the person appointed to carry out the review.

## Oral hearings

**20.10 Regulation xx** provides that in cases where a review has been requested, if the Authority, Authorities or person carrying out the review consider that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but they are minded nonetheless to make a decision that is against the applicant's interests on one or more issues, they should notify the applicant:

- i. that they are so minded and the reasons why; and
- ii. that the applicant, or someone acting on his or her behalf, may, within a reasonable period, make oral representations, further written representations, or both oral and written representations.

It is envisaged that such deficiencies or irregularities would include:

- i. failure to take into account relevant considerations and to ignore irrelevant ones;
- ii. failure to base the decision on the facts;
- iii. bad faith or dishonesty;
- iv. mistake of law;
- v. decisions that run contrary to the policy of the Act;
- vi. irrationality or unreasonableness; (Wednesbury unreasonableness is the legal test of the level of irrationality or unreasonableness in the exercise of a power or duty that needs to be shown before the courts will intervene); and
- vii. procedural unfairness, e.g. where an applicant has not been given a chance to comment on matters relevant to a decision. 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 a review must be completed**

20.11 Regulation xx 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 Authority;
- ii. ten weeks, where the decision was made jointly by two Authorities under s.80(5) (a decision whether the conditions for referral are met); and
- iii. twelve weeks, where the decision is taken by a person appointed pursuant to the Schedule to the **Homelessness (Review Procedures) (Wales) Regulations 2015**.

20.12 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**

20.13 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.

## **Procedure for review of reasonable steps**

20.14 Guidance on working with applicants in setting and agreeing a series of reasonable steps are set out in **Chapter xx**.

20.15 The use of reasonable steps during both s.66 and s.73 is intended to be individualised based on the needs of the applicant. Therefore there is no set formula for the use of reasonable steps. When a review of the reasonable steps taken is requested, the reviewer(s) should scrutinise the process followed during this stage and the applicant's involvement and agreement to the reasonable steps plan. When considering the appropriateness of the reasonable steps, the reviewer(s) should consider the following:

- i. whether the steps were focused on the individual's key needs;
- ii. the Authorities local context (ie housing stock, demand, etc);
- iii. the timeliness of actions taken and the proactivity of the Authority;

- iv. the likely success of the agreed reasonable steps;
- v. the cost in terms of both staff time and expenditure to the reasonable steps agreed and or taken during s.66 and s.73; and
- vi. the reasonableness of the demands and expectations placed on Local Authorities by the applicant.
- vii. The contribution by the applicant to supporting the reasonable steps that were or could have been taken.

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

20.16 Where the original decision under s.80(5) was made by a person appointed pursuant to the Schedule to the **Homelessness (Review Procedures) (Wales) Regulations 2015**, regulation **xx** provides that a review should be carried out by another person appointed by the notifying authority and the notified Authority. This requirement applies even where the original decision was carried out by a person appointed from the panel by the chairman of the Welsh Local Government Association, or his or her nominee. If, however, the two local Authorities fail to appoint a person to carry out the review within 5 working days of the date of the request for a review, the notifying Authority must request the chair of the Welsh Local Government Association to appoint a person from the panel. The chair, in turn, must within 7 working days of that request appoint a person from the panel to undertake the review. The Authorities are required to provide the reviewer with the reasons for the original decision, and the information on which that decision is based, within 5 working days of his or her appointment.

20.17 Any person thus appointed must comply with the procedures set out in **regulations 6, 7, 8 and 9**. Specifically, he or she must invite written representations from the applicant and send copies of these to the two Authorities, inviting them to respond. The reviewer is also required to notify in writing the two 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 Authorities adequate time to notify the applicant of the decision before expiry of the period.

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

20.18 S.86 requires an Authority to notify the applicant in writing 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 authority under s.80;
- iii. Confirms a previous decision that the conditions for referral in s.80 are met in the applicant's case.

20.19 Where the review is carried out jointly by two Authorities under s.80(5), or by a person appointed pursuant to the **Homelessness (Review Procedures) (Wales) Regulations 2015**, the notification may be made by either of the two Authorities concerned.

20.20 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.88 and of the period in which to appeal.

### **Power to Accommodate Pending a Review**

20.21 Under s.85 of the Housing (Wales) Act, applicants have the right to ask for a review of the Authority's decision on a number of issues relating to their case. Broadly speaking, where applicants who request a review of the Authority's decision on their case, the Authority have a power to accommodate them pending a decision on a review, but there is no duty to accommodate pending a review decision.

