Llywodraeth Cymru
Welsh Government

Code of Guidance

for Local Authorities on the Allocation of Accommodation and Homelessness

July 2026

OGL © Crown copyright 2026, Welsh Government, WG54593, Digital ISBN 978-1-80853-156-9

Contents

Introduction

About this Code of Guidance

Purpose of the Code
Target Audience
Legal Status of the Code
Structure of the Code
Effective Dates of the Code
Compliance with the Code
The Legislation in Context Terminology
Code up-dates
Navigating the Code

PART 1: ALLOCATIONS

Chapter 1 Introduction

Allocations and the Role of Social Landlords
Improving Lives and Communities – Homes in Wales
Housing White Paper, 2012
Communication
Financial Inclusion
Purpose of Part 1 of the Code
Summary of Amendments to the Code
Effective Date of Part 1 of Code

Chapter 2 Eligibility for Housing

Overview
Definition of Allocation
Eligible Categories
Unacceptable Behaviour
Policy Considerations
Notification and Appeals to Decisions on Eligibility
Residential Criteria
Applications from Owner Occupiers
No Fixed Address

Chapter 3 The Allocations Scheme

Balancing Priorities
The Requirement to have an Allocation Scheme
Transfer Applicants
Civil Partnerships
Joint Tenancies
Succession
Reasonable Preference
Additional Preference
Determining Priorities
Choice and Preference Options
Offers and Refusals
Allocations Scheme Flexibility
Meeting Diverse Needs
Low Cost Home Ownership and Intermediate Rent
Advice and Information

Chapter 4 Allocation Scheme Management

Housing Registers
Allocations Scheme Consultation
Publicising the Allocation Scheme
Elected Member and Board Member Involvement in Allocation Decisions
Offences Related to Information given or withheld by Applicants
Data Protection
Public Services Ombudsman for Wales
Monitoring and Evaluation

PART 2: HOMELESSNESS

Chapter 5 Strategic planning of homelessness services

Chapter 6 Partnership working

Duty to co-operate
Partnership Working
Working with Housing Associations
Partnership Working across Policy Areas
Working with Supporting People providers
Domestic Abuse
Health Partnerships
Criminal Justice
People in custody
Resettlement
Prisons and the role of Community Rehabilitation Companies
Armed Forces Veterans

Chapter 7 Eligibility

Providing information, advice and assistance
Eligibility categories
Persons Subject to Immigration Control Prescribed as Eligible
Other Persons from Abroad who are ineligible
The Habitual Residence Test
Procedures for determining eligibility of persons from abroad
Transitional provisions

Chapter 8 Definition of Homeless/threatened with Homelessness

Homelessness
Threatened with homelessness
Accommodation Available for Occupation
Legal Right to occupy Accommodation
Inability to secure entry to accommodation
Instances where there may be no Legal Right to Occupy
Accommodation consisting of moveable structures
Accommodation which is reasonable for the applicant to continue to occupy
Domestic abuse or other abuse
General housing circumstances
Affordability

Chapter 9 Duty to provide information, advice and assistance

Who Provides the Advisory Service?
Funding Voluntary Sector Agencies
Assessing Advice Provision
What Service should be offered?
What Advice and Information?
Standards
Accessibility
Groups at Particular Risk

Chapter 10 Duty to assess

When a local housing authority must assess
Assessing if the applicant is eligible for help
Assessment of circumstances
Assessment of housing needs
Assessment of support needs
Assessment of duty owed
Assessment of the applicant's wishes
Applications to more than one Authority
Keeping the assessment under review
Not able to change decision when made
Notice of outcome of assessment
Restricted person
Withdrawn applications

Chapter 11 Interim duty to secure accommodation for homeless applicants

Introduction
Guidance
Other circumstances where accommodation must or may be provided under section 68
Need for support
Standards and charges
Protection of property
Households with Pets

Chapter 12 Duty to help to prevent ('prevention')

Introduction

The duty to help to prevent an applicant from becoming homelessness

Meaning of help to secure

How to secure or help to secure the availability of accommodation

Viable Housing Options

Private Rented Sector (PRS)

Tenant given notice of intention to recover possession

Housing Benefit Joint Working

Homelessness Prevention Fund

Preventing Homelessness in Specific Circumstances

Groups Most at Risk of Homelessness

People with an institutionalised background

People who have experienced other problems that may increase the risk of homelessness including family/relationship breakdowns; domestic, hate incidents and hate crime or other violence; poor mental or physical health; drug and alcohol misuse; age-related problems and debt.

Preventing homelessness recurring

People affected by redevelopment or who are otherwise displaced

Making referrals

Common causes of homelessness

Monitoring Prevention

Chapter 13 Duty to help to secure ('relief')

Introduction

The duty to help to secure accommodation for homeless applicants

Local Connection

Taking reasonable steps

Local Authorities' duties in helping to secure accommodation

Help to secure (rather than "to secure") that suitable accommodation is available

How to secure or help to secure the availability of accommodation

Rough Sleepers Pets

Chapter 14 Duty to secure ('final')

Introduction
When to assess if the section 75 duty is owed
Who the Section 75 duty applies to

Chapter 15 Ending the duties

Introduction
Best use of resources
Circumstances in which the duty in S.66 ends
Circumstance in which the duty in S.68 ends
Circumstances in which the duty in S.73 ends
Circumstance in which the duty in section 75 ends
Further circumstances in with the duties in section 66, 68, 73 and 75 end
Carrying out the assessment
Notification that duties have ended

Chapter 16 Priority need for accommodation

Introduction
Categories of applicants who have priority need
Old age
Mental and physical illness and mental and physical disability
People in receipt of psychiatric services
Chronically sick people
Victims of abuse
Rough Sleepers
Former asylum seekers
Meaning of Vulnerability
Meaning of Vulnerable
Meaning of Street Homeless

Chapter 17 Intentionality

Introduction
Deciding to have regard to intentionality
Meaning of intentionality
Available for occupation

Deliberate Act or Omission

Vulnerable applicants

Acts or omissions which may be regarded as deliberate include Acts or omissions in good faith

Other circumstances in which the applicant's actions may not amount to intentional homelessness

Enters into an arrangement

When can someone Re-apply?

When to consider intentionality

When a Local Housing Authority cannot consider intentionality to determine if a duty is owed

When a local housing authority must consider intentionality to determine if a duty is owed

Interim duty and Intentionality

Sufficient period

Families with Children under 18

Duty to applicants with children under 18, 16 and 17 year old applicants, persons up to the age of 21 and persons up to the age of 25 if they have been looked after or fostered, from 2019 onwards.

Chapter 18 Local connection and referrals

Introduction

Conditions for Referral from Welsh Local Authorities to Welsh Local Authorities

Ex-service personnel

Ex-prisoners

No local connection anywhere

Abuse

Duties to applicant whose Case is considered for referral or referred

Disputes between Authorities

Referrals to English Local Housing Authorities

Cases referred from a Local Housing Authority in England

Chapter 19 Suitability of accommodation

Introduction

Assessment of Suitability

Accommodation to end the prevention, help to secure and secure duties

Physical condition of the property

Health and safety matters

Regulatory Reform (Fire Safety) Order 2005

Landlord behaviour

Elements of good management

Tenancy Deposit Scheme

Shared Housing

Licensing for Houses in Multiple Occupation Use of Bed and Breakfast Accommodation

Use of Bed and Breakfast for 16 and 17 year olds and care leavers aged 18 to 21

Homelessness (Suitability of Accommodation) (Wales) Order 2015

Larger establishments (more than 6 bedrooms)

The Standards to be applied

Higher Physical Standards

Higher Management Standard

Chapter 20 Right to review and appeals to court

Introduction

Right to request a review

Review procedure

Who may carry out the review?

Written presentations

Oral hearings

Period during which a review must be completed

Late representations

Procedure for review of reasonable steps

Procedures for review of decisions made under the Decisions on Referrals Order

Notification of decision on review

Power to Accommodate Pending a Review

Effect of a decision on review or appeal that reasonable steps were not taken

Right of appeal to county court on point of law

Applicants' right to appeal to the County Court against decision not to accommodate

Public Services Ombudsman for Wales

About this Code of Guidance

Purpose of Code

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

Target audience

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

Many of the activities discussed in the Code require joint planning and operational co-operation between Local Authorities and Housing Associations, Local Health Boards, other referral agencies, voluntary sector organisations and the diverse range of bodies working in the housing sector. Local Authorities should take steps to raise awareness of their partner organisations on relevant elements of the Code.

Legal Status of Code

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

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

This Code is an update to the Code of Guidance to Local Authorities on the Allocation of Accommodation and Homelessness 2016.

Structure

The Code comes in two parts. Part 1 relates to the allocation of accommodation in accordance with Part 6 of the Housing Act 1996 and, although updated to reflect changes in the law and relevant case law, largely follows the same format as the 2016 edition of the Code.

Part 2 of the Code covers Part 2 of the Housing (Wales) 2014 Act,

Effective Date

The revisions to this Code take effect from May 2026.

Compliance with the Code

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

The Legislation in Context

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

Terminology

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

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

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

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

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

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

In this Code "Housing Association" and "Association" mean Registered Social Landlord or Registered Provider of Social Housing who provides social housing in Wales.

Code up-dates

The Code of Guidance is provided in an electronic form only. This facilitates future updating and access to new or revised guidance. Each time the Welsh Government revises the Code, stakeholders will be informed. The latest version will be available via the Welsh Government's website. It is recommended that users access the electronic version of the document for the most up-to-date version.

Navigating the Code

Where possible the documents quoted in the Code have been hyperlinked for ease of access by the user.

Contact

For queries on the Code or comments or suggestions on updating any element of it, please contact the Homelessness Prevention Team

Email: housingmanagementandhomelessnesspreventionpolicy@gov.wales

PART 1

ALLOCATIONS

CHAPTER 1: INTRODUCTION

Purpose of Part 1 of the Code

1. The Welsh Ministers are issuing the guidance contained in Part 1 of this Code to Local Housing Authorities in Wales under s.169 of the HA1996. The HA 1996 requires Local Housing Authorities to have regard to this guidance in exercising their functions under Part 6 of the 1996 Act. This is the conventional route taken by those who wish to access social housing allocated by a Local Housing Authority. The Codes of Practice for England and Scotland do not apply in Wales. English case law may be applicable where the legislation is similar but should not be referred to where the case is based on English-only legislation or guidance from the English Code, unless it is similar to Welsh legislation and guidance.

Allocations and the Role of Local Housing Authorities

Introduction

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

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

Overview

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

1.4. For the purposes of this Code, 'Housing Associations' (as defined by s.1 Housing Associations Act 1985), 'Registered Social Landlords' (as defined by s.1 of the Housing Act 1996), 'Community Landlords' (as defined by s.9 Renting Homes (Wales) Act 2016) and 'Registered Providers of Social Housing' (as defined by s.80 Housing and Regeneration Act 2008) will be collectively referred to as 'Social Landlords'. They are distinguished from other landlords by having the principal objective of meeting housing need and, in Wales, being not-for-profit organisations.

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

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

1.6. The Welsh Government understands that Local Housing Authorities are not subject to the same legislative framework as other Social Landlords. However, all Social Landlords need to be aware of the duties on Local Housing Authorities to address housing need. All Social Landlords should actively work with Local Housing Authorities to help them fulfil this function and deliver good housing outcomes.

1.7. Section 170 of the HA1996 requires Private Registered Providers of Social Housing and Registered Social Landlords to 'co- operate to such an extent as is reasonable in the circumstances in offering accommodation to people with priority under the authority's allocations scheme.'

1.8. Section 95(2) of the HWA 2014 requires that a relevant 'person' asked by a Local Housing Authority to co-operate with its homelessness function must co-operate unless it considers that doing so would be "incompatible with the person's own duties" or "otherwise have an adverse effect on the exercise of the person's functions". Section 95(5) of the HWA 2014 defines a relevant 'person' in this context as:

- a local housing authority
- a social services authority
- a registered social landlord
- a new town corporation
- a private registered provider of social housing
- a housing action trust

1.9. The Welsh Government's The Regulatory Framework for Welsh Registered Social Landlords (the Regulatory Framework) puts a requirement on Registered Social Landlords to ensure that their work supports the Local Housing Authority in the delivery of its strategic housing role. The Regulatory Framework issued under Part 1 of the HA1996 aims to ensure that Registered Social Landlords (RSLs) provide good quality homes and services to contract holders and others who use their services. It does this by ensuring that each RSL is well governed, financially viable and delivering high quality services. See Annex 12 for further details on the Regulatory Framework.

Communication

1.10. Local Housing Authorities and other Social Landlords should think carefully about the information they provide to the public and ensure that it is up to date. It is in the organisations' and applicants' interest to provide information that is as clear and straight forward as possible and provide alternative options when an applicant needs to write in rather than use the available online functions. Where this Code mentions the need for written communication, in line with good practice, the Welsh Government requires the information to be clearly written and easy to understand. Clear, simple written communication can lead to efficiency savings as well as better outcomes for service users. Where requested by the applicant or tenant / contract-holder, all written information should be provided in a format suitable for the needs of the individual. This may include

translation into another language, communication in other accessible formats for people with both physical and non-physical communication needs, e.g. people with sight loss, learning disabilities, and literacy problems etc. Consideration should be given to providing information that will assist, where required, family members, carers, support workers or staff completing forms on behalf of an applicant. The Welsh Government would refer you to Mencap Cymru/Learning Disability Wales guide 'Clear and Easy – A Handbook for making written information easy to read and understand for people with learning disabilities. https://www.ldw.org.uk/er-resource/clear-and-easy-handbook There is also a Welsh version of this document 'Hawdd a Chlir' https://www.ldw.org.uk/cy/er-resource/llawlyfr-clir-a-hawdd/

1.11. Local Housing Authorities and other Social Landlords are also obliged to make reasonable adjustments when communicating with disabled people under the Equality Act 2010.

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

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

1.14. Local Housing Authorities should ensure that in communicating with service users they comply with the relevant Welsh Language Standards imposed upon them by the Welsh Language Commissioner under the Welsh Language (Wales) Measure 2011.

Financial Inclusion

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

1.16. The Welsh Government encourages Local Housing Authorities and other Social Landlords to engage with applicants and tenants / contract-holders throughout the application and allocation process. Local Housing Authorities and other Social Landlords should consider providing information and support including topics such as covering the cost of moving and running a home, affordable credit and budgeting. They should also consider referring or signposting applicants and contract-holders to organisations that can help build their financial capability. This is in order to prevent people on low incomes falling into debt in the first place and to help them plan their finances more effectively. There are various sources of information available including information from the Money Advice Service, Shelter and Citizens' Advice Cymru.

Care Leavers and persons aged 16 – 17

1.17. Local Housing Authorities have a range of duties to care leavers who represent a particularly vulnerable group. This is a key group for floating support or other forms of housing support to enable residential accommodation to be maintained. Local Authorities are reminded that under s.23B of the Children Act 1989, they are required in prescribed circumstances to assist in meeting the accommodation needs of care leavers. The Social Services and Well-being (Wales) Act 2014 makes similar provision, which requires Social Services and Local Housing Authorities to work together to meet the needs of young people in care as they move to independent living.

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

1.19. The revised Code will come into effect from July 2026.

2. ELIGIBILITY FOR AN ALLOCATION

Introduction

2.1 This chapter provides guidance to Welsh Local Housing Authorities on determining whether an applicant is eligible for the allocation of housing accommodation under Part 6 of the Housing Act 1996. It focuses on eligibility based on immigration status and habitual residence and reflects the Welsh Government's intention to maintain consistency with UK immigration policy and retained European legislation. This also incorporates the implications of the Withdrawal Agreement and the Court of Appeal judgment in SSWP v AT [2023].

The HA 1996 states:

Section 160A – Allocation to eligible persons [Wales]

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

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

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

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

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

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

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

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

6. Nothing in subsection (3) or (5) affects the eligibility of a person who is already [a contract-holder in relation to housing accommodation allocated to that person by a local housing authority in Wales.]

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

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

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

8. The only behaviour which may be regarded by the authority as unacceptable for the purposes of subsection (7)(a) is [behaviour of the person concerned which would (if that person were a contract-holder of the authority) breach section 55 of the Renting Homes (Wales) Act 2016 (anaw 1) (anti-social behaviour and other prohibited conduct).]

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

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

b) is to be treated as ineligible for such an allocation by virtue of subsection (7), they shall notify the applicant of their decision and the grounds for it.

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

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

The legal basis for eligibility decisions

2.2 Eligibility is governed by section 160A of the Housing Act 1996, which sets out who may or may not be allocated housing accommodation by a Local Housing Authority. A Local Housing Authority must not allocate housing to persons who are ineligible due to immigration status or unacceptable behaviour. Eligibility is determined by reference to the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 ("the 2014 Regulations"), which prescribe:

- Classes of persons subject to immigration control who are eligible.
- Classes of other persons from abroad who are ineligible.

2.3 A Local Housing Authority must also consider whether an applicant is habitually resident in the Common Travel Area.

2.4 Local Housing Authorities should ensure staff who are required to screen applicants about eligibility for an allocation of housing accommodation are given training in the complexities of the housing provisions, the Local Housing Authority's duties and responsibilities under equalities legislation (e.g. the EA 2010), and how to deal with applicants in a sensitive manner. Legislation on immigration and related case law is subject to frequent change, with consequential changes for eligibility for an allocation of housing accommodation under HA 1996.

2.5 The Eligibility Regulations are subject to amendment by the Welsh Ministers and therefore an up-to-date version of the Eligibility Regulations should always be used to assess eligibility.

2.6 The Border Security, Asylum and Immigration Act 2025 clarifies the position in respect of persons holding status under the EU Settlement Scheme (EUSS). In accordance with section 45 of that Act, persons who hold EUSS status (including EU, EEA and Swiss nationals and their family members) must be treated as having rights under the Withdrawal Agreement or, where relevant, the Separation Agreement, for so long as they hold that status.

This means that, for the purposes of determining eligibility for an allocation of housing accommodation, Local Housing Authorities must proceed on the basis that an applicant with valid EUSS status benefits from those Agreement rights throughout the period that status is held. Authorities should not apply additional tests or requirements which would be inconsistent with that position.

2.7 In addition to persons benefiting from rights under the Withdrawal Agreement or Separation Agreement (including those with EUSS status), certain persons from abroad may be eligible for an allocation of housing accommodation where this is provided for in regulations. These include, but are not limited to persons with retained worker or self-employed status (and their family members), and persons granted leave under humanitarian or temporary protection routes.

2.8 Local housing authorities should ensure that eligibility assessments take account of the full range of categories and exemptions, including rights arising under the Withdrawal Agreement or Separation Agreement, the Eligibility Regulations and other relevant immigration legislation, including provision relating to family members where applicable.

Persons subject to immigration control

2.9 A person is subject to immigration control if they require leave to enter or remain in the UK under the Immigration Act 1971 (whether or not such leave has been given).

2.10 Persons subject to immigration control are typically not eligible for an allocation of social housing. However, Regulation 3 of the 2014 Regulations prescribes the categories of persons subject to immigration control who are eligible for an allocation of housing accommodation. The eligible categories are outlined below.

For persons with a no recourse to public funds (NRPF) condition, eligibility criteria will be met following a successful change of those conditions and provided they meet any other relevant criteria.

2.11 A Local Housing Authority must confirm the immigration status where necessary and ensure that eligibility is assessed in line with the most recent version of the 2014 Regulations.

Other persons from abroad (Not subject to immigration control)

2.12 These include British citizens, Irish citizens and certain EEA nationals with retained rights under the Withdrawal Agreement.

2.13 Under Regulation 4, such persons are generally eligible for an allocation of social housing unless they fall into one of the ineligible categories. The ineligible categories are outlined below.

EEA Nationals and the AT Judgment

2.14 In some cases, particularly where an applicant does not hold pre-settled status under the EU Settlement Scheme, but is not exercising a qualifying right to reside, eligibility may not be established through rights under the Withdrawal Agreement or Separation Agreement. In such cases, a Local Housing Authority must consider whether refusal of assistance would expose the applicant to an actual or current risk of a breach of their rights under the EU Charter of Fundamental Rights, as it applies by virtue of the Withdrawal Agreement. This assessment will not be required in all cases involving EUSS status, but may arise in particular circumstances, including where the applicant holds pre-settled status without a qualifying right to reside.

2.15 Following the Court of Appeal judgment in SSWP v AT [2023], a Local Housing Authority must assess whether refusal would expose the applicant to such a risk in relation to relevant Charter rights. These may include, but are not limited to:

- Article 1 – Human dignity
- Article 7 – Respect for private and family life
- Article 24 – Rights of the child
- Article 35 – Health care
- Article 21 – Non-discrimination

2.16 The Charter rights listed above are provided as examples only and do not constitute an exhaustive list of the rights that may be engaged in an individual case. In reaching a view, the authority must carry out an individualised assessment of the applicant’s circumstances, considering factors including:

- Risk of destitution or street homelessness
- Access to benefits or other financial support
- Presence of children or vulnerable adults
- Health conditions, caring responsibilities or other vulnerabilities that may prevent employment

The factors listed above are illustrative only and must be considered alongside other relevant circumstances of the applicant's case. Where refusal of assistance would expose the applicant to an actual and current risk of a breach of their Charter rights, the applicant must be treated as eligible.

Definition of Allocation

The HA 1996 states:

Section 159 – Allocation of housing accommodation

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

2. For the purposes of this Part a local housing authority allocate housing accommodation when they—
   a) select a person to be a secure or introductory tenant of housing accommodation held by them,
   b) nominate a person to be a secure or introductory tenant of housing accommodation held by another person, or
   c) nominate a person to be an assured tenant of housing accommodation held by [a private registered provider of social housing or] registered social landlord.
   d) [select a person to be a tenant under a secure contract or an introductory standard contract of housing accommodation held by them, or
   e) Nominate a person to be a tenant under a secure contract or an introductory standard contract of housing accommodation held by another person.]

3. The reference in subsection (2)(a) to selecting a person to be a secure tenant [and the reference in subsection (2)(d) to selecting a person to be a tenant under a secure contract or an introductory standard contract,] includes deciding to exercise any power to notify an existing tenant or licensee that his tenancy or license is to be a secure tenancy[, a secure contract or an introductory standard contract].

4. The references in subsection (2)(b)[, (c) and (e)] to nominating a person

include nominating a person in pursuance of any arrangements (whether legally enforceable or not) to require that housing accommodation, or a specified amount of housing accommodation, is made available to a person or one of a number of persons nominated by the authority.

[(4A) Subject to subsection (4B), the provisions of this Part do not apply to an allocation of housing accommodation by a local housing authority in England to a person who is already—

a) a secure or introductory tenant, or

b) an assured tenant of housing accommodation held by a private registered provider of social housing or a registered social landlord.

(4B) The provisions of this Part apply to an allocation of housing accommodation by a local housing authority in England to a person who falls within subsection (4A)(a) or (b) if—

a) the allocation involves a transfer of housing accommodation for that person,

b) the application for the transfer is made by that person, and

c) the authority is satisfied that the person is to be given reasonable preference under section 166A(3).]

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

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

Allocation to existing contract-holders and other exemptions from Part 6 of the HA 1996

2.17 S.159(5) of the HA 1996 provides that Part 6 of the HA 1996 does not apply to allocations to existing contract-holders under a secure or introductory standard occupation contract, unless the allocation is a transfer for which the contract-holder has applied. For example, Part 6 does not apply to transfers of existing contract-holders for management purposes.

2.18 S.160 of the HA 1996 sets out other exemptions from the provisions of Part 6 of the HA 1996. In summary, the exemptions also include succession; assignment; transfers as a result of family proceedings; conversion from an introductory standard occupation contact to a secure occupation contract; and those rehoused as a result of a compulsory purchase, or from a defective dwelling.

Eligible Categories

2.19 S.160A of the HA 1996 provides that a Local Housing Authority must not make an allocation under Part 6 of the HA 1996 to ineligible persons. Regulations 3 and 4 of the 2014 Regulations are relevant to assessing the eligibility of applicants for an allocation of housing accommodation.

2.20 The following are the main categories of eligible applicants to whom a Local Housing Authority may allocate accommodation under Part 6 of the HA 1996, taking account of nationality and immigration status:

i) Existing contract-holders - S.160A(6) of the HA 1996 provides that none of the provisions relating to the eligibility of contract-holders with respect to their immigration status is to affect the eligibility of an applicant who is already a contract-holder of housing accommodation allocated by a Local Housing Authority in Wales. It is therefore the case that where such a contract-holder applies for an allocation of housing accommodation, the Local Housing Authority need not question eligibility and an allocation can be made regardless of immigration status or habitual residence.

ii) A person from abroad who is not subject to immigration control, unless prescribed as ineligible

A 'person from abroad who is not subject to immigration control' will generally refer to British nationals who arrive from abroad, either for the first time or following a period of time elsewhere.

A person who falls into one of the following categories is to be treated as a person from abroad (who is not subject to immigration control) who is ineligible for an allocation of housing accommodation:

i) a person who is not habitually resident in the Common Travel Area, subject to certain exceptions – see below.

ii) a person whose only right to reside in the UK is derived from their status as jobseeker (or family member of a jobseeker)

iii) a person whose only right to reside in the UK is an initial right to reside for a period not exceeding three months under Regulation 13 of the Immigration (European Economic Area) Regulations 2016 ('the EEA Regulations')

iv) a person whose only right to reside in the UK is a derivative right to reside to which the person is entitled under Regulation 16(1) of the EEA Regulations, but only in a case where the right exists under that Regulation because the person satisfies the criteria in Regulation 16(5) of the EEA Regulations*

v) a person whose only right to reside in the Common Travel Area is a right equivalent to paragraphs (ii) to (iv) above.

For the purposes of determining whether the only right to reside that a person has is of a kind mentioned in paragraphs (ii) to (v) above, a right to reside by virtue of having been granted either limited leave to enter or remain under the Immigration Act 1971 by virtue of Appendix EU to the Immigration Rules or leave

to enter the UK by virtue of an entry clearance that was granted under Appendix EU (Family Permit) to the Immigration Rules is to be disregarded.

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

i) a worker

ii) self-employed person

iii) a family member of a person referred to in paragraph (i) to (ii) above

iv) a person with a permanent right to reside by virtue of Regulation 15(1)(c)(d) or (e) of the EEA Regulations

v) a person who is in the UK as a result of the person's deportation, expulsion or other removal by compulsion of law from another country to the UK

vi) frontier workers

vii) a person who is the family member of a frontier worker and has a right to reside by virtue of having been granted limited leave to enter or remain in the UK under the Immigration Act 1971 by virtue of Appendix EY t the Immigration Rules made under section 3 of the Immigration Act 1971

viii) a person who left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021

ix) a person who was residing in Ukraine immediately before 1 January 2022 and who left Ukraine in connection with the Russian invasion which took place on 24 February 2022

x) a person who was residing in Sudan before 15 April 2023 and left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan

xi) a person who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7 October 2023 and who left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon in connection with the Hamas terrorist attack in Israel on 7 October 2023 or the violence which rapidly escalated in the region following the attack

xii) a person who was residing in Israel, the West Bank, the Gaza Strip or East Jerusalem on or before 23 June 2025 and who left Israel, the West Bank, the Gaza Strip or East Jerusalem in connection with the conflict which escalated in June 2025 and within 6 months beginning on the date on which His Majesty's Government first published advice to British nationals to leave Israel, the West Bank, Gaza strip or East Jerusalem, or the date of first evacuation from Israel, the West Bank, the Gaza Strip or East Jerusalem, whichever is later, made an application for an allocation of housing accommodation under Part 6 of the Housing Act 1996.

* These rights were added to reflect the decision of the Court of Justice of the European Union in the case of C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)

i) Persons subject to immigration control prescribed as eligible

Generally, persons subject to immigration control within the meaning of the Asylum and Immigration Act 1996 are not eligible for housing accommodation. However, under s.160A(3) of the HA 1996, Welsh Ministers have prescribed classes of person subject to immigration control who are to be considered eligible; the classes are set out in Regulation 3 of the Eligibility Regulations. These are:

a) **Refugees** – A person granted refugee status when his or her request for asylum is accepted is eligible for an allocation of housing accommodation.

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

c) **Indefinite leave to remain** - A person with current leave to enter or remain in the UK with no condition or limitation, and who is habitually resident in the Common Travel Area will be eligible for an allocation of housing accommodation. This includes EEA nationals with 'settled status.' However, where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the person's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK – or the date of the sponsorship undertaking, whichever is the later – for the applicant to be eligible. Where a sponsor died within the first five years, the applicant would be eligible.

d) **Humanitarian Protection** – A person who has been granted Humanitarian Protection under the Immigration Rules is eligible for an allocation of housing accommodation. Humanitarian Protection is granted to non European Union citizens who do not meet the strict definition of refugee but who have international protection needs.

e) **Certain Afghan citizens** – An Afghan citizen who as a result of serving the UK Government has been granted permission to relocate to the Common Travel Area and who is habitually resident in one of those areas will be eligible for an allocation of housing accommodation.

f) **Human Rights Grounds** - A person who has limited leave to enter or remain in the UK on family or private life grounds under Article 8 of the European Convention of Human Rights, and who is not subject to a condition requiring that person to maintain and accommodate themselves (and any person who is dependent on that person) without recourse to public funds is eligible for an allocation of housing accommodation.

g) **Unaccompanied asylum-seeking children** – A child who is habitually resident in the Common Travel Area and who has been relocated to the UK under section 67 of the Immigration Act 2016 and has limited leave to remain under paragraph 352ZH of the Immigration Rules is eligible for an allocation of housing accommodation.

h) **Calais Leave** - A person who is habitually resident in the Common Travel Area and has Calais Leave to remain under paragraph 352J of the Immigration Rules is eligible for an allocation of housing accommodation.

i) **Stateless persons** - A person who is habitually resident in the Common Travel

Area and who has limited leave to remain in the UK as a stateless person under paragraph 405 of the Immigration Rules is eligible for an allocation of housing accommodation. Stateless persons are individuals who are not, under the law, considered as a national of any State and are unable to live permanently in any other country.

j) **Relevant Hong Kong British Nationals** - A person who has limited leave to enter or remain in the UK by virtue of Appendix Hong Kong British National (Overseas) of the Immigration Rules, whose leave to enter or remain is not subject to a condition requiring that person to maintain and accommodate themselves (and any person who is dependent on that person) without recourse to public funds, and who is habitually resident in the Common Travel Area is eligible for an allocation of housing accommodation.

k) **Afghan Relocations and Assistance Policy (or previous scheme)** - A person who is granted leave to enter or remain in the UK in accordance with the Immigration Rules where such leave is granted by virtue of (a) the Afghan Relocations and Assistance Policy; (b) the previous scheme for locally-employed staff in Afghanistan, or (c) with leave to enter or remain in the UK outside those schemes, and who left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021 is eligible for an allocation of housing accommodation. The person must not be subject to a condition requiring that they maintain and accommodate themselves (and any person who is dependent on them), without recourse to public funds. Where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the person's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK – or the date of the sponsorship undertaking, whichever is the later – for the person to be eligible. Where a sponsor died within the first five years, the person would be eligible.

l) **Ukraine Scheme** - A person who has been granted leave to enter or remain in the UK by virtue of Appendix Ukraine Scheme of the Immigration Rules is eligible for an allocation of housing accommodation.

m) **Victims of Human Trafficking** - A person who has temporary leave to remain in the UK granted in accordance with Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery of the Immigration Rules is eligible for an allocation of housing accommodation.

n) **Relevant Sudanese residents** - A person who was residing in Sudan before 15 April 2023, left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan, and has leave to enter or remain in the UK given in accordance with the Immigration Rules is eligible for an allocation of housing accommodation. The person must not be subject to a condition requiring that person to maintain and accommodate themselves (and any person who is dependent on that person) without recourse to public funds. Where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the person's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK – or the date of the sponsorship undertaking, whichever is the later – for the person to be eligible. Where a sponsor died within the first five years, the person would be eligible.

o) **Relevant residents Isreal, the West Bank, the Gaza Strip, East Jerusalem,**

the Golan Heights or Lebanon - A person who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7 October 2023, who left those areas in connection with the Hamas terrorist attack in Israel on 7 October 2023 or the violence which rapidly escalated in the region following the attack, and has leave to enter or remain in the UK given in accordance with the Immigration Rules is eligible for an allocation of housing accommodation. The person must not be subject to a condition requiring that person to maintain and accommodate themselves (and any person who is dependent on that person) without recourse to public funds. Where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the person's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK – or the date of the sponsorship undertaking, whichever is the later – for the person to be eligible. Where a sponsor died within the first five years, the person would be eligible.

p) A person who has indefinite leave to enter the United Kingdon by virtue of Appendix Victim of Domestic Abuse of the Immigration Rules in circumstances where they are a victim of transnational marriage abandonment.

q) Persons with limited leave to enter or remain in the United Kingdom and who, after making a change of conditions application, has that their 'no recourse to public funds' condition lifted by the Home Office.

r) A person who was residing in Israel, the West Bank, the Gaza Strip or East Jerusalem on or before 23 June 2025 and left Israel, the West Bank, the Gaza Strip or East Jerusalem in connection with the conflict between Israel and Iran which escalated in June 2025 and has leave to enter or remain in the United Kingdon given in accordance with the immigration rules and is not a person who's leave is subject to a condition requiring that person to maintain and accommodate themselves, and an person who is dependant on that person, without recourse to public funds, and is not a person (a) who has been given leave based on an undertaking given by a sponsor, (b) has been resident in the Common Travel Area for less than five years beginning on the date of entry or the date the sponsor gave the undertaking (whichever is later), (c) whose sponsor is alive, made an application for an allocation of housing under Part 6 HA 1996 within 6 months beginning on the date on which His Majesty's Government first published advice to British nationals to leave Israel, the West Bank, the Gaza Strip or East Jerusalem, or from the date of the first evacuation from Israel.

Joint occupation contracts

2.22 Under s.160A (1)(c) of the HA 1996, a Local Housing Authority shall not allocate housing accommodation to two or more people jointly if any one of them is a person from abroad who is ineligible, or is a person who is being treated as ineligible because of unacceptable behaviour (see below).

The Habitual Residence Test

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

factors for habitual residence are period of residence, continuity and nature of actual residence.

2.24 The term ”habitual residence” is intended to convey a degree of permanence in the person’s residence in the Common Travel Area: it implies an association between the individual and the country. When deciding whether an applicant is habitually resident, Local Housing Authorities should take account of the applicant’s period of residence and its continuity, the applicant’s employment prospects, the applicant’s reason for coming to the UK, the applicant’s future intentions, the applicant’s centre of interest and any other fact or circumstance which might be relevant.

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

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

2.27 While the majority of the categories eligible for an allocation of housing accommodation require the applicant to be habitually resident in the Common Travel Area, most applicants for social housing will not be persons from abroad and there will be no reason to apply the test. It is also likely that persons who have been resident in the Common Travel Area continuously during the two years prior to their housing application will be habitually resident in the Common Travel Area. In such cases, therefore, Local 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 Common Travel Area might include visits abroad (e.g. for holidays or to visit relatives). Where two years of continuous residency in the UK is not established, Local Housing Authorities may need to conduct further enquiries to determine whether the applicant is habitually resident in the Common Travel Area

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

2.29 A person cannot claim to be habitually resident in any country unless the person has taken up residence and lived there for a period. There will be cases where the person concerned is not coming to the UK for the first time but is resuming a habitual residence previously held. The Annexes provide detailed guidance on the factors which a Local 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 automatically imply habitual residence in the country to which that person has travelled.

Procedures for determining eligibility of persons from abroad

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

2.31 If there is any uncertainty about an applicant's immigration status, Local Housing Authorities are recommended to contact the Home Office using the procedures set out in the Annexes. Before doing so, the Local Housing Authority should advise the applicant that an inquiry will be made; if at this stage the applicant prefers to withdraw his or her application, no further action will be required.

2.32 Local 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 Local Housing Authority's duties and responsibilities under the EA 2010 and how to deal with applicants in a sensitive manner.

2.33 Local Housing Authorities should ensure that language and interpretation support is available for those applicants who have difficulty speaking or reading English, particularly before making adverse decisions. Consideration should be given to identifying ethnic origin and language of choice, producing information in a variety of minority languages, carefully channelling information so that it reaches its target audience; and employing staff who can speak minority ethnic languages. When interpretation support is provided this should be a professional service and it is not appropriate to rely on family, community members, or non-professional translation services. This is important due to the nature and sensitivity of the information being sought.

Unacceptable Behaviour

2.34 Most applicants for social housing will not be persons from abroad, and will have been resident in the UK (or elsewhere in the Common Travel Area) for two years prior to their application. Such applicants, together with eligible applicants from abroad may, however, at the discretion of the Local Housing Authority, be treated as ineligible by the Local Housing Authority on the basis of unacceptable behaviour. There is no obligation on Local Housing Authorities to implement these provisions and where they do, robust procedures are needed to ensure compliance with the law, this Code and the fair and consistent treatment of applicants. Policies regarding the application of sanctions on the grounds of unacceptable behaviour should accommodate the broader Welsh Government

policy aims of equality of opportunity, social inclusion and sustainability. Therefore, sanctions to exclude people from social housing should be kept to a minimum and support mechanisms should be developed to maximise opportunities for people to secure social housing. However, in developing sustainable communities, the Welsh Government recognises that Local Housing Authorities must also take into account the needs of existing contract-holders. A decision to treat an applicant as ineligible should be just one of a range of measures used by a Local Housing Authority to address unacceptable behaviour. Further guidance is given in Chapter 3.

Description

2.35 Under s.160A(7) of the HA 1996, a Local Housing Authority may, where it is satisfied that an applicant (or a member of the applicant's household) is guilty of unacceptable behaviour serious enough to make him or her unsuitable to be a contract-holder of the Local Housing Authority, decide to treat the applicant as ineligible for an allocation. Local Housing Authorities should note however, that where they are satisfied that an applicant is unsuitable to be a contract-holder, they are not required to decide that he or she is ineligible for an allocation; they may instead proceed with the application and decide to give the applicant no preference for an allocation under s.167(2B). It is for each Local Housing Authority to decide which provision, if any, is applied.

2.36 S.160A(8) of the HA 1996 provides that the only behaviour which can be regarded as unacceptable for these purposes is behaviour by the applicant (or by a member of his or her household) that would - if the applicant had been a contract-holder of the Local Housing Authority at the time – have breached s.55 of the RHWA 2016 regarding antisocial behaviour (ASB) and other prohibited conduct. S.55 of the RHWA 2016 is set out in full in the Annexes. Local Housing Authorities should note that it is not necessary for the applicant to have actually been a contract-holder of the Local Housing Authority when the unacceptable behaviour occurred. The test is whether the behaviour would have entitled the Local Housing Authority to a possession order if, whether actually or notionally, the applicant had been a contract-holder.

Test of unacceptable behaviour

2.37 There is a three-stage test that must be applied before a Local Housing Authority can exercise the power to decide that an applicant is ineligible for allocation, or will be given no preference, on the basis of unacceptable behaviour.

i) Is there evidence of unacceptable behaviour? If so, was it serious enough to have entitled a Local Housing Authority to obtain a possession order?

2.38 Ground for possession: Local Housing Authorities will need to satisfy themselves that there has been unacceptable behaviour which falls within the definition in s.160A(8) of the HA 1996 – in short, behaviour that would breach s.55 of the RHWA 2016. If a Court has already made a possession order based on a breach of s.55 of the RHWA 2016, then a Local Housing Authority may accept that as evidence of unacceptable behaviour and proceed straight to paragraphs (ii) and (iii) below. Alternatively, in considering whether a possession order would have been granted in circumstances where no possession order has been made, the Local Housing Authority must first ask

itself whether a breach of s.55 of the RHWA 2016 would have been proven to the Court on the balance of probabilities (i.e. more likely than not). A breach of s.55 of the RHWA 2016 would have occurred if, for example, the applicant had engaged in conduct capable of causing nuisance or annoyance to their neighbours or their landlord, or had used their property for criminal purposes.

2.39 Reasonableness: If the Local Housing Authority is satisfied that, on the information it has about the applicant (or a member of the applicant's household), it would have been able to prove a breach of s.55 of the RHWA 2016, it then has to consider whether the Court would have decided that it was reasonable to grant a possession order in the circumstances. The Court can only grant a possession order based on a breach of s.55 of the RHWA 2016 if it considers it reasonable to do so. In deciding whether it is reasonable to grant possession, the Court must have regard to Schedule 10 of the RHWA 2016, which sets out the specific circumstances which the Court must consider when determining the reasonableness of granting a possession order. Schedule 10 of the RHWA 2016 is set out in full in the Annexes. Schedule 10 includes, for example, the probable effect of a possession order on the contact-holder, the landlord and other persons; the general public interest in making a possession order; and the likelihood of breaches re-occurring. If the Local Housing Authority is not satisfied that the Court would decide it was reasonable to grant a possession order in the circumstances, the applicant cannot be guilty of unacceptable behaviour as per s.160A(7) of the HA 1996.

ii) Was the behaviour serious enough to render the applicant or a household member unsuitable to be a contract-holder?

2.40 Having concluded that there would be entitlement to a possession order per paragraphs (i) and (ii) above, the Local Housing Authority will then need to satisfy itself that the behaviour is serious enough to make the applicant unsuitable to be a contract-holder. It is the Welsh Government's view that to do this, the Local Housing Authority needs to satisfy itself that if a possession order were granted it would have been an outright possession order. Where a Local Housing Authority has reason to believe that the Court would have suspended the possession order, then such behaviour should not normally be considered serious enough to make the applicant unsuitable to be a contract-holder.

2.41 Courts are generally inclined to suspend a possession order in respect of ASB where:

a) the allegations of nuisance are relatively minor; and/or

b) the nuisance was caused by a member of the household who has since left; and/or

c) the Court is satisfied that the imposition of a suspended order will serve to control the contract-holder's future behaviour.

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

2.42 Finally, if satisfied that the applicant is unsuitable to be a contract-holder by reason of unacceptable behaviour, the Local Housing Authority must have regard to the circumstances at the time the application is considered, and must satisfy itself that the applicant is still unsuitable at the time of the application. Previous unacceptable behaviour, or even an outright possession order, may not justify a decision to treat the applicant as ineligible where that behaviour can be shown by the applicant to have improved. A policy

of treating all those evicted for a breach of s.55 of the RHWA 2016 as unsuitable is likely to be unlawful.

2.43 Only if satisfied on all three aspects above (i.e. (i) there is evidence of unacceptable behaviour that (ii) is serious enough to render the applicant unsuitable (iii) at the time of the application) can a Local Housing Authority consider exercising its discretion to decide if the applicant is to be treated as ineligible for an allocation. In reaching its decision, a Local Housing Authority must act reasonably. That means it must consider each application on its own merits. It must have regard for each applicant's personal circumstances (and the personal circumstances of the applicant's household), including his or her health and medical needs, dependents and any other factors relevant to the application. In practice, the matters before the Local Housing Authority will include the information provided on the application form and supporting information.

2.44 If an applicant who has, in the past, been deemed by the Local Housing Authority to be ineligible, now considers their unacceptable behaviour should no longer be held against them as a result of changed circumstances, they can make a fresh application. Unless there has been a considerable lapse of time, it will be for the applicant to show that their circumstances or behaviour has changed. What constitutes a considerable lapse of time will depend upon the individual circumstances of the case and in particular the nature of the unacceptable behaviour. Some applicants may find this process difficult and should be referred to an independent source of housing advice such as Shelter Cymru.

Unacceptable behaviour - ineligible or no preference for an allocation?

2.45 There is no obligation on a Local Housing Authority to treat an applicant as ineligible for an allocation (s.160A(7) of the HA 1996) due to an applicant's or household member's behaviour. If a Local Housing Authority does apply the unacceptable behaviour standard and a person is deemed unsuitable to be a contract-holder, it may treat them as eligible but reduce the priority that is given to their housing application. By virtue of s.167(2B) and (2C) of the HA 1996, an allocation scheme may provide that no preference is given to an applicant where the Local Housing Authority is satisfied that they, or a member of their household, have been guilty of unacceptable behaviour serious enough to make them unsuitable to be a contract-holder and the Local Housing Authority is satisfied that, in the circumstances at the time the application is considered, they deserve not to be treated as a person who should be given reasonable preference.

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

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

2.47 It is possible for a Local Housing Authority, where it has determined an applicant to be unintentionally homeless and in priority need, to determine also that they are guilty of unacceptable behaviour serious enough to make them unsuitable to be a contract-holder and decide to treat them as ineligible for an allocation (s.160A(7) of the HA 1996);

or not afford them any priority for rehousing under their allocation scheme (s.167(2B) and (2C) of the HA 1996) or; give them preference over non-homeless applicants but less preference than other homeless applicants (s.167(2C)(b) of the HA 1996). It should be noted, however, that Local Housing Authorities will still have a statutory duty to secure accommodation for such persons (see Chapter 14), though this need not be through a statutory allocation (s.159 of the HA 1996) under its allocation scheme. Rather, a Local Housing Authority has the discretion to accommodate such persons in the private sector or by some other means.

Policy Considerations

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

i) consider their role as Social Landlords and brokers of social housing. Social housing is subsidised stock, and it is incumbent on Local Housing Authorities to allocate occupation-contracts primarily to meet housing need in their areas and to co-operate with other housing providers in so doing.

ii) develop 'unacceptable behaviour' policies which are compliant with the law, and which have due regard for this Code of Guidance and good practice. They should clearly specify the grounds for determining whether a person is ineligible for an allocation or whether to remove their preference for an allocation and whether such determinations are reasonable. Policies should be supported by robust procedures, which require applications to be considered on a case-by-case basis and avoid circumstances where an unacceptable behaviour ruling will always be found. Local Housing Authorities should also:

a) consider adoption of appropriate terminology. For example, use 'no priority' to reflect decisions of no preference for an allocation. The term 'no priority' reflects the position that 'no preference' decisions do not preclude a landlord from making an allocation and so are not a suspension. Where a decision is made to adjust preference for an allocation due to unacceptable behaviour under s.167(2A), 'adjusted priority' could be used;

b) set reasonable timescales for periods of restricted access and review such determinations on an individual basis dependent upon their personal circumstances;

c) introduce appropriate appeal mechanisms (see below);

d) ensure procedures are responsive to any relevant change in applicant circumstances;

e) provide information about the ways in which any restricted access decisions may be reversed (e.g. evidence that an applicant is reducing his or her rent arrears); and

f) disseminate monitoring information concerning the numbers of people who are considered not eligible for social housing because of unacceptable behaviour and the outcomes of any appeals/reviews.

iii) keep restricted access measures to a minimum to ensure their statutory

responsibilities are being met.

iv) work collaboratively with the Police and Probation Services and other statutory and voluntary agencies in sharing information on sex offenders or other violent applicants and, where appropriate, become involved in the management of the risk posed by them (see Chapter 4).

v) avoid using application requirements which it would be unreasonable to expect applicants to meet (e.g. the requirement for young people to have referees and/or guarantors).

vi) monitor and evaluate policies and practices on a regular basis to ensure outcomes are compliant with policy objectives, the law and good practice.

vii) develop common restricting access policies with partner community landlords to maximise consistency in approach and improve efficiency in nominations procedures based on local strategic priorities.

2.49 S.218A of the HA1996, as inserted by s.12 of the Anti- Social Behaviour Act 2003, requires Local Housing Authorities, Housing Action Trusts, non-profit Registered Providers of Social Housing and Registered Social Landlords to prepare and publish policies and procedures in relation to ASB. The Welsh Government commissioned an Anti-social Behaviour Policy and Practice Review. The conclusions of this review were published in February 2014. A recommendation in this report was to establish a new Welsh Anti-social Behaviour Framework to take account of the findings of the review and the Anti-social Behaviour, Crime and Policing Act 2014 (“ASBCPA 2014”).

Notification and Reviews to Decisions on Eligibility

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

S.160A (3) HA 1996 (being subject to immigration control);

S.160A (5) HA 1996 (being an ineligible person from abroad); or

S.160A (7) HA 1996 (being a person to be treated as ineligible because of unacceptable behaviour); or are not afforded any preference by virtue of: S.167(2B) and (2C) HA 1996 (being a person not afforded any preference under the allocation scheme because of unacceptable behaviour) must give such applicants written notification of the decision and the grounds for it. The decision must be firmly based on the relevant facts of the case. The notification should also refer to the right of applicants to request a review of the decision.

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

2.52 In cases where the notification cannot be sent to the applicant, or where the Local Housing Authority believes that it may not have been received by the applicant, the Local Housing Authority should make available at its office a written statement of its decision, and the reasons for it, to enable the applicant, or someone who represents the

applicant, to collect within a reasonable period.

2.53 Under S.167 (4A)(d) of the HA 1996, applicants have the right to request a review of any decision as to eligibility or loss of preference, and a right to be informed of the decision on review and the grounds for that decision.

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

a) ensure that notifications of a decision on eligibility include advice on the right to request a review of it, and the time within which such a request must be made. Notices should also inform applicants that, if they need help or advice about the notice and what to do about it, they should take it immediately to a Citizens Advice Bureau, a housing aid centre such as Shelter Cyrmu, a law centre or a solicitor;

b) ensure that applicants have an opportunity to request further information about any decision;

c) advise applicants that they may request a review by way of an oral hearing, or without such a hearing via a written submission;

d) ensure that the review is carried out by a person who was not involved in the original decision. Where the review of a decision made by an officer is to be made by another officer, he or she should be senior to the officer who made the original decision;

e) ensure that the circumstances of the applicant at the time of the review, not just at the time of the original decision, are taken into account. This is to allow for a change in circumstances since the original decision to be taken into account (e.g. paying off arrears or establishing a payment agreement, or departure of a member of the household responsible for ASB);

f) if there is not to be a hearing, allow the applicant to make representations in writing to be considered by the Local Housing Authority. The Local Housing Authority should inform the applicant of the date by which such representations must be received, allowing the applicant at least five clear days to provide representations to the Local Housing Authority;

g) if there is to be a hearing, the applicant must be given notice of the date, time and place of the hearing, which should not be less than five days after receipt of the request for a hearing. If the applicant has not been given such notice, the hearing should only proceed with the consent of the applicant or their representative;

h) ensure that the person hearing the review determines the procedure to be adopted. The procedure should provide that the applicant who has requested it is given the right to:

- be heard;
- be accompanied;
- be represented by another person, whether that person is professionally qualified or not. For the purposes of the proceedings any representative should have the

rights and powers which the applicant has, for example to;

- call their own supporting witnesses to give evidence. This does not give the applicant the power to require witnesses to attend;
- put questions to any person who gives evidence at the hearing;
- make representations in writing;

i) ensure that a person conducting a review where someone fails to appear at the hearing (having been given appropriate notice), should have regard to all the circumstances including any explanation offered for the absence, be able to proceed with the hearing, or give whatever directions they think proper on the conduct of a further review;

j) allow for applicants to be able to apply to request a postponement of a hearing and grant or refuse the request as it sees fit;

k) ensure that the person hearing the review can adjourn the hearing at any time during the hearing on the application of the applicant or their representative, or if the person hearing the review sees fit. If a hearing is adjourned part-heard and, after the adjournment, the person or persons hearing the review differ from those at the first hearing, proceeding should be by way of a complete rehearing of the case;

l) ensure that where more than one person is conducting the review, he or she should, with the consent of the applicant or their representative but not otherwise, be able to proceed in the absence of one of the persons who is to determine the review;

m) ensure that the applicant is notified of the decision on the review. If the decision is to confirm the original decision, the Local Housing Authority should also notify the applicant of the reasons for the decision;

n) ensure that an unsuccessful applicant is notified of the right to make a fresh application under s.160A(11) of the HA 1996 if they consider they should no longer be treated as ineligible;

o) ensure that the review is conducted in the applicant's language of choice in line with the Welsh Language Standards imposed on the Local Housing Authority.

Residential Criteria

2.55 S.166(3) of the HA 1996 requires that every application made to a Local Housing Authority for an allocation of housing accommodation shall (if made in accordance with the procedural requirements of the Local Housing Authority's allocation scheme) be considered by the Local Housing Authority. However, s.167 (2A) of the HA 1996 provides that allocation schemes may contain provision for determining priorities for reasonable/additional preference categories. The factors that may be taken into account in determining priorities include any local connection (within the meaning of s.81 of the HWA 2014) which exists between a person and the Local Housing Authority's area (see the annexes). The application of such criteria however must not detract from the Local Housing Authority giving overall reasonable preference to the categories of person set out in s.167(2) of the HA 1996.

Applications from Owner-Occupiers

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

No Fixed Address

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

3. THE ALLOCATION SCHEME

Introduction

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

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

The HA 1996 states:

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

1. Every local housing authority in Wales shall have a scheme (their "allocation scheme") for determining priorities, and as to the procedure to be followed, in allocating housing accommodation. For this purpose "procedure" includes all aspects of the allocation process, including the persons or descriptions of persons by whom decisions are to be taken.

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

a) a choice of housing accommodation; or

b) the opportunity to express preferences about the housing accommodation to be allocated to them.

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

a) people who are homeless (within the meaning of Part 2 of the Housing (Wales) Act 2014);

b) people who are owed any duty by a local housing authority under section 66, 73 or 75 of the Housing (Wales) Act 2014;

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

d) people who need to move on medical or welfare grounds including grounds relating to disability; and

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

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

(2ZA) People are to be disregarded for the purposes of subsection (2) if they would not have fallen within paragraph (a) or (b) of that subsection without the local housing authority having had regard to a restricted person (within the meaning of Part 2 of the Housing (Wales) Act 2014).

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

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

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

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

The Requirement to have an Allocation Scheme

3.6 Under s.167 of the HA 1996, Local Housing Authorities are required to have an allocation scheme that determines the Authority's priorities and the procedure to be followed in allocating housing. 'Procedure' includes all aspects of the allocation process, including the people, or descriptions of people, by whom decisions are taken. It is essential that the scheme reflects all the Local Housing Authority's policies and procedures, including information on whether the decisions are taken by elected members or officers acting under delegated powers. Also, under s.167 (1A), the scheme must include a statement of the Local Housing Authority's policy on offering eligible applicants a choice of accommodation or the opportunity to express preferences about housing accommodation to be allocated to them.

3.7 Local Housing Authorities should have a published allocations policy upon which they have consulted locally. They should involve residents in the development of their policy to assist better understanding of the policy and waiting list management. See Chapter 4 for more guidance on who should be involved. Information, guidance and best practice examples on how to involve people can be obtained from a variety of sources including Tai Pawb and TPAS Cymru.

3.8 Under s.50 of the HWA 2014, Local Housing Authorities must take their homelessness strategies into account in the exercise of all their functions. In Wales, the requirements in local homelessness strategies are expected to be incorporated into the local housing strategy where this is still prepared. It is important that the allocation scheme is consistent with the homelessness strategy and with the housing strategy if still prepared.

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

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

- There is no requirement for Local Housing Authorities to frame their allocation scheme to provide for cumulative preference, i.e. affording greater priority to applicants who fall into more than one reasonable preference category
- An allocation scheme which allows for priority to be determined between applicants in the reasonable preference categories on the basis of waiting time alone is not unlawful or irrational

An allocation scheme is not unlawful if it allows for a small percentage of lets to be allocated to existing social housing tenants (or contract-holders) who wish to transfer and who do not fall within any of the reasonable preference categories. In her judgement, Baroness Hale confirmed that the Authority were entitled to allocate 5% of the properties which became available for choice-based letting to voluntary transfers. The Welsh Government considers that the percentage used by Local Authorities is a matter for individual Authority consideration based on how to best meet the strategic needs of the area, including under-occupation and dealing with the effects of Welfare Reform.

- Where a Local Housing Authority's allocation scheme complies with the requirements of s.167 of the HA 1996, (reasonable preference categories) and any other statutory requirements, the Courts should be slow to interfere on the ground that it is irrational.

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

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

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

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

Publicising the Allocation Scheme

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

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

Transfer Applicants

3.16 S.159(5) of the HA 1996 does not prevent existing secure contract-holders applying, under the allocation scheme, for transfer to other social housing. This may be in the same area or in another Local Authority area. Transfer applicants can therefore expect to be treated on the same basis as other applicants in accordance with the provisions set out in the Local Housing Authority's allocation scheme. Transfer applicants are entitled to

‘reasonable preference’ (s.167(2)) if they fall into an appropriate category or categories. The House of Lords concluded in the case of R (on the application of Ahmad) v Newham London Borough Council (2009) that a Local Authority may give priority to some transfer applicants even if they are not within the reasonable preference categories (see below) . Local Housing Authorities are strongly encouraged to consider the benefits of transferring secure contract-holders who have expressed an interest in moving from under-occupied properties in order to make the best use of housing stock available, particularly in light of welfare benefit changes (see the Annexes for Reasonable Preference Categories). Social Housing providers should ensure that transfers for under-occupation take account of any particular difficulties experienced by people with protected characteristics, and provide support where needed.

3.17 Transfer applicants must also be given the same rights to information and to reviews of decisions as other applicants (s.167(4A)). They will also be subject to the same eligibility criteria, and potential exclusion from allocation (s.160A), as new applicants.

3.18 Transfers between existing secure contract-holders pursuant to s.118 of the RHWA 2016 are not allocations within Part 6 of the HA 1996 (see the Annexes for exemptions). Neither are transfers that the Local Housing Authority initiates for management purposes, for example, to affect a temporary decant or re-location of contract-holders to allow repairs to a property to be carried out

Civil Partnerships

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

3.20 The general effect in relation to occupation contracts is to give rights to civil partners or same-sex married couples and their families that are equal to those enjoyed by married opposite-sex couples and their families. The Civil Partnership Act 2004 also equalises the rights of same-sex partners who are living together as if they were civil partners and their families with those of unmarried opposite sex cohabitants and their families.

Joint Occupation Contracts

3.21 The Welsh Government considers that joint occupation contracts can play an important role in the effective use and equitable allocation of housing. Where household members have long-term commitments to the home (for example, when adults share accommodation as partners, friends or unpaid live-in carers), Local Housing Authorities can grant a joint occupation contract. This way, upon the death of one of the contract holders the contract can continue based on survivorship unless the surviving joint contract holder has ceased to occupy the accommodation.

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

3.23 Pursuant to Section 49 of the RHWA 2016 a contract holder under an occupation contract may, with the consent of the landlord, make another person a joint contract holder under the contract. There are no pre-requisite to such a request for consent and landlords should have regard to Schedule 6 RHWA 2016 when considering whether or not to grant consent.

Succession

3.24 Part 3 of the RHWA 2016 sets out who may succeed to an occupation contract. S.74 of the RHWA 2016 states that, subject to satisfying the relevant statutory tests, a person can succeed a contract-holder if they are a ‘priority’ successor (i.e. a spouse, civil partner or an equivalent cohabitee) or a ‘reserve’ successor (i.e. a qualifying family member or carer), unless the contract-holder was themselves a reserve successor.

3.25 In all cases, the successor must be over the age of 18 at the time of the contract-holder’s death.

3.26 In all cases, in the 12 months prior to the contract-holder’s death, they must not have occupied any part of the property under a sub-occupation contract, subject to the conditions in s.74(5) of the RHWA 2016.

3.27 In the case of priority successors, a person qualifies if he or she is the spouse or civil partner of the contract holder, or lived together with the contract holder as a spouse or civil partner, and occupied the dwelling as their only or principal home at the date of death. If the deceased was a priority successor, then this person can be a reserve successor.

3.28 In the case of reserve successors who are family members, they must meet ‘the family member condition’, occupy the dwelling at the date of the contract holder’s death and meet the basic residence condition (see S.76 of the RHWA 2016 for further detail).

3.29 In the case of reserve successors who are carers who are not priority successors, he or she must meet ‘the carer condition’, occupy the dwelling as their only or principal home at the date of the contract holder’s death and meet ‘the carer residence condition’ (see S.77 of the RHWA 16 for further detail).

3.30 In all cases, in the 12 months prior to the contract-holder’s death the successor must not have occupied any part of the property under a sub-occupation contract, subject to the conditions in s.74(5) of the RHWA 2016.

3.31 S.78 of the RHWA 2016 provides for circumstances where there is more than one person qualified to succeed. In summary, if only one of the people is a priority successor, that person succeeds to the occupation contract; otherwise, the potential successors should attempt to agree between them who should succeed to the occupation contract. In the absence of such an agreement, the landlord selects the person or persons who will succeed to the contract. This decision is subject to an appeal process.

3.32 In many cases where a contract-holder dies, there will be at least one priority or reserve successor. However, if a contract-holder dies without any priority or reserve successors there may be another household member who does not have succession rights and has:

- been living with the contract-holder for the year prior to the death; or
- been looking after the contract-holder; or
- accepted responsibility for the contract-holder's dependents

The Local Housing Authority should, in suitable cases, consider granting an occupation-contract to that person, either in the same home or in suitable alternative accommodation provided that the allocation does not have adverse implications for the good use of housing stock and has sufficient priority under the allocation scheme. In the first two cases, the contract-holder's accommodation must have been the principal or only residence of the survivor at the time the contract-holder dies.

Reasonable Preference

3.33 Local Housing Authorities must ensure that reasonable preference is given to ***all of*** the following categories of people, as set out in S.167(2) of the HA 1996:

i) people who are homeless within the meaning of Part 2 of the HWA 2014 (see Part 2 of this Code),

ii) people who are owed a duty by a Local Housing Authority under S.66, S.73 or S.75 of the HWA 2014 (see Part 2 of this Code),

iii) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions,

iv) people who need to move on medical or welfare grounds (including grounds relating to a disability), and

v) people who need to move to a particular locality in the area of the Local Housing Authority, where failure to meet that need would cause hardship (to themselves or to others).

3.34 People are to be disregarded for the purposes of S.167(2) of the HA 1996 if they would not have fallen within paragraphs (i) or (ii) without the Authority having had regard to a restricted person (within the meaning of Part 2 of the HWA 2014).

3.35 Following the case of R (on the application of Ahmad) v Newham London Borough Council (see above), there is no requirement for Local Housing Authorities to

frame their allocation scheme to provide for cumulative preference, i.e. affording greater priority to applicants who fall into more than one reasonable preference category.

Homeless or threatened with homelessness

3.36 See Part 2 of this Code for the definition of 'Homeless' and related guidance.

Insanitary, overcrowded or unsatisfactory housing conditions

3.37 In considering whether an applicant should be given reasonable preference as a result of these factors, a Local Housing Authority should take into account the law governing overcrowding (Part 10 of the HA 1985) and legislation covering houses in multiple occupation (Part 2 of the HA 2004).

3.38 The HA 2004 also introduced a new system for assessing housing conditions based on the health and safety of the occupants, the Housing Health and Safety Rating System. The Welsh Government issued two sets of statutory guidance to accompany the introduction of Housing Health and Safety Rating System in June 2006. Links to the guidance are included in: https://www.gov.uk/government/publications/housing-health-and-safety-rating- system-guidance-for-landlords-and-property-related-professionals https://www.gov.uk/government/publications/housing-health-and-safety-rating- system-enforcement-guidance-housing-conditions

3.39 A Local Housing Authority should also have regard to Section 92 of the RHWA 2016 and the Renting Homes (Fitness for Human Habitation) Regulations 2022, particularly in relation to the 29 matters and circumstances that may render a dwelling unfit for human habitation, and the duties imposed on the landlord to respond to any such matters. The Authority should be aware of the distinction between a dwelling being unsuitable for the particular applicant verses the property being unfit for human habitation generally when considering these criteria. Medical and welfare grounds including grounds relating to disability

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

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

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

3.43 The Welsh Government believes that it is important that Service Personnel who have been seriously injured or disabled in Service and who have an urgent need for social housing should be given high priority within Local Housing Authorities' allocation schemes in recognition of their service. The Welsh Government's commitment to this was established in "The Nation's Commitment: Cross- Government Support to our Armed Forces, their Families and Veterans" which was updated by the Armed Forces Covenant and the Welsh Government's response to the Covenant as set out in our "Package of Support for the Armed Forces Community in Wales".

https://www.gov.uk/government/publications/the-nations-commitment-cross- government-support-for-our-armed-forces-their-families-and-veterans

https://www.gov.uk/government/collections/armed-forces-covenant-supporting- information

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/274417/Cm7424.pdf

Hardship grounds

3.44 'Hardship grounds' would include (but not be limited to), for example, if a person who needs to move to a different locality in order to give or receive care; to access specialised medical treatment; or, to take up a particular employment or training opportunity.

3.45 In England, the UK Government introduced the Right to Move. They have brought into force regulations which enable existing social tenants who need to move to take up work or training to do so within social housing. In Wales, we think this flexibility already exists within the reasonable preference hardship grounds. The Welsh Government would therefore encourage Local Housing Authorities to use the hardship reasonable preference category for secure contract-holders wanting to move within and across Local Authority boundaries to take up or to be nearer to specific work or training or job opportunities. Local connection may have to be disregarded in these cases. Social Landlords would have to check the jobs and training were bona fide and long-term.

3.46 The Annexes provide indicators of the criteria that Local Housing Authorities may use in determining reasonable preference. This is not an exhaustive list, and Local Housing Authorities may have other local factors to consider and include as indicators of the categories.

Additional Preference

3.47 S.167(2) of the HA 1996 gives Local 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. The particular descriptions of people refer to people who have **urgent housing needs.** All Local Housing Authorities must consider the need to give effect to this provision, in the light of local circumstances. Examples of people to whom a Local Housing Authority should consider giving additional preference within their allocation scheme include:

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

- victims of domestic or other abuse;
- victims of hate incidents; or,
- witnesses of crime, or victims of crime, who would be at risk of intimidation amounting to violence or threats of violence if they remained in their current homes. Local Housing Authorities need to have local liaison arrangements with the Police and other criminal justice partners to ensure that allocations can be made quickly and confidentially, where necessary

ii) those who need to move because of urgent medical reasons. Including where an applicant's (or a member of their household's) -

- Condition is expected to be terminal, and re-housing is required due to unsuitable accommodation or to provide a basis for the provision of suitable care.
- Condition is life threatening and the applicant's existing accommodation is a major contributory factor.
- Planned discharge from hospital is imminent and there is no accommodation available to them that it is reasonable for them to occupy.

iii) an applicant with a reasonable prospect of an accommodation offer within a relatively short period who suddenly loses their existing home as a result of a disaster.

iv) any applicant who needs to move to suitable adapted accommodation because of a serious injury, medical condition or disability which he or she, or a member of their household, has sustained as a result of service in the Armed Forces.

v) people needing accommodation as a result of leaving the Armed Forces and the loss of military accommodation.

vi) people under-occupying social housing and wanting to transfer to a smaller property, particularly in light of welfare benefit changes and the under-occupancy charge. Households in this situation need detailed advice on their options to help prevent them falling into arrears if they are deemed to have a 'spare room', cannot afford the extra rent and cannot move immediately. The UK Government guidance also suggests that people may wish to consider taking a lodger. This needs to be carefully considered and discussed with the social landlord.

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

3.49 It is the responsibility of Local Housing Authorities to decide how they wish to reflect the 'reasonable preference' categories set out in s.167 (2) of the HA 1996 in their allocation scheme. Possible indicators are given in the Annexes. There is no requirement to give equal weight to each of these categories, but Local 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. This means that an allocation scheme may include other policy priorities such as promoting job related and training related mobility, prioritising under-occupation (given the changes to welfare benefit), provided that:

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

Determining Priorities

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

a) the financial resources available to the applicant to meet his/her housing costs (e.g. a Local Housing Authority would be able to give less priority to an applicant who was financially able to secure accommodation through buying or privately renting)

b) any behaviour of the applicant (or a member of his or her household) which affects his/her suitability to be a contract-holder, which is not a decision of ineligibility or the removal of preference – see above

c) any local connection (within the meaning of s.81 of the HWA 2014) which exists between the applicant and the Local Housing Authority's area. Under s.81 of the HWA 2014, a person has a local connection with the area of a Local Authority if he/she has a connection because of normal residence there (either current or previous) of his/her own choice, employment there, family associations or special circumstances. Where circumstances warrant, housing providers can confirm the local connection claim is valid with the person to whom a connection is claimed.

   Normal residence in an area is not of a person's own choice if it is the consequence of being detained in prison (see the Annexes). For the purposes of the HWA 2014, serving members of the Armed Forces and other persons who normally live with them as part of their household do establish a local connection with an area by virtue of serving, or having served, there while in the Forces.

