



**OFFICE OF THE
DEPUTY PRIME MINISTER**

Allocation of Accommodation

Code of guidance for
local housing authorities

November 2002

housing



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Office of the Deputy Prime Minister

Following the reorganisation of the government in May 2002, the responsibilities of the former Department for Transport, Local Government and the Regions (DTLR) in this area were transferred to the Office of the Deputy Prime Minister.

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Printed in Great Britain on material containing 75% post-consumer waste and 25% ECF pulp.

November 2002

Product code 02HC00782

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CHAPTER 1

Introduction

Purpose of the Code

- 1.1 The First Secretary of State is issuing this Code of Guidance to local housing authorities (referred to in this Code of Guidance as housing authorities) in England under s169 of the Housing Act 1996 (the 1996 Act). Housing authorities are required to have regard to this guidance in exercising their functions under Part 6 of the 1996 Act.
- 1.2 The Code of Guidance (the Code) provides information about the allocation of social housing under Part 6 of the 1996 Act. It gives guidance on how housing authorities should discharge their functions and apply the various statutory criteria in practice. It is not a substitute for legislation and in so far as it comments on the law can only reflect the Department's understanding at the time of issue. Housing authorities will still need to keep up to date on any developments in the law in these areas. The Code has been published following the introduction of the Homelessness Act 2002 (the 2002 Act), which amends Part 6 of the 1996 Act. Annex 2 provides a list of amending and secondary legislation which currently apply.

Who is the Code for?

- 1.3 The Code is issued specifically for housing authority members and staff. It is also of direct relevance to registered social landlords (referred to as RSLs). RSLs have a duty under the 1996 Act to co-operate with housing authorities to such extent as is reasonable. It should be noted that RSLs are subject to the Housing Corporation's Regulatory Code and guidance and therefore they need to take into account its guidance on allocations.
- 1.4 Many of the activities discussed in the Code require joint planning and operational co-operation between housing authorities and social services departments, health authorities, other referral agencies, voluntary sector organisations and the private rented sector – so the Code is also relevant to these organisations.

The Legislation in Context

- 1.5 The responsibilities that Part 6 gives to housing authorities should be seen in the context of their other housing functions. Consideration should be given to the wider objectives of meeting the district's housing needs, as set out in the housing authority's housing strategy. The allocation of housing accommodation under Part 6 should also be seen as one of the tools for combating homelessness and considered as part of the housing authority's homelessness strategy.
- 1.6 For a wide range of vulnerable people, housing, care and support are inextricably linked, and housing authorities will want to consider how their housing allocation policies interact with other programmes of care and support.

CHAPTER 2

Overview of the Amendments to Part 6 of the 1996 Act made by the Homelessness Act 2002

- 2.1 Part 6 of the 1996 Act relates to the process by which people apply and are considered for an allocation of social housing. The 2002 Act introduces substantial revision to Part 6.
- 2.2 The main policy objectives behind the amendments to Part 6 contained in the 2002 Act are :
- to facilitate the introduction by housing authorities of allocation schemes that offer new applicants and existing tenants a more active role in choosing their accommodation;
 - to ensure the widest possible access to social housing for applicants by:
 - removing the power for authorities to implement blanket exclusions of certain categories of applicant. In its place housing authorities are given the power to decide that individual applicants are unsuitable to be tenants as a result of serious unacceptable behaviour; and
 - breaking down existing barriers to cross-boundary applications. Housing authorities must consider all applications, and cannot exclude applicants who, for example, are not currently resident in the borough. However, in determining relative priorities for an allocation, authorities are able to have regard to whether or not applicants have a local connection with the district;
 - to rationalise the reasonable preference categories so they are squarely based on housing need;
 - to ensure that existing social tenants seeking a transfer of accommodation can have their application considered on the same basis as new applicants;
 - to ensure that any necessary assistance is available free of charge to those who are likely to have difficulty in making an application for housing.
- 2.3 The detailed changes to Part 6 of the 1996 Act are set out in the following paragraphs.
- 2.4 Under s.159, housing authorities are obliged to comply with the provisions of Part 6 in the allocation of introductory and secure tenancies in their own stock and their nomination of applicants to assured tenancies in RSL stock. In this context the term ‘allocation’ now includes a transfer at the tenant’s request (s.159(5)). (See Chapter 3.)

- 2.5 Sections 161 to 165, which relate to housing registers, are repealed and the requirement to keep a register ceases. However there is nothing to prevent a housing authority from continuing to maintain a register of applicants, if it so wishes.
- 2.6 New s.160A provides that only those eligible for housing accommodation may be allocated such accommodation and defines eligibility. This includes, at s.160A(7), a power for a housing authority to decide that an applicant is to be treated as ineligible by reason of unacceptable behaviour serious enough to make him unsuitable to be a tenant. (See Chapter 4.)
- 2.7 The provisions in s.166 relating to information about the housing register have been repealed. New s.166 requires a housing authority to ensure that advice and information is available about the right to make an application and that assistance is available for those who are likely to have difficulty making an application. The housing authority must also ensure that applicants are informed of certain rights they have, for example the right to be informed of any decision about the facts of the case and the right to review certain decisions. Every application properly made must be considered by the housing authority. (See Chapter 6.)
- 2.8 Each housing authority must have and publish an allocation scheme under s.167 as before. In addition s.167(1A) provides that the scheme must contain a statement as to the housing authority's policy on offering people a choice of accommodation or the opportunity to express preferences about their accommodation. Also, s.167 sets out new reasonable preference categories at ss.(2) and makes further provisions relating to those categories and how they may be treated. This includes provisions at ss.(2B) to (2D) relating to unacceptable behaviour. At ss.(2E) there is provision for the scheme to facilitate choice. At ss.(4A) an applicant also has rights under the scheme to request certain information, to request to be informed of certain decisions and in some cases to request reviews of decisions. Again the housing authority must ensure that the applicant is informed of these rights (s.166(2)). (See Chapter 5.)
- 2.9 Apart from minor consequential amendments the supplementary provisions contained in s. 169 to s.174 remain unchanged.

CHAPTER 3

Allocations: General

Partnership working

- 3.1 Most social housing is provided by housing authorities using their own stock and by RSLs. Even where a housing authority has transferred its stock to an RSL, it retains responsibility for its statutory housing duties. A housing authority has a strategic responsibility for meeting its district's housing needs and the Secretary of State regards it as essential that housing authorities work closely with RSLs, other housing providers and voluntary agencies to meet those needs.
- 3.2 Housing authorities will need to develop working relationships with other organisations at a strategic and operational level to ensure that the housing, care and support needs of vulnerable people are appropriately met. These organisations will include Supporting People teams, Connexions partnerships, housing related support providers, health authorities, social services authorities, the police and probation service.
- 3.3 There need to be effective mechanisms in place for developing an interface with other services and providers. The Supporting People process provides a useful model (see www.spkweb.org.uk). Housing authorities will also wish to take advantage of the partnership working arrangements which they develop in drawing up their homelessness strategies.

Definition of “allocation”

- 3.4 For the purposes of Part 6 the allocation of housing accommodation by housing authorities is defined in s.159 as:
 - (a) selecting a person to be a secure or introductory tenant of housing accommodation held by a housing authority;
 - (b) nominating a person to be a secure or introductory tenant of housing accommodation held by another person (i.e. one of the authorities or bodies fulfilling the landlord condition mentioned in the Housing Act 1985, s.80); or
 - (c) nominating a person to be an assured tenant of housing accommodation held by an RSL.

Transfers

- 3.5 Provisions in relation to transfers are now contained in s.159(5). As a result, Part 6 now applies to most allocations to existing tenants of housing authorities and RSLs seeking to move to other social housing. This entitles existing social housing tenants to apply to transfer to other social housing stock, which may be in the same district or in another

housing authority's district. However, s.167(2A) of the 1996 Act means that housing authorities may take into account any local connection which exists between the applicant and the housing authority's district in determining priorities in relation to applicants who fall within the reasonable and additional preference categories (see Chapter 5, para. 5.23).

- 3.6 Those applying for a transfer must be treated on the same basis as other applicants in accordance with the provisions set out in the housing authority's allocation scheme, which should reflect a sensible balance between meeting the housing needs of existing tenants and new applicants, whilst ensuring the efficient use of stock. Transfers that the housing authority initiates for management purposes do not fall within Part 6. These would include a temporary decant to allow repairs to a property to be carried out. Mutual exchanges between existing tenants also do not fall within Part 6 (see annex 1 for a full list of exemptions).