20.22 In considering whether to exercise their power to accommodate pending a decision on a review, Authorities will need to balance, on the one hand, the objective of maintaining fairness between homeless persons in circumstances where they have decided that no duty is owed to them, and , on the other hand, proper consideration of the possibility that the applicant might be right (and the Local Authority wrong) and that to deprive the applicant of accommodation could result in the denial of an entitlement. In weighing the balance, there are certain matters that the Authority will always need to consider (although other matters may also be relevant):

- i. The merits of the case itself and the extent to which it could be said that the decision was either one that appears to be contrary to the merits of the case or one that required a very fine balance of judgement that could have gone either way;
- ii. Whether any new material, information or argument has been put to the Authority, which could have a real effect on the decision under review; and
- iii. The personal circumstances of the applicant and the consequences to him or her of a decision not to exercise the discretion to accommodate.

20.23 For Authorities where, generally, only a small proportion of requests for a review are successful, it may be open to the Authority to adopt a policy of deciding to exercise the power to accommodate pending a review only in exceptional circumstances. However, such a policy would need to be applied flexibly, and each case would need to be considered on the particular facts and circumstances. In deciding whether there were exceptional reasons in any particular case, the Authority would need to ensure that account was taken of all material considerations and no account taken of any that were immaterial.

20.24 In deciding whether or not to accommodate an applicant pending an appeal, an authority must act reasonably. On an appeal against the Authority's decision not to accommodate, the Court must apply the principles that would be applied by the High Court on an application for judicial review. In effect, this means that the County Court can only test the reasonableness of the decision taken by the Authority; it cannot substitute its own decision as such. However, where the court quashes the decision of the Authority, it may order the 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.

## **Effect of a decision on review or appeal that reasonable steps were not taken.**

### **The Act states**

Section 87 - Effect of a decision on review or appeal that reasonable steps were not taken

(1) Subsection (2) applies where it is decided on review under section 85(2) or on an appeal of a decision under that section that reasonable steps were not taken.

(2) The duty in section 73 applies to the applicant again, with the modification that the 56 day period mentioned in subsection (2) of section 74 is to be interpreted as starting on the day the authority notifies the applicant of its decision on review under section 85(2) or, on an appeal, on such date as the court may order.

### **Guidance**

20.25 Where, following the review process, it is determined that reasonable steps have not been taken, the applicant is to be re-admitted to the s.73 stage (duty to help to secure accommodation for homelessness applicants) with the day of the notification of the outcome of the appeal, day 1 in relation to a new 56 day period.

Details on the process for reviewing the use of reasonable steps is above.

## **Right of appeal to county court on point of law**

### **The Act states**

Section 88 – Right of appeal to county court on point of law

(1) An applicant who has requested a review under section 85 may appeal to the county court on any point of law arising from the decision or, as the case may be, original decision or a question as to whether reasonable steps were taken if the applicant –

- a) Is dissatisfied with the decision on the review, or
- b) Is not notified of the decision on the review within the time prescribed under section 86.

(2) An appeal must be brought within 21 days of the applicant being notified of the decision or, as the case may be, of the date on which the applicant should have been notified of a decision on review.

(3) The court may give permission for an appeal to be brought after the end of the period allowed by subsection (2), but only if it is satisfied –

- a) Where permission is sought before the end of that period, that there is a good reason for the applicant to be unable to bring the appeal in

time, or

- b) Where permission is sought after that time, that there is a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for permission.

(4) On appeal the court may make such order confirming, quashing or varying the decision as it thinks fit.

(5) Where the authority was under a duty under section 68,75 or 82 to secure that suitable accommodation is available for the applicant's occupation, it may secure that suitable accommodation is so available –

- a) During the period for appealing under this section against the authority's decision and
- b) If an appeal is brought, until the appeal (and any further appeal) is finally determined.

And

#### Section 89 – Appeals against refusal to accommodate pending appeal

(1) This section applied where an applicant has the right to appeal to the county court under section 88.

(2) An applicant may appeal to the county court against a decision of the authority –

- a) Not to exercise their power under section 88(5) (“the section 88(5) power”) in the applicant's case.
- b) To exercise that power for a limited period ending before the final determination by the county court of the applicant's appeal under section 88(1) (“the main appeal”), or
- c) To cease exercising that power before the final determination.

(3) An appeal under this section may not be brought after the final determination by the county court of the main appeal.