   Local connection policies should comply with the EA 2010 and should not be used in a way so as to detract from giving overall reasonable preference to persons set out in S.167(2) of the HA 1996. Some Local Housing Authorities may wish to give more priority to local connection so that people who live or work in the area or

who have close family connections have a greater chance of being rehoused than other applicants in need. While Local Housing Authorities cannot exclude people who do not have a local connection, there is nothing to prevent them including local connection as a policy priority within their allocation scheme, provided that, overall, the scheme continues to meet the reasonable preference requirements in s.167(2) of the HA 1996. This is particularly relevant for Local Housing Authorities operating in rural locations who aim to promote community and Welsh language sustainability.

3.51 It would be good practice for applications to be accepted from those currently living in institutional arrangements where they have a connection with the area, and they have a known date for discharge which is not unreasonably distant from the date of application. This includes people leaving the Armed Forces, prisoners, care-leavers and hospital patients. Those due to leave custody will benefit from the additional co-ordination as a result of the National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate. Release dates will be known by the relevant Authorities in advance of release and during the process of taking reasonable steps.

3.52 **Homeless households living in leased accommodation** – In the case of R (Lin) v Barnet London Borough Council [2007], the Court of Appeal found that it was lawful for an applicant owed a full housing duty under Part 7 of the HA1996 (s.193(2)) and entitled to a reasonable preference for an allocation under Part 6 of the HA 1996 (s.167(2)(a) and/or (b)), to be awarded less than full homelessness points until such time as the landlord leasing the property was obliged to return it to the private owner, at which time full homeless points would be awarded. Ten points were awarded during the lease period and 300 awarded at lease termination to enable the household to realistically compete for an allocation at that time. The Authority's justification for the differential in points was that the household was suitably housed whilst residing in leased accommodation.

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

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

Unacceptable behaviour - ineligible or no preference for an allocation?

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

Choice and Preference Options

3.56 The requirement under s.167(1A) of the HA 1996 for a statement to be contained in the scheme as to the Local 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 Local Housing Authority must address the matter and take a policy decision on it.

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

3.58 Financial inclusion. Consideration should be given to providing information on the estimated costs of running a home, savings and affordable credit at the earliest opportunity. This is in order to educate and inform applicants of the financial commitment involved in undertaking an occupation contract. This is a way of preventing people on low incomes from falling into debt, helping them plan their finances and maintain their contracts. See the Financial Inclusion section in Chapter 1 for more information. Social Landlords should not refuse to offer an occupation contract to an applicant on the basis of their credit record. Where rent arrears can be proved to be as a result of welfare benefit changes, options should be looked at in more detail with the possibility that arrears be converted to loans or support provided from the Discretionary Assistance Fund. Social landlords should ensure that financial assessments are used to provide additional advice and support where appropriate and to enable the person to be allocated accommodation which they can afford with reasonable assistance. They should only enforce a condition for rent to be paid in advance for an occupation contract to be offered where the person clearly has the means to do so whilst closely monitoring and enforcing agreements for rent to be paid within the contract-holder's income cycle.

3.59 Support. Where required, support should be provided to assist applicants to complete forms and where appropriate in the bidding process for properties under Choice-Based Lettings, so that no groups are disadvantaged by the application process. Social Landlords should offer pre and post occupation contract training and advice for people with limited experience of holding or retaining an occupation contract. Where a clear support

need has been identified prior to allocation, Social Landlords should focus on organising the necessary support with tenancy support teams and Social Services, rather than rejecting the application.

3.60 Common housing registers. These facilitate access to a greater pool of properties and make the process of applying for social housing easier, providing a single point of application. They also enable the Local Housing Authority to establish a more robust indication of housing need in the area. There has been an increase in Common Housing Registers operating in Wales and the Welsh Government continues to strongly encourage their development.

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

3.62 Common Allocation Policies. These are agreed between the Local Housing Authority and Registered Social Landlords generally within a common housing register framework. Common allocation policies make the allocation process easier to understand for applicants as there is a consistent approach to prioritisation and allocation between all housing providers in an area.

3.63 'Mutual exchange'/Transfer registers. Choice is also enhanced by facilitating moves by transfer (in accordance with s.118 of the RHWA 2016 or otherwise) and participation in local, regional or national mobility schemes, such as Homeswapper. Social housing providers are strongly encouraged to join national mobility schemes that share data to increase the pool of exchange properties available to their contract-holders. This will enable contract-holders to move for employment or training opportunities or to accommodation more suitable for their needs under welfare benefit changes. Social Housing providers need to collect equalities information about the users of this service. This will allow them to ensure that no one is discriminated against.

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

Simple and transparent systems

3.65 When developing allocation schemes, Local Housing Authorities should take into account the importance of having understandable and open systems of administering and prioritising applications for housing. Local Housing Authorities should raise awareness of allocations amongst local communities; producing allocations schemes which are easy to access and understand; advice for applicants about allocation procedures and allocations; and publishing information about lettings.

3.66 It is important that Local Housing Authorities provide regular, accurate and generalised information on how housing is allocated and how waiting lists are managed,

working actively to dispel any myths and misconceptions which may arise, whilst also managing expectations of applicants.

3.67 Engaging with and involving local communities in developing allocation policies will achieve a clearer understanding of the process and the number of properties available. Consultation on the Local Housing Authority's published allocations scheme will help to reduce misunderstanding about the way social housing is allocated. The policies developed should reflect local pressures and priorities and create a sense among local people that housing is allocated fairly. The consultation should be broad based and use a variety of methods to ensure that it is representative and addresses the needs of people with protected characteristics. Information, guidance and best practice examples on how to involve under-represented and seldom reached groups can be obtained from a variety of sources such as Tai Pawb, TPAS Cymru, Stonewall Cymru, Unique, Press for Change, Disability Wales, Age Cymru, Children's Service, Sure Start, National Childbirth Trust, Gingerbread and Cymorth Cymru. Local Housing Authorities should consider monitoring responses to any consultation in terms of diversity. Social landlords should also undertake contract-holder profiling.

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

Offers and Refusals

3.69 Under s.67, s.74, and s.76 of the HWA 2014, Local Housing Authorities cease to be subject to the duties to homeless applicants contained within s.66 (prevention duty), s.73 (relief duty) and s.75 (main housing duty) of the HWA 2014 if the applicant (having been informed of the consequence of refusal and of his or her right to request a review of the suitability of accommodation) refuses an offer of accommodation that is deemed suitable by the Local Housing Authority. This would include offers made under Part 6 of the HA 1996.

3.70 It is the responsibility of each Local Housing Authority to determine its policy on offers and refusals under Part 6 of the HA 1996 and others not covered by the homelessness duty cessation provisions referred to above. The policy must take account of s.167(1A) of the HA 1996 regarding choice and preference options and should include a review mechanism to enable applicants without a legal right to review, to seek redress where penalties are attached to refusing an offer.

Offers and management considerations

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

- control of empty social housing (voids)
- the cost of temporary accommodation to discharge duties under Part 2 of the HWA 2014, to homeless households

- avoidance of approaches which lead to concentrations of vulnerable or homeless people being re-housed in particular areas, especially low demand areas.

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

Period for considering an offer

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

3.74 Personal circumstances the Authority should take into account include:

i) difficulty for an applicant who is working and/or has a child or other care commitments to make arrangements to view the property;

ii) the property's distance from the applicant's current accommodation;

iii) where acceptance of the offer would involve a child changing schools or create difficulties for members of the household maintaining work or training;

iv) need for advocate / support worker to be present at the viewing;

v) the availability / timings of essential furniture or public funding to enable the applicant to move; and/or

vi) the individual's circumstances, with consideration for individuals with protected characteristics as defined by the EA 2010.

Allocation Scheme Flexibility

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

own secondary criteria to dominate schemes at the expense of the statutory preference categories. The latter must be reflected on the face of schemes and be evident when schemes are evaluated over a longer period.

Local lettings policies

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

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

- Creating more diverse communities,
- Dealing with a concentration of deprivation,
- Ensuring properties that are particularly suited to being made accessible (e.g. ground floor flats) are prioritised for those with access needs,
- Relocating essential workers such as teachers, nurses and police officers within a reasonable travelling distance from their work,
- Supporting people in work, training or volunteering or people who are seeking work or to take up volunteering opportunities,
- Dealing sensitively with lettings in rural areas to sustain communities by giving priority to those with a local connection to the local area,
- Sustaining Welsh-speaking communities by giving priority to those in housing need with a local connection to the area,
- Taking account of the needs of mobile workers such as those in the Armed Forces.
- Child to adult ratios could be lowered on an estate where there is high child density or, conversely, young single people could be integrated into an estate via this route. Welfare benefit restrictions on under- occupation should be considered and highlighted to potential contract-holders.
- Under occupancy as a result of welfare reform.

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

3.79 Local lettings policies should have clear aims linked to community sustainability supported by clear evidence of the need for the approach. Also, procedures should be in place to ensure that local policies fit with and inform strategic priorities. Where 'sustainability' and 'meeting housing need' objectives or priorities conflict, arrangements should be in place to ensure further consideration of the issue and a decision made in

respect of it. Overall, however, strategies should set out parameters for local lettings policies that do not prevent a Local Housing Authority from meeting its statutory duties, including the allocation to those in statutory reasonable preference categories over those applicants who are not. The Welsh Government recognises that this could produce opposing policy objectives particularly in areas of high demand where an Authority may not be able to discharge its statutory duties and have local lettings initiatives. In such circumstances the needs of applicants to whom a duty is owed should take priority over the objectives of local lettings initiatives. Local lettings policies must not discriminate on the basis of protected characteristics listed in the EA 2010. They should be monitored and reviewed, and an equality impact assessment should be carried out prior to introduction and as part of each review.

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

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

Hard to let properties

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

Mobility

3.83 Choice is enhanced by facilitating moves either by transfer, or by transfer to another secure contract holder under Section 118 of the RHWA 2016, and participation in any local, regional or national mobility schemes such as Homeswapper. Where available, Social Landlords are encouraged to join national mobility schemes that share data. This is to increase the pool of exchange properties available to their contract-holders.

3.84 The Welsh Government would expect Local Housing Authorities to help contract-holders to move to different areas where they have a need to move, particularly to help their employment and training prospects and the local economy. This could involve giving some preference in their allocation schemes to those whose skills are needed locally, or to people who need to move to take up training, or employment opportunities. Access to schemes that promote mobility should be available to all.

Meeting Diverse Needs

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

- Age
- Disability
- Gender Reassignment
- Marriage and Civil Partnership
- Pregnancy and Maternity
- Race (includes race, colour, and nationality (including citizenship) ethnic or national origins)
- Religion or belief (including non- belief)
- Sex
- Sexual orientation.

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

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

3.88 The section that follows describes some of the potential needs that allocation schemes should be sensitive to - this is not exhaustive, and schemes should be informed by the local authority's Local Housing Market Assessments (LHMAs) for which Welsh Government guidance is published. Under the current guidance, LHMAs should be undertaken every five years and reviewed once in that five-year period, between years 2 and 3.

3.89 The housing needs of people from all protected characteristic groups should be mainstreamed and accommodated within all relevant housing and related strategies. In line with this, Local Housing Authorities must ensure that their allocations

policies and procedures do not discriminate, directly or indirectly, on the grounds of a protected characteristic. They must comply with statutory requirements relating to equal opportunities, and relevant codes of practice. Local Housing Authorities should also have in place a formal equal opportunities policy relating to all aspects and stages of the allocation process with the aim of ensuring equality of treatment for all applicants. Local Housing Authorities and their partners should ensure that allocation processes take account of any particular difficulties experienced by people with protected characteristics including harassment or hate crime. The mainstreaming of the public sector equality duties will align with each Local Authority's Strategic Equality Plan.

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

3.91 Where relevant, Local Housing Authorities should consider ways to improve awareness of, and access to, social housing for people who are currently under-represented in social housing. For information or assistance with engaging under represented and seldom reached groups housing providers should contact organisations such as Tai Pawb, and TPAS Cymru.

Asylum Seekers and Refugees

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

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

3.94 Former asylum seekers who have been granted refugee status, exceptional leave to remain or humanitarian protection will be eligible for homelessness assistance and may be at risk of homelessness as a result of having to leave accommodation that had been provided for them (e.g. by the United Kingdom Visas and Immigration department) in the period before a decision was reached on their asylum claim.

3.95 They may well have experienced persecution or trauma in their country of origin or severe hardship in their efforts to reach the UK and may be vulnerable as a result. They are likely to have poor English language skills, have little knowledge or understanding of the cultural, social and economic customs and are less likely to have any social networks on which they can call on for support.

3.96 Under the Syrian Resettlement Programme, Local Housing Authorities which agree to resettle Syrian refugees must arrange accommodation which meets Local Housing Authority standards, which will be available on their arrival and is affordable and sustainable. This could be in private rented accommodation or social housing but it should be an occupation contract. The accommodation should be in an area where the refugees can access formal and informal support networks including faith based organisations, schools and General Practitioners.

General Resources

3.97 The resource list below includes material that might prove useful.

3.98 The Welsh Strategic Migration Partnership promotes a rights based approach to the inclusion of asylum seekers, refugees and migrants in Wales. Their portal includes a lot of useful information, and needs registration to access it:

http://wmp.infobasecymru.net/IAS/links/

https://www.gov.uk/government/organisations/uk-visas-and-immigration

http://www.housing-rights.info/03_1_1_Housing_eligbility_law.php

Gypsies and Travellers

3.99 A Local Housing Authority is required to assess the accommodation needs of Gypsies and Travellers residing in or resorting to its area under s.101 of the HWA 2014. If a Local Housing Authority's approved assessment identifies needs within the Authority's area with respect of the provision of sites on which mobile homes may be stationed, the Authority must exercise its powers in s.56 of the Mobile Homes Wales Act 2013 (power of Authorities to provide sites for mobile homes) to meet those needs.

3.100 The Welsh Government has published its Anti-Racist Wales Action Plan which sets out a number of actions to recognise that safe, culturally appropriate accommodation is necessary in order for individuals to flourish in other parts of their lives and to address the lack of site provision and poor quality of Gypsy and Traveller accommodation in Wales. Local authorities should ensure that the needs of Gypsies and Travellers are assessed,

planned and implemented in a more strategic way and that barriers to accessing services are reduced.

The Welsh Language

3.101 The Welsh Ministers made the Welsh Language Standards (No. 1) Regulations 2015 (as amended). These came into force on 31 March 2015. These Regulations specify policy making standards and authorise the Welsh Language Commissioner to require Local Authorities to comply with those standards. This requires Local Authorities when formulating a new policy, or reviewing or revising an existing policy, to give proper consideration to the effects, if any (whether positive or adverse), of the policy decision on opportunities for persons to use the Welsh language, and on treating the Welsh language no less favourably than the English language.

3.102 Cymraeg 2050 - a million Welsh speakers' is the Welsh Governments' national Welsh-language strategy. While it does not impose direct legal duties on Local Authorities, it is relevant when considering if Local Authorities are complying with their policy making duties under the Welsh language Standards.

3.103 The strategy highlights that, alongside increasing the number of Welsh speakers strengthening the confidence, use, and daily opportunities for people who already speak the language is a central objective, including in the delivery of public services. This includes those accessing services and ensuring Welsh is available and visible in daily interactions. In that context, housing policies, including allocations policies and related local lettings policies may be a relevant consideration where lawful and proportionate, in supporting the sustainability of Welsh speaking communities. Legal advice should be obtained in the development of such letting policies to ensure compliance.

Disabled People

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

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

3.106 Local Housing Authorities and Social Landlords should consider using specific registers to record the requirements of both individuals needing homes and properties available.

3.107 Accessible Housing Registers are a means of helping to ensure that the needs of disabled people are met. An Accessible Housing Register is a register that:

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

3.108 Accessible Housing Registers ensure:

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

3.109 Registration on an Accessible Housing Register should not preclude applicants from registering on the general waiting list due to the scarcity of adapted properties. Properties that are suitable for adaptation to meet the needs of the individual should also be considered. Under an enhanced approach to Accessible Housing other options such as grants, Care and Repair and other services should be explored.

3.110 A review of systems for assessment, recording and matching was undertaken with community landlords to ascertain the extent of use of Accessible Housing Registers and alternative matching systems. In July 2013 the Welsh Government published the findings of this review

3.111 The Welsh Government encourages every Local Housing Authority to use an Accessible Housing Register to help effectively match accessible housing to disabled people. An independent All Wales Accessible Housing Register Network has been established and is facilitated by Tai Pawb. Further information on the network is available at https://www.taipawb.org/resources/housing-strategy-equality/accessible-housing/

3.112 A 'Supporting people with sensory loss: Best practice guide for housing providers' has been produced following a year-long project, where people living across Wales were asked to tell their personal stories of finding, and living in, social housing. Supporting-people-with-sensory-loss-Best-Practice-guide-for-housing-providers-english.pdf

People with mental health problems/ mental illness or a learning difficulty

3.113 People from other vulnerable groups, such as those with mental health problems / mental illness or learning difficulties may need support to enable them to access and maintain social housing. Local Housing Authorities will need to make arrangements for effective links with Supporting People Teams, Social Services and other agencies such as Health and Probation to ensure that action plans are in place for meeting the housing and support needs of people with a mental illness or disability. These may

cover the planning and commissioning of services, the tailoring of services to meet specific needs and referral systems to ensure the effective pre-planned discharge from institutions.

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

3.115 In April 2025, the Welsh Government launched its new Strategy for Mental Health and Wellbeing in Wales, 'Mental health and wellbeing strategy 2025 to 2035 , link below. https://www.gov.wales/mental-health-and-wellbeing-strategy-2025-2035

3.116 The Welsh Government has also published good practice guides for working with contract-holders and homeless people with Autistic Spectrum Disorders. The housing management guide is linked: and the homelessness guide is linked: https://www.gov.wales/sites/default/files/publications/2021-08/code-of-practice-on-the-delivery-of-autism-services-supporting-guidance.pdf

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

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

Domestic Abuse

3.119 The Welsh Government considers that the term 'abuse' should not be given a restrictive meaning, and that 'abuse' should be understood to include threatening or intimidating behaviour, physical violence and any other form of abuse which may give rise to the risk of harm. This might include for example, psychological, physical, sexual, financial or emotional abuse. 'Abuse' is 'domestic abuse' if the victim is associated with the abuser, for example between persons who are, or have been, intimate partners, family members or members of the same household, regardless of gender or sexuality. S.58 of the HWA 2014 provides a definition of 'abuse' and 'domestic abuse' in relation to homelessness. The Welsh Government considers that this definition should also be used in the context of allocations.

3.120 Local Housing Authorities must ensure that their allocation policies are sensitive to the needs of victims of domestic abuse. Domestic abuse is not confined to instances within the home but extends to abuse outside the home. Further information can be obtained from your local Domestic Abuse Coordinator, Welsh Women's Aid, Refuge,

National Centre for Domestic Violence, the Welsh Government Website and the Local Authority Housing Support Grant team.

http://livefearfree.gov.wales/?skip=1&lang=en

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

3.122 The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 ensures a focus across the public sector on the prevention of these issues, the protection of victims and the support for those affected.

3.123 "Ask and Act" is a process of targeted enquiry to be practiced across the public service to identify violence against women, domestic abuse and sexual violence. The term targeted enquiry describes the recognition of indicators of violence against women, domestic abuse and sexual violence as a prompt for a professional to ask their client whether they have been affected by any of these issues. This involves collaboration in its broadest sense to create consistency and standardisation of response, no matter which gateway (housing, health, social care etc.) an applicant uses to access service provision. A link to the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 is here: http://www.legislation.gov.uk/anaw/2015/3/contents/enacted

Older people

3.124 The Welsh Government Strategy for an Ageing Society, published in 2021, sets out the action we will take to prepare for the future. It considers the many things that influence how we age and suitable housing can become increasingly important as we get older as our needs change.

3.125 Poor quality housing poses health risks and can worsen long-term health conditions. Many older people struggle to afford repairs or improvements to their homes. To address this, a working group within the Ministerial Advisory Forum on Ageing (MAFA) will focus on the housing needs of older adults. We will collaborate across government to ensure housing policies are designed to meet the needs of an ageing population. Age friendly Wales: our strategy for an ageing society [HTML] | GOV.WALES

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

- the physical attributes of the property (e.g. its location and accessibility and whether it has appropriate adaptations and/or support)
- the proximity of accommodation to family or other support, facilities or services

- support available to help isolated, vulnerable and Black and Minority Ethnic people to integrate into the community
- being flexible with any age restrictions that may apply, particularly where an applicant who does not meet the age criteria has mobility problems or where it is evident that housing couples together is beneficial and not doing so would have a detrimental effect on a person's well-being and care needs.
- whether a pet can be accommodated (see for example, RSPCA guidance 'Housing Pets and People' which can be downloaded from www.rspca.org.uk)
- ensuring older persons accommodation is Lesbian, Gay, Bisexual and Transgender friendly.

3.127 In addition, when considering options for older applicants wishing to transfer from private to social housing, the Local Housing Authority should consider whether the needs of the individual are actually better served by adaptations to their existing home possibly with assistance from the local Care & Repair Agency. The particular needs of older people from the Black and Minority Ethnic population also need to be taken into account.

Lesbian, Gay, Bisexual and Transgender People

3.128 Local Housing Authorities and their partners should ensure that allocation processes are sensitive to particular difficulties experienced by LGBTQI+ people such as homophobic harassment. Further assistance may be obtained from Stonewall Cymru and Tai Pawb. Local Housing Authorities and their partners should ensure that front line staff receive training on transgender issues.

Children in need

3.129 Households may include a child with a need for settled accommodation on medical or welfare grounds. In Wales, Local Authorities are unitary authorities with both functions, so the Housing and Social Services departments should co-operate as required by Parts 3 and 4 SSWWA 2014. Local authorities in Wales are under duties to assess a child's needs for care and support and, where the eligibility criteria are met, to secure provision to meet those needs. In doing this, authorities must have regard to the child's well being, which is defined in section 2 of the Act and expressly includes the suitability of living accommodation (section 2(2)(h)). Under Part 9 of the SSWWA 2014 Act, housing and social services functions have statutory duties of co operation and partnership working. Where a child's health or welfare gives rise to accommodation needs, housing authorities must work jointly with social services to determine priority and to ensure that any assessed care and support needs are met. The duties to co-operate with a Welsh local authority are in sections 164 and 164A of the 2014 Act. These statutory co-operation duties apply between housing and social services departments.

3.130 S27 of the Children Act 1989 is in place to support cross border arrangements where an English local authority requests assistance from a Welsh local authority or LHB, or a Welsh authority requests assistance from an English local authority, and in relation to children placed across the England–Wales border or otherwise requiring cross border cooperation. That includes, for example:

- A child placed by a Welsh local authority in England;
- A child placed by an English local authority in Wales;
- Requests for accommodation, education, health, or welfare support that require authorities on the other side of the border to act.

3.131 Local 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

3.132 In making accommodation offers to applicants who receive support from carers who do not reside with them, Local Housing Authorities should take account of the applicant's need for a spare bedroom. However, welfare reform changes around housing benefit and Universal Credit mean that any room which is assessed to be spare may incur rental income not paid by the relevant benefit.

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

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

Care Leavers and persons aged 16 – 17

3.135 Local Authorities have a range of duties to care leavers who represent a particularly vulnerable group. Part 6 SSWWA governs looked after and accommodated children and care leavers in Wales. Section 107 requires that Pathway Plans must be prepared for children who are being looked after to ensure they move into suitable accommodation when they leave the care system. It is vital that operation of the accommodation scheme is linked to joint planning arrangements between Housing and Social Services to achieve this. This is a key group for floating support or other forms of housing support to enable occupation contracts to be maintained. Authorities are reminded that under Part 6 SSWWA , they are required in prescribed circumstances to assist in meeting the accommodation needs of care leavers, whether they are homeless or not.

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

Lone parents under 18

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

this aim, although the support may be provided by family and friends.

3.138 The allocation of appropriate housing and support should be based on consideration of the young person's housing and support needs, their individual circumstances and their views and preferences. Local Housing Authorities must ensure that the accommodation is suitable for babies and young children. Wherever possible, Local Housing Authorities should take account of education and employment needs and opportunities when identifying suitable accommodation.

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

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

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

3.142 In exceptional cases, it may be decided that supported housing would not be appropriate. Such a decision should only be made after careful consideration of the housing and support needs of that individual and their views and preferences. In such circumstances, Local 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, and relevant voluntary agencies and local providers.

3.143 Local Housing Authorities should also, in consultation with the relevant Social Landlords in their area, make provision for appropriate move-on accommodation for young parents who have been assessed as ready to leave supported accommodation. In some cases, where the young parent has made good progress, it may be appropriate for them to live independently before they reach the age of 18.

3.144 When allocating move-on accommodation to a young parent, the Local Housing Authority should consider whether they have any continuing support needs, in consultation with the young person, Social Services and relevant providers.

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

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

3.147 Authorities should not allow complications in granting appropriate occupancy rights to persons aged under 18 to inhibit them from offering accommodation. See the Annexes for guidance on occupancy agreements for 16 and 17 year olds.

Local Authority Duties under the Social Services and Well-being (Wales) Act 2014 (SSWWA2014)

3.148 The SSWWA 2014 provides the statutory framework to deliver the Welsh Government's commitment to integrated social services to support people of all ages and support people as part of families and communities.

3.149 It transformed the way social services are delivered, primarily through promoting people's independence to give them stronger voices in decisions made about them and more control over their lives.

3.150 The SSWWA 2014 introduced a new model of delivering care and support for individuals (adults and children) and support for carers. It requires Local Authorities to promote well-being and delivers arrangements for assessment, determinations of eligibility and care and support planning.

3.151 Part 3 of the SSWWA 2014 covers 'Assessing the Needs of Individuals'. S.19 of the SSWWA 2014 requires Local Authorities to assess the needs of an adult where it appears to the Local Authority that the adult has need for care and support.

3.152 S.21 of the SSWWA 2014 requires Local Authorities to assess the needs of a child for care and support where it appears that a child may need care and support in addition to or instead of the care and support provided by the child's family.

3.153 S.24 of the SSWWA 2014 requires Local Authorities to assess the needs of a carer where it appears to the Local Authority that the carer has need for support.

3.154 The purpose of an assessment for care and support, or support for carers, is to work with an individual, carer and family, and other relevant individuals to understand their needs, capacity, resources and the outcomes they need to achieve and then to identify how they can best be supported to achieve them.

3.155 The Regulations and Code of Practice for Part 3 of the SSWWA 2014 provide the detail on how the arrangements are delivered and the responsibilities of the Local Housing Authority and their partners. The following link provides access to the relevant Regulations and Code of Practice.

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

3.156 Part 4 of the SSWWA 2014 covers 'Meeting Needs' which covers the care and support needs of adults and children and support needs of carers.

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

3.158 Determining eligibility is not about giving a right to any one service, it is about guaranteeing access to care and support where without it the person is unlikely to achieve their personal well-being outcomes.

3.159 The national eligibility criteria are flexible and recognise that people will need help at different times in their lives. The 'eligibility status' is given to the need not to the person, the value of this being that services may be provided to people at certain times of need in their lives, or for certain elements of the care and support that they receive.

3.160 Where a Local Authority determines it necessary to meet the needs of the individual to protect that person from abuse or neglect or the risk of abuse or neglect (and in the case of a child, harm or the risk of harm) there is no need to consider or apply the determination of eligibility; the Local Authority must not apply that determination where to do so may prevent or delay the Local Authority from making a response designed to protect or safeguard the person concerned.

3.161 The Regulations and Code of Practice for Part 4 - 'Meeting Needs' - provide the detail on how the new arrangements will be delivered and the responsibilities of the Local Authority and their partners. The following link provides access to the relevant Regulations and Code of Practice.

Codes of Practice for the Social Services and… | Social Care Wales

Care and Support Planning

3.162 A Local Authority must provide and keep under review care and support plans for people, and support plans for carers, whose needs meet the eligibility criteria.

3.163 The care and support plan, or support plan for carers, must be developed in partnership with the individual to ensure there is an agreed understanding of how the needs will be met and the personal outcomes achieved.

3.164 The Regulations and Code of Practice for Part 4 of the SSWWA 2014 provide the detail on how the arrangements are to be delivered and the responsibilities of the Local Authority and their partners. The following link provides access to the relevant Regulations and Code of Practice.

Codes of Practice for the Social Services and… | Social Care Wales

3.165 Accommodation is a key factor to take into account when establishing how to meet an individual's needs and the extent to which the Local Authority may need to provide care and support, or support to carers, to meet identified needs. It is imperative that there is an integrated approach between Housing and Social Services Departments within Local Authorities to deliver the duties under the HWA 2014 and the SSWWA 2014.

People in or leaving the Armed Forces

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

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

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

3.169 In the light of this, the Welsh Government would also like to see Social Housing Grant funded Do It Yourself Homebuy targeted at service personnel provided they meet the other eligibility criteria for the scheme. Local Housing Authorities have discretion to disregard compensation payments whether they are lump sums or on- going payments.

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

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

Seriously injured and disabled servicemen

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

3.173 S.167(2) of the HA 1996 provides that, in framing their allocation scheme so as to determine priorities in the allocation of accommodation, Local Housing Authorities must ensure that reasonable preference is given to specified categories of applicants, including

people who need to move on medical or welfare grounds. S.167(2) further provides that Local Housing Authorities may frame their allocation scheme so as to give additional preference to people who fall within the reasonable preference categories and who have urgent housing needs.

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

Armed Forces and Mental Health

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

3.176 The Welsh Government would highlight the work of the Veterans NHS Wales. This service, funded by Welsh Government, provides veterans' therapists in each Local Health Board and offers evidence-based treatment for clients, who are able to self-refer or access the service via referral from a GP, charity or family member.

3.177 The Welsh Government is supportive of improving access to psychological therapies. A national action has also been commissioned which will enable Health Boards to ensure consistent provision of talking therapies. The funding will support the delivery of therapies - such as Cognitive Behavioural Therapy (CBT) and mindfulness - for people of all ages, and will include psychological therapies for veterans suffering from post-traumatic stress disorder.

Rough sleepers / Risk of being Street Homeless

3.178 Local Authority Single Integrated Plans and Rapid Rehousing Transition Plans have a key role to play in preventing homelessness and rough sleeping and in sustaining the reductions in rough sleeping. Access to housing will be vital for rough sleepers/street homeless and people at risk of sleeping rough/being street homeless.

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

Allocation schemes should be developed with strong links to such support services provided under local homelessness planning arrangements and Supporting People Regional Commissioning Plans and any other relevant regional strategic plans. In some areas rough sleepers can be housed directly into general needs occupation-contracts though a *'Housing First' approach, provided the person's housing support needs are addressed.

*The "Housing First" model was developed in the United States and has demonstrated high degrees of success in both housing and supporting those who are chronically street homeless with multiple and complex needs. It is founded on the principle of housing being a basic human right and provides permanent accommodation for people straight from the street. The model has no preconditions of addressing wider social care and support needs.

Registered sex offenders, violent and other sex offenders

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

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

3.182 When working with victims of sexual or violent offenders, where the victim previously resided with the perpetrator, allocation processes should take account of the risk to the victim in continuing to reside in an address known to both the perpetrator and the family of the perpetrator. Reallocation of accommodation should be considered in all such instances.

3.183 Local Housing Authorities will have a duty to work with prisoners prior to release under s.66 of the HWA 2014 and relevant social landlords will have a duty to co-operate with Local Authorities under S.95 of the HWA 2014. Relevant social landlords are expected to work with Local Housing Authorities to help prevent homelessness of prisoners upon release by supporting the resettlement process.

Agricultural Workers

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

i) the dwelling-house from which the worker is displaced is needed to accommodate another agricultural worker;

ii) the farmer cannot provide suitable alternative accommodation for the displaced worker; and

iii) they need to re-house the displaced worker in the interests of efficient agriculture.

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

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

Housing Options

Move On

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

Housing Related Support and Supporting People

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

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

Use of quotas in schemes for particular needs groups

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

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

3.191 Where a group of Authorities have common arrangements for receiving referrals from an outside agency, they will need to ensure that their individual allocation schemes are mutually compatible. The Welsh Government would particularly encourage Authorities to consider the use of quotas on a collective basis with neighbouring Authorities to contribute to addressing the needs of groups with significant housing needs, but who may not be long term residents of a particular area e.g. rough sleepers. Social Landlords should work in partnership with the

Local Housing Authority in order to ensure they are able to meet the housing needs of vulnerable groups.

Low Cost Home Ownership and Intermediate Rent

3.192 Local Housing Authorities need to give consideration to applicants whose level of need may not be appropriate for social rented housing but may qualify for other affordable housing options like Low Cost Home Ownership. Consideration needs to be given to the eligibility criteria for applicants who may qualify for these schemes. Local Housing Authorities may keep a separate list for these applicants or may award separate

criteria so these individuals can be identified from the general waiting list. For Local Housing Authorities, new affordable housing policies must be equality impact assessed, and evidence gathered on who is accessing these schemes. For information or assistance with engaging under represented and seldom reached groups, housing providers should contact organisations such as Tai Pawb, and TPAS Cymru.

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

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

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

Homebuy

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

3.197 Under the Welsh Government's Homebuy scheme, the homeowner raises and pays for the mortgage element (normally 70% of the value of the property). The remaining Homebuy loan (normally 30%) will be secured on the property; no rent or interest is paid on the loan by the homeowner. When a

Homebuy property is sold (or bought outright), the amount repaid is based on the market value of the property at the time. For example, if the loan was originally 30%, the amount repaid is 30% of the property's value at the time of repayment.

3.198 Further guidance is available on the Welsh Government's website on https://www.gov.wales/homebuy-wales

Intermediate Rent – including Rent First

3.199 Intermediate rent could offer more flexibility as regards tenure and therefore more choice in housing options. It can be used to expand housing supply and may provide further choice for people on housing waiting lists and those in housing need. Some

intermediate rent approaches seek to provide access to home ownership after a period of time.

3.200 The Welsh Government has issued guidance for Rent First – Intermediate Rent which can be accessed on the Welsh Government website, where details of eligibility criteria can be accessed. This guidance provides Local Housing Authorities and Social Landlords access to Social Housing Grant to support intermediate rent properties that meet particular requirements. A potential future purchase of properties by contract-holders is provided as an option if the provider chooses to include it. Rent First has recently been reviewed. A copy of the review can be assessed at Evaluation of Rent First | GOV.WALES

Tenure Neutral

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

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

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

Private rental

3.204 The Private Rented Sector is becoming increasingly central when considering housing options particularly given the long waiting lists for social housing. Consideration should be given to the Private Rented Sector where suitable when discussions are taking place around housing options. Rent Smart

Wales has information available to assist contract-holder living in, or looking to live in, the private rented sector.

https://www.rentsmart.gov.wales/en/

Advice and Information

Making applications

3.205 Applications for housing should be made on a standard form where possible, and not by letter or verbal enquiry. This does not apply to written requests for referrals from recognised agencies. Application forms should be accompanied by guidance notes that are easy to understand and in plain language. Translations of all forms and

notes should be available for applicants whose first language is not Welsh or English. Alternatively, Authorities might wish to provide applicants with access to translation or interpreting services. Help to complete forms should be provided for those who need it, such as people with low literacy levels. Other accessible formats should also be made available to cater for people with various communication needs (see Chapter 1 for advice on communication). Please note that applications under Part 2 of the HWA 2014 for homelessness and threatened with homelessness can be made by letter or verbally or via a third party.

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

The right to request general information

3.207 S.166(2) of the HA 1996 requires Local Housing Authorities to inform applicants that they have the right to certain general information as set out in in s.167(4A)(a), that is information:

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

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

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

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

3.209 S.167(4A) of the HA 1996 also requires Local Housing Authorities to inform applicants that they have the following rights about decisions which are taken in respect of their application:

i) the right to be notified in writing of any decision not to give an applicant any preference under the scheme because of unacceptable behaviour serious enough to make him/her (or a member of his/her household) unsuitable to be a contract-holder (see Chapter 1 for guidance on communication);

ii) the right, on request, to be informed of any decision about the facts of the applicant's case which has been, or is likely to be, taken into account in considering whether to make an allocation to him/her; and

iii) the right, on request, to review a decision mentioned in paragraph (i) or (ii) above or in respect of s.160A(9) regarding those who are ineligible or who may be treated as such on the grounds of unacceptable behaviour. The applicant also has the right to be informed of the decision on the review and the grounds for it (see Chapter 1 for guidance on communication).

Confidentiality

3.210 S.166(4) of the HA 1996 prohibits Local 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.

4. ALLOCATION SCHEME MANAGEMENT

The HA 1996 states:

Section 168 – Information about allocation scheme

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

Overview

4.1 In framing their allocation scheme, Local Housing Authorities need to ensure that it is compatible with the requirements of the Equality Act 2010 (EA 2010) including the Welsh Specific Duties, and that the scheme and any changes to it are subject to an equality impact assessment and monitoring. The Welsh specific duties are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and place specific duties on the Welsh Government and other specified authorities to publish a Strategic Equality Plan. Allocations schemes should also seek to incorporate key areas of the UN Convention of the Rights of Persons with Disabilities - in particular Article 19 (Living independently and being part of the community) and Article 28 (Adequate standard of living and social protection) - as well as the UN Convention on the Elimination of All Forms of Discrimination Against Women and the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (known as the ‘Istanbul Convention’).

4.2 Local Housing Authorities should bear in mind that the general public sector duty in the EA 2010 will mean that they will need, when carrying out their allocation functions and reviewing and revising their allocation policies, to consider the impact of their decisions on people with protected characteristics of age, race, disability, sex, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief or non-belief and gender re-assignment. Where Local Housing Authorities have delegated authorities or similar for specialised housing provision, including Accessible Housing Registers, it would be best practice to ensure those providers are fully compliant with the EA 2010 also. With regard to all types of housing, it should be possible to extract information relating to protected characteristics.

4.3 Local Housing Authorities must monitor letting outcomes under the allocation scheme and must ensure that this information is regularly made publicly available. This will help clarify who is being allocated social housing. This information should be published on the website and in newsletters to residents. This should apply to all housing provision, including Accessible and Adapted Housing.

Housing Registers

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

Accessible Housing Registers

4.5 The Welsh Government is committed to the concept and use of Accessible and Adapted Housing Registers. We believe they are a key tool to help ensure effective and appropriate use of homes which are suitable for disabled people.

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

4.7 The Welsh Government encourages Local Housing Authorities and other Social Landlords to set up Accessible Housing Registers which include both people and property databases. Their primary objective is to assist the matching of available property with the needs of disabled people seeking housing. In addition, they have the potential to enable the Local Housing Authority to make best use of existing resources (i.e. the adapted property), avoid unnecessary spending on adaptations and assist with the planning of future housing. The Welsh Government highlights the distinction between a Register and an Accessible Housing Service; the latter will include a significant element of housing service and support.

4.8 Accessible housing registers assist a Local Housing Authority's ability to make an effective contribution to care and support planning. By identifying needs and mapping provision, they will help Local Housing Authorities to meet the housing stock challenges currently faced when addressing housing need. Where an Accessible Housing Register or Accessible Housing Service exists, the Welsh Government would expect to see information related to accessible housing need stated in relation to Local Housing Market Assessments and similar strategic housing needs documents.Where a Local Housing Authority makes use of an Accessible Housing Register (or similar approach) disabled people must remain entitled to be eligible for housing which is not included on this register

(general needs non adapted housing). Local Housing Authorities must not significantly disadvantage the housing opportunities of disabled people by refusing to adapt a non-adapted property where no suitable alternative exists and it is reasonable to do so. This is a reflection of Article 19 of the UN Convention on the Rights of Persons with Disabilities (CRPD) – Living independently and being included in the community.

Common Housing Registers and Common Allocation Frameworks

4.9 The Welsh Government strongly encourages the development of common housing registers and Local Housing Authorities are urged to consider the benefits of establishing one with other Social Landlords operating in their areas, on the basis of full consultation with partner organisations. Engagement in the development and implementation of Common Housing Registers and Allocation Frameworks has been shown to be associated with improved co-operation with Social Landlords in regard to homelessness, and are thus a recommended element in tackling this issue. The Welsh Government would recommend consideration of incorporating an Accessible Housing Register provision within the Common Housing Register approach. Common Housing Registers have certain advantages:

i) they provide a single point of access and application for service users to all social housing in the area

ii) they help improve joint working between a Local Housing Authority and other Social Landlords and help in meeting strategic housing objectives

iii) they support the development of more strategically planned and integrated lettings schemes in an area

iv) they give a better understanding of the pattern of local housing needs

v) they can reduce void levels.

4.10 Ease of access and improved economic mobility for applicants to social housing can be further enhanced by cross-boundary or sub-regional lists across Local Housing Authorities.

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

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

4.13 Local Housing Authorities setting up common registers are reminded that the Welsh Government requires Registered Social Landlords to retain responsibility for their own allocations i.e. allocations are made in accordance with the social landlords policies and the requirements of the Welsh Government's regulatory framework.

4.14 Effective partnership working is essential. It can lead to common allocation frameworks and common allocation policies. Local Housing Authorities should adopt clearly specified management arrangements set out in formal agreements which allow for joint control and management of a Common Register or Allocation Framework, including clear arrangements for meeting the needs of people to whom the Local Housing Authority owes a homelessness duty.

4.15 Where a Local Housing Authority has transferred its stock to a transfer organisation it is important that the Authority and Social Landlord have a clear nomination agreement and effective arrangements for allocations as the Social Landlord will be the Local Housing Authority's primary, but not only, means of discharging its housing duty. This is supported by the duty to co-operate between Local Authorities and Registered Social Landlords and Private Registered Providers of Social Housing, under S.170 of the HA1996. Further information is available from the Welsh Government's Regulatory Framework (see Chapter 1) and the Welsh Government's Housing Transfer Guidelines 2009

Welsh Government Policy on pets in social housing

4.16 The Welsh Government has not developed a specific published policy on pets in social housing; however, we would ask Social Landlords to work towards a balance between the preferences of the individual and the needs of the wider community and provide clearly defined guidance that is flexible enough to allow pets to be kept on a case-by-case basis where the owner can meet the animal's welfare needs.

4.17 A flexible and common sense approach is required on all sides; this includes accommodation with shared entrances. Contract-holders should always seek the permission of the Social Landlord before they commit themselves to a pet.

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

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

4.20 Pets may be an area of particular importance for older people. The Society for Companion Animal Studies provides best practice in relation to the impact of pet ownership on the health and wellbeing of older people. (http://www.scas.org.uk/)

4.21 The Welsh Government would refer you to its pet welfare Codes of Practice produced under the provisions of the Animal Welfare Act (2006). The Codes offers practical advice to contract-holders in relation to the welfare of their animals. Animal welfare: pets | Sub-topic | GOV.WALES

Allocation Scheme Consultation

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

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

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

4.24 It would be best practice for a Local Housing Authority to ensure that organisations representing people with the various protected characteristics and marginalised groups are engaged and the needs of these people are addressed (groups such as substance misusers, Gypsies and Travellers, ex-offenders, disabled people). Local Housing Authorities can also consider informing or consulting existing contract-holders through their current consultation arrangements under s.105 of the HA 1985.

4.25 Consulting with a wide variety of stakeholders in the statutory, voluntary and community sectors as well as applicants, their advocates, local community councils, Public Service Boards, Housing Support Grant commissioners and recipients and the wider community will provide the opportunity to have people's views heard and allow the Local Housing Authority to raise awareness about the pressures on social housing and ensure that people have a better understanding of why certain groups are prioritised for social housing. Engagement at this level ensures that the Local Housing Authority's allocation scheme reflects local priorities and issues.

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

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

4.27 Engaging with local communities in the development of allocation policies can involve a variety of techniques including questionnaires, surveys, citizen panels and focus groups. Social media is now a recognised method of involvement and should be fully utilised. Local Housing Authorities should also consider drawing on good practice from within the housing sector and more broadly.

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

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

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

Consultation period

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

Elected Member and Board Member Involvement in Allocation Decisions

4.32 S.167 of the HA 1996 enables the Welsh Government to make regulations setting down principles within which Local Housing Authorities' allocation procedures must be framed. The Local Housing Authorities (Prescribed Principles for Allocation Schemes) (Wales) Regulations 1997 (SI 1997 No. 45) restrict a Local 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 Local Housing Authority or any sub-committee) at the time the allocation decision is made, when either the:

i) accommodation concerned is situated in their electoral ward; or

ii) the person subject to the decision has their sole or main residence in the member's electoral ward.

4.33 The Regulations do not prevent elected members' involvement in allocation decisions where the above-mentioned circumstances do not apply. They do not prevent a ward member from seeking or providing information on behalf of their constituents, or from participating in the decision-making body's deliberations prior to its decision. However, the elected member should be careful to ensure compliance with their Local Authority's Code of Conduct, when doing this. In particular, members should consider whether the Code of Conduct requires them to declare an interest before participating in such deliberations. If in any doubt, the advice of the Local Authority's Monitoring Officer should be obtained. Improperly conferring or attempting to confer an advantage on any person (such as, for instance, influencing housing allocations unfairly to benefit one's relatives or friends) would

amount to a breach of the Code. Elected members remain responsible for determining allocation policies that are compliant with the HA 1996 (as amended), this Code and the EA 2010. They are also responsible for monitoring allocation scheme implementation to ensure the operation of open and accountable systems that are compliant with policy objectives. The Regulations do not prevent elected members' involvement in policy decisions that affect the generality of a particular electoral ward's housing accommodation; for example, that allocation of units in a certain block of flats should not be let to older persons or to households including young children.

4.34 The Welsh Government recommends that Social Landlord Board Members are not involved in allocation decisions. Community Housing Cymru can assist Social Landlords when drafting Codes of Conduct for Board Members. Tai Pawb has also prepared a toolkit to assist with board diversity. The Regulatory Framework (see Chapter 1) can also assist with advice to Boards.

Offences Related to Information given or withheld by Applicants

4.35 S.171 of the HA 1996 (false statements and withholding information) makes it an offence for anyone seeking assistance from a Local Housing Authority under Part 6 of the HA 1996, to:

i) knowingly or recklessly give false information; or

ii) knowingly withhold information which the Local Housing Authority have reasonably required the applicant to give.

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

4.37 It is for individual Local 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:

i) any false information given on an application form for social housing;

ii) any false information given in response to subsequent review letters or other updating mechanisms; or

iii) any false information given or submitted by applicants during the proceedings of a review.

4.38 S.157 and S.158 of the RHWA 2016 enables a landlord to seek possession of an occupation contract pursuant to a 'breach of contract' if the landlord is induced to make the contract by means of a relevant false statement.

4.39 The Welsh Government commenced the Prevention of Social Housing Fraud Act 2013 in Wales in November 2013. The Prevention of Social Housing Fraud Act 2013 aims to enable Social Landlords to take a tougher approach on social housing fraud.

http://www.legislation.gov.uk/ukpga/2013/3/contents/enacted

4.40 There are various different types of occupation contract fraud; the Prevention of Social Housing Fraud Act 2013 is primarily concerned with strengthening the powers of Social Landlords to tackle contract-holders who sublet the whole of their dwellings for a profit. The policy rationale behind the Prevention of Social Housing Fraud Act 2013 is to ensure that social housing is occupied by those in the greatest housing need. The Prevention of Social Housing Fraud Act 2013 creates offences and makes other provisions relating to sub-letting and parting with possession of social housing.

4.41 The Prevention of Social Housing Fraud (Detection of Fraud) (Wales) Regulations 2014 came in to force in Wales on the 25 March 2014.

http://www.legislation.gov.uk/wsi/2014/826/contents/made

4.42 The Social Landlords' Crime and Nuisance Group's website holds useful information about the Prevention of Social Housing Fraud Act 2013. Note the Group are now known as Resolve Anti- Social Behaviour.
Home - Resolve - Antisocial Behaviour

Data Protection

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

Information Commissioner's Office

Public Services Ombudsman for Wales

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

4.45 Further information about the Public Services Ombudsman for Wales can be found at https://www.ombudsman.wales/

Monitoring and Evaluation

4.46 Local Housing Authorities and other Social Landlords must monitor allocations to determine, for example, the success of lettings plans and whether they are meeting equal opportunities obligations, and addressing the local housing need.

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

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

4.49 Allocations policies and procedures should be reviewed on a cyclical basis to ensure they are compliant with the law and good practice, including guidance for socially excluded groups. Ongoing monitoring of significant case law is necessary, as well as review of the impact of schemes in relation to local strategic objectives, and it would be good practice to review allocation policies at least every two years.

PART 2

HOMELESSNESS

5. STRATEGIC PLANNING OF HOMELESSNESS SERVICES

Housing Support Programme Strategy

5.1 Local Housing Authorities should develop a Housing Support Programme (HSP) Strategy every four years, with a mid-point review every two years, which will outline the strategic direction of the Local Housing Authority for housing support services. This should provide a single strategic view of the Local Housing Authority's approach to homelessness prevention and housing support services. As such, it would include both statutory homelessness functions funded through the revenue settlement and non-statutory preventative services funded through the Housing Support Grant (HSG).

5.2 Local Housing Authorities must ensure the HSP Strategy - as the single strategic document on housing support and homelessness prevention - also satisfies the existing statutory requirements for a homelessness strategy under Part 2 of the Housing (Wales) Act 2014. There is no requirement to produce a separate strategy.

5.3 Local Housing Authorities should also develop a local HSG Delivery Plan which should set out how they intend to deliver the priorities identified in the HSP Strategy through the HSG, and any other HSG delivery priorities, including spending and commissioning intentions.

Guidance is set out at Chapter 4 of the HSG Guidance

5.4 Strategic planning for the HSG should take into account how it can support delivery of the transformational shift required to move to a rapid re-housing approach and the specific guidance to be provided to Local Housing Authority in respect of this. Development of a Rapid Rehousing Transition plan by Local Housing Authorities should be a priority in HSP Strategies.

Rapid Rehousing

5.5 The Rapid Rehousing Transition Plan guidance sets out the main steps to take for the Local Housing Authority and partners to move away from the use of temporary accommodation to stable, sustainable models of accommodation and support. This will be different for each Local Housing Authority and depend on what the main challenges are.

5.6 The Transition to Rapid Rehousing is dependent upon a supply of housing that reflects the needs of the local population particularly households in temporary accommodation. Homelessness prevention teams will need to work closely with their colleagues responsible for housing strategy and housing supply/development teams to deliver capacity within the local housing market.

Some of the crucial elements to consider are:

- A detailed understanding of the level of housing and support needs, including the number of households in or waiting to move into temporary settings; how much and what type of housing is required to permanently house people; and who needs support, and at what level, to maintain their occupation contract
- a coordinated and strategic approach to identify sources of housing from Local Housing Authorities, other Social Landlords and landlords within the Private Rented Sector
- house-building programmes that factor in housing need, for example through Local Housing Market Assessments, housing prospectuses and regeneration plans
- Local Housing Authority allocation policies that prioritise households with no permanent home
- a multi-agency commitment to providing support, particularly by mental health and substance misuse services
- a comprehensive range of prevention activities, such as mediation and advice services
- people with lived experience of homelessness having a role in informing and co-producing plans and services within the transition to RRH.

5.7 It is fundamentally important that public services and Social Landlords take all opportunities to prevent homelessness. If rapid rehousing is coordinated with housing supply and, with the right support, evidence confirms that over time we can reduce our reliance on temporary accommodation and repeated homelessness can be prevented.

6. PARTNERSHIP WORKING

Introduction

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

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

The HWA 2014 states

Section 95 - Co-operation

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

a) the prevention of homelessness;

b) that suitable accommodation is or will be available for people who are or may become homeless;

c) that satisfactory support is available for people who are or may become homeless; and

d) the effective discharge of its functions under this Part.

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

a) be incompatible with the person's own duties, or

b) otherwise have an adverse effect on the exercise of the person's functions.

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

a) be incompatible with the person's own duties, or

b) otherwise have an adverse effect on the exercise of the person's functions.

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

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

a) a local housing authority;

b) a social services authority;

c) a registered social landlord;

d) a new town corporation;

e) a private registered provider of social housing;

f) a housing action trust.

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

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

8. In this section—

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

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

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

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

Guidance

Duty to Co-operate

6.3 S.95 of the HWA 2014 is a significant duty to co-operate and covers both strategic and operational functions. The presumption is placed clearly on the relevant service to co-operate unless it can demonstrate that the proposed action would be incompatible with its duties. Their reasons would have to be given in writing, and it would not be sufficient to say that there were other priorities that had to take precedence.

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

Partnership Working

Building successful partnerships

6.5 The successful development and delivery of the Homelessness Strategy (developed under S.50 of the HWA 2014) (the Strategy) will be dependent upon strong partnership arrangements with other statutory and voluntary sector organisations as well as the private rented sector. It may be appropriate to develop these partnerships within existing partnership arrangements, provided that there is a strong and distinct focus on homelessness and homelessness prevention, and that it includes relevant representation from each sector. This includes Regional Housing Support Collaborative Groups, on which statutory homelessness services ought to be represented. There should also be links to the local partnership arrangements for health and social care under Part 9 of the SSWWA 2014.

6.6 The partnership should have a continuing dialogue with a broad range of representative groups and interests, many of which will not be directly represented on the group. Partner organisations should be kept informed of progress in the development of homelessness strategy and planning. It is particularly important that the views of service users from diverse backgrounds are represented through these arrangements.

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

Working with Social Landlords

6.8 S.95 of the HWA 2014 places a duty on a relevant ‘person’ to co-operate with the Local Housing Authority in exercising their homelessness duties. They are essential partners and have a vital role to play in preventing and alleviating homelessness and supporting the Local Housing Authority in the delivery of its strategic housing role. Section 95(5) of the HWA 2014 defines a relevant ‘person’ in this context as:

- a local housing authority
- a social services authority
- a registered social landlord
- a new town corporation
- a private registered provider of social housing
- a housing action trust

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

6.10 Partnership working with Local Housing Authorities on homelessness has not always been maximised. Social housing stock already makes a central contribution to tackling homelessness, and there are many other examples where Social Landlords have initiated action to support Local Housing Authorities in tackling homelessness. With the increasing pressures on available housing resources, it is essential that Local Housing Authorities and other Social Landlords work exhaustively and systematically to enhance their collaboration to meet the homelessness duties set out in the HWA 2014.

Partnership Working across Policy Areas

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

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

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

Working with Housing Related Support Providers

6.13 Local Housing Authorities will need to consider how best to maintain a strong relationship between the homelessness strategic functions and the operational planning tasks of housing related support services by local Housing Support Grant (HSG) teams. Local Housing Authorities are expected to focus HSG funded services on the objective of preventing homelessness, and the monitoring of the impact of these services should be linked to homelessness prevention monitoring.

Domestic Abuse

6.14 Tackling domestic abuse and supporting victims/survivors is an area where partnership working is essential. Community Safety Partnerships ("CSPs") in Wales are key to the implementation of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. The coordination of domestic abuse activity within Local Authorities and CSPs is greatly enhanced where there is a strategic lead in place. Strategic leadership and working collaboratively across Local Authority departments and with other public sector partners is essential for the eradication of domestic abuse.

6.15 One of the requirements of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 is for Local Authorities and Health Boards to work in partnership to develop and publish local strategies which will be underpinned by a local needs assessment. Social Landlords will wish to seek opportunities to ensure that objectives on tackling homelessness can be achieved for victims of domestic abuse. Homelessness services play a key role in helping to provide support and protection to victims of domestic abuse and their families when they are at their most vulnerable. Support may include provision of information and advice, securing accommodation or accessing other available support. Given that during 2024-25, the number of households found to be eligible, homeless subject to duty to help to secure accommodation (section 73), 20% of those had 'breakdown of relationship with partner' reported as the main reason for loss of their last settled home, effective partnership working between Local Housing Authority homelessness services and domestic abuse, sexual violence and gender-based services is vital. Services are expected to engage with Community Safety Partnerships and third sector frontline services to identify how best to support individuals in this situation, and where appropriate feed into existing care pathways.

Health and Social Care Partnerships

6.16 Regional Partnership Boards established under the SSWWA 2014 have responsibility for planning integrated care and support services, which will impact on planning for homeless services. There are inextricable links between homelessness and poor health, with homeless people more likely to suffer ill health and have difficulties in accessing heath and care and support services.

Duties of co-operation between Local Health Boards and Local Authorities:

6.17 S.12(3) of the National Health Service (Wales) Act 2006 read together with S.82(1) of the National Health Service Act 2006 places Local Health Boards under a duty to co-operate with Local Authorities and allows Welsh Ministers to give direction, through guidance. Joint guidance on the duties of co-operation expected between Local Health Boards and Local Authorities with regard to homeless persons will be issued in due course.

Criminal Justice

6.18 Local Housing Authorities need to work in partnership with criminal justice agencies and Community Safety Partnerships in taking a strategic approach to tackling homelessness and crime. A clear understanding of local and regional links and responsibilities needs to be in place with prison and probation services under His Majesty's Prison and Probation Service (HMPPS) with the aim of delivering the National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate. These connections also need to be clarified with voluntary agencies working with offenders.

6.19 There are close links between the *National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate and the National Pathway for care and support of adults in the secure estate and National Pathway for care and support of children and young people in the secure estate.*

People in custody

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

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

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

6.23 A key partner in enabling the delivery of this code of guidance is His Majesty's Prison and Probation Service (HMPPS). HMPPS is an executive agency of the Ministry of Justice and responsible on behalf of the Secretary of State for Justice for commissioning and delivering prison and probation services in England and Wales.

6.24 For the purpose of this Code the use of HMPPS in Wales will generically apply to include prison and probation services in Wales, including the contracted out services.

6.25 To accompany this Code of Guidance, the Welsh Government has developed the National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate. The Pathway provides a practical guide to delivering accommodation services to support prisoners' resettlement within the meaning of the Code. Youth Justice Service (known in legislation as Youth Offending Teams) are already based on a partnership model, and also need to be supported with clear pathway arrangements for young offenders.

6.26 Further detail on supporting prisoners can be found in Chapter 12 and the National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate.

Armed Forces Veterans

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

Private Rented Sector

6.28 The private rented sector has a crucial role in the provision of accommodation for people who are at risk of homelessness. It is essential that Local Housing Authorities take a strategic approach to its engagement with the sector, aiming to maximise the availability of well managed, accessible and affordable accommodation. Local Housing Authorities need a clear approach involving a menu of incentives and support to offer private landlords. The range of options will need to be effective in attracting landlords and maintaining their support. Local Housing Authorities will have a range of functions dealing with the sector, and the co-ordination of these functions should take full account of this objective. There is growing evidence that with the right support, more people from diverse backgrounds such as people with disabilities and vulnerable people, including former rough sleepers, can be appropriately housed in the sector.

6.29 Part 1 of the HWA 2014 created a database of registered rented properties and licensed agents and landlords in each Local Authority area. This resource will allow Local Housing Authorities to engage with landlords and offer their services to the sector. Landlords and agents who are licensed will have been trained and deemed 'fit and proper' and so should be managing occupation contracts to a good standard. They also will have to adhere to a Code of Practice. Part 1 and Part 2 of the HWA 2014 should complement each other; Local Housing Authorities must ensure landlords and agents they are working to meet their legal obligations.

6.30 Local Housing Authorities should develop a range of measures to promote the effectiveness of the sector in helping reduce homelessness, including support for landlords, occupation contract sustainment, housing benefit liaison, investment in the sector to incentivise access, and private rented sector access services such as social lettings, leasing schemes and bond schemes. This is supported by numerous good practice examples. The Welsh Government will continue to support understanding and implementation of good practice in this area. Tai Pawb can offer support to private landlords, who are members, in connection to equality and diversity and their obligations under the EA 2010.

7. ELIGIBILITY

Introduction

The purpose of this section is to explain which persons are eligible to receive the services associated with relevant duties in Chapter 2 of Part 2 of HWA 2014. Eligibility is to be determined by virtue of section 61 and Schedule 2 of the HWA 2014, and the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 (as amended) ("the Eligibility Regulations").

Section 61 – Eligibility for help under this Chapter

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

AND

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

Persons not eligible for help

1. A person is not eligible for help under section 66, 68, 73 or 75 if he or she is a person from abroad who is ineligible for housing assistance.

2. A person who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is not eligible for housing assistance unless the person falls within a class of persons prescribed by regulations made by the Welsh Ministers or the Secretary of State.

3. No person who is excluded from entitlement to universal credit or housing benefit by section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) may be included in any class prescribed under sub-paragraph (2).

4. The Welsh Ministers or the Secretary of State may by regulations provide for other descriptions of persons who are to be treated for the purposes of Chapter 2 of Part 2 as persons from abroad who are ineligible for housing assistance.

5. A person who is not eligible for housing assistance is to be disregarded in determining for the purposes of Chapter 2 of Part 2 whether a person failing within sub-paragraph

6. –

a) is homeless or threatened with homelessness, or

b) has a priority need for accommodation.

c) A person falls within this subsection if the person –

d) falls within a class prescribed by regulations made under sub-paragraph (2), and

e) is not a person who, immediately before Implementation Period completion day, was—

vi) a national of an EEA State or Switzerland, and

vii) within a class prescribed by regulations made under sub-paragraph (2)

which had effect at that time.

Asylum-seekers and their dependants: transitional provision

1) Until the commencement of the repeal of section 186 of the Housing Act 1996 (asylum-seekers and their dependants), that section applies to Chapter 2 of Part 2 of this Act as it applies to Part 7 of that Act.

2) For this purpose, in section 186 of the Housing Act 1996 –

a) the reference to section 185 of that Act is to be interpreted as a reference to paragraph 1, and

b) the reference to "this Part" is to be interpreted as a reference to Chapter 2 of Part 2 of this Act and not Part 7 of that Act.

1) The Secretary of State must, at the request of a local housing authority, provide the authority with such information as it may require –

a) as to whether a person is a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies, and

b) to enable it to determine whether such a person is eligible for help under Chapter 2 of Part 2.

2) Where that information is given otherwise than in writing, the Secretary of State must confirm it in writing if a written request is made to the Secretary of State by the authority.

If it appears to the Secretary of State that any application, decision or other change of circumstances has affected the status of a person about whom information was previously provided to a local housing authority under this paragraph, the Secretary of State must inform the authority in writing of that fact, the reason for it and the date on which the previous information become

Overview

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

7.2 Local Authorities should ensure that staff who are required to screen housing applicants in respect of eligibility for assistance are given training in the complexities of the housing provisions, the Local Housing Authority's duties and responsibilities under equalities legislation (e.g. EA 2010) and how to deal with applicants in a sensitive manner. Legislation on immigration and related case law is subject to frequent change, with consequential changes for eligibility for housing assistance under HWA 2014.

7.3 The Welsh Government's intention is to reflect consistency with UK immigration policy and any retained European legislation in its regulations on eligibility. The main principles within HWA 2014 and the Eligibility Regulations which relate to eligibility for homelessness are set out below (Regulations 5 and 6 are relevant to the discharge of the main duties under Chapter 2 of Part 2 of HWA 2014). These principles include the following:

- persons subject to immigration control are not generally eligible for homelessness assistance other than as provided for in exceptions set out in the Eligibility Regulations;
- other persons from abroad not subject to immigration control are eligible other than as provided for in exceptions set out in the Eligibility Regulations; and
- persons who have no right to reside in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland ("the Common Travel Area") are generally ineligible for assistance.

The Eligibility Regulations are subject to amendment by the Welsh Ministers and therefore an up-to-date version of the Eligibility Regulations should always be used to assess eligibility.

7.4 Section 45 of the Border Security, Asylum and Immigration Act 2025 clarifies the position of persons holding status under the EU Settlement Scheme (EUSS). Persons who hold EUSS status (including EU, EEA and Swiss nationals and their family members) must be treated as having rights under the Withdrawal Agreement or, where relevant, the Separation Agreement, for so long as they hold that status.

For the purposes of determining eligibility for homelessness assistance, Local Housing Authorities must proceed on the basis that such applicants benefit from those rights throughout the period that their EUSS status is held.

7.5 Local housing authorities should not apply additional eligibility tests or requirements to applicants with EUSS status where doing so would be inconsistent with the recognition of their rights under the relevant Agreements. Where an applicant holds EUSS status, this should be the starting point for the eligibility assessment.

7.6 In assessing application from persons with EUSS status, local housing authorities must therefore consider both the eligibility provisions in domestic legislation and any applicable rights arising under the Withdrawal Agreement.

Providing information, advice and assistance

7.7 In accordance with section 60 of the HWA 2014, Local Housing Authorities have a statutory duty to ensure there is a service provided to provide information, advice and assistance to access help to anyone in its area, or anyone with a local connection to its area, who present to them for assistance, including people who are ineligible for other housing assistance under Chapter 2 of Part 2 of the HWA 2014.

7.8 Please see chapter 9 for guidance on providing information, advice and assistance.

Eligible Categories – main housing duties

7.9 The following are the main categories of eligible applicants to whom a Local Housing Authority may offer housing assistance under Chapter 2 of Part 2 of the HWA 2014, taking account of the applicant's nationality and immigration status.

British Citizens

7.10 Generally British citizens are eligible for housing assistance provided they are habitually resident in the Common Travel Area. If an applicant is a British citizen returning from a period of residence abroad or is coming to the UK for the first time, the rules relating to 'other persons from abroad' apply.

European Economic Area ("EEA") Nationals

7.11 As set out in paragraph 7.5, persons holding status under the EU Settlement Scheme benefit from rights under the Withdrawal Agreement or Separation Agreement for so long as that status is held. The provisions of section 7(1) of the Immigration Act 1988 and the Asylum and Immigration Act 1996 continue to be relevant in determining the treatment of certain EEA nationals and their family members who have citizens' rights protected by those Agreements. This ensures that EEA nationals and their family members who:

i) acquired limited leave to enter and remain in the UK (also known as 'pre-settled status') by virtue of Appendix EU of the Immigration Rules ("the EU Settlement Scheme");

ii) were frontier working in the UK prior to 31st December 2020; or

iii) were lawfully residing in the UK by 31st December 2020, but had still to apply to, or acquire status under, the EU Settlement Scheme before the deadline of 30th June 2021, and covered by the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020

continue to be treated as 'persons not subject to immigration control' where this would have been the case prior to Brexit, so that their eligibility for housing assistance can be judged on the basis of Regulation 6 of the Eligibility Regulations as was the case prior to 31st December 2020.

7.12 EEA nationals, and their family members, granted indefinite leave to enter or remain (also known as 'settled status') under the EU Settlement Scheme, do not need the

exemptions to apply to them. Their eligibility should be judged on the basis of Class C of Regulation 5 of the Eligibility Regulations, as is the case for persons subject to immigration control who have been granted indefinite leave to remain. In general, they should be eligible provided they can demonstrate habitual residence. Please see the section titled 'Persons subject to immigration control' below for further guidance.

EEA Nationals and the AT Judgment

7.13 In some cases, particularly where an applicant hold pre-settled status under the EU Settlement Scheme but is not exercising a qualifying right to reside, eligibility may not be established solely by reference to rights rights under the Withdrawal Agreement or Separation Agreement. In such cases a Local Housing Authority must consider whether refusal of assistance would expose the applicant to an actual and current risk of a breach of their rights under the EU Charter of Fundamental Rights, as it applies by virtue of the Withdrawal Agreement. This assessment will not be required in all cases involving EUSS status, but may arise in particular circumstances, including where the applicant holds pre-settled status without a qualifying right to reside.

7.14 Following the Court of Appeal judgment in SSWP v AT [2023], a local housing authority must assess whether refusal would breach:

- Article 1 – Human dignity
- Article 7 – Respect for private and family life
- Article 24 – Rights of the child
- Article 35 – Health care
- Article 21 – Non-discrimination

7.15 The Charter rights listed above are provided as examples only and do not constitute an exhaustive list of the rights that may be engaged. Local housing authorities must consider all relevant Charter rights as appropriate to the circumstances of the individual case.

7.16 A local housing authority must assess whether refusal of assistance would expose the applicant to an actual or current risk of a breach of the applicant's Charter rights, particularly Article 1. This includes assessing whether the applicant is able to meet their most basic housing needs, such as access to safe and secure accommodation.
In reaching a view on whether there is an actual and current risk of a breach of Charter rights, the local housing authority must carry out an individualised assessment of the applicant's circumstances, taking account of relevant factors including:

- Risk of destitution or street homelessness
- Access to benefits or other financial support
- Presence of children or vulnerable adults
- Health conditions, caring responsibilities or other vulnerabilities that may prevent employment

7.17 Where a local housing authority concludes that refusal of assistance would expose the applicant to an actual and current risk of a breach of their Charter rights, the applicant must be treated as eligible for assistance.

Persons Subject to Immigration Control

7.18 Some persons subject to immigration control may nevertheless be eligible for housing assistance where they fall within an exempt category prescribed in the Eligibility Regulations.