Joint tenants

- 3.7 The Secretary of State considers joint tenancies can play an important role in the effective use and equitable allocation of housing. Where household members have long term commitments to the home, for example, when adults share accommodation as partners (including same sex partners), friends or unpaid live-in carers, housing authorities should normally grant a joint tenancy. In this way the ability of other adult household members to remain in the accommodation on the death of the tenant would not be prejudiced. Housing authorities should ensure that there are no adverse implications from the joint tenancy for the good use of their housing stock and for their ability to continue to provide for housing need.
- 3.8 Housing authorities should ensure that applicants, including where they are existing tenants, are made aware of the option of joint tenancies. When doing so, the legal and financial implications and obligations of joint tenancies must be made clear, including the implications for succession rights of partners and children. Where housing authorities refuse an application for a joint tenancy, clear, written reasons for the refusal should be given.
- 3.9 Where a joint tenant serves notice to quit, housing authorities have a discretion to grant a sole tenancy to the remaining tenant. In exercising this discretion, they should ensure that there are no adverse implications for the good use of their housing stock and their ability to continue to provide for housing need. Where housing authorities decide that they may wish to exercise their discretion in this respect, they must reflect this in their allocation scheme.
- 3.10 Where a tenant dies and another household member (who does not have succession rights to the tenancy) has:
- (a) been living with the tenant for the year prior to the tenant's death; or
 - (b) been providing care for the tenant; or
 - (c) accepted responsibility for the tenant's dependants and needs to live with them in order to do so,

- housing authorities should consider granting a tenancy to the remaining person or persons, either in the same home or in suitable alternative accommodation, provided 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 (a) and (b), the accommodation in question must be the principal or only residence of the survivor at the time the tenant dies.

Period for considering an offer of accommodation

- 3.11 Applicants must be allowed a reasonable period to make a decision about accommodation offered to them under Part 6. There is no statutory time limit but it is important that applicants are given sufficient time for careful consideration. 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.
- 3.12 Some applicants may require longer than others depending on their circumstances: they may wish to take advice in making their decision – particularly in the case of vulnerable applicants; or they may be unfamiliar with the property. Longer periods may be required, for example, where the applicant is currently in hospital, on in some form of temporary accommodation, such as a hostel or refuge.

CHAPTER 4

Eligibility for an Allocation of Accommodation

General overview

- 4.1 Section 166 (3) places an obligation on housing authorities to consider all applications for social housing that are made in accordance with the procedural requirements of the housing authority's allocation scheme. In considering applications, however, housing authorities must ascertain if an applicant is eligible for accommodation or whether he is excluded from allocation under s.160A (1)(a), (3) or (5). Housing authorities may decide to treat the applicant as ineligible for an allocation under s.160A (7) (unacceptable behaviour). Otherwise, housing authorities must treat all applicants as eligible.

Nationality and immigration status/Persons from abroad

- 4.2 Under s.160A (3) persons from abroad who are subject to immigration control within the meaning of the Asylum and Immigration Act 1996 are ineligible for allocations, but the Secretary of State has prescribed classes of persons who are subject to immigration control but are nonetheless to be eligible for an allocation. Under s.160A (5) the Secretary of State has also prescribed that certain persons from abroad, who are not subject to immigration control, have to be habitually resident in the Common Travel Area (CTA) (i.e. the UK, the Channel Islands, the Isle of Man and the Republic of Ireland) in order to be eligible (see annex 6).
- 4.3 The following are the main categories of applicants to whom a housing authority may allocate accommodation taking account of nationality and immigration status (see also annex 4):
- a) **Existing tenants** – All existing secure and introductory tenants of a housing authority and assured tenants of accommodation allocated by a housing authority;
 - b) **British Nationals** – British Nationals, who are habitually resident in the CTA;
 - c) **EEA Nationals** – Any person, who is a national of any of the countries in the European Economic Area (EEA), and is habitually resident in the CTA; or is a worker, or has a right to reside in the UK;
 - d) **Persons subject to immigration control** who have been granted:-
 - i) **Refugee status**;
 - ii) **Exceptional leave to remain** – provided that there is no condition that they shall not be a charge on public funds; or

- iii) **Indefinite leave to remain** – provided that they are habitually resident in the CTA and their leave to remain was not granted in the previous 5 years on the basis of a sponsorship given in relation to maintenance and accommodation (or, if so, that their sponsor has (or in the case of more than one sponsor, all of them have) died);
- e) **Persons subject to immigration control who are nationals of a country that has ratified the European Convention on Social and Medical Assistance (ECSMA) or the European Social Charter (ESC)** – provided that they are habitually resident in the CTA and are lawfully present in the UK (see also annex 6).

The habitual residence test

- 4.4 While the majority of the categories eligible for housing require the applicant to be habitually resident in the CTA, most applicants for social housing will not be persons from abroad and there will be no reason to apply the test. It is also likely that persons who have been resident in the CTA continuously during the 2 years prior to their housing application will be habitually resident in the CTA. In such cases, therefore, housing authorities may consider it unnecessary to make further enquiries to establish habitual residence, unless there are other circumstances that need to be taken into account. A period of continuous residence in the CTA might include visits abroad e.g. for holidays or to visit relatives. Where 2 years continuous residency in the UK is not established, housing authorities may need to conduct further enquiries to determine whether the applicant is habitually resident in the CTA.
- 4.5 The term “habitual residence” is intended to convey a degree of permanence in the person’s residence in the CTA; it implies an association between the individual and the country and relies substantially on fact. When deciding whether an applicant is habitually resident, housing authorities should take account of the applicant’s period of residence and its continuity, his employment prospects, his reason for coming to the UK, his future intentions and his centre of interest.
- 4.6 A person cannot claim to be habitually resident in any country unless he 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 had. Annex 11 provides detailed guidance on the factors which a housing authority should consider in determining whether an applicant is habitually resident in these circumstances. However, the fact that a person has ceased to be habitually resident in another country does not imply habitual residence in the country to which he has travelled.
- 4.7 A person who is in stable employment is more likely to be able to establish habitual residence than someone whose employment is, for whatever reason, transitory (i.e. an au pair or someone who is on a fixed short-term contract). Equally, a person, one of whose apparent aims in coming to the UK is to claim benefits, is less likely to be able to establish habitual residence.
- 4.8 A person who intends to take up permanent work is more likely to be able to establish habitual residence, as is a person who can show that he has immediate family or other ties in the UK.

- 4.9 The habitual residence test does not apply to –
- a) a worker for the purposes of EC law (see Council Regulation (EEC) No 1612/68 or (EEC) No 1251/70);
 - b) a person with a right to reside in the United Kingdom under treaty rights (see Council Directive No 68/360/EEC or No 73/148/EEC); or
 - c) a person who left the territory of Monserrat after 1 November 1995 because of the effect of the volcanic activity there.
- 4.10 On 21 May 2002 most British Overseas Territories Citizens, including all citizens of Monserrat, became British Citizens. Since their new EU-style passport will not identify that they are from Monserrat, it has been recommended that they should also retain their old British Overseas Territories Citizen passport, to help them demonstrate eligibility for social security benefits and social housing in the UK.

Eligible categories

- 4.11 **Existing tenants** – Section 160A(6) 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 to him by a housing authority. It is therefore the case that where such a tenant applies for an allocation the housing authority does not need to question eligibility and an allocation can be made regardless of immigration status or habitual residence.
- 4.12 **British Nationals** – Where a British National arrives from abroad, as with all nationals of an EEA country, he must establish habitual residence in order to be eligible for an allocation, even in cases where he was born in the CTA.
- 4.13 **EEA Nationals** – These are the Nationals of the EU countries plus Iceland, Norway and Liechtenstein. They are not subject to immigration control, but are not eligible for accommodation unless they can establish habitual residence.
- 4.14 **Persons subject to immigration controls prescribed as eligible** – Generally, persons subject to immigration control are not eligible for housing accommodation. However, under s.160A (3) the Secretary of State has prescribed classes of person who are to be eligible and they are:-
- i) Persons granted refugee status – A person is granted refugee status when his request for asylum is accepted.
 - ii) Persons granted exceptional leave to enter or remain (ELR) – This will be either someone who has failed in his request for asylum, but nonetheless been given leave to remain, or someone who has been granted leave to remain where there are compelling, compassionate circumstances. However, it may be the case that when ELR was granted it was on condition that the applicant should not be a charge on public funds. If that is the case, the applicant is not eligible for an allocation.
 - iii) Persons granted indefinite leave to enter or remain (ILR) – This will be someone who has permission to remain in the UK for an indefinite period and is regarded as having settled status. In order to be eligible, however, the applicant will still have to be able to establish habitual residence. It is also the case that if ILR status was obtained as a result

of sponsorship five years must have elapsed since the person's arrival in the UK or the date of the sponsorship undertaking, whichever is later. However, where a sponsor dies (or where there is more than one sponsor, where all of them die) within the first five years, the applicant will be eligible provided he can establish habitual residence.

- iv) Persons subject to immigration control who are nationals of a country that has ratified ECSMA or ESC – Such persons have to be lawfully present in the UK as well as habitually resident. This means that the applicant must have leave to enter or remain in the UK.
- 4.15 Annex 8 provides guidance on identifying persons subject to immigration control who are eligible for an allocation. Annex 7 lists classes of persons subject to immigration control who are not eligible for an allocation. Annex 9 identifies the countries which have ratified ECSMA and ESC, and lists other European groupings.
- 4.16 The provisions on eligibility are complex and housing authorities will need to ensure that they have procedures in place to carry out appropriate checks on housing applicants.
- 4.17 If there is any uncertainty about an applicant's immigration status, housing authorities are recommended to contact the Home Office Immigration and Nationality Directorate, using the procedures set out in annex 10. 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. Where there is reason to believe that the applicant may be an asylum seeker, they should be referred to the National Asylum Support Service (see annex 10).
- 4.18 Housing authorities should ensure that staff who are required to screen housing applicants about eligibility for an allocation are given training in the complexities of the housing provisions, the housing authority's duties and responsibilities under the race relations legislation and how to deal with applicants in a sensitive manner. Housing authorities may wish to refer to annex 5, which provides model questions that can provide a pathway to determining eligibility. Annex 12 provides a pathway for determining eligibility in the form of a flow chart.