(4) On an appeal under this section the court –

- a) May order the authority to secure that suitable accommodation is available for the applicant's occupation until the determination of the appeal (or such earlier time as the court may specify), and
- b) must confirm or quash the decision appeal against.

(5) In considering whether to confirm or quash the decision the court must apply the principles applied by the High Court on an application for judicial review.

(6) If the court quashes the decision it may order the authority to exercise the section 88(5) power in the applicant's case for such period section 88(5) power in accordance with the order would substantially prejudice the applicant's ability to pursue the main appeal;

(7) May not specify any period ending after the final determination by the county court of the main appeal.

## Guidance

20.26 S.88 provides an applicant with the right of appeal to the county court on any point of law arising from the decision on the review if:

- i. he or she is dissatisfied with the decision on a review, or
- ii. he or she is not notified of the decision on the review within the time prescribed in regulations made under s.86.

20.27 In the latter case, an applicant will be entitled to appeal against the original decision. The right of appeal is on a point of law arising from the decision on the review or, as the case may be, the original decision.

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

- i. the date on which he or she is notified of the decision on review; or
- ii. the date on which he or she should have been notified (i.e. the date marking the end of the period for the review prescribed in the regulations, or any extended period agreed in writing by the applicant).

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

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

20.28 On appeal, a county court is empowered to make an order confirming, quashing or varying the Authority's decision as it thinks fit. It is important, therefore, that Authorities have in place review procedures that are robust, fair, and transparent.

20.29 Under s.89, an applicant has the right to appeal to the County Court against an Authority's decision of the Authority not to secure accommodation for him or her pending the appeal. The applicant can also appeal against a decision of the Authority to secure accommodation for him or her for only a limited period which ends before final determination of the appeal.

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

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

20.31 Under s.88(1), applicants have the right of appeal to the County court on a point of law if they are dissatisfied with a decision on a review or are not notified of the decision on the review within the time prescribed. S.88(2) provides that an

appeal must be brought by applicants within 21 days of the date they were notified of the decision on the review (or the date by which they should have been notified). Under s.88(3), the court may give permission for an appeal to be brought after 21 days, in certain circumstances.

20.32 Under s.88(5), the Authority has a power to accommodate certain applicants during the period for making an appeal, and pending the appeal and any subsequent appeal (until all appeals are finally determined). By s.85(5), Authorities have such a power in respect of applicants who were previously owed a duty to secure accommodation under s.68, s.76(6) or s.82. Authorities also have such power in a case where the applicant was owed a duty under section 75, but have subsequently been found intentionally homeless, the applicant requested a review and subsequently become homeless, and in consequence, the Authority had a power under s.75 to secure accommodation pending the decision on the review.

20.33 The powers under s.88(5) to accommodate an applicant pending an appeal to the County Court apply whether or not the Authority has exercised their power to accommodate the applicant pending a review. In deciding whether to exercise their power to accommodate pending an appeal to the county court, 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.

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

20.34 In deciding whether or not to accommodate an applicant pending an appeal, an Authority must act reasonably. On an appeal against the Authority's decision not to accommodate, the Court must apply the principles that would be applied by the High Court on an application for judicial review. In effect, this means that the County Court can only test the reasonableness of the decision taken by the Authority; it cannot substitute its own decision as such. However, where the Court quashes the decision of the Authority, it may order the Authority to accommodate the applicant, but on 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.

### **Public Services Ombudsman for Wales**

20.35 Applicants may complain to the Public Services Ombudsman for Wales if they consider that they have been caused injustice as a result of maladministration or service failure by an Authority. The Ombudsman may investigate the way a decision has been made, but may not question the merits of a decision properly reached other than in relation to the provision of health or social care. For example, maladministration could occur where an authority:

- I. took too long to do something;
- II. did not follow their own rules or the law;
- III. broke their promises;
- IV. treated the applicant unfairly; and
- V. gave the applicant the wrong information.

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 Authority, for example, an appeal to the County Court under s.88; and
- 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.

20.36 Where there is a right of review the Ombudsman would expect an applicant to pursue the right before making a complaint. Where an applicant has a grievance the Ombudsman would normally expect the applicant to complain to the Authority in the first instance and allow it to have the opportunity to investigate the grievance and, if upheld, put the matter right. It is recommended that the Authority should adopt the model complaints policy and guidance issued by the **Welsh Government during 2011**. If there is any doubt about whether the Ombudsman can look into a complaint, the applicant should seek advice from the Public Services Ombudsman for Wales office.