7.19 Certain persons from abroad, including those not subject to immigration control, may also be eligible for housing assistance even where they do not meet the habitual residence test, where this is provided for in regulations. These include, but are not limited to, persons with rights protected under the Withdrawal Agreement (including some persons with pre-settled status), persons with retained worker or self-employed status (and their family members), and persons granted leave under humanitarian or temporary protection routes.

7.20 Local housing authorities should ensure that eligibility assessments take account of the full range of categories and exemptions set out in the Eligibility Regulations and relevant immigration legislation. This includes consideration of family members who may derive rights from a relevant person, where provided for in law, and rights arising under the Withdrawal Agreement or Separation Agreement

7.21 Regulation 5 of the Eligibility Regulations sets out the categories of people subject to immigration control who are eligible to receive housing assistance under S.66, S.68, S.73 or S.75 of the HWA 2014, as follows

i) **Refugees** – A person granted refugee status when his or her request for asylum is accepted is eligible for housing assistance.

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

iii) **Indefinite leave to remain** - A person with current leave to enter or remain in the UK with no condition or limitation, and who is habitually resident in the Common Travel Area will be eligible for housing assistance. This includes EEA nationals with 'settled status'. However, where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the person's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK – or the date of the sponsorship undertaking, whichever is the later – for the person to be eligible. Where a sponsor died within the first five years, the person would be eligible.

iv) **Humanitarian Protection** – A person who has been granted Humanitarian Protection under the Immigration Rules is eligible for housing assistance. Humanitarian Protection is granted to non European Union citizens who do not meet the strict definition of refugee but who have international protection needs.

v) **Asylum Seekers** - Some asylum seekers whose claim for asylum was made before 3 April 2000 may be eligible for assistance.

vi) **Certain Afghan citizens** - An Afghan citizen who as a result of serving the UK Government has been granted permission to relocate to the Common Travel Area and who is habitually resident in one of those areas will be eligible for housing assistance.

vii) **Human Rights grounds** - A person who has limited leave to enter or remain in the UK on family or private life grounds under Article 8 of the European Convention of Human Rights, and who is not subject to a condition requiring that person to maintain and accommodate themselves (and any person who is dependent on that person) without recourse to public funds is eligible for housing assistance.

viii) **Unaccompanied asylum-seeking children** – A child who is habitually resident in the Common Travel Area and who has been relocated to the UK under section 67 of the Immigration Act 2016 and has limited leave to remain under paragraph 352ZH of the Immigration Rules is eligible for housing assistance.

ix) **Calais Leave** - A person who is habitually resident in the Common Travel Area and has Calais Leave to remain under paragraph 352J of the Immigration Rules is eligible for housing assistance.

x) **Stateless persons** - A person who is habitually resident in the Common Travel Area and who has limited leave to remain in the UK as a stateless person under paragraph 405 of the Immigration Rules is eligible for housing assistance. Stateless persons are individuals who are not, under the law, considered as a national of any State and are unable to live permanently in any other country.

xi) **Relevant Hong Kong British Nationals** - A person who has limited leave to enter or remain in the UK by virtue of Appendix Hong Kong British National (Overseas) of the Immigration Rules, whose leave to enter or remain is not subject to a condition requiring that person to maintain and accommodate themselves (and any person who is dependent on that person) without recourse to public funds, and who is habitually resident in the Common Travel Area is eligible for housing assistance.

xii) **Afghan Relocations and Assistance Policy (or previous scheme)** - A person who is granted leave to enter or remain in the UK in accordance with the Immigration Rules where such leave is granted by virtue of (a) the Afghan Relocations and Assistance Policy; (b) the previous scheme for locally-employed staff in Afghanistan, or (c) with leave to enter or remain in the UK outside those schemes, and who left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021 is eligible for housing assistance. The person in category (c) must not be subject to a condition requiring that they maintain and accommodate themselves (and any person who is dependent on them), without recourse to public funds. Where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the person's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK – or the date of the sponsorship undertaking, whichever is the later – for the person to be eligible. Where a sponsor died within the first five years, the person would be eligible.

xiii) **Ukraine Scheme** - A person who has been granted leave to enter or remain in the UK by virtue of Appendix Ukraine Scheme of the Immigration Rules is eligible for housing assistance.

xiv) **Victims of Human Trafficking** - A person who has temporary leave to remain in the UK granted in accordance with Appendix Temporary Permission to Stay for

Victims of Human Trafficking or Slavery of the Immigration Rules is eligible for housing assistance.

xv) **Relevant Sudanese residents** - A person who was residing in Sudan before 15 April 2023, left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan, and has leave to enter or remain in the UK given in accordance with the Immigration Rules is eligible for housing assistance. The person must not be subject to a condition requiring that person to maintain and accommodate themselves (and any person who is dependent on that person) without recourse to public funds. Where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the person's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK – or the date of the sponsorship undertaking, whichever is the later – for the person to be eligible. Where a sponsor died within the first five years, the person would be eligible.

xvi) **Relevant residents of Isreal, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon (October 2023)** - A person who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7 October 2023, who left those areas in connection with the Hamas terrorist attack in Israel on 7 October 2023 or the violence which rapidly escalated in the region following the attack, and has leave to enter or remain in the UK given in accordance with the Immigration Rules is eligible for housing assistance. The person must not be subject to a condition requiring that person to maintain and accommodate themselves (and any person who is dependent on that person) without recourse to public funds. Where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the person's maintenance and accommodation, five years must have elapsed since the person's arrival in the UK – or the date of the sponsorship undertaking, whichever is the later – for the person to be eligible. Where a sponsor died within the first five years, the person would be eligible.

xvii) **Victims of Domestic Abuse** – a person who has indefinite leave to enter the United Kingdom by virtue of Appendix Victim of Domestic Abuse of the Immigration rules in circumstances where the person is victim of transnational marriage abandonment.

xviii) **Lifting of 'NRPF' conditions** – a person who has limited leave to enter or remain in the United Kingdom and who, after making a change of conditions application, has had their 'no recourse to public funds' condition lifted by the Home Office in accordance with section 3(1)(c)(ii) of the Immigration Act 1971 (other than persons in Class G or Class K of Regulation 5)

xix) **Relevant residents of Isreal, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon (June 2025)** – a person who was residing in the West Bank, the Gaza Strip or East Jerusalem on or before 23rd June 2025, left those areas in connection with the conflict between Isreal and Iran which escalated in June 2025 and has leave to enter or remain in the UK given in accordance with the Immigration Rules is eligible for housing assistance. The person must not be subject to a condition requiring that person to maintain and accommodate themselves (and any person who is dependent on that person) without recourse to public funds. Where the leave to enter or remain was granted on an undertaking that a sponsor would be responsible for the person's maintenance and accommodation, five years must have elapsed since the person's arrival in

the UK – or the date of the sponsorship undertaking, whichever is the later – for the person to be eligible. Where a sponsor died within the first five years, the person would be eligible. The person must have made an application for housing assistance under Part 7 of HA 1996 within 6 months beginning with the date on which His Majesty's Government first published advice to British Nationals to leave Isreal, the West Bank, the Jaza Strip or East Jerusalem or within 6 months of the first evacuation of those areas, whichever is later.

Other Persons from Abroad

7.22 In general, other persons from abroad who are not subject to immigration control are eligible for housing assistance unless prescribed as ineligible in regulations by the Welsh Ministers. This includes British nationals returning from a period of residence abroad or coming to the UK for the first time.

7.23 Regulation 6 of the Eligibility Regulations provides that a person from abroad who is not subject to immigration control will be ineligible if they are not habitually resident in the Common Travel Area, subject to certain exceptions. The exceptions are set out in Regulation 6(2) and provide that the following people from abroad do not need to pass the habitual residence test:

i) a worker or their family member

ii) a self-employed person or their family member

iii) a person with a right to reside permanently in the UK by virtue of regulation 15(1)(c), (d) or (e) of the EEA Regulations; that is

- a worker or self-employed person who has ceased activity;
- the family member of a worker or self-employed person who has ceased activity provided (1) the family member was a family member when the activity ceased and (2) at that point the family member enjoyed a right to reside on the basis of being the family member of that worker or self-employed person; or
- the family member of a worker or self-employed person where (1) the worker or self-employed person has died, (2) the family member resided with the worker or self-employed person immediately before the death and (3) the worker or self employed person had resided continuously in the UK for at least 2 years prior to their death, or their death resulted from an accident at work or an occupational disease

iv) a person who is in the UK as a result of that person's deportation, expulsion or other removal by compulsion of law from another country to the UK

v) A frontier worker or their family member, provided the family member has a right to reside by virtue of having been granted limited leave to enter or remain in the UK under the Immigration Act 1971 by virtue of Appendix EU to the immigration rules made under section 3 of that Act

vi) a person who left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021

vii) a person who was residing in Ukraine immediately before 1 January 2022 and who left Ukraine in connection with the Russian invasion which took place on 24 February 2022

viii) a person who was residing in Sudan before 15 April 2023 and left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan

ix) a person who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7 October 2023 and who left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon in connection with the Hamas terrorist attack in Israel on 7 October 2023 or the violence which rapidly escalated in the region following the attack.

A person who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon on or before 23rd June 2025, left those areas in connection with the conflict between Isreal and Iran which escalated in June 2025, and made an application for housing assistance under Part 7 of HA 1996 within 6 months beginning with the date on which His Majesty's Government first published advice to British Nationals to leave Isreal, the West Bank, the Jaza Strip or East Jerusalem or within 6 months of the first evacuation of those areas, whichever is later

7.24 Regulation 6 further provides that a person who falls into one of the following categories is also to be treated as a person from abroad who is ineligible for an allocation of accommodation:

i) a person whose only right to reside in the UK is derived from their status as jobseeker or as the family member of a jobseeker

ii) a person whose only right to reside in the UK is an initial right to reside for a period not exceeding three months under regulation 13 of the EEA Regulations

iii) a person whose only right to reside in the UK is a derivative right to reside under regulation 16(1) of the EEA Regulations, but only in a case where the right exists under that regulation because the applicant satisfies the criteria in regulation 16(5) of those Regulations, that is:

- the person is a primary carer of a British citizen
- the British citizen is residing in the UK and
- The British citizen would be unable to reside in the UK or in any other EEA state if the person left the UK for an indefinite period

iv)a person whose only right to reside in the Common Travel Area is a right equivalent to paragraphs (i) to (iii) above.

* These rights were added to reflect the decision of the Court of Justice of the European Union in the case of C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm) and the subsequent Immigration (European Economic Area) (Amendment) (No 2) Regulations 2012 made by the Home Office.

7.25 These rules at paragraph 7.14 do not apply if the right to reside is limited leave to enter or remain in the UK under the Immigration Act 1971 by virtue of Appendix EU to the Immigration Rules, or leave to enter the UK by virtue of an entry clearance that was granted under Appendix EU (Family Permit) to the Immigration Rules.

The Habitual Residence Test

7.26 When deciding whether a person meets the habitual residence test, consideration must be given to all the facts in a common sense way. There is no statutory definition of “habitual residence” and therefore whether a person is habitually resident or not will be a question of fact to be decided in the circumstances. The most important factors for habitual residence are period of residence, continuity and nature of actual residence. The conditions and general principles pertaining to the Habitual Residence Test can be found in Chapter 2 – Eligibility for an Allocation.

7.27 Exemptions from the Habitual Residence Test

The following groups are exempt from the habitual residence test and are eligible even if not habitually resident:

- Workers and self-employed persons with pre-settled status.
- Family members of such persons.
- Frontier workers and their family members.
- Persons relocated due to conflict or humanitarian crises (e.g. Ukraine, Sudan, Israel/Gaza).
- Persons deported or removed to the UK by law.
- Victims of domestic abuse with indefinite leave.

Additional categories of persons exempt from the habitual residence test

The following persons are also eligible even if not habitually resident:

- Croatian nationals treated as workers under Regulation 6(1) of the EEA Regulations.
- Persons with a permanent right to reside under Regulation 15(1)(c), (d), or (e).
- Persons deported or removed to the UK by law.
- Persons relocated from Afghanistan, Ukraine, Sudan, Israel/Gaza due to conflict or humanitarian crisis.

Procedures for determining eligibility of persons from abroad

7.28 Authorities will need to ensure that they have procedures in place to carry out appropriate checks on applicants and ensure they do not discriminate on the basis of race, nationality, ethnic origins or any of the other protected characteristics as defined in the EA 2010. Authorities should monitor their performance in screening housing applicants for immigration status to ensure that members of ethnic minorities who are eligible for

assistance are not denied housing and do not experience unreasonably long delays while their application is considered. In devising such procedures, Authorities should have due regard to the information contained in this Code.

7.29 If there is any uncertainty about an applicant's immigration status, Local Housing Authorities are recommended to contact the Home Office. Before doing so, the applicant should be advised that an inquiry will be made if at this stage the applicant prefers to withdraw his or her application, no further action will be required.

7.30 Local Housing Authorities should ensure staff who are required to screen housing applicants about eligibility for housing assistance are given training in the complexities of the housing provisions, the Local Authority's duties and responsibilities under the EA 2010 and how to deal with applicants in a sensitive manner.

7.31 Local Housing Authorities should ensure that language and interpretation support is available for those applicants who have difficulty speaking or reading English, particularly before discharging duties or making adverse decisions. Consideration should be given to identifying ethnic origin and language of choice, producing information in a variety of minority languages, carefully channelling information so that it reaches its target audience; and employing staff who can speak minority ethnic languages. When interpretation support is provided this should be a professional service and it is not appropriate to rely on family, community members, or non-professional translation services. This is important due to the nature and sensitivity of the information being sought.

8. DEFINITION OF HOMELESSNESS AND THREATENED WITH HOMELESSNESS

Introduction

8.1 The purpose of this section is to explain the definitions of 'homelessness' and 'threatened with homelessness' for the purpose of the duties in the HWA 2014.

The Act states

Section 55 - Meaning of homeless and threatened homelessness

1. A person is homeless if there is no accommodation available for the person's occupation, in the United Kingdom or elsewhere, which the person—

a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,

b) has an express or implied licence to occupy, or

c) occupies as a residence by virtue of any enactment or rule of law giving the person the right to remain in occupation or restricting the right of another person to recover possession.

2. A person is also homeless if the person has accommodation but—

a) cannot secure entry to it, or

b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where the person is entitled or permitted both to place it and to reside in it.

3. A person is not to be treated as having accommodation unless it is accommodation which it would be reasonable for the person to continue to occupy.

4. A person is threatened with homelessness if it is likely that the person will become within 56 days.

Guidance on Homelessness

8.2 Under S.55 (1)-(3) of the HWA 2014 a person is homeless if they have no accommodation in the UK or elsewhere which is available for his or her occupation and which that person has a legal right to occupy. A person is also homeless if they have accommodation but cannot secure entry to it, or the accommodation is a moveable structure, vehicle or vessel adapted for human habitation (such as a caravan or house

boat) and there is nowhere it can be placed in order to provide accommodation. A person who has accommodation is to be treated as homeless where it would not be reasonable for them to continue to occupy that accommodation.

Threatened with Homelessness

8.3 Under S.55(4) of the HWA 2014, a person is threatened with homelessness if it is likely that they will become homeless (per the above definition) within the next 56 days. In practice, most applicants will be threatened with homelessness when they apply for help, rather than actually homeless. Local Housing Authorities must act immediately to assess their housing needs and render assistance if they are eligible. The HWA 2014 is based on the assumption that most applicants will be assisted at this stage, so it is vital that Local Housing Authorities engage proactively with people at risk of homelessness and seek to identify them as early as possible. It is important to note the threshold for an assessment under S.62 of the HWA 2014 (the Assessment) to be carried out is very low and Local Housing Authorities only need to consider if the applicant may be threatened with homelessness to trigger the assessment. The purpose of the Assessment is primarily to satisfy a Local Housing Authority that the threat of homelessness exists.

8.4 In many cases it will not be clear exactly when the person may lose their home, particularly if they only have a licence to occupy. If it is unclear when the right to occupy may be withdrawn, but it is a realistic threat in the near future, Local Housing Authorities should assume that the duty to act is triggered. Where legal action for repossession is pending, Local Housing Authorities should not assume that legal delays mean that the person is not threatened with losing their home within 56 days, but rather that their home is under threat and that the duty to help prevent applies.

Accommodation Available for Occupation

8.5 S.56 of the HWA 2014 Act provides that accommodation is available for a person to occupy only if it is available for occupation by them together with:

i) any other person who normally resides with them as a member of the family, or

ii) any other person who might reasonably be expected to reside with them.

8.6 The first group (i) covers those members of the family who normally reside with the applicant. The phrase ‘as a member of the family’, although not defined, will include those with close blood or marital relationships, cohabiting partners (including same sex partners), adopted or fostered children and legal guardianship, and where such a person is an established member of the household.

8.7 The second group (ii) relates to any other person and includes those who may not have been living as part of the household at the time of the application, but whom it would be reasonable to expect to live with the applicant as part of his or her household. Persons in the second group might include a companion or carer for an elderly or disabled person for example. The second group will also include those members of the family who were not living as part of the household at the time of the application, but who nonetheless might reasonably be expected to form part of it.

8.8 It is for the Local Housing Authority to assess whether any person might reasonably be expected to live with the applicant and there will be a range of situations which the Local Housing Authority will need to consider. Persons who would normally live with the applicant but who are unable to do so because there is no accommodation in which they can all live together should be included in the Assessment.

8.9 When dealing with a family which has split up, Local Housing Authorities will need to take a decision as to which members of the family normally reside, or might be expected to reside, with the applicant. A court may have made a residence order indicating with whom the children are to live, but in many cases it will be a matter of agreement between the parents and a court will not have been involved. There may be cases where an applicant is lawfully excluded from their accommodation for a limited period, such as though an injunction or where a Domestic Violence Protection Order has been made. In these circumstances the Local Housing Authority will be obliged to regard them as homeless, although it may take account of the likelihood and timing of the person being able to return to that accommodation.

Legal Right to Occupy Accommodation

8.10 As above, a person is to be considered homeless if there is no accommodation available for their occupation. For these purposes, there are three categories of legal right to occupy accommodation that the Local Housing Authority ought to consider:

a) entitlement to occupy accommodation by virtue of a legal interest in it or by virtue of an order of a court

b) an express or implied licence (e.g. as a lodger, as an employee with a service occupancy, or living with relatives); or

c) residence by virtue of any enactment or rule of law either giving an applicant the right to remain in occupation or restricting another person's right to recover possession (e.g. a statutory tenant under Rent Act 1977 after his or her contractual rights to occupy have expired or been terminated).

8.11 Someone who has been occupying accommodation as a licensee whose express or implied licence has been terminated is homeless because they no longer have a legal right to continue to occupy, even if they do in fact continue to occupy. This may include, for example, people whom friends or relatives have asked to leave or those required to leave hospitals or care institutions where accommodation is no longer suitable, or available, or where there is no onward accommodation

8.12 Where applicants have been asked to leave their current accommodation by family or friends with whom they have been living, the Local Housing Authority will need to consider carefully whether the applicant's express or implied licence to occupy the accommodation has in fact been revoked. Local Housing Authorities would be acting unlawfully if they insisted that the applicant obtain a letter confirming that they have been asked to leave before they entertain offering homeless assistance. Local Housing Authorities may need to interview the parents or friends to establish whether they are genuinely revoking the licence to occupy and rendering the applicants homeless.

8.13 Local Housing Authorities are encouraged to be sensitive to situations where parents or carers may have been providing a home for a family member with support needs (e.g. a person with learning disabilities) for a number of years and who are genuinely finding it difficult to continue with that arrangement but are reluctant to revoke their licence to occupy formally until alternative accommodation can be secured.

8.14 In some cases, the applicant may be unable to stay in their accommodation, and in others there may be scope for preventing or postponing homelessness through mediation and providing the applicant with an opportunity to plan their future accommodation and pursue various housing options with assistance from the Local Housing Authority. However, Local Housing Authorities will need to be sensitive to the possibility that for some applicants it may not be safe for them to remain in, or return to, their home because of a risk of abuse, or it may not be reasonable for them to remain in occupation where the relationship has irretrievably broken down.

8.15 People living with family and friends may have genuine difficulties in finding alternative accommodation that can lead to friction and disputes within their current home, culminating in a threat of homelessness. The hosts may not be prepared for the applicant to remain due to the stress on their own position. In some cases, external support or the promise of assistance with alternative housing may help to reduce tension and allow more time for alternative accommodation to be found to prevent homelessness. The use of family mediation services may assist here.

8.16 People who have been occupying accommodation as a contract-holder and who have received a valid notice to quit or a notice that the landlord intends to begin possession proceedings would have the right to remain in occupation until the date specified in an order for possession granted by the court (except those with resident landlords and certain other occupiers who do not benefit from the Protection from Eviction Act 1977). However, the fact that a contract-holder has the right to remain in occupation does not necessarily mean that they are not homeless. In assessing whether an applicant is homeless in cases where they are a contract-holder who has a right to remain in occupation pending a court order, the Local Housing Authority will need to consider whether it would be reasonable and safe for them to continue to occupy the accommodation pending proceedings.

8.17 Homeless applicants may include those who are no longer entitled to occupy accommodation because their landlord has defaulted on the mortgage of the property of which they are contract-holders or licensees. Where a mortgage lender starts possession proceedings, the Civil Procedure Rules require the lender to send written notice of the proceedings to the occupiers of the property. The notice must be given within 5 days of the receiving notification of the hearing date by the Court.

Inability to secure entry to accommodation

8.18 Under S.55(2) a person is homeless if they have a legal entitlement to accommodation but is unable to secure entry to it. For example:

i) those who have been evicted illegally, or

ii) those whose accommodation is being occupied illegally by squatters.

8.19 Legal remedies may be available to the applicant to regain possession of their accommodation, but Local Housing Authorities must treat the applicant as homeless until re-entry is secured.

Instances where there may be no Legal Right to Occupy
Accommodation consisting of moveable structures

8.20 S.55(2)(b) provides that a person is homeless if they have accommodation available for their occupation which is a moveable structure (e.g. a caravan or houseboat) and there is nowhere that they can legally place it and reside in it. The site or mooring for the structure does not have to be permanent in order to avoid homelessness. Some gypsies, travellers and other people with an itinerant lifestyle (e.g. travelling show people) may move regularly between authorised sites which allow access for a limited period only.

Accommodation which is reasonable for the applicant to continue to occupy

8.21 S.55(3) provides that a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for them to continue to occupy. Reasonableness to occupy has no correlation to security of tenure, so it is possible for a homeowner, or contract-holder with security of tenure either in the private or social rented sectors, to become homeless if it is, or becomes, no longer reasonable for them to continue to occupy their accommodation.

8.22 Case law (Ahamed v London Borough of Haringey (2023)) has also confirmed that ‘reasonableness to occupy’ is distinct from ‘suitable to continue to occupy’, so it is possible (albeit rare) that accommodation would be ‘suitable’ for an applicant even if it is no longer reasonable for them to continue to occupy it. It does not automatically follow that accommodation is reasonable to continue to occupy just because it is suitable even if this is usually the case.

8.23 There are some factors which must be taken into account when considering reasonableness, as defined in the following paragraphs, but there is no simple test of reasonableness. It is for the Local Housing Authority to make a judgement on the facts of each case. Lomax v Gosport BC [2018] EWCA Civ 1846 confirmed that the Local Housing Authority should have a ‘sharp focus’ on each applicant’s specific needs and consequences of remaining in their accommodation when considering whether accommodation is reasonable to continue to occupy.

Domestic abuse or other abuse

8.24 S.57 (1) of the HWA 2014 provides that it is not reasonable to continue to occupy accommodation if it is probable that this will lead to the person, or a member of their household, being subjected to abuse. S.58(1) of the HWA 2014 provides that abuse in this context means physical violence, threatening or intimidating behaviour, and any other form of abuse which may give rise to harm. Domestic abuse is defined in Section 24 Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 as where the victim is or has been ‘associated with’ the abuser. This can include family members and ex partners.

8.25 Domestic abuse is not confined to instances within the home but extends to abuse outside the home. “Abuse” might include for example physical, sexual, psychological, emotional or financial abuse. This is consistent with the definition contained in Section 24 of Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

The likelihood of a threat of abuse being carried out should not be based on whether there has been actual abuse in the past. Assessment should be based on the facts of the case, to determine whether the abuse or threatened abuse is the cause of the homelessness. Inquiries into cases where abuse is alleged should be handled carefully and with sensitivity.

8.26 In cases involving abuse, Local Housing Authorities may wish to inform applicants of the option of seeking an injunction, but there is no obligation for the applicant to do so. If applicants wish to pursue this, they should be advised to obtain independent advice as an injunction may be ill-advised in some circumstances. Injunctions ordering a person not to molest or enter the home of an applicant will not necessarily deter that person, and applicants should not be expected to return home on the strength of an injunction. Applicants who have experienced actual or threatened abuse should be informed of appropriate organisations in the area which can provide appropriate support and specialist advice.

8.27 When dealing with cases involving abuse or threat of abuse from outside the home, Local Housing Authorities should consider with the applicant whether steps to prevent homelessness by supporting them in their current home or alternative accommodation are appropriate, such as target hardening, housing-related support or personal protection arrangements. Local Housing Authorities should consider the option of improving the security of the applicant’s home to enable them to continue to live there safely, where that is an option which the applicant wishes to pursue. In some cases, immediate action to improve security within the victim’s home may prevent homelessness. A fast response combined with support from the Local Housing Authority, police and voluntary sector may provide a victim with the confidence to remain in their home. When dealing with domestic abuse within the home, Local Housing Authorities should consider the scope for removing the perpetrator and allowing the victim to remain in their home. However, where there would be a probability of abuse if the applicant continued to occupy his or her present accommodation, the Local Housing Authority must treat the applicant as homeless and should not expect them to return to the accommodation.

8.28 A refuge may be suitable as emergency accommodation for some victims of domestic abuse although this should not be a precondition for being accepted as homeless. Each case should be considered on an individual basis as to whether this is the right accommodation for the applicant. Applicants are not required to remain in the refuge for a minimum period of time before an application for re-housing will be considered. Consideration should also be given to the needs of disabled people and older victims and whether refuge accommodation can meet the accessibility needs of those people in particular.

8.29 All other forms of abuse or threats of abuse likely to be carried out towards the applicant or members of their household will need to be taken into account when considering whether it would be reasonable for them to continue to occupy

accommodation. Local Housing Authorities will need to liaise with relevant local support organisations and the Welsh Government to ensure that they have appropriate arrangements for responding to hate incidents and hate crime.

General Housing Conditions

8.30 S.57 (3) of the HWA 2014 provides that in determining whether it is reasonable for a person to continue to occupy accommodation due to its suitability, Local Housing Authorities may have regard to the general housing circumstances prevailing in the area. This could include;

a) **physical conditions:** Local Housing Authorities will need to consider following an inspection whether the condition of the property is such as to render it unsuitable for human habitation or is so bad in comparison with other accommodation in the area that it would not be reasonable to expect someone to continue to live there. The Health and Safety Rating System should be used to assess the risk to and suitability for the household who are to reside in the accommodation, taking account of their particular needs, this is particularly the case for people with physical disabilities and/or children. The Local Housing Authority should also have regard to The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 which sets out obligations on landlords of contract-holders to ensure properties are fit for human habitation. The Regulations set out 29 matters and circumstances to which regard must be had when determining whether a property is fit for human habitation. In addition, there are specific requirements placed upon a landlord to help ensure certain matters and circumstances do not arise;

b) **overcrowding:** Local Housing Authorities may wish to refer to Part 10 of the Housing Act 1985. Although statutory overcrowding, by itself, is not sufficient to determine whether it is unreasonable for the applicant to continue to live in accommodation, it can be a key factor which suggests unreasonableness. Overcrowding will need to be considered in relation to general housing conditions in the area;

c) **type of accommodation:** some types of accommodation are intended to provide temporary accommodation in a crisis, for example, women's refuges, direct access or limited stay hostels and night shelters, and it should not be regarded as reasonable for someone to continue to occupy such accommodation in the longer term.

8.31 The House of Lords judgment on the case of R (Aweys and Others) v Birmingham City Council and Moran v Manchester City Council [2009], debated the definition of 'accommodation' and 'reasonable to occupy' specifically with regards to 'overcrowding or unsanitary conditions' and 'refuge' accommodation. The House of Lords determined that suitability of accommodation can be linked to the length of time a person is expected to live there. Accommodation may be suitable in the short term but not in the medium term, or suitable in the medium term but not in the longer term. If accommodation is only suitable for a person in the short term, Local Housing Authorities need to consider if it would be reasonable for the applicant to continue to occupy that accommodation. It is likely that such applicants should be considered to be homeless.

8.32 However, accommodation does not need to be available ‘indefinitely’, or for any minimum prescribed time, for it to be considered reasonable to continue to occupy. Each application will be case specific.

Affordability

8.33 One factor that must be considered in all cases is affordability. S.59 (2) of the HWA 2014 in particular requires the Local Housing Authority to have regard to whether or not the accommodation is affordable for that person. In carrying out this duty Local Housing Authorities should take account of:

i) the financial resources available to the person;

ii) the costs in respect of the accommodation;

iii) maintenance payments (in respect of ex-family members); and

iv) the applicant’s other reasonable living expenses.

8.34 Consideration should be given to any changes in the applicant’s income. This could include, for example, loss of work or migrating from legacy benefits onto Universal Credit and/or changes in applicable levels of any benefits received including changes in the Local Housing Allowance. Households should not be penalised for the loss or potential loss of accommodation where it was due to an unavoidable change in their welfare benefits or income related to employment that led to the accommodation becoming unaffordable. In these circumstances they should be regarded as homeless or threatened with homelessness, and they should be assisted at the earliest point to maintain the accommodation, and if appropriate through available resources or provided with assistance to look for alternative accommodation.

8.35 In Samuels v Birmingham City Council (2019) the Supreme Court stated that an applicant’s income must be compared with their ‘reasonable living expenses’ when assessing whether accommodation is/was affordable (and therefore reasonable to continue to occupy). In other words, the Local Housing Authority should consider whether the applicant can afford their reasonable living expenses after paying their rent when taking into account their income. The Court determined that subsistence benefits (e.g. Income Support or Universal Credit) are a helpful “starting point” for assessing what an applicant’s reasonable living expenses may be – though each case should still be assessed on a case-by-case basis. Local Housing Authorities need not take into account all living expenses, only those that are reasonable.

8.36 Local Housing Authorities should assess reasonable living expenses on an objective (rather than subjective) basis. In Baptie v The Royal Borough of Kingston Upon Thames [2022] the Court of Appeal held that it would not be unlawful to rely on Association of Housing Advice Service (AHAS) guidance as objective evidence of reasonable living expenses. The Court also held that it may be appropriate to consider the applicant’s full benefit entitlement when assessing affordability, and not just the benefits the applicant claims – for example, where an applicant has been advised to claim additional benefits but has failed to do so this may be a relevant consideration. Where the applicant’s benefits are ‘capped’, the capped income should be income that is relevant.

8.37 Other factors that may be relevant include:

i) **Contract-holder given notice of intention to recover possession -**

Where the applicant is a contract-holder who has been given a valid notice to quit or a notice that the landlord intends to begin proceedings for possession, Local Housing Authorities should consider scope for preventing homelessness through consulting the landlord at an early stage to explore the possibility of the occupation contract continuing or allowing the contract-holder to remain for a reasonable period to provide an opportunity for alternative accommodation to be found. If the landlord does not agree, the Local Housing Authority will need to consider whether it would be reasonable for the applicant to continue to occupy the accommodation once the valid notice has expired.

Local Housing Authorities should ensure that staff dealing with these cases are fully aware of what constitutes a valid notice.

The following is not an exhaustive list but provides some guidance on elements that may be considered in relation to assured and/or assured shorthold tenancies, should the applicant be residing in England:

- whether a tenancy deposit was received in connection with the tenancy;
- whether any deposit was protected in accordance with an authorised statutory scheme, when the notice was served;
- whether, at the time of service, the landlord had served a notice on the tenant (and any 'relevant person') containing all the prescribed information in relation to any deposit;
- whether any prescribed information notice is complete and correct;
- in relation to a notice served in connection to a tenancy that has always been periodic and never preceded by a fixed term agreement, whether the more onerous requirements contained in section 21(4) of the Housing Act 1988 were complied with; where the tenanted premises formed part of a house in multiple occupation when the notice was served, whether the premises was subject to mandatory or selective licensing, and if so whether the premises were licensed.

The following is not an exhaustive list but provides some guidance on elements that may be considered in relation to standard occupation contracts:

- whether the landlord has given the contract-holder a written statement of the contract, or gave the written statement after a specified period
- whether the landlord has given the contract-holder information about the landlord's identity
- whether the correct length of notice has been provided
- whether the landlord has provided a valid Energy Performance Certificate, Electrical Condition Report, or Gas Safety Certificate to the contract-holder
- whether the landlord has protected the contract-holder's deposit in a deposit protection scheme and/or given prescribed information about the scheme to the contract-holder

- whether the landlord has taken any prohibited payments from the contract-holder and/or failed to return the payment to the contract-holder
- whether the property has working smoke alarms and carbon monoxide detectors
- where the occupied premises formed part of a house in multiple occupation when the notice was served, whether the premises was subject to mandatory or selective licensing, and if so whether the premises were licensed.

In determining whether it would be reasonable for an applicant to continue to occupy accommodation, the Local Housing Authority will need to consider all relevant factors and decide the weight that individual matters should attract, including whether any notice of seeking possession or notice to quit (where applicable) has been served correctly. As well as the factors set out in S.59 of the HWA 2014, other factors which may be relevant include the general cost to the Local Housing Authority, the position of the contract-holder, the position of the landlord, the likelihood that the landlord will actually proceed to eviction, and the costs to the contract-holder if this happens and burden on the courts of unnecessary proceedings where there is no defence to a possession claim.

The Welsh Government considers that where:

i) the applicant is a standard contract-holder in Wales or an assured or assured shorthold tenant in England who has received proper notice of seeking possession, or notice to quit,

ii) the Local Housing Authority is satisfied that the landlord intends to seek possession; and

iii) there would be no defence to an application for a possession order

then it is unlikely to be reasonable for the applicant to continue to occupy the accommodation beyond the date of the notice unless the Local Housing Authority are taking steps to persuade the landlord to withdraw the notice or delay applying to court for possession to allow the Local Housing Authority time to make alternative arrangements for accommodation. Local Housing Authorities should treat cases that have received a valid notice as threatened with homelessness and take reasonable steps to help to prevent homelessness.

ii) **Former Armed Forces personnel required to leave service accommodation**

The Ministry of Defence recognises that Local Housing Authorities will need to be satisfied that entitlement to occupy service accommodation will end on a certain date, in order to determine whether applicants who are service personnel and who are approaching their date of discharge may be homeless or threatened with homelessness. For this purpose, the MOD issues a Certificate of Cessation of Entitlement to Occupy Service Living Accommodation six months before discharge (see examples at Annexes 8). These certificates indicate the date on which entitlement to occupy service accommodation ends, and Local Housing Authorities should not insist upon a court order for possession to establish that entitlement to occupy has ended. Local Housing Authorities should take advantage of the six-month period of notice of discharge to ensure that service personnel receive timely and comprehensive advice on the housing options available to them when they leave the Armed Forces.

9. DUTY TO PROVIDE INFORMATION, ADVICE AND ASSISTANCE IN ACCESSING HELP

Introduction

9.1 The legislation embraces the following key principles:

i) Access to housing advice and information plays a key role in helping people make informed decisions, enforce or defend their rights and can play a key role preventing housing problems from escalating into homelessness. Ensuring there is adequate provision of free, quality assured and impartial housing advice and information accessible to everyone with a housing need ought to be the cornerstone of homelessness strategies.

ii) To be at its most effective the provision of housing advice and information will need to be delivered within a framework that incorporates the whole range of social welfare advice and information services. A housing advice service, which includes initial contact being managed through an appropriately resourced triage service which has direct links to: debt and welfare benefit advice; training and employment services; health and social care advice, private rented sector teams, mediation services, etc., will tend to deliver the most positive and sustainable outcomes for people with housing problems. Therefore, Local Housing Authorities, when planning their housing advice and information services, ought to develop links with complementary strategies and plans for example Advice and Financial Inclusion Strategies, Tackling Poverty Action Plans, etc. and should consider partnership working with the stakeholders who are delivering the advice and information provision within these plans to maximise the use of resources as effectively as possibly.

iii) The impacts upon a person's health and wellbeing, which are generated through successful advice interventions, are positive and well documented. Successful advice interventions may improve mental health and raise living standards. Research on the economic value of advice services is now also providing evidence that the positive outcomes from advice and information services create a positive contribution towards reducing public expenditure upon all statutory services. Therefore, when considering the budgetary implications of the provision of housing advice and information services, a Local Housing Authority and key stakeholders could adopt a cost benefit analysis of the level of housing advice and information and the complementary social welfare advice service provision that will be delivered within their locality.

9.2 This section of the Code will provide guidance to Local Housing Authorities on planning, developing, funding and delivering their housing advice and information service.

The Act states

Section 60 - Duty to provide information, advice and assistance in accessing help

1. A local housing authority must secure the provision, without charge, of a service providing people in its area, or people who have a local connection with its area, with —

a) information and advice relating to preventing homelessness, securing accommodation when homeless, accessing any other help available for people who are homeless or may become homeless, and

b) assistance in accessing help under this Chapter or any other help for people who are homeless or may become homeless.

2. In relation to subsection (1)(a), the service must include, in particular, the publication of information and advice on the following matters —

a) the system provided for by this Chapter and how the system operates in the authority's area;

b) whether any other help for people who are homeless or may become homeless (whether or not the person is threatened with homelessness within the meaning of this Chapter) is available in the authority's area;

c) how to access the help that is available.

3. In relation to subsection (1)(b), the service must include, in particular, assistance in accessing help to prevent a person becoming homeless which is available whether or not the person is threatened with homelessness within the meaning of this Chapter.

4. The local housing authority must, in particular by working with other public authorities, voluntary organisations and other persons, ensure that the service is designed to meet the needs of groups at particular risk of homelessness, including in particular —

a) people leaving prison or youth detention accommodation,

b) young people leaving care,

c) people leaving the regular Armed Forces of the Crown,

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

e) people receiving mental health services in the community.

5. (5) Two or more local housing authorities may jointly secure the provision of a service under this section for their areas; and where they do so —

a) references in this section to a local housing authority are to be read as references to the authorities acting jointly, and

b) references in this section to a local housing authority's area are to be read as references to the combined area.

6. The service required by this section may be integrated with the service required by section 17 of the Social Services and Well-being (Wales) Act 2014.

Guidance

9.3 The Local Housing Authority is required to ensure that accessible, quality assured advice and information about homelessness and the prevention of homelessness is available free of charge. The service is to be made accessible and available, not just to people owed a main statutory duty under Part 2 of the HWA 2014, but to everyone in housing need approaching the Local Authority. This includes people who are not in priority need, those who are intentionally homeless and persons who are not otherwise eligible for housing assistance. Furthermore, the Local Housing Authority must, by working with other public authorities, voluntary organisations and other persons, ensure that the advice and information service is designed to meet the needs of groups who are at particular risk of homelessness, such as those listed under S.60(4) of the HWA 2014.

9.4 The outcomes from effective housing advice and information interventions generate positive economic, social and health benefits. For example, for the individual concerned stressors are reduced which will improve their mental health and their income can be maximised which will improve their living standards. For the Local Housing Authority, there will be cost savings through the prevention of the individuals housing problems escalating and requiring more intensive intervention. The Welsh Government strongly urge Local Housing Authorities to give serious and significant attention to the scale and scope of services they provide in order to fulfil their S.60 duties. The provision of housing advice and information ought to form the foundation for a Local Housing Authority's homelessness strategy.

9.5 Good quality accessible advice and information services can enable people, particularly those with complex problems or from a group which is at a particular risk of homelessness, (i.e. ex-offenders, care leavers, etc) to fully explore the range of options available to them and achieve the most favourable and sustainable outcome to their housing difficulties. Assistance should also include help, where necessary, for people to make contact with the required service.

9.6 Often a housing need will have underlying links to other financial or personal difficulties a person is experiencing. For example, a person struggling to pay their rent or mortgage and who is, or may become, at a risk of losing their home because of rent or mortgage arrears will need advice on their housing rights and also advice on maximising

their household income, managing debts, etc. For some people the provision of the appropriate accessible advice and information will be sufficient to enable them to resolve the underlying problem/s that has/have created their housing need. However, for many people, for example those whose problems are more complex or who are vulnerable, they will require more than advice on their social welfare rights; they will also need practical assistance and support to, for example, claim welfare benefits/tax credits, negotiate with creditors, or develop their personal budgeting skills, etc. Therefore, the Welsh Government recommend that Local Housing Authorities consider the value of enhancing their housing advice and information services through ensuring people have a holistic assessment to identify any underlying issues that may be contributing to their housing problems and that measures are in place, for example a referral gateway, to enable ease of access to a range of social welfare advice and support services.

9.7 Through planning their advice services collaboratively with their key partners, Local Housing Authorities can ensure that all appropriate services adopt a similar holistic person-centred approach. This will enable a clear and accessible pathway to be developed through which people at risk of homelessness can have seamless access to proactive advice and support that will help them resolve their problems, enforce their housing rights and prevent their homeless.

Who Provides the Advisory Service?

9.8 As the legislation does not specify how a Local Housing Authority should meet the requirement to secure the provision of advisory services, Local Housing Authorities can choose to meet this duty in a number of ways. For example, through providing the service themselves, commissioning another organisation to provide the service, or providing the service in collaboration with another organisation.

9.9 Collaboration with other service providers will assist the Local Housing Authority to make informed decisions on the scale and scope of their advice service. Local Housing Authorities will also determine decisions on the extent of the housing advice and information service provision after taking into account other factors, such as, local housing circumstances, available resources, the effectiveness of different methods of delivery and the level of service provision required. Where there is a wide range of housing conditions and communities within a single authority area, the Local Housing Authority may wish to consider securing the provision of a variety of types of advisory services with a range of delivery systems to help ensure they meet the needs of those with protected characteristics. Local Housing Authorities should consider whether they have the relevant expertise to deliver advice to specific groups who may be at particular risk (e.g. those with mental health problems). They may wish to collaborate with specialist agencies to ensure applicants have access to appropriate advice.

9.10 Decisions about how to provide advisory services are matters for Local Housing Authorities. However, Local Housing Authorities will be very aware that there will be occasions where a person will need to challenge the legality of a homelessness decision made by the Local Housing Authority. Thus, the availability of accessible independent housing advice will help to minimise the potential for concerns around conflicts of interest

arising when the Local Housing Authority solely provides the housing advisory services. The Wales National Advice Network has defined “independent advice” as advice which is delivered by a provider which “is able to act fully independently in the client’s sole interest”. However, Local Housing Authorities are urged to recognise that, whatever type of provision is made, they should ensure that the advice and information service is viewed as being impartial, available, and accessible to everyone in the locality. These factors ought to be recognised in agreements whether or not a Local Housing Authority funds an independent provider to deliver services. Therefore, Local Housing Authorities are encouraged to establish explicit Service Level Agreements or protocols with independent advice providers, which clarify roles and define how services will work together to achieve shared objectives. Ideally these agreements should explicitly state what is expected in relation to delivering services to people from diverse backgrounds.

9.11 The Welsh Government suggests Local Housing Authorities work collaboratively with key stakeholders to ensure the advisory service delivered under S.60 of the HWA 2014 is planned on a strategic basis and has strong links with other complementary strategies that include the delivery of advice and information services. Under S.60(6), the information, advice and assistance service may be integrated with the information, advice and assistance service required by Part 2, S.17 of the SSWWA 2014, and indeed Local Housing Authorities are strongly recommended to do so. The Welsh Government established a National Advice Network to bring together experts involved in the planning and delivery of information and advice services, as well as funders of advice services. This Network includes representatives from services relating to housing, welfare rights, debt and money matters, social care and discrimination. The primary aim of the Network is to examine how different advice and support services can work together more effectively to provide services which are fit for purpose and maximise the use of available resources.

Funding Voluntary Sector Agencies

9.12 In considering how to meet their S.60 duties, Local Housing Authorities may also want to review and evaluate the current funding arrangements for voluntary sector advice services in their area. Frequently, the funding of advice and information services will not be solely a matter for the Local Housing Authority. Therefore, Local Housing Authorities should work in partnership with other stakeholders who commission and/or fund advice and information services to maximise available resources and reduce the potential for duplication of effort.

9.13 Local Housing Authorities ought to develop a co-ordinated approach to funding of advice and information services between the various departments within their Local Housing Authorities. Not only will this promote the effective use of available resources, it will also help towards engendering a better understanding across the Local Housing Authority of the wider statutory homelessness duties within the HWA 2014 and a corporate approach to the fulfilment of those duties.

9.14 In some areas, it may be appropriate for a Local Housing Authority to fund or provide a service jointly with neighbouring Authorities. Such an approach may reduce budgetary costs for each participating authority and provide a better resourced service for people generating improved and sustainable outcomes.

Assessing Advice Provision

9.15 In order to demonstrate that the requirements of S.50 of the HWA 2014, 'duty to carry out a homelessness review and formulate a homelessness strategy' are being fully met, Local Housing Authorities will need to periodically assess the provision of housing advice and information services in their area. Regular assessment, perhaps as a part of their housing strategy or within a wider review of all advice services provided within their locality, would give Local Housing Authorities the opportunity to consider which services they continue to provide and/or commission. Reviewing current service provision could also help to:

- determine the nature of the provision and the role(s) of the agency(ies);
- analyse the need/demand for services, map all available resources and identify any gaps or duplication in provision;
- establish the needs of particular groups;
- make clear the role which the Local Housing Authority themselves will play in the provision of the advice and information service and what implications this may have for Third/voluntary sector agencies;
- develop and implement effective partnership arrangements with key stakeholders for the strategic planning, funding, and joint delivery of advisory services;
- make projections for future service provision based upon current and emerging trends; and
- objectively appraise the quality and effectiveness of services being provided taking into consideration the needs of people from diverse backgrounds.

What Service should be offered?

9.16 It is important that Local Housing Authorities proactively publicise their housing advice and information service to ensure that people and service providers within their area are made aware of the service, how it is accessed, and the scale and scope of the help that can be obtained by accessing the service.

9.17 Advice and information is not defined in the legislation. However, Local Housing Authorities are required to design a housing advice and information service that is able to demonstrate that it is providing services that meet the specific needs of groups who are at a particular risk of homelessness, such as those listed under S.60(4) of the HWA 2014 for example ex-offenders, people with mental health problems, etc.

9.18 A Local Housing Authority will be required to provide a housing advice and information service that is free, impartial, confidential, accessible and where required by the user, free of any conflict of interest, real or perceived. The delivery of the advice and information service should be made available through multiple channels (e.g. face-to-face, telephone, web based) and be equally accessible to all users regardless of their communication requirements and/or their locality, i.e., urban or rural. Staff involved in the provision and design of these services should be trained in matters relating to equality and diversity.

Regardless of whether the advice and information service is provided directly by the Local Housing Authority or by another provider, it is important that the service being delivered conforms to publicly recognised quality standards (Advice Quality Standards, Specialist Quality Mark, etc.) applicable to the type of service being provide, i.e., advice or advice with casework, etc.

9.19 The Welsh Government developed the Information and Advice Quality Framework (IAQF) in response to concerns that there was a lack of consistency and understanding amongst advice providers of what constitutes quality information and advice. This was a contributory factor to the lack of partnership working between providers. The IAQF was first published in 2019 and all the key independently owned Advice Quality Standards operating in the UK have applied for and been awarded IAQF Approved Accrediting Body status. The Welsh Government updated the IAQF in December 2022. Local Housing Authorities ought to ensure that the advice providers they fund hold an accredited quality mark or are working towards the attainment of a quality mark, in order to provide assurance to the public that the housing advice and information services are of a high standard.

9.20 To be at its most effective, particularly in the prevention of homelessness, Local Housing Authorities ought to deliver the provision of housing advice and information within a framework that incorporates the whole range of social welfare advice and information services. A person-centred housing advice service which has direct links to, debt and welfare benefit advice; training and employment services; health and social care advice, private rented sector teams, mediation and counselling services, etc., will deliver the most positive and sustainable outcomes for people with housing problems.

9.21 The Welsh Government recommend that a Local Housing Authority adopt a strategic approach to the planning of the housing advice and information services that ensures effective partnerships and collaborative working with relevant statutory and non-statutory service providers. The strategic planning will also seek to establish connections between local advice and information providers to encourage partnership working between providers and the sharing of resources/best practices.

What Advice and Information?

The legislation enables a Local Housing Authority to determine, based upon local housing circumstances and an assessment of local needs, etc., the scale and scope of the housing advice and information service within their locality. However, the service must primarily be about homelessness and the prevention of homelessness and designed to meet the needs of specific groups who are at particular risk of homelessness.

9.22 The list below provides some examples of the type of information and advice that will be sought by a person seeking assistance, particularly when the advice is required to prevent homelessness:-

- local housing opportunities, including private sector options and low cost home ownership;

- Local Housing Authority and other Social Landlords housing registers and allocations policies;
- landlords and letting agents;
- housing status, security and rights of occupation;
- discrimination, harassment and illegal eviction;
- possession proceedings;
- consequences of relationship breakdown, and implications for homelessness;
- domestic abuse;
- income maximisation - welfare benefits, housing benefit;
- rent levels;
- Private Rented Sector access services;
- rent deposits, and how to retrieve them;
- rent and mortgage arrears, and other money or debt issues which could lead to homelessness;
- Local Housing Authority duties towards homeless households;
- housing conditions, improvements, adaptations, grants and repairs;
- leaseholders rights and service charges, and mortgage disputes;
- the needs of particular households including young single people, people from diverse ethnic and religious backgrounds, people with disabilities, women, older people and lesbian, gay, bisexual people and people who identify as Transgender
- supported housing projects; and,
- support services available in the area for example related to mental health, drugs, alcohol, housing support schemes.

9.23 The above list is for illustrative purposes only and is not intended to be a full list of the type of advice and information services that should be provided.

9.24 To maximise the use of available resources, a Local Housing Authority may wish to consider the merits of designing their housing advice and information service to include an appropriately resourced triage at the point of initial contact. An effective triage will enable all the person's problems (and the potential solutions) to be identified at the earliest juncture and allow the person to be seamlessly referred to other advice services, which will assist in the implementation of solutions and alleviate, as far as practical, the housing problem. However, it is important staff dealing with the initial contact are adequately trained in areas such as mental health, physical and learning disabilities, and equality and diversity. In order to achieve an accurate assessment of the person's status and needs, Local Housing Authorities should consider working with specialist statutory or voluntary services to ensure that assessments are accurate and comprehensive, and consider the advantages of arrangements such as co-location of a mental health worker within the homelessness team.

9.25 Increasingly, Local Housing Authorities are also considering co-locating services in order to provide a holistic advice service to people seeking assistance on a housing problem and ensure that there is ease of access to complementary services, which will offer positive support to the alleviation of their housing problem. For example, a Local Housing Authority may consider delivering the provision of housing advice services alongside welfare benefits and money advice services, employment and training services, etc.

Standards

9.26 The Welsh Government recommends that housing advice and information services ought to be person-centred and designed around the needs of service users, particularly those from groups at most risk of experiencing homelessness to ensure they are accessible, effective and person-centred. Therefore, whether providing the housing advice and information service themselves or, securing it from another provider, Local Housing Authorities ought to consult with local people/service users in a manner that encourages and enables their engagement so they can help shape the delivery of the housing advice and information services. It is useful to remember that people in the groups which are at most risk of experiencing homelessness may come from a variety of diverse backgrounds and therefore all advice and information services should be designed and delivered with the recognition of diverse needs.

9.27 Shelter Cymru has developed the “Equal Ground” Service User Standard framework. The framework will guide Local Housing Authorities on the principles, which constitute good practice about providing a good quality service, and will help shape the involvement of service users in development of their services.

9.28 To promote the most effective use of available resources and a customer focused service delivery, it is important that people seeking assistance are not sent back and forth between various departments/agencies and are not referred inappropriately. The Welsh Government recommends the Local Housing Authority develop close liaison with internal departments, e.g., Social Services, and with external advice providers. Local Housing Authorities should also implement formal referral arrangements with internal and external services to ensure that people receive assistance as seamlessly and in as timely a way as possible.

9.29 Local Housing Authorities will need to ensure that effective monitoring and evaluation procedures are in place to monitor the quality and the outcome of information and advice (e.g. through quality audits and customer surveys) and to evaluate performance against the objectives within service plans. To enable the Local Housing Authority to properly monitor the service provision, it is essential that the Local Housing Authority ensures the advice provider/s have appropriate measures in place that allow them to accurately record all advice given and outcomes that are obtained, etc. It will be appropriate and useful to monitor outcomes across all the protected characteristics in the EA 2010 to ensure that outcomes are not affected by a person’s protected characteristics and to monitor the extent to which positive outcomes are achieved.

9.30 To ensure the service is meeting the needs of all sections of the community and is providing a customer focused and accessible service, a Local Housing Authority ought to keep the effectiveness of the service under review, and to measure outcomes

and customer satisfaction levels, to ensure the service is meeting the needs of all sections of the community and is providing a customer focused and accessible service. A service provider who is delivering services within a quality assured framework will be required to demonstrate they are complying with such factors and will therefore have information available to the Local Housing Authority. However, Local Housing Authorities may also want to establish their own monitoring procedures to measure performance of providers.

9.31 The Welsh Government realise that service standards can only be maintained if advice and information services are suitably resourced. This ought to include access to updated legal and good practice information, as well as resources for training and for promoting the service. The Regional Advice Networks are a valuable means of enabling providers to share good practice and to make best use of their available resources.

Accessibility

9.32 The Local Housing Authority will need to ensure that the housing advice and information service is accessible to all those who may have need of the service. Therefore, it is essential that Local Housing Authorities, together with partner organisations, effectively promote and publicise the service ensuring that accessible information is widely disseminated across the locality. For example, people will need to know how to access the service and that the service is available not only to homeless people but to any person seeking information about housing problems. The Local Housing Authority, together with its partners, may also want to publicise other homelessness prevention initiatives, for example, the Housing Loss Prevention Advice Service (HLPAS) and court duty schemes, where a solicitor/housing advisor is present at court to give on-the-spot assistance to people subject to possession proceedings, etc.

9.33 Local Housing Authorities ought to ensure that the advice and information services are delivered through appropriate channels, which ensure the services being provided are accessible. For example, a Local Housing Authority may wish to consider the contribution that information technology and a telephone advisory service can make to ensure a service is widely available and easily accessible for all people, particularly in rural areas.

9.34 Local Housing Authorities will also need to ensure that the information provided is accurate, up to date and accessible, for example, in a range of relevant languages, and in Braille and/or on tape for people with a visual impairment. The advice services must also be available in Welsh where this is required by the Welsh Language Standards (No 1) Regulations 2015.

9.35 It is important that Local Housing Authorities work proactively to deliver their services to people with diverse needs and this equally applies with the delivery of the housing advice and information service. Therefore, the delivery arrangements of the service ought to be tailored accordingly to ensure it is accessible to meet the requirements of all people within the locality. This will require delivery through outreach surgeries and other initiatives that aim to target specific groups, such as people from different ethnic backgrounds, ex-offenders, etc. Local Housing Authorities may find it beneficial to work locally and regionally with the youth and Third/voluntary sectors to ensure that services meet the particular needs of young people, disabled people and other groups with particular needs.

9.36 Services should be designed to be customer-friendly for all groups, particularly those people who may have communication needs. Local Housing Authorities may find it appropriate to work with specialist services to augment the main housing advice service, perhaps on a regional level and they ought to make use of available information and guidance on delivering services to particular groups, for example, the Welsh Government has published guidance on providing housing advice to people with an Autistic Spectrum Disorder.

9.37 The premises from where the housing advice and information service is to be delivered will need to be accessible to people with physical or sensory disabilities. Where this is not possible, an alternative, accessible venue for the delivery of service will need to identified, or, if appropriate, the offer of a home visit should be considered. However, the offer of a home visit will need to be handled sensitively, as the person may not always wish to discuss their housing situation within their home environment, in particular if they are victims of abuse within the home, or are leaving due to a relationship breakdown

9.38 Local Housing Authorities can encourage more people within their locality to access housing advice by increasing awareness of free telephone and on-line advice and information services, which are available. These include:

- Shelter Housing Advice Freephone Line - **08000 495 495**
- Shelter Cymru, On line Advice Service www.sheltercymru.org.uk/get/advice

9.39 Local Housing Authorities should ensure that those accessing the housing information, advice and assistance service are made aware of, and if need be referred across to, their local care and support information, advice and assistance service (under Part 2 of the SSWWA 2014) where these have not been integrated if there is a belief that the individual(s) could have care and support needs or support needs if they are a carer.

Groups at Particular Risk

9.40 Local Housing Authorities are required to ensure that housing information and advice services are designed to meet the needs of vulnerable groups, in particular:-

a) People leaving prison or youth detention accommodation;

b) Young people leaving care;

c) People leaving the regular Armed Forces of the Crown;

d) People leaving hospital after medical treatment for mental disorder as an inpatient;

e) People receiving mental health services in the community.

9.41 This means that they will need to ensure that information, advice and assistance is particularly tailored to meet the needs of these groups. That can best be achieved by working in partnership with the relevant Local Health Board, criminal justice services, social services and Armed Forces welfare advice agencies.

10. DUTY TO ASSESS

Introduction

10.1 Good assessment is a complex activity which involves not just the gathering of facts, but an understanding of what information is needed, why it is needed and a rigorous and methodical analysis of the material obtained in order to determine effective intervention.

10.2 It is important that the assessment is considered in the overall context of providing a service to those in housing need. Staff should adopt a person-centred, non-judgemental, proactive approach that focuses on finding solutions to housing problems. It is essential that the assessment enables a Local Housing Authority and the applicant to work in partnership to identify the most suitable reasonable steps to take to prevent homelessness or help to secure accommodation.

10.3 A Local Housing Authority's staff must be equipped with the necessary skills, training and knowledge for an assessment to be effective. It must ensure that members of its staff are confident that they have the right skills for the tasks they must undertake and are fully supported in their role. Staff will need to be fully versed on the homelessness legislation so that they apply it correctly and provide applicants with accurate advice and information on their housing rights, as well as having the skills to conduct person-centred assessments that help people to find solutions that work for them. Staff will need to be aware of the local services available in their area so they are able to signpost applicants appropriately. The Welsh Government recommends the development of a regional service directory which can help officers and applicants identify available support.

10.4 Key to a thorough assessment will be joint working with other Local Housing Authority departments such as social services and education and other organisations such as Social Landlords, probation, local health boards, voluntary organisations, local support service providers, independent advice agencies and credit unions. Protocols for sharing information on the housing and other needs of applicants who are homeless or threatened with homelessness are essential as well as developing appropriate support planning systems, which clearly define roles and responsibilities to meet those needs. This is especially important where there may be mental capacity concerns. Careful consideration and a clear policy will need to be used in connection with sharing personal information relating to the protected characteristics of applicants, as well as clear policy around how information is stored.

10.5 The priority is that the assessment and the decision are correct. However, it is the view of the Welsh Government that wherever possible, Local Housing Authorities should aim to complete each stage of the assessment and notify the applicant of their decision as soon as possible. In most cases this should be achieved within 10 working days and in many cases much more quickly, but may take longer where the case is complex or information is difficult to clarify. The Welsh Government recommends where the eligibility and housing status has been determined, the decision on which duty is owed, if any, should be relayed to the applicant as soon as possible and the remaining elements of the assessment can be concluded within the 10 working days. This will ensure that applicants can be included within the statutory framework and early intervention work can be appropriately recorded.

When a Local Housing Authority must assess.

The Act states

Section 62 - Duty to Assess

1. A local housing authority must carry out an assessment of a person's case if—

a) the person has applied to a local housing authority for accommodation or help in retaining or obtaining accommodation,

b) it appears to the authority that the person may be homeless or threatened with homelessness, and

c) subsection (2) does not apply to the person.

2. This subsection applies if the person has been assessed by a local housing authority under this section on a previous occasion and the authority is satisfied that—

a) the person's circumstances have not changed materially since that assessment was carried out, and

b) there is no new information that materially affects that assessment.

3. In this Chapter, "applicant" means a person to whom the duty in subsection (1) applies.

Guidance

10.6 S.62(1)(a) and (b) of the HWA 2014 state that if it appears to a Local Authority that a person may be homeless or threatened with homelessness, and the person has applied for accommodation or help in retaining or obtaining accommodation, then a Local Authority must carry out an assessment of the person's case.

10.7 Under S.62(5) and (6) this includes an assessment of the person's circumstances, housing need and the support needed by the applicant (or any person with whom the applicant lives or who might reasonably be expected to live) to retain accommodation. The Local Housing Authority must also seek to identify the outcome the applicant wishes to achieve from the Local Housing Authority's help. Local Housing Authorities may wish to make some initial inquiries with the person to meet the threshold of 'reason to believe' a threat of homelessness may exist to avoid unnecessary assessments. Welsh Government note that if the Local Housing Authority engages with a third party to substantiate a claim of homelessness or threatened with homelessness, the S.62 duty to assess is triggered and a notification of outcome is required.

10.8 Applications can be made by anyone aged 16 or over, to any department of the Local Authority and expressed in any form. They need not be expressed as explicitly seeking assistance under Part 2 of the HWA 2014. Applications could be in person or over

the phone, verbal or written. Applications can also be made by a person acting on behalf of the applicant, for example, by a social worker or solicitor acting in a professional capacity, or by a relative or friend. Ideally applications should be made by the applicant, however this is not always possible due to a variety of reasons such as institutionalisation, disability or medical issues.

10.9 Applications cannot be made by any person without capacity. Applications should only be made by those who are duly authorised either by an appropriate Power of Attorney, Deputyship or order from the Court of Protection.

10.10 So long as there is a request for accommodation, or help in retaining or obtaining accommodation, and the information provided gives the Local Authority a reason to believe that the applicant may be homeless, or threatened with homelessness within 56 days, then the duty to assess under S.62 arises and an application for homelessness assistance has been made. As soon as an application has been made, the Local Housing Authority has a duty to complete an assessment in accordance with S.62 of the HWA 2014 and to notify the applicant of the outcome of the assessment in accordance with S.63.

10.11 If there is any doubt as to whether the applicant may be homeless or threatened with homelessness within 56 days, then the Local Housing Authority should err on the side of caution and begin the assessment process in order to determine whether or not the Local Housing Authority has any duty to the applicant under the provisions of the HWA 2014.

10.12 S.62(1)(c) of the HWA 2014 says that the Local Housing Authority does not have to carry out an assessment if S.62(2)(a) and (b) apply.

10.13 S.62(2) states that where an applicant has previously been assessed, and the applicant's circumstances have not materially changed since that assessment was carried out and there is no new information that materially affects the assessment, then a new assessment is not required.

10.14 The decision to not complete a new assessment should not be based on a defined period of disqualification. It is for the Local Housing Authority to decide whether there are any new facts in the fresh application which render it different from the earlier application. If no new facts are revealed, or any new facts are of a trivial nature, the Local Housing Authority would not be required to consider the new application. However, where the fresh application does reveal substantive new facts, the Local Housing Authority must treat the fresh application in the same way as it would any other application for accommodation or assistance in retaining/obtaining accommodation. Therefore, if the Local Housing Authority has reason to believe that the person is homeless, or threatened with homelessness, the Local Housing Authority should carry an assessment under S.62 and decide whether any duty is owed under the HWA 2014.

10.15 Where an applicant makes a repeat application, the Local Housing Authority should ensure that it considers whether there are substantive new facts, taking into account all information provided by the applicant, before considering what duties (if any) are owed. The Local Housing Authority should not refuse a repeat application simply because it believes no duties would be owed if another assessment were completed.

Assessing if the applicant is eligible for help.

The Act states

Section 62 - Duty to Assess

4. The authority must assess whether or not the applicant is eligible for help under this Chapter

And

7. A local housing authority may carry out its assessment of the matters mentioned in subsections (5) and (6) before it has concluded that the applicant is eligible for help under this Chapter.

Guidance

10.16 Local Housing Authorities have a statutory duty to assess applications from people who may be homeless or threatened with homelessness and are seeking help in retaining or obtaining accommodation in order to decide whether any duty to provide assistance is owed to that person. Schedule 2 of the HWA 2014 includes provisions that deny eligibility for housing assistance to certain applicants – see Chapter 7. Local Housing Authorities will therefore need to satisfy themselves that applicants are eligible before providing homelessness assistance. The provisions on eligibility are complex and Local Housing Authorities will need to ensure that they have procedures in place to carry out appropriate checks on applicants. S.68 duties can be triggered with only a reason to believe a person may be eligible.

10.17 S.62 (7) of the HWA 2014 allows for a Local Housing Authority to carry out its assessment of the applicant's circumstances, housing need, support needed by the applicant (or any person with whom the applicant lives or who might reasonably be expected to live) to retain accommodation and the applicant's wishes, before a conclusion has been reached on the applicant's eligibility for help. The provisions on eligibility are complex and may take some time to assess. It is therefore in the best interest of both the applicant and the Local Housing Authority to seek as full an understanding of the applicant's circumstances, housing and related support needs and wishes as early as possible so that once eligibility is confirmed prevention and/or relief can commence immediately. If the applicant is found ineligible they must still be provided with information, advice and assistance in accordance with S.60.

What a Local Housing Authority must assess.

The Act states

Section 62 - Duty to Assess

5. If the applicant is eligible for help under this Chapter, the assessment must include an assessment of—

a) the circumstances that have caused the applicant to be homeless or threatened with homelessness;

b) the housing needs of the applicant and any person with whom the applicant lives or might reasonably be expected to live;

c) the support needed for the applicant and any person with whom the applicant lives or might reasonably be expected to live to retain accommodation which is or may become available;

d) whether or not the authority has any duty to the applicant under the following provisions of this Chapter.

6. In carrying out an assessment, the local housing authority must —

a) seek to identify the outcome the applicant wishes to achieve from the authority's help, and

b) assess whether the exercise of any function under this Chapter could contribute to the achievement of that outcome.

7. A local housing authority may carry out its assessment of the matters mentioned in subsections (5) and (6) before it has concluded that the applicant is eligible for help under this Chapter.

Guidance

10.18 A thorough assessment of the circumstances that have caused the applicant to be homeless or threatened with homelessness and their housing needs must take place in order to determine what duty, if any, is owed to an applicant. The assessment should be person-focused and seek to identify if any support is needed by the applicant and their household in order to retain the accommodation they are currently living in or any accommodation that may become available to them as a result of the duty owed.

10.19 The outcome that the applicant wishes to achieve must also be sought, and the Local Housing Authority must assess if it can help to achieve that outcome. Contact with the applicant should be conducted in such a way that allows them to participate in discussions and processes that affect them, enabling them to make informed choices and encouraging them to take ownership and responsibility for decisions that are made.

The applicant should be provided with a realistic outline of the options available and what assistance can be provided when considering the local housing market, the current waiting times for appropriate social or supported housing, and the cost of private renting in the areas of their choice including whether this could be affordable and accessible to them.

10.20 The Welsh Government recommends that Local Housing Authorities sign up to a Customer Service Standards Charter. Shelter Cymru, in participation with service users, have produced the “Equal Ground” service Standard Framework which a Local Housing Authority is recommended to adopt. The Welsh Government recognises that some Local Housing Authorities will already have corporate standards that staff must adhere to.

10.21 The range of circumstances and needs of people using a Local Housing Authority’s homelessness services is varied. Applicants must be assessed in a consistent way. To ensure this, and to ensure that any decisions reached are fair, it is important that the findings and outcomes of all assessments are documented. These assessments should take into account any risks associated with the behaviour of the person or with others with whom they may share accommodation. Where risks are identified they should be recorded along with appropriate control measures such as referral to an appropriate specialist agency. Assessments should be quality checked by Team Leaders to ensure consistent practice and quality across the service. This should take into account any protected characteristics of applicants (under the EA 2010) to ensure that all applicants are treated fairly and appropriately.

10.22 A recommended template for the assessment is included in the Annexes. A Local Housing Authority can choose to use or adapt this template or choose to develop one specific to them. If the Local Housing Authority chooses to develop their own, they should ensure that it covers all the required elements of the assessment duty.

10.23 The Welsh Government strongly recommends that the outcome of the assessment is then used to inform a housing plan detailing the steps to be taken both by the Local Housing Authority and individual to address the situation. A recommended template for the housing plan is included in the Annexes. A Local Housing Authority can choose to use or adapt this template or to develop one specific to their requirements.

10.24 It is recommended that applicants are given an indication of the length of time the application process will take and should be kept well informed of the progress of their application and what inquiries the Local Housing Authority will make at each stage of the process.