Unacceptable behaviour

- 4.19 Most applicants for social housing will not be persons from abroad, and will have been resident in the UK (or elsewhere in the CTA) for 2 years prior to their application. Such applicants, together with those eligible applicants from abroad may nonetheless be treated as ineligible by the housing authority on the basis of unacceptable behaviour.
- 4.20 Where a housing authority is satisfied that an applicant (or a member of the applicant's household) is guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant, section 160A(7) permits the authority to decide to treat the applicant as ineligible for an allocation.
- 4.21 Section 160A(8) 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 household that would – if the applicant had been a secure tenant of the housing authority at the time – have entitled the housing authority to a possession order under s.84 of the Housing Act 1985 in relation to any of the grounds in Part I of Schedule 2, other than Ground 8. These

are fault grounds and include behaviour such as conduct likely to cause nuisance or annoyance, and use of the property for immoral or illegal purposes. Housing authorities should note that it is not necessary for the applicant to have actually been a tenant of the housing authority when the unacceptable behaviour occurred. The test is whether the behaviour would have entitled the housing authority to a possession order if, whether actually or notionally, the applicant had been a secure tenant.

- 4.22 Where a housing authority has reason to believe that s.160A (7) may apply; there are a number of steps that will need to be followed.
- i) They will need to satisfy themselves that there has been unacceptable behaviour which falls within the definition in s160A (8). In considering whether a possession order would be granted in the circumstances of a particular case, the housing authority would have to consider whether, having established the grounds, the court would decide that it was reasonable to grant a possession order. It has been established in case law that, when the court is deliberating, “reasonable” means having regard to the interests of the parties and also having regard to the interests of the public. So, in deciding whether it would be entitled to an order the housing authority would need to consider these interests, and this will include all the circumstances of the applicant and his or her household. In practice, courts are unlikely to grant possession orders in cases which have not been properly considered and are not supported by thorough and convincing evidence. It is acknowledged that in cases involving noise problems, domestic violence, racial harassment, intimidation and drug dealing, courts are likely to grant a possession order. Rent arrears would probably lead to a possession order, although in many cases it will be suspended giving the tenant the opportunity to pay the arrears. In taking a view on whether it would be entitled to a possession order, the housing authority will need to consider fully all the factors that a court would take into account in determining whether it was reasonable for an order to be granted. In the Secretary of State’s view, a decision reached on the basis of established case law would be reasonable.
 - ii) Having concluded that there would be entitlement to an order, the housing authority will need to satisfy itself that the behaviour is serious enough to make the person unsuitable to be a tenant of the housing authority. For example, the housing authority would need to be satisfied that, if a possession order were granted, it would not be suspended by the court. Behaviour such as the accrual of rent arrears which have resulted from factors outside the applicant’s control – for example, delays in housing benefit payments; or liability for a partner’s debts, where the applicant was not in control of the household’s finances or was unaware that arrears were accruing – should not be considered serious enough to make the person unsuitable to be a tenant.
 - iii) The housing authority will need to satisfy itself that the applicant is unsuitable to be a tenant by reason of the behaviour in question – in the circumstances at the time the application is considered. Previous unacceptable behaviour may not justify a decision to consider the applicant as unsuitable to be a tenant where that behaviour can be shown to have improved.
- 4.23 The housing authority must be satisfied on all three aspects set out in para. 4.22. Only then can the housing authority consider exercising its discretion to decide that the applicant is to be treated as ineligible for an allocation. In reaching a decision on whether or not to treat an applicant as ineligible, the housing authority will have to act reasonably, and will need to consider all the relevant matters before it. This will include all the

circumstances relevant to the particular applicant, whether health, dependants or other factors. In practice, the matters before the housing authority will normally mean the information provided with the application.

- 4.24 If an applicant, who has, in the past, been deemed by the housing authority to be ineligible, considers his unacceptable behaviour should no longer be held against him as a result of changed circumstances, he can make a fresh application. Unless there has been a considerable lapse of time it will be for the applicant to show that his circumstances or behaviour have changed.
- 4.25 Where a housing authority has reason to believe that an applicant's unacceptable behaviour is due to a physical, mental or learning disability, they must not treat that person as ineligible for an allocation without first considering whether he would be able to maintain a tenancy with appropriate care and support. In considering the applicant's case, the housing authority will need to consult with relevant agencies, including social services, health professionals, and providers of suitable housing, care and housing related support services.
- 4.26 Housing authorities should note, however, that they are not required to treat an applicant as ineligible where they are satisfied that he is guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant; instead they may decide to proceed with the allocation but give the applicant no preference for an allocation. This option is considered further at Chapter 5, paras. 5.19 to 5.22.
- 4.27 A housing authority may also take into account the behaviour of an applicant (or a member of his household) which affects his suitability to be a tenant when determining priorities in relation to applicants who fall within the reasonable preference categories. This option is considered further at Chapter 5, para. 5.23(b).

Joint tenancies

- 4.28 Under s.160A (1)(c), a housing authority shall not grant a joint tenancy to two or more people 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.

Reviews of decisions on eligibility

- 4.29 Under s.160A (9) and (10), and s.167 (4A) housing authorities, who decide that applicants are ineligible by virtue of s.160A (3) or (5) or are to be treated as ineligible because of unacceptable behaviour, must give them written notification of the decision. The notification must give clear grounds for the decision which must be based firmly on the relevant facts of the case.
- 4.30 Under s.167 (4A)(d) applicants have the right to request a review under the allocation scheme of any decision as to eligibility and a right to be informed of the decision on review and the grounds for that decision.

CHAPTER 5

Allocation Scheme

General overview

- 5.1 Housing authorities are required by s.167 of the 1996 Act to have an allocation scheme for determining priorities, and for defining the procedures to be followed in allocating housing accommodation. “Procedure” includes all aspects of the allocation process, including the people, or descriptions of people, by whom decisions are taken. It is essential that the scheme reflects all the housing authority’s policies and procedures, including information on whether the decisions are taken by elected members or officers acting under delegated powers. Under s.167 (1A) the scheme must include a statement of the housing authority’s policy on offering eligible applicants a choice of accommodation or the opportunity to express preferences about the accommodation offered to them. The scheme must also be framed in such a way as to ensure that reasonable preference is given to certain classes of people. The categories have been revised by the 2002 Act.

Choice and preference options

- 5.2 The requirement under s.167 (1A) of the 1996 Act for a statement to be contained in the scheme as to the housing authority’s policy on offering a choice of accommodation, or giving the applicant an opportunity to express preferences in relation to accommodation, means that the housing authority must address the matter and take a policy decision on it.
- 5.3 The Secretary of State believes that allocation policies for social housing should provide choice for applicants wherever possible, while continuing to meet housing need. In his view, this is the best way to ensure sustainable tenancies and to build settled and stable communities, as tenants are more likely to meet their tenancy obligations, maintain the property in good condition, and remain in situ for longer.
- 5.4 The allocation scheme may contain provision under s.167 (2E) for the allocation of particular accommodation to a person who makes a specific application for that accommodation. This is intended to facilitate choice by providing for the adoption of “advertising schemes” whereby applicants can apply for particular properties, which have been advertised as vacant by the housing authority.
- 5.5 It is for housing authorities and their partner RSLs to decide in the light of local circumstances, and drawing on the experience of the choice based lettings pilot scheme, the ways in which they can amend or develop their existing arrangements so as to offer more choice to applicants.
- 5.6 Housing authorities which do not offer a choice of accommodation, should consider giving the applicant an opportunity to express preferences in relation to accommodation. This means that they should allow the applicant to express a preference about, for example, the location and type of accommodation to be allocated. Wherever possible, such preferences should be taken into account in allocating accommodation to that person.

- 5.7 By virtue of sections 193(3A) and 195(3A) of the 1996 Act, housing authorities are required to give people, to whom they owe a duty, a copy of the statement included in their allocation scheme under s.167(1A) about their policy on offering choice or the opportunity to express preferences (see para. 5.2). The persons who are owed a duty are defined under sections 193 (duty to persons in priority need who are not homeless intentionally) and 195 (duties in case of threatened homelessness). Housing authorities must therefore ensure that their allocation scheme addresses the extent to which they are able to offer choice (or the ability to express preferences) to people to whom they owe a homelessness duty.

Reasonable preference

- 5.8 In framing their allocation scheme so as to determine priorities in the allocation of housing, housing authorities must ensure that reasonable preference is given to the following categories of people, as set out in s167 (2) of the 1996 Act:
- (a) people who are homeless (within the meaning of Part 7 of the 1996 Act); this includes people who are intentionally homeless, and those who are not in priority need;
 - (b) people who are owed a duty by any housing authority under section 190(2), 193(2) or 195(2) of the 1996 Act (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any housing authority under section 192(3);
 - (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; and
 - (e) people who need to move to a particular locality in the district of the housing authority, where failure to meet that need would cause hardship (to themselves or to others).
- 5.9 It is important that the priority for housing accommodation goes to those with greater housing need. In framing their allocation scheme to give effect to s.167(2), housing authorities must have regard to the following considerations -
- a) the scheme must include mechanisms for:
 - i) ensuring that the authority assess an applicant's housing need, and for
 - ii) identifying applicants in the greatest housing need
 - b) the scheme must be framed so as to give reasonable preference to applicants who fall within the categories set out in s.167(2), over those who do not;
 - c) the reasonable preference categories must not be treated in isolation from one another. Since the categories can be cumulative, schemes must provide a clear mechanism for identifying applicants who qualify under more than one category, and for taking this into account in assessing their housing need;

- d) there is no requirement to give equal weight to each of the reasonable preference categories. However, housing authorities will need to be able to demonstrate that, overall, reasonable preference for allocations has been given to applicants in all the reasonable preference categories. Accordingly it is recommended that housing authorities put in place appropriate mechanisms to monitor the outcome of allocations; and
- e) a scheme may provide for other factors than those set out in s 167(2) to be taken into account in determining which applicants are to be given preference under a scheme, provided they do not dominate the scheme at the expense of those in s.167(2). (See para. 5.25 below)

Otherwise, it is for housing authorities to decide how they give effect to the provisions of s.167(2) of the 1996 Act in their allocation scheme.

RECONCILING CHOICE AND NEED

- 5.10 The Secretary of State is of the opinion that there is sufficient flexibility within the statutory framework to enable housing authorities to offer applicants a choice of accommodation while continuing to give reasonable preference to those with the most urgent housing need.
- 5.11 When considering how to reconcile choice and housing need, housing authorities should consider adopting a simplified system of applicant prioritisation in place of a complex points-based approach. An appropriate approach might include systems that:
 - (a) “band” applicants into a number of groups reflecting different levels of housing need, with prioritisation of applicants within these groups being determined by waiting time, and/or
 - (b) give people in the most urgent housing need priority over other applicants (often by using a time-limited “priority card”).
- 5.12 Housing authorities may wish to consider the use of time limited priority cards. They provide a fast track for those with the most urgent housing need. They also enable housing authorities to keep a closer eye on priority applicants, and in so doing to identify those who may be having difficulty applying because they have a need for assistance which they are not receiving. It is essential that, where the applicant does not make use of the priority card within the specified time limit, there is a mechanism for reconsidering his housing needs (including the need for any assistance), and for extending the time limit where this is appropriate.

MEDICAL AND WELFARE GROUNDS

- 5.13 Where it is necessary to take account of medical advice, housing authorities should contact the most appropriate health or social care professional who has direct knowledge of the applicant’s condition, as well as the impact his condition has on his housing needs.
- 5.14 “Welfare grounds” is intended to encompass not only care or support needs, but also other social needs which do not require ongoing care and support, such as the need to provide a

secure base from which a care leaver or other vulnerable person can build a stable life. It would include vulnerable people (with or without care and support needs) who could not be expected to find their own accommodation.

- 5.15 Where accommodation is allocated to a person who needs to move on medical or welfare grounds, it is essential to assess any support and care needs, and housing authorities will need to liaise with social services, the Supporting People team and other relevant agencies, as necessary, to ensure the allocation of appropriate accommodation. Housing authorities should also consider, together with the applicant, whether his needs would be better served by staying put in his current accommodation if appropriate aids and adaptations were put in place.

“ HARDSHIP” GROUNDS

- 5.16 This would include, for example, a person who needs to move to a different locality in order to give or receive care, to access specialised medical treatment, or to take up a particular employment, education or training opportunity.
- 5.17. Possible indicators of the criteria which apply to categories (c) and (d) are given in [annex 3](#).

Additional preference

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

- (a) 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 violence
 - victims of racial harassment amounting to violence or threats of violence
 - same sex couples who are victims of harassment amounting to violence or threats of violence
 - witnesses of crime, or victims of crime, who would be at risk of intimidation amounting to violence or threats of violence if they remained in their current homes.

Housing authorities need to have local liaison arrangements with the police to ensure that allocations can be made quickly and confidentially, where necessary;

- (b) those who need to move because of urgent medical reasons.

Unacceptable behaviour

- 5.19 By virtue of s.167 (2B) and (2C) an allocation scheme may provide that no preference is given to an applicant where the housing authority is satisfied that 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 housing authority; and the housing authority is satisfied that, in the circumstances at the time the case is considered, he deserves not to be treated as a person who should be given reasonable preference.
- 5.20 By virtue of s.167 (2D), 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, that is to say s.160A (8).
- 5.21 Section 160A(8) 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 household that would – if the applicant had been a secure tenant of the housing authority at the time – have entitled the housing authority to a possession order under s.84 of the Housing Act 1985 in relation to any of the grounds in Part I of Schedule 2, other than Ground 8.
- 5.22 Chapter 4, paras. 4.21 and 4.22 provide guidance, for the purposes of determining eligibility under s.160A (7), on what constitutes unacceptable behaviour serious enough to make an applicant unsuitable to be a tenant, and sets out the steps which housing authorities should take to satisfy themselves in this regard. This guidance applies equally to decisions under s. 167 (2B) and (2C).

Determining priorities

- 5.23 Section 167(2A) allows allocation schemes to make provision for determining priorities in relation to applicants who fall within the reasonable preference and any additional preference categories. The factors which the scheme may allow to be taken into account include:
- (a) the financial resources available to the applicant to meet his housing costs. This, for example, would enable a housing authority to give less priority to an applicant who was financially able to secure alternative accommodation at market rent or to buy a home;
 - (b) any behaviour of the applicant (or a member of his household) which affects his suitability to be a tenant. This would allow housing authorities to take account of both bad and good behaviour. Bad behaviour would include unacceptable behaviour which was not serious enough to justify a decision to treat the applicant as ineligible, or to give him no preference for an allocation, but which could be taken into account in assessing the level of priority which was deserved relative to other applicants. An example could be minor rent arrears. Another applicant might be able to demonstrate that he had been a model tenant or that his actions had directly benefited other residents on his estate;
 - (c) any local connection which exists between the applicant and the housing authority's district. By s.199 of the 1996 Act, broadly speaking a person has a local connection with the district of a housing authority if he has a connection because of normal

residence there (either current or previous) of his own choice, employment there, family connections or special circumstances. Residence in an area is not of a person's own choice if it is the consequence of serving in the armed forces or being detained in prison. Local connection policies should not discriminate against any ethnic group and must comply with the Race Relations Amendment Act 2000.

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

Allocation scheme flexibility

- 5.25 While housing authorities will need to ensure that, overall, reasonable preference for allocations is given to applicants in the relevant categories in s167 (2), these should not be regarded as exclusive. A scheme should be flexible enough to incorporate other considerations. For example, housing authorities may wish to give sympathetic consideration to the housing needs of extended families. However, housing authorities must not allow their own secondary criteria to dominate schemes at the expense of the statutory preference categories. The latter must be reflected on the face of schemes and be evident when schemes are evaluated over a longer period.

Local lettings policies

- 5.26 Section 167(2E) enables housing authorities to allocate accommodation to people of a particular description, whether or not they fall within the reasonable preference categories. Essential workers such as teachers, nurses and police officers could be allocated accommodation within a reasonable travelling distance from their work in areas where high housing costs might otherwise price them out of the communities they serve. Similarly the child to adult ratio could be lowered on an estate where there is high child density or, conversely, young single people could be integrated into an estate via this route. Where operating local lettings policies, housing authorities will need to ensure that, overall, reasonable preference for allocations is given to applicants in the reasonable preference categories; and that their local lettings policies do not discriminate, directly or indirectly, on racial or other equality grounds.

Hard to let properties

- 5.27 Housing authorities may need to go outside the reasonable preference categories in order to fill hard-to-let vacant stock. This is acceptable. However, housing authorities will need to bear in mind that they must be able to demonstrate that in allocating their housing accommodation overall, reasonable preference is given to those in the statutory preference categories.

Equal opportunities

- 5.28 Housing authorities must ensure that their allocation policies and procedures do not discriminate, directly or indirectly, on grounds of race, ethnicity, sex or disability.
- 5.29 Housing authorities should ensure that their allocation scheme and lettings plan are representative of the community and promote community cohesion. In doing so, they should ensure that the views of groups which are currently under-represented in social housing are taken into account when consulting on their allocation scheme and developing their lettings plans. Housing authorities should also consider making realistic plans in respect of the allocation of accommodation to such groups, to monitor their lettings outcomes, and review their allocation practices where any group is shown to be disadvantaged.
- 5.30 Housing authorities must comply with statutory requirements relating to equal opportunities, and relevant codes of practice including the Commission for Racial Equality's Code of Practice in Rented Housing. Housing authorities should consider having in place a formal equal opportunities policy relating to all aspects of the allocation process with the aim of ensuring equality of treatment for all applicants

Black and minority ethnic groups

- 5.31 Housing authorities should, where relevant, ensure that information on their allocation scheme is available in a range of ethnic languages appropriate to the area. This information should be readily accessible to Black and Minority Ethnic (BME) households, as should appropriate advice and assistance for them to apply for housing.
- 5.32 Where relevant, housing authorities should consider ways to improve awareness of and access to social housing for BME households. The Secretary of State believes that the best approach is to adopt allocation policies and procedures which are open and transparent and which give applicants a more active role in the choice of their housing.