Assessment of circumstances

10.25 The assessment should be based on the facts of the case. Local Housing Authorities will need to take into account all of the circumstances surrounding the case and consider all of the information available to it when reaching a decision. Applicants must be given the opportunity to fully explain the circumstances that have led to their application. Local Housing Authorities must take account of any factors that may make it difficult for the applicant to explain their situation fully such as any health problems, any disabilities,

whether Welsh or English is not a first language, or whether, because of the circumstances of the applicant's homelessness such as they are a victim of domestic abuse, it is particularly difficult for them to discuss. The circumstances surrounding an applicant's case may be complex and a Local Housing Authority must be prepared to consider a number of factors before they are satisfied that they have the facts of the case before them which could include issues linked to a protected characteristic.

10.26 The obligation to complete a thorough assessment, and satisfy itself whether a duty is owed, rests with the Local Housing Authority and it is not for applicants to "prove their case". The burden of proof lies with the Local Housing Authority. It is important that the applicant has been given the opportunity to explain their circumstances fully, particularly on matters that could lead to a decision against their interests, for example, a decision that an applicant is intentionally homeless or they are not in priority need.

Assessment of housing needs

10.27 The Local Housing Authority has a duty to assess the housing needs of the applicant and any person with whom the applicant lives or might reasonably be expected to live. In practice this means that a Local Housing Authority must take account of factors such as any medical and/or physical needs, any social considerations which might affect the decision they are reaching, and any relevant safety concerns. In particular a thorough assessment of the applicant's housing needs will inform the reasonable steps to be used by the Local Housing Authority in the carrying out of its duty under its S.66 duty to help prevent homelessness, its S.73 duty to help secure accommodation and its S.75 duty to secure accommodation.

10.28 The discharge of s.75 duty is usually dependent upon an offer of suitable accommodation; s66 and s73 may also be discharged upon an offer of suitable accommodation. The Local Housing Authority will, therefore, need to ensure that any identified housing need is taken fully into account when discharging these duties.

Assessment of support needs

10.29 The Local Housing Authority has a duty to assess whether any support is needed by the applicant and their household in order to retain accommodation which is or may become available. As this part of the assessment is particularly concerned with helping an applicant to retain their accommodation or, if new accommodation is provided, to sustain that accommodation, it is important that the Local Housing Authority assess if an applicant has, or could have, a particular difficulty in sustaining an occupation contract. Factors that should be taken into account include poverty, outstanding debt, physical or mental ill health or physical or mental disability or where there is a history of rough sleeping. In some circumstances an applicant's homelessness is caused not by a structural factor such as loss of a job or the end of an occupation contract, but by an unmet support need which, if not addressed, is likely to lead to repeat homelessness. Identification of an unmet support need may also indicate what type of accommodation would be appropriate.

10.30 All Local Housing Authorities should have a mechanism for assessing housing support needs and any potential risks to the applicant or to others. Officers should be trained to look for triggers that would indicate that an applicant may benefit from some degree of housing support in the short or longer term. This should be built into the assessment. It is recommended that front line staff who may receive contact with people seeking assistance receive training to recognise mental health issues, which should also include suicide prevention training such as ASIST (Applied Suicide Intervention Skills Training).

10.31 Officers should be aware of the duties on the Local Authority under Part 3 of the Social Services and Well-being (Wales) Act 2014 (SSWWA 2014) regarding assessing needs for care and support and the associated Regulations and Code of Practice. To avoid duplication, a Local Authority may carry out both assessments at the same time if staff are suitably trained and skilled to do so. In all cases a multi-agency approach should be adopted when other professionals and agencies are involved to ensure a joined-up approach to support an individual to achieve their outcomes with minimum intervention and bureaucracy.

10.32 Close links with Housing Support Grant funded services and in particular Tenancy Support Units that offer both generic and specialist floating support are particularly important. Local Housing Authorities should consider embedding support services and staff within their Housing Options team.

10.33 Raising staff awareness of the duties under the HWA 2014 and the SSWWA 2014 is important, as are mechanisms to ensure integration between housing and care and support services.

Assessment of duty owed

10.34 In carrying out an assessment the Local Housing Authority will need to use the information gathered to decide if any duty is owed to the applicant under any of the provisions of the Chapter. The specifics of the duties can be found in other areas of the Guidance:

- S.66 - Duty to help to prevent an applicant from becoming homeless
- S.68 - Interim duty to secure accommodation for homeless applicants, who may be homeless, may be eligible and may be in priority need.
- S.73 - Duty to help secure accommodation for homeless applicants
- S.75 - Duty to secure accommodation for applicants in priority need when the duty in S.73 ends

10.35 The analysis of the information gathered about the housing and support needs of the applicants and their household as well as their wishes will then inform how the identified duty should be met. When it appears to the Local Housing Authority that an adult or child may have needs for care and support, the Local Authority must carry out an assessment of their care and support needs under Part 3 of the SSWWA 2014. Training and referral arrangements will need to be in place in every Local Authority to ensure this duty is met. Eligibility for care and support is set out in the Care and Support (Eligibility)

(Wales) Regulations 2015. Where a person is suffering from or is at risk of abuse or neglect, or additionally in the case of a child is at risk of harm, the Local Authority must meet the relevant need. To avoid duplication, a Local Authority may carry out a housing assessment and a care and support assessment at the same time if staff are suitably trained and skilled to do so. Further information about the requirements for assessment under the SSWWA 2014 are available in the Regulations and Code of Practice on Part 3 of that Act. The process for determining eligibility for care and support is set out in the Care and Support (Eligibility) (Wales) Regulations 2015 and associated code of practice under Part 4 of SSWWA 2014. Where a person is suffering from or at risk of abuse or neglect, or in the case of a child at risk of harm, the Local Authority must act immediately and follow the correct procedures.

Assessment of the applicant's wishes

10.36 The assessment should include a consideration of the outcome that the applicant wishes to achieve. This could include a wish to be in a specific location that is close to family, employment or a specialist facility such as a hospital or special school, or caring responsibilities or any other desired outcomes such as cultural needs, links with a particular community, the services available in the area, and any services being received from adult care or child and family services. The Local Housing Authority should make the applicant aware of the realistic options available to them which will enable them to have a reasonable expectation of what can be done for them. There should be a clear understanding of the difference between 'wishes' and 'needs'; for example an applicant may need to be near a hospital or a special school in order to continue with medical care or support for a severely disabled child rather than having a 'wish' to be near a certain school for subjective reasons. Assessment will need to be made to determine where there is a 'need' rather than a 'wish' and where not fulfilling such needs will, potentially, result in occupation contract breakdown and further / repeated homelessness. The Local Housing Authority should clearly identify an applicant's needs as 'needs', rather than as 'wishes' or 'wants', when completing their assessment.

10.37 The assessment should be designed to engage the applicant in the process. It should reflect their own views and understanding as participation tends to encourage individuals to take more ownership and responsibility for decisions that are made. The Welsh Government recommends the use of a personal housing plan which details the applicant's desired outcome, the housing support needs of the applicant, the reasonable steps to be taken and an agreement on the actions the applicant and the Local Housing Authority, or an organisation on behalf of the Local Housing Authority, are expected to undertake. A personal housing plan should clearly identify what the applicant's 'needs' are, and what the applicant's 'wishes' are. A recommended template for the housing plan is included in the Annexes. A Local Housing Authority can choose to use or adapt this template or to develop one specific to their requirements.

10.38 In order to be person-centred, consistent and transparent, a Local Housing Authority should develop its own procedure to be followed by all staff for conducting an assessment of an applicant and their families. As a guide, the checklist below may be useful:

- Explain the process of the assessment clearly
- Describe its purpose
- Recognise the applicant's current circumstances
- Recognise the applicant's housing and related support needs
- Recognise the applicant's wishes
- Be aware of any cultural, social and racial issues
- Avoid jargon or over reliance on legal terms and phrases without giving a full explanation
- Explain what duty, if any, is owed to the applicant and the responsibility of the Local Housing Authority
- Describe any restrictions on choice imposed by the legislation or local policy and provide a realistic outline of options and what can be provided given the local housing market, the current waiting times for the appropriate social housing and the cost of private renting in the areas of their choice
- Explain what contribution the Local Housing Authority can make to the applicant's wishes
- Explain the responsibilities of the applicant in the process
- Explain and discuss confidentiality and agree who has access to the assessment.
- Obtain permission to share information and be clear what information will be shared.
- Agree timescales for agreed actions to take place
- Require the signature of the officer and the applicant
- Make available a copy of the outcome of the assessment and resulting plan
- Review the assessment and plan on a regular basis

Whether the exercise of any function under this Chapter could contribute to the achievement of the outcome the applicant wishes to achieve

10.39 Once the Local Housing Authority has identified the outcome that the applicant wishes to achieve then it must further assess whether meeting any of the duties under the provisions in the HWA 2014 can contribute to achieving the outcome.

10.40 The HWA 2014 is clear that there is no expectation that the Local Housing Authority must meet the wishes of the applicant unless it is able to do so within the functions detailed in the HWA 2014 and within the constraints of the local housing market and its own resources.

10.41 The level of support that can be given to applicants to help them realise the outcome that they want will be based on the reasonable steps that the Local Housing Authority must use when fulfilling its duties under this Chapter.

10.42 It will be important for the Local Housing Authority, where possible, to link the wishes of the applicant to the reasonable steps taken. This will provide evidence that the applicant's wishes have been considered both from the position of engaging the applicant in the process and from the Local Housing Authority's legal obligation to provide evidence of the work it has completed.

Applications to more than one Local Housing Authority

10.43 In some cases, applicants may apply to more than one Local Housing Authority simultaneously and Authorities will need to be alert to cases where an applicant is doing this. Where a Local Housing Authority has reason to believe that the applicant may be homeless or threatened with homelessness, it may wish to contact the other Authorities involved, to agree which Local Housing Authority will take lead responsibility for conducting inquiries and, if necessary, providing interim accommodation. Where another Local Housing Authority has previously made decisions about an applicant's circumstances, a Local Housing Authority considering a fresh application may wish to have regard to those decisions. However, Local Housing Authorities should not rely solely on decisions made by another Local Housing Authority and will need to make their own inquiries in order to reach an independent decision on whether any duty, and if so which duty, is owed under Part 2 of the HWA 2014.

Applications from people in custody

10.44 Chapter 6 outlines the new resettlement support available to those in the secure estate to be delivered by either directly by HMPPS or by the contracted service (Nacro in North Wales and Forward Trust in South Wales)

10.45 In order to co-ordinate support between the new resettlement support and the homelessness legislation within Part 2 of the HWA 2014, the National Pathway for Homelessness for Children, Young People and Adults in the Secure Estate was developed. The key element of the Pathway is the referral process which will ensure that where a future or current accommodation need has been identified a comprehensive Local Authority Application for Help with Housing is completed. This application will be submitted to the relevant Local Housing Authority and will provide enough information for them to make a decision on the eligibility and, if appropriate, duty owed to the applicant.

10.46 The *National Pathway for Homelessness for Children, Young People and Adults in the Secure Estate dovetails with the National Pathway for the care and support of adults in the secure estate and the national Pathway for the care and support of children and young people so ensure there is continuity of care.*

Keeping the assessment under review.

The Act states

Section 62 - Duty to Assess

8. A local housing authority must keep its assessment under review during the period in which the authority considers that it owes a duty to the applicant under the following provisions of this Chapter or that it may do so.

9. A local housing authority must review its assessment in the following two cases—

Case 1 - where an applicant has been notified under section 63 that a duty is owed to the applicant under section 66 (duty to help to prevent an applicant from becoming homeless) and subsequently it appears to the authority that the duty under section 66 has or is likely to come to an end because the applicant is homeless;

Case 2 - where an applicant has been notified under section 63 that a duty is owed to the applicant under section 73 (duty to help to secure accommodation for homeless applicants) and subsequently it appears to the authority that the duty in section 73 has or is likely to come to an end in circumstances where a duty may be owed to the applicant under section 75 (duty to secure accommodation for applicants in priority need when the duty in section 73 ends).

10. The duty in subsection (5)(d) does not require a local housing authority to assess whether or not a duty would be owed to the applicant under section 75 unless and until it reviews its assessment in accordance with subsection (9) in the circumstances described in case 2 of that subsection; but it may do so before then.

11. Subsections (9) and (10) do not affect the generality of subsection (8).

Guidance

10.47 The duties owed to applicants who are homeless or threatened with homelessness under the HWA 2014 can change as their circumstances change; see S.62 (9). For this reason, an applicant's assessment must be kept under review.

10.48 For some applicants there will be at least a two-stage assessment if the steps taken under S.73 do not relieve the homelessness. Firstly, an assessment will be made to see if a duty is owed under S.73 duty to help secure accommodation which will either be carried out when the application is made or when S.66 duty to prevent homelessness comes to an end; and secondly, if the S.73 duty is concluded under the reasons set out in S.74(2) and S.74(3), a review of the assessment will be required to decide if the S.75 duty

to secure accommodation is owed. As per S.63 (1), the Local Housing Authority must notify the applicant of the outcome of this reviewed assessment to determine their eligibility for S.75 and inform them of their reasons for the decision.

10.49 Where applicants have been assessed and were owed the section 66 duty to help prevent homelessness, and unsuccessful action is taken to prevent homelessness, if they then become homeless their assessment will need to be reviewed in order to inform what further reasonable steps can be taken under the S.73 duty to help secure accommodation.

10.50 Should an applicant request interim accommodation whilst they are owed the S.73 duty to help secure accommodation, the assessment will need to be reviewed in order to determine if they have reason to believe the applicant may be in priority need and therefore entitled to it.

10.51 It is important to note that an applicant cannot be assessed on first contact for the S.75 duty to secure accommodation, since they will always need to be assessed for the S.73 duty to help secure accommodation duty first, and in some cases, an assessment for the S.66 duty to help prevent homelessness will have also been carried out.

10.52 The assessment process and the form used (paper or electronic) will be key to ensuring that officers are not repeating assessments but are able to build on information and decisions already made. It is essential that the Local Housing Authority has a clear process in place for their officers to follow and a comprehensive assessment form which allows information gathered and decisions reached to be recorded, future plans to be clearly laid out and the assessment to be reviewed at the key stages.

Not able to change decision when made

10.53 Once a Local Housing Authority has notified an applicant that they are entitled to one of the duties under this Chapter, they cannot normally – unless the decision is subject to a request for a review – change their decision. The duty under S.62 (8) to keep the assessment under review is only applicable as set out above and it is not for a Local Housing Authority to change a decision once made.

10.54 Loss of priority need after acceptance of the duty under S.75 duty to secure accommodation does not entitle a Local Housing Authority to make a new decision that no further duty is owed. Instead, the duty must be brought to an end in one of the ways set out in S.76 or s.79 of the HWA 2014. For example, a single person with children may be owed the duty under S.75 (Duty to secure accommodation) and has been notified of that fact. Where the circumstances of the case are such that the children move permanently to another address, such as with another family member, so that the household composition has changed, this duty will continue to be owed to the applicant until it can be discharged in accordance with the reasons in S.76 or S.79.

10.55 There are some recognised exceptions

i) Where an applicant has deliberately misled a Local Housing Authority;

ii) Where there has been a fundamental mistake of fact;

iii) Where there has been a decision adverse to the applicant's interests and a Local Housing Authority wishes to re-open the decision, for example because new information has come to light.

Notice of the outcome of assessment

The Act states

Section 63 - Notice of the outcome of assessment

1. The local housing authority must notify the applicant of the outcome of its assessment (or any review of its assessment) and, in so far as any issue is decided against the applicant's interests, inform the applicant of the reasons for its decision.

2. If the authority decides that a duty is owed to the applicant under section 75, but would not have done so without having had regard to a restricted person, the notice under subsection (1) must also—

a) inform the applicant that its decision was reached on that basis,

b) include the name of the restricted person,

c) explain why the person is a restricted person, and

d) explain the effect of section 76(5).

3. If the authority has notified or intends to notify another local housing authority under section 80 (referral of cases), it must at the same time notify the applicant of that decision and inform him or her of the reasons for it.

4. A notice under subsection (1) or (3) must also—

a) inform the applicant of his or her right to request a review of the decision and of the time within which such a request must be made (see section 85), and

b) be given in writing and, if not received, is to be treated as having been given if it is made available at the authority's office for a reasonable period for collection by the applicant or on the applicant's behalf.

5. In this Chapter, "a restricted person" means a person—

a) who is not eligible for help under this Chapter,

b) who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996, and

c) who either—

i) does not have leave to enter or remain in the United Kingdom, or

ii) has leave to enter or remain in the United Kingdom subject to a condition to maintain and accommodate himself or herself and any dependants, without recourse to public funds.

Guidance

10.56 When a Local Housing Authority has completed an assessment under S.62 of the HWA 2014, they must notify the applicant in writing of their decision as to whether they are eligible for assistance and whether any duty is owed (and if so, which duty) under Part 2 of the HWA 2014. Local Housing Authorities should not delay their decision-making process to avoid acceptance of a particular duty. Whilst steps to help to prevent and relieve can be put in place from first contact, decisions on duties owed should be made as soon as all relevant information is available to the Local Housing Authority.

10.57 The priority is that the assessment and the decision are correct. However, it is the view of the Welsh Government that wherever possible, Local Housing Authorities aim to complete each stage of the assessment and notify the applicant of their decision within 10 working days. The Welsh Government recommends that where the eligibility and housing status have been determined, the decision on which duty is owed (if any) can be relayed to the applicant as soon as possible and the remaining elements of the assessment can be concluded within 10 working days. This will ensure applicants can be included within the statutory framework and early intervention work can be appropriately recorded.

10.58 This assessment provides a good opportunity for consideration to be given to whether the applicant has any care and support needs, or support needs if they are a carer. If they appear to have care and support needs a referral should be made to care and support services.

10.59 The notification must be given in writing and should include:

- a clear explanation of the reasons for any decision which is against the interest of the applicant and the factors that were taken into account when making that decision for example that they are not eligible for assistance, are not homeless, are not in priority need or are homeless intentionally;
- a clear explanation of the reasons for a decision to refer the applicant to another Local Housing Authority and the factors were taken into account when making that decision (S.80 to S.82);
- information about the applicant's right to request a review of the decisions made, and the period within which a request for a review must be made (S.85);
- information on how to obtain independent housing advice
- Local Housing Authorities should also advise applicants about the procedure to be followed on a review (S.86).

10.60 In accordance with S.63 (4)(b), where the notification cannot be sent to the applicant, or where the Local Housing Authority believes that it may not have been received by them, the Local Housing Authority should make available at its office a written statement of its decisions, and the reasons for them, to enable the applicant, or someone who represents the applicant, to collect within a reasonable period.

10.61 Local Housing Authorities must notify applicants, or a person designated by the applicant, in writing as soon as decisions are made on their case. The Local Housing Authority will need to ensure the notification explains clearly and fully the reasons for the decisions and what, if anything, the Local Housing Authority will now do to assist the applicant. It is important to ensure that the applicant fully understands the nature of any housing duty that is owed and the reasonable steps that will be carried out by the applicant, the Local Housing Authority and any relevant partners or agencies. Where possible, a Local Housing Authority should try to explain decisions in person as well as in writing. This is particularly important when an applicant may have difficulty understanding the consequence of any decision.

Restricted person.

The Act states

Section 63 - Notice of the outcome of assessment

2. If the authority decides that a duty is owed to the applicant under section 75, but would not have done so without having had regard to a restricted person, the notice under subsection (1) must also—

a) inform the applicant that its decision was reached on that basis,

b) include the name of the restricted person,

c) explain why the person is a restricted person, and

d) explain the effect of section 76(5).

5. In this Chapter, “a restricted person” means a person—

a) who is not eligible for help under this Chapter,

b) who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996, and

c) who either—

i) does not have leave to enter or remain in the United Kingdom, or

ii) has leave to enter or remain in the United Kingdom subject to a condition to maintain and accommodate himself or herself and any dependants, without recourse to public funds.

Guidance

10.62 Under S.63 (2) and (5), a Local Housing Authority must have regard to whether an applicant's household contains a restricted person. A restricted person is a person who is subject to immigration control with either no, or conditional, leave to remain. If there is a restricted person in the household for further guidance on eligibility see Chapter 7.

Withdrawn applications

10.63 It is recommended that Local Housing Authorities have procedures in place for dealing with applications that are withdrawn or where someone fails to maintain contact with the Local Housing Authority after making an application. It is good practice for applications to be considered for closure if there has been no contact with the applicant for more than 6 weeks. Any further approach from the applicant after this time may need to be considered as a fresh application. Where an applicant renews contact within 6 weeks the Local Housing Authority will need to consider any change of circumstances that may affect the application.

10.64 However, where the application has been received from an applicant residing in an institution (i.e. hospital, prison, etc.), Local Housing Authorities need to make allowances and extend the 6-week deadline as appropriate.

11. INTERIM DUTY TO PROVIDE TEMPORARY ACCOMMODATION

Introduction

11.1 This chapter provides detailed guidance regarding the circumstances in which interim accommodation should be provided, consideration of factors when providing accommodation and how the interim duty to accommodate is brought to an end.

11.2 The chapter also provides guidance on the protection of property for persons who are provided accommodation under the interim duty to accommodate.

The Act states

Section 68 – Interim duty to secure accommodation for homeless applicants in priority need

1. The local housing authority must secure that suitable accommodation is available for the occupation of an applicant to whom subsection (2) or (3) applies until the duty comes to an end in accordance with section 69.

2. This subsection applies to an applicant who the authority has reason to believe may -

a) be homeless

b) be eligible for help, and

c) have a priority need for accommodation,

in circumstances where the authority is not yet satisfied that the applicant is homeless, eligible for help and in priority need for accommodation.

3. This subsection applies to an applicant –

a) who the authority has reason to believe or is satisfied has a priority need or whose case has been referred from a local housing authority in England under section 198(1) of the Housing Act 1996, and

b) to whom the duty in section 73 (duty to help to end homelessness) applies.

4. The duty under this section arises irrespective of any possibility of the referral of the applicant's case to another local housing authority (see section 80 to 82).

Guidance

11.3 If a Local Housing Authority has reason to believe that an applicant may be eligible for assistance, may be homeless and may have a priority need, the Local Housing Authority will have an immediate duty under S.68 of the HWA 2014 to ensure that suitable interim accommodation is available for the applicant (and his or her household).The threshold for the S.68 duty is a lower test than 'being satisfied'; the Local Housing Authority only has to have a 'reason to believe' that the applicant 'may be' homeless, eligible for assistance and have a priority need.

11.4 Where an applicant is not offered interim accommodation as the Local Housing Authority does not consider that the applicant has a priority need, the Welsh Government recommends that the decision is communicated in writing on the day of this decision, setting out the reasons why the decision was made and informing the applicant of their right to review as set out in S.85 (1)(b).

11.5 If the Local Housing Authority needs to make further enquiries as to whether the applicant is homeless and/or eligible for housing assistance, but the conditions for S.68 are already satisfied, the Local Housing Authority must accept an interim duty to accommodation pending completion of those enquiries (R (on the application of IA) v City of Westminster Council [2013] EWHC 1273 (QB)). The Local Housing Authority should make appropriate enquiries into whether a person is homeless and/or eligible and give reasoned consideration of any new information obtained before making a decision as to whether S.73 duty is owed.

11.6 When a person is found to be homeless because it is not reasonable to continue to occupy accommodation, then that accommodation should ordinarily not be regarded as suitable to discharge the S.68 duty. There can be an agreement reached between the Local Housing Authority and the homeless person if the homeless person wants to opt to remain in the accommodation currently available to them (e.g. staying with a family member or friend, or in accommodation considered unreasonable by the Local Housing Authority that triggers homelessness) until more suitable accommodation can be found, provided that the applicant is well informed and freely consents to the arrangement. This does not result in the Local Housing Authority ceasing to be subject to the duty in the event the applicant requires alternative accommodation under S.68 (unless the Local Housing Authority has already made an offer of accommodation under S.68). The Welsh Government recommends that the applicant's wishes are taken into account, Local Housing Authorities should be cautious around cases where collusion may be taking place.

11.7 The S.68(1) duty applies even where the Local Housing Authority considers the applicant may not have a local connection with the Local Housing Authority area and may have a connection with another Local Housing Authority. Applicants cannot be referred to another Local Housing Authority unless the Local Housing Authority dealing with the application is satisfied that S.73 of the HWA 2014 would apply should the applicant have a connection with the assessing Local Housing Authority and the conditions for referral are met (i.e. the applicant is eligible for assistance, unintentionally homeless and has a priority need – see Chapter 18 for further guidance).

11.8 The Local Housing Authority is able to move applicants from one temporary address to another, even if there is no change of circumstances which made the first address unsuitable. This may be necessary, for example, as a way of managing the Local Housing Authority's housing stock.

Other circumstances where accommodation must or may be provided under section 68

11.9 Suitable accommodation must be provided to any person that may be homeless, eligible and in priority need. In the event that the case is being considered for referral to another Local Housing Authority in England or Wales, accommodation must be provided until the notification of acceptance of the referral from the receiving Local Housing Authority has been received. Once the notified Local Housing Authority confirms receipt of the notification, the duty under S.68 will cease for the notifying Local Housing Authority and become the duty of the notified Local Housing Authority.

11.10 Accommodation may be provided to an applicant pending the outcome of a review or an appeal requested under S.85 and S.88 (per s.69(11) or s.88(5) of the HWA 2014). In the event the Local Housing Authority does not exercise its power to accommodate pending review, the applicant can appeal under S.89. The Local Housing Authority must notify the applicant or a person designated by the applicant in writing with the reasons why it is not exercising its power to accommodate pending appeal / review and notifying the applicant of their right to appeal under S.89.

Waiting lists

11.11 The use of 'waiting lists' for people who are entitled to accommodation under either s68 or s75 is unlawful. If a s68 (interim duty to secure accommodation for homeless applicants in priority need) or a s75 (duty to secure accommodation for applicants in priority need when the section 73 duty ends) duty is owed, the local authority must secure that suitable accommodation is available for occupation.

Need for support

11.12 In deciding what accommodation needs to be secured, Local Housing Authorities will need to consider whether the applicant has any support needs. This will be of particular importance for young people who may not have experienced living by themselves. Local Housing Authorities will therefore need to have well-developed effective links between their Homelessness / Housing Options / Solutions team, Supporting People team, the Social Services Authority or other bodies (e.g. local health boards, Criminal Justice Services, Social Landlords and voluntary sector organisations) to ensure that a joint assessment of an applicant's housing and support needs can be made where necessary. Such assessments will also assist in considering options for the provision of more settled accommodation that will bring the duties under S.73 and S.75 to an end.

11.13 This assessment provides a good opportunity for consideration to be given to whether the individual in question has any care and support needs, or support needs if they are a carer, and for a referral to the appropriate department to be made for a care and

support assessment under the duties afforded under Parts 3 and 4 of the Social Services and Well-being (Wales) Act 2014.

Standards and charges

11.14 Local Housing Authorities must ensure that all accommodation provided as a discharge of a homelessness duty complies with relevant legislation and regulations on health and safety standards and arrange appropriate inspections. This must include compliance with the Homelessness (Suitability of Accommodation) (Wales) Order 2015 and successive orders – see Chapter 19

11.15 Where Local Housing Authorities secure that accommodation is available for an applicant, they may, if they wish, require him or her under S.90 of the HWA 2014 to:

i) pay reasonable charges determined by the Local Housing Authority in respect of accommodation which it secures for the person's occupation (either by making it available itself or otherwise), or

ii) pay a reasonable amount determined by the Local Housing Authority in respect of sums payable by it for accommodation made available by another person.

11.16 In setting charges, Local Housing Authorities will need to bear in mind that accommodation secured for applicants must be affordable for them (see S.59(2)).

Protection of property

11.17 S.93 of the HWA 2014 provides that where the Local Housing Authority has become subject to a duty under specified provisions of Part 2 HWA 2014 and it has reason

93 — Protection of property

1. Where a local housing authority has become subject to a duty in respect of an applicant as described in subsection (2), it must take reasonable steps to prevent the loss of the personal property of the applicant or prevent or mitigate damage to it if the authority has reason to believe that—

a) there is danger of loss of, or damage to, the property by reason of the applicant's inability to protect it or deal with it, and

b) no other suitable arrangements have been or are being made.

2. The duties in respect of an applicant are—

- section 66 (duty to help to prevent an applicant from becoming homeless) in the case of an applicant in priority need;
- section 68 (interim duty to secure accommodation for homeless applicants in priority need);

- section 75 (duty to secure accommodation for applicants in priority need when the duty in section 73 ends);
- section 82 (duties to applicant whose case is considered for referral or referred) in the case of an applicant in priority need.

3. Where a local housing authority has become subject to the duty in subsection (1), it continues to be subject to that duty even if the duty in respect of the applicant as described in subsection (2) comes to an end.

4. The duty of a local housing authority under subsection (1) is subject to any conditions it considers appropriate in the particular case, which may include conditions as to—

a) the making and recovery by the authority of reasonable charges for the action taken, or

b) the disposal by the authority, in such circumstances as may be specified, of property in relation to which it has taken action.

5. A local housing authority may take any steps it considers reasonable for the purpose of protecting the personal property of an applicant who is eligible for help or prevent or mitigate damage to it if the authority has reason to believe that—

a) there is danger of loss of, or damage to, the property by reason of the applicant's inability to protect it or deal with it, and

b) no other suitable arrangements have been or are being made.

6. References in this section to personal property of the applicant include personal property of any person who might reasonably be expected to reside with the applicant.

to believe that:

i) there is danger of loss of, or damage to, the property by reason of the applicant's inability to protect it or deal with it, and

ii) no other suitable arrangements have been, or are being made, the Local Housing Authority will have a duty to protect the property.

11.18 The specified provisions are:

i) S.66 (duty to help to prevent an applicant from becoming homeless) in the case of an applicant in priority need;

ii) S.68 (interim duty to accommodate applicants in priority need);

iii) S.75 (duty to secure accommodation for applicant in priority need when duty in

section 73 ends);

iv) S.82 (duties to applicant whose case is considered for referral or referred) in the case of an applicant in priority need.

11.19 Applicants may be unable to protect their property if, for example, they are ill or are unable to afford to have it stored themselves. In order to protect an applicant's property, a Local Housing Authority can enter the applicant's current or former home and deal with the property in any way which seems reasonably necessary (S.94(1) of the HWA 2014). They may store the property or arrange for it to be stored. This may be appropriate where the applicant is accommodated by the Local Housing Authority in furnished accommodation for a period. In some cases, where the applicant's previous home is not to be occupied immediately, it may be possible for the property to remain there, if it can be adequately protected.

11.20 The applicant may request the Local Housing Authority to move their property to a particular location. If the Local Housing Authority considers that the request is reasonable, S. 94(4) provides they may discharge their responsibilities by doing as the applicant asks. Where such a request is met, the Local Housing Authority will have no further duty or power to protect the applicant's property, and they must inform the applicant of this consequence before complying with the request (S.94(5) and (8)).

11.21 Local Housing Authorities may impose certain conditions on the assistance they provide. These may include making a reasonable charge for storage of property and reserving the right to dispose of property in certain circumstances specified by the Local Housing Authority for example, if the applicant loses touch with them and cannot be traced after a certain period or the property is perishable (S.93 (4)).

11.22 S.94(6) of the HWA 2014 provides that where a request to move property to another location either is not made or is not carried out, the duty or power to take any action under S.93 ceases when the Local Housing Authority believes there is no longer any serious risk of loss or damage to the property. This may be the case, for example, where an applicant recovers from illness or finds accommodation where he or she is able to place his or her possessions, or becomes able to afford the storage costs themselves. However, where a Local Housing Authority has discharged the duty under S.93 by placing property in storage, they may continue to keep the property in storage, if they wish. Where they do so, any conditions imposed by the Local Housing Authority continue to apply and may be modified as necessary.

11.23 Where a Local Housing Authority ceases to be under a duty, or ceases to have a power, to protect an applicant's property under S.93 of the HWA 2014 they must notify the applicant of this and give the reasons for it. The notification must be delivered to the applicant or sent to his or her last known address (S.94 (8) and (9)).

Households with Pets

11.24 Local Housing Authorities should be sensitive to the accommodation needs of applicants with pets. In the event that accommodation cannot be provided that would accept an applicant's pet, Local Housing Authorities should have arrangements in place to ensure the safeguarding of the pet. Local Housing Authorities may wish to consider developing links with local kennelling / cattery services.

11.25 Where an applicant is dependant on the companionship provided by a pet, Local Housing Authorities should in the first instance aim to provide accommodation that is suitable for a pet owner. Where this is not immediately available, Local Housing Authorities should continue to aim to provide pet-friendly accommodation as soon as possible.

11.26 Where an applicant does have a pet, they should be encouraged to seek arrangements with either a member of family or a friend or alternatively the kennelling / cattery services because the Local Housing Authority would be entitled to make a reasonable charge under the protection of property provisions since pets are considered to be personal property.

11.27 Local Housing Authorities need to be aware that some people may be undergoing animal assisted therapy. In these cases, accommodation provided by the Local Housing Authority on a temporary basis should allow this form of treatment to continue if an alternative venue is not possible due to the type of therapy the applicant may be receiving.

12. DUTY TO HELP TO PREVENT HOMELESSNESS

Introduction

12.1 The prevention of homelessness is a key priority of the Welsh Government. It is embedded in legislation as a result of Part 2 of the HWA 2014. The HWA 2014 places a duty on Local Housing Authorities to work with people who are threatened with homelessness within 56 days in order to help prevent them from becoming homeless.

12.2 Preventing homelessness in the first place can help avoid the significant negative impacts homelessness can have, for example, on a person's health, education, employment opportunities and social well-being. Early intervention is therefore not only beneficial to those threatened with homelessness, but can also result in direct cost savings for Local Housing Authorities and other public services. Local Housing Authorities are urged to be aware of the benefits in identifying and working with an applicant as soon as possible and potentially much earlier than the minimum 56 days set out in the HWA 2014.

12.3 This section of the Code provides guidance to Local Housing Authorities on how to fulfil their duty to take reasonable steps to people threatened with homelessness.

The duty to help to prevent an applicant from becoming homelessness

The HWA 2014 states

Section 66 – Duty to help to prevent an applicant from becoming homeless

1. A local housing authority must help to secure that suitable accommodation does not cease to be available for occupation by an applicant if it is satisfied that the applicant is

a) threatened with homelessness, and

b) eligible for help.

2. Subsection (1) does not affect any right of the authority, whether by virtue of a contract, enactment or rule of law, to secure vacant possession of any accommodation.

Guidance

12.4 When a Local Housing Authority, following an assessment under S.62, deems an applicant to be threatened with homelessness within 56 days, it is obliged to help an eligible applicant to prevent them becoming homeless by either directly meeting their housing need or by assisting them in one or more of the following ways:

- to remain in their current accommodation;
- to delay a need to move out of current accommodation in order to allow a planned move into alternative accommodation;
- to find alternative accommodation; and/or
- to sustain independent living.

12.5 In helping to secure that suitable accommodation does not cease to be available for occupation, Local Housing Authorities might find it beneficial to work in partnership with each other to not only identify at the earliest opportunity the factors associated with the risk of homelessness, but also to deliver the services required to prevent homelessness.

12.6 Once an assessment has been carried out to determine eligibility, the threat of homelessness and the immediacy of that threat, a Local Housing Authority will need to investigate the reasons behind the threat and develop a deeper understanding of the applicant's housing situation. Guidance on assessment can be found at Chapter 10 and guidance on eligibility can be found at Chapter 7.

Meaning of help to secure

The HWA 2014 states

Section 65 – Meaning of help to secure

Where a local housing authority is required by this Chapter to help to secure (rather than "to secure") that suitable accommodation is available, or does not cease to be available, for occupation by an applicant, the authority –

a) is required to take reasonable steps to help, having regard (among other things) to the need to make the best use of the authority's resources;

b) is not required to secure an offer of accommodation under Part 6 of the Housing Act 1996 (allocation of housing);

c) is not required to otherwise provide accommodation.

Guidance

12.7 Where the S.66 duty applies, the Local Housing Authority must help an applicant to secure or retain suitable accommodation. This does not mean that the Local Housing Authority has a duty to secure accommodation on behalf of the applicant at this stage, and it is vital that the applicant co-operates fully in developing and undertaking a housing solution. Guidance on unreasonable failure to cooperate can be found at chapter three.

12.8 Guidance on suitability of accommodation can be found at Chapter 19.

12.9 In relation to the range of 'reasonable steps' a Local Housing Authority may take, more detailed guidance is provided below. It is by no means an exhaustive list, nor is it a prescriptive set of minimum interventions to be offered to each applicant. Local Housing Authorities are expected to consider the most appropriate intervention or range of interventions on a case-by-case basis, and determine which are most likely to result in a positive outcome.

12.10 This should be done following an investigation of the causes behind the applicant's particular housing issues and should lead to the Authority and applicant agreeing a plan to address their housing situation, including a list of reasonable steps.

Best use of the Authority's resources

12.11 Detailed guidance on when and how a Local Housing Authority can consider the best use of its resources can be found in Chapter 15.

How to secure or help to secure the availability of accommodation

The HWA 2014 states

Section 64 – How to secure or help to secure the availability of accommodation

1. The following are examples of the ways in which local housing authority may secure or help to secure that suitable accommodation is available, or does not cease to be available for occupation by an applicant –

a) by arranging for a person other than the authority to provide something;

b) by itself providing something;

c) by providing something, or arranging for something to be provided, to a person other than the applicant.

2. The following are examples of what may be provided or arranged to secure or help to secure that suitable accommodation is available, or does not cease to be available, for occupation by an applicant –

a) mediation;

b) payments by way of grant or loan;

c) guarantees that payments will be made;

d) support in managing debt, mortgage arrears or rent arrears;

e) security measures for applicants at risk of abuse;

f) advocacy or other representation;

g) accommodation;

h) information and advice;

i) other services, goods or facilities.

Guidance

12.12 S.64 of the HWA 2014 includes examples of the types of interventions that Local Housing Authorities might consider.

12.13 The following is a list of interventions that Local Housing Authorities ought to have in place as a minimum set of available interventions. Authorities have flexibility to provide interventions, including commissioning with other Local Authority areas, but it is paramount that Local Housing Authorities consider the individual needs of the applicant when developing interventions.

- Housing Options Advisors – to provide constructive advice to individuals to help identify and tackle the underlying housing and other needs of the applicant including the factors associated with their threatened homelessness and to provide appropriate advice and/or help to secure accommodation;
- Services to resolve disputes between different parties, such as mediation and conciliation – to assist applicants to resolve relationship issues via mediation and conciliation services. This might include family, spousal or neighbourly relationships that have resulted in a threatened eviction, etc. Local Housing Authorities will need to aware that it is not always appropriate to undertake mediation in all situations (e.g. domestic abuse);
- Financial payments from a homelessness prevention fund – potential financial assistance to assist those with financial issues to clear possible debts and/ or assist them to move to other accommodation (this intervention should be considered alongside debt/money advice to tackle the underlying causes of any financial difficulty and break the potential for a cycle of debt – see below);
- Specialist advice on welfare/benefit rights and debt/money advice, including access to independent advice – to support an applicant to make the appropriate decision in light of benefit entitlements and other financial considerations, support an applicant to downsize if appropriate, or support an applicant to negotiate with lenders and set a realistic household budget;

- Independent housing advice – refer individuals to a relevant local advice service such as Shelter Cymru, which may be the most suitable agency to provide specialist advice;
- Joint working between Local Housing Authorities and social landlords to prevent homelessness – this support could potentially range from helping with an application for social housing, giving an applicant added priority on choice based lettings, to discussing and resolving rent arrears;
- Joint approaches with other services such as Social Care and Health – work in partnership with colleagues both corporately within the Local Authority and with relevant local health boards to assess an applicant's social care, health and other needs to develop a holistic plan to prevent their homelessness, which may be integrated into a statutory care and support plan under the SSWWA 2014;
- Domestic abuse services – support to source the most appropriate domestic abuse service, including but not limited to support through personal safety advice, target hardening and help to find a refuge placement if appropriate when considering all the risks to the applicant;
- Crisis intervention – securing accommodation immediately (e.g. through a partner agency, hostel or payment to a landlord);
- Referral to a statutory Intensive Family Support Team - this must be in place to assist families where the welfare of children is at risk;
- Discretionary Housing Payments (DHPs) – support an applicant to access financial support to help with rent or housing costs, if they are in receipt of Housing benefit or the housing element of Universal Credit . Support should also be considered to tackle the underlying issue as to why the intervention was required initially;
- Employment and training options advice – where an applicant's housing situation would be improved by enhanced employment and training. This is particularly important in the context of welfare reform.
- Housing support – supporting people to sustain their accommodation through the help of a local Housing Support Service, possible via Housing Support Grant funded services;
- Specialist welfare services for Armed Forces personnel/veterans – support Armed Forces veterans to access the specialised services available to them;
- Action to resolve anti-social behaviour ("ASB") – such as referrals to an ASB preventative support service, including interventions relating to responding to hate crime and/or harassment;
- Working in prisons prior to release in order to prevent homelessness – utilising the *National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate* work proactively with partners such as the Prison, Probation Services along with Local Health Boards, third sector organisations, Local Authority Social Services and private landlords to help people in custody to either secure accommodation upon release or help them to retain existing accommodation on reception to custody;
- Options to facilitate access to the Private Rented Sector ("PRS") – ensure that suitable PRS options are available locally to applicants. This could be via support to the applicant to access a locally managed private rented sector access service that should be available in every Local Authority area, a well maintained list of

PRS opportunities or referral to a house sharing website; this may also include payments for rent in advance or deposit and/or bond scheme;

- Action to intervene with mortgage arrears – help to access local and national programmes to support people at risk of homelessness as a result of mortgage arrears, including mortgage rescue schemes where available;
- Action to support disabled applicants – utilise funds to help adapt existing properties (DFGs, PAGS and RRAP), and in addition and where appropriate, consider a referral to one of the Welsh Accessible Housing Registers;
- Access to supported housing – where a support need is identified, refer and manage a transition to supported housing or placement on a relevant waiting list;
- Arranging accommodation with relatives and friends – help to identify and secure, including using mediation where necessary, suitable accommodation with relatives or friends;
- Options for the accommodation of vulnerable applicants – ensure that all options are considered including the potential for the applicant to be accommodated and supported in housing which is funded, for example, by health, social services, the Housing Support Grant or through third sector grant funding, etc.;

12.14 Although this is a list of minimum interventions that Local Housing Authorities ought to offer, other innovative interventions based on local demand must also be identified and considered in Local Homelessness Strategies (i.e Housing Support Programme Strategies). An example might include providing additional financial and debt advice support and employment and training options in an area that has been significantly impacted by a recent major redundancy process, or projects designed to meet the needs of particular groups facing high levels of homelessness in a particular Local Authority area.

12.15 Support for applicants must be on an individual basis and must be developed following an investigation of the causes of the applicant's particular housing situation. Local Housing Authorities must be pro-active in their utilisation of this range of interventions, including looking beyond this list for solutions, and applicants must be involved as much as possible to ensure they are fully engaged with the approach.

Personal Housing Plan

12.16 Although not a requirement in law, Welsh Government strongly recommends that it would be best practice for Local Housing Authorities to adopt a system of utilising a Personal Housing Plan when supporting an applicant to deliver reasonable steps. A template plan is attached in the Annexes but Local Housing Authorities are free to adapt or use alternative systems. Where the person has a care and support plan in discharge of the Local Authority's duty under S.35 of the SSWWA 2014, liaison should take place with the Care and Support Plan Co-ordinator to ensure there is appropriate linkage between the plans.

12.17 Chapter 10 of this Code outlines the requirements surrounding notification of outcome of the assessment and Chapter 15 provides details on how to notify an applicant that a duty has ended. The Welsh Government note that the merging of written notification to reduce the level of bureaucracy may be considered, particularly where an applicant is simply moving from one duty to another (i.e. S.66 to S.73). This should help to reduce

potential confusion for applicants provided the notifications are clear about the decisions which have been taken and the implications for the applicant.

12.18 It is also of paramount importance that the applicant is able to understand the language used in the notification. Local Housing Authorities might consider it appropriate to combine the Personal Housing Plan with other points of notification in order to simplify the paperwork submitted to applicants.

Viable Housing Options

12.19 Through proactive and effective prevention, the first option to be considered should be for the applicant to remain at their current accommodation, if suitable/ appropriate. Where this is not appropriate, the Local Housing Authority should aim to achieve a planned move into suitable alternative accommodation. The option to wait for social housing should also be explored with applicants in appropriate circumstances. This can include where an applicant is claiming to be threatened with homelessness or living in overcrowded conditions, where it is reasonable for them to be expected to continue to occupy that accommodation and concerns of abuse as outlined in S.57 HWA 2014 do not apply.

12.20 Allocation practices should not encourage the view that people have to apply as homeless to the Local Housing Authority in order to obtain an occupation contract with a Community Landlord. Local Housing Authorities should ensure their allocations scheme achieves a balance between giving reasonable preference to homeless people and the priority given to other people in housing need. Applicants should be reminded that social housing is also provided by Community Landlords and encouraged to apply for housing from these organisations as well. It is vital that Local Housing Authorities are vigorous in establishing and implementing nomination arrangements with Community Landlords that play a full part in housing people who are threatened with homelessness as well as those who are homeless.

12.21 Where a Local Authority or other social landlord operates low cost home ownership schemes, these should be a considered as a viable option when supporting applicants threatened with homelessness if appropriate. The marketing of these schemes needs to be developed, incorporating flexibility within schemes to allow low cost start-up rents or low levels of ownership or equity. This can ensure that even people on relatively low incomes can access these schemes.

12.22 In cases of homeowners at risk of repossession, Local Housing Authorities and their social landlord partners should work with the homeowner to explore options available to them to help them remain in their home. Examples include Mortgage Rescue Schemes, Support for Mortgage Interest and Home Owner Mortgage Support for people who have experienced a temporary decrease in their income. Local Housing Authorities should also consider referring homeowners experiencing financial difficulty for debt advice to organisations such as Shelter Cymru debt advice services, Citizens Advice, Credit Unions, or the Housing Debt Helpline operated by Step Change.

12.23 Local Housing Authorities should also work with social (and other) housing providers to encourage them to seek to maintain and sustain occupation contracts by employing effective strategies for the prevention and management of rent arrears. Landlords should be encouraged to make early and personal contact with contract-holders in arrears and to assess whether there are any additional support needs and, where relevant, to establish that all welfare benefits to which contract-holders are entitled are being claimed. Social Landlords should offer assistance and advice on welfare benefits and in making a claim, debt counselling and money advice either in-house or through a referral to an external agency. They should also implement ways for recovering the money such as debt management plans or attachment to benefits or earnings orders. Possession action should only be taken as a last resort.

12.24 Local Housing Authorities should assist and work with private landlords to ensure that contract-holders are able to manage and sustain their occupation contracts effectively.

Private rented sector (“PRS”)

12.25 While concerns over the shortage of housing supply remain, access to the private rented sector is a key priority for Local Housing Authorities in Wales and discharge of duty into suitable PRS remains an option for Local Housing Authorities.

12.26 Appropriate use of the private rented sector must be made to prevent homelessness from occurring and/or to provide settled accommodation for people living in temporary accommodation. Local Housing Authorities must continue to develop strong relations with private landlords, for example through landlord forums. It will be essential for Local Housing Authorities to offer a clear package of options to incentivise landlords to make accommodation available to people at risk of homelessness.

12.27 However, Local Housing Authorities need to be aware that PRS housing will not be appropriate for all applicants. In particular, Local Housing Authorities will need to consider the suitability of accommodation for those applicants who require support to accompany their housing and sustain an occupation contract. Authorities should consider potential risks to an applicant when offering / sourcing accommodation which is shared. Authorities need to be sensitive to those who may face harassment or racist, homophobic, or transphobic abuse from housemates and their visitors. Local Housing Authorities should also consider the applicant’s risk of exploitation by sharers, visitors or neighbours. Applicants with mental health issues and young people may be at a higher risk of exploitation.

12.28 Shared housing is likely to be the main option for single persons under 35 in receipt of a low income. Authorities should consider the needs of the applicant and be sensitive around the needs of applicants who have medical conditions that make communal living very difficult, for example, OCD, eating disorders etc. Authorities may wish to consider sourcing small, shared housing units for applicants with these needs.

12.29 In addition, landlords will be more likely to accept a homeless applicant if they can be assured that appropriate housing support measures are in place.

12.30 It is important that applicants are fully aware of the availability of housing options in the private sector in order for them to make an informed choice as to what tenure would meet their current housing needs most effectively.

12.31 For many, the private sector will offer the only realistic opportunity of finding the type of property they need in their preferred location and Local Housing Authorities should ensure that they fully engage with PRS landlords in order to exploit this significant source of housing.

12.32 Access to the private rented sector can be difficult for people on low incomes so Local Housing Authorities should also ensure initiatives are developed in their local area to enable access to the sector for vulnerable and homeless people. As well as financial support to access the sector, this may also include ongoing housing/social support.

12.33 As a minimum, Local Housing Authorities ought to develop guidance on how to access the private rented sector locally, including details of bond schemes, letting agents, etc. As with all support, Local Housing Authorities will need to consider on a case by case basis, the level of assistance each applicant requires.

PRS landlord engagement practice examples

12.34 Local Housing Authorities across Wales and England have been engaged with providers of private rented accommodation for many years. The duties contained within Part 2 of the HWA 2014 allow discharge of duties through offers of suitable accommodation. This can include private sector housing. Examples of engagement with private landlords throughout Wales include:

- Landlord Fora in partnership with the landlord representative organisations
- Contract-holder Accreditation practices
- Social Lettings
- Third Sector Bond Schemes
- Local Authority contract-holder finder and management services

12.35 Guidance on the suitability of PRS accommodation can be found in Chapter 19.

Contract-holder given notice of intention to recover possession

12.36 Where the applicant is a contract-holder who has been given a valid notice to quit or a notice that the landlord intends to begin proceedings for possession, Local Housing Authorities should consider scope for preventing homelessness through consulting the landlord at an early stage to explore the possibility of the occupation contract continuing or allowing the contract-holder to remain for a reasonable period to provide an opportunity for alternative accommodation to be found. If the landlord does not agree, the Local Housing Authority will need to consider whether it would be reasonable for the applicant to continue to occupy the accommodation once the valid notice has expired.

Housing Benefit / Universal Credit Joint Working

12.37 In tackling homelessness, the Local Housing Authority will need to work closely with a wide range of external and internal partners. In particular, close relations must be maintained with the Local Housing Authority's Benefit team and the Department of Work and Pensions (DWP) as their roles are crucial to cases relating to rent arrears, involving temporary accommodation and other hardship. It is vital that the Benefit team and DWP work quickly and efficiently to respond to claims, and support partnership working with the private and social rented sectors. This will require agreement on service standards, to ensure that no-one loses their home due to delays in resolving benefit claims.

12.38 The Local Housing Allowance was introduced nationally in April 2008 and is a way of working out housing benefit for private sector contract-holders. Because Local Housing Allowance rates are published in advance, people can immediately assessthe maximum amount of housing benefit or Universal Credit housing costs that will be paid, depending on the size and make up of their household and the size and location of the property they are seeking to rent. People can therefore make a quick decision on whether or not they can afford to rent a particular property, avoiding any delays that may put them at greater risk of homelessness.

12.39 Housing Benefit or housing costs within Universal Credit are paid direct to most contract-holders, who then pass this on to their landlords. Safeguards are in place for those who are unable to manage their financial affairs, even with support, so that rent can be paid direct to the landlord where it is in the interest of the contract-holder to do so. Local Authority benefit teams and the DWP are responsible for making decisions about who to offer this safeguard to, and the DWP has issued guidance on this. Housing Options teams need to work closely with their counterparts in the benefit team and with DWP to ensure that these safeguards operate effectively so that homelessness can be prevented and no one becomes at risk of homelessness as a result of non-payment of rent. The Local Housing Authority should also work closely with their partner organisations to identify vulnerable people and ensure their rent is paid directly to the landlord, removing the threat of homelessness through eviction due to rent arrears.

12.40 Since 2013, the DWP has rolled out Universal Credit, an integrated means-tested benefit for people of working age into a single monthly payment. It has replaced the six means-tested benefits and tax credits previously claimed by working age people on low incomes. This roll out is likely to have created additional impacts for claimants, particularly around claiming on-line and managing on a single monthly payment.

12.41 The DWP recognises that some claimants will require help to adapt to the changes that Universal Credit has introduced. It has published guidance for claimants, which includes guidance on circumstances where claimants can apply for an advance payment while their claim is being processed; and specific guidance for people who are experiencing, or at risk of homelessness: Universal Credit: detailed information for claimants - GOV.UK

12.42 The DWP has also produced a toolkit for partner organisations, and this contains up to date information on all aspects of Universal Credit. Universal Credit: information for stakeholders and partners - GOV.UK

12.43 The Local Housing Authority can also maximise its resources for tackling homelessness by utilising Discretionary Housing Payment (DHP) funding. This grant funding is awarded by the DWP and is administered by the Local Authority's benefits team. The DWP allocates a sum of money to each Local Authority annually to allow Local Authorities to help families and individuals access homes or remain in their own home – without causing financial hardship. But there are specific restrictions on what type of support this funding can provide, which is set out in published guidance: Discretionary Housing Payments guidance manual - GOV.UK. Local Authorities may 'top up' the annual funding allocations they receive from the DWP, but there is an upper expenditure limit of two and a half times their contribution. The additional funding for this will need to come from within the Local Authority's budget. Any unspent portion of the Government contribution must be returned to the DWP. Local Authorities should therefore aim to maximise their use of DHP funding because if the Local Authority fails to spend their allocation, they reduce their opportunities to help homeless people and they may face a reduced funding allocation the following year.

12.44 It is vital that operational homelessness staff and managers are made aware of the existence of DHP so that they can work closely with Benefit teams to successfully utilise the fund to prevent homelessness. Examples of good practice include setting up a panel, to include both homelessness and housing Benefit staff, to oversee and make decisions on the spending of this fund. This helps to ensure that this resource is utilised to its maximum benefit to prevent homelessness.

12.45 In the spirit of prevention, it is encouraged that operational staff utilise DHP in conjunction with additional support to help prevent further instances of threatened homelessness, tailoring solutions accordingly.

12.46 Since the introduction of the 2010/15 UK Government's Welfare Reforms in April 2013, applications to the DHP fund increased significantly.

12.47 Due to the increase in applications, in 2015 a framework developed in partnership with the Welfare Reform Club, Welsh Government and the Welsh Local Government association was established to help authorities manage the demand and ensure support was provided in a fair and consistent way.

12.48 The framework sought to maintain flexibility and discretion for Local Authorities to meet local demands and aims to give applicants a more equitable and consistent decision, whilst supporting residents to do all they can to resolve the situation.

12.49 Local Housing Authorities, who are responsible for administering the DHP fund, are required to follow guidelines provided by the DWP in administering the fund. All councils have their own policies in place which are reviewed regularly and some elements of the framework exist within their policies whilst being reactive to other welfare and financial issues that arise.

Homelessness Prevention Fund

12.50 In implementing a strategy and action plan geared to prevent homelessness, the Local Authority will need to recognise the value of 'invest to save' policies. Every Local Authority committed to tackling and preventing homelessness should have an established homelessness prevention fund. Evidence of the initial implementation of the legislation suggests that this source of funding can be vital in preventing homelessness or even delaying it to allow a household to remain in their home until a settled housing option becomes available. A homelessness prevention fund is in effect a flexible budget available to homelessness and housing advice staff that can be used in whatever way is deemed appropriate to help secure or maintain accommodation for households which would otherwise become homeless.

12.51 There will be cases where having used the prevention fund the applicant goes on to make a homelessness application, but this should not deter the Local Authority from making this fund available. It should recognise the merits of those cases where such 'invest to save' has been successful and can be successful, as opposed to concentrating on those where it might not. Successful prevention fund schemes are where staff are able to operate in an accountable but supportive culture, operating within clear parameters but have a degree of discretion and flexibility about how best to deploy monies.

Preventing Homelessness in Specific Circumstances

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

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

12.53 In many cases homelessness can be prevented by identifying people who are in circumstances which put them at risk of homelessness, and by providing services and working with partners, which can enable them to remain in their current home. Homelessness can also be prevented by ensuring assistance is available prior to known risk points such as discharge from prison, the Armed Forces or hospital. The table below gives examples of some of the measures that may help tackle some of the more common causes of homelessness.

12.54 Working with any individuals to prevent homelessness presents Local Housing Authorities with an opportunity to identify whether the individual has any care and support needs, or support needs if they are a carer, and for a referral to the appropriate department to be made for a care and support assessment under Parts 3 and 4 of the SSWWA 2014.

Groups Most at Risk of Homelessness Young people

12.55 Advice to help prevent homelessness is particularly relevant for all young people since the introduction of the UK Government's welfare reform programme which has a particular impact on young single people. The House of Lords judgment, in the case of R (on the application of G) (2009) UKHL 3 All ER 189 v London Borough of Southwark, highlighted the duties of children's services towards homeless young people, aged 16 and 17. This case restated and clarified the established legal position that the duties under S.20 of the Children Act 1989 (now replaced in Wales by the SSWWA 2014) take precedence over the duties under Part 7 of the Housing Act 1996 (now replaced in Wales by the HWA 2014). It also reinforces the importance of housing and social services departments working closely together to prevent young care leavers and other very young people such as 16 and 17 year olds (who will be in priority need) from becoming homeless and ensuring they are not at risk. Further guidance can be found in the Code of Practice under Part 6 of the SSWWA 2014.

12.56 Local Housing Authorities are strongly urged to work in a holistic way internally and with partners in the statutory and voluntary sectors to address not only the housing needs of care leavers, 16 and 17 year olds and other young people but also any support needs such people may have. Local partners, including the Youth Justice Service (via the National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate) and voluntary sector agencies, should work together with the housing service to identify as early as possible those young people most at risk of homelessness. A pathway planning approach involving housing, social services and other partners can provide the most comprehensive approach to addressing the needs of the most vulnerable young people, whether or not they are care leavers. In doing so they should pay due regard to young people's views and concerns. Such an approach can help young people to make a successful transition to independent living. Independent advocacy and mediation services will have a role to play in helping young people to stay at home where appropriate, or move on to independence.

12.57 The UK Government's welfare reforms have had a particular impact on young single people given the increase in the age criteria for the shared accommodation rate from 25 to 35. UK Government advice is that Discretionary Housing Payments could be used in these circumstances. However, while working with those young people affected, Authorities should work on an individual basis to find the most suitable resolution. For those affected by reductions in housing benefit or housing costs, Local Housing Authorities, if appropriate, might consider encouraging them to consider taking up shared accommodation opportunities, such as with family or friends. Local Authorities in some areas, might also find it beneficial to invest in a shared housing scheme in order to increase the options available to young single people.

12.58 Local Authorities have particular duties under Part 6 of the SSWWA 2014 to assist care leavers. These duties do not rest solely with social services but are instead a corporate responsibility of the whole Authority. In order to meet these duties

Local Authorities are required to keep in touch with care leavers, to offer support and accommodation, help with education, training and employment, and in general to assist their transition to adulthood and independent living. Under S.107 of the SSWWA 2014, the Local Authority is required to draw up a pathway plan for children in care aged 16 and 17, and for those leaving care up to at least 21, with the full participation of the care leaver. Advice and information about housing options and assistance with accommodation where appropriate will play an important role in enabling an effective, realistic and achievable plan to be formulated. Because access to NHS services is sometimes an issue for this group, Local Authorities and the NHS should make arrangements to ensure easy and equitable access. Care leavers are not subject to the Shared Accommodation Rate until their 25th birthday (previously, this applied up until their 22nd birthday, but this age limit changed in May 2021).

People from BME backgrounds;

12.59 The EA 2010 places obligations on Local Housing Authorities to prevent discrimination in relation to protected characteristics, including race (which refers to people defined by their race, colour, and nationality (including citizenship) ethnic or national origins). When carrying out homeless functions and discharging homelessness duties Authorities must comply with the EA 2010 including the General and Specific Welsh Public Sector Equality Duty.

12.60 Local Housing Authorities need to ensure that their homelessness services pay particular attention to the needs of the ethnic minority communities they serve. Welsh Government funded research into 'Homelessness amongst people from Black and Minority Ethnic populations in Wales' (2014) notes that:

"For settled BME communities, homelessness risk factors tend to echo those of the white Welsh majority, for example: relationship breakdown, unmet support needs, lack of independent living skills and so on. Homelessness risk for settled BME communities, however, is raised by the presence of additional factors including:

- Some BME communities having larger families, placing them at a greater risk of overcrowding and facing a reduced chance of finding suitable accommodation in Wales
- The continuing inequality in issues other than housing such as access to support services, reduced education and employment opportunities and increased poverty; and
- The suitability of housing options in Wales for some BME communities. For example, a lack of adequate site provision for Gypsies and Travellers and the housing of some BME households where they feel unsafe or discriminated against."

12.61 The research highlighted three key areas Local Housing Authorities need to consider when addressing homelessness in relation to people from minority ethnic backgrounds:

1. A lack of awareness of housing procedures and rights and a lack of confidence to enforce rights, especially for recently settled migrants and refugees. This barrier is

often compounded due to the presence of language barriers. There is also a fear of being viewed as ‘a trouble maker’ by housing staff.

2. The visibility, accessibility and appropriateness of housing services and support. The barrier in terms of the perceived lack of cultural sensitivity of mainstream housing and related services for BME people. Also identified was a lack of effective signposting between services and the need to address wider support needs that could impact on a person’s ability to sustain their occupation contract if not addressed.
3. The appropriateness of accommodation and access to good quality and affordable housing

12.62 Other issues to note are:

- Hidden homelessness i.e. BME people not presenting at all to services when they find themselves in housing need. It is important to note that people from the Gypsy or Traveller communities might be deterred from approaching the Local Authority for help due to the fear of being placed in bricks and mortar housing.
- A lack of awareness of refugee specific experiences in statutory services.
- A preference for ‘own’ services (i.e. services delivered by those within their own community) due to perceptions that specialist organisations are more appropriate and sensitive to their culture.
- Fear of racial harassment in social and private rented housing and in temporary accommodation.

12.63 To respond to the above issues it is advised that Local Housing Authorities address the following:

Language and Communication

- Meet potential language needs by ensuring that advice and information about homelessness and the prevention of homelessness is available in a range of community languages appropriate to the area.
- Ensure an adequate and good quality interpretation service is available for service users who require access to housing advice. Ensure all staff are aware of how to deal with different language requirements and how to access interpreting and translation services.
- Ensure general documentation is written in plain English or Welsh and where possible avoid the use of technical language.

There should be ongoing monitoring of local BME and migration data in order to be able to adjust communication in line with local need.

Eligibility

More detailed guidance on eligibility can be found at Chapter 7.

- Ensure staff have access to up-to-date guidance on eligibility.

- Ensure procedures in place to carry out appropriate checks on applicants is applied in a manner that does not discriminate on the basis of race, colour, nationality, national or ethnic origins and deals with applicants in a sensitive manner.

Culturally Sensitive Services

- It is essential to ensure that homelessness services are culturally sensitive to the needs of different communities.
- When addressing housing need it is important to consider issues relating to being near to places of worship, community facilities and shops. In some cases, there may be a need to address concerns about safety and fears of being at risk of racial harassment.
- Services need to be sensitive when dealing with service users who have experienced hate crime.

People with an institutionalised background, for example where they have spent time in care, in hospital, prison or in the Armed Forces

Armed Forces Personnel

12.64 The majority of Armed Forces personnel are not home-owners, and this combined with the relatively short nature of a service career means that a significant number of ex-services personnel will look to Local Housing Authorities for accommodation on leaving the Armed Forces. Although not all will qualify for assistance as homeless under the HWA 2014, Authorities will need to offer them advice and information, and need to advise them how they may access social housing in the area in which they make an application for housing assistance, even though they may not have a local connection. Local Housing Authorities must consider periods of time spent by an applicant in their area whilst in the Armed Forces as relevant to the assessment of the applicant's local connection to that area in relation to their application for homelessness assistance or social housing.

12.65 The resettlement services of the Ministry of Defence advise service personnel to consider their future accommodation arrangements and where they intend to live well before discharge.

12.66 The Defence Transition Services (DTS) team is the MOD's tri-service focal point to provide service personnel and their dependants with civilian housing information for those wishing to move to civilian accommodation at any time in their career, and for those during resettlement to assist with the transition to civilian life. Alongside holistic support to Service leavers facing challenges as they adjust to civilian life, the team can deliver housing advice, including advice and guidance on housing queries and the online Civilian Housing Options brief.

12.67 DTS, together with colleagues in the Veterans Welfare Service (VWS) can help service personnel make informed choices on their civilian housing options as they transition out of the forces. For further information, or to book a place on a Civilian Housing

Brief, please visit: https://www.gov.uk/guidance/information-and-guidance-on-civilian-housing

12.68 The Ministry of Defence recognises that Local Housing Authorities will often require proof that entitlement to occupy service quarters is coming to an end before they will consider an application for homelessness assistance. Authorities should not insist upon a court order for possession in such cases and should instead accept Certificates of Cessation of Entitlement to Occupy Service Families Accommodation produced by the Defence Infrastructure Organisation's Loss of Entitlement Team. If requested, these certificates are issued a maximum of 6 months prior to the date of discharge. However, the Certificate is routinely included within a Notice to Vacate pack, which MoD issues at least 3 months before the date of discharge.

12.69 While people leaving the Armed Forces will be eligible for the duty to help to prevent homelessness should they be threatened with homelessness within 56 days, where someone has presented up to six months prior to discharge from the Armed Forces, Local Housing Authorities must provide information, advice and assistance via the S.60 duty. Authorities should also consider the local reasonable preference arrangements and refer to Chapter 3 in this Code with detailed guidance on the allocation of accommodation for ex-service personnel.

12.70 Where an ex-service person has presented well in advance of the 56-day threshold, Local Housing Authorities are encouraged to use this additional time to assist the applicant and increase their housing options in a proportional manner. Authorities should identify long term activity which will help to increase options. This includes pre-occupation contract and debt management courses as well as encouraging the take up of savings schemes (i.e. via a credit union) to help pay for future bonds and furniture.

12.71 The Welsh Government have developed a guide to provide important information and contacts for serving personnel, veterans, and their families to help ensure they can find any support they need, when they need it. This has been informed by our partners from the Royal Navy, Army, RAF, Career Transition Partnership (CTP), Reserve Forces and Cadets Association (RFCA) and the many public and charity organisations in Wales.

Veterans

12.72 Under S.70 of the HWA 2014, people who have formerly served in the regular Armed Forces of the Crown and who have been homeless since leaving those forces are recognised as being in priority need. However, Veterans may also experience difficulties post-discharge, in adjusting to civilian life. This may include, late onset of trauma, mental health difficulties, problems associated with physical injury and substance misuse. These issues may then result in difficulties in adapting to their new life and in a minority of cases involvement with the criminal justice system.

12.73 Local Housing Authorities working with their partners across Wales are signed up to Community Covenants, which encourage providers from all sectors to offer targeted support for their Armed Forces community. To increase access to this support, Local Housing Authorities should work with local homelessness out-reach services to support the identification of ex-service personnel amongst homeless people.

12.74 In 2021, the Armed Forces Act was amended to have 'due regard' to the principles of the Armed Forces Covenant when exercising certain statutory functions in the fields of healthcare, education, and housing ('relevant functions'). The Covenant Duty came into effect on 22 November 2022.

Hospital patients

12.75 People risk losing their home during a protracted stay in hospital if they cannot maintain their rent or mortgage payments. This can often be a particular problem for people who have been admitted to hospital because of their mental health. Their deteriorating health or a crisis could have led to tenancy problems prior to entering hospital and it is essential that Local Housing Authorities and Health Boards identify patients who will need support to maintain or re-access accommodation and work with relevant voluntary sector organisations to address these issues. Where the Authority has early warning of this, it can aim to ensure that appropriate arrangements are made either to retain or to terminate the occupation contract/residence of the accommodation in order to prevent rent or mortgage arrears building up. In social rented housing it will be essential for the landlord to first contact the relevant social worker or key worker before a decision to evict should be taken. Where a head of a household enters hospital, the Authority might refer their household for advice on any benefits to which they may be entitled and how the change in household circumstances affects the household's housing rights. In such circumstances, in order to avoid homelessness Local Housing Authorities may want to consider whether they are able to transfer the occupation contract to another household member.

12.76 Local Housing Authorities will need to consider the arrangements for preparing people in hospital for discharge. Where someone is leaving hospital, advice about housing options at an early stage, before discharge, may help to ensure that homelessness does not occur. Close liaison between Local Housing Authority, the advice service and the Local Health Authority should be put in place to ensure that people received appropriate assistance to ensure a planned discharge into appropriate accommodation. Local Housing Authorities will have a S.66 or S.73 duty to anyone in hospital who is at risk of homelessness on discharge, and should develop arrangements with hospitals to identify people in this position. People leaving hospital, who have no home to go to, will have a priority need if they are vulnerable by reason of their illness or impairment.

12.77 The 'Standards for Improving the health and Well-being of Homeless and Specific Vulnerable Groups', published in 2013, sets out the need for hospital discharge protocols to be in place for safe and appropriate discharge from secondary care for homeless people and specific vulnerable groups. Further advice on this can be obtained from Public Health Wales.

People in custody returning to communities in Wales

This section needs to be read in conjunction with the National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate, which was developed in 2015 by the multi-agency Prisoner Resettlement and Accommodation Working Group and updated by members of the Post Custody Accommodation Working Group in 2025. The Pathway provides a practical guide to delivering accommodation services to support

prisoners' resettlement within the meaning of the Code.

12.78 Getting people due to leave custody into stable housing can act as a gateway to effective resettlement with research suggesting that men and women leaving custody who have accommodation arranged for their release are more likely to have employment, education or training arranged than those who do not have accommodation in place. Accommodation is also an important factor in securing access to health, social care and other support services, which can help people to maintain their health and wellbeing and avoid homelessness. But accommodation is not the only key element and it is vital that all partners work together to ensure that accommodation and integrated support is considered on a case by case basis.

12.79 To support the successful resettlement, Local Housing Authorities will need to work proactively with probation and prison services, as well as other providers, to ensure that prisoners have full and equal access to the range of accommodation services as early as possible to, where possible, retain existing accommodation upon reception to custody and of course prevent homelessness upon release.

12.80 As a result, the *National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate* has been developed in order to provide a co-ordinated path for those due to leave custody and ensure they have equal access to the new homelessness services.

12.81 The National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate dovetails with the National Pathway for the care and support of adults in the secure estate and the National Pathways for the care and support of children and young people in the secure estate.

Communication between Local Authorities and Probation services

12.82 While there would need to be a formal application prior to release to trigger an assessment and possible duty, both formal and informal communications between Local Housing Authorities and the in-prison probation services is encouraged to ensure the appropriate resettlement support is aligned and provided to the offender to help toward a safe resettlement.

12.83 The communications between the Local Authority and the probation services for housing to be considered in the resettlement plans also provides an opportunity to consider if the individual being resettled has any care and support needs and if so for these needs to be assessed / met under the duties afforded by the SSWWA 2014.

12.84 To ensure the individual applicant themself is aware of the progress of his or her case, the relevant Local Housing Authority should acknowledge receipt of the application and must inform the applicant of the outcome of the application. This is a key requirement of the *National Pathway for Homeless Services to Children, Young People and Adults in the Secure Estate.*

Housing Support on reception

12.85 For those serving a sentence that is likely to see them stay in custody for longer than 12 weeks, identification of a possible future housing need at reception is key as retention of accommodation will not always be possible and the continued accrual of arrears might hinder the housing options available on release. Key services working in the prison may provide advice to the potential applicant of the possible implications of allowing the accommodation to be reclaimed by the landlord/mortgage provider. The content of advice will be dependent on the make-up of the household and the circumstances of the case rather than just the length of sentence.

12.86 Where release of occupation contract or sale of property is agreed as the best option, the key probation service or Prison Link Cymru may wish to work with the relevant Local Housing Authority for additional support and also to ensure they are able to begin the process of planning for accommodation on release (including potentially encouraging prisoners to open credit union accounts with the possibility of accruing enough savings to cover some or all of the cost of a bond/first month's rent).

12.87 Where a housing need has been identified, and retention of existing accommodation is possible, the key probation service or Prison Link Cymru will inform the prisoner of their options in order to allow the applicant to agree a suitable approach to retaining an occupation contract. Where retention of an occupation contract is deemed appropriate, the applicant should receive support to ensure that the accommodation can be retained. This might include liaison with statutory agencies to maintain Universal Credit claims during the sentence, or reach an agreement over arrears with the landlord.

Local Authority work following referral

12.88 Welsh Government recommends that work starts earlier than 56 days to increase the chances of successful resettlement. However, the Welsh Government is sensitive to the definitions of 'homeless' and 'threatened with homelessness' and is aware of the potential to restrict an applicant's housing options as a result of an early referral.

12.89 Following an application, a Local Housing Authority will need to decide whether the prisoner is owed any duty. Please see Chapter 10 for details on Assessment and Chapter 18 for details on referring to another Local Housing Authority. It is a fundamental principle of the *Pathway,* that everyone receives the same treatment as anyone else who approaches the Local Housing Authority for assistance, and will be subject to the same tests regarding which duty is owed.

12.90 Once a Local Housing Authority has established that a duty is owed, they will have responsibility for providing reasonable steps as per either the S.66 or S.73 duties. It will not be appropriate for the Local Housing Authority to take over the delivery of all reasonable steps to support a prisoner's full resettlement needs and the Local Housing Authority should focus on steps which help to address accommodation on release. The probation services will continue to have responsibility for resettlement planning and the relevant Local Housing Authority will need to work with them to support the accommodation element. To ensure that there is no duplication of services, a clear communication channel should be maintained.

12.91 It should be made clear to a Local Housing Authority that the duties under S.66 and S.73 are both blind to intentionality so a Local Authority who is having regard to intentionality cannot refuse to support a prisoner on that basis.

12.92 While the use of Personal Housing Plans will be restricted for those in custody both in terms of working with the prisoner, but also the amount the prisoner can do for themselves, a Local Housing Authority must, however, be cognisant of the possibility of challenge in relation to their support and therefore it is recommended that they ensure that evidence of the steps taken prior to referral is documented and retained. Therefore, the *National Pathway for Homelessness Services for Children, Young People and Adults in the Secure Estate* does suggest that Personal Housing Plans are used.

12.93 Many will leave prison with one or more characteristic that will make it more challenging for them to source accommodation. The *National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate* stresses Local Authorities should liaise with the Community Offender Manager who will retain overall responsibility for the applicant throughout the length of his/her whole sentence.

12.94 Access to the Private Rented Sector for prison leavers can be more difficult than other homeless people due not only to the stigma and sometimes the nature of their original crime, but also the additional support needs required in many cases. That is not to say that the sector is not a viable option, but whether a package of support is required in addition to the accommodation ought to be considered for all prisoners referred to the private rented sector

12.95 It is possible that a Local Housing Authority could discharge its duty via an offer of accommodation without the applicant having had the opportunity to physically view the property. The Local Housing Authority should be mindful of ensuring that the applicant has full access to the details of the property including photographs, dimensions and key facts are provided. The Welsh Government recommends that an advocate or family member is given the opportunity to view the property on the applicant's behalf. This situation is similar to those where an applicant is bed bound or in hospital and is unable to view a property in person.

12.96 In assessing the suitability of accommodation, Local Housing Authorities ought to take account of both the vulnerability of the applicant and the applicant's risk to the community to which they will be returning. This should be looked at in terms of the risk of re-offending and also the risk of harm to the community.

12.97 Placing people who have just been released from prison into Bed & Breakfast accommodation or other multi occupancy arrangement with other men or women who have left prison has often been shown to be unsuitable accommodation for a successful resettlement and **must not** be the default housing solution and only used in an emergency or where there are no alternatives. If it is used, the Local Housing Authority should record an explanation of why, keep probation services, and their partners, fully informed and begin planning move on arrangements immediately (i.e. the following morning).

12.98 The issue of data sharing is often cited as a barrier to effective partnership working. Local Housing Authorities should work with relevant partners to identify alternative approaches if necessary. Local Housing Authorities should also be mindful of S.115 of

the Crime and Disorder Act 1998, which allows for the transfer of data where there is a public safety concern. To ensure the safe transfer of data between partners, Local Housing Authorities will also find it useful to arrange for a secure email address to be available.

Post-release and offenders in the community

12.99 If accommodation has been secured, which will be available on release, Local Housing Authorities should liaise with the Community Offender Manager to consider the most appropriate transport arrangement to ensure the accommodation can be viewed or secured. If it is identified that an applicant should be met at the gate and taken to the accommodation, a risk assessment should be carried out to determine its appropriateness.

12.100 In considering post-release support, Local Housing Authorities should have regard to their possible future responsibility under the HWA 2014 to people who lose their accommodation or risk losing their accommodation. A further package of support may also be required to enable the individual to maintain their accommodation and refrain from reoffending and this should be negotiated with suitable service providers such as probation services, particularly through IOM Cymru partnership arrangements.

12.101 This is also relevant to those who lose or are at risk of losing their accommodation as a result of their offending behaviour while in the community. These people will be eligible for the same prevention services and assistance to help to secure accommodation using reasonable steps.

12.102 A Local Housing Authority would benefit in maintaining contact with this cohort in the early weeks after release with the aim of possibly providing further support to help overcome any issues relating to their accommodation or occupation contract should they arise. This could include the extension of floating support provision.

12.103 It is important to note that where accommodation has not been sourced as a result of work undertaken prior to release (by any partner), it is the Welsh Government's view that release from prison will be considered a material change of circumstance and a former prisoner will be eligible for a further assessment under S.62. The *National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate* provides additional details on this and dovetails with the National Pathway on the care and support of adults in the secure estate and the *National Pathway on the care and support of children and young people in the secure estate.*

Resettlement of Women Prisoners

12.104 It is acknowledged that women in custody are one of the most complex groups to support, in terms of the specific vulnerabilities they may face. Evidence suggests that they are:

- Much more likely (than men) to have been the victim of physical or sexual abuse;
- More likely to demonstrate depression, anxiety and self-harm in custody; and
- More likely to demonstrate a prevalence of substance misuse issues which can pose particular difficulties for effective resettlement.

12.105 In addition, the absence of a female custodial establishment in Wales impacts on home connections during sentence and results in Welsh women travelling some distance on release to resettle in their home communities. The fact that women are far more likely to be primary carers on their intake into custody, and will often try to re-establish connections with their children on release, should also be taken into account.

12.106 Given these challenges, Local Housing Authorities will need to develop an alternative approach to support the resettlement and accommodation needs of women resettling back to Wales.

12.107 The majority of female offenders likely to resettle back to Wales will be held in HMP Eastwood Park, where Prison Link Cymru will support them in addition to probation services.

12.108 When working with this client group, Local Housing Authorities must also be sensitive to the case details of the applicant when undertaking an assessment and/or developing reasonable steps. This includes careful and sensitive handling when investigating accusations of domestic abuse, establishing support needs, and the appropriateness of re-establishing family and partner relationships.

Multi-Agency Public Protection Arrangements and High Risk of Harm cases

12.109 Multi-Agency Public Protection Arrangements (MAPPA) are designed to protect the public, including previous victims of crime, from serious harm by sexual and violent offenders. They require the local criminal justice agencies and other relevant organisations to work in partnership to manage the risk that these offenders pose to the community. MAPPA is not a statutory body in itself but is a mechanism through which agencies can better discharge their statutory responsibilities under the Criminal Justice Act 2003 and protect the public in a co-ordinated manner.

12.110 The 2003 Act identifies a group of Responsible Authorities, which consist of the police, probation and prisons. The Act also identifies other bodies who have a statutory Duty to Co-operate and are known as “Duty to Co- operate agencies”. Their contribution plays an important role in protecting the public by sharing information which improves the assessment and management of the risk of harm presented by individual offenders. Additionally, helping offenders to resettle in the community and reduce offending-related problems contributes to the work to help them avoid reoffending. This could involve work to address accommodation problems, improve employment prospects or tackle substance misuse.

12.111 The Local Authority is listed as a Duty to Co-operate agency and thus has a duty to co-operate with MAPPA and vice versa. As such the Local Authority should be represented on the local MAPPA Strategic Management Board and a memorandum of understanding should be in place to outline how the Local Authority as a Duty to Co-operate agency will work with the Multi-Agency Public Protection Arrangements and those offenders subject to the arrangements.

12.112 Clear guidelines will need to be in place around the sharing and disclosure of information when working with the resettlement needs of offenders subject to the Multi-Agency Public Protection Arrangements. Clear lines of communication between all those involved with the offender subject to the arrangements improves the quality of the overall risk assessment and risk management plan for the individual offender, and ultimately enhances public protection.

12.113 Where housing is an issue, in the main the principle of the referral using the same application form contained within the *National Pathway for Homeless Services to Children, Young People and Adults in the Secure Estate.* However there may be rare occasions whereby referral to the Local Authority in advance of this point for particularly complex or high risk cases is deemed appropriate to follow the MAPPA process in the interests of managing the high risk that the case poses to the public. The name of the Local Authority MAPPA representative agreeing this course of action at the meeting should be clearly recorded on the Local Authority Application for Help with Housing.

CAS Accommodation

12.114 HMPPS also fund and manage a range of accommodation options that are relevant in this context. They are called Community Accommodation Services and are broken down into different tiers aimed at different cohorts of people:

- Tier 1 (CAS1) – also known as Approved Premises (AP) provision for high-risk offenders with a public protection focus and provides 24 hour stagged accommodation with a high level of monitoring.
- Tier 2 (CAS-2) – previously known as Bail, Accommodation and Support Service (BASS), is a contracted service which provides short-term accommodation for those who have no suitable accommodation and may otherwise be held in custody. The service is available for those on Bail, Home Detention Curfew, released from a custodial sentence of less than four years and of no fixed abode, on licence and at risk of recall due to loss of accommodation or on an Intensive Community Order with a residential requirement.
- Tier 3 (CAS 3) – New general transitional accommodation for any released prisoners who are homeless and supporting transition into settled accommodation.

12.115 All of these kinds of accommodation are, by their nature, temporary and will not be appropriate for a discharge of duty. Local Housing Authorities must retain responsibility for managing the accommodation needs of people leaving this type of accommodation and for supporting their community resettlement via a move on plan.

National Care and Support Pathway for Children, Young People and Adults in the Secure Estate

12.116 As a result of the SSWWA 2014, separate Pathways for providing social care services to children, young people and adults in the secure estate has been developed by the Welsh Government Social Services Department. The *National Pathway for Homeless Services to Children, Young People and Adults in the Secure Estate* has been developed alongside and there are a number of common milestones. Part 6 and 7 of the Pathway identify these common milestones.

12.117 One of the most significant common milestones is the assessment point. The assessment legislation in both Acts has been drafted in knowledge of each other in order to encourage a joint approach. This is supported by the common milestones and authorities are urged to develop a corporate approach to the assessment of those people held in custody.

The Supplementary Guidance to support the code of practice Part 11 of the SSWWA 2014 – Meeting the needs of those in the secure estate contains the two national care and support pathways,

Refugees including former asylum seekers who have been given permission to stay in the UK and are no longer being accommodated by the United Kingdom Border Agency;

12.118 People granted refugee status or exceptional leave to remain, humanitarian protection, or discretionary leave will be eligible for homelessness assistance and may be at risk of homelessness as a result of having to leave accommodation that had been provided for them (e.g. by the National Asylum Support Service) in the period before a decision was reached on their asylum claim. They may well have experienced persecution or trauma in their country of origin or severe hardship in their efforts to reach the UK and may be vulnerable as a result. Some Local Housing Authorities treat all new refugees as vulnerable and in priority need, due to these factors whilst others have more restricted criteria.

12.119 In working with applications from this client group, Local Housing Authorities should give careful consideration to the possibility that they may be vulnerable as a result of another special reason. Authorities should be sensitive to the fact that former asylum seekers may be reluctant to discuss, or have difficulty discussing, their potential vulnerability, if, for example, they have experienced humiliating, painful or traumatic circumstances such as torture, rape or the killing of a family member and may need support to do so.

Further sources of information and guidance:

12.120 Examples of good practice approaches can be seen in Appendix 2 of Shelter Cymru's and Tai Pawb's 'Homelessness amongst people from Black and Minority Ethnic populations in Wales'.

12.121 The Chartered Institute for Housing's website and that of the HACT Housing Rights website aims to provide accurate information to recent arrivals and to advisers about entitlements to housing, based on people's immigration status - http://www.housing-rights.info/index.php

People who have experienced other problems that may increase the risk of homelessness including family/relationship breakdowns; domestic, hate incidents and hate crime or other violence; poor mental or physical health; drug and alcohol misuse; age-related problems and debt.

People with mental impairment/learning disabilities

12.122 People with mental disability/learning disabilities can be particularly vulnerable to homelessness if their needs are not identified and addressed through the statutory care framework. In particular, people whose disability is not easily identified may have difficulties seeking assistance and explaining their problems. It is important that Local Housing Authority homelessness services are sensitive to people in this situation and provide appropriate assistance. Local Housing Authority services will need to work closely with social services, the Local Health Boards and the NHS in helping people with mental impairment/learning disabilities who are at risk of losing their homes. There are a number of agencies which could assist the Local Housing Authority in their duty to provide advice and information. These agencies include Local Authority Community Adult Learning Disability Teams, day care providers and voluntary sector organisations concerned with supporting people with learning difficulties or with mental health conditions, and the statutory providers of help, including professional providers such as the individual's key worker. One of the most important elements in preventing homelessness among this vulnerable group is to ensure that the various agencies who may, and should be, involved in providing services and support, work effectively together and take joint responsibility for the client.

People with Mental Health Needs

12.123 People with mental health needs may also be vulnerable to homelessness, which in itself can aggravate or lead to mental ill health. It is essential that Local Housing Authority homelessness teams have joint working arrangements with Community Mental Health Teams in order to support people with mental health problems find appropriate accommodation.

12.124 The new 10-year Mental Health and Wellbeing Strategy is centred on early intervention, prevention and person-centred support and ensuring people are referred to the most appropriate form of support, at the right time and without delay. The Strategy will be supported by a series of delivery plans. The Strategy builds on the Mental Health (Wales) Measure 2010 and accompanying statutory guidance, with extending access to primary mental health services and introducing a more holistic, personalised approach to secondary care through personal pathway plans which address housing and other needs. It is vital that housing services collaborate with health and social services at strategic and operational level to enable access to primary care and ensure these pathway plans are implemented effectively.

Neurodivergence/Neurodivergent Individuals

12.125 Neurodivergence refers to individuals whose cognitive functions and behaviours differ from typical neurological patterns. It includes Autistic Spectrum Disorder (ASD), Attention Deficit Hyperactivity Disorder (ADHD), dyslexia, dyspraxia, and other learning differences. These variations affect communication, social interactions, and sensory processing, and while neurodivergence is not a learning disability, individuals may require tailored support to meet their needs effectively.

12.126 Neurodivergent individuals may experience difficulties with verbal and non-verbal communication, social engagement, problem-solving, and adaptability. Sensory sensitivities—such as heightened reactions to sound, touch, or light—can also impact daily life. Limited access to support networks may create barriers in employment, education, and healthcare. However, targeted interventions, inclusive policies, and reasonable adjustments enable individuals to thrive across different aspects of life.

12.127 The Welsh Government is committed to enhancing services for neurodivergent individuals through the Neurodivergence Improvement Programme. This initiative aims to improve diagnosis pathways, post-diagnostic support, and accessible services.

12.128 The Code of Practice on the Delivery of Autism Services provides statutory guidance to ensure consistent, high-quality autism services across Wales. It sets out clear expectations for health boards, local authorities, and service providers, ensuring that autistic individuals receive appropriate diagnostic, assessment, and support services. Work is underway to develop a Neurodivergence Code of Practice, expected publication in 2026.

12.129 The Social Services and Well-being (Wales) Act 2014 provides the legal framework for improving the well-being of individuals who need care and support, including neurodivergent people. The Act reinforces the importance of tailored, person-centered support, ensuring neurodivergent individuals can access the resources they need to live independently, participate in society, and achieve well-being.

12.130 The National Neurodivergence Team website serves as a hub for neurodivergence-related guidance, offering personal profile tools, practitioner guides, and community support resources.

12.131 Welsh Government have established an adult Integrated Autism Services (IAS) in every health board across Wales. Their role is to diagnose Autism and offer support with day to day issues such as employment, housing, anxiety and mental health to individuals or parents of autistic children.

Presentation to the housing authority

12.132 Professionals should ensure that their practice is adapted for Neurodivergent individuals, including written and verbal communication and the environment. An e learning tool for health and social care professionals which provides an overview of Neurodivergence in adulthood and also outlines how professionals can adapt their practice can be accessed via I work in housing - Niwrowahaniaeth Cymru | Neurodivergence Wales | National Neurodivergence Team at no cost.

12.133 A study of long term rough sleepers in Devon3 found that nine out of 14 individuals could fall within the autistic spectrum. Local Housing Authorities should consider there may be a particular risk of rough sleeping to those people who present with ASD or who exhibit symptoms of ASD, as well as be alert to the possibility that an applicant who is rough sleeping may have ASD.

People with a substance misuse problem

12.134 Substance misuse undermines the ability of people to maintain settled lives and often leads to and exacerbates homelessness. Local Housing Authorities will need to liaise with specialist teams within Substance Misuse Area Planning Board areas to ensure that people with substance misuse problems who are homeless or at risk of homelessness are referred to appropriate treatment and support services, and have access to housing as part of a wider harm minimisation approach.

People experiencing domestic disputes, abuse, violence or harassment

12.135 In cases involving violence or harassment, victims should be offered support and legal advice as quickly as possible, including a range of legal remedies such as injunctions. The likely effectiveness of legal action will need to be discussed with the victim. Local Housing Authorities should discuss with the victim the option of securing the person's home to enable them to continue living in the property, where that is an option they wish to pursue and where it is safe to do so. A fast response combined with support from the police, Local Authority and voluntary sector may provide the victim with the confidence to remain in the home. Good practice in homelessness prevention in cases of domestic abuse should be based on joint working. At the local level this should include services which provide advice and assistance to enable the victim to remain in their home.

12.136 In some cases, homelessness will arise because of a domestic dispute. Local Housing Authorities should ensure that advice and assistance as well as emergency accommodation where necessary are available to people who would be threatened with violence or abuse if they were to remain in their current accommodation. Authorities should not discourage someone from making a homelessness application even if they have not made use of alternative approaches, such as counselling or the use of injunctions, to try to resolve their situation

12.137 Where a Local Housing Authority services becomes aware that a young person under 18 is the victim of abuse, or sexual exploitation, they must alert social services to the case. If that young person is homeless as a result of the abuse, then the duties on social services within the Southwark Judgement apply. In this respect Local Housing Authority services should be aware of the duties of their social services and certain other specified Authorities under SSWWA 2014. An approach to social services might also be directed at relieving tension within the household to enable members to continue to live together. Social services may be able to offer counselling and support or provide advice on other local services and agencies which might provide specialist help.

12.138 Where there is threatened or actual domestic abuse, applicants will be in priority need. Local Housing Authorities should work closely with the police and appropriate specialist organisations to ensure that victims have access to the appropriate advice and support services, and enable them to remain in their home where they wish to do so. For further information you can speak to your Regional Strategic Domestic Abuse Lead, call the Live Fear Free Helpline on 0808 80 10 800 or visit http://livefearfree.gov.wales/service-directory/?lang=en

12.139 Not all relationship breakdowns involve domestic abuse. Relationships can still break down irretrievably in the absence of abuse or threats of abuse, and

Authorities should not require abuse to have occurred to demonstrate breakdown of the relationship. Each case should be treated on its merits and careful consideration given to what information is needed to establish whether there is homelessness as a result of relationship breakdown. In order to reduce the distress caused to applicants, Local Housing Authorities must be sensitive in the way in which investigations are undertaken as well as determining appropriate solutions.

12.140 People suffering or at risk of other forms of abuse will also need support to resolve their problems. Local Housing Authorities and community landlords should establish specific procedures and help for people experiencing hate crimes or incidents due to their Protected Characteristic(s) under the EA 2010. Victims can experience significant impacts due to being targeted and victimised in their own homes. This can lead to depression, isolation and evidence from the All Wales Hate Crime Research in 2013 found that victims of repeat incidents were over four times more likely than any other victim to experience thoughts of suicide. Victims should be offered support to remain in their own homes and specialist services are available. All Four Welsh Police Forces have specially trained Hate Crime Officers and a National Hate Crime Report and Support Centre and other specialist support services are in place to provide independent advocacy. A Hate Crime and Housing: Policy Update for Social Landlords has been produced by Tai Pawb to identify good practice and to provide practical advice (http://gov.wales/docs/desh/publications/141013-hate-crime-toolkit-en.pdf).

12.141 This should also present an opportunity to consider if the individual(s) have care and support needs and if Local Authorities should fulfil their duties afforded by the SSWWA 2014.

Preventing homelessness recurring

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

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

i) effective monitoring that identifies housing applicants who are homeless or threatened with homelessness and who have previously been secured accommodation under homelessness legislation (either by the same Authority or another Authority in a different area);

ii) an analysis of the main causes of homelessness among housing applicants who have experienced homelessness more than once; and

iii) the existence of support services (and, in particular, strong links with the local Housing Support Programme strategy and housing related support services and partners such as the NHS) for housing applicants who have experienced homelessness more than once, which tackle these causes and help the applicants to sustain occupation contracts or other forms of settled accommodation in the longer term. Local Housing Authorities must establish mechanisms to identify people experiencing repeat homelessness, and focus support services to intervene and break this cycle with multi-agency casework.

12.144 Sustaining accommodation is central to preventing repeat homelessness and can include a range of interventions. It is closely linked with good housing management and housing related support provided via Housing Support Grant funded services. Whilst sustaining accommodation is the eventual objective, some individuals may find it particularly difficult to sustain accommodation due to personal circumstances, for example mental health or substance misuse difficulties.

People affected by redevelopment or who are otherwise displaced

12.145 Local Authorities may have to compulsorily displace people to, for example, undertake the redevelopment or improvement of residential accommodation. If suitable alternative accommodation is not otherwise available, the Local Authority will have a duty, under S.39 of the Land Compensation Act 1973, to ensure that people displaced are provided with such accommodation. This duty applies whatever the household's personal situation. Local Authorities should ensure that advice is available to people in what may be a confusing and upsetting situation. People who are forced to move in such circumstances are likely to be distressed to be losing their homes. Careful consideration should be given to the manner in which such news is imparted and the Local Housing Authority and any other relevant body should aim to ensure that people are kept fully informed, perhaps in the first instance through the offer of public meetings, about their situation and the alternative housing options available. Local Housing Authorities should ensure that contract-holders receive practical help with moving, taking account of 'Involving Residents in Improvements – A Major Works Agreement Compendium' written by the Chartered Institute of Housing Cymru, TPAS Cymru and the Tenantiaid Cymru / Welsh Tenants.

Making referrals

12.146 Guidance on how to refer an applicant to another Local Housing Authority is contained within Chapter 18. Where an Authority is minded to reconnect an applicant on the basis of their local connection without using the referral process, the Authority should work with the 'home' Local Housing Authority to ensure they receive a supported re-connection service with both Authorities working in partnership.

Common causes of homelessness

12.147 Causes of homelessness can be varied and sometimes unique. Below is a list of the more common causes of homelessness.

12.148 Local Housing Authorities should consider which reasonable steps would best meet the needs of the applicant based on the identified cause of the threat to their accommodation. LocalHousing Authorities need to be aware of each applicant's unique situation and circumstances.

Monitoring Prevention

12.149 It is vital that Local Housing Authorities and partners monitor the effectiveness of their prevention practices. To coincide with the implementation of the HWA 2014, Welsh Government introduced a new data return which includes data on prevention. Authorities will need to use this and other management information to fine tune their services in

Cause	Example action/reasonable steps
Parents, relatives or friends not being able or willing to provide accommodation	Mediation and conciliation services – perhaps contracted out by the Local Authority to, for example, Llamau, Youth Crime prevention and parenting programmes; actions to resolve anti social behaviour; and employment and training options advice.
Relationship breakdown, including domestic violence	Mediation and conciliation services, domestic abuse service, including 'sanctuary' schemes, which allow domestic violence victims to remain in their homes where they choose to do so once security measures are in place.
Discharge from an institutional situation e.g. hospital, prison, residential treatment/ care	Early planning for discharge between institutional staff and local housing providers, including assessing support needs. Proactive provision of advice by Local Housing Authority on housing options (prior to discharge and on initial reception).
Mental health problems or crisis	Work with relevant health and third sector agencies to ensure early identification of mental health problems and referral to relevant support services. Work with health and third sector agencies to ensure accommodation needs are identified following hospitalisation and met through holistic mental health care and treatment plans.
Discharge from remand or custody	Engage in joint assessment and referral system to help identify those prisoners with a housing need and also to help prisoners to either retain or manage the appropriate release of their accommodation upon reception.
End of occupation contract or licence	Housing advice. Rent deposit or bond schemes to encourage landlords to let to potentially homeless people. Housing mediation services, to resolve disputes about behaviour or repairs
Landlord action and court orders	Independent housing advice, services to resolve disputes between different parties such as mediation and conciliation.

Cause	Example action/reasonable steps
Mortgage arrears	Support applicants with mortgage arrears to help applicants to either manage or downsize.
Hate Crimes	Support applicants to access specialist support services for emotional needs and advocacy. Resolution including restorative approaches and mediation with perpetrator(s).
Anti-social behaviour	Action to resolve anti-social behaviour (such as referral to ASB prevention support) and services to resolve disputes between different parties, such as mediation and conciliation.
Person ill-equipped to sustain an occupation contract	Housing support and advice and support under the Housing Support Grant for vulnerable people at risk of homelessness, for example improving budgeting and 'life' skills.
Lack of information	Early and proactive intervention from Local Authority homelessness services to discuss options, advice and signpost to relevant services.

accordance with best practice in order to measure the effectiveness of their service.

13. DUTY TO HELP TO SECURE ACCOMMODATION FOR HOMELESS APPLICANTS

Introduction

13.1 The duty to help to secure accommodation for homeless applicants is intended to help people where the duty to prevent homelessness has been unsuccessful or the applicants are already homeless when they approach the Local Housing Authority.

13.2 This duty is owed to all applicants who are eligible and homeless and emphasis should be placed by Local Housing Authorities on proactively working in partnership with the applicant to identify reasonable steps that will help them to find a solution to their housing need.

13.3 This section of the Code will provide guidance for Local Housing Authorities on the reasonable steps that may be used to support people who are homeless and the ways in which this duty can come to an end.

The duty to help to secure accommodation for homeless applicants

The Act states

Section 73 - Duty to help to secure accommodation for homeless applicants

1. A local housing authority must help to secure that suitable accommodation is available for occupation by an applicant, if the authority is satisfied that the applicant is—

a) homeless, and

b) eligible for help.

2. But the duty in subsection (1) does not apply if the authority refers the application to another local housing authority (see section 80).

Guidance

13.4 If following the assessment under S.62 an applicant is deemed to be eligible and homeless the Local Housing Authority has a duty to help to secure accommodation for them. This does not mean that the Local Housing Authority has a duty to actually secure accommodation; it means that the Local Housing Authority has to take reasonable steps to help to secure that accommodation is available. In helping to secure accommodation, the Local Housing Authority will need to work in partnership with the applicant to identify appropriate reasonable steps to be taken.

13.5 Guidance on eligibility can be found in Chapter 7. Guidance on the definition of homelessness can be found in Chapter 8.

Local connection

13.6 Where a Local Housing Authority decides that an applicant would normally be owed the S.73 duty to help to secure accommodation but considers that the conditions for referral of the case to another Local Housing Authority are met (that is, they have a local connection with the area of another Local Housing Authority and no connection with the area they have applied to, they have a priority need and they are unintentionally homeless) then the Local Housing Authority is able to consider making a local connection referral.

13.7 Guidance on local connection and making a local connection referrals can be found in Chapter 18.

Taking reasonable steps: Local Housing Authorities' duties in helping to secure accommodation

The Act states

Section 65 - Meaning of help to secure

Where a local housing authority is required by this Chapter to help to secure (rather than "to secure") that suitable accommodation is available, or does not cease to be available, for occupation by an applicant, the authority –

a) is required to take reasonable steps to help, having regard (among other things) to the need to make the best use of the authority' resource;

b) is not required to secure an offer of accommodation under Part 6 of the Housing Act 1996 (allocation of housing);

c) is not required to otherwise provide accommodation.

Guidance

13.8 The Local Housing Authority must ensure that reasonable steps are taken to help an individual to secure or retain suitable accommodation. Much of the work to be undertaken by the Local Housing Authority and the applicant regarding reasonable steps under S.66 duty (to help prevent an applicant from becoming homeless) and S.73 duty (to help secure accommodation for homeless applicants) will be similar. Detailed guidance on reasonable steps can therefore be found in the chapter on prevention - see Chapter 12.

13.9 Where, as a result of being owed the S.66 duty to help prevent an applicant from becoming homeless, a number of reasonable steps have already been tried in partnership with the applicant, and despite this they have become homeless, the Local Housing Authority must review their assessment of the applicant and explore whether there are any further reasonable steps that can now be pursued.

Best use of the Authority's resources

13.10 Detailed guidance on when and how a Local Housing Authority can consider the best use of its resources can be found in Chapter 15.

Help to secure (rather than "to secure") that suitable accommodation is available

13.11 Applicants should be made aware that the duty to help to secure accommodation does not mean that the Local Housing Authority is obliged to secure them either an allocation of Local Housing Authority accommodation via Part 6 of the Housing Act 1996 or to secure them any other form of accommodation.

How to secure or help to secure the availability of accommodation

The Act states

Section 64 - How to secure or help to secure the availability of accommodation

1. The following are examples of the ways in which a local housing authority may secure or help to secure that suitable accommodation is available, or does not cease to be available for occupation by an applicant –

a) by arranging for a person other than the authority to provide something;

b) by itself providing something;

c) by providing something, or arranging for something to be provided, to a person other than the applicant.

2. The following are examples of what may be provided or arranged to secure or help to secure that suitable accommodation is available, or does not cease to be available, for occupation by an applicant –

a) mediation;

b) payment by way of grant or loan;

c) guarantees that payments will be made;

d) supporting in managing debt, mortgage arrears or rent arrears;

e) security measures for applicants at risk of abuse;

f) advocacy or other representation;

g) accommodation;

h) information and advice;

i) other services, goods or facilities.

13.12 S.64 of the HWA 2014 includes examples of the types of interventions that Local Housing Authorities might consider.

13.13 A more comprehensive list of interventions that Local Housing Authorities might wish to consider, and which they have to put in place as a minimum set of interventions available, can be found in the Chapter 12.

13.14 The following is a list of interventions that may be more relevant to the S.73 duty to help secure accommodation than the S.66 duty to prevent:

- Supported Housing – the provision of supported housing with move on accommodation provided as part of an exit strategy such as a 'Move On scheme' – excluding night shelters, crisis short-stay accommodation or interim accommodation
- Shared housing and/or houses of multiple occupation – the provision of shared accommodation through a managed scheme. Shared accommodation is particularly important for applicants who would be subject to the single rent occupancy rate for Housing Benefit/Universal Credit housing costs;
- Accommodation arranged with friends and family – where appropriate, through the provision of mediation with friends or family, to enable the applicant to remain in or return to accommodation that is suitable and sustainable for a minimum of 6 months and not just, for example, a temporary arrangement on a sofa;
- Supported lodgings – the provision of a supported lodging scheme which will provide supported accommodation, particularly for young people aged up to 25, that will continue to be available to them until they are ready to move to fully independent living. This is distinct from Nightstop schemes which are intended to be short term crisis accommodation;
- Social housing – the provision of social housing should be considered whether through the Local Housing Authority or another Social Landlord(Part 6 Housing Act 1996 allocation or nomination)
- Private rented accommodation – enabling suitable accommodation to be accessed through services such as private rented sector access services social letting agencies and private sector leasing schemes such as Leasing Scheme Wales.

13.15 Local Housing Authorities have the flexibility to provide intervention through working in partnership with voluntary organisations, other Local Housing Authority services and across regional areas. Interventions should be based on a sound knowledge of local issues and demand which should be reflected in the Local Homelessness Strategy.

Rough Sleepers

13.16 People who are sleeping rough will likely be 'street homeless' and therefore have a priority need for accommodation under S.70(1)(k). Alternatively, they may be vulnerable for some 'other special reason' due to the health and social implications of their situation and have a priority need under S.70(1)(C). Most applicants sleeping rough should therefore be offered interim accommodation under S.68 duty of the HWA 2014, as well as S.73 duty.

13.17 Local Housing Authorities need to be proactive in ensuring that rough sleepers can access the housing and support services that they need, so that no one needs to sleep rough. Appropriate assessment and the provision of services that can meet housing and support needs would need to be available to people in this situation. Many people who have been homeless long term have multiple needs, often including mental health and substance misuse problems. Someone may be vulnerable not from a single need but from a combination of needs. Statutory and voluntary sector services should be co-ordinated to identify and address multiple needs in a joined-up and flexible way.

13.18 When Local Housing Authorities are considering the range of reasonable steps that may be actioned to assist rough sleepers, consideration must be given to the circumstances of the individual. Some people who may have had a transient or chaotic lifestyle may not be able to cope with permanent accommodation and the dramatic change this may bring to their lives.

13.19 Local Housing Authorities ought to give appropriate weighting to the reasons a person has had a significant period without accommodation in the event that accommodation is declined or lost due to their inability to cope with such a provision. Those individuals who have had a significant period of rough sleeping may not fit well into a supported housing setting and a 'Housing First' approach may be considered, resources permitting.

13.20 For those individuals with chaotic lifestyles, a judgement will need to be made whether a 'Housing First' approach with support in the community can be applied or if they need intermediate specialist accommodation which is more intensively managed. Some rough sleepers can be hard to engage, and Local Housing Authorities may wish to consider an individual budget[1] approach to increase engagement and tackle some of the root causes of homelessness.

13.21 Local Housing Authorities should have protocols in place to respond to the needs of rough sleepers, particularly those who are considered "new". In some cases, it may be of benefit to the individual to be reconnected to their home area should they not have a local connection to the Local Housing Authority area completing the assessment. Any such moves should be supported with appropriate assistance to help the person engage with services in those other areas.

13.22 Where a reconnection is pursued as a reasonable step and not via S.80 of the HWA 2014, the Local Housing Authority should work in partnership with the 'home' Local Housing Authority to ensure the applicant receives a supported re-connection service.

---

[1] 3 Pritchard, C., 2010 An Evaluation of the Devon Individualised Budget project to encourage rough sleepers into accommodation. [project report] Exeter City Council, cf Autism and Homelessness: Briefing for Frontline Staff, Homeless Link September 2015

Pets

13.23 Due to the isolation that comes with being homeless and particularly street homelessness, many people often have pets as a form of companionship. When meeting the accommodation needs of this group, Local Housing Authorities ought to have consideration of this relationship between the applicant and his/ her companion / pet and where possible aim to help to secure accommodation that would enable this relationship to continue. In the event that this type of accommodation cannot be provided readily, Local Housing Authorities should be discouraged from ending their duties particularly where the pet has a positive effect on the applicants' health and wellbeing.

14. DUTY TO SECURE ACCOMMODATION FOR APPLICANTS IN PRIORITY NEED

Introduction

14.1 S.75 of the HWA 2014 places a duty on Local Housing Authorities to secure accommodation for applicants in priority need where the duty in S.73 (help to secure accommodation) has ended. This duty can only follow the S.73 duty, though in appropriate cases the S.66 duty to help prevent will also have been owed before S.73 duty. The reasonable steps taken under S.66 and S.73 will mean that for many applicants considerable work will have been completed and a successful solution found. Thus the S.75 duty to secure accommodation should only be required for a limited number of applicants.

14.2 The S.75 duty is an absolute duty to secure that suitable accommodation is available for occupation by the applicant. When securing accommodation for applicants, the priority for Local Housing Authorities must be to minimise the risk of homelessness recurring in order to allow applicants to establish, or re-establish, a settled way of life.

14.3 The S.75 duty can be discharged in a number of ways. This includes an acceptance of an offer of accommodation through Part 6 of the Housing Act 1996. The duty can also be discharged by acceptance of an offer of an occupation contract in Wales or an assured (including shorthold) tenancy in England. The duty may also be discharged through a refusal of an offer of accommodation under Part 6 of the Housing Act 1996, a 'private rented sector' offer or an offer of suitable temporary accommodation under S.75. For further guidance on how S.75 duty can be brought to an end, see Chapter 15.

14.4 Whichever method is used to discharge the duty, Local Housing Authorities should always seek to secure long-term solutions to homelessness. This should include consideration of the wide range of factors which may impact on resettlement, in particular the household's requirements in terms of proximity to family and friends and the accessibility of healthcare, employment, education and training and support providers.

14.5 This section of the Code will provide guidance for Local Housing Authorities on the duty to secure accommodation for applicants in priority need where the duty in S.73 has ended.

14.6 This should also present an opportunity to consider if the individual(s) have care and support needs and if Local Authorities should fulfil their duties under the SSWWA 2014.

14.7 Most applicants who are entitled to a S.75 duty will have been offered suitable interim accommodation under S.68 duty (interim duty to secure accommodation) when they made the homeless application, if there was reason to believe they may be eligible, homeless and in priority need at that time. Interim accommodation should continue to be made available to the applicant and their household as temporary accommodation when S.75 duty is accepted. Temporary accommodation should continue to be made available

until the S.75 duty is discharged – again, see Chapter 15 for further guidance on how S.75 duty can be brought to an end.

When to assess if the section 75 duty is owed.

The Act states

> Section 75 - Duty to secure accommodation for applicants in priority need when the duty in section 73 ends
>
> 1. When the duty in section 73 (duty to help secure suitable accommodation for a homeless applicant) comes to an end in respect of an applicant in the circumstances mentioned in subsection (2) or (3) of section 74, the local housing authority must secure that suitable accommodation is available for occupation by the applicant if subsection (2) or (3) (of this section) applies.

Guidance

14.8 When the S.73 duty to help to secure accommodation comes to an end either because:

- the period of 56 days has expired; or
- before the end of the 56 days the Local Housing Authority is satisfied that reasonable steps have been taken to help to secure that suitable accommodation is available for the applicant, but accommodation that is likely to last for a period of at least 6 months is not available to the applicant;

the Local Housing Authority must review the applicant's assessment to determine if they now owe the S.75 duty to secure accommodation. Where an assessment is reviewed, S.63(1) makes it clear that the applicant must be notified of the outcome of this review. Therefore all applicants discharged via S.74(2) and (3) must be notified whether they are entitled to receive the S.75 duty.

14.9 The Local Housing Authority may not be in position to decide whether the S.75 duty is owed immediately following the ending of a S.73 duty as it will need to satisfy itself of priority need and intentionality. Whilst Welsh Government recommends 10 working days between decisions as a guide, noting that arriving at the correct decision is paramount, it would be of benefit to the applicant if relevant evidence gathering takes place during the S.73 stage at a point where the Local Housing Authority considers the case is likely to require the assessment for S.75, provided no decision is taken on intentionality of the applicant at this stage.

14.10 Further guidance regarding Priority Need can be found at Chapter 16, and further guidance regarding Intentionality can be found at Chapter 17.

Who the Section 75 duty applies to.

The Act states

Section 75 - Duty to secure accommodation for applicants in priority need when the duty in section 73 end

2. This subsection applies where the local housing authority—

a) is satisfied that the applicant—

i) does not have suitable accommodation available for occupation, or

ii) has suitable accommodation, but it is not likely that the accommodation will be available for occupation by the applicant for a period of at least 6 months starting on the day the applicant is notified in accordance with section 84 that section 73 does not apply,

b) is satisfied that the applicant is eligible for help,

c) is satisfied that the applicant has a priority need for accommodation, and

d) if the authority is having regard to whether or not the applicant is homeless intentionally (see section 77), is not satisfied that the applicant became homeless intentionally in the circumstances which gave rise to the application;

3. This subsection applies where the local housing authority is having regard to whether or not the applicant is homeless intentionally and is satisfied that—

a) the applicant became homeless intentionally in the circumstances which gave rise to the application,

b) the applicant—

i) does not have suitable accommodation available for occupation, or

ii) has suitable accommodation, but it is not likely that the accommodation will be available for occupation by the applicant for a period of at least 6 months starting on the day on which the applicant is notified in accordance with section 84 that section 73 does not apply,

c) the applicant is eligible for help,

d) the applicant has a priority need for accommodation,

e) the applicant is—

i) a pregnant woman or a person with whom she resides or might reasonably be expected to reside,

ii) a person with whom a dependent child resides or might reasonably be expected to reside,

iii) a person who had not attained the age of 21 when the application for help was made or a person with whom such a person resides or might reasonably be expected to reside, or

iv) a person who had attained the age of 21, but not the age of 25, when the application for help was made and who was looked after, accommodated or fostered at any time while under the age of 18, or a person with whom such a person resides or might reasonably be expected to reside, and

f) the authority has not previously secured an offer of accommodation to the applicant under this section following a previous application for help under this Chapter, where that offer was made—

i) at any time within the period of 5 years before the day on which the applicant was notified under section 63 that a duty was owed to him or her under this section, and

ii) on the basis that the applicant fell within this subsection.

Guidance

14.11 The S.75 duty is owed to applicants who meet specific criteria. The applicant must:

i) **not have suitable accommodation available for occupation that is likely to last for a period of at least 6 months:** the Local Housing Authority must be satisfied that, having taken reasonable steps, the applicant has no suitable accommodation available to them that it is likely to last for a period of at least 6 months. For the purpose of determining the 6-month period, it starts on the day the applicant is notified that he or she is no longer entitled to the S.73 duty

ii) **be eligible for help:** at this stage eligibility should already have been determined through the assessment of whether the applicant was entitled to help under the S.66 help to prevent or S.73 help to secure accommodation duties, one or both of which will always precede determination of this duty.

iii) **have a priority need for accommodation:** during the assessment of an applicant's entitlement to the S.73 duty to help to secure, the Local Housing Authority will also need to establish if they have reason to believe that there is a priority need as this will entitle the applicant to interim accommodation for the purposes of the S.68 duty. The Local Housing Authority will be able to use the evidence already gathered during the ongoing assessment when determining if the applicant is entitled to S.75 duty, but at this stage will need to be satisfied that the applicant is in a priority need category. Local Housing Authorities are reminded that where age is the determining factor for priority need, the date of the application is used not the date of the assessment of entitlement to S.75

iv) **be unintentionally homeless or exempt from a finding of intentionality:** the Local Housing Authority, if they intend to investigate intentionality under S.78 (deciding to have regard to intentionality) for the category of priority need that is applicable to the applicant, must be satisfied that the applicant did not make themselves intentionally homeless. Alternatively, the applicant must be a person who is entitled to S.75 duty despite being intentionally homeless per S.75(3) – see below. It is likely that during an earlier stage of the assessment the Local Housing Authority will have formed an opinion as to whether the applicant may be intentionally homeless or not. In line with the Welsh Government's recommendation, the Local Housing Authority should already have informed the applicant by letter that they are minded to find him or her intentionally homeless, the reasons why and what the consequence of that decision could be. For the purposes of determining if the S.75 duty is owed, the Local Housing Authority must be satisfied that the applicant is not intentionally homeless or that they are a person who is entitled to S.75 duty despite being intentionally homeless if it is has having regard to intentionality.

Applicants excused from intentionality

14.12 Section 75(3) ensures that the following categories of applicants will continue to be eligible for the S.75 duty even where a Local Housing Authority is satisfied that they have been found intentionally homeless:

i) A pregnant woman or a person with whom she resides, or might reasonably be expected to reside;

ii) A person with whom a dependent child resides or might reasonably be expected to reside;

iii) A person who had not attained the age of 21 when the application for help was made or a person with whom they reside, or might reasonably be expected to reside;

iv) A person who had attained the age of 21, but not the age of 25, when the application for help was made, and who was looked after, accommodated or fostered at any time while under the age of 18 or a person with whom they reside, or might reasonably be expected to reside.

14.13 However, section 75(3)(f)(i) limits this provision so that where such a person has been found intentionally homeless twice in a five-year period, they would not be entitled to the S.75 duty. Where such a person has previously been found intentionally homeless, the five years commences on the date that they received notification that they were owed a duty under S.75. For example, if a duty is owed under this section on 1st January 2025, then then the applicant would be entitled to the main housing duty as a result of S.75(3) if no more than one intentionality decision has taken place since 1st January 2020.

14.14 Local Housing Authorities should not under any circumstances look to discharge S.73 early (for example, under S.74(3)) purely in order to ensure that an applicant would fail the five year test.

14.15 Local Housing Authorities will need to be aware that where an applicant has been provided accommodation following the section 75(3) provision, then the notification letter should ensure that this is outlined. Failure to do so, will result in the five year time limit not being enforceable.

15. ENDING THE DUTIES

Introduction

15.1 The Local Housing Authority has a number of duties under Part 2 of the HWA 2014 towards applicants who are in housing need. For each of the duties a specific circumstance or set of circumstances will bring the duties to an end.

15.2 At all stages of the process the Local Housing Authority will have been working proactively and in partnership with the applicant to help them find a solution to their housing need. The Local Housing Authority will also have been working in partnership with other organisations to deliver interventions that can help an applicant resolve their housing need.

15.3 When bringing a duty to an end, the Local Housing Authority will need to be able to draw on information and evidence from all parties that everything that could be done to help the applicant within the requirements of Part 2 of the HWA has been considered and, where appropriate, carried out.

15.4 The Welsh Government considers it is as important for a Local Housing Authority to work closely with an applicant when considering bringing a duty to an end as it is to work closely with an applicant when assessing and identifying what, if any, duty is owed.

15.5 This section of the Code will provide guidance for Local Housing Authorities on the specific circumstance or set of circumstances in which a duty can be brought to an end, and the way in which an applicant must be notified.

Key terminology used in this section

Suitable accommodation

15.6 A Local Housing Authority must be satisfied that accommodation offered to an applicant in the discharge of any of the duties in Part 2, Chapter 2 of the HWA 2014 is suitable.

15.7 A number of factors such as support needs, location, cultural needs, size (including numbers of bedrooms) and affordability must be considered when a Local Housing Authority is deciding whether accommodation is suitable.

15.8 Detailed guidance on what constitutes suitable accommodation can be found in Chapter 19.

Accommodation likely to be available for a period of at least six months

15.9 Local Housing Authorities must be satisfied that accommodation offered to an applicant in the discharge of the S.66 duty to help to prevent homelessness and the S.73 duty to help to secure accommodation is likely to be available for occupation by the applicant for a period of at least 6 months.

15.10 Where an applicant has returned home or gone to stay with friends or extended family, for example, through the use of mediation or negotiation by the housing options worker, it is the responsibility of the Local Housing Authority to satisfy itself that there is a realistic expectation that this solution will last for 6 months and that it is not intended by the friends, extended family or the applicant to be a temporary arrangement.

15.11 Where an applicant has accepted a private rented occupation contract then it would be reasonable for the Local Housing Authority to expect this accommodation to be available for the minimum necessary period and therefore meet the duty.

15.12 A Local Housing Authority must take into account the support needs and vulnerability of an applicant which will have been identified as part of the assessment. As long as these have been considered, the Local Housing Authority can reasonably expect that an applicant will adhere to any rules when determining the likelihood of accommodation lasting for at least 6 months, including those set out in an occupation contract.

15.13 The period of 6 months (per S.67(5) and S.74(7)) begins on the day the notice under S.84 (notice that duties have ended) is sent or first made available for collection. Local Housing Authorities cannot determine that the duty has ended unless the accommodation is actually available to the applicant. In the case of a private rented (standard) occupation contract, the accommodation must be available for the applicant to move into. It is not enough for the Local Housing Authority to have secured the promise of accommodation from a private landlord or to have helped an applicant to make a waiting list application for an occupation contract.

Refusal or acceptance of an offer of accommodation

15.14 Local Housing Authorities must allow applicants a reasonable period for considering offers of accommodation that will bring the duties under Part 2 of the HWA 2014 to an end. There is no set reasonable period. Longer periods may be required where the applicant is in hospital or temporarily absent from the district. In deciding what a reasonable period is, Local Housing Authorities must take into account the applicant's circumstances in each case.

15.15 Applicants should be given the opportunity to view accommodation before being required to decide whether they accept or refuse an offer, and before being required to sign any written agreement relating to the accommodation (e.g.an occupation contract).

15.16 The Local Housing Authority must ensure that the applicant is fully aware that the refusal of an offer of suitable accommodation, including through the private rented sector or through securing accommodation with friends or family, can result in the ending of duties contained within S.66, S.68 and S.73 of the HWA 2014. Applicants must also be made fully aware that the refusal of:

i) an offer of suitable interim accommodation under S.75;

ii) an offer under the Local Authority's allocation scheme;

iii) an offer of a private rented occupation contract in Wales;

iv) or a private rented assured (including assured shorthold) tenancy in England can result in the S.75 duty coming to an end. Under S.84 of the HWA 2014, in order to bring its duty to an end, the Authority must also notify the applicant that it regards itself as having discharged its duty and comply with the other requirements in that section.

15.17 The Local Housing Authority should take care to ensure that an offer of accommodation has, in fact, been refused before discharging a duty on that basis. However, the Authority does not need to identify the exact moment of refusal; it only needs to identify whether a refusal has taken place. An applicant can refuse an offer expressly or by conduct (for example, refusing to sign an occupation contract).

15.18 When the Local Housing Authority determines that a duty can be brought to an end and informs the applicant by a S.84 notice that duties have ended, they must include information on the right of the applicant to ask for a review of the decision. Further guidance of S.84 can be found at the end of this Chapter. Guidance on S.85 the right to request a review can be found in Chapter 20.

Monitoring progress and closing the case

15.19 Once the Local Housing Authority and applicant agree a plan for addressing the applicant's homelessness or threat of homelessness, that plan must be kept under review. The frequency of follow-up meetings will be dictated by the nature of the applicant's particular housing situation, but a Local Housing Authority will be expected to demonstrate that continuing dialogue with the applicant has taken place before it can justify ending its duty. The purpose of this dialogue is to be able to nimbly address any changes in circumstances, while also reviewing general progress to date.

Best use of resources

15.20 When taking reasonable steps under S.66 duty to help to prevent and S.73 duty to help to secure, a Local Housing Authority may have regard to making best use of the Authority's resources.

15.21 Each Local Authority will need to be committed corporately to tackling homelessness if it is to be prevented effectively. Homelessness needs to be a high priority both in political and operational terms when targeting and allocating resources. Local Authorities should be aware of the potential cost savings at a corporate level, to be gained from fully resourcing a dedicated homelessness prevention service.

15.22 Local Authorities should ensure that resources are allocated effectively and efficiently to ensure that all clients have the ability to receive a tailored core service of key interventions which can best meet their individual needs.

15.23 Where a Local Authority has made disproportionate reductions in their homelessness budget when compared to their full funding settlement, any decisions to discharge their duty on the best use of resources can expect to be subject to additional scrutiny and an increased likelihood of challenge. In addition, it is the Welsh Government's opinion that redirection of budget from homelessness services to other statutory services,

although potentially of indirect benefit, will not be considered a justifiable reason for a disproportionate reduction in budget.

15.24 It is recommended that budgets are set based on estimated demand for the new year, recent trends and other changes which are likely to have an impact, such as benefit changes.

15.25 Some interventions will be more costly than others. In some cases, a single intervention, such as clearing a family's mortgage arrears, could cost significantly more than a range of interventions for someone else.

15.26 It is not appropriate for a Local Housing Authority to consciously allocate additional resources to applicants likely to be eligible for the S.75 duty during either S.66 or S.73. Local Housing Authorities should provide a service to all applicants who are eligible for either duty, but within the context of an individualised service. Someone with additional support needs might require additional support, and therefore resources.

15.27 It is recommended that resources are monitored closely throughout the year to ensure expenditure is consistent with both spend profiles and client numbers. Where an applicant presents towards the end of the financial year, it is not appropriate for them to be disadvantaged in relation to the reasonable steps taken purely due to the exhaustion of resources. However, when allocating resources, a Local Housing Authority may give some priority to people with local connections to the area or who have a clear need to move from their original area, provided they continue to meet their statutory duties to all applicants.

15.28 Where an applicant's threat of homelessness fails to be prevented while being supported via S.66 and they have moved through to S.73 duty to help to secure, a Local Housing Authority must consider the reasonable steps in the context of the applicant's new situation and, on a case by case basis, consider the likely success and cost effectiveness of revisiting the same reasonable steps as used under S.66. For example, a private rented sector placement might become available during S.73 and an Authority should consider retaining it as an option. However, an Authority might be justified in removing some steps on the basis that they are no longer appropriate or are highly unlikely to be successful. An example could be continuing family mediation where it is apparent that the relationship has deteriorated beyond the point of repair within 56 days.

15.29 Where an Authority discharges the S.73 duty ahead of the 56-day period based on having undertaken reasonable steps, they need to aware of the possibility of challenge in respect of taking reasonable steps.

15.30 When a Local Housing Authority discharges their duty on the basis of having undertaken reasonable steps within the best use of resources, they must communicate the decision in writing to the applicant outlining why they consider all reasonable steps having been taken within the context of the best use of resources.

Duty to help prevent homelessness (S.66)

Circumstances in which the duty in S.66 ends

The Act states

Section 67 - Circumstance in which the duty in section 66 ends

1. The duty to an applicant under section 66 comes to an end in any of the circumstances described in subsections (2), (3) or (4), if the applicant has been notified in accordance with 84.

2. The circumstances are that the local authority is satisfied that the applicant has become homeless.

3. The circumstances are that the local authority is satisfied (whether as a result of the steps it has taken or not) that-

a) the applicant is no longer threatened with homelessness, and

b) suitable accommodation is likely to be available for occupation by the applicant for a period of at least 6 months.

4. The circumstances are that –

a) the applicant, having been notified in writing of the possible consequences of refusal or acceptance of the offer, refuses an offer of accommodation from any person which the authority is satisfied is suitable for the applicant, and

b) the authority is satisfied that the accommodation offered is likely to be available for occupation is satisfied that the accommodation offered is likely to be available for occupation by the applicant for a period of at least 6 months.

5. The period of 6 months mentioned in subsections (3)(b) and (4)(b) begins on the day the notice under section 84 is sent or first made available for collection.

6. See Section 79 for further circumstances in which the duty in section 66 comes to an end.

The Act requires

15.31 The Local Housing Authority has a continuing duty to an eligible applicant who is threatened with homelessness, to help to prevent homelessness under S.66 until a specific circumstance or set of circumstance is reached which brings the duty to an end. S.67 of the HWA 2014 lists those circumstances.

Guidance

S.67 (2) the Local Housing Authority is satisfied that the applicant has become homeless

15.32 Where a Local Housing Authority has reason to believe that an applicant may have become homeless or that the applicant has re-presented as homeless, the Authority must assess to satisfy itself whether the applicant is eligible for continued assistance. If the Authority is satisfied that the applicant is no longer 'threatened with' homelessness and has actually become 'homeless', the duty under S.66 will end. The Authority must then consider what further duty, if any, is owed.

15.33 Guidance on working with people either homeless or suspected of being homeless can be found at Chapters 12 and 13.

S.67(3) the Local Housing Authority is satisfied that the applicant is no longer threatened with homelessness

15.34 If the Local Housing Authority is satisfied that the applicant is no longer threatened with homelessness, whether as a result of reasonable steps it has taken or not, the duty under S.66 will end. The Authority must be satisfied that suitable accommodation is likely to be available to the applicant for occupation for a period of at least 6 months.

15.35 The Local Housing Authority must have due regard to the outcome of the initial assessment and the statutes regarding the legal right to occupy and accommodation available for occupation.

15.36 Local Housing Authorities may need to interview parents, carers or friends to establish the facts behind a possible change of situation for the applicant. Authorities are encouraged to be sensitive to situations where parents, carers or friends may have been providing a home for a family member or friend with support needs (e.g. a person with learning disabilities) for a number of years and who are genuinely finding it difficult to continue with that arrangement, but are reluctant to revoke their licence to occupy formally until alternative accommodation can be secured. In some circumstances it may not be appropriate to bring S.66 duty to an end.

S.67(4) applicant refuses an offer of accommodation

15.37 If the applicant refuses an offer of accommodation (from any person) that the Local Housing Authority is satisfied is suitable for them, the S.66 duty can end. The accommodation must be suitable and likely to be available to the applicant for a period of 6 months. The period of 6 months begins on the day the notice under S.84 is sent or made available for collection.

15.38 The Local Housing Authority can only bring the S.66 duty to an end for this reason having notified the applicant in writing of the possible consequences of refusal or acceptance of an offer of accommodation.

S.67(6) - see S.79 for further circumstance in which the duty in S. 66 comes to an end

15.39 S.79 of the HWA 2014 sets out further circumstances in which the S.66 duty can come to an end. The circumstances contained in S.79 are set out below in this Chapter.

15.40 For detailed guidance on S.66 of the HWA 2014 (the duty to prevent), see Chapter 12.

Interim duty to secure accommodation for homeless applicants in priority need (S.68)

Circumstance in which the duty in S.68 ends

The Act states

Section 69 - Circumstances in which the duty in section 68 ends

1. The duty to an applicant under section 68 comes to an end in any of the circumstances described in subsection (2), (3) (subject to subsection (4) and (5)), (7), (8) or (9) if the applicant has been notified in accordance with section 84.

2. The circumstances are that the local housing authority has decided that no duty is owed to the applicant under section 73 and the applicant is notified of that decision.

3. In the case of an applicant to whom section 68(3) applies, the circumstances are that the local housing authority has—

a) decided that the duty owed to the applicant under section 73 has come to an end and that a duty is or is not owed to the applicant under section 75, and

b) notified the applicant of that decision; but this is subject to subsections (4) and (5).

4. Subsection (5) applies where a local housing authority has decided that no duty is owed to the applicant under section 75 on the basis that the authority—

a) is satisfied that the applicant became homeless intentionally in the circumstances which gave rise to the application, or

b) has previously secured an offer of accommodation of the kind described in section 75(3)(f).

5. The duty under section 68 does not come to an end in the circumstances described in subsection (3) until the authority is also satisfied that the

accommodation it has secured under section 68 has been available to the applicant for a sufficient period, beginning on the day on which he or she is notified that section 75 does not apply, to allow the applicant a reasonable opportunity of securing accommodation for his or her occupation.

6. The period mentioned in subsection (5) is not sufficient for the purposes of that subsection if it ends on a day during the period of 56 days beginning with the day on which the applicant was notified that the duty in section 73 applied.

7. The circumstances are that the applicant, having been notified of the possible consequence of refusal, refuses an offer of accommodation secured under section 68 which the local housing authority is satisfied is suitable for the applicant.

8. The circumstances are that the local housing authority is satisfied that the applicant has become homeless intentionally from suitable interim accommodation made available for the applicant's occupation under section 68.

9. The circumstances are that the local housing authority is satisfied that the applicant voluntarily ceased to occupy as his or her only or principal home suitable interim accommodation made available for the applicant's occupation under section 68.

10. The duty comes to an end in accordance with this section even if the applicant requests a review of any decision that has led to the duty coming to an end (see section 85).

11. The authority may secure that suitable accommodation is available for the applicant's occupation pending a decision on a review.

12. See section 79 for further circumstances in which the duty in section 68 comes to an end.

The Act requires

15.41 The Local Housing Authority has an interim duty to accommodate an applicant (and their household) who may be eligible, may be homeless and may have a priority need under S.68, until a specific circumstance or set of circumstances are reached which brings the duty to an end. S.69 of the HWA 2014 lists those circumstances.

15.42 It has been established that, as a general rule, accommodation provided pending homelessness inquiries is provided on a temporary basis and, applying established case law, does not generally fall within the Protection from Eviction Act 1977. The courts have applied this principle in cases where the accommodation provided was accommodation in a Bed and Breakfast hotel and/or where it was a self-contained flat.

15.43 Consequently, where this general rule applies, Local Housing Authorities are required only to provide an applicant with reasonable notice to vacate accommodation

provided under the interim duty, and do not need to apply for a possession order from the court.

15.44 Authorities should note, however, that this general rule may be displaced by an agreement between the Local Housing Authority and the applicant, or if the facts show a more settled period of occupation, a different legal status or the occupation continues outside the intended interim framework.

Guidance

S.69(2) No duty is owed under S.73

15.45 The duty under S.68 will end when the Local Housing Authority has satisfied itself that the person does not have a duty owed to them under S.73. The applicant must be notified of that decision.

S.69(3)-(6) Duty under S.73 has come to an end and no further duty is owed under S.75

15.46 When the duty under S.73 ends and the applicant is subject to the duty under S.75, temporary accommodation must be secured for while the S.75 duty lasts. The accommodation provided under S.68 can continue to be used as temporary accommodation for the purposes of S.75 so long as the accommodation remains suitable for the household and any other person reasonably expected to reside with them. It is also possible for the Local Housing Authority to move the applicant to new temporary accommodation if needed, for example, to manage their housing stock.

15.47 However, if the duty under S.73 comes to an end as a result of S.74 (2) or (3), and the Local Housing Authority is satisfied that the applicant is not entitled to S.75 duty because the applicant is intentionally homeless (and the applicant is not in a specified category per S.75(3)), the S.68 duty will end. However, the interim accommodation provided under S.68 duty must continue to be provided for a sufficient period for the applicant to attempt to secure housing for their occupation with the help of the Local Housing Authority. This period would not be considered sufficient if ended within 56 days of acceptance of the S.73 duty. Also, the period of accommodation granted after the ending of the S.73 duty must be of a reasonable time frame.

For example.

15.48 Applicant accepts accommodation under the interim S.68 duty. The Authority accepts the S.73 duty (DAY 1). The Authority is satisfied it has discharged the S.73 duty after taking reasonable steps and is unable to find a solution after two weeks (DAY 14). The Authority are satisfied the applicant is not owed the S.75 duty and notifies the person that they are intentionally homeless based on the circumstances that gave rise to the application where the Authority is having regard to intentionality for the particular specified category. The interim accommodation must continue for a sufficient / reasonable period, which will be a minimum of 56 days from DAY 1.

Or

15.49 Applicant accepts accommodation under the interim S.68 duty. The Authority accepts the S.73 duty (DAY 1). The Authority is satisfied it has been unable to help to secure housing and after 56 days the S.73 duty ends. The Authority is satisfied the applicant is not owed the S.75 duty and notifies the person that they are intentionally homeless based on the circumstances which gave rise to the application where the Authority is having regard to intentionality for the particular specified category. The interim accommodation will continue for reasonable period as determined by the Local Housing Authority from the notification that S.75 does not apply.

15.50 S.75 duties may still apply to specified household types under S.75 (3) that the Local Authority has determined to be intentionally homeless. Further guidance can be found in Chapter 14. In those circumstances, the applicant will continue to be provided with temporary accommodation pending discharge of S.75 duty.

S.69(7) The applicant refuses an offer of suitable interim accommodation

15.51 The circumstances are that the applicant, having been notified of the possible consequence of refusal, refuses an offer of accommodation secured under S.68 which the Local Housing Authority is satisfied is suitable for the applicant.

S.69(8) The applicant has become homeless intentionally from suitable interim accommodation

15.52 The circumstances are that the Local Housing Authority is satisfied that the applicant has become homeless intentionally from suitable interim accommodation made available for the applicant's occupation under S.68. See Chapter 17 for further guidance on Intentionality.

S.69(9) The applicant voluntarily ceased to occupy as their only/principal home their suitable interim accommodation

15.53 The circumstances are that the Local Housing Authority is satisfied that the applicant voluntarily ceased to occupy as his or her only or principal home suitable interim accommodation made available for the applicant's occupation under S.68

S.69(12) - see S.79 for further circumstances in which the duty in S.68 comes to an end

15.54 S.79 of the HWA 2014 sets out further circumstances in which the S.68 duty can come to an end. The circumstances contained in S.79 are set out below in this Chapter.

15.55 For detailed guidance on S.68 of the HWA 2014 (the interim duty), see Chapter 11.

Duty to help to secure accommodation (S.73)

Circumstances in which the duty in S.73 ends

The Act states

Section 74 - Circumstances in which the duty in section 73 ends

1. The duty to an applicant under section 73 comes to an end in any of the circumstances described in subsections (2), (3), (4), or (5), if the applicant has been notified in accordance with section 84.

2. The circumstances are the end of a period of 56 days.

3. The circumstances are that before the end of a period of 56 days the local housing authority is satisfied that reasonable steps have been taken to help to secure that suitable accommodation is available for occupation by the applicant.

4. The circumstances are that the local housing authority is satisfied (whether as a result of the steps it has taken or not) that—

a) the applicant has suitable accommodation available for occupation, and

b) the accommodation is likely to be available for occupation by the applicant for a period of at least 6 months.