Children in need

- 5.33 Households may include a child with a need for settled accommodation on medical or welfare grounds.
- 5.34 Under s.27 of the Children Act 1989, housing authorities are required to respond to social services authorities, who have duties towards children under that Act (see s.18). 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". Subject to an amendment in the Adoption and Children Bill, families in this context are to include adoptive families, and prospective adoptive families.
- 5.35 A child in need is defined in the Children Act 1989 as someone 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 of certain services by a local

authority; or someone whose health or development is likely to be significantly impaired, or further impaired, without the provision of such services; or someone who is disabled. A child in need may require settled accommodation on medical or welfare grounds.

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

Carers

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

Lone teenage parents under 18

- 5.38 The provision of suitable accommodation with support for lone parents under 18 is a key part of the Government's Teenage Pregnancy Strategy. While lone teenage parents will normally be young women – which is why this guidance uses the terms “she” and “her” in this section – housing authorities need to recognise that there may be some occasions when the applicant is a young man.
- 5.39 The Government's objective is 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 semi-independent accommodation with support. Housing authorities should work with social services, Supporting People teams, RSLs and relevant voluntary organisations in their district to ensure that the Government's objective is met.
- 5.40 The allocation of appropriate housing and support should be based on consideration of the young person's housing and support needs, her individual circumstances and her views and preferences. Housing authorities must ensure that the accommodation is suitable for babies and young children. Wherever possible, housing authorities should take account of the education and employment needs and opportunities of the applicant when identifying suitable accommodation.
- 5.41 Where an application for housing is received from a lone parent aged 16 or 17, the Secretary of State recommends that housing authorities have arrangements in place to ensure that they can undertake a joint assessment of the applicant's housing, care and support needs with social services. Housing authorities should obtain the consent of the young parent before involving social services, unless child protection concerns are present and to seek such consent might endanger the welfare of the child of the young parent.
- 5.42 Where RSLs in the district have vacancies in a suitable supported housing scheme, housing authorities should use their nomination rights to secure accommodation for young parents in such accommodation. Support may be provided on site or on a “floating” basis.
- 5.43 Where there is no suitable RSL accommodation available, housing authorities should consider allocating the young parent a place in other similar accommodation where appropriate support is available.

- 5.44 The Secretary of State believes that the young person should not normally be allocated an independent tenancy without floating support. In exceptional cases, however, 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 her views and preferences. In such circumstances, housing authorities should ensure that the young person is aware of relevant sources of support and advice and how to access them. This might include social services, health visitors, the Connexions service, and relevant voluntary agencies and local providers.
- 5.45 Housing authorities should also, in consultation with the relevant RSLs in their district, make provision for appropriate move-on accommodation for young parents who have been assessed as ready to leave supported accommodation and live independently. In some cases, where the young parent has made good progress, it may be appropriate for her to live independently before she reaches the age of 18. When allocating move-on accommodation to a young parent, the housing authority should consider whether the parent or child have any continuing support needs, in consultation with the young person, social services and relevant providers.
- 5.46 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 her to be accommodated by social services, for example, in foster care.
- 5.47 Young parents under the age of 16 must always be referred to social services so that their social care needs may be assessed.
- 5.48 Further guidance is set out in *Guidelines for Good Practice in Supported Accommodation for Young Parents*, published jointly by DTLR and the Teenage Pregnancy Unit in September 2001 (available from www.teenagepregnancyunit.gov.uk or www.housingcorp.gov.uk).

Tenancies for minors

- 5.49 In some circumstances, social services authorities may consider it appropriate to underwrite a tenancy agreement for an applicant who is under 18. There are legal complications associated with the grant of a tenancy to a minor because a minor cannot hold a legal estate in land. However, if a tenancy is granted, it probably takes effect as a contract for a lease and would be fully enforceable as a contract for necessities (ie the basic necessities of life) under common law. Any guarantee given in those circumstances would remain valid in respect of any liability incurred by the minor notwithstanding that he or she may repudiate the agreement on or shortly after reaching 18.

Rough sleeping

- 5.50 Housing authorities' homelessness strategies have a key role to play in preventing homelessness and rough sleeping. Access to good quality, affordable housing will be vital for rough sleepers and people at risk of sleeping rough.
- 5.51 Housing authorities should ensure that allocation schemes make provision to enable access to housing authority and RSL accommodation for this client group. Where appropriate, schemes should also ensure that vulnerable people have access to the assistance they need

to apply for housing. Often, people at risk of homelessness will require support, for example to address mental health, alcohol or drug problems, or simply to cope with bill paying and basic life skills. Allocation schemes should be developed with strong links to such support services provided under local homelessness strategies and Supporting People.

Sex offenders

- 5.52 Where sex offenders are allocated accommodation, this should be in the light of considered decisions about managing any risks associated with their release from prison into the community, involving multi-agency arrangements with the police, probation services, social services, health professionals and other relevant bodies. Housing authorities should have regard to DETR guidance issued to Chief Housing Officers in November 1999 about the management of risk in such cases.

Rent (Agriculture) Act 1976

- 5.53 The Rent (Agriculture) Act 1976 (referred to as the 1976 Act) requires housing authorities to use their best endeavours to provide accommodation for displaced agricultural workers. Section 27 of the 1976 Act requires the housing authority to be satisfied that:
- (a) the dwelling-house from which the worker is displaced is needed to accommodate another agricultural worker;
 - (b) the farmer cannot provide suitable alternative accommodation for the displaced worker; and
 - (c) the displaced worker needs to be rehoused in the interests of efficient agriculture.
- 5.54 In reaching a decision, the housing authority must have regard to advice of an Agricultural Dwelling-House Advisory Committee (ADHAC). The ADHAC's role is to provide advice on whether the interests of efficient agriculture are served by re-housing the worker, and on the application's urgency. If the housing authority is satisfied that the applicant's case is substantiated, it is its duty under s28 of the 1976 Act to use its best endeavours to provide suitable alternative accommodation for the displaced worker. In assessing the application's priority the housing authority is required to consider (a) the case's urgency; (b) the competing claims on the accommodation; and (c) its resources.
- 5.55 A housing authority would not be properly discharging its duty under s.28 of the 1976 Act if it 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 s28 factors in the light of the ADHAC's advice. It is important, where relevant, for housing authorities to include in their allocation scheme a policy statement in respect of cases arising under the 1976 Act.

General information about particular applications

- 5.56 Under s167 4A(a), allocation schemes must be framed so as to give applicants the right to request from housing authorities general information that will enable them to assess;
- (a) how their application is likely to be treated under the scheme and, in particular, whether they are likely to fall within the reasonable preference categories;
 - (b) whether accommodation appropriate to their needs is likely to be made available and, if so, how long it is likely to be before such accommodation becomes available.
- 5.57 Housing authorities which operate an open advertising scheme, whereby applicants can apply for particular properties, would usually be expected to provide information about the properties which have been let; for example, what level of priority the successful applicants had, or the date on which they had applied to go on the housing authority's waiting list. Such feedback is crucial as it enables applicants to assess their chances of success in subsequent applications. It can also assist applicants in refining their preferences, and all housing authorities are therefore recommended to consider the extent to which they are able to provide information about properties which have been let. However, s.166 (4) prohibits housing authorities from divulging to other members of the public that a particular individual is an applicant for social housing, unless they have the applicant's consent, and therefore personal information about applicants should always be kept confidential.

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

- 5.58 Under s167 4A, allocation schemes must also be framed so as to give applicants the following rights about decisions which are taken in respect of their application:
- (a) 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 unsuitable to be a tenant of the housing authority;
 - (b) 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; and
 - (c) the right, on request, to review a decision mentioned in (a) or (b) above, or a decision to treat the applicant as ineligible because of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the housing authority. The applicant also has the right to be informed of the decision on the review and the grounds for it.

CHAPTER 6

Allocation Scheme Management

Information about allocation schemes

- 6.1 S.168 of the 1996 Act requires a housing authority to publish a summary of its scheme.
- 6.2 Housing authorities must provide a summary of their allocation scheme free of charge to any member of the public who asks for one. They shall make the full 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 requests one.
- 6.3 S.168(3) provides that, when an alteration is made to a scheme reflecting a major change of policy, a housing authority must ensure within a reasonable time that those likely to be affected by the change shall have the effect of the alteration brought to their attention. The requirement is to take such steps as the housing authority consider reasonable. This will depend on the nature of the allocation scheme. 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. Housing authorities should be aware that they still have certain duties under s. 106 of the Housing Act 1985 (information about housing allocation).

Consulting on allocation schemes

- 6.4 S.167(7) requires housing authorities, before adopting an allocation scheme, or altering existing schemes, to:
 - (a) send a copy of the draft scheme, or proposed alteration, to every RSL with which they have nomination arrangements, and
 - (b) ensure that those RSLs have a reasonable opportunity to comment on the proposals.
- 6.5 Although it is not a statutory requirement, the Secretary of State considers that housing authorities should consult social services departments, health authorities, Supporting People teams, Connexions Partnerships, relevant voluntary sector organisations and other recognised referral bodies. Housing authorities will need to do this in order to produce a scheme that reflects the particular requirements of their district.
- 6.6 When consulting on an allocation scheme, housing authorities will need to work to a time frame. The Cabinet Office's Code of Practice on Written Consultation lays down 12 weeks as the standard minimum time for written consultation periods to be used by UK government departments and their agencies; it is recommended that housing authorities use the same guideline.

Advice and information

- 6.7 S.166(1) requires a housing authority to ensure advice and information is available free to everyone in its district about the right to apply for housing accommodation. If a person is likely to have difficulty in making an application without assistance, then any necessary assistance he requires must be made available free of charge.
- 6.8 Any written advice and information should be available in a range of formats and languages, as appropriate.
- 6.9 Where authorities adopt an allocation policy which requires the active participation of housing applicants in choosing their accommodation, the level of assistance needed by those who are likely to have difficulty in making an application will normally be greater, and housing authorities will need to provide for this.
- 6.10 S.166 (2) requires housing authorities to inform an applicant that he has the right to certain general information, that is to say:
- (a) information that will enable him to assess how his application is likely to be treated under the scheme, and, in particular, whether he is likely to fall within the reasonable preference categories; and
 - (b) information about whether accommodation appropriate to his needs is likely to be made available and, if so, how long it is likely to be before such accommodation becomes available.
- 6.11 The Secretary of State recommends housing authorities to maintain lists of properties which are suitable for disabled people and other special needs groups. These lists could be made available to relevant applicants as part of the general information supplied to applicants under s166. Such lists might include all accessible or significantly adapted local authority stock, RSL properties and private sector properties to which authorities nominate tenants.
- 6.12 Section.166(4) prohibits housing authorities from divulging to other members of the public that a person is an applicant for social housing, unless they have the applicant's consent and therefore personal information about individual applicants should always be kept confidential.

The right to information about decisions and the right to a review of a decision

- 6.13 S.166 (2) also requires housing authorities to inform applicants that they have the following rights about decisions which are taken in respect of their application:
- (a) 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 unsuitable to be a tenant of the housing authority;

- (b) 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; and
- (c) the right, on request, to review a decision mentioned in (a) or (b) above, or a decision to treat the applicant as ineligible because of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the housing authority. The applicant also has the right to be informed of the decision on the review and the grounds for it.

Elected members involvement in allocation decisions

- 6.14 S.167 enables the Secretary of State to make regulations setting down principles within which housing authorities' allocation procedures must be framed. The Allocation of Housing (Procedure) Regulations 1997 (SI 1997 No. 483) restricts a housing authority's elected members' involvement in allocation decisions in certain specified circumstances. They prevent an elected member from being part of a decision-making body (i.e. the housing authority or any sub-committee) at the time the allocation decision is made, when either:
- (a) the unit of housing accommodation concerned is situated in their electoral ward; or
 - (b) the person subject to the decision has their sole or main residence in the member's electoral ward.
- 6.15 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. Elected members remain responsible for determining allocation policies and monitoring their implementation. The regulations do not prevent elected members' involvement in policy decisions that affect the generality of particular electoral ward's housing accommodation; for example, that allocation of units in a certain block of flats should not be let to older persons or to households including young children.

Offences related to information given or withheld by applicants

- 6.16 Section 171 (false statements and withholding information) makes it an offence for anyone seeking assistance from a housing authority under Part 6 of the 1996 Act to:
- (a) knowingly or recklessly give false information; or
 - (b) knowingly withhold information which the housing authority has reasonably required the applicant to give.

- 6.17 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.
- 6.18 It is for individual housing authorities to determine when these provisions apply and when to institute criminal proceedings. However, the circumstances in which an offence is committed could include:
- (a) any false information given on an application form for social housing;
 - (b) any false information given in response to subsequent review letters or other updating mechanisms; or
 - (c) any false information given or submitted by applicants during the proceedings of a review.
- 6.19 Ground 5 in Schedule 2 to the 1985 Housing Act (as amended by the 1996 Act, s.146) enables a housing authority to seek possession of a tenancy which they have granted as a result of a false statement by the tenant or a person acting at the tenant's instigation.

CHAPTER 7

Contracting Out and Stock Transfer

Contracting out

- 7.1 The Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 (SI 1996 No. 3205) enables housing authorities to contract out certain functions under Part 6 of the 1996 Act. The Order is made under s.70 of the Deregulation and Contracting Out Act 1994 (the 1994 Act). In essence, the Order allows the contracting out of executive functions, while leaving the responsibility for making strategic decisions with the housing authority.
- 7.2 Schedule 1 to the Order lists the allocation functions which may not be contracted out:
- i) adopting or altering the allocation scheme, including the principles on which the scheme is framed, and consulting RSLs; and,
 - ii) making the allocation scheme available at the authority's principal office.
- 7.3 The Order therefore provides that the majority of functions under Part 6 may be contracted out. These include:
- iii) making enquiries about and deciding a person's eligibility for an allocation;
 - iv) carrying out reviews of decisions;
 - v) making arrangements to secure that advice and information is available free of charge to persons within the housing authority's district on how to apply for housing;
 - vi) making arrangements to secure that any necessary assistance is made available free of charge to anyone who is likely to have difficulty in making a housing application without such assistance; and
 - vii) making individual allocations in accordance with the allocation scheme.
- 7.4 The 1994 Act provides that a contract made:
- i) may authorise a contractor to carry out only part of the function concerned;
 - ii) may specify that the contractor is authorised to carry out functions only in certain cases or areas specified in the contract;
 - iii) may include conditions relating to the carrying out of the functions, e.g. prescribing standards of performance;

- iv) shall be for a period not exceeding 10 years and may be revoked at any time by the Minister or the housing authority. Any subsisting contract is to be treated as having been repudiated in these circumstances;
- v) shall not prevent the authority from itself exercising the functions to which the contract relates.

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

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

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

Stock transfer

7.7 Housing authorities that have transferred all or part of their housing stock, or are in the process of transferring their stock, are still required under Part 6 to have an allocation scheme where they continue to allocate housing within the meaning of s.159 of the 1996 Act. The requirement in s.167(7) of the 1996 Act to consult RSLs before adopting or altering their allocation scheme will be particularly important in the case of a transferring housing authority. Whilst transfer RSLs must operate as independent bodies, housing authorities seeking to transfer may wish to consider including in the contract an obligation on the transfer RSL to consult the housing authority if the RSL wishes to amend its allocation policy.

7.8 Nomination arrangements between the transferring housing authority and the transfer RSL must reflect the requirement that nominations of assured tenancies must be to eligible persons in accordance with the housing authority's allocation scheme. It is important to remember that the housing authority may have nomination arrangements with other RSLs in the district, and these should be included in any agreement to contract out the allocation function.

7.9 The transfer agreement will need to include monitoring arrangements. Monitoring arrangements will be important, to ensure that housing authorities can demonstrate that they are meeting their statutory obligations under Part 6, and in particular the requirement to give reasonable preference to persons in the categories set out in s.167(2). The monitoring arrangements will also need to cover nominations to all RSL stock.

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

7.11 Good practice guidance on arrangements for contracting out homelessness and allocation functions will be published in Autumn 2003.

ANNEX 1

Scope of Part 6 – Exemptions

1. Part 6 of the 1996 Act (as amended) does not apply to mutual exchanges within an RSL's stock or between housing authorities and RSLs.

Primary Legislation Exemptions

2. The 1996 Act (as amended), s159(5) states that Part 6 provisions do not apply 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.
3. Similarly, s160 (as amended) exempts from Part 6 provisions cases:
 - a) where a secure tenant dies, the tenancy is a periodic one, and there is a person qualified to succeed the tenant under the Housing Act 1985, s89;
 - b) where a secure tenant with a fixed term tenancy dies and the tenancy remains secure by virtue the Housing Act 1985, s90;
 - c) where a secure tenancy is assigned by way of exchange under the Housing Act 1985, s92;
 - d) where a secure tenancy is assigned to someone who would be qualified to succeed to the tenancy if the secure tenant died immediately before the assignment; or
 - e) where a secure tenancy vests or is otherwise disposed of in pursuance of an order made under:

the Matrimonial Causes Act 1973, s24 (property adjustment orders in connection with matrimonial proceedings);

the Matrimonial and Family Proceedings Act 1984, s17(1) (property adjustment orders after overseas divorce); or

the Children Act 1989, Schedule 1, paragraph 1 (orders for financial relief against parents), or
 - (f) where an introductory tenancy:
 - i) becomes a secure tenancy on ceasing to be an introductory tenancy;
 - ii) vests under the 1996 Act, s133(2) (succession to an introductory tenancy on death of tenant); or

- iii) is assigned to someone who would be qualified to succeed the introductory tenancy if the introductory tenant died immediately before the assignment; or
- iv) meets the criteria in paragraph 3(e) above.