5. The circumstances are that—

a) the applicant, having been notified of the possible consequence of refusal or acceptance of the offer, refuses an offer of accommodation from any person which the authority is satisfied is suitable for the applicant, and

b) the authority is satisfied that the accommodation offered is likely to be available for occupation by the applicant for a period of at least 6 months.

6. The period of 56 days mentioned in subsections (2) and (3) begins on the day the applicant is notified under section 63 and for this purpose the applicant is to be treated as notified on the day the notice is sent or first made available for collection.

7. The period of 6 months mentioned in subsection (4)(b) and (5)(b) begins on the day the notice under section 84 is sent or first made available for collection.

8. See section 79 for further circumstances in which the duty in section 73 comes to an end.

The Act requires

15.56 That the Local Housing Authority has a continuing duty to an eligible and homelessness applicant to help to secure accommodation under S.73 until a specific circumstance or set of circumstances is reached which brings the duty to an end. S.74 of the HWA 2014 lists those circumstances.

Guidance

S.74 (2) the end of the period of 56 days.

15.57 Applicants found to be eligible and homeless and owed the S.73 duty to help to secure accommodation should be notified that this duty will continue for a maximum of 56 days from the date of notification of the outcome of the S.62 assessment.

15.58 During the 56-day period the Local Housing Authority must identify the reasonable steps that it will take, in partnership with the applicant, to help to secure accommodation.

15.59 The Local Housing Authority must not simply wait out the 56 days. When it brings the duty to an end in circumstances described in S.74(2) or S.74(3) (discussed below), it will be required under S.84(2) to notify the applicant of the reasons why it considers the duty has come to an end. The notification must include the reasonable steps the Authority identified during assessment, the assistance it offered the applicant in order to pursue those steps, and the reason/s why those reasonable steps have failed.

15.60 If the Local Housing Authority is unable to evidence that it used the 56 days to ensure that reasonable steps were taken, then it could be subject to a challenge from the applicant under S.85 (right to request a review). If the applicant is dissatisfied with the decision on the review, then an appeal to the County Court may be made under S.88 (right of appeal to the county court on point of law).

S.74(3) before the end of a period of 56 days

15.61 The S.73 duty can last for a maximum of 56 days. However, there may be circumstances where a Local Housing Authority has exhausted all reasonable steps and is able to evidence this before the end of the 56 day period. This may be particularly applicable in circumstances where the Authority has already pursued a number of reasonable steps with the applicant under the S.66 duty to help prevent and therefore limited options remain available to meet the S.73 duty to help secure accommodation.

15.62 The Local Housing Authority should be cautious when bringing the S.73 duty to an end before the end of the 56 day period. They should be satisfied that reasonable steps have been taken. If the Local Housing Authority is unable to evidence that reasonable steps were taken, it could be subject to a challenge from the applicant under S.85 and then an appeal to the County Court can be made under S.88.

The 56- day period.

15.63 For both subsections (2) and (3) of S.74, the 56 days begins on the day that the applicant is notified of the outcome of the assessment. There are a number of different outcomes and/or duties that may result from an assessment and it is important that an applicant who is owed the S.73 duty to help secure accommodation is made aware from the outset that this duty is time limited. This will enable them to make informed, realistic choices about the reasonable steps that are identified and the outcome that they wish to achieve.

S.74(4) the applicant has suitable accommodation that is likely to be available to them for a period of 6 months.

15.64 The Local Housing Authority can bring the duty in S.73 to an end if it is satisfied that the applicant is no longer homeless because they have suitable accommodation available for their occupation which is likely to be available to the applicant for a period of at least 6 months. The accommodation may be available to the applicant as a result of steps the Authority has taken, but does not have to be.

15.65 The period of 6 months begins on the day the notice under S.84 is sent or made available for collection.

S.74(5) the applicant refuses an offer of suitable accommodation that is likely to be available to them for a period of 6 months.

15.66 The Local Housing Authority can bring the duty in S.73 to an end if, having notified the applicant of the possible consequences of refusal or acceptance, the applicant refuses an offer of accommodation. The offer of accommodation can be made by any person provided the Authority is satisfied it is suitable for the applicant.

15.67 The accommodation must be likely to be available to the applicant for a period of 6 months. The period of 6 months begins on the day the notice under S.84 is sent or made available for collection.

S.74(8) - see S.79 further circumstance in which the duty in S.73 comes to an end

15.68 S.79 of the HWA 2014 sets out further circumstances in which the S.73 duty can come to an end. The circumstances contained in S.79 are set out below in this Chapter.

15.69 For detailed guidance on S.73 of the HWA 2014 (the duty to help to secure), see Chapter 13.

The duty to secure accommodation (S.75) Circumstance in which the duty in S.75 ends.

The Act states

Section 76 - Circumstances in which the duty in section 75 ends

1. The duty to an applicant under section 75(1) comes to an end in any of the circumstances described in subsections (2), (3), (6) or (7), if the applicant has been notified in accordance with section 84.

2. The circumstances are that the applicant accepts—

a) an offer of suitable accommodation under Part 6 of the Housing Act 1996 (allocation of housing), or

b) an offer of suitable accommodation in Wales under a tenancy which is an occupation contract

c) an offer of suitable accommodation (in England) under an assured tenancy (including an assured shorthold tenancy).

3. The circumstances are that the applicant, having been given notice in writing of the possible consequence of refusal or acceptance of the offer, refuses—

a) an offer of suitable interim accommodation under section 75,

b) a private rented sector offer, or

c) an offer of accommodation under Part 6 of the Housing Act 1996, which the authority is satisfied is suitable for the applicant.

4. For the purposes of this section an offer is a private rented sector offer if—

a) it is an offer of -

i) a tenancy which is an occupation contract made by a private landlord to the applicant in relation to accommodation in Wales which is available for the applicant's occupation, or

ii) an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation in England which is available for the applicant's occupation,,

b) it is made, with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority's duty under section 75 to an end, and

c) in relation to accommodation in England, the tenancy being offered is a fixed term tenancy for a period of at least 6 months.

5. In a restricted case, the local housing authority must, so far as reasonably practicable, bring its duty to an end by securing a private rented sector offer; for this purpose, a “restricted case” means a case where the local housing authority would not be satisfied as mentioned in section 75(1) without having regard to a restricted person (see section 63(5)).

6. The circumstances are that the local housing authority is satisfied that the applicant has become homeless intentionally from suitable interim accommodation made available for the applicant’s occupation—

a) under section 68 and which continues to be made available under section 75, or

b) under section 75.

7. The circumstances are that the local housing authority is satisfied that the applicant has voluntarily ceased to occupy as his or her only or principal home, suitable interim accommodation made available for the applicant’s occupation—

a) under section 68 and which continues to be made available under section 75, or

b) under section 75.

8. See section 79 for further circumstances in which the duty in section 75(1) comes to an end.

9. In this section –

“fixed term tenancy” (“tenantiaeth cyfnod penodedig”) in relation to accommodation in England has the meaning given in Part 1 of the Housing Act 1988 (c. 50);

“occupation contract” (“contract meddiannaeth”) has the same meaning as in the Renting Homes (Wales) Act 2016 (anaw 1) (see section 7 of that Act)

The Act requires

15.70 That the Local Housing Authority has a continuing duty to applicants who are owed a duty under S.75 until a specific circumstance or set of circumstances is reached which brings the duty to an end. S.76 of the HWA 2014 lists those circumstances.

Guidance

S.76(2) the applicant accepts an offer

i) Accepts an offer of suitable accommodation under Part 6 of the Housing Act 1996 (allocation of housing).

15.71 The S.75 duty ends if the applicant accepts an offer of accommodation under Part 6 (an allocation of social housing): This would include an offer of a tenancy from a local authority or / Registered Provider of Social Housing via the Authority's allocation scheme in England; this would also include an offer of an occupation contract from community landlord via an allocation scheme in Wales. Authorities should take care to note the occupation date of any occupation contract/tenancy provided before taking a decision to discharge duty as the accommodation may only be available from a future date. It is suggested that any accompanying temporary accommodation continues to be available until the accommodation is available for occupation. For further guidance on allocating accommodation, see Part 1 of this Code.

ii) Accepts an offer of suitable accommodation in Wales under an occupation contract

15.72 The S.75 duty ends if the applicant accepts an offer of an occupation contract in Wales: this would include an offer of a standard occupation contract from a private rented sector landlord, or a secure occupation contract from a community landlord. Where the occupation contract is made by a private landlord, the accommodation must be available for occupation before the duty can be ended. Authorities should take care to note the occupation date of any occupation contract/tenancy provided before taking a decision to discharge duty as the accommodation may only be available from a future date.

iii) Accepts an offer of suitable accommodation in England under an assured tenancy (including an assured shorthold tenancy)

15.73 The S.75 duty ends if the applicant accepts an offer of an assured tenancy (including an assured shorthold tenancy) in England: this would include an offer of an assured (shorthold) tenancy made by a Registered Provider of Social Housing or from a private rented sector landlord not secured via S.76 (3)(b). Where an assured shorthold tenancy is made by a private landlord, the tenancy must be for a minimum period of at least 6 months and be available for occupation before the duty can be ended. Authorities should take care to note the occupation date of any occupation contract/tenancy provided before taking a decision to discharge duty as the accommodation may only be available from a future date.

S. 76(3) the applicant refuses an offer

i) Refuses an offer of interim accommodation offered under S.75

15.74 The S.75 duty ends if the applicant refuses an offer of suitable interim accommodation offered under S.75: the duty does not end unless the applicant is informed in writing of the possible consequence of refusal or acceptance, and of his or her right to ask for a review of the suitability of the accommodation.

ii) Refuses an offer of suitable private rented sector accommodation

15.75 The S.75 duty ends if the applicant refuses a 'private rented sector offer'. The duty does not end unless the applicant is informed in writing of the possible consequence of refusal or acceptance and of his or her right to ask for a review of the suitability of the accommodation. The applicant should also be given a written offer, which should state that

it is a final offer, and the Authority is satisfied that the accommodation is suitable, would be available for a minimum of 6 months (in England) and that it would be reasonable for the applicant to accept it.

iii) Refuses an offer of accommodation under Part 6 of the Housing Act 1996

15.76 The S.75 duty ends if the applicant refuses an offer of accommodation as a result of the Part 6 allocation scheme which the Local Housing Authority is satisfied is suitable for the applicant. The duty does not end unless the applicant is informed in writing of the possible consequences of refusal and of his or her right to ask for a review of the suitability of the accommodation. The applicant should also be given a written offer, which should state that it is a final offer, and the Authority is satisfied that the accommodation is suitable and that it would be reasonable for the applicant to accept it.

Viewing accommodation

15.77 Applicants should be given the chance to view accommodation before being required to decide whether they accept or refuse an offer, and before being required to sign any written agreement relating to the accommodation (e.g. an occupation contract).

15.78 Under S.85 (3) an applicant who is offered accommodation can request a review of its suitability whether or not he or she has accepted the offer. See Chapter 19 for further guidance on suitability of accommodation, and Chapter 20 for further guidance on reviews.

Section 76(4) ‘private rented sector offer’

15.79 A private rented sector offer for the purposes of S.76 (3) is an offer of an occupation contract for accommodation in Wales made by a private landlord to the applicant. Alternatively, a private rented sector offer is an assured, or assured shorthold, tenancy for accommodation in England made by a private rented sector landlord. The offer must be made with the approval of the Local Housing Authority, in pursuance of arrangements made by the Authority with the landlord with a view to bringing the Authority’s duty under S.75 to an end. The tenancy or occupation contract must allow for the occupation of the accommodation for a period of at least 6 months (in England) and must be available for the applicant’s occupation (i.e. it cannot be a promise of an offer of accommodation that may become available in the future).

15.80 It is vital for Local Housing Authorities, partners, other organisations and applicants to recognise the private rented sector as an important source of accommodation to meet permanent housing needs. For many applicants the private sector will offer a realistic opportunity of finding the type of property they want in their preferred location. Local Housing Authorities are encouraged to develop private sector access services and build strong relationships with private sector landlords, for example through landlord fora.

15.81 Local Housing Authorities are reminded that when securing accommodation for applicants the priority should be to minimise the risk of homelessness recurring in order to allow applicants to establish, or re-establish, a settled way of life.

15.82 Private rented accommodation must meet the standards for suitable accommodation set out in Chapter 19 and in particular, when using the private rented sector to end the S.75 duty the Local Housing Authority must be satisfied that the accommodation is affordable to the applicant. Many private sector landlords require bonds and rents in advance. The Welsh Government recommends that Local Authorities develop a rent deposit or guarantee scheme in order to allow homeless people to access private sector rented housing more easily. Local Housing Authorities should also ensure that any deposits and/or rents in advance requested by Private Landlords comply with the Renting Homes (Fees etc) (Wales) Act 2019 (in Wales) or the Tenant Fees Act 2019 (in England).

15.83 More guidance on what constitutes suitable private rented accommodation including affordability, physical condition of the property, health and safety matters, landlord behaviour and good management can be found in the chapter of suitability of accommodation (Chapter 19).

S.76 (5) Restricted Case

15.84 S.63 (5) of the HWA 2014 defines a restricted person as someone who is not eligible for help under Part 2, Chapter 2 HWA 2014 because they are subject to immigration control within the meaning of the Asylum and Immigration Act 1996 and they either do not have leave to remain in the United Kingdom or have leave to enter or remain subject to conditions to maintain and accommodate himself or herself or any dependents without recourse to public funds.

15.85 Where an eligible applicant has a ‘restricted person’ as a member of their household and the Local Housing Authority has a duty to re-house the household under S.75 but only due to the priority need status of the restricted person, this duty should be discharged through an offer of private sector rented accommodation, so far as reasonably practicable.

S.76(6) intentionally homeless from interim accommodation

15.86 The S.75 duty ends if the applicant becomes homeless intentionally from suitable interim accommodation made available to him or her under S.68 and which continues under S.75, or suitable temporary accommodation made available under S.75. See Chapter 17 for further guidance on determining whether an applicant became homeless intentionally.

S.76(7) voluntarily cease to occupy interim accommodation

15.87 The S.75 duty ends if the applicant voluntarily ceases to occupy as his or her principal home interim accommodation made available under S.68 and which continues under S.75, or temporary accommodation made available under S.75.

S.76(8) - see S.79 for further circumstances in which the duty in S.75(1) comes to an end

15.88 S.79 of the HWA 2014 sets out further circumstances in which the S.75 duty can come to an end. The circumstances contained in S.79 are set out below in this Chapter.

15.89 For detailed guidance on S.75 of the HWA 2014 (the final duty), see Chapter 14.

Further circumstances in with the duties in S.66, S.68, S.73 and S.75 can end

The Act states

> Section 79 - Further circumstances in which the duties to help applicants end
>
> 1. The duties in sections 66, 68, 73 and 75 come to an end in the circumstances described in subsection (2), (3), (4) or (5), if the applicant is notified in accordance with section 84.
>
> 2. The circumstances are that the local housing authority is no longer satisfied that the applicant is eligible for help.
>
> 3. The circumstances are that the local housing authority is satisfied that a mistake of fact led to the applicant being notified under section 63 that the duty was owed to the applicant.
>
> 4. The circumstances are that the local authority is satisfied that the applicant has withdrawn his or her application.
>
> 5. The circumstances are that the local housing authority is satisfied that the applicant is unreasonably failing to co-operate with the authority in connection with the exercise of its functions under this Chapter as they apply to the applicant.

The Act requires

15.90 That the Local Housing Authority has a continuing duty to applicants who are owed a duty under S.66, S.68, S.73 or S.75 until a specific circumstance or set of circumstances is reached which brings the duty to an end. S.79 of the HWA 2014 lists further circumstances that can bring the duties to an end.

Guidance

S.79(2) no longer eligible for help

15.91 The duties in S.66, S.68, S.73 and S.75 come to an end if the Local Housing Authority is satisfied that the applicant is no longer eligible for housing assistance. See Chapter 7 for further guidance on eligibility for housing assistance.

S.79(3) a mistake of fact

15.92 If the Local Housing Authority is satisfied that a mistake of fact has led to the applicant being notified that a duty was owed to them, the Authority can withdraw this duty once the mistake has been identified.

15.93 Applicants must be reminded at the point of application that it is an offence (under S.97 of the HWA 2014) for a person with intent to induce a Local Housing Authority to believe, in connection with its exercise of its functions under the homelessness chapter of the HWA 2014, that a person or another person, is entitled to help in accordance with the provisions of Part 2 of the HWA 2014. To induce can include knowingly or recklessly making a statement which is false or withholding information that is reasonably required by the Authority in connection to the exercise of the functions contained within Part 2 of the HWA 2014 or failure to notify the Local Housing Authority with any change in facts that are material to the application.

15.94 A person guilty of the above offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

15.95 Where an applicant has deliberately falsified information in order to benefit from the duties, Local Housing Authorities should seek legal advice.

S.79(4) withdrawn applications

15.96 It is recommended that Local Housing Authorities have procedures in place for dealing with applications that are withdrawn or where someone fails to maintain contact with the Local Housing Authority after making an application. It is good practice for applications to be considered for closure if there has been no contact with the applicant for more than 6 weeks. Any further approach from the applicant after this time may need to be considered as a fresh application. Where an applicant renews contact within 6 weeks, the Authority will need to consider any change of circumstances that may affect the application.

15.97 However, where the application has been received from an applicant residing in an institution (i.e. hospital, prison, etc.), Authorities need to make allowances and extend the 6-week deadline as appropriate.

S.79(5) unreasonably failing to co-operate

15.98 A Local Housing Authority can bring a duty to an end if it is satisfied that an applicant is unreasonably failing to co-operate. The Local Housing Authority must be satisfied that the applicant is not failing to co-operate because they are vulnerable, have an unmet support need or have difficulty communicating. As long as they are satisfied that the applicant is not vulnerable or has no unmet support needs it would not ordinarily be unreasonable of the Local Housing Authority to bring the duty to an end in the circumstances listed below (this is not an exhaustive list):

- having agreed to the reasonable steps the applicant then fails to co-operate in their implementation, as an example the applicant and their family may have agreed to mediation which the applicant, with no good reason, then fails to engage with;
- despite every effort on behalf of the Local Housing Authority the applicant unreasonably fails to co-operate in the identification of reasonable steps to take, for example, by providing necessary information on their circumstances; and
- the Local Housing Authority is satisfied that it has identified reasonable steps to prevent or help secure accommodation but the applicant unreasonably fails to agree to those steps, such as approaching an agency which might help them.

15.99 Local Housing Authorities should not invoke S.79 (5) until they have made every effort to obtain the co-operation of the applicant and explained the consequences of them not co-operating.

15.100 Where a Local Housing Authority is considering invoking S.79 (5), they should explain their reasons to the applicant and give them all reasonable opportunity to reengage with the process. Local Housing Authorities might consider a ‘minded to’ letter might be appropriate in this circumstance.

15.101 Where an Authority has discharged their duty, it is considered good practice for them to exercise discretion to continue to offer limited assistance to applicants on the basis that it will help the household to avoid repeat presentations.

Carrying out the assessment

15.102 The obligation to carry out an assessment of needs lies with the Local Housing Authority and it is not for applicants to “prove their case”, provided that they co-operate in identifying needs and how they can be addressed.

15.103 An Authority must then make a decision on the basis of its assessment. A decision-making flowchart on statutory duties to homeless people is contained in the Annexes. Authorities should remember that any delegation to officers, committees or others must comply with S.101 of the Local Government Act 1972 (which allows Authorities to make arrangement for the discharge of their functions by a committee, sub-committee, an officer or another Authority).

15.104 Wherever possible, it is recommended that Local Housing Authorities aim to complete their assessment and notify the applicant of their decision within 10 working days. In many cases it should be possible for Authorities to complete the assessment significantly earlier. However, the priority is for the assessment and decision to be correct which may take longer.

Notification that duties have ended.

Section 84 - Notice that duties have ended

1. (1) Where a local housing authority concludes that its duty to an applicant under section 66, 68, 73 or 75 has come to an end (including where the authority has referred the applicant's case to another authority or decided that the conditions for referral are met), it must notify the applicant—

a) that it no longer regards itself as being subject to the relevant duty,

b) of the reasons why it considers that the duty has come to an end,

c) of the right to request a review, and

d) of the time within which such a request must be made.

2. Where a notice under subsection (1) relates to the duty in section 73 coming to an end in the circumstances described in section 74(2) or (3), it must include notice of the steps taken by the local housing authority to help to secure that suitable accommodation would be available for occupation by the applicant.

3. Notice under this section must be in writing.

4. Where a notice is not received by an applicant, the applicant may be treated as having been notified under this section if the notice is made available at the authority's office for a reasonable period for collection by the applicant or on the applicant's behalf.

The Act requires

15.105 In order to bring any of the duties found in Part 2 of the HWA 2014 to an end the Local Housing Authority must notify the applicant.

Guidance

15.106 The notification must be given in writing and should include the following, where appropriate:

- a clear statement that it no longer regards itself as being subject to any or all of the following duties
    - S.66 duty to help prevent applicants from becoming homeless
    - S.68 interim duty to secure accommodation for homeless applicants in priority need
    - S.73 duty to help secure accommodation for homeless applicants
    - S.75 duty to secure accommodation for applicants in priority need when the duty is S.73 ends;

- a clear explanation of the reasons why it considers the duty/duties have come to an end, including the reasonable steps it has taken and the outcome of those reasonable steps S.84 (2);
- a clear statement that it is satisfied that any accommodation offered is suitable for the applicant and likely to last for at least 6 months and the reasons why it believes this;
- the reasons for any decision which is against the interest of the applicant and the factors that were taken into account when making that decision (e.g. that he or she is not eligible for assistance, is not homeless, is not in priority need or is homeless intentionally);
- a clear explanation of the reasons for a decision to refer the applicant to another Authority and the factors that were taken into account when making that decision S.82(2);
- information about the applicant's right to request a review of the decisions made, and the period within which a request for a review must be made S.84(1);
- Authorities should also advise applicants about their procedures on the right of review at this stage.
- Applicants should be informed that they can seek independent legal or other advice on the decision if dissatisfied, and also independent representation in review procedures

15.107 It is important to ensure that the applicant fully understands why the duty has come to an end. Where possible, a Local Housing Authority should try to explain the decision in person as well as in writing. This is particularly important when an applicant may have difficulty understanding the consequence of the ending of the duty and their right to request a review.

15.108 If an applicant is unable to speak or read English or Welsh, the Authority should take care to ensure they understand information relating to their application, particularly before discharging duty to them.

15.109 In accordance with S.84(4) where the notification cannot be sent to the applicant, or where the Authority believes that it may not have been received by him or her, the Authority should make it available at its office to enable the applicant, or someone who represents the applicant, to collect within a reasonable period.

15.110 Where a Local Housing Authority has decided to discharge the duty by securing accommodation outside their area, S.91 of the HWA 2014 requires that they notify the Authority in whose area the accommodation is located.

15.111 The Annexes contain basic examples of notification letters that include references to the relevant requirements set out in S.84 and S.63. Authorities may wish to amend as they feel appropriate in light of communicating with service users in plain, easy to understand language.

16. DUTY TO SECURE ACCOMMODATION FOR APPLICANTS IN PRIORITY NEED

Introduction

16.1 The HWA 2014 places an emphasis on Local Housing Authorities, working in partnership with applicants, to identify and take reasonable steps to prevent homelessness or to help to secure accommodation. The duty to prevent homelessness (S.66) or help to secure accommodation (S.73) is for all applicants who are eligible and either threatened with homelessness or homeless. Applicants do not need to have been assessed as being in one of the priority need groups to be entitled to those duties.

16.2 The determination of priority need will need to take place at key points in the assessment and review of the applicant's situation; see Chapter 10 for more guidance on the duty to assess. A determination of priority need should be regarded as a safety net for those applicants deemed to be most in need.

16.3 This section of the Code will provide guidance on the categories of applicants who have priority need and the meaning of vulnerability for the purposes of this section of the HWA 2014.

Categories of applicants who have priority need.

Guidance

16.4 The interim duty to secure accommodation contained in S.68 applies to those applicants who the Local Housing Authority has reason to believe have a priority need. The final duty to secure accommodation contained in S.75 applies to those the Authority are satisfied have priority need.

The following categories of persons have a priority need

Section 70 – Priority need for accommodation

1. The following persons have a priority need for accommodation for the purpose of this Chapter -

a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside.

Guidance

16.5 A pregnant woman, together with anyone with whom she lives (or might reasonably be expected to live), has a priority need for accommodation. Local Housing Authorities are reminded that this is regardless of the length of time she has been pregnant. The normal letter of confirmation of pregnancy from the medical services issued to pregnant women or a midwife's letter should be adequate evidence of pregnancy. If a pregnant woman suffers a miscarriage or terminates her pregnancy during the assessment process, the Authority may need to consider whether she continues to have a priority need, for example, on the basis that she is vulnerable for a 'special reason' per S.70(1)(c) - see below.

Section 70 – Priority need for accommodation

b) a person with whom a dependent child resides or might reasonably be expected to reside

Guidance

16.6 Applicants have a priority need if they have any dependent children living with them or who might reasonably be expected to live with them. The HWA 2014 does not define dependent children, but Local Housing Authorities should treat as dependant:

i) all children under 16, and

ii) all children aged 16 to 18 years old (up to their 19th birthday) who are in or are about to begin full-time education (including further but not higher education) or training, or who for other reasons are unable to support themselves and who live at home.

16.7 Children between the age of 16 and their 18th birthday who are financially independent of their parents would not normally be considered to be dependants, although they could be if they were dependent on them in other ways; some children in this position may not be ready to live independently of their parents.

16.8 Dependent children need not necessarily be the applicant's own children but could be, for example, related to the applicant or his or her partner or adopted or fostered by the applicant. There must, however, be a dependant relationship akin to that of a parent-child relationship.

16.9 Local Housing Authorities may receive homelessness applications from a parent who is separated. In some cases where the parents of a child separate, the Court may make a residence order which will indicate which parent the child lives with. In such cases, the parent named in the order may be considered to have care of the child, and the child may be considered to be dependent on that parent. However, in many cases the parents will come to an agreement between themselves as to which of them has care of the child, and a court order will not be made or required. In these cases, to satisfy itself whether

the child is dependent on the parent making the homelessness application, the Authority will need to consider all the circumstances, taking into account the arrangements made between the parents. A child may be dependent on an applicant even though they do not live with the applicant at all times but divides their time between parents or others. There may also be cases where the child does not reside with the applicant for want of suitable accommodation. Authorities need to take care that each case is fully assessed on its individual circumstances.

16.10 R v Westminster CC ex p Bishop (1996) gives further clarity around the issue of agreements between parents where the children's time was split equally. The Court concluded, having taken into account the arrangements and housing available to the children including the recipient of child related benefits which were paid to the other parent not the applicant, the children were not considered dependant on the applicant, who was unemployed and had no means of supporting them financially.

16.11 More guidance in this area can be found by viewing the judgment of the House of Lords, in Holmes-Moorhouse v Richmond Upon Thames London Borough Council [2009]. In this case, the House of Lords ruled that *'where a court in family proceedings makes a shared residence order providing for children to spend alternate weeks with each parent, and one parent is homeless, a Local Authority is not obliged on account of that order to regard the homeless parent as having priority need on the ground that he was the person with whom dependent children might reasonably be expected to reside.'* The House of Lords determined that the Authority should consider the circumstances of each case where parents are separated, and suggested that only in exceptional circumstances would a child be reasonably expected to live with both separated parents where one of those parents is homeless and in need of accommodation.

16.12 Where the applicant's children are being looked after by a Local Authority (i.e. are subject to a care order or are accommodated under a voluntary agreement) and are not currently living at home, liaison with the social services department will be essential in determining the nature and degree of the children's dependency, particularly since Local Authorities are required to take steps to settle the children back with their family and to encourage contact between them (unless either of these things would be contrary to the children's best interests). A joint approach with the social services department will be necessary to ensure that the best interests of the applicant and the children are served.

Section 70 – Priority need for accommodation

c) a person—

i) who is vulnerable as a result of some special reason (for example: old age, physical or mental illness or physical or mental disability), or

ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;

Guidance

16.13 It is a matter of judgement whether the applicant's circumstances make him or her vulnerable. When determining whether an applicant is vulnerable, the Local Authority should refer to S.71 which sets out the meaning of vulnerable in S.70, see below.

16.14 This should also present an opportunity to consider if the individual(s) have care and support needs and if Local Authorities should fulfil their duties afforded by the SSWWA 2014.

Vulnerable as a result of some special reason.

16.15 Being vulnerable due to some special reason is not restricted to the physical or mental characteristics of a person. What matters here is the degree of severity of the circumstances, or combination of circumstances, which render the person less able than others to fend for him or herself as defined in S.71. The definition of vulnerability under S.71 is set out below.

16.16 To be able to make a decision on the vulnerability of an applicant, or a member of their household, due to a special reason, Local Housing Authorities must ensure that a thorough assessment is conducted gathering all the relevant facts and placing the identified needs of the applicant and their household at the centre of the decision.

16.17 Local Housing Authorities must keep an open mind and should avoid blanket policies which assume that particular groups of applicants will, or will not, be vulnerable for a special reason.

16.18 A Local Housing Authority should have regard to any advice from other professionals such as medical professionals, social services, providers of care and support and specialist voluntary organisation who may have significant and relevant information about the applicant. In cases where there is doubt as to the extent of any vulnerability, Authorities may also consider seeking a clinical opinion.

16.19 The burden of proof lies with the Local Housing Authority, though applicants can be expected to provide written consent to gathering or inspecting any medical or other relevant information held about them.

16.20 The final decision on the question of vulnerability rests with the Local Housing Authority.

16.21 The HWA 2014 gives an example list of special reasons that could be considered in determining vulnerability. The example list is not intended to be exhaustive. Some of the factors which may be relevant to determining whether a particular applicant is vulnerable are set out below.

Old age:

16.22 While age alone may not necessarily be sufficient for the applicant to be deemed vulnerable, the Authority should consider whether it is a factor which makes the applicant less able to fend for him or herself. Applications from people aged over 60 need to be considered carefully, particularly where the applicant is leaving tied accommodation, and Local Housing Authorities should normally consider applicants over 60 to be vulnerable. However, Authorities should not use 60 (or any other age) as a fixed age beyond which vulnerability occurs automatically, or below which it is ruled out; each case will need to be considered on its individual circumstances.

Mental and physical illness and mental and physical disability including Autistic Spectrum Disorder (ASD):

16.23 Mental or physical impairment, such as those which satisfy the definition of disability in the EA 2010, which impinge on the applicant's housing situation and give rise to vulnerability, may be readily ascertainable. However, advice from health or social services staff should be sought, if necessary.

16.24 The assessment of vulnerability will need to take into account any medical information given in support of the application. It is for the Local Housing Authority to make any further inquiries it deems necessary with any health professionals involved in the provision of any treatment.

16.25 Local Housing Authorities may seek the opinion of a medical or other relevant professional not directly involved in the provision of treatment, where this will enable Authorities to develop a better understanding of the nature of the condition and how this affects the ability of a person with the medical condition to fend for themselves. Where the opinions of the medical professional(s) directly involved in providing treatment differ from that provided by professionals not directly involved, then the Local Housing Authority will need to show how they have reconciled this difference, taking into account the quality of the information provided, the level of knowledge of the applicant's condition and any other particular expertise. Appropriate weight should be given to the seniority of the medical professional providing evidence, and their interaction with the applicant. The final decision on level of vulnerability must rest with the Local Housing Authority, who are not bound by the information provided by any medical professional opinion given, though they must show that this has been taken into consideration and the reasons why it has not led to a decision that the applicant is in priority need. Decisions departing from medical evidence must be rational.

16.26 Factors which a Local Housing Authority will need to consider include:

i) the nature and extent of the illness or impairment which may render the applicant vulnerable;

ii) the relationship between the illness or impairment and the individual's housing difficulties;

iii) the relationship between the illness or impairment and other factors such as drug/ alcohol misuse, offending behaviour, challenging behaviours, age and personality disorder; and

iv) whether the illness or impairment would impact the applicant more if the applicant were to be made homeless.

16.27 Local Housing Authorities need to have regard to the Public Sector Equality Duty ("PSED") when dealing with protected persons under the EA 2010, including applicants who are disabled. When assessing an applicant's vulnerability, there may be an overlap with a PSED assessment and a priority need assessment. It is important that the PSED is not used as a 'tick box' exercise to determine priority need, and that Authorities do not apply blanket policies in respect of disabled applicants (e.g. deciding that all applicants with a particular disability automatically do, or do not, have a priority need). The Court of Appeal in McMahon v Watford BC; Kiefer v Hertsmere BC (2020) made it clear that even when an applicant is disabled, Authorities must still conduct a thorough assessment of the individual's circumstances with *'a sharp focus on the extent of the illness, handicap or physical disability; and its effect on the person's ability to deal with the consequences of homelessness'.* That case suggested that even if an applicant is disabled, they may not have a priority need under this category.

16.28 Information about an applicant's illness or impairment should be treated in strict confidence.

People in receipt of psychiatric services:

16.29 Local health boards have an express duty to implement a specifically tailored care programme for all patients considered for discharge from psychiatric hospitals and all new patients accepted by the specialist psychiatric services. People discharged from psychiatric hospitals and Local Authority hostels for those with mental health problems are likely to be vulnerable. Effective liaison between housing, social services and local health boards will assist in such cases but Local Housing Authorities also need to be sensitive to direct approaches from discharged patients who are homeless. Local Housing Authorities will also need to collaborate with mental health services on implementing the needs assessments of people in secondary care under the care pathway planning arrangements.

Chronically sick people:

16.30 People in this group may be vulnerable not only because their illness has progressed to the point of physical or mental impairment but also because the manifestations or effects of their illness, or common attitudes to it, make it very difficult for them to find stable or suitable accommodation.

Victims of abuse:

16.31 Persons of any gender and of any age may be subject to abuse. Local Housing Authorities should consider whether applicants who have suffered, or who are at risk of suffering, for example, hate incidents or hate crime on account of their gender, physical or mental health issues, race, colour, ethnic or national origin, religion or sexual orientation are vulnerable as defined in S.71.

Rough Sleepers/At Risk of Rough Sleeping

16.32 People who are sleeping rough are likely to have a priority need under the 'street homelessness' category of priority need at S.70(1)(k) – see below. However, there may be circumstances where an applicant is sleeping rough despite having accommodation they are entitled to occupy, and therefore fall outside the scope of the 'street homelessness' category of priority need; for example, a chronic rough sleeper who is struggling to adapt to new accommodation. Those applicants may have a priority need for some 'special reason' for the purposes of S.70(1)(c).

16.33 Any applicant that is sleeping rough may be vulnerable due to the health and social implications of their situation.

16.34 Local Housing Authorities need to be proactive in ensuring that rough sleepers can access the housing and support services that they need to be able to find sustainable solutions to address their circumstances, so that no one needs to have to sleep rough.

16.35 Appropriate assessment and the provision of services that can meet housing and support needs would need to be available to people in this situation. Many people who have been homeless long term have multiple needs, often including mental health and substance misuse problems. Someone may be vulnerable not from a single need but from a combination of needs. Statutory and voluntary sector services should be co-ordinated to identify and address multiple needs in a joined-up and flexible way.

Former asylum seekers:

16.36 Former asylum seekers who have been granted refugee status, exceptional leave to remain or humanitarian protection will be eligible for homelessness assistance and may be at risk of homelessness as a result of having to leave accommodation that had been provided for them (e.g. by the United Kingdom Border Agency) in the period before a decision was reached on their asylum claim.

16.37 Former asylum seekers may well have experienced persecution or trauma in their country of origin or severe hardship in their efforts to reach the UK and may be vulnerable as a result. They are likely to have poor English language skills, have little knowledge or understanding of the cultural, social and economic customs and are less likely to have any social networks which they can call on for support.

16.38 In assessing applications from this applicant group, Local Housing Authorities should give careful consideration to the possibility that they may be vulnerable due to the reasons given above. Authorities should be sensitive to the fact that former asylum seekers may be reluctant to discuss, or have difficulty discussing, their potential vulnerability; particularly if, for example, they have experienced humiliating, painful or traumatic circumstances such as torture, rape or the killing of a family member.

Section 70 – Priority need for accommodation

d) a person-

i) who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster, or

ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;

Guidance

16.39 An applicant has a priority need if he or she is homeless or threatened with homelessness as a result of an emergency such as fire, flood or other disaster. A person has a priority need by reason of such an emergency whether or not he or she has dependent children or is vulnerable for any of the other reasons described above.

Section 70 – Priority need for accommodation

e) a person-

i) who is homeless as a result of being subject to domestic abuse or

ii) with whom a person who falls within sub-paragraph (i) resides (other than the abuser) or might reasonably be expected to reside:

Guidance

16.40 Abuse is defined at S.58 (1) of the HWA 2014 as meaning physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm. Abuse is domestic abuse where the victim is ‘associated with’ the abuser.

16.41 Domestic abuse can occur in same gender as well as mixed gender relationships, and can be perpetrated by relatives as well as (former or current) partners. S.58 (2) sets out the meaning of a person being ‘associated with’ another.

16.42 In cases involving domestic abuse, the safety of the applicant and ensuring confidentiality will be of paramount importance. Local Housing Authorities should not seek confirmation of domestic abuse from the alleged perpetrator. Victims of domestic abuse may wish to remain in their homes. Authorities should consider what reasonable steps they can take to assist with this wish.

16.43 Local Housing Authorities must acknowledge the need for a person to move between Local Authority areas to escape domestic abuse, and are reminded that under the provisions of S.80(3)(c), they must not refer any applicant to another Authority where the person would run a risk of domestic abuse in that area.

16.44 More guidance on the steps Local Housing Authorities can take in response to allegations of domestic abuse can be found within the Duty to Prevent in Chapter 12.

Section 70 – Priority need for accommodation

f) a person—

i) who is aged 16 or 17 when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, or

ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;

Guidance

16.45 Local Housing Authorities must treat 16 or 17 year olds as being in priority need. It is important to note that a person who is 16 or 17 at the time they apply to a Authority retains their priority need should they turn 18 at any point during the assessment and whilst any identified duty is being fulfilled.

16.46 Local Housing Authorities must ensure that there is a coordinated response to young people aged 16 and 17 who are homeless or threatened with homelessness and should have protocols in place to ensure the best outcomes for the young person accessing their services. Local Housing Authorities have a duty to meet the care and support needs of any child in order to protect them from suffering, or to prevent the risk of them suffering, abuse, neglect or harm. Homeless 16 and 17 year olds should primarily be assisted under social services legislation, maintaining the principle set out in R (G) v Southwark 2009, with joint working between services to meet their housing and other needs.

16.47 Where a 16 or 17 year old presents as homeless, Local Housing Authorities should work with other agencies which provide specialist services for young people where these can help to address the causes of homelessness.

16.48 This should also present an opportunity to consider if the individual(s) have care and support needs and if Local Authorities should fulfil their duties afforded by the SSWWA 2014.

16.49 It is in the best interest of most 16 and 17 year olds to live in the family home, unless it would be unsafe or unsuitable for them to do so because they would be at risk of violence, harm or abuse. Local Housing Authorities should recognise this and work pro-actively with young people and their families to identify and resolve the issues which have led to the homelessness crisis and should consider the possibility of reconciliation through mediation.

Section 70 – Priority need for accommodation

g) a person—

i) who has attained the age of 18, when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, but not the age of 21, who is at particular risk of sexual or financial exploitation, or

ii) with whom a person who falls within sub-paragraph (i) resides (other than an exploiter or potential exploiter) or might reasonably be expected to reside;

Guidance

16.50 Priority need also arises when a young person aged 18 or over but under the age of 21 is deemed to be at particular risk of sexual or financial exploitation. This could include a person who:-

i) is at risk of sexual abuse; or

ii) is at risk due to their sexual orientation; or

iii) is at risk of prostitution; or

iv) has learning difficulties; or

v) is at risk of misuse of power or exercise of control by another person; or

vi) is at risk of financial extortion; or

vii) on a low income and is vulnerable due to a lack of alternative financial means ('low income' should not be regarded as someone whose income is below a threshold, but someone whose income falls substantially below their needs. It would therefore be a matter of judgement in each individual case based on the applicant's personal circumstances, but for the purposes of this clause does not include a student who is in further education).

16.51 It is important to note that a person who is aged 18 or over but is under the age of 21 when they apply to a Local Housing Authority and is deemed to be in priority need for the purpose of S.70 (1)(g) retains their priority need should they turn 21 at any point during the assessment and whilst any identified duty is being fulfilled.

16.52 Local Housing Authorities should consider whether a young person considered to be in priority need under this category is vulnerable as a result of having suffered such exploitation from persons with whom they are associated or reside. Authorities should also consider, where relevant, whether young persons would be at risk of further exploitation if they returned to live at their former home.

16.53 Where young persons have a history of being sexually or financially exploited, they should normally be regarded as vulnerable and in priority need, unless there is strong evidence that they are no longer at risk. The Welsh Government considers it is not good practice for Local Housing Authorities to always expect direct evidence of sexual or financial exploitation.

Section 70 – Priority need for accommodation

h) a person—

i) who has attained the age of 18, when the person applies to a local housing authority for accommodation or help in obtaining or retaining accommodation, but not the age of 21, who was looked after, accommodated or fostered at any time while under the age of 18, or

ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;

Guidance

16.54 Priority need arises when an applicant is aged under 18 or over but is under the age of 21, and at any time:

a) was looked after by a Local Authority (within the meaning of S.74 of the SSWWA 2014 or S.22 of the Children Act 1989) or

b) was accommodated by or on behalf of a voluntary organisation; or

c) was accommodated in a private children's home; or

d) was accommodated for a continuous period of at least three months–

i) by a Local Health Board or Special Health Authority or Primary Care Trust or

ii) by an authority in the exercise of education functions (within the meaning given by the S.579(1) of the Education Act 1996); or

iii) in any care home or independent hospital or in any accommodation provided by an NHS Trust or

iv) privately fostered.

16.55 It is important to note that a person who has attained the age of 18 but not the age of 21 when they apply to the Local Housing Authority and is in priority need because of S.70 (1)(h) retains their priority need should they turn 21 at any point during the assessment and whilst any identified duty is being fulfilled.

16.56 Local Housing Authorities should be aware that a young person is in priority need for the purpose of the HWA 2014 if he or she has spent any time, however short, during their childhood in care.

16.57 Young people who have been in care, or are leaving care, are often highly vulnerable and are too often placed in unsuitable housing with no support and little prospect for independent living. S.70 makes specific provision for care leavers under the age of 21. However, Local Housing Authorities should continue to give careful consideration to homelessness applications from care leavers who are 21 or older who are likely to be vulnerable as a result of being in care and not having a network of family to fall back on for housing support. This could be a 'special reason' under S.70 (1)(c) – see above.

16.58 It is particularly important that Local Housing Authorities make arrangements for joint assessments between social service departments and Local Housing Authorities in respect of young people under 18 and care leavers. Any consideration of housing needs should take account of the young person's need for support, education, employment training and health care. It is a statutory requirement that care leavers have up to date pathway plans and support from a Young Person's Advisor. Regard should be given to the plan and where appropriate the Young Person's Advisor should be involved in helping to identify the housing and support needs of the care leaver and the most suitable response. This planning process should begin well in advance of the young person leaving care, and should consider a range of accommodation options with support, including in some cases remaining with or returning to foster carers. Care leavers will need continuing access to support and Local Authorities and partners should have flexible policies to enable young people to have alternative accommodation if their housing situation breaks down.

16.59 Under the provisions of the SSWWA 2014, the responsibility of Local Authorities for dealing with care leavers extends until they reach the age of 21, and in the case of those in continuing further education, may in some circumstances continue until they finish education.

16.60 In meeting their housing responsibilities toward care leavers, Local Authorities will need to take careful account of the statutory guidance issued by the Welsh Government under Part 6 of the SSWWA 2014.

16.61 Local Authorities will also need to be mindful of S.104 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which provides that any young person remanded to youth detention accommodation may be treated as looked after by the designated authority. This means that all young people who are securely remanded to youth detention accommodation may be treated as though they have 'looked after' status.

Section 70 – Priority need for accommodation

i) a person—

i) who has served in the regular Armed Forces of the Crown who has been homeless since leaving those forces, or

ii) with whom a person who falls within sub-paragraph (i) resides or might reasonably be expected to reside;

Guidance

16.62 Priority need arises where a person formerly serving in the regular Armed Forces of the Crown has been homeless since leaving those forces. Persons included in this definition mean the Royal Navy, the regular forces as defined by S.225 of the Army Act 1955, the regular Air Force as defined by S.223 of the Air Forces Act 1955 and Queen Alexandra's Royal Naval Nursing Service.

16.63 Since the majority of Armed Forces personnel are not homeowners, a significant number of service personnel might present as homeless on leaving the Armed Forces.

16.64 Local Housing Authorities should accept Certificates of Cessation of Entitlement to occupy Service Family Accommodation and of Impending Homelessness produced by the Defence Infrastructure Organisation's Loss of Entitlement Team as sufficient evidence - these certificates are usually issued six months before discharge.

16.65 Local Housing Authorities should recognise that priority need arises where the applicant has failed to secure suitable permanent accommodation and has therefore been unable to establish stable accommodation since leaving the Armed Forces. 'Suitable permanent accommodation' is defined for the purposes of this clause as being accommodation provided by a Community Landlord (i.e. a secure occupation contract), a private landlord (i.e. a standard occupation contract), an accredited supported housing provider, or permanently settled with family or friends as part of their household.

16.66 When considering degree of permanence, in addition to considering suitability of accommodation (see Chapter 19) regard must be made of the original intention of the arrangement when the applicant took up occupation of the accommodation. For example, if the applicant moved in with friends to accommodation which became overcrowded as a result and where this was only ever intended to be a temporary measure until they found alternative accommodation, then this may not be considered as 'settled'. No time limit should be placed on eligibility following discharge if no suitable permanent accommodation has been found in the interim.

16.67 Local Housing Authorities will need to consider whether former Armed Forces personnel who have been housed following discharge but later become homeless are vulnerable due to some special reason per S.70(1)(c) – see above or is street homeless or

at risk of street homeless per S70(1)(k) – see below. Authorities will need to take account of their service background which may lead to vulnerability, particularly if they have post-traumatic stress disorder.

16.68 Employment in the Armed Forces requires a Local Housing Authority to consider periods of time spent by the applicant in their area whilst serving as relevant to the assessment of local connection

Section 70 – Priority need for accommodation

j) a person who has a local connection with the area of the local housing authority and who is vulnerable as a result of –

i) having served a custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 222 of the Sentencing Code

ii) having been remanded in or committed to custody by an order of the court,

or

iii) having been remanded in youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

or a person with whom such a person resides or might reasonably be expected to reside.

Guidance

16.69 In order to determine if a former prisoner has a priority need for accommodation, they must be found to be vulnerable as a result of having been in custody or detention as defined by the HWA 2014. In making this determination a Local Housing Authority should take into account the following factors:

- the length of time the applicant served in custody or detention (although Authorities should not assume that vulnerability could not occur as a result of a short period in custody or detention);
- whether the applicant is still suffering the effects of any traumatic episode/s experienced during a spell in custody or detention;
- whether the applicant is receiving supervision from a criminal justice agency for example His Majesty's Prison and Probation Service in Wales (and contracted services), Youth Offending Team or Drug Intervention Programme. Authorities should have regard to any advice from criminal justice agency staff regarding their view of the applicant's general vulnerability, but the final decision on the question of vulnerability for the purposes of homelessness legislation will rest with the Local Authority;

- the length of time since the applicant was released from custody or detention, and the extent to which the applicant has been able to obtain and/or maintain accommodation during that time
- whether the applicant has any existing support networks, for example family or friends, and how much of a positive influence these networks are likely to be in the applicant's life
- whether the applicant has received as assessment and is receipt of care
- whether the applicant is in receipt of services under the Mental Health Measure 2010.

16.70 For this category of priority need the applicant must also have a local connection with the area of the Local Housing Authority. Residence in prison does not in itself establish a local connection with an area.

16.71 Local Housing Authorities should give regard to information provided by His Majesty's Prison and Probation Service, Youth Offending Service, Criminal Justice Intervention Team, Local Health Board, Local Authority or a voluntary organisation acting on behalf of one of these agencies.

16.72 Prison leavers may have particular reasons for wishing to be re-housed in a certain area outside of the area in which they have a local connection in order to give themselves the greatest chance of rebuilding a new life. They may not wish to return to the area in which they resided prior to receiving a prison sentence in order to distance themselves from known associates. They also may be prevented from returning to their home area due to the terms of their licence. Local Housing Authorities may wish to consider having arrangements in place where such requests can be accommodated, possibly on a reciprocal basis with other Local Authorities.

16.73 When considering former prisoners in general, Chapter 12 provides more information and the National Pathway for Homeless Services to Children, Young People and Adults in the Secure Estate.

16.74 Authorities are reminded that a former prisoner is eligible for any of the other priority need categories.

Section 70 – priority need for accommodation

k) a person –

i) who is street homeless (within the meaning of 71(2)) or

ii) with whom a person who falls within sub-paragraph (i) might reasonably be expected to reside.

Section 71 – meaning of vulnerable in section 70

2. In subsection (1), "street homeless" ("digartref ac ar y stryd"), in relation to a person, means that the person has no accommodation available for the person's occupation in the United Kingdom or elsewhere, which the person—

a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,

b) has an express or implied licence to occupy, or

c) occupies as a residence by virtue of any enactment or rule of law giving the person the right to remain in occupation or restricting the right of another person to recover possession;

and sections 55 and 56 do not apply to this definition.

Guidance

16.75 The Homelessness (Priority Need and Intentionality) (Wales) Regulations 2022 ("the 2022 Regulations") came into force on 24th October 2022 and introduced a new category of person who has a priority need for accommodation. The 2022 Regulations state that a person who is 'street homeless' as defined by S.71(2) has a priority need for accommodation. A person who might reasonably be expected to reside with a person who is 'street homeless' also has a priority need.

Determining 'street homelessness'

16.76 The definition of homelessness used in the HWA 2014 allows for people to be considered 'homeless' even when they have a right to occupy accommodation - see Chapter 8. The definition of 'street homeless' used in the 2022 Regulations is, however, narrower than the definition of 'homeless'; it captures applicants who have no accommodation in the UK or elsewhere which is available for their occupation or which they have a legal right to occupy. An applicant who has accommodation which is not reasonable to continue to occupy, for example, may be 'homeless' for the purposes of S.55 but would not be 'street homeless' for the purposes of S.70(1)(k).

16.77 An applicant has a priority need for accommodation under S70(1)(k) if they do not:

i) have an entitlement to occupy any accommodation by virtue of a legal interest in it (e.g. as a freeholder, lessee or contract-holder) or an order of the court;

ii) have an express or implied licence to occupy any accommodation (e.g. as a lodger, an employee with a service occupancy, or with friends or relatives with their consent); or

iii) occupy any accommodation by virtue of any enactment or rule of law giving the person the right to remain in occupation and/or restricting the right of another person to recover possession (e.g. where a person's contractual right to occupy has expired or been terminated, but a court has not yet granted an order enabling the landlord to recover possession).

16.78 An applicant who is sleeping rough and has no accommodation available to them to occupy per S.70(1)(k) would be street homeless. However, there is no need for an applicant to evidence that they are or have been sleeping rough; just whether they are 'street homeless' at the precise time that they present for assistance.

16.79 Local Housing Authorities are urged to avoid undertaking verification exercises that may delay accepting a duty where someone is likely to be sleeping rough. If further verification is required to satisfy the Authority that the applicant is homeless, eligible for help and/or has a priority need for accommodation, the Authority must secure suitable interim accommodation for the applicant in line with their S.68 duty whilst their investigation continues – see Chapter 11.

16.80 There may be circumstances where an applicant is sleeping rough despite having accommodation they are entitled to occupy, for example a chronic rough sleeper who is struggling to adapt to a new accommodation. Such applicants would not be 'street homeless' for the purposes of S.70(1)(k) but may have a priority need as a person vulnerable for some 'special reason' per S.70(1)(c) – see above.

16.81 An applicant who is sofa-surfing with a landlord or homeowner's permission will likely have an express or implied licence and so would not be 'street homeless' for the purposes of S.70(1)(k). This means that while some applicants are in unstable living arrangements and are at risk of street homelessness, they are not 'street homeless' for the purposes of S.70(1)(k) and therefore do not have a priority need for accommodation under this category. However, as well as considering their duties under HWA 2014, Local Housing Authorities are also reminded of the need to explore what other statutory services may be available to the applicant and any other functions to provide support, assistance and/or source temporary accommodation.

16.82 An applicant who is squatting without a landlord or homeowner's permission and has no other accommodation available to them would fall within the scope of the street homeless category.

16.83 Local Housing Authorities are reminded that applicants may fall under one or more of the categories of person who has a priority need, including a person who is vulnerable as a result of some special reason per s70(1)(c).

Section 71 - Meaning of vulnerable in section 70

1. A person is vulnerable as a result of a reason mentioned in paragraph (c) or (j) of section 70(1) if, having regard to all the circumstances of the person's case,—

a) the person would be less able to fend for himself or herself (as a result of that reason) if the person were to become street homeless than would an ordinary homeless person who becomes street homeless, and

b) this would lead to the person suffering more harm than would be suffered by the ordinary homeless person;

this subsection applies regardless of whether or not the person whose case is being considered is, or is likely to become, street homeless.

Meaning of Vulnerability

Guidance

Meaning of vulnerable

16.84 It is a matter of judgement whether the applicant's circumstances make him or her vulnerable. In order to make that judgement, the Local Housing Authority must ensure that a thorough assessment is conducted gathering all the relevant facts and placing the identified needs of the applicant and their household at the centre of the decision.

16.85 When determining whether an applicant is vulnerable in the categories set out in S.70(1)(c) or (j), the Local Housing Authority must consider whether the reason in S.70(1) (c) or (j) results in the applicant being less able to fend for themselves if they were to become street homeless than an ordinary homeless person who becomes street homeless – and whether, as a result, he or she will suffer more harm than would be suffered by the ordinary homeless person.

16.86 The Welsh Government's view is that when a Local Housing Authority is using the comparator of an 'ordinary homeless person who becomes street homeless' in order to determine an applicant's vulnerability, they should not equate that person who becomes street homeless to a chronic rough sleeper with the associated social, mental and physical health problems that they can display.

16.87 The Local Housing Authority must therefore first understand the likely harm or detriment an ordinary homeless person would face if they were to become street homeless and their ability to fend for themselves. This should be based on the ordinary person who is in need of accommodation. This would be the starting point for any comparison.

16.88 Once they have established the harm or detriment that the ordinary homeless person would experience, and their ability to fend for themselves if street homeless, they will need to compare this to the applicant. If the applicant or any other person reasonably expected to reside would be less able to fend for themselves AND thus suffer more harm as a result of the special reason, then they would be considered "Vulnerable" as set out in S.70(1)(c) and (j).

16.89 The assessment of an applicant's ability to cope is a composite one taking into account all of the circumstances including the level of support available to the applicant if he or she were to become street homeless.

17. INTENTIONAL HOMELESSNESS

Introduction

17.1 A Local Housing Authority has the power to decide to have regard to intentionality for any category of applicant specified by the Welsh Ministers. The Welsh Ministers have specified these categories via a secondary order. The Local Housing Authority must in turn publish a notice of its decision to have regard to intentionality and which of the allowed specific categories it will consider. This notice will give the reason/s why the Local Housing Authority has decided to have regard to intentionality for each of the categories specified. The Welsh Government has chosen to put the onus on Local Housing Authorities to opt into having regard to intentionality rather than opt out as it is hoped that Authorities will eventually move away from the use of intentionality.

17.2 The use of intentionality is intended to discourage households from giving up accommodation which is suitable for their needs and available to them. It recognises the expectation that, where possible, people ought to take responsibility for their actions and ensure they do not behave in a way which could cause them to lose accommodation, placing them at potential risk. Even where an applicant feels their accommodation is no longer suitable, they should be encouraged to remain in their current accommodation where safe to do so, whilst working with Local Housing Authorities in the assessment of their housing situation.

17.3 It is for the Local Housing Authority to take into consideration any mitigating circumstance, including support needs (please refer to the Applicants with unmet support needs section below), before reaching the conclusion that the applicant has become homeless intentionally.

17.4 Where a Local Housing Authority has decided to have regard to intentionality, the use of it is only appropriate once a Local Housing Authority is sure that it has taken reasonable steps to help prevent homelessness and/or to help to secure accommodation. The Local Housing Authority ought to make every effort to advise an applicant if during the assessment process it appears that there is a possibility that he or she could be found intentionally homeless and ought to advise the applicant of the possible consequences of such actions, including the potential for ending duties. However, a formal decision on intentionality should not be made until the Local Housing Authority is making its decision on whether the duty is owed under S.75 or, if the Authority is considering making a referral, under S.80.

17.5 This section of the Code will provide guidance on what ‘intentionally homeless’ means, when it can be used and how it relates to the provision of interim accommodation.

Deciding to have regard to intentionality

The Act states

Section 78 - Deciding to have regard to intentionality

1. The Welsh Ministers must, by regulations, specify a category or categories of applicant for the purpose of this section.

2. A local housing local authority may not have regard to whether or not an applicant has become homeless intentionally for the purposes of sections 68 and 75 unless—

a) the applicant falls within a category specified under subsection (1) in respect of which the local authority has decided to have regard to whether or not applicants in that category have become homeless intentionally, and

b) the authority has published a notice of its decision under paragraph (a) which specifies the category.

3. Subsection (4) applies where a local housing local authority has published a notice under subsection (2) unless the local authority has—

a) decided to stop having regard to whether or not applicants falling into the category specified in the notice have become homeless intentionally, and

b) published a notice of its decision specifying the category.

4. For the purposes of section 68 and 75, a local housing local authority must have regard to whether or not an applicant has become homeless intentionally if the applicant falls within a category specified in the notice published by the local authority under subsection (2).

Guidance

17.6 The Welsh Ministers have, via the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015, prescribed categories of applicants that a Local Authority may have regard to when considering intentionality. The Homelessness (Priority Need and Intentionality) (Wales) Regulations 2022 also came into force on 24th October 2022 and added a further prescribed category. These categories of applicant reflect the priority need categories as follows:

- A pregnant woman or a person with whom she resides or might reasonably be expected to reside;
- A person with whom a dependent child resides or might reasonably be expected to reside;

- A person who is vulnerable as a result of some special reason (e.g. old age, physical or mental illness or physical or mental disability) or a person with whom they reside or might reasonably be expected to reside;
- A person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster or a person with whom they reside or might reasonably be expected to reside;
- A person who is homeless as a result of being subject to domestic abuse or a person with whom they reside or might reasonably be expected to reside (other than the abuser);
- A person who is aged 16 or 17 or a person with whom they reside or might reasonably be expected to reside;
- A person who has attained the age of 18, but not the age of 21, who is at particular risk of sexual or financial exploitation or a person with whom they reside or might reasonably be expected to reside;
- A person who has attained the age of 18, but not the age of 21, who was looked after, accommodated or fostered at any time while under the age of 18 or a person with whom they reside or might reasonably be expected to reside;
- A person who has served in the regular Armed Forces of the Crown who has been homeless since leaving those forces or a person with whom they reside or might reasonably be expected to reside;
- A person who has a local connection with the area of the Local Authority and who is vulnerable as a result of one of the following reasons:
    - Having served a custodial sentence within the meaning of S.76 of the Powers of Criminal Courts (Sentencing) Act 2000 or s.222 of the Sentencing Code,
    - Having been remanded in or committed to custody by an order of a court, or
    - Having been remanded to youth detention accommodation under S.91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or a person with whom they reside or might reasonably be expected to reside.
- A person who is street homeless (within the meaning of S.71(2) of the HWA 2014) or a person with whom they might reasonably be expected to reside.

17.7 When considering whether to have regard to intentionality, the Local Housing Authority ought to consider to what categories of applicants, it intends to apply intentionality. It may be that a Local Housing Authority would want to gradually phase out considering intentionality and would choose, to begin with, certain groups such as young people, pregnant woman and/or families. The Local Housing Authority is able to amend its notice to either add or remove categories of applicants so long as they fall within the list published by the Welsh Ministers.

17.8 The Local Housing Authority must inform the Welsh Ministers in writing which categories it intends to have regard to and the reason(s) for having regard to the category or categories contained in the list of specified categories of applicants (Reg.3(2)(b)). The

Welsh Ministers must also be informed of any subsequent amendments to the notice. The Local Housing Authority must publish the notice, and any subsequent amendments, on its own website and by any other appropriate method to ensure that key stakeholders, applicants and people in their area have access to it.

17.9 The notice must be published on the website of the Local Housing Authority at least 14 days prior to the implementation of the revised list of categories.

17.10 In order to reduce the bureaucracy and uncertainty for applicants, Local Housing Authorities will only be allowed to revise their list of categories twice in a rolling 12-month period.

17.11 Where a Local Housing Authority has regard to a category or categories, any on-going applications will not be subject to a negative impact as a result of any revision. Therefore, if a category is withdrawn, then all affected applicants would immediately not be liable to an intentionality test. However, where an Authority has added a category, any affected ongoing applications would not be subject to the revised approach.

Meaning of intentionality

Section 77 - Meaning of intentionally homeless

1. A person is intentionally homeless for the purpose of this Chapter if subsection (2) or (4) apply.

2. This subsection applies if the person deliberately does or fails to do anything in consequence of which the person ceases to occupy accommodation which is available for the person's occupation and which it would have been reasonable for the person to continue to occupy.

3. For the purposes of subsection (2) an act or omission in good faith on the part of a person who was unaware of any relevant fact may not be treated as deliberate.

4. This subsection applies if—

a) the person enters into an arrangement under which the person is required to cease to occupy accommodation which it would have been reasonable for the person to continue to occupy, and

b) the purpose of the arrangement is to enable the person to become entitled to help under this Chapter, and there is no other good reason why the person is homeless.

The Act states

Guidance

17.12 Local Housing Authorities must make inquiries to satisfy themselves in each case whether an applicant is homeless or threatened with homelessness intentionally. It is not for the applicant to 'prove their case'. Decisions on intentionality must be based on investigations carried out in each individual case. Local Housing Authorities must not have general or blanket policies which assume all particular types of applicants will be found intentionally homeless for example prisoners. Where it is clear the circumstances demonstrate intentionality and the applicant is in one of the specified categories that the Local Housing Authority has regard to intentionality for, then the applicant must be found intentionally homeless.

17.13 Where an applicant is the member of a household previously found to be intentionally homeless, the Local Housing Authority must satisfy itself that the applicant acquiesced in the behaviour that led to the homelessness in order to find them intentionally homeless.

Available for occupation

17.14 For intentional homelessness to be established there must have been actual occupation of accommodation which has ceased. The accommodation must have been available for the applicant, and anyone reasonably expected to reside with them, and must have been reasonable to continue to occupy.

17.15 Whether or not the place that the applicant previously occupied is 'accommodation' for the purposes of intentional homelessness is a matter for the Local Housing Authority to decide, based on the Wednesbury test of reasonableness (i.e. would another Authority, with the same information, acting reasonably, have reached the same decision).

Deliberate Act or Omission

17.16 For homelessness to be intentional, the Authority must satisfy itself that the act or omission that led to homelessness was deliberate. Local Housing Authorities must clearly identify what the act or omission was that caused the applicant to cease, or to have to cease, to occupy accommodation. The Local Housing Authority must also link this act or omission to the consequent loss of accommodation. An act or omission made in good faith where someone is genuinely ignorant of a relevant fact should not be treated as deliberate.

17.17 Applicants ought to be given an opportunity to explain an act or omission. It would be good practice to allow an applicant to do this during a face-to-face interview.

17.18 Generally, an act or omission ought not to be considered deliberate where:

i) the act or omission was non-payment of rent which was the result of housing benefit or Universal Credit delays, or financial difficulties which were beyond the applicant's control;

ii) the Local Authority have reason to believe the applicant is incapable of managing their affairs, for example, due to age, physical or mental illness or physical or mental disability;

iii) particular acts or omissions were the result of a vulnerability as defined by S.71 of the HWA 2014. In such circumstances, the appropriate partner agency should be consulted before a conclusion on the applicant's intentionality status is reached;

iv) imprudence or lack of foresight on the part of an applicant led to homelessness but the act or omission was in good faith.

17.19 An applicant's actions would not amount to intentional homelessness if he or she has lost their home, or has had to sell their home because, as a consequence of financial difficulties beyond the control of the applicant, they were unable to keep up the rent or mortgage payments, for example due to a reduction in salary, Welfare Reform, redundancy.

17.20 Where an applicant has lost a former home due to rent or mortgage arrears, the reasons why the arrears accrued ought to be fully explored. The applicant's ability to pay their rent or mortgage when it was taken on, given the applicant's financial situation at that time, ought to be taken into account. Authorities must take into account the affordability of the former accommodation. The Local Housing Authority must refer to the Homelessness (Suitability of Accommodation) (Wales) Order 2015 which specifies that in determining whether it would be, or would have been, reasonable for a person to occupy accommodation that is considered suitable, a Local Housing Authority must take into account whether the accommodation is affordable.

17.21 Local Housing Authorities would be advised to seek advice from their Legal Departments on individual cases, where appropriate.

Applicants with unmet support needs

17.22 For some applicants, an unmet support need may have led to circumstances that are so difficult as to render their behaviour unintentional when considering the circumstances of them losing their home. Local Housing Authorities ought to ensure that during the assessment they pay particular attention to the identification of support needs that, where unmet, have led to difficulty in sustaining an occupation contract and that could, if they remain unmet, contribute to repeat homelessness. Factors that ought to be taken into account may include physical or mental ill health, physical or mental disability, substance misuse, past trauma or where there is a history of rough sleeping. This is not an exhaustive list.

17.23 Local Housing Authorities must consider what advice and support was made available to an applicant before he or she became homeless. Authorities will need to consider what efforts were made to prevent the applicant becoming homeless and why these failed. Where advice and support had been offered and every effort had been made to help the applicant to engage with the support to avoid becoming homeless, but the applicant disregards or did not act on this and has become homeless as a result, then the Local Housing Authority may be minded to consider the person homeless intentionally.

17.24 Where a person was not offered advice and support to help prevent them becoming homeless or advice and support that was relevant and understandable to that applicant, then the Authority may be minded to decide he or she became homeless because he or she were unable to manage without support, and the loss of the accommodation might not be seen as a result of a deliberate act, but rather a lack of appropriate support or understanding.

Deliberate acts or omissions

17.25 Acts or omissions which may be regarded as deliberate include:

i) where someone chooses to sell their home where there is no risk of losing it;

ii) where someone has lost their home due to wilful and persistent refusal to pay rent or mortgage payments where they had the means to do so;

iii) where someone could be said to have significantly neglected their affairs having disregard to sound advice from qualified persons;

iv) an applicant failing to apply for welfare benefits that would have made previous accommodation affordable, despite ample advice and opportunity to do so;

v) where someone voluntarily surrenders adequate accommodation in this country or abroad which it would have been reasonable to continue to occupy;

vi) where someone is evicted because of anti-social behaviour, for example, nuisance to neighbours, harassment etc.;

vii) where someone is evicted because of violence or threats of violence by them; or

viii) where someone leaves a job with tied accommodation and the circumstances indicate that it would have been reasonable for them to continue in the employment and reasonable to continue to occupy the accommodation.

Acts or omissions in good faith

17.26 Acts or omissions in good faith where someone was genuinely unaware of relevant facts must not be regarded as deliberate.

17.27 An act made in good faith would be a situation where someone gives up possession of accommodation in the belief that he or she has no legal right to continue to occupy the accommodation, and it would therefore not be reasonable for them to continue to occupy. For example, where someone leaves accommodation in the private sector after receiving a valid notice to quit or notice that the occupation contract has come to an end and was genuinely unaware that he or she had a right to remain until the court granted an order and warrant for possession.

17.28 Other examples of acts or omissions in good faith may include situations where;

i) someone gets into rent arrears, being unaware that he or she may be entitled to housing benefit, Universal Credit or other benefits;

ii) an owner/occupier faced with foreclosure or possession proceedings to which there is no defence, sells before the mortgagee recovers possession through the courts, or surrenders the property to the lender; or

iii) a contract-holder, faced with possession proceedings to which there would be no defence, and where the granting of a possession order would be mandatory, surrenders the property to the landlord. Although the Local Authority may consider that it would have been reasonable for the contract-holder to continue to occupy the accommodation, the contract-holder would not have become homeless deliberately if he or she had taken a contrary view in ignorance of material facts, for example the general pressure on the Local Authority for housing assistance.