Secondary Legislation Exemptions

4. The Allocation of Housing Regulations 1996 SI 1996 No.2753, Regulation 3 exempts the following allocations from Part 6 provisions:
 - a) cross-border transfers of secure or assured tenants belonging to the Northern Ireland Housing Executive; Scottish local authorities; housing associations registered with Scottish Homes; or housing companies who acquired the said accommodation from a Scottish local authority, or from Scottish Homes;
 - b) where a housing authority secure the provision of suitable alternative accommodation under the Land Compensation Act 1973, s39 (duty to re-house residential occupiers);
 - c) the grant of a secure tenancy under the Housing Act 1985, s554 or s555 (grant of a tenancy to a former owner-occupier or statutory tenant of defective dwelling-house).

ANNEX 2

Amending and Secondary Legislation

The Homelessness Act 2002

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

The Allocation of Housing (Procedure) Regulations 1997 (S.I. 1997 No. 483)

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

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

The Allocation of Housing (England) Regulations 2002

ANNEX 3

Indicators of the criteria in the reasonable preference categories (s.167(2) (c) and (d))

Local housing authorities may devise their own indicators of the criteria in the reasonable preference categories in the 1996 Act (as amended), s167(2). The following list is included for illustrative purposes and to assist housing authorities in this task: it is by no means comprehensive or exhaustive, and local housing authorities may have other, local factors to consider and include as indicators of the categories.

Insanitary, overcrowded and unsatisfactory housing conditions

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

People who need to move on medical or welfare grounds (criteria may apply to any member of the household)

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

ANNEX 4

Classes of applicants who are eligible for an allocation of housing

Class of applicant	Conditions of eligibility	How to identify/verify
Existing social tenant (allocated accommodation by LA)	None	
British citizen	Must be habitually resident in the CTA ¹	Passport
EEA citizen ²	Must be habitually resident in CTA, unless: – applicant is a ‘worker’ ³ , or – applicant has a right to reside in the UK ⁴	Passport or national identity card
Person subject to immigration control granted refugee status	None	Stamp in passport or Home Office letter
Person subject to immigration control granted exceptional leave to remain	ELR must not be subject to a condition requiring him/her to maintain him/herself and dependants	Stamp in passport or Home Office letter
Person subject to immigration control granted indefinite leave to remain	Must be habitually resident in CTA And, if ILR was granted on undertaking that a sponsor(s) would be responsible for maintenance & accommodation and 5 years has not elapsed since date of entry to UK or the undertaking – no sponsor remains alive	Stamp in passport or Home Office letter
Person subject to immigration control who is a citizen of a country that has ratified ECSMA ⁵ or ESC ⁶ (see Annex 9)	Must be lawfully present ⁷ in UK Must be habitually resident in CTA	Passport
<p>1 CTA: The Common Travel Area includes the UK, the Channel Islands, the Isle of Man and the Republic of Ireland</p> <p>2 EEA countries are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the UK</p> <p>3 A “worker” for the purpose of Council Regulation (EEC) No. 1612/68 or (EEC) No.1251/70</p> <p>4 A right to reside pursuant to Council Directive No.68/360/EEC or No.73/148/EEC</p> <p>5 ECSMA is the European Convention on Social and Medical Assistance. Non EEA ratifying countries are: Malta and Turkey (See annex 9)</p> <p>6 ESC is the European Social Charter. Non EEA ratifying countries are: Cyprus, Czech Republic, Hungary, Latvia, Poland and Slovakia.</p> <p>7 Persons subject to immigration control are not lawfully present in the UK unless they have leave to enter or remain in the UK. Asylum seekers are generally granted “temporary admission” and do not have leave to enter or remain.</p>		

ANNEX 5

Eligibility pathway: model questions and procedures

Questions housing authorities will need to ask to determine whether applicants are eligible for an allocation

1. **ASK ALL APPLICANTS**

Are you either:

- an existing secure or introductory tenant of a housing authority, or
- an existing assured tenant of accommodation allocated to you by a housing authority?

If YES – Applicant is eligible

If NO – Go to 2

2. **Are you a citizen of the United Kingdom, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway Portugal, Spain or Sweden?**

(i.e. a country within the European Economic Area (EEA) – for confirmation of current EEA membership check annex9 or <http://secretariat.efta.int/>)

If YES – Go to 11

If NO – Go to 3

3. **Have you been granted refugee status in the UK?**

If YES – Applicant is eligible

If NO – Go to 4

4. **Do you have indefinite leave to enter or remain in the UK with no condition or limitation?**

If YES – Go to 5

If NO – Go to 7

5. **Were you given leave on an undertaking that a sponsor or sponsors would be responsible for your accommodation needs?**

If YES – Go to 6

If NO – Go to 11

6. **Do both the following statements apply in your case:**
- i) you have been resident in the UK for less than 5 years since the date of your entry to the UK, or the date of the undertaking, whichever is the later, and
 - ii) the person (or at least one of the persons) who gave the undertaking is still alive?
- If YES – Applicant is not eligible
If NO – Go to 11
7. **Have you been granted exceptional leave to enter or remain in the UK?**
- If YES – Go to 8
If NO – Go to 9
8. **Is your leave subject to a condition that you are required to maintain and accommodate yourself (and any dependants)?**
- If YES – Applicant is not eligible
If NO – Applicant is eligible
9. **Are you a citizen of Cyprus, Czech Republic, Hungary, Latvia, Malta, Poland, Slovakia, or Turkey?**
- (ie. a non-EEA country that has ratified either the European Convention on Social and Medical Assistance (ECSMA) and / or the European Social Charter (ESC) – for current ratification status of countries check annex 9 or <http://www.humanrights.coe.int>).*
- If YES – Go to 10
If NO – Applicant is not eligible
10. **Do you have leave to enter or remain in the UK?**
- If YES – Go to 12
If NO – Applicant is not eligible*
- * Persons subject to immigration control are not lawfully present in the UK if they do not have leave to enter or remain. Asylum seekers are generally granted “temporary admission” and do not have leave to enter or remain.
11. **Are you any of the following:**
- (i) a “worker” (for the purposes of Council Regulation (EEC) No. 1612/68 or (EEC) No.1251/70)**
 - (ii) a person with a right to reside in the UK (pursuant to Council Directive No.68/360/EEC or No.73/148/EEC)**
 - (iii) a person who left Montserrat after 1 November 1995 because of the effect of volcanic eruption there?
- ** see annex 11 (habitual residence and exceptions)
- If YES – Applicant is eligible
If NO – Go to 12

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

If YES – Go to 13

If NO – Go to 14

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

If YES – Applicant is eligible

If NO – Go to 14

14. **Determine whether applicant is habitually resident in the CTA** (see annex 11).
Applicant is eligible if habitually resident – and not eligible if not habitually resident.

ANNEX 6

The Allocation of Housing (England) Regulations 2000 S.I. 2000/702 will on commencement be replaced by regulations made under sections 160A(3) and (5). **This annex is intended to reflect the new regulations.**

Allocation of Housing (England) Regulations 2002

NB: *All existing tenants of accommodation allocated by a local housing authority are eligible for an allocation of accommodation (and are not affected by s.160A(3) and (5))*

REGULATION 4

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

Class of applicant	Conditions of eligibility	Reference
Person subject to immigration control granted refugee status	None	Class [A]
Person subject to immigration control granted exceptional leave to remain	ELR must not be subject to a condition requiring him/her to maintain him/herself and dependants	Class [B]
Person subject to immigration control granted indefinite leave to remain	Must be habitually resident in CTA And, if ILR was granted on undertaking that a sponsor(s) would be responsible for maintenance & accommodation and 5 years has not elapsed since date of entry to UK or the undertaking – then their sponsor(s) must have died	Class [C]
Person subject to immigration control who is a citizen of a non-EEA country that has ratified ECSMA or ESC (see Annex 9)	Must be lawfully present in UK Must be habitually resident in CTA	Class [D]

REGULATION 5

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

Class of applicant	Reference
EEA nationals (including UK nationals) who are not habitually resident in the CTA – unless they: <ul style="list-style-type: none"> – are a EU worker, – have a EU right to reside in the UK, or – left Montserrat after 1 November 1995 because of volcanic activity 	Class [E]

Notes

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

ANNEX 7

Persons subject to immigration control who are not eligible for an allocation of housing

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

Classes of person ineligible for an allocation

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

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

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

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

a **sponsored person** who has been in this country less than 5 years (from date of entry or date of sponsorship, whichever is the later) and **whose sponsor(s) is still alive** (see para 3 below)

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

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

a person who is **in the United Kingdom illegally**, or who has **overstayed** his/her leave (see para.s 4 to 5 below)

ASYLUM SEEKERS

2. Asylum seekers are unlikely to have possession of their passport since this will generally be lodged with IND when they make an asylum application. Instead they may have a standard acknowledgement letter (**SAL**) or other letter from IND in connection with the asylum claim. Other documents which an asylum seeker may produce include a **Form IS**

96 (used by the Home Office to notify a person that he or she has been granted temporary admission to the United Kingdom) and a GEN 32 (used by the Home Office to provide an applicant with a date for attending the Asylum Screening Unit for an interview).