17.29 Other circumstances in which the applicant's actions might not amount to intentional homelessness include:

i) Where an applicant has fled their home because of domestic violence, intimidation or harassment, or threats of such, and the applicant has failed to pursue all legal remedies against the perpetrator because of fear of reprisal;

ii) Where an applicant has a priority need and is a prison leaver, and the prison sentence has led to loss of their accommodation. The Welsh Government considers that the actions that caused the person to be imprisoned should not be automatically considered as grounds for regarding them intentionally homeless. However, if the offence which resulted in the prison sentence was a direct cause of the homelessness, for example a breach of an occupation contract which led to repossession of the property, then it may be reasonable to consider whether that person was homeless intentionally;

iii) Where it is unreasonable to expect the applicant to remain in the accommodation due to a breakdown in relationship with the host, or where the behaviour of the host has been unreasonable. Where the surrender of accommodation is due to unreasonable behaviour of the applicant, however, this may be considered as intentionally homeless. The situation may arise where the applicant was not fully responsible for the loss of accommodation due to the actions of others. The reasonableness of the applicant's actions will need to be considered by the Local Authority in light of the alternative action he or she could reasonably have taken.

iv) Where the applicant's homelessness has been caused by an unmet need; (please refer to the section above on 'Applicants with unmet support needs'); or,

v) Where an applicant's previous accommodation became overcrowded due to their children growing older, in circumstances where the accommodation was initially suitable.

Victims of Domestic Abuse

17.30 For a victim of domestic abuse to be designated as intentionally homeless, a Local Authority should have clear evidence that it would have been reasonable for him or her to return to the home and to live in safety. It is also proposed that, where appropriate, advice from specialist services supporting the victim is considered.

Applicants relinquishing an occupation contract while in custody

17.31 Where someone has, either with support from the Local Authority or a service working within custody, voluntarily relinquished an occupation contract while in custody, it is the Welsh Government's view that this should have no impact on their possible future

intentionality status unless the accommodation could have been retained and would have been reasonable for the person to return.

17.32 This is based on the unreasonableness to 'remain' in an occupation contract which is unaffordable. S.77(2) of the HWA 2014 states that intentional decisions can only be made where it was reasonable to continue to occupy accommodation the applicant became homeless from, while S.57(3)(b) ensures that a Local Housing Authority must have regard to whether or not the accommodation is affordable. It is likely not reasonable for someone in custody to continue an occupation contract they cannot afford to maintain, for accommodation they cannot reside in.

Enters into an arrangement

17.33 Local Housing Authorities will need to be alert to the possibility of collusion by which an applicant may claim that he or she is obliged to leave accommodation in order to take advantage of the homelessness legislation. Collusion is not confined to those staying with friends or relatives but can also occur between landlords and contract-holders/ tenants/licensees. Local Housing Authorities need to use their experience and knowledge to identify possible collusion, but must be 'satisfied' that it exists and not merely rely on hearsay or unfounded suspicions. For collusion to amount to intentional homelessness, the HWA 2014 also requires that 'no other good reason exists' for the homelessness. Examples of 'other good reasons' would include overcrowding or an obvious breakdown in relationships between the applicant and the 'host' household. Written confirmation of a requirement to leave accommodation occupied on licence may be sufficient, but a home visit may help to determine whether collusion has taken place. The Local Housing Authority must have some objective evidence to justify a conclusion that collusion has taken place and thus deciding that the applicant is intentionally homeless.

17.34 Unless objective evidence has been obtained to justify an assertion that collusion has taken place, Authorities are advised to continue to focus on solutions to what is clearly an unstable housing situation, including discussions about the potential to remain in the property while alternative accommodation is sought.

When can someone Re-apply?

17.35 There is no period of disqualification if someone wants to re-apply as homeless after he or she has been found intentionally homeless. When an applicant re-applies, the Local Housing Authority can initially limit their assessment to whether or not there has been any intervening settled accommodation or other material change of circumstances.

17.36 Where there has been intervening settled accommodation or other material change, then the Local Housing Authority will need to complete an assessment to determine what if any further duty is owed, (as set out in Chapter 10 – Duty to Assess).

17.37 If there has not been any intervening settled accommodation or other material change, then the Local Housing Authority can rely on their original investigations and findings of intentionality.

When to consider intentionality

Guidance

17.38 If a Local Housing Authority is having regard to intentionality, then in determining an applicant's entitlement to certain duties, an Authority must make a decision on whether an applicant is intentionally or unintentionally homeless.

17.39 HWA 2014 does not say that a Local Housing Authority is not allowed to look at intentionality at any point during its assessment. As such it may become clear to the Authority that the applicant could be found to be intentionally homeless before the point where it is required to determine it. Where this is the case, the Welsh Government recommends that the applicant is notified in writing that the Authority is minded to find them intentionally homeless when the appropriate stage of the assessment of duties owed is reached, and what the consequences of that decision could be for them. This will allow the applicant time to provide any further explanation or evidence they have and for them to make informed, realistic choices. A more general discussion around what constitutes intentionality and the consequences of being found intentionally homeless may be of benefit to the applicant during the initial interview whilst the Local Housing Authority is explaining the help they can and cannot provide.

17.40 Until the Local Housing Authority is required to determine intentionality, it should not spend time investigating this issue to the detriment of focussing on problem solving through the use of reasonable steps to help the applicant to prevent homelessness or to help secure accommodation.

When a Local Housing Authority cannot consider intentionality to determine if a duty is owed.

Guidance

17.41 A Local Housing Authority is not able to use intentionality as a determining factor in deciding if an applicant is entitled to the S.66 duty to help prevent homelessness or S.73 duty to help to secure.

When a Local Housing Authority must consider intentionality to determine if a duty is owed.

Guidance

17.42 If a Local Housing Authority is having regard to intentionality, it must consider if an applicant is intentionally homeless when it is determining if the S.75 duty to accommodate an applicant in priority need is owed.

17.43 Chapter 10 provides more guidance in relation to notifying the applicant of the decision following assessment of an applicant's eligibility for S.75; and Chapter 15 provides more guidance on the process for notifying the applicant of the ending of the S.73 duty. It is the view of Welsh Government that there is no legal reason why these

points of notification cannot be combined. In other words, the Local Housing Authority may notify an applicant that the S.73 duty (to help to secure) has come to an end at the same time as notifying the applicant whether they are entitled to the S.75 duty (to secure accommodation).

17.44 In order for a Local Housing Authority to make a local connection referral via S.80, the applicant must be in priority need, be unintentionally homeless and have a local connection with the area of another Local Authority in England or Wales. A referral can be made as long as the applicant meets all of the conditions above and would be entitled to the S.73 duty to help to secure accommodation if not referred. If the Local Housing Authority wishes to make a local connection referral, it must, therefore, consider intentionality regardless of whether the household falls into a category that the assessing Authority is not having regard to. Further guidance on local connection and referrals is available at Chapter 18.

Interim duty and Intentionality

Section 77 - Meaning of intentionally homeless

1. A person is intentionally homeless for the purpose of this Chapter if subsection (2) or (4) apply.

2. This subsection applies if the person deliberately does or fails to do anything in consequence of which the person ceases to occupy accommodation which is available for the person's occupation and which it would have been reasonable for the person to continue to occupy.

3. For the purposes of subsection (2) an act or omission in good faith on the part of a person who was unaware of any relevant fact may not be treated as deliberate.

4. This subsection applies if—

a) the person enters into an arrangement under which the person is required to cease to occupy accommodation which it would have been reasonable for the person to continue to occupy, and

b) the purpose of the arrangement is to enable the person to become entitled to help under this Chapter,

c) and there is no other good reason why the person is homeless.

Guidance

17.45 With regard to intentionality and the provision of accommodation under S.68 the parts of the HWA 2014 above are relevant and should be read with reference to each other.

17.46 Where an applicant may be eligible, homeless and the Local Housing Authority has reason to believe they may have a priority need, the Authority must secure that suitable accommodation under S.68 (the interim duty to secure accommodation) is available for their occupation.

17.47 If the Local Housing Authority ends the S.73 duty (to help to secure accommodation) and then determines, because the applicant is intentionally homeless, that he or she is not entitled to the S.75 duty (to secure accommodation) then the Authority must provide the applicant with suitable interim accommodation for a sufficient period of time in order to allow them a reasonable opportunity to secure their own accommodation.

17.48 The sufficient period cannot end within 56 days of the acceptance of S.73 (duty to help secure accommodation). If the S.73 duty is brought to an end because 56 days have passed since the acceptance of the duty and the household does not qualify for S.75 because they have been determined to be intentionally homeless, the Authority must provide interim duty accommodation for a reasonable period of time. The sufficient / reasonable period does not begin until the applicant is notified that he or she does not qualify for the S.75 duty.

Sufficient period

17.49 Local Housing Authorities must consider each case on its merits when determining the sufficient period for which interim accommodation will be secured. A few weeks may provide the applicant with a reasonable opportunity to secure accommodation for him or herself. Local Housing Authorities will need to take account of the housing circumstances in the local area, including how readily other accommodation is available in the district, and have regard to the particular circumstances of the applicant, including the resources available to him or her to provide rent in advance or a rent deposit where this may be required by landlords. Where there is a local private rented sector access service, consideration ought to be taken of the length of time it may take to secure accommodation; for example an application for a bond could take a week, and any prospective property would need to be inspected, with no guarantee that that property will pass the inspection. The sufficient time needs to include consideration of elements outside of the applicant's control.

17.50 The Welsh Government would expect the Local Housing Authority to continue to offer advice to the applicant in order to help them secure accommodation. This might include, for example, assistance with a rent deposit or guarantee to help the applicant to obtain accommodation in the private rented sector, or advice on applying for an allocation of long-term social housing. Families with Children under 18 The Act states

> Section 96 - Co-operation in certain cases involving children
>
> 1. This section applies where a local housing local authority has reason to believe that an applicant with whom a person under the age of 18 normally resides, or might reasonably be expected to reside—

a) may be ineligible for help,

b) may be homeless and that a duty under section 68, 73 or 75 is not likely to apply to the applicant, or

c) may be threatened with homelessness and that a duty under section 66 is not likely to apply to the applicant.

2. A local housing local authority must make arrangements for ensuring that—

a) the applicant is invited to consent to the referral to the social services department of the essential facts of his or her case, and

b) if the applicant has given that consent, the social services department is made aware of those facts and of the subsequent decision of the local authority in respect of his or her case.

3. Nothing in subsection (2) affects any power apart from this section to disclose information relating to the applicant's case to the social services department without the consent of the applicant.

4. A council of a county or county borough must make arrangements for ensuring that, where it makes a decision as local housing local authority that an applicant is ineligible for help, became homeless intentionally or became threatened with homelessness intentionally, its housing department provides the social services department with such advice and assistance as the social services department may reasonably request.

5. In this section, in relation to the council of a county or county borough—
"the housing department" ("yr adran dai") means those persons responsible for the exercise of its functions as local housing local authority;
"the social services department" ("yr adran gwasanaethau cymdeithasol") means those persons responsible for the exercise of its social services functions under Part 3 of the Social Services and Well- Being (Wales) Act 2014.

Guidance

17.51 S.96 of the HWA 2014 requires Local Housing Authorities to have arrangements in place to ensure that social services are alerted as quickly as possible to cases where the applicant has children under 18 and the Authority considers that the applicant is homeless or threatened with homelessness but will not be offered assistance under the following duties because they are ineligible or intentionally homeless:

- under S.66 (Duty to help prevent an applicant from becoming homeless);
- under S.68 (Interim duty to secure accommodation for homeless applicants in priority need);

- under S.73 (Duty to help secure accommodation for homeless applicants); or
- under S.75 (Duty to secure accommodation for applicants in priority need when the duty in S.73 ends).

17.52 This should also present an opportunity to consider if the individual(s) have care and support needs and if Local Authorities should fulfil their duties afforded by the SSWWA 2014.

17.53 Local Housing Authorities ought in most circumstances to seek the consent of the applicant before making a referral to social services. However, the Local Housing Authority must have regard to the child's welfare and a referral to social services must be made where they have concerns regardless of whether consent has been given.

Duty to applicants who are pregnant; applicants with children under 18; 16 and 17 year old applicants; persons up to the age of 21 and persons up to the age of 25 if they have been looked after or fostered.

The Act states

Section 75 - Duty to secure accommodation for applicants in priority need when the duty in section 73 ends

1. When the duty in section 73 (duty to help secure suitable accommodation for a homeless applicant) comes to an end in respect of an applicant in the circumstances mentioned in subsection (2) or (3) of section 74, the local housing authority must secure that suitable accommodation is available for occupation by the applicant if subsection (2) or (3) (of this section) applies.

3. This subsection applies where the local housing authority is having regard to whether or not the applicant is homeless intentionally and is satisfied that—

a) the applicant became homeless intentionally in the circumstances which gave rise to the application,

b) the applicant—

i) does not have suitable accommodation available for occupation,

ii) has suitable accommodation, but it is not likely that the accommodation will be available for occupation by the applicant for a period of at least 6 months starting on the day on which the applicant is notified in accordance with section 84 that section 73 does not apply, or

c) the applicant is eligible for help,

d) the applicant has a priority need for accommodation,

e) the applicant is—

i) a pregnant woman or a person with whom she resides or might reasonably be expected to reside,

ii) a person with whom a dependent child resides or might reasonably be expected to reside, or

iii) a person who had not attained the age of 21 when the application for help was made or a person with whom such a person resides or might reasonably be expected to reside,

iv) a person who had attained the age of 21, but not the age of 25, when the application for help was made and who was looked after, accommodated or fostered at any time while under the age of 18, or a person with whom such a person resides or might reasonably be expected to reside, and

f) the authority has not previously secured an offer of accommodation to the applicant under this section following a previous application for help under this Chapter, where that offer was made—

i) at any time within the period of 5 years before the day on which the applicant was notified under section 63 that a duty was owed to him or her under this section, and

ii) on the basis that the applicant fell within this subsection.

4. For the purpose of subsections (2)(a)(ii) and (3)(b)(ii), the applicant is to be treated as notified on the day the notice is sent or first made available for collection.

Guidance

17.54 S.75(3) of the HWA 2014 ensures that the following categories of applicants will continue to be eligible for the S.75 duty even where a Local Housing Authority is satisfied that they have been found intentionally homeless:

i) A pregnant woman and a person with whom she resides or would reasonably be expected to reside;

ii) A person with whom a dependent child resides;

iii) A person who had not attained the age of 21 when the application for help was made and a person with whom they reside or would reasonably be expected to reside;

iv) A person who had attained the age of 21, but not the age of 25, when the application for help was made and who was looked after, accommodated or fostered at any time while under the age of 18 and a person with whom they reside or would reasonably be expected to reside.

17.55 However, S.75(3)(f)(i) limits this provision so that where someone has been found intentionally homeless twice in a five-year period, they would not be subject to a further S.75 duty.

17.56 This section only applies where a Local Authority has notified Ministers whether they are having regard to intentionality and which categories of applicant they intend to have regard to intentionality and for the categories of applicant they intend to apply the intentionality test.

17.57 Where someone has been found intentionally homeless, the five years commences on the date that they received notification that they were owed a duty under S.75. For example, if a duty is owed under this section on 1st January 2020, then if no more than one intentionality decision has taken place since 1st January 2015, then the applicant would be eligible for the final duty under S.75 as a result of S.75(3). The date of the intentionality decision is the date of the letter notifying the applicant that they have been found intentionally homeless. Authorities should not under any circumstances look to discharge S.73 early (via S.74(3)) purely in order to ensure that an applicant would fail the five-year test.

17.58 Guidance in relation to notifying applicants is contained within Chapter 15. Local Housing Authorities will need to be aware that where an applicant has been provided accommodation following the S.75(3) provision, then the notification letter should ensure that this is outlined. Failure to do so, will result in the five-year time limit not being enforceable.

18. LOCAL CONNECTION AND REFERRALS

Introduction

18.1 To ensure that Local Housing Authorities are not unfairly burdened, they have discretion to apply a local connection test for the purposes of ensuring that local resources are utilised on local persons, and non-local persons where it is unreasonable to return to their home area. Referrals are discretionary only; Local Housing Authorities are not required to refer applicants to other Authorities. Authorities are also not, generally, required to make any inquiries as to whether an applicant has a local connection with an area.

The HWA 2014 states

Section 80 - Referral of case to another local housing authority

1. Subsection (2) applies where—

   a) a local housing authority considers that the conditions for referral to another local housing authority (whether in Wales or England) are met (see subsection (3)), and

   b) the local housing authority would, if the case is not referred, be subject to the duty in section 73 in respect of an applicant who is in priority need of accommodation and unintentionally homeless (duty to help to secure accommodation for homeless applicants).

2. The local housing authority may notify the other authority of its opinion that the conditions for referral are met in respect of the applicant.

3. The conditions for referral of the case to another local housing authority (whether in Wales or England) are met if—

   a) neither the applicant nor any person who might reasonably be expected to reside with the applicant has a local connection with the area of the authority to which the application was made,

   b) the applicant or a person who might reasonably be expected to reside with the applicant has a local connection with the area of that other authority, and

   c) neither the applicant nor any person who might reasonably be expected to reside with the applicant will run the risk of domestic abuse in that other area.

4. But the conditions for referral mentioned in subsection (3) are not met if—

a) the applicant or any person who might reasonably be expected to reside with the applicant has suffered abuse (other than domestic abuse) in the area of the other authority, and

b) it is probable that the return to that area of the victim will lead to further abuse of a similar kind against him or her.

5. The question of whether the conditions for referral of a case are satisfied is to be decided—

a) by agreement between the notifying authority and the notified authority, or

b) in default of agreement, in accordance with such arrangements—

i) as the Welsh Ministers may direct by order, where both authorities are in Wales, or

ii) as the Welsh Ministers and the Secretary of State may jointly direct by order, where the notifying authority is in Wales and the notified authority is in England.

6. An order under subsection (5) may direct that the arrangements are to be—

a) those agreed by any relevant authorities or associations of relevant authorities, or

b) in default of such agreement, such arrangements as appear to the Welsh Ministers or, in the case of an order under subsection (5)(b)(ii), to the Welsh Ministers and the Secretary of State to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as they think appropriate.

7. In subsection (6), "relevant authority" means a local housing authority or a social services authority; and it includes, in so far as that subsection applies to arrangements under subsection (5)(b)(ii), such authorities in Wales and England.

8. The Welsh Ministers may by order specify other circumstances in which the conditions are or are not met for referral of the case to another local housing authority.

Guidance

Conditions for Referral from Welsh Local Authorities to Welsh Local Authorities.

18.2 Where a Local Housing Authority decides that an applicant would normally be owed a duty under S.73 of the HWA 2014 to help to secure accommodation if they had a local connection to the assessing Authority, but the conditions for referral of the case to another Authority are met, they may notify the other Authority of their opinion (S.80(2)).

The conditions for referral are met if the assessing Local Housing Authority considers that the applicant is:

i) eligible for housing assistance (see Chapter 7);

ii) has no local connection to the area to which they have presented;

iii) unintentionally homeless (see Chapter 17);

iv) has a priority need for accommodation (see Chapter 16); and

v) has a local connection to the other Authority's area.

18.3 An applicant can be considered for referral only when an assessing Authority would have been subject to the duty under S.73 if the local connection were established with the Authority completing an assessment under S.62. Referral is not an option where an applicant is solely owed the interim duty under S.68 and/or if the assessing Authority has not completed a S.62 assessment. An applicant may be owed an interim duty to accommodate under S.68 but the referral process cannot begin until the Local Housing Authority has completed its assessment under S.62 and is satisfied that the person is homeless, eligible and does not have a local connection to the Authority where the application has been made. During the assessment the Authority would then consider if the other conditions for referral are met (i.e. whether the applicant has a priority need for accommodation and is unintentionally homeless). If the Authority refers a case to another Welsh Local Authority, the S.73 duty (to help to secure) would be the responsibility of the receiving Authority along with the provision of S.68 interim accommodation from acceptance of the referral.

18.4 A duty is not owed to an applicant under S.73 by the assessing Authority if their case is being referred. Referral under S.80 does not apply to any other duty (e.g. where the applicant is threatened with homelessness or found to be homeless intentionally). Detailed guidance on referrals is available from the 'Guide For Local Authorities on Procedures for Referral agreed by the Welsh Government Association (WLGA)' ("the WLGA Guidance")

18.5 An Authority's decision to not have regard to intentionality, only applies to applicants who may qualify for the S.75 duty. An Authority that is considering a referral to another area based on local connection will, however, need to be satisfied that the household is unintentionally homeless, even if it chooses not to have regard to intentionality when considering applicants for S.75 duty.

Local Connection

The HWA 2014

States

Section 81 – Local connection

1. This section applies for the purposes of this Chapter.

2. A person has a local connection with the area of a local housing authority in Wales or England if the person has a connection with it—

a) because the person is, or in the past was, normally resident there, and that residence is or was of the person's own choice,

b) because the person is employed there,

c) because of family associations, or

d) because of special circumstances.

3. Residence in an area is not of a person's own choice if the person, or a person who might reasonably be expected to reside with that person, becomes resident there because the person is detained under the authority of an enactment.

4. The Welsh Ministers may by order specify circumstances in which—

a) a person is not to be treated as employed in an area, or

b) residence in an area is not to be treated as of a person's own choice.

5. A person has a local connection with the area of a local housing authority in Wales or England if the person was (at any time) provided with accommodation in that area under section 95 of the Immigration and Asylum Act 1999 (support for asylum seekers).

6. But subsection (5) does not apply—

a) to the provision of accommodation for a person in an area of a local housing authority if the person was subsequently provided with accommodation in the area of another local housing authority under section 95 of that Act, or

b) to the provision of accommodation in an accommodation centre by virtue of section 22 of the Nationality, Immigration and Asylum Act 2002 (use of accommodation centres for section 95 support).

18.6 A Local Housing Authority may refer an applicant, to whom S.73 would normally apply, to another Local Housing Authority if:

i) neither the applicant nor any person who might reasonably be expected to live with him or her has a local connection with their area, and

ii) at least one member of the applicant's household has a local connection with the area of the other Local Authority; and

iii) none of them will be at risk of domestic abuse, abuse or threat of abuse which is likely to be carried out, in the area of the other Local Authority.

18.7 When a Local Housing Authority makes inquiries to determine whether an applicant is eligible for assistance and owed any duty under Part 2 of the HWA 2014, they may, if they wish, also make inquiries to decide whether the applicant has a local connection with the area of another Local Authority in England or Wales.

18.8 The more detailed description of local connection is found in the WLGA Guidance. This description applies to cases that are being referred to another Authority where the applicant has a local connection. It should not be used to determine whether an applicant is eligible for advice and assistance – see Chapter 9. In consulting the WLGA Guidance, it should be noted the law relating to referrals under the HWA 2014 differs from that under Part VII Housing Act 1996, which no longer applies in Wales.

18.9 There is no set period that an applicant has to live in an area to be regarded as having a local connection. Local Housing Authorities need to consider all the circumstances and decide whether the applicant is clearly settled and if not, whether they have a clear connection elsewhere. Previous guidance gave periods such as 6 out of the last 12 months, and 3 out of the last 5 years; whilst this may give indication of a settled period, Authorities will be required to look at the specific circumstances of the case.

18.10 Looked after young people who have been placed out of area that are leaving care and wish to return to the area to which they were originally connected should be accepted as having a connection with the area, even where they have been placed for a considerable time elsewhere. Care leavers who wish to remain in the area of placement should also be considered to have a local connection should they meet the local connection test.

18.11 In assessing whether an applicant's household has a local connection with their area, a Local Housing Authority should also consider whether any person who might reasonably be expected to live with the applicant has such a connection.

18.12 A Local Housing Authority may not seek to transfer responsibility to another Authority where the applicant has a local connection with their area but the Authority considers there is a stronger local connection elsewhere. However, in such a case, it would be open to a Local Housing Authority to seek assistance from the other Authority in securing accommodation, under S.95 of the HWA 2014 (co-operation). Where a person has a local connection with more than one other Authority, the referring Authority will wish to take account of the applicant's preference in deciding which Authority to notify.

18.13 The establishment of the 11th category of priority need ('street homelessness' – see Chapter 16) may increase the potential for a Local Housing Authority to consider making a local connection referral, as there is an expectation of a higher number of applicants who can meet the conditions for referral. Authorities are reminded that when determining local connection, a connection with another area needs to be established rather than there not being a local connection to their own area.

18.14 Local Housing Authorities are urged to avoid developing disproportionate assessment processes to filter out those with a local connection to other areas in order to trigger S.80 referrals and reduce demand on local temporary accommodation services. Local Housing Authorities are reminded that referrals can only take place if the applicant has no local connection to the area they have presented to; and are also urged to avoid the additional bureaucracy that would surround a referral process and understand the potential impacts on the applicant.

18.15 The Housing Support Grant guidance (implemented April 2020) was updated to ensure that there is greater alignment with the HWA 2014 when it comes to local connection and the provision of housing related support services. As a result, no-one should be denied access to support based on establishing local connection and Local Housing Authorities must meet the need at the point where it is presented.

Ex-service personnel

18.16 For the purposes of the HWA 2014, serving members of the Armed Forces, and other persons who normally live with them as part of their household, do establish a local connection with an area by virtue of serving, or having served, there while in the Forces.

18.17 This should also present an opportunity to consider if the individual(s) have care and support needs, and if Local Authorities should fulfil their duties afforded by the SSWWA 2014.

Ex-prisoners

18.18 Residence in prison does not itself establish a local connection with an area. However, any period of residence in accommodation prior to imprisonment may give rise to a local connection.

18.19 For adults, location of resettlement on release will be based on a risk assessment undertaken by probation prior to release and will take account of license conditions and/or familial connections. As part of the referral process outlined in the National Pathway for Homelessness Services for Children, Young People and Adults in the Secure Estate, initial contact is encouraged prior to an application being submitted. This will allow geographical mistakes to be identified prior to an application being submitted to an incorrect Local Authority area. However, Local Housing Authorities are reminded that the S.66 and S.73 duties are blind to local connection, and it is not appropriate to refuse to support an individual based on their offending history.

Former Asylum seekers

18.20 S.81(5) of the HWA 2014 provides that a person has a local connection with the district of a housing authority in Wales or England if the person was (at any time) provided with accommodation there under S.95 of the Immigration and Asylum Act 1999 (“S.95 accommodation”).

18.21 Under S.81(6) however, a person does not have a local connection by virtue of S.81(5):

a) if that person has been subsequently provided with S.95 accommodation in a different area. Where a former asylum seeker has been provided with S.95 accommodation in more than one area, the local connection is with the area where such accommodation was last provided; or

b) if they have been provided with S.95 accommodation in an accommodation centre in the district by virtue of S.22 of the Nationality, Immigration and Asylum Act 2002.

18.22 A local connection with a district by virtue of S.81(5) does not override a local connection by virtue of S.81(2) Thus, a former asylum seeker who has a local connection with a district because he or she was provided with s.95 accommodation there may also have a local connection elsewhere for some other reason, for example, because of employment or family associations.

No local connection anywhere

18.23 If an applicant, or anyone who might reasonably be expected to live with him or her, has no local connection with any area in Great Britain, then the duty to help to secure accommodation will rest with the Local Housing Authority to which his or her application has been made. This may apply to people who have had an unsettled way of life for many years.

Abuse

18.24 A Local Housing Authority cannot refer an applicant to another Local Housing Authority if that person or any person who might reasonably be expected to reside with him or her would be at risk of abuse in that other area. The conditions for referral are not met if the applicant or any person who might reasonably be expected to reside with them has suffered abuse in the district of the other Authority and it is probable that the return to that district will lead to further abuse of a similar kind. Authorities should take ‘similar kind’ to mean any abuse forming a pattern of conduct against them, even where the individual perpetrators may vary.

18.25 S.58(1) defines abuse as physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm.

Duties to applicant whose case is considered for referral or referred

Section 82 - Duties to applicant whose case is considered for referral or referred

1. Where a local housing authority notifies an applicant in accordance with section 84 that it intends to notify or has notified another local housing authority in Wales or England of its opinion that the conditions are met for the referral of the applicant’s case to that other authority—

a) it ceases to be subject to any duty under section 68 (interim duty to secure accommodation for homeless applicants in priority need), and

b) it is not subject to any duty under section 73 (duty to help to secure accommodation for homeless applicants);

but it must secure that suitable accommodation is available for occupation by the applicant until the applicant is notified of the decision whether the conditions for referral of the case are met.

2. When it has been decided whether the conditions for referral are met, the notifying authority must notify the applicant in accordance with section 84.

3. If it is decided that the conditions for referral are not met, the notifying authority is subject to the duty under section 73 (duty to help to secure accommodation for homeless applicants).

4. If it is decided that those conditions are met and the notified authority is an authority in Wales, the notified authority is subject to the duty under section 73 (duty to help to secure accommodation for homeless applicants); for provision about cases where it is decided that those conditions are met and the notified authority is an authority in England, see section 201A of the Housing Act 1996 (cases referred from a local housing authority in Wales).

5. The duty under subsection (1) ceases as provided in that subsection even if the applicant requests a review of the authority's decision (see section 85).

6. The authority may secure that suitable accommodation is available for the applicant's occupation pending the decision on a review.

7. If notice required to be given to an applicant under this section is not received by the applicant, it is to be treated as having been given if it is made available at the authority's office for a reasonable period for collection by the applicant or on the applicant's behalf.

The HWA 2014 states

Guidance

18.26 If a Local Housing Authority decides to refer a case to another Authority in Wales, they will need to notify the other Local Housing Authority that they believe the conditions for referral are met (S.80). They must also notify the applicant that they have notified, or intend to notify, another Local Housing Authority that they consider that the conditions for referral are met. At that point, the Local Housing Authority would cease to be subject to the interim duty to accommodate under S.68 but will owe a duty under S.82 (1) to secure that accommodation is available for the applicant pending the outcome of whether the conditions for referral are met.

18.27 If the referral is accepted by the other Local Housing Authority, they will be under a duty to help to secure accommodation under S.73 and the provision of interim accommodation for the applicant under S.68. It is not open to a receiving Authority to re-assess whether the applicant is homeless, unintentionally homeless and/or in priority need, unless the Authority is reviewing the decision at the end of the S.73 duty to establish if S.75 duty to secure accommodation applies.

18.28 When the question of whether the conditions for referral to another Local Housing Authority are met has been decided, the notifying Authority must notify the applicant of the decision and the reasons for it (S.84). The notification must also advise the applicant of his or her right to request a review of the decision, and the timescale within which such a request must be made. Where the applicant requests a review under S.85, the Local Housing Authority may secure suitable accommodation pending the outcome of the review if it feels appropriate based on the circumstances of the individual.

18.29 The Welsh Government recommends that applicants who may have a priority need are provided with temporary accommodation whilst their review is being considered. This is provided for in S.69 (11) of the HWA 2014.

18.30 Notifications to the applicant must be provided in writing and copies made available at the Authority's office for collection by the applicant, or his or her representative, for a reasonable period.

Disputes between Authorities

18.31 The question of whether the conditions for referral are met in a particular case should be decided by agreement between the Local Housing Authorities concerned, but if they cannot agree, the decision should be made in accordance with such arrangements as may be directed by order of the Welsh Ministers; S.80(5) for Wales.

18.32 The Homelessness (Decisions on Referrals) Order 1998 (SI 1998 No. 1578) directs that the arrangements to be followed in such a dispute are the arrangements which have been agreed between the Local Authority Associations (i.e. the Local Government Association, the Convention of Scottish Local Authorities, the Welsh Local Government Association and the Association of London Government). More information is available from the Welsh Local Government Association.

18.33 Broadly speaking, the arrangements provide that in the event of two Authorities being unable to agree whether the conditions for referral are met, they must seek to agree on a person to be appointed to make the decision for them. If unable to agree on who should be the appointed person, they may wish to seek advice from the Welsh Local Government Association.

18.34 The arrangements set out in the Schedule to The Homelessness (Decisions on Referrals) Order 1998 (SI 1998 No. 1578) apply in all cases where a Local Housing Authority in England or Wales seeks to refer a homelessness case to another Local Housing Authority in England or Wales, and the two authorities are unable to agree whether the conditions for referral are met.

Referrals to English Local Housing Authorities

18.35 Where a Local Housing Authority is satisfied that an applicant has a local connection in England, and they intend to refer the case to that Authority, they must refer under S.80 HWA 2014.

18.36 The Authority will need to make enquiries to satisfy itself that the applicant has a local connection to an area in England and that there is no risk of abuse if they returned to the area, and the Authority must be satisfied that the applicant is eligible, homeless, has a priority need (in accordance with HWA 2014) and is unintentionally homeless.

18.37 Where the referral is to a Local Housing Authority in England, an applicant may not be in priority need under the legislation applicable to England. As a result, the applicant may suffer a detriment by being referred.

18.38 The process for referral is identical to cases referred within Wales.

Cases referred from a Local Housing Authority in England

Section 83 – Cases referred from a local housing authority in England

1. This section applies where an application has been referred by a local housing authority in England to a local housing authority in Wales under section 198(1) of the Housing Act 1996 (referral of case to another local housing authority).

2. If it is decided that the conditions in that section for referral of the case are met the notified authority is subject to the following duties in respect of the person whose case is referred—

a) section 68 (interim duty to secure accommodation for homeless applicants in priority need);

b) section 73 (duty to help to secure accommodation for homeless applicants);

for provision about cases where it is decided that the conditions for referral are not met, see section 200 of the Housing Act 1996 (duties to applicant whose case is considered for referral or referred).

3. Accordingly, references in this Chapter to an applicant include a reference to a person to whom the duties mentioned in subsection (2) are owed by virtue of this section.

The HWA 2014 states

Guidance

18.39 Applicants referred from England under S.198 Part VII Housing Act 1996, if accepted, will be owed a duty under S.68 (interim duty to accommodate) and S.73 (duty to help to secure). Following the discharge of the S.73 duty, the S.75 duty to secure accommodation may apply. Cases will only be referred under this section in the event that the applicant has a local connection to the Authority receiving the referral, is homeless, eligible, has a priority need and is unintentionally homeless.

18.40 Any dispute arising from such a referral will need to be dealt with through S.80 (5) (b).

19. SUITABILITY OF ACCOMMODATION

Introduction

19.1 This chapter provides detailed guidance regarding what is considered suitable in relation to accommodation provided or sourced for the purposes of the S.66 prevention, S.68 interim, S.73 help to secure, and S.75 secure duties.

19.2 Where S.68 or S.75 duties are accepted, the duty to provide suitable interim or temporary accommodation is immediate and non-deferrable. Different accommodation may be provided at different times to ensure that the duties are being performed, and the length of time an applicant is placed in accommodation may be relevant to its suitability. However, if accommodation becomes unsuitable at any time, then alternative suitable accommodation must be provided. A lack of resources cannot be used as a defence to placing the applicant in unsuitable accommodation.

19.3 The chapter provides the requirements for private and social sector housing, and the use of shared housing such as bed and breakfast style short term accommodation.

19.4 Currently demand for affordable housing, and in particular social housing outweighs the supply, and whilst all efforts should be made to ensure an allocation or offer of settled accommodation that is suitable to the applicants needs is made as soon as possible, applicants are highly likely to spend a period of time in temporary accommodation ahead of settled accommodation becoming available. Temporary accommodation settings must also be suitable for the applicant. Effective communication between the applicant and Housing Options Teams should be undertaken to ensure an understanding of the role of temporary accommodation, and also to manage expectations of wait times for settled accommodation.

Assessment of Suitability

The HWA 2014 states

Section 59 - Suitability of accommodation

1. In determining whether accommodation is suitable for a person, a local housing authority must have regard to the following enactments—

a) Part 9 of the Housing Act 1985 (slum clearance);

b) Part 10 of the Housing Act 1985 (overcrowding);

c) Part 1 of the Housing Act 2004 (housing conditions);

d) Part 2 of the Housing Act 2004 (licensing of houses in multiple occupation);

e) Part 3 of the Housing Act 2004 (selective licensing of other residential accommodation);

f) Part 4 of the Housing Act 2004 (additional control provisions in relation to residential accommodation);

g) Part 1 of this Act (regulation of private rented housing).

2. In determining whether accommodation is suitable for a person, a local housing authority must have regard to whether or not the accommodation is affordable for that person.

3. The Welsh Ministers may by order specify—

a) circumstances in which accommodation is or is not to be regarded as suitable for a person, and

b) matters to be taken into account or disregarded in determining whether accommodation is suitable for a person.

Guidance

19.5 Any attempt to discharge S.66, S.68, S.73, or S.75 of the HWA 2014 by way of an offer of accommodation requires the accommodation to be suitable for the applicant's occupation and any other person reasonably expected to reside with them. This includes interim accommodation offered under S.68 and any temporary arrangements offered under S.75.

19.6 S.59 requires that, in assessing suitability, Local Housing Authorities must have regard to S.47 of the Housing Act 2004 ("HA 2004") (slum clearance declarations), S.5 to S.10 HA 2004 (housing standards) and S.55 to S.78 HA 2004 (Licensing of Houses in Multiple Occupation). These sections should be read in conjunction with any relevant regulations including the Homelessness (Suitability of Accommodation) (Wales) Order 2015 ("the Suitability Order").

19.7 Part 1 of the HA 2004 is specifically concerned with dwelling houses or houses in multiple occupation that present a danger to their occupants because of the existence of hazards that are a danger to health and safety. Hazards are grouped into either Category 1, where the Local Authority has a statutory duty to take action to remedy the hazard, or Category 2 where the Local Authority has discretion to deal with the hazard. Before any establishment is used as temporary accommodation for a homeless household, the placing Local Housing Authority should give careful consideration to the existence of hazards in the establishment and the effect they may have on the health and safety of the potential occupants.

19.8 Part 1 of the HA 2004 also deals with housing standards and S.5 to S.10 HA 2004 will have a specific bearing on issues relating to the size of accommodation and its suitability for the number of potential occupants. If temporary accommodation does not

seem appropriate because of its limited size, it will be for the Local Housing Authority to show that the accommodation nevertheless remains suitable.

19.9 Part 2 of the HA 2004 deals with licensing of houses in multiple occupation (HMO) and separate regulations have been produced by the Welsh Government covering management and amenity standards in houses in multiple occupation. Local Housing Authorities should have regard to this documentation when considering the suitability of accommodation for homeless households.

19.10 Local Housing Authorities will also need to ensure that accommodation offered to applicants meets the statutory requirements for dwellings, including regulations on gas and electrical appliances and the provisions of the Furniture and Furnishings (Fire Safety) Regulations 1988 and their subsequent amendments. Inspection of properties is an essential element of ensuring that accommodation is suitable. Local Housing Authorities will need to establish an inspection process which involves assessment of properties against all the statutory criteria. Inspections will need to be carried out by staff with the requisite skills in property inspection. Each property should be inspected before it is first offered to an applicant, and then re-inspected before it is offered to a different applicant if it has been occupied since the last inspection. Authorities are urged to incorporate spot checks into their monitoring systems, based on a risk assessment of the properties and landlords.

19.11 The accommodation must be suitable in relation to the applicant and all members of his or her household, who normally reside with him or her, or who might reasonably be expected to reside with them. Local Housing Authorities should therefore have regard to the relevant circumstances of the applicant and his or her household. Local Housing Authorities also need to take account of any medical and/or physical needs, and any social considerations which might affect the suitability of accommodation. For example, accommodation may be unsuitable for disabled applicants because of its location (e.g. in hilly areas), and some disabled applicants may require certain facilities to be close at hand (e.g. an exercise area for a guide dog or a parking space for a car on which they rely). Local Housing Authorities must take account of any medical evidence available. Authorities should also consider factors such as access to schools and other services and facilities (e.g. GPs and informal support networks) with a view to maintaining stability for the household, particularly in respect of children's schooling, wherever possible. Authorities should be aware of cultural factors in addressing suitability of accommodation (R [Price] v Carmarthenshire County Council, (2003)). Any risk of abuse or hate crime should also be taken into account.

19.12 Where it is not realistically possible to find housing for an applicant within a preferred location, accommodation should be secured as close as possible to that location. Location of accommodation is relevant to suitability.

19.13 The assessment of suitability should present an opportunity to consider if the individual has care and support needs and, if so, Local Authorities should fulfil their duties afforded by the SSWWA 2014. Suitability of accommodation concerns may arise from the care and support needs identified and Local Authorities should ensure assessments of need in the broadest sense are conducted and acted upon in reaching their determination of suitability.

Location

19.14 The suitability of the location for all members of the household must be considered by the Local Housing Authority.

19.15 Where it is not possible to secure accommodation within the district and a Local Housing Authority has secured accommodation outside their district, the Authority is required to take into account the distance of that accommodation from the district of the Authority. Where accommodation which is otherwise suitable and affordable is available nearer to the Local Housing Authority's district than the accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the Authority has a justifiable reason for offering the more distant property, or the applicant has specified a preference.

19.16 Generally, where possible, Local Housing Authorities should try to secure accommodation that is as close as possible to where an applicant was previously living unless the applicant's preferences are to be relocated and there is reasonable justification for this request. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Local Housing Authorities are required to take into account the significance of any disruption, with specific regard to employment, caring responsibilities or education of the applicant or members of their household. Where possible the Authority should seek to enable the applicant to retain established links with schools, doctors, social workers, other key services and support services. In assessing the significance of disruption to employment, account will need to be taken of the individual's need to reach their normal workplace from the accommodation secured.

19.17 In assessing the significance of disruption to caring responsibilities, account will need to be taken of the type and importance of the care household members provide and the likely impact the withdrawal would cause. Authorities may want to consider the cost implications of providing care where an existing care arrangement becomes unsustainable due to a change of location.

19.18 Authorities should also take into account the need to minimise disruption to the education of young people, particularly at critical points in time such as leading up to taking GCSE (or their equivalent) examinations.

19.19 Account will also need to be taken of medical facilities and other support currently provided for the applicant and their household. Local Housing Authorities should consider the potential impact on the health and well-being of an applicant or any person reasonably expected to reside with them, were such support removed or where medical facilities were no longer accessible. They should also consider whether similar facilities are accessible and available near the accommodation being offered and whether there would be any specific difficulties in the applicant or person residing with them using those essential facilities, compared to the support they are currently receiving. Examples of other support might include support from particular individuals, groups or organisations located in the area where the applicant currently resides, for example essential support from relatives or support groups which would be difficult to replicate in another location.

19.20 Local Housing Authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities unless absolutely necessary.

19.21 Authorities should be aware of the potential impact Autistic Spectrum Disorder (ASD) might have on the suitability of accommodation offered. For example, accommodation may be unsustainable for those who cannot live in close proximity to others. Local Housing Authorities should ensure that they are aware of the particular characteristics of the ASD experienced by the individual so as to ensure that accommodation is suitable and that appropriate support is in place.

19.22 Cultural and religious factors need to be considered when offering suitable accommodation.

19.23 Local Housing Authorities must take account of the proximity of a perpetrator of an alleged domestic abuse or victims of an abuse when considering the location of accommodation. While Authorities should, as far as is practicable, aim to secure accommodation within their own district, they should also recognise that there can be clear benefits for some applicants to be accommodated outside of the district. This could occur, for example, where the applicant and/or a member of his or her household would be at risk of domestic or other abuse in the district and need to be accommodated elsewhere to reduce the risk of further contact with the perpetrator(s). This could also occur where ex-offenders or drug/alcohol users would benefit from being accommodated outside the district to help break links with previous contacts which could exert a negative influence. Any risk of abuse or racial harassment and other harassment due to protected characteristics in a particular locality must also be taken into account. Where domestic abuse is involved and the applicant is not able to stay in the current home, Local Housing Authorities may need to consider the need for alternative accommodation whose location can be kept confidential and which has security measures and staffing to protect the occupants.

19.24 Similarly, there may also be advantages in enabling some applicants to access employment opportunities outside of their current district. The availability, or otherwise, of employment opportunities in the new area may help to determine if that area is suitable for the applicant.

19.25 Where, exceptionally, suitable accommodation is secured outside of the Local Authority area, the discharging Local Housing Authority must give written notice to the Local Authority where the accommodation is situated. This is particularly important for applicants who may require additional statutory services such as adult care, children services, education, health etc.

Affordability

19.26 S.59(2) of the HWA 2014 specifies that in determining whether accommodation is (or would have been) suitable for an applicant, a Local Housing Authority must have regard to whether the accommodation is affordable. In particular, the Authority should take account of:

i)The financial resources available to him or her (i.e. all forms of income), including, but not limited to:

a) salary, fees and other remuneration (from such sources as investments, grants and pensions etc.);

b) welfare benefits (such as Universal Credit, council tax benefit etc.);

c) payments due under a court order for periodical payments to a spouse or to, or for the benefit of, a child;

d) payments of child support maintenance due under the Child Support Act 1991;

e) pensions;

f) contributions to the costs of the accommodation which are or were made (or which might reasonably be expected to be, or have been, made) by other members of the household. Most members can be assumed to contribute, but the amount depends on various factors including their age and income. Other influencing factors can be drawn from the parallels of their entitlement to Universal Credit. Current rates should be available from Local Authority benefit sections or the Department of Work and Pensions (DWP);

g) financial assistance towards the costs of the accommodation, including loans or grants provided by a Local Authority, voluntary organisation or other body;

h) benefits derived from a policy of insurance (such as cover against unemployment or sickness);

i) savings and other capital sums which may be a source of income or might be available to meet accommodation expenses. However, it should be borne in mind that, again drawing from the parallel social security assistance, capital savings below a threshold amount are disregarded for the purpose of assessing a claim.

ii) the costs in respect of the accommodation, including, but not limited to:

a) payments of, or by way of, rent (including rent default/property damage deposits, rent top up due to under occupancy charge);

b) payments in respect of a licence or permission to occupy the accommodation;

c) mortgage costs (including an assessment of entitlement to Support for Mortgage Interest, covering repairs/improvements, service charges, ground rent etc.);

d) payments of, or by way of, service charges (e.g. maintenance or other costs required as a condition of occupation of the accommodation);

e) the expected utilities cost for the property based on EPC rating

f) mooring charges payable for a houseboat;

g) where the accommodation is a caravan or a mobile home, payments in respect of the site on which it stands;

h) the amount of council tax payable in respect of the accommodation;

i) payments by way of deposit or security in respect of the accommodation;

j) payments required by an accommodation agency.

iii) payments which that person is required to make under a court order for the making of periodical payments to a spouse or former spouse, or to, or for the benefit of, a child and payments of child support maintenance required to be made under the Child Support Act 1991; and

iv) his or her other reasonable living expenses, including special circumstances that may impact on expenditure such as essential dietary requirements, costs for essential medical appointments

19.27 Local Housing Authorities should have access to independent financial advisors or alternatively have in-house provision to assess household budgets to ensure that accommodation is affordable.

19.28 In considering an applicant's residual income after meeting the costs of the accommodation, the Welsh Government recommends that Local Housing Authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be unable to meet their reasonable living expenses – see the section on 'affordability' in Chapter 8. This amount will vary from case to case, according to the circumstances and composition of the applicant's household. A current tariff of applicable amounts in respect of such benefits should be available within the Local Authority's housing benefit section or from the DWP. Local Housing Authorities will need to ensure that the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, utilities and transport – this is a non-exhaustive list.

19.29 Applicants may challenge the suitability of accommodation offered by seeking a review of the Local Housing Authority's decision (under S.85 (3) HWA 2014). Where such a review is sought, the applicant should be allowed to accept the offer subject to a review of its suitability. If the review confirms the original decision (i.e. confirms that the accommodation is suitable), the applicant should be allowed to retain the accommodation, if he or she wishes to do so. Applicants should be given information on the standards of suitability required under the law, and their right to challenge the suitability of the accommodation offered.

Inspection

19.30 Inspections are a vital aspect of ensuring that properties are suitable for the discharge of duties to provide temporary and permanent accommodation. Local Authorities should inspect all properties used to meet their duties before they are offered to applicants, and then be re-inspecting them for succeeding offers if the property has been occupied since the last inspection. The inspection should be carried out in accordance with a standard assessment process, to ensure the assessment covers each of the statutory criteria, including the Health and Safety Rating System. This will require inspection by staff who have been trained to inspect against the statutory standards. It is recommended that social landlords ensure that properties are free from defects before allowing an occupation contract or license to commence. Local Housing Authorities should have processes in place to ensure supported housing providers and social landlords have inspected the accommodation before making it available for the next occupant.

Accommodation to end the prevention, help to secure and secure duties.

19.31 S.66 and S.73 of the HWA 2014 can be ended through an offer of suitable accommodation which is likely to last for a period of 6 months. This includes private sector housing, social housing or any other accommodation that is considered suitable.

19.32 S.75 of the HWA 2014 can be ended with a minimum fixed term of 6 months in the private sector or an offer of accommodation under Part 6 of the Housing Act 1996 (The Allocation Scheme).

19.33 Local Housing Authorities will need to ensure that they consider the suitability of any property being used to end the respective duty. Authorities are encouraged to record for each offer their considerations in respect of determining suitability. Comprehensive record keeping will be of utmost importance when dealing with challenges around suitability.

Circumstances in which accommodation secured under S.66, S.73 and S.75 is not to be regarded as suitable for a person

19.34 This part of the guidance sets out those circumstances in which accommodation is not to be regarded as suitable for an applicant. The requirements can be grouped under six broad headings.

Physical condition of the property

19.35 Local Housing Authorities are obliged under S.3 of the HA 2004 to keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under the Housing Health and Safety Ratings System legislation. The Local Housing Authority is also required to keep the housing conditions in their area under review in relation to other powers/duties such as licensing of HMOs.

19.36 S.4 of the HA 2004 provides that a Local Housing Authority must arrange for an inspection of residential premises in its district with a view to determining whether any Category 1 or 2 hazard exists on those premises. Such an inspection is only required if the Authority considers that it would be appropriate for them to be inspected, as a result of any matters of which they have become aware of, in carrying out their duty under S.3 HA 2004, or for any other reason.

19.37 Local Housing Authorities should secure accommodation that is in reasonable physical condition and is free from Category 1 hazards. Authorities should ensure that the property has been visited by either a Local Authority officer or someone acting on their behalf to determine its suitability before an applicant moves in.

19.38 In determining whether the property is in reasonable physical condition, attention should be paid to signs of damp, mould, indications that the property would be cold, for example lack of suitable fixed heating, and any other signs that would indicate the property is not in good physical condition.

Health and safety matters

19.39 Landlords are by law required to ensure that all electrical equipment provided within a property is safe. The Local Housing Authority are required to satisfy themselves that any electrical equipment provided in the property meets the current requirements.

19.40 Generally speaking, it is likely that a visual inspection of the property, by a person authorised to act on behalf of the Local Housing Authority, which checks for obvious signs of loose wiring, cracked or broken electrical sockets, light switches that do not work and evidence of Portable Appliance Testing will be indicative that the specific regulations have been applied.

19.41 The Regulatory Reform (Fire Safety) Order 2005 applies to the common or shared parts of multi-occupied residential buildings. As such landlords, owners or managing agents will need to carry out a fire risk assessment of the common parts and implement and maintain appropriate and adequate fire safety measures. As part of their responsibilities, landlords should put in place appropriate management and maintenance systems to ensure any fire safety equipment or equipment which may represent a fire hazard, is maintained in good working order, and in accordance with the manufacturer's instructions. Landlords are also required to ensure that furniture and furnishings supplied must comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended).

19.42 Local Housing Authorities and Fire and Rescue Authorities should work together to ensure the safety of domestic premises including the provision of fire safety advice to households (such as the benefits of a working smoke alarm). Local Authorities will need to satisfy themselves that these regulations have been adhered to.

Regulatory Reform (Fire Safety) Order 2005

19.43 Local Housing Authorities are asked to satisfy themselves that the landlord has taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation, where such a risk exists. Taken together with a valid Gas Safety Record, the installation of a carbon monoxide alarm would constitute reasonable precaution to prevent the possibility of carbon monoxide poisoning, where such a risk exists. This is a requirement in relation to Occupation Contracts in Wales.

19.44 If the accommodation is or forms part of residential property which does not have a valid Energy Performance Certificate as required by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, then it will not be regarded as suitable. Local Housing Authorities should ensure they have had sight of a current certificate to ensure that this requirement has been met.

19.45 Local Housing Authorities should satisfy themselves that accommodation that is or forms part of relevant premises in accordance with Regulation 36 of the Gas Safety (Installation and Use) Regulations 1994 has a current Gas Safety Certificate. A Local Housing Authority can do this by requesting sight of the valid Gas Safety Certificate.

Landlord behaviour

19.46 Authorities should satisfy themselves that landlords of accommodation secured under Part 2 of the HWA 2014 are fit and proper persons to act in the capacity of a landlord. Local Housing Authorities are required to consider any convictions in relation to 'landlord and tenant' law, fraud or other dishonesty, violence or drugs as well as any discrimination and/or sexual offences. Most Local Housing Authorities currently do this for Houses in Multiple Occupancy, and they can also check their own records for any prosecutions for offences of harassment and illegal eviction brought by the Local Authority. If their record checking does not satisfy them that the landlord is a fit and proper person to act in the capacity of a landlord then the Local Authority can require the landlord to carry out a Disclosure and Barring Service (DBS) check, but they are not required to do this in every case. The Welsh Government recommends that when placing households outside of their district that the Local Housing Authority liaise with the receiving district to check whether that Authority has taken any enforcement activity against the landlord. Part 1 of the HWA 2014 covers the requirement for a landlord to be registered. Local Housing Authorities must ensure that any landlords that may be supplying accommodation in the private sector for the purposes of fulfilling or ending a duty under Part 2 of the HWA 2014 are registered under the provisions of Part 1 of the HWA 2014.

Elements of good management

19.47 Part 1 of the HWA 2014 requires that a person who is responsible for the management of a property is licensed under Part 1 of the HWA 2014.

19.48 From 1st December 2022, every contract-holder must be given a 'written statement' of their occupation contract by their landlord. The written statement must include all the terms (the do's and don't's) of the occupation contract. To make it easier for landlords and contract-holders to agree contracts, the Welsh Government has published 'model written statements' on its website. Landlords are not required to use model written statements, so the written statement a landlord gives a contract-holder might look different to the model written statement that is published. However, because the RHWA 2016 says the fundamental and supplementary terms should be written a certain way, even if terms appear in different places in a written statement, they should still be recognisable from the model written statements and the guidance published by the Welsh Government.

19.49 Landlords are required to provide the contract-holder with an address to which they should send any documents that are intended for the landlord within 14 days of any new occupation contract, or any change of address or landlord. The landlord must also provide the contract-holder with an inventory that lists and describes the condition of all the fixtures and fittings as at the occupation date. The inventory must be provided no later than the date by which the written statement must be provided.

Deposit Scheme

19.50 Whilst a Local Housing Authority will not be able to check that a contract-holder's deposit has been placed in a deposit protection scheme prior to them taking the occupation contract, we recommend that Authorities remind prospective landlords and contract-holders of their responsibilities in this area.

19.51 Deposit protection schemes guarantee that contract-holders will get their deposits back at the end of the occupation contract, if they meet the terms of the contract and do not damage the property. Landlords must protect their contract-holders' deposits using a deposit protection scheme for all occupation contracts where a deposit is paid.

19.52 Where a Local Housing Authority provides a deposit as part of its reasonable steps to help to secure or secure accommodation and this deposit is required to be held with one of the deposit protection schemes, the Authority must ensure that the deposit is registered against the Local Authority and not the contract-holder, which should ensure that the resource can be recycled in the future.

Shared Housing

19.53 The same standards apply for assessing suitability for shared housing. Local Housing Authorities should ensure that any offer of accommodation in a house of multiple occupation should be suitable and that the property is appropriately licensed in accordance with Part 2 of the HA 2004.

19.54 Authorities are reminded to take into account the potential risks to applicants who may be accessing shared housing. Chapter 12 contains further details of matters an Authority may wish to consider.

Licensing for Houses in Multiple Occupation

19.55 Accommodation that is in a house of multiple occupation which is subject to licensing under S.55 of the HA 2004 and is not licensed is unsuitable. Accommodation in a house of multiple occupation that is subject to additional licensing under S.56 of the HA 2004 and is not licensed is unsuitable. To confirm whether a property of this type does need a licence, the relevant section of the Local Authority who enforces the licensing regime should be consulted.

Use of Bed and Breakfast Accommodation

19.56 The following paragraphs provide general guidance for the use of Bed and Breakfast accommodation. Specific guidance relating to 16- and 17-year-olds and 18- to 21-year-old Care Leavers can be found in the relevant titled section below.

19.57 The Suitability Order sets out the matters to be considered in determining whether accommodation is suitable for a vulnerable person, thereby restricting the use of Bed and Breakfast ("B&B") accommodation by Local Housing Authorities. It stipulates the minimum standard that accommodation must meet in order to be used as temporary accommodation for homeless households subject to the duties under S.68, S.75 and S.82 of the HWA 2014.

19.58 Local Housing Authorities are encouraged to reduce the use of B&B accommodation wherever possible. B&B accommodation should only be used on an exceptional basis and for a limited period of time for any applicant or their household.

19.59 The Suitability Order places substantial restrictions on the use of B&B accommodation. B&B accommodation will generally afford residents only limited privacy and may lack certain important amenities, such as cooking and laundry facilities. Where there is no other option immediately available it should cater for very short-term stays only.

19.60 Where B&B accommodation is used, Local Housing Authorities are encouraged to take steps to ensure that applicants placed in B&B accommodation are allowed to use their rooms during the day and have adequate access to cooking facilities. If applicants do not wish to take meals provided, a Local Housing Authority may wish to negotiate bed only arrangements. The Welsh Government does not consider accommodation suitable if it is not available for 24 hours a day (with exceptions for routine cleaning).

19.61 If a Local Housing Authority has no other option and has to use B&B accommodation as a short-term arrangement for an applicant, the Authority should ensure that the standard of B&B accommodation meets the statutory requirements for houses in multiple occupation as well as the requirements of the Suitability Order. Local Housing Authorities may wish to consider co-operating with other Authorities in drawing up guidance to monitor conditions and safety standards to assist with performing their obligations.

19.62 Where accommodation is made available outside of the Local Authority area, the placing Local Housing Authority must, by law, notify the host Local Authority with the location and details of the applicant within 14 days of the placement as set out in S.91 of the HWA 2014. However, the Welsh Government strongly recommends that where accommodation is being made available in another local authority area, the placing Local Housing Authority should contact the host area before the placement is authorised, to assist with ensuring the placement is suitable and safe. The Welsh Government encourages the development of out of area placement protocols to help manage this type of scenario.

19.63 The Welsh Government recognises Local Housing Authorities may have different departments arranging short term accommodation for their respective applicants. In such circumstances when an Authority may need to revert to using B&B accommodation, the Authority should have in place a single point of access. This will assist in managing the coordination of all placements by the Local Housing Authority as a way of minimising risk, collecting data on needs and using this to plan alternatives to B&B accommodation.

Additional Guidance for 16- and 17-year-olds and 18- to 21-year-old care leavers and the use of Bed and Breakfast Accommodation.

19.64 The Welsh Ministers intend to see an end of the use of B&B accommodation for single 16- and 17-year-olds whilst encouraging and support the minimisation of the use of this form of temporary accommodation, except in the most exceptional circumstances.

19.65 The Welsh Government highlights placements in B&B accommodation for 16- and 17-year-olds are not normally regarded as suitable. The Welsh Government recommends that pending the ending of placements in B&B accommodation for 16- and 17-year-olds, they should only occur in emergency/temporary accommodation situations.

19.66 The Welsh Ministers recommend that where vulnerable young people including all 16- and 17-year-olds are involved, Local Housing Authorities should have in place a network of suitable provision which can meet all likely need for emergency/temporary accommodation. This may include a mixture of hostels, supported lodgings, supported housing for young people, supported “crashpads”, Nightstop or similar provision. The Local Housing Authority should understand the possible impacts on the young person if B&B accommodation is provided and make every effort to find more suitable emergency accommodation.

19.67 Where B&B accommodation is used for 16- and 17-year-olds, the placement should be signed off by a senior decision maker with a clear plan in place for the individual to be moved to more suitable accommodation as soon as possible, ideally within 48 hours. The Head of Service/Director should be aware which establishments are being used, ensure compliance with the guidance and the Suitability Order in respect of the minimum standard of such accommodation, and ensure that the required provision of support for the young person is in place.

19.68 In such instances where an emergency/temporary placement is made in B&B accommodation for 16- and 17-year-olds and 18- to 21-year old care leavers, this should quickly trigger a multi-agency planning meeting of local agencies, (including Housing, Children’s Services, if relevant Youth Offending Service/CRC/Probation, local supported housing providers, health partners etc.) to agree a planned move to more appropriate accommodation.

19.69 Where any vulnerable young person up to the age of 21 is placed in B&B temporary accommodation, Local Authorities should have clear arrangements in place to provide practical support. This should include, where necessary, financial support for the individual and appropriate mechanisms for the young person to access support when required 24 hours a day.

19.70 If a young person is placed out of their Local Authority area or some distance from their local community, arrangements including travel costs, if necessary, should be made to ensure they are able to continue in education, training or employment and can attend meetings/appointments at the Job Centre.

19.71 The local Social Services Emergency Duty/Out of Hours Homelessness Team should be informed of placements of all 16- and 17-year-olds and care leavers aged 18 to 21 whether or not this placement is through Homelessness or Social Services provisions. The young person should have access to a telephone (free to use) within the establishment in order to contact services should the need arise.

19.72 In relation to emergency placements, regardless of the service area, placing vulnerable 16- and 17-year-olds and care leavers aged 18 to 21 should be provided with basic provisions (such as toiletries) if required on entry to the placement and access to a hot meal during their stay at the B&B accommodation.

Waiting lists

19.73 The use of 'waiting lists' for people who are entitled to accommodation under either s68 or s75 is unlawful. If a s68 (interim duty to secure accommodation for homeless applicants in priority need) or a s75 (duty to secure accommodation for applicants in priority need when the section 73 duty ends) duty is owed, the local authority must secure that suitable accommodation is available for occupation.

Homelessness (Suitability of Accommodation) (Wales) Order 2015

19.74 The Suitability Order was introduced to meet Welsh Government objectives to reduce the use of B&B accommodation for homeless people and to ensure that the form and quality of temporary accommodation meets the needs of the homeless household.

19.75 Although the Suitability Order only applies to the actions Local Housing Authorities take in respect of their duties to homeless people, every endeavour should be made to ensure all temporary accommodation meets a minimum decent standard. A summary of the Suitability Order is provided below in relation to temporary accommodation.

Summary of the Homelessness (Suitability of Accommodation) (Wales) Order 2015

19.76 The Suitability Order provides that in determining whether it would be reasonable for a person in priority need to occupy accommodation and in determining whether accommodation is suitable for a person in priority need who is the applicant, or who is a member of the applicant's household, there shall be taken into account the following matters:

a) the specific health needs of the person;

b) the proximity and accessibility of family support;

c) any disability of the person;

d) the proximity and accessibility of medical facilities or other support services being provided to the person which are essential to their well-being;

e) where the accommodation is situated outside the area of the authority, the distance of the accommodation from the area of the authority

f) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person; and

g) the proximity of an alleged perpetrator of domestic abuse to the accommodation provided.

19.77 Bed and breakfast accommodation is defined as accommodation (whether or not breakfast is included) which meets the following conditions:

- a kitchen is either unavailable to the licensee, or it is available to the licensee but it is shared by people who are not part of the same household, and

- the following amenities are available to the licensee but may be shared by people who are not part of the same household:
    - a toilet,
    - personal washing facilities
- and the second condition is that the accommodation is provided on a commercial basis (i.e. the accommodation is not owned or managed by a community landlord within the meaning of S.9 of the RHWA 2016, a registered charity or a voluntary organisation.

19.78 B&B accommodation is not normally regarded as suitable for families with children, pregnant women and 16- and 17-year-olds. The ages of children are 'highly relevant' to whether an offer of suitable accommodation should be made. The Suitability Order includes two standards for B&B establishments. Restrictions and the application of these standards will depend on the size of the establishment and whether the proprietor resides on the premises.

19.79 A "small'' establishment is defined as one that has 6 or less bedrooms available for letting and where the proprietor is resident on the premises. The time restrictions set out below include, cumulatively, any previous periods of placement in B&B establishments by the Local Housing Authority under a continuing duty to provide temporary accommodation.

Larger establishments (more than 6 bedrooms)

Larger establishments	
Families with children, pregnant women and 16- and 17-year-olds for periods up to a maximum of 2 weeks	Basic standard
Families with children, pregnant women and 16- and 17-year-olds for periods in excess of 2 weeks (14 nights) up to a maximum of 6 weeks	Higher standard
All other households	Basic standard

19.80 In the case of larger establishments, the use of B&B accommodation is restricted to 6 weeks for families with children, pregnant women and 16- and 17-year-olds. A 2-week restriction will apply where establishments do not reach the higher standard.

Smaller establishments (6 bedrooms or less)

19.81 A "small'' establishment is defined as one that has 6 or less bedrooms available for letting and where the proprietor is resident on the premises. In the case of such small establishments, the use of B&B for families with children, pregnant women and

Smaller establishments	
Families with children, pregnant women and 16- and 17-year-olds for periods up to a maximum of 2 weeks	Basic standard Where the Authority decide to offer the choice at 2 weeks, the household must be offered suitable alternative accommodation (where the establishment already meets the higher standard no choice need be offered). If that alternative accommodation is shared it must meet the higher standard.
Families with children, pregnant women and 16- and 17-year-olds for periods in excess of 2 weeks (14 nights) up to a maximum of 6 weeks	Basic or Higher standard (depending on choice of household – see above). At six weeks the household must be offered a further choice, unless the Authority offers the household suitable alternative accommodation. Where the Authority wishes to offer the choice to remain: for families and pregnant women, an offer of suitable self- contained accommodation should be made; for 16- and 17-year-olds an offer of suitable accommodation with support. The household can then choose to stay in their current B&B.
All other households	Basic standard

16- and 17-year-olds may exceed the six week period; however, 2 choice tests must be applied at 2 and 6 weeks if the Authority wishes to allow the household to remain in the accommodation.

19.82 Where the Local Housing Authority owes a duty, the Suitability Order applies the 2- and 6-week limit as outlined in Stage 2 to all priority need groups occupying B&B accommodation. Where the choice to remain is offered to the remaining priority need groups not covered in Stage 2, the alternative accommodation may be any suitable accommodation at 2 and 6 weeks.

19.83 The Higher Standard applies to all types of shared temporary accommodation occupied in excess of 14 nights. Where the property does not meet the higher standard and is owned and managed by a Local Authority or Social Landlord, the Authority may offer the household a choice of remaining in the accommodation after two weeks and up to six weeks, subject to an offer of suitable alternative accommodation which meets the Higher Standard.

The Standards to be applied

19.84 Local Authorities will be expected to inspect all B&B premises used as temporary accommodation for homeless households to ensure they meet the required standard.

Both the basic and higher standards are minimum standards.

Basic Standard means accommodation where:

- All minimum legal requirements are met;
- The manager/ owner is deemed by the Local Authority to be a fit and proper person and can demonstrate their ability to manage B&B accommodations.

Higher Standard means:

- The Basic Standard is met; and
- Physical property and management standards, additional to minimum legal requirements relating to licensing, as set out in the Schedule of the Suitability Order – see below.

Fit and proper person

19.85 S.66 of the HA 2004 sets out the evidence that must be considered in determining whether someone is a fit and proper person to be a licence holder or manager.

19.86 The application of this test is a matter of judgement by the Local Housing Authority, based on all the relevant information. When determining whether the proprietor/ manager is a fit and proper person and their ability to manage the property, the Authority will need information about any problems that have arisen in the past. Relevant convictions do not automatically mean that a person cannot be deemed fit and proper but should be declared. These may be considered alongside matters such as a proprietor having undertaken training or accreditation or a record of engagement with initiatives with the Local Authority to improve the sector. We therefore propose to require that:

a) The proprietor/manager must give information concerning any unspent convictions that may be relevant to his application, including in particular:

    a) Any offence involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003
    b) Any unlawful discrimination on grounds of sex, colour, race, religion, ethnic or national origins or disability in, or in connection with, the carrying on of any business.
    c) Contravention of any provision of the law relating to housing or of landlord and tenant law; (including any civil proceedings that they have lost).
    d) Contravention of any provision of the law relating to health and safety and food safety.

b) They should also reveal whether they have in the last 5 years:

a) Been in control of any property subject to a control order under S.379 of the Housing Act 1985 in the last 5 years.

b) Been refused a licence or had a licence removed for any property in relation to HMO, additional or selective licensing under the HA 2004.

c) Been found to have breached a condition on a licence for any property in relation to HMO, additional or selective licensing under the HA 2004.

d) Been found by a Local Authority to have acted otherwise than in accordance with any Code of Practice approved under S.233 of the HA 2004.

e) Been in control of any property that has been the subject of any proceedings by a Local Authority (such as breaches of the Environmental Protection Act, planning control of compulsory purchase proceedings).

f) Been in control of any property on which the Local Authority has carried out work in default.

g) Been in control of any property which has been the subject of an Interim or Final Management Order or a Special Interim Management Order under the HA 2004.

19.87 The proprietor/manager should also reveal whether any person associated or formerly associated with them (whether on a personal, work or other basis) has done any of the things set out above, where this is relevant to the question of whether the applicant is a fit and proper person to be the manager of the house.

Higher Physical Standards

Room sizes where cooking facilities provided in a separate room/ kitchen	
Floor Area of Room	**Maximum No of Persons**
Not less than 6.5 m2	1 person
Not less than 10.2 m2	2 persons
Not less than 14.9 m2	3 persons
Not less than 19.6 m2	4 persons

1) For the purposes of calculating occupancy numbers and ratios children under 10 count as a ‘half person’.
2) The standards apply only to temporary accommodation where the accommodation is not self-contained.

Space standards for sleeping accommodation

19.88 No sharing of rooms for those of opposite genders over the age of 10, unless they are living together as partners and both are over the age of consent or where a parent or guardian elects to share with an older child.

19.89 All rooms must have a minimum floor to ceiling height of at least 2.1 m over not less than 75% of the room area. Any floor area where the ceiling height is less than 1.5 m shall be disregarded.

19.90 Separate kitchens and bathrooms are unsuitable for sleeping accommodation.

19.91 Habitable rooms and baths or shower rooms shall have a heating system capable of maintaining a minimum temperature of 18°C when the outside temperature is -1° C.

Storage, preparation and cooking of food within the unit

19.92 Food preparation area provided must include;

- Unit accommodating more than one person
- 4 hobs, conventional oven and grill or 2 hobs and a microwave with built in oven and grill.
- Sink and integral drainer with a constant supply of hot water and cold drinking water.
- Storage cupboard minimum capacity 0.2 m3 excluding storage beneath the sink.
- Refrigerator.
- Four 13amp sockets (single or double) over worktop.
- Worktop for food preparation of minimum 1000mm x 600mm.
- A minimum of 1000mm circulation space from facilities to other furniture in the room.

19.93 Room accommodating one person

As above but to have a minimum of 2 hobs.

Storage, preparation and cooking of food in shared facility

Where food preparation areas are shared between more than one household there must be one set of facilities for:

Every 3 family households or fewer.

Every 5 single person households or fewer. (For single person households between 6 and 9 an additional oven or microwave required).

Every 10 persons or fewer where there are both family and single person households within the same premises.

(The food preparation area used by management may be included when calculating the ratio provided it meets the criteria for Shared Food Preparation Areas).

Each set of Shared facilities must include:

As Unit accommodating more than one person above except that:

a) Cooking facilities must consist of 4 hobs, oven, grill and Microwave.

b) Electric kettle and toaster to be provided.

19.94 Where residents have no access to kitchen facilities and the proprietor provides at least a breakfast and evening meal for residents, the requirements for shared kitchen facilities will be deemed to have been met.

19.95 Additional facilities to be provided in each bedroom or within the total accommodation occupied exclusively by each household

- Refrigerator.
- Lockable storage. Alternatively this can be provided elsewhere within the building.
- Toilet and Washing Facilities
- Facilities for exclusive use of occupant or household This must include:
- A bath or shower, wash hand basin with a constant supply of hot and cold water, and water closet either ensuite or in a separate room reserved for the exclusive use of individuals or households.

Shared Facilities

19.96 The number of persons occupying a unit of accommodation with a water closet facility provided for their exclusive use shall not be included in the ratio calculation.

This must include:

a) 1 water closet and wash hand basin with a constant supply of hot and cold water within the building for every 5 households or less and not more than 1 floor away from intended users. For the first 5 households the water closet and wash hand basin can be in the shower or bathroom. All additional water closets and wash hand basins for occupancies of 6 households or more must be in a separate compartment.

b) One bathroom or shower room to be provided for every 5 persons not more than 1 floor distant from intended users.

c) Minimum of 50% of bathing facilities must contain baths suitable for children where children under the age of 10 are accommodated.

19.97 The entrance door to each unit of accommodation must be lockable and be capable of being unlocked from inside without the use of a key.

Common Room (s)

19.98 Every premises must have a common room of minimum 12m2 unless all households have a living area separate from their sleeping area that is available for their exclusive use or the premises are for single person households only.

Higher Management Standard

19.99 Each household should be issued with written ‘house rules’ which should include how sanctions will be applied. This document to be approved by the Local Housing Authority placing homeless households in the premises.

19.100 Each household should be issued with written information relating to the premises including how to operate all installations, for example heating and hot water appliances and fire fighting equipment.

19.101 Written information should be made available to residents relating to the local area including the location or contact details of local facilities, laundrettes, doctors surgeries, schools.

19.102 The Welsh Government would expect residents to have access to their rooms at all times except when rooms are being cleaned or maintained. Provision should be made to accommodate residents at these times.

19.103 Access is allowed for the appropriate officers of the Local Housing Authority in whose area the premises are situated, and officers of any Local Housing Authority placing homeless households in the premises, to inspect the premises as and when they consider necessary, to ensure that the requirements are being complied with; and that the manager will allow such inspections to take place, if necessary without notice.

19.104 Access is allowed for the officers of the area local health board, Local Authority and authorised community workers for the area in which the premises are situated, to visit the occupiers of the premises and interview them in private in the room(s) they occupy.

19.105 A manager with adequate day to day responsibility to ensure the good management of the property can be contacted at all times and that a notice giving the name, address and telephone number of the manager shall be displayed in a readily visible position in the property.

19.106 A clear emergency evacuation plan is in place setting out action upon hearing the fire alarm, escape routes and safe assembly points. The managers must ensure that each person newly arriving at the premises is told what to do in the event of a fire and about fire precautions provided.

19.107 Each household should be issued with a complaint procedure which should detail how to make a complaint. The information should also include where the complainant can obtain further advice and assistance.

20. RIGHT OF AN APPLICANT TO REQUEST A REVIEW OF A DECISION AND APPEAL TO COUNTY COURT

Introduction

20.1 The right of an applicant to request a review is a fundamental part of a balanced system that protects the rights of applicants, while also ensuring that individualised services are made available by Local Housing Authorities. The provisions within the HWA 2014 allow for an applicant to request a review in some circumstances. The review procedure is included in the Homelessness (Review Procedure) (Wales) Regulations 2015 ("the Review Regulations").

20.2 This chapter is broken down into a number of sections in order to provide guidance for Local Housing Authorities and applicants on the process and parameters for undertaking:

- Reviews of decisions under the HWA 2014;
- Appeal to County Court – point of law; and
- Appeal to County Court – refusal to accommodate pending an appeal

Right to request review

The HWA 2014 states

Section 85 – Right to request review

1. An applicant has the right to request a review of the following decisions

   a) A decision of local housing authority as to the applicant's eligibility for help;

   b) A decision of a local housing authority that a duty is not owed to the applicant under section 66, 68, 73 or 75 (duties to applicants who are homeless or threatened with homelessness);

   c) A decision of a local housing authority that a duty owed to the applicant under section 66, 68, 73 or 75 has come to an end (including where the authority has referred the applicant's case to another authority or decided that the conditions for referral are met).

2. Where the duty owed to an applicant under section 73 has come to an end in the circumstances described in section 74(2) or (3), an applicant has the right to request a review of whether or not reasonable steps were taken during the period in which the duty under section 73 was owed to help to secure that suitable accommodation would be available for his or her occupation.

3. An applicant who is offered accommodation in, or in connection with, the discharge of any duty under this Chapter may request a review of the suitability of the accommodation offered to the applicant (whether or not he or she has accepted the offer).

4. There is no right to request a review of the decision reached on an earlier review.

5. A request for review must be made before the end of the period of 21 days (or such longer period as the authority may in writing allow) beginning with the day on which the applicant is notified of the authority's decision.

6. On a request being made to them, the authority or authorities concerned must review their decision.

Guidance

20.3 A Local Housing Authority must review their original decision where an applicant has requested a review of:

a) Any decision of an Authority about the applicant's eligibility for assistance

b) Any decision of an Authority that a duty is not owed under S.66, S.68, S.73 or S.75 of the HWA 2014

c) Any decision of an Authority that a duty under S.66, S.68, S.73 or S.75 of the HWA 2014 has come to an end

d) Whether or not reasonable steps were taken under S.73 duty, if the Authority has decided to end S.73 duty because either (a) the 56-day period has ended or (b) the Authority is satisfied that reasonable steps have been taken before the end of the 56-day period

e) Any decision of an Authority to notify another Authority under S.80 (2) (i.e. a decision to refer the applicant to the other Authority because they appear to have a local connection with that Authority's area and not with the area where they have made the application);

f) Any decision under S.80(5) as to whether the conditions are met for the referral of the applicant's case;

g) Any decision under S.82(3) or (4) (i.e. a decision as to whether the notified Authority or the notifying Authority owe the duty to secure accommodation in a case considered for referral or referred);

h) Any decision of an Authority that accommodation offered in connection with or discharge of a duty under HWA 2014 is suitable

20.4 An applicant can request a review orally or in writing (or both). The request for a review must be made by the applicant or someone acting on their behalf.

20.5 The applicant does not have to use the word ‘review’ when making a review request, but the fact it is a request should be identifiable. Where there is any doubt, a Local Housing Authority should seek clarification and confirmation when they consider an oral request has been made.

20.6 In reviewing a decision, Local Housing Authorities will need to have regard to any information relevant to the period before the decision (even if only obtained afterwards) as well as any new relevant information obtained since the decision.

20.7 An applicant must request a review before the end of 21 days from the date of the original notification of the decision. This includes when applicants request a review of the suitability of accommodation; if accommodation is later deemed to be unsuitable, the applicant should request a fresh decision on its suitability which would trigger a further 21-day window to request a review. In any event, the 21-day deadline can be extended but only as specified by the Local Housing Authority.

Review procedure

The HWA 2014 states

Section 86 – Procedure on review

1. The Welsh Ministers may make provision by regulations as to the procedure to be followed in connection with a review under section 85.

2. Regulations under subsection (1) may, for example,-

a) Require the decision on review to be made by a person of appropriate seniority who was not involved in the original decision, and

b) Provide for the circumstances in which the applicant is entitled to an oral hearing, and whether and by whom the applicant may be represented at such a hearing, and

c) Provide for the period within which the review must be carried out and notice given of the decision.

3. The authority, or as the case may be either of the authorities, concerned must notify the applicant of the decision on the review.

4. The authority must also notify the applicant of the reasons for the decision, if the decision is-

a) To confirm the original decision on any issue against the interests of the applicant, or

b) To confirm that reasonable steps were taken.

5. In any case they must inform the applicant of his or her right to appeal to the county court on a point of law, and of the period within which such an appeal must be made (see section 88).

6. Notice of the decision is not be treated as given unless and until subsection (5), and where applicable subsection (4), is complied with.

7. Notice required to be given to a person under this section must be given in writing and, if not received by that person, is to be treated as having been given if I is made available at the authority's office for a reasonable period for collection by the person or on his or her behalf.

Guidance

20.8 That Welsh Ministers have the power to make regulations in relation to the procedure for a review. The Welsh Ministers exercised this power making the Review Regulations, a link to which is provided below.

The Homelessness (Review Procedure) (Wales) Regulations 2015.

Who may carry out the review?

20.9 A review may be carried out by the Local Housing Authority itself or by someone acting as an agent of the Authority (see the annexes about contracting out). The Review Regulations provide that where the review is to be carried out by an officer of the Local Housing Authority, the officer must not have been involved in the original decision.

20.10 Where the decision under review is a joint decision by the notifying Local Housing Authority and a notified Authority as to whether the conditions of referral of the case are satisfied, Regulation 4 requires that the review should be carried out jointly by the two Authorities. Where the decision under review was taken by a person appointed pursuant to the arrangements set out in the Review Regulations, the review must be carried out by another person appointed under those arrangements.

Presentations

20.11 Applicants must be invited to make representations orally or in writing (or both) in connection with his or her request for a review. The relevant provisions in the HWA 2014 give a person an unfettered right to request a review of a decision, so he or she is not required to provide grounds for challenging the Authority's decision. The purpose of the requirement is to invite the applicant to state his or her grounds for requesting a review (if he or she has not already done so) and to elicit any new information that the applicant may have in relation to his or her request for a review.

20.12 Regulation 2 of the Review Regulations requires the Local Housing Authority to notify the applicant that he or she, or someone acting on his behalf, may make oral or written representations (or both) in connection with the request for a review. The notice should also advise the applicant of the procedure to be followed in connection with the review (if this information has not been provided earlier). Regulation 2 also provides that where the case falls within Regulation 4 (see above), the person appointed must do the same.

Oral hearings

20.13 Regulation 5 provides that in cases where a review has been requested, if the Local Housing Authority, Authorities or person carrying out the review consider that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but they are minded nonetheless to make a decision that is against the applicant's interests on one or more issues, they should notify the applicant:

i) that they are so minded and the reasons why; and

ii) that the applicant, or someone acting on the applicant's behalf, may make further representations, either orally or in writing (or both). Oral representations can be made by telephone or face-to-face, if so requested by the applicant.

It is envisaged that such deficiencies or irregularities would include:

i) failure to take into account relevant considerations and to ignore irrelevant ones;

ii) failure to base the decision on the facts;

iii) bad faith or dishonesty;

iv) mistake of law;

v) decisions that run contrary to the policy of the HWA 2014;

vi) irrationality or unreasonableness; (Wednesbury unreasonableness is the legal test of the level of irrationality or unreasonableness in the exercise of a power or duty that needs to be shown before the courts will intervene); and

vii) procedural unfairness, for example where an applicant has not been given a chance to comment on matters relevant to a decision. The reviewer must consider whether there is "something lacking" in the decision, i.e. were any significant issues not addressed or addressed inadequately, which could have led to unfairness.

Period during which a review must be completed

20.14 Regulation 6 provides that the period within which the applicant must be notified of the decision on review is:

i) eight weeks from the day of the request for a review, where the original decision was made by the Local Housing Authority;

ii) ten weeks, where the decision was made jointly by two Authorities under S.80(5) (a decision whether the conditions for referral are met); and

iii) twelve weeks, where the decision is taken by a person appointed pursuant to Regulation 4.

20.15 The Review Regulations provide that in all of these cases it is open to the reviewer to seek the applicant's agreement to an extension of the prescribed period; any such agreement must be given in writing.

Late representations

20.16 The Review Regulations require the reviewer(s) to consider any oral or written representations received, subject to compliance with the requirement to notify the applicant of the decision on review within the period of the review i.e. the period prescribed in the Review Regulations or any extended period agreed in writing by the applicant. It may in some circumstances be necessary to make further enquiries of the applicant about information he or she has provided. The reviewer(s) should be flexible about allowing such further exchanges, having regard to the time limits for reviews prescribed in the Review Regulations. If this leads to significant delays, the applicant may be approached to agree an extension in the period for the review. Similarly, if an applicant has been invited to make oral representations and this requires additional time to arrange, the applicant should be asked to agree an appropriate extension.

Procedure for review of reasonable steps

20.17 Guidance on working with applicants in setting and agreeing a series of reasonable steps are set out in Chapters 12 and 13.

20.18 The use of reasonable steps at both S.66 and S.73 of the HWA 2014 is intended to be individualised based on the needs of the applicant. Therefore, there is no set formula for the use of reasonable steps, including the level of resources utilised or the balance of responsibilities between the Local Housing Authority and the applicant.

20.19 When a review of the reasonable steps taken is requested, the reviewer(s) should first understand the meaning of 'help to secure' (S.65 of the HWA 2014), which forms the legal basis of the reasonable steps process, as well as the guidance at Chapters 12 and 13.

20.20 The reviewer(s) should then scrutinise the process followed during this stage and the applicant's involvement and agreement to the reasonable steps plan. When considering the appropriateness of the reasonable steps, the reviewer(s) should consider the following:

i) Whether the steps were focused on the individual's key needs;

ii) The Local Housing Authority's local context (i.e. housing stock, demand, etc.);

iii) The timeliness of actions taken and the proactivity of the Authority;

iv) The likely success of the agreed reasonable steps;

v) The cost in terms of both staff time and expenditure to the reasonable steps agreed and or taken during S.66 and S.73 duties;

vi) The reasonableness of the demands and expectations placed on Local Authorities by the applicant;

vii) The contribution by the applicant to supporting the reasonable steps that were, or could have been, taken; and

viii) The capacity of the applicant to undertake the reasonable steps.

20.21 Guidance on how a Local Housing Authority has regard to best use of resources is contained within Chapter 15, but does not prescribe a level of resources per applicant. The core of the process is that the reasonable steps partnership is weighted in proportion to the capacity of the individual. For example, it would be acceptable for a professional to receive less direct support from the Local Housing Authority than a young care leaver. A reviewer should take into consideration the Authority's general level of support and other case studies when considering whether an Authority has made best use of their resources.

20.22 All decisions on review must be based on the facts known at the time of the new decision.

Procedures for review of decisions made under the Decisions on Referrals Order

20.23 Where the original decision under S.80(5) was made by a person appointed pursuant to the Schedule to the Review Regulations, Regulation 3 provides that a review should be carried out by another person appointed by the notifying Local Housing Authority and the notified Authority. This requirement applies even where the original decision was carried out by a person appointed from the panel by the chairman of the Welsh Local Government Association, or his or her nominee. If, however, the two Local Housing Authorities fail to appoint a person to carry out the review within 5 working days of the date of the request for a review, the notifying Authority must request the chair of the Welsh Local Government Association to appoint a person from the panel. The chair, in turn, must within 7 working days of that request appoint a person from the panel to undertake the review. The Authorities are required to provide the reviewer with the reasons for the original decision, and the information on which that decision is based, within 5 working days of his or her appointment.

20.24 Any person thus appointed must comply with the procedures set out in Regulations 2, 3, 4, 5 and 6. Specifically, he or she must invite oral or written representations (or both) from the applicant and send copies of these to the two Authorities, inviting them to respond. The reviewer is also required to notify the two Authorities in writing of his or her decision on review and the reasons for it at least a week before the end of the prescribed period of twelve weeks (or of any extended period agreed by the applicant). This allows the Authorities adequate time to notify the applicant of the decision before expiry of the period.

Notification of decision on review

20.25 Following the completion of the review process, S.86 of the HWA 2014 requires that a Local Housing Authority notifies the applicant in writing of the reasons for their decision where it: confirms the original decision on any issues against the interests of the applicant or confirms that reasonable steps were taken.

20.26 Where the review is carried out jointly by two Local Housing Authorities under S.80(5) of the HWA 2014, or by a person appointed pursuant to the Review Regulations, the notification may be made by either of the two Authorities concerned.

20.27 At this stage, the Local Housing Authority making the notification should advise the applicant of his or her right to appeal to the County Court against a review decision under S.88 of the HWA 2014 and of the period in which to appeal.

Power to Accommodate Pending a Review

20.28 Under S.85 of the HWA 2014, applicants have the right to ask for a review of the Local Housing Authority's decision on a number of issues relating to their case. Broadly speaking, where applicants who request a review of the Authority's decision on their case, the Authority have a power to accommodate them pending a decision on a review, but there is no duty to accommodate pending a review decision.

20.29 In considering whether to exercise their power to accommodate pending a decision on a review, Local Housing Authorities will need to balance, on the one hand, the objective of maintaining fairness between homeless persons in circumstances where they have decided that no duty is owed to them, and, on the other hand, proper consideration of the possibility that the applicant might be right (and the Local Housing Authority wrong) and that to deprive the applicant of accommodation could result in the denial of an entitlement. In weighing the balance, there are certain matters that the Authority will always need to consider (although other matters may also be relevant):

i) The merits of the case itself and the extent to which it could be said that the decision was either one that appears to be contrary to the merits of the case or one that required a very fine balance of judgement that could have gone either way;

ii) Whether any new material, information or argument has been put to the Authority, which could have a real effect on the decision under review; and

iii) The personal circumstances of the applicant and the consequences to him or her of a decision not to exercise the discretion to accommodate.

20.30 For Local Housing Authorities where, generally, only a small proportion of requests for a review are successful, it may be open to the Authority to adopt a policy of deciding to exercise the power to accommodate pending a review only in exceptional circumstances. However, such a policy would need to be applied flexibly, and each case would need to be considered on the particular facts and circumstances. In deciding whether there were exceptional reasons in any particular case, the Local Housing Authority would need to ensure that account was taken of all material considerations and no account taken of any that were immaterial.

20.31 In deciding whether or not to accommodate an applicant pending an appeal, a Local Housing Authority must act reasonably. On an appeal against the Authority's decision not to accommodate, the Court must apply the principles that would be applied by the High Court on an application for judicial review. In effect, this means that the County Court can only test the reasonableness of the decision taken by the Local Housing

Authority; it cannot substitute its own decision as such. However, where the Court quashes the decision of the Authority, it may order the Authority to accommodate the applicant, but only where it is satisfied that failure to do so would substantially prejudice the applicant's ability to pursue the main appeal on the homelessness decision.

Section 87 - Effect of a decision on review or appeal that reasonable steps were not taken

1. Subsection (2) applies where it is decided on review under section 85(2) or on an appeal of a decision under that section that reasonable steps were not taken.

2. The duty in section 73 applies to the applicant again, with the modification that the 56 day period mentioned in subsection (2) of section 74 is to be interpreted as starting on the day the authority notifies the applicant of its decision on review under section 85(2) or, on an appeal, on such date as the court may order.

Effect of a decision on review or appeal that reasonable steps were not taken.

The HWA 2014 states

Guidance

20.32 Where, following the review process, it is determined that reasonable steps have not been taken, the applicant is to be re-admitted to the S.73 stage (duty to help to secure accommodation for homelessness applicants) with the day of the notification of the outcome of the appeal being day 1 in relation to a new 56 day period.

20.33 Details on the process for reviewing the use of reasonable steps is above.

Section 88 – Right of appeal to county court on point of law

1. An applicant who has requested a review under section 85 may appeal to the county court on any point of law arising from the decision or, as the case may be, original decision or a question as to whether reasonable steps were taken if the applicant –

a) Is dissatisfied with the decision on the review, or

b) Is not notified of the decision on the review within the time prescribed under section 86.

2. An appeal must be brought within 21 days of the applicant being notified of the decision or, as the case may be, of the date on which the applicant should have been notified of a decision on review.

3. The court may give permission for an appeal to be brought after the end of the period allowed by subsection (2), but only if it is satisfied –

a) Where permission is sought before the end of that period, that there is a good reason for the applicant to be unable to bring the appeal in time, or

b) Where permission is sought after that time, that there is a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for permission.

4. On appeal the court may make such order confirming, quashing or varying the decision as it thinks fit.

5. Where the authority was under a duty under section 68,75 or 82 to secure that suitable accommodation is available for the applicant's occupation, it may secure that suitable accommodation is so available –

a) During the period for appealing under this section against the authority's decision and

b) If an appeal is brought, until the appeal (and any further appeal) is finally determined.

Section 89 – Appeals against refusal to accommodate pending appeal

1. This section applied where an applicant has the right to appeal to the county court under section 88.

2. An applicant may appeal to the county court against a decision of the authority –

a) Not to exercise their power under section 88(5) ("the section 88(5) power") in the applicant's case.

b) To exercise that power for a limited period ending before the final determination by the county court of the applicant's appeal under section 88(1) ("the main appeal"), or

c) To cease exercising that power before the final determination.

3. An appeal under this section may not be brought after the final determination by the county court of the main appeal.

4. On an appeal under this section the court –

a) May order the authority to secure that suitable accommodation is available for the applicant's occupation until the determination of the appeal (or such earlier time as the court may specify), and

b) must confirm or quash the decision appeal against.

5. In considering whether to confirm or quash the decision the court must apply the principles applied by the High Court on an application for judicial review.

6. If the court quashes the decision it may order the authority to exercise the section 88(5) power in the applicant's case for such period as may be specified in the order.

7. May not specify any period ending after the final determination by the county court of the main appeal.

a) may only be made if the court is satisfied that failure to exercise the section 88(5) power in accordance with the order would substantially prejudice the applicant's ability to pursue the main appeal ;and

b) may not specify any period ending after the final determination by the county court of the main appeal.

Right of appeal to county court on point of law

The HWA 2014 states

And

Guidance

20.34 S.88 of the HWA 2014 provides an applicant with the right of appeal to the County Court on any point of law arising from the decision on the review if:

i) he or she is dissatisfied with the decision on a review, or

ii) he or she is not notified of the decision on the review within the time prescribed in Review Regulations made under S.86 of the HWA 2014.

20.35 In the latter case, an applicant will be entitled to appeal against the original decision. The right of appeal is on a point of law arising from the decision on the review or, as the case may be, the original decision.

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

i) the date on which he or she is notified of the decision on review; or

ii) the date on which he or she should have been notified (i.e. the date marking the end of the period for the review prescribed in the Review Regulations, or any extended period agreed in writing by the applicant).

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

i) (where permission is sought within the 21-day period), that there is good reason for the applicant to be unable to bring the appeal in time; or

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

20.38 On appeal, a County Court is empowered to make an order confirming, quashing or varying the Local Housing Authority's decision as it thinks fit. It is important, therefore, that Authorities have in place review procedures that are robust, fair, and transparent.

20.39 Under S.89 of the HWA 2014, an applicant has the right to appeal to the County Court against a decision of the Local Housing Authority not to secure accommodation for him or her pending the appeal. The applicant can also appeal against a decision of the Authority to secure accommodation for him or her for only a limited period which ends before final determination of the appeal.

20.40 In deciding whether or not to accommodate an applicant pending an appeal, a Local Housing Authority must act reasonably. On an appeal against the Authority's decision not to accommodate, the Court must apply the principles that would be applied by the High Court on an application for judicial review. In effect, this means that the County Court can only test the reasonableness of the decision taken by the Authority; it cannot substitute its own decision as such. However, where the Court quashes the decision of the Local Housing Authority, it may order the Authority to accommodate the applicant, but only where it is satisfied that failure to do so would substantially prejudice the applicant's ability to pursue the main appeal on the homelessness decision.

Powers to accommodate pending an Appeal to County Court

20.41 Under S.88 (5) of the HWA 2014, the Local Housing Authority has a power to accommodate certain applicants during the period for making an appeal, and pending the appeal and any subsequent appeal (until all appeals are finally determined). By S.88(5) of the HWA 2014, Authorities have such a power in respect of applicants who were previously owed a duty to secure accommodation under S.68, S.76(6) or S.82. Authorities also have such power in a case where the applicant was owed a duty under S.75, but have subsequently been found intentionally homeless, the applicant requested a review and subsequently become homeless, and in consequence, the Authority had a power under S.75 to secure accommodation pending the decision on the review.

20.42 The powers under S.88 (5) of the HWA 2014 to accommodate an applicant pending an appeal to the County Court apply whether or not the Local Housing Authority has exercised their power to accommodate the applicant pending a review. In deciding whether to exercise their power to accommodate pending an appeal to the County Court, Local Housing Authorities will need to adopt the same approach, and consider the same factors, as for a decision whether to exercise their power to accommodate pending a review – see above.

Applicant's right to appeal to the County Court against decision not to accommodate

20.43 In deciding whether or not to accommodate an applicant pending an appeal, a Local Housing Authority must act reasonably. On an appeal against the Authority's decision not to accommodate, the Court must apply the principles that would be applied by the High Court on an application for judicial review. In effect, this means that the County Court can only test the reasonableness of the decision taken by the Authority; it cannot substitute its own decision as such. However, where the Court quashes the decision of the Local Housing Authority, it may order the Authority to accommodate the applicant, but only where it is satisfied that failure to do so would substantially prejudice the applicant's ability to pursue the main appeal on the homelessness decision.

Public Services Ombudsman for Wales

20.44 Applicants may complain to the Public Services Ombudsman for Wales if they consider that they have been caused injustice as a result of maladministration or service failure by a Local Housing Authority. The Ombudsman may investigate the way a decision has been made, but may not question the merits of a decision properly reached other than in relation to the provision of health or social care. For example, maladministration could occur where an Authority:

i) took too long to do something;

ii) did not follow their own rules or the law;

iii) broke their promises;

iv) treated the applicant unfairly; and

v) gave the applicant the wrong information.

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

i) matters the applicant knew about more than twelve months before he or she wrote to the Ombudsman or to a councillor, unless the Ombudsman considers it reasonable to investigate despite the delay;

ii) matters about which the applicant has already taken court action against the Authority, for example, an appeal to the County Court under S.88; and

iii) matters about which the applicant could go to court, unless the Ombudsman considers there are good reasons why the applicant could not reasonably be expected to do so.

20.46 Where there is a right of review, the Ombudsman would expect an applicant to pursue the right before making a complaint. Where an applicant has a grievance, the Ombudsman would normally expect the applicant to complain to the Local Housing Authority in the first instance and allow it to have the opportunity to investigate the grievance and, if upheld, put the matter right. If there is any doubt about whether the Ombudsman can look into a complaint, the applicant should seek advice from the Public Services Ombudsman for Wales office.

ANNEXES

Index

ANNEX 1	Scope of Part 6 – Exemptions
ANNEX 2	Amending and Secondary Legislation
ANNEX 3	Indicators of the criteria in the reasonable preference categories
ANNEX 4	European groupings (EU, EEA)
ANNEX 5	How to contact the Home Office's Visa and Immigration Centre
ANNEX 6	Habitual Residence Test
ANNEX 7	Local Connection
ANNEX 8	Ministry of Defence Entitlement Cessation Certificates
ANNEX 9	Contracting Out of Functions under Parts 6 and 7
ANNEX 10	Unacceptable Behaviour / Section 55 RHA 2016 Determinations
ANNEX 11	Occupancy agreements for 16 & 17 year olds
ANNEX 12	Housing Association Regulatory Delivery Outcomes
ANNEX 13	Standard Notification Form Referrals Section 80
ANNEX 14	Shelter Cymru Equal Ground Standard
ANNEX 15	Example Housing Solutions Initial Contact
ANNEX 16	Example Support Needs Assessment Template
ANNEX 17	Example Personal Housing Plan Templates
ANNEX 18	Example Outcome of assessment
ANNEX 19	Example Notice Duties have ended
ANNEX 20	Decision making flow charts S. 66, 73, 68 and 75

ANNEX 1

Scope of Part 6 - Exemptions

1. Part 6 of the 1996 Act (as amended) does not apply to mutual exchanges within an Registered Social Landlord's (RSLs) stock or between Local Authorities and RSLs, for example through the Housing Organisations Mobility and Exchange Services (HOMES) schemes.

Exemptions to Part 1 contained in the Housing Act 1996

2. Section 159(5) of the 1996 Act provides that the provisions of Part 6 do not apply to someone who is already:

a) a secure or introductory tenant unless the allocation involves a transfer of housing accommodation for that person and is made on his or her application:

3. Similarly, s.160 exempts from the provisions of Part 6 cases:

a) where a secure tenant dies, the tenancy is a periodic one, and there is a person qualified to succeed the tenant under s.89 of the Housing Act 1985;

b) where a secure tenant dies and the tenancy is one for a fixed term and therefore remains a secure tenancy by virtue of s.90 of the 1985 Act;

c) where a secure tenancy is assigned by way of exchange under s.92 of the 1985 Act;

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:

s.24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings);

s.17(1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce); or

Paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents),

Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7, to the Civil Partnership Act 2004 (Property adjustment orders in connection with civil partnership proceedings or after overseas dissolution of civil partnership) or

f) where an introductory tenancy:

i) becomes a secure tenancy on ceasing to be an introductory tenancy;

ii) vests under s.133(2) of the 1996 Act (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.

4. In addition, regulation 3 of the Allocation of Housing (Wales) Regulations 2003 provide the provisions of Part 6 of the 1996 Act about the allocation of housing accommodation do not apply in the following cases—

a) where a local housing authority secures the provision of suitable alternative accommodation under section 39 of the Land Compensation Act 1973 (duty to rehouse residential occupiers);

b) in relation to the grant of a secure tenancy under section 554 and 555 of the Housing Act 1985 (grant of tenancy to former owner-occupier or statutory tenant of defective dwelling-house).

ANNEX 2

Amending and Secondary Legislation

Part 6 – Allocations

- The Homelessness Act 2002 The Housing Act 2004
- The Local Authority (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 S.I. 1996/3205
- The Local Housing Authorities (Prescribed Principles for Allocation Schemes) (Wales) Regulations 1997/45
- The Allocation of Housing (Reasonable and Additional Preference) Regulations 1997 S.I. 1997/1902
- The Allocation of Housing (Wales) Regulations 2003 S.I. 2003/239 (W.36) - Regulation 3
- The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 No. 2603 (W.257)
- The Prevention of Social Housing Fraud (Detection of Fraud) (Wales) Regulations 2014 No. 826 (W.84)
- The Anti-social Behaviour, Crime and Policing Act 2014 The Housing (Wales) Act 2014
- Housing Act 1985 (amendment of Schedule 2a) (Serious Offences) (Wales) Order 2016

Part 2 Housing (Wales) Act 2014 – Homelessness

- The Local Authority (Contracting out of Allocation of Housing and Homelessness Functions) Order 1996 [S.I. 1996/3205] – amended by
- The Housing (Wales) Act 2014 (Consequential Amendments) Regulations 2015 [S.I. 2015/752 (W.59)]
- The Homelessness (Decisions of Referrals) Order 1998 [S.I. 1998/1578] The Immigration and Asylum Act 1999
- Section 117 (as amended by the Homelessness Act 2002) Schedule 14 para.116
- Schedule 15 para.13
- The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 [S.I. 2014/2603 (W.257)]
- Part 2 of, and Schedule 2 to, The Housing (Wales) Act 2014
- The Homelessness (Suitability of Accommodation) (Wales) Order 2015 [S.I.2015/1268 (W.87)]
- The Homelessness (Review Procedures) (Wales) Regulations 2015 [S.I. 2015/1266 (W.86)]
- The Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015 [S.I. 2015/1265 (W.85)]

ANNEX 3

Indicators of the criteria in the reasonable preference categories

- Local authorities may devise their own indicators of the criteria in the reasonable preference categories in section167 (2) of the 1996 Act (as amended). The following list is included for illustrative purposes and to assist authorities in this task: it is by no means comprehensive or exhaustive, and local 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 with a particular need for settled accommodation on medical or welfare grounds (criteria may apply to any member of the household)

- A mental illness or disorder
- People with a physical or sensory impairment People with learning difficulties
- Chronic or progressive medical conditions (e.g. MS, HIV/AIDS) Infirmity due to old age
- The need to give or receive care
- The need to recover from the effects of violence or threats of violence, or physical, emotional or sexual abuse
- The need to recover from the effects of racist incidents 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 Recovery from alcohol/drug problem

ANNEX 4

European groupings (EU, EEA)

1. Countries within the European Union (EU)

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Croatia.

2. Countries within the European Economic Area (EEA)

All EU countries, plus Iceland, Norway and Liechtenstein. Nationals of Switzerland have been given the same rights as EEA nationals. In this guidance, reference to 'EEA nationals' means all of the foregoing, including Switzerland.

3. The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014

Definition of worker, regulation 2(2) of the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014

"Worker" has the same meaning as for the purposes of the definition of a "qualified person" in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006. The definition in the EEA regulations provides for certain circumstances where people will retain their worker status if they are temporarily unemployed.

6 "Qualified person"

1) In these Regulations, "qualified person" means a person who is an EEA national and in the United Kingdom as—

    a) a jobseeker;

    b) a worker;

    c) a self-employed person;

    d) a self-sufficient person; or

    e) a student.

2) [Subject to [regulations 7A(4) and 7B(4)], a person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—]

    a) he is temporarily unable to work as the result of an illness or accident;

    b) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom for at least one year, provided that he—

        i) has registered as a jobseeker with the relevant employment office; and

        ii) satisfies conditions A and B;]

c) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided that he—

i) has registered as a jobseeker with the relevant employment office; and

ii) satisfies conditions A and B;]

d) he is involuntarily unemployed and has embarked on vocational training; or

e) he has voluntarily ceased working and embarked on vocational training that is related to his previous employment.

2A) A person to whom paragraph (2)(ba) applies may only retain worker status for a maximum of six months.]

3) A person who is no longer in self-employment shall not cease to be treated as a self-employed person for the purpose of paragraph (1)(c) if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident.

4) For the purpose of paragraph (1)(a), a “jobseeker” is a person who satisfies conditions [A, B and, where relevant, C].

5) Condition A is that the person—

a) entered the United Kingdom in order to seek employment; or

b) is present in the United Kingdom seeking employment, immediately after enjoying a right to reside pursuant to paragraph (1)(b) to (e) (disregarding any period during which worker status was retained pursuant to paragraph (2)(b) or (ba)).

6) Condition B is that the person can provide evidence that he is seeking employment and has a genuine chance of being engaged.

7) A person may not retain the status of a worker pursuant to paragraph (2)(b), or jobseeker pursuant to paragraph (1)(a), for longer than [the relevant period] unless he can provide compelling evidence that he is continuing to seek employment and has a genuine chance of being engaged.]

8) In paragraph (7), “the relevant period” means—

a) in the case of a person retaining worker status pursuant to paragraph (2)(b), a continuous period of six months;

b) in the case of a jobseeker, [91] days, minus the cumulative total of any days during which the person concerned previously enjoyed a right to reside as a jobseeker, not including any days prior to a continuous absence from the United Kingdom of at least 12 months.

9)(9) Condition C applies where the person concerned has, previously, enjoyed a right to reside under this regulation as a result of satisfying conditions A and B—

a) in the case of a person to whom paragraph (2)(b) or (ba) applied, for at least six months; or

b) in the case of a jobseeker, for at least [91] days in total, unless the person concerned has, since enjoying the above right to reside, been continuously absent from the United Kingdom for at least 12 months.

10) Condition C is that the person has had a period of absence from the United Kingdom.

11) Where condition C applies—

a) paragraph (7) does not apply; and

b) condition B has effect as if “compelling” were inserted before “evidence”.]

ANNEX 5

How to contact the Home Office's UK Visas and Immigration Centre

1. The Home Office's UK Visa and Immigration Centre will exchange information with local 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 UK Visas and Immigration Centre will provide a service to local authorities to confirm the immigration status of an applicant from abroad (Non Asylum Seekers). In order to take advantage of the service, local authorities will need to email them at EvidenceandEnquiry@homeoffice.gsi.gov.uk

3. Registration details required by the UK Visa and Immigration Centre's Local Authorities Team are;

a) Name of enquiring local authority,

b) Job title/status of officer registering on behalf of the local authority,

c) Names of local authority staff and their respective job titles/status who will be making enquiries on behalf of the local authority.

4. In cases where the UK Visa and Immigration Centre indicate that the applicant may be an asylum seeker, enquiries of their status can be made via the UK Visas and Immigration Centre at www.gov.uk.

ANNEX 6

THE HABITUAL RESIDENCE TEST

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

DEFINITION OF HABITUALLY RESIDENT

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

GENERAL PRINCIPLES

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

- the test focuses on the fact and nature of residence;
- a person who is not resident somewhere cannot be habitually resident there.

Residence is a more settled state than mere physical presence in a country. To be resident a person must be seen to be making a home. It need not be the only home or a permanent home but it must be a genuine home for the time being.

For example, a short stay visitor or a person receiving short term medical treatment is not resident;

- the most important factors for habitual residence are the length, continuity and general nature of actual residence rather than intention;
- the practicality of a person’s arrangements for residence is a necessary part of determining whether it can be described as settled and habitual;
- established habitual residents who have periods of temporary or occasional absence of long or short duration may still be habitually resident during such absences.

ACTION ON RECEIPT OF AN APPLICATION

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

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

Factors to consider

5. The applicant's stated reasons and intentions for coming to the UK will be relevant to the question of whether he or she is habitually resident. If the applicant's stated intention is to live in the UK, and not return to the country from which they came, that intention must be consistent with their actions.

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

Why has the applicant come to the UK?

7. If the applicant is returning to the UK after a period spent abroad, and it can be established that the applicant was previously habitually resident in the UK and is returning to resume his or her former period of habitual residence, he or she will be immediately habitually resident.

8. In determining whether an applicant is returning to resume a former period of habitual residence authorities should consider:

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

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

Applicant is joining family or friends

10. If the applicant has come to the UK to join or rejoin family or friends, authorities should consider:

- has the applicant sold or given up any property abroad?

- has the applicant bought or rented accommodation or is he or she staying with friends?
- is the move to the UK intended to be permanent?

Applicant's plans

11. Authorities should consider the applicant's plans, e.g.:

- if the applicant plans to remain in the UK, is the applicant's stated plan consistent with his or her actions?
- were any arrangements made for employment and accommodation (even if unsuccessful) before the applicant arrived in the UK?
- did the applicant buy a one-way ticket?
- did the applicant bring all his or her belongings?
- is there any evidence of links with the UK, e.g. membership of clubs?

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

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

Length of residence in another country

14. Authorities should consider the length and continuity of an applicant's residence in another country:

- how long did the applicant live in the previous country?
- does the applicant have any remaining ties with his or her former country of residence?
- has the applicant stayed in different countries outside the UK?

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

Centre of interest

16. An applicant is likely to be habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland, despite spending time abroad, if his or her centre of interest is located in one of these places.

17. People who maintain their centre of interest in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland, for example a home, a job, friends, membership of

clubs, are likely to be habitually resident there. People who have retained their centre of interest in another country and have no particular ties with the UK, the Channel Islands, the Isle of Man or the Republic of Ireland, are unlikely to be habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland.

18. Authorities should take the following into account when deciding the centre of interest:

- home;
- family ties;
- club memberships;
- finance accounts

19. If the centre of interest appears to be in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland but the applicant has a home somewhere else, authorities should consider the applicant's intentions regarding the property.

20. In certain cultures, e.g. the Asian culture, it is quite common for a person to live in one country but have property abroad that they do not intend to sell. Where such a person has lived in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland for many years, the fact that they have property elsewhere does not necessarily mean that they intend to leave, or that the applicant's centre of interest is elsewhere.

ANNEX 7

Local Connection under Section 81 of the Housing (Wales) Act 2014

1. Under s.167(2A) of the 1996 Act, allocation schemes may contain provision for determining priorities for reasonable/additional preference categories. The factors that may be taken into account in determining priorities include any local connection (within the meaning of s. 81 of the Housing (Wales) Act 2014) which exists between a person and the authority's area.

2. There is no set period that an applicant has to live in an area to be regarded as having a local connection. Local Authorities need to consider all the circumstances and decide whether the applicant is clearly settled and if not, whether they have a clear connection elsewhere.

3. Section 81 provides as follows:

i) A person has a local connection with the area of a local housing authority in Wales or England if the person has a connection with it—

a) because the person is, or in the past was, normally resident there, and that residence is or was of the person's own choice,

b) because the person is employed there,

c) because of family associations, or

d) because of special circumstances.

ii) Residence in an area is not of a person's own choice if the person, or a person who might reasonably be expected to reside with that person, becomes resident there because the person is detained under the authority of an enactment.

iii) The Welsh Ministers may by order specify circumstances in which—

a) a person is not to be treated as employed in an area, or

b) residence in an area is not to be treated as of a person's own choice.

iv) A person has a local connection with the area of a local housing authority in Wales or England if the person was (at any time) provided with accommodation in that area under section 95 of the Immigration and Asylum Act 1999 (support for asylum seekers).

v) But subsection (5) does not apply—

a) to the provision of accommodation for a person in an area of a local housing authority if the person was subsequently provided with accommodation in the area of another local housing authority under section 95 of that Act, or

b) to the provision of accommodation in an accommodation centre by virtue of section 22 of the Nationality, Immigration and Asylum Act 2002 (use of accommodation centres for section 95 support).

4. In assessing whether an applicant's household has a local connection with their area, an authority should also consider whether any person who might reasonably be expected to live with the applicant has such a connection.

Ex-service personnel

5. S.81 does not prevent allows service personnel from establishing a local connection with the area in which they are serving, or have served.

Ex-prisoners

6. Residence in prison does not itself establish a local connection with an area. However, any period of residence in accommodation prior to imprisonment may give rise to a local connection.

No local connection anywhere

7. If an applicant, or anyone who might reasonably be expected to live with him or her, has no local connection with any area in Great Britain, then the duty to secure accommodation will rest with the authority to which his or her application has been made. This may apply to people who have had an unsettled way of life for many years.

ANNEX 8

Ministry of Defence Entitlement Cessation Certificates

Certificate A

	MINISTRY OF DEFENCE	Mod Form 1166 Introduced 4/03 (Updated 9/10)

CERTIFICATE OF CESSATION OF ENTITLEMENT TO OCCUPY SERVICE ACCOMMODATION (SLA / SSSA) AND OF IMPENDING HOMELESSNESS

I certify that	(Name)	
	(Rank & Number)	
Of	(Unit)	
Will cease to be entitled to occupy	(Address of SLA or Substitute SLA)	
From	(Date)	

By reason of loss of entitlement to occupy Service Accommodation.

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

The person has the following special circumstances.....

.....

Signed: .....

Name: .....

Designation: .....

Date: .....

UNIT ADMIN OFFICE STAMP

1. This certificate provides evidence of impending homelessness arising from cessation of entitlement to occupy Single Living Accommodation or Substitute Single Service Accommodation.

2. The certificate should be completed by the Unit Admin Officer and sent at the earliest possible date to the Housing Authority / Association to which application for accommodation has been made, preferably as soon as it is known that entitlement to occupy Service Accommodation will cease.

3. A period of at least six months notice should normally be allowed so that the appropriate arrangements can be made.

4. Copies of this form are published in the Homelessness Code of Guidance for Local Authorities, issued by DCLG July 2006 (Annex 15), Welsh Assembly and Scottish Executive.

Certificate B

	MINISTRY OF DEFENCE	Mod Form Introduced 4/03 (Updated 7/09)

CERTIFICATE OF CESSATION OF ENTITLEMENT TO OCCUPY SERVICE FAMILY ACCOMMODATION (SFA/SSFA) AND OF IMPENDING HOMELESSNESS

I certify that	(Name)	
	(Rank & Number) #	
Of	(Unit) #	
(# Omit if only family involved)		
Will cease to be entitled to occupy	(Address of SFA or Substitute SFA)	
From	(Date)	

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

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

The following special circumstances apply .....

.....

The household is as follows .....

.....

Signed: .....

Name: .....

Designation: .....

Date: .....

DE OPS HOUSING STAMP

1. This certificate provides evidence of impending homelessness arising from cessation of entitlement to occupy Service Family Accommodation or Substitute Service Family Accommodation and should dispense with the need to obtain a Court Order for possession.

2. The certificate should be completed by the Licences Officer of Defence Estates Operations Housing and sent at the earliest possible date to the Housing Authority/Association to which application for accommodation has been made, preferably as soon as it is known that entitlement to occupy Service Families Accommodation will cease.

3. A period of at least six months notice should normally be allowed so that the appropriate arrangements can be made.

4. Copies of this form are published in the Homelessness Code of Guidance for Local Authorities, issued by DCLG July 2006 (Annex 15), Welsh Assembly and Scottish Executive.

ANNEX 9

Contracting Out of Functions under Part 6 of the Housing Act 1996 and Part 2 of the Housing (Wales) Act 2014

The Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 (SI 1996 No. 3205) enables local authorities to contract out certain functions under Parts 6 and 7 of the Housing Act 1996. Part 7 of the 1996 Act has now been superseded by Part 2 of the Housing (Wales) Act 2014 and the Order has been amended so that it is updated to reflect the new Act. This was done by the Housing (Wales) Act 2014 (Consequential Amendments) Regulations 2015. Contracting out of allocation schemes under these provisions often arises where a local authority has transferred its stock to an RSL. 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 local authority.

Part 6 (Allocations) Functions which may not be contracted out

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 for inspection at the authority's principal office.

Allocation Functions which may be contracted out under Part 6

The functions in Part 6 that may be contracted out under the Order include:

i) making enquiries and reaching decisions in individual cases whether persons are or are not eligible persons;

ii) carrying out reviews of decisions;

iii) providing information to applicants; and

iv) making individual allocations in accordance with the allocation scheme.

Contracting out or reviewing existing contracted out schemes

Local authorities that have contracted out their Part 6 functions cannot rely on the contracted agency reviewing the scheme. The local authority must take decisions about how it will revise its scheme to take account of the current law and then amend or agree a new contract with its agency.

Local authorities that are reviewing or agreeing contracts should ensure that their agreement includes:

i) arrangements for monitoring and performance targets,

ii) requirements to provide the local authority with information it needs to carry out its strategic housing function,

iii) provisions to review and amend the scheme in the light of changing circumstances (e.g. changes in demand or legislation),

iv) the requirement to manage the allocations scheme in accordance with Parts 1 and 2 of this Code of Guidance and the authority's homelessness strategy.

Homelessness Functions that must not be contracted out under Part 2 of the Housing (Wales) Act 2014

Schedule 2 to the Order lists the functions in Part 7 of the 1996 Act and Part 2 of the 2014 Act that may not be contracted out:

i) giving various forms of assistance to people providing advice and information about homelessness and the prevention of homelessness to people in the area (Part 7 only);

ii) giving assistance to voluntary organisations concerned with homelessness (Part 7 only);

iii) co-operating with another local authority by rendering assistance in the discharge of their homelessness functions.

Homelessness Functions that may be contracted out under Part 2

The functions in Part 7 of the 1996 Act and Part 2 of the 2014 Act (as applicable) that may be contracted out under the Order include:

iv) making arrangements to secure that advice and information about homelessness, and the prevention of homelessness, is available free of charge within the authority's district;

v) making inquiries about and deciding a person's eligibility for assistance;

vi) making inquiries about and deciding whether any duty, and, if so, what duty is owed to a person under Part 7 or Part 2 as applicable;

vii) handling referrals to another local authority;

viii) carrying out reviews of decisions.

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 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 authority. Any subsisting contract is to be treated as having been repudiated in these circumstances;

v) shall not prevent the authority from themselves exercising the functions to which the contract relates.

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.

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.

Large Scale Voluntary Transfer

Local 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. Nomination arrangements between the transferring authority and the transfer RSL must reflect the requirement that nominations of assured tenancies must be to eligible persons in accordance with the authority's allocation scheme.

A transferring authority may contract to the transfer RSL a range of functions under Parts 6 and 7 of the 1996 Act, and Part 2 of the 2014 Act as permitted under the Order, or they may participate in a common register with other landlords. The requirement in s.167(7) of the 1996 Act to consult RSLs and every private registered provider of social housing before adopting or altering their allocation scheme will be particularly important in the case of a transferring authority.

The Welsh Government is aware that some local authorities have already delegated the operation of their allocations and homelessness functions either voluntarily or under compulsory competitive tendering. Where such contracts

have already been awarded to external contractors (including delegations to Tenant Management Organisations), the contractor must be made aware of the provisions of Parts 6 and 7 of the 1996 Act and Part 2 of the 2014 Act and advised how the legislation and this guidance may apply to them. Functions of an operational or administrative nature may also have been delegated or contracted out to transfer landlords or registered social landlords: they, too, must be made aware of these provisions and of the guidance.

ANNEX 10

Unacceptable Behaviour Section 55 Renting Homes (Wales) Act 2016

S.160A(8) of the HA 1996 provides that the only behaviour which can be regarded as unacceptable for these purposes is behaviour by the applicant (or by a member of his or her household) that would - if the applicant had been a contract-holder of the Local Housing Authority at the time – have breached s.55 of the RHWA 2016 regarding antisocial behaviour (ASB) and other prohibited conduct.

55Anti-social behaviour and other prohibited conduct

1. The contract-holder under an occupation contract must not engage or threaten to engage in conduct capable of causing nuisance or annoyance to a person with a right (of whatever description)—

a) to live in the dwelling subject to the occupation contract, or

b) to live in a dwelling or other accommodation in the locality of the dwelling subject to the occupation contract.

2. The contract-holder must not engage or threaten to engage in conduct capable of causing nuisance or annoyance to a person engaged in lawful activity—

a) in the dwelling subject to the occupation contract, or

b) in the locality of that dwelling.

3. The contract-holder must not engage or threaten to engage in conduct—

a) capable of causing nuisance or annoyance to—

i) the landlord under the occupation contract, or

ii) a person (whether or not employed by the landlord) acting in connection with the exercise of the landlord's housing management functions, and

b) that is directly or indirectly related to or affects the landlord's housing management functions.

4. The contract-holder may not use or threaten to use the dwelling subject to the occupation contract, including any common parts and any other part of a building comprising the dwelling, for criminal purposes.

5. The contract-holder must not, by any act or omission—

a) allow, incite or encourage any person who is living in or visiting the dwelling to act as mentioned in subsections (1) to (3), or

b) allow, incite or encourage any person to act as mentioned in subsection (4).

6. This section is a fundamental provision which is incorporated as a term of all occupation contracts; section 20 provides that this section—

a) must be incorporated, and

b) must not be incorporated with modifications.

ANNEX 11

Occupancy agreements for 16 & 17 year olds

Following the making of the Homeless Persons (Priority Need) (Wales) Order 2001 in the spring of 2001, which gave 16 & 17 year olds a priority need for accommodation if they are homeless, local authorities should be aware of the following issues of legality and good practice in housing minors. The provisions of this Order are now contained in section 70 of the Housing (Wales) Act 2014.

It would not be appropriate for the Welsh Government to provide definitive legal advice on this matter, since the local authority must be satisfied that it is acting in a proper manner and should therefore seek its own legal advice.

However, the Welsh Government provides the following guidance on law and practice by way of assistance:

In principle, housing applications by minors should be considered on the same basis as other applications. A minor cannot hold a legal estate in land (s.1(6) of the Law of Property Act 1925), but this does not restrict a minor from acquiring an “equitable” interest. Since 1997 any attempt to convey a legal estate to a minor operates as a declaration that the property is held on trust in favour of the minor (Trusts of Land & Appointment of Trustees Act 1996, Schedule 1, paragraph 1[1]). Simply, the authority (as landlord) would hold the property as trustee on behalf of the minor.

However, there is nothing preventing the minor from having a right of occupation of the property, subject to any obligations attached to an agreement. Further, unless s/he repudiates the tenancy within a reasonable time after reaching the age of 18, s/he will be bound by it (Davies v Beynon-Harris [1931] 47 T.L.R. 424).

An equitable tenancy would only apply where the occupier is granted exclusive possession of any part of the premises. In the case of Kingston-upon-Thames Borough Council-v-Prince [1999] 1 FLR 593 it was held that a minor could succeed to a statutory tenancy under s.87 of the Housing Act 1985 (“the 1985 Act”).

However, this only applies to local authorities and not RSLs.

A local authority can grant a licence to a minor, particularly if the person is only occupying part of a premises. Section 79(3) of the 1985 Act provides the same security to licence to occupy a dwelling house as it given to a tenancy.

Both an equitable tenancy and a licence would be considered as a contract of necessity and may be enforceable against the minor. Local authorities would be able to enforce any rental and other covenants against the minor, provided that the property is the minor’s only or principal home. Authorities could insert an appropriate clause into the agreement. However, a minor cannot take or defend legal proceedings and therefore the court would appoint a “litigation friend”, normally a Guardian ad litem.

ANNEX 12

Housing Association Regulatory Delivery Outcomes

The Welsh Government's Regulatory Framework for Housing Associations Registered in Wales issued under Part 1 of the Housing Act 1996, aims to ensure that Housing Associations provide good quality homes and services to tenants and others who use their services. It does this by ensuring that each association is well governed, financially viable and delivering high quality services. All Housing Associations are expected to carry out a regular self assessment which evaluates their performance on service delivery, governance and finance and proposes improvement action. Self assessments should be based on delivery outcomes, developed in partnership with the social housing sector. Delivery outcomes set out how associations fund and manage their business to deliver outcomes for tenants and communities and how Associations deliver efficient and effective services as landlords. Delivery outcomes focus on what is being achieved not how it is being achieved and on the difference that a Housing Association is making to its tenants and services users, not its strategies, processes and activities.The delivery outcomes that directly relate to this Code are:

- We make it easy for people to understand what to expect from our services and how to access them.
- We communicate information and advice in an appropriate, timely, effective manner, readily understood by the communities we serve.
- We value and are responsive to the views of the people who want to use our services.
- We are accountable to our tenants and service users.
- We engage with all relevant parties and organisations, embrace the principles of partnership working to enhance our delivery.
- We have strong relationships with local authorities in the geographical areas where we operate, that enables us to find effective solutions to local issues, and improve outcomes for communities.
- Our work supports the local authority in the delivery of its strategic housing role.
- We ensure that our adapted homes are available to those who need them.
- We work with other organisations to prevent and alleviate homelessness.
- We ensure that access to our homes is fair and open, and we work with others to ensure routes into housing are well publicised, easy to understand and simple to use. We give reasonable preference to those in greatest housing need or are homeless, maximising choice and sustaining communities.

ANNEX 13

STANDARD NOTIFICATION FORM REFERRAL SECTION 80 HOUSING (WALES) ACT 2014

A NOTIFYING AUTHORITY DETAILS

Contact Name .....

Authority .....

Telephone Number ..... Fax Number .....

E-mail .....

Address for Correspondence .....

.....

.....

B APPLICANT DETAILS

Name of Main Applicant ..... Date of Birth .....

Current Address .....

.....

.....

C FAMILY MEMBERS

Name	Relationship	Date of Birth
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

D ADDRESSES IN LAST 5 YEARS (include dates and type of tenure)

.....

.....

.....

.....

.....

.....

E PRESENT/PREVIOUS EMPLOYMENT DETAILS

Employer ..... Tel No .....

Address .....

.....

Contact Name ..... Job Title .....

Previous Employer .....

Date from ..... Date to .....

Address .....

.....

F REASONS FOR HOMELESSNESS

.....

.....

.....

.....

G INTENTIONALITY (indicate why applicant has been deemed unintentionally homeless)

.....

.....

.....

.....

H PRIORITY NEED CATEGORY

.....

I LOCAL CONNECTION DETAILS

.....

.....

.....

.....

.....

J WISHES OF THE APPLICANT(S) (in the context of the referral)

.....

.....

.....

.....

K REASON FOR THE REFERRAL

.....

.....

.....

.....

L ANY SUPPLEMENTARY INFORMATION (attach supporting documentation if relevant)

.....

.....

.....

.....

I confirm that, in accordance with S80 Housing (Wales) Act 2014, I do not consider any member of the household to be at risk of domestic or other abuse through this referral

Signed ..... Date .....

ANNEX 14

SHELTER CYMRU EQUAL GROUND STANDARD

The Equal Ground Standard is a tool for embedding person-centred principles in frontline homelessness services. It has been designed by service users in order to help further the aims of Part 2 of the Housing (Wales) Act 2014.

The Equal Ground Standard can be accessed HERE.

ANNEX 15

HOUSING SOLUTIONS FIRST CONTACT ASSESSMENT

Name:		**D.O.B:**	
Address:			
Postcode		**NI No:**	
Email			
Ethnic Origin			
Nationality			
Dates Resident at Address		**All Contact Tel Numbers : (Tick Safe to Contact ☐)**	Tel: Mobile: Work:
Type of Property			
Partners Name:			

Other Household Members Name(s)	**DOB & Nat Ins No.**

Current Tenure (Please tick)		Homeowner		Council Tenant
		Housing Association		Private Rented
		Prison		HM Forces
		Living with family/ friends		
		Other please specify:		

Reason for Requesting Housing Assistance from Any County Council (Please tick)		Threatened with homelessness within 56 days
		Homeless
		Medical, welfare or disability need, mental health, substance misuse
		Leaving armed forces
		Care leaver
		Under occupying/overcrowding in current accommodation
		Fleeing violence

		Financial hardship/ property unaffordable
		Unsatisfactorily housing conditions
		Anti social behaviour
		Other please specify:
Household Income (per week/ month): **Total amount of savings:**		
Additional Information (include any vulnerabilities/support form other services)		

Office Use Only

Action Taken or Referred to:		Housing Register		Supporting People Gateway
		Affordable Housing Register		Housing Options
		Home Swapper		Environmental Health
		No further action		Private Sector Team/ Bond
		Neighbourhood Housing		Environmental Health
		SLA/PRS Agency		Other
Notes				
Officer				
Date				

ANNEX 16

SUPPORT ASSESSMENT

Which of the following applies to you? ***(please tick all that apply)***			
Suffering from Domestic Abuse / Violent Relationship		Person with learning difficulties	
Person with mental health issues		Older Person	
Person with drug dependency issues		Refugee with support needs	
Person with alcohol dependency issues		Young single homeless person who requires support or young person leaving care	
Ex-offender / Criminal Justice		Family at risk of homelessness due to anti social behaviour (ASB)	
Person with a chronic Illness (including HIV, AIDS)		Vulnerable single parent who requires support	
Person with a Physical Disability or Sensory Impairment			

Support Requirements (*please tick all that apply)*			
Life skills / maintaining a tenancy		Setting up a new home	
Tenancy issues (neighbour dispute, rent arrears, ASB etc.)		Budgeting / debt etc.	
Advice / Assistance to claim Welfare benefits		Education / employment	
Completing forms / dealing with correspondence		Support networks (relationships)	
Children / parenting skills		Accessing appropriate services	
Health issues		Others – please specify	

Current Support – Do you have contact with any of the following?					
Home Carer		District Nurse		Psychologist / Psychiatrist	
Support Worker		Health Visitor		CPN	
Social Worker		Occupational Therapist		YOT / Probation	
Other (please specify)..					
What would you like to achieve through support? (Include any other additional information)					

ANNEX 17

PERSONAL HOUSING PLAN

We saw you today as you have a housing problem and wanted our help. We want to do everything we can to make sure you do not lose your home and this plan confirms the actions that we have agreed to help resolve your housing issue.

Please show this plan, if you wish to, to your relatives, friends, or any other agencies that may be supporting you so that they are aware of how we are trying to help you. If they know your problem and the actions we have suggested they might be able to help you resolve your housing problem.

Applicant(s)	
Reason for Homelessness	
Advice Given/Options Available	
Action/reasonable steps to be taken by Housing Officer:	
Action/reasonable steps to be taken by applicant(s)	

We will review this plan on the **/**/****

I confirm that this is an accurate summary of my housing options interview and I understand the options available to me and any action I need to take

Signed:_____
__

Housing Options Officer :_____
Date:_____

ANNEX 18

Example decision letters Notice of outcome of assessment

Section 63 of the Housing (Wales) Act 2014

(All references to Sections are to sections in the Housing (Wales) Act 2014)

Dear

Under Section 63, I am required to provide you with this notice informing you of the outcome of the assessment carried out under the duty in Section 62 that has been carried out following your application to this Local Authority for help in obtaining or retaining accommodation and it appeared that you may be homeless or threatened with homelessness in accordance with the definitions contained in Section 55.

We have carried out the appropriate enquiries into the circumstances which led to your application and these included having regard to:

The Welsh Ministers' Code of Guidance: Homelessness Your Application Details

Notes from the interviews between yourself and the Council's Housing Team Support Information

Medical Information

The outcome of the assessment is as follows:

Following the assessment of your circumstances, housing and support needs we are satisfied that you are eligible for assistance and are threatened with homelessness within the next 56 days.

As a result of this assessment this Local Authority owes you a duty under Section 66.

This Authority accepts it has a duty to help to prevent you from becoming homeless.

This duty will end in the event that you do become homeless, if this is the case we will review your case and you may be owed further assistance duties under section 73 (Duty to help to secure accommodation for homeless applicants).

This duty can also end in the event that you are no longer threatened with homelessness, this could mean that alternative suitable accommodation has been offered for you which you accept or refuse or we are satisfied that you have suitable accommodation available to you that is likely to last for 6 months.

This duty will also end should you cease to be eligible for assistance, withdraw your application, if the Authority is satisfied that the duty should not be owed as a result of a mistake of fact or the Authority is satisfied that you have unreasonably failed to co-operate with us as we try to help you from becoming homeless.

This Local Authority will now take reasonable steps to help you to avoid becoming homeless.

We will write to you informing you when this duty has been brought to an end and the reasons for this duty ending.

Under Section 85 you have a right to have your case reviewed regarding any decisions that are made on your case and the duties owed to you.

If you would like to exercise your right to review please contact us within 21 days from the date of this letter.

Yours sincerely

Mr H Solutions

ANNEX 19

Notice that duties have ended

Dear

Notice that a Duty has ended

Section 84 Housing (Wales) Act 2014

(ALL references to Sections are to sections in the Housing (Wales) Act 2014)

We are writing to inform you that the duty to help to secure accommodation, under section 73, which we owed to you has come to an end.

The Authority accepted this duty under Section 73 after carrying out an assessment in accordance with Section 62 on [DATE] and notified you that this particular duty was owed on [DATE].

The Authority considers that this duty has come to an end in accordance with [Section 74(X)]/[Section 79(X)] (delete as appropriate)

(Insert the reason for ending the duty here and that the Authority has had regard to the Welsh Ministers' Code of Guidance: Homelessness)

(If the reason is either Section 74(2) or 74(3) please set out here if the applicant is now owed the duty under Section 75, if not please set out the reasons why, such as not in priority need under Section 70 or intentionally homeless as defined section 77)

(Alternatively the LA may not have decided that the duty is or is not owed under Section 75.)

[The Local Authority is now reviewing your assessment and we are considering whether or not you will be owed a further duty under Section 75. Section 75 is a duty to secure accommodation. We will write to you about this separately.]

In accordance with Section 84(2) I am required to inform you of the steps we have taken to help to secure accommodation. ***(This only applies to Sections 74(2) or 74(3))***

The Steps taken are as follows

(Here list the steps and dates action was taken, along with outcomes of the action)

Now that this duty has been brought to an end, you can still access advice via a service provided in accordance with the provisions under Section 60. This provision of advice can be accessed below

(Enter contact details of the service here and opening / closing times)

If do not agree with the decisions contained within this letter you are entitled to ask for your case to be reviewed in accordance with Section 85.

Independent housing advice is available at (Enter details of national or local advice agency). If you are considering requesting a review you may wish to contact the above agency for further advice and support in relation to your request.

You have 21 days to request a review from the date you have been notified of the decision.

If you have any questions please contact:

The Council

Town Hall

Wales

Tel:xxxxxxxxxx

Email: Housing@Council.gov.uk

Yours Sincerely

Mr H Solutions

Section 84 Housing (Wales) Act 2014 (Notice that Duties have ended)

ALL Sections refer to Housing (Wales) Act 2014

Ending Section 66 duty including moving to Section 73 duty

We are writing to inform you that the duty to help to prevent your homelessness owed to you under Section 66 has come to an end.

The Authority accepted this duty after carrying out an assessment in accordance with Section 62 on [DATE] and notified you that this particular duty was owed on [DATE].

The Authority considers that this duty has come to an end in accordance with [Section 67(X)] /[Section 79(X)] (delete as appropriate)

(enter reason here including having regard to the code of guidance)

THE FOLLOWING APPLIES TO CASES THAT BECOME HOMELESS

*As you have now become homeless in accordance with the definitions contained with Section 55, the Authority has reviewed your assessment.

Under Section 63 I am notifying you that the Authority is satisfied you are eligible and homeless. In arriving at this decision we have had regard to

The Welsh Ministers' Code of Guidance: Homelessness

Your Application Details

Notes from your interviews

Support Information

Medical Information

This Authority now owes you a duty under Section 73 to help to secure accommodation. This duty can last up to a maximum of 56 days but may be ended anytime before day 57 should you refuse or accept an offer of suitable accommodation or unreasonably fail to cooperate with us as we try to help you secure accommodation.

The Local Authority can also end this duty should we feel that we have taken all reasonable steps to help to secure accommodation before the end of the 56 day period which starts from the date of this letter.

In the event that you remain homeless at the end of the 56 days or you remain homeless and the Authority considers it has taken all reasonable steps before the end of 56 days we will review your assessment to consider if any further duties are owed to you.*

You can still access general advice regarding homelessness regardless is the council owes you a duty via a service provided in accordance with the provisions under section 60. This provision of advice can be accessed below

(Enter contact details of the service here and opening / closing times)

If do not agree with the decisions contained within this letter you are entitled to ask for your case to be reviewed in accordance with Section 85.

Independent housing advice is available at *(Enter details of national or local advice agency).* If you are considering requesting a review you may wish to contact the above agency for further advice and support in relation to your request.

You have 21 days to request a review from the date you been notified of this decision.

If you have any questions please contact:

The Council

Town Hall

Wales