SPONSORED PERSONS

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

ILLEGAL ENTRANTS

4. Illegal entrants will include:

Description of persons who are illegal entrants

a person who entered the country by evading immigration controls

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

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

5. The question of whether or not someone is an illegal entrant is a matter of fact that could be established by a housing authority. However, in all cases where a housing authority considers that an applicant may be an illegal entrant it is recommended that the housing authority makes an inquiry of the Home Office Immigration and Nationality Directorate (IND), using the procedures set out in annex 10. Only IND will have access to full details of any representations made by a person seeking entry to the United Kingdom to the entry clearance officer or to the immigration officer at the point of entry. IND are also able to regularise the stay of a person, so that they would be in the country lawfully.

OVERSTAYERS

6. Establishing whether a person has overstayed his or her leave to remain is unlikely to be straightforward and may require detailed knowledge of the provisions of the Immigration Act 1971. Consequently, in all cases where a housing authority considers that an applicant may be an overstayer, it is recommended that the housing authority consults IND using the procedures set out in annex 10.

ANNEX 8

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

REFUGEE STATUS

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

A PERSON WHO HAS EXCEPTIONAL LEAVE TO ENTER OR REMAIN IN THE UNITED KINGDOM

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

A PERSON WHO HAS CURRENT LEAVE TO ENTER OR REMAIN IN THE UNITED KINGDOM WHICH IS NOT SUBJECT TO ANY LIMITATION OR CONDITION

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

CONFIRMATION OF STATUS

8. If there is any doubt about an applicant's immigration status or the particular leave to enter or remain which they hold, housing authorities should contact IND using the procedures set out in annex 10.

ANNEX 9

European groupings (EU, EEA, ECSMA, ESC)

1. COUNTRIES WITHIN THE EUROPEAN UNION (EU)

Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

2. COUNTRIES WITHIN THE EUROPEAN ECONOMIC AREA (EEA)

All EU countries, plus:
Iceland, Norway and Liechtenstein.

3. COUNTRIES THAT HAVE RATIFIED THE EUROPEAN CONVENTION ON SOCIAL AND MEDICAL ASSISTANCE (ECSMA)

All EU countries (**except Austria and Finland**) plus:
Iceland, Malta, Norway, and Turkey.

4. COUNTRIES THAT HAVE RATIFIED THE COUNCIL OF EUROPE SOCIAL CHARTER (ESC)

All EU countries plus:
Cyprus, Czech Republic, Hungary, Iceland, Latvia, Malta, Norway, Poland, Slovakia, and Turkey.

NB List updated on publication. See websites

http://www.europa.eu.int/abc/governments/index_en.html, <http://www.humanrights.coe.int>, and <http://secretariat.efta.int/> for current memberships.

ANNEX 10

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

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

ANNEX 11

Habitual Residence Test

Allocation of Housing (England) Regulations 2002 provide that some classes of applicant will be eligible for an allocation subject to their being habitually resident in the Common Travel Area (CTA). However, in practice, when considering applications from these classes of applicant it is only necessary to investigate habitual residence if the applicant has entered the UK in the last two years.

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

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

Action on receipt of an application

APPLICANT CAME TO LIVE IN THE UK IN THE LAST TWO YEARS

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

FACTORS TO CONSIDER

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

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

WHY HAS THE APPLICANT COME TO THE UK?

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

- when did the applicant leave the UK?
- how long did the applicant live in the UK before leaving?
- why did the applicant leave the UK?
- how long did the applicant intend to remain abroad?
- why did the applicant return?
- did the applicant's partner and children, if any, also leave the UK?
- did the applicant keep accommodation in the UK?
- if the applicant owned property, was it let, and was the lease timed to coincide with the applicant's return to the UK?
- what links did the applicant keep with the UK?
- have there been other brief absences? If yes, obtain details
- why has the applicant come to the UK?

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

WORK ARRANGEMENTS

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

- is the work full time or part time?

- how many hours do/will they work?
- is the work short term employment, eg au pair, seasonal work?
- is the applicant on a short term contract with a current employer?

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

PATTERN OF WORK

Consider the pattern of work, i.e.:

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

JOINING FAMILY OR FRIENDS

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

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

APPLICANT'S PLANS

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

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

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

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

LENGTH OF RESIDENCE IN ANOTHER COUNTRY

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

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

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

CENTRE OF INTEREST

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

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

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

- home
- family ties
- club memberships
- finance accounts

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

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

DEFINITION OF HABITUALLY RESIDENT

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

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

GENERAL PRINCIPLES

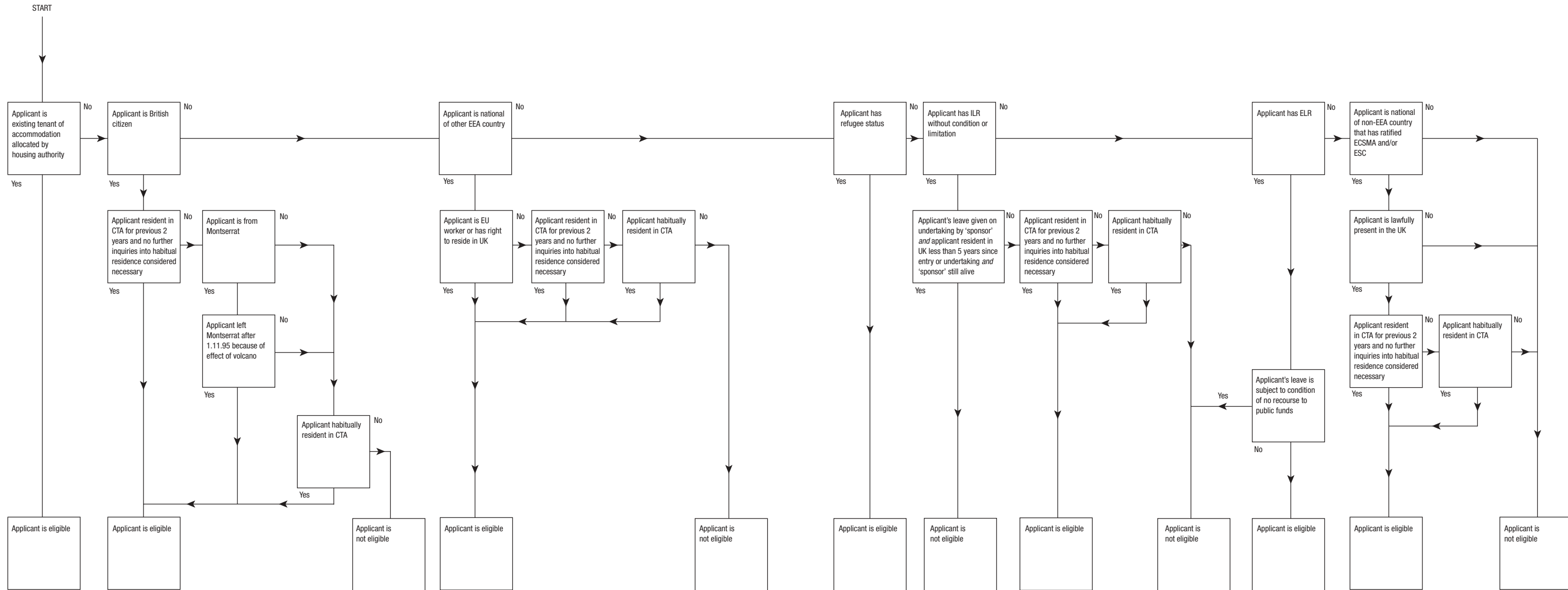
When deciding whether a person is habitually resident in a place consideration must be given to all the facts of each case in a common sense way. It should be remembered that:

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

- the practicality of a person's arrangements for residence is a necessary part of determining whether it can be described as settled and habitual
- established habitual residents of this country who have periods of temporary or occasional absence of long or short duration may still be habitually resident during such absences.

ANNEX 12

Eligibility Pathway Flow Chart



ANNEX 13

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

INFORMATION ABOUT DECISIONS

1. Under s.160(A)(9) and s.167(4A)(b), a housing authority must notify an applicant in writing of any decision –
 - (i) to treat him as ineligible by virtue of s.160A (3) or (5) (ie persons from abroad);
 - (ii) to treat him as ineligible because of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the housing authority;
 - (iii) not to give an applicant any preference under the scheme because of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the housing authority.
2. The notification must give clear grounds for the decision, which must be based firmly on the relevant facts of the case.
3. An applicant also has 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.

THE RIGHT TO A REVIEW OF A DECISION

4. Under s.167 (4A)(d) an applicant has the right to request a review of a decision –
 - (i) to treat him as ineligible because of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the housing authority;
 - (ii) not to give him any preference under the scheme because of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the housing authority;
 - (iii) about the facts of his case which has been, or is likely to be taken into account in considering whether to make an allocation to him.and to be informed of the decision on the review and the grounds for it.
5. By virtue of s.166(2), a housing authority must inform an applicant that he has the rights set out in s1674A, that is to say the right to a review of a decision, and the right to be informed of any decision about the facts of his case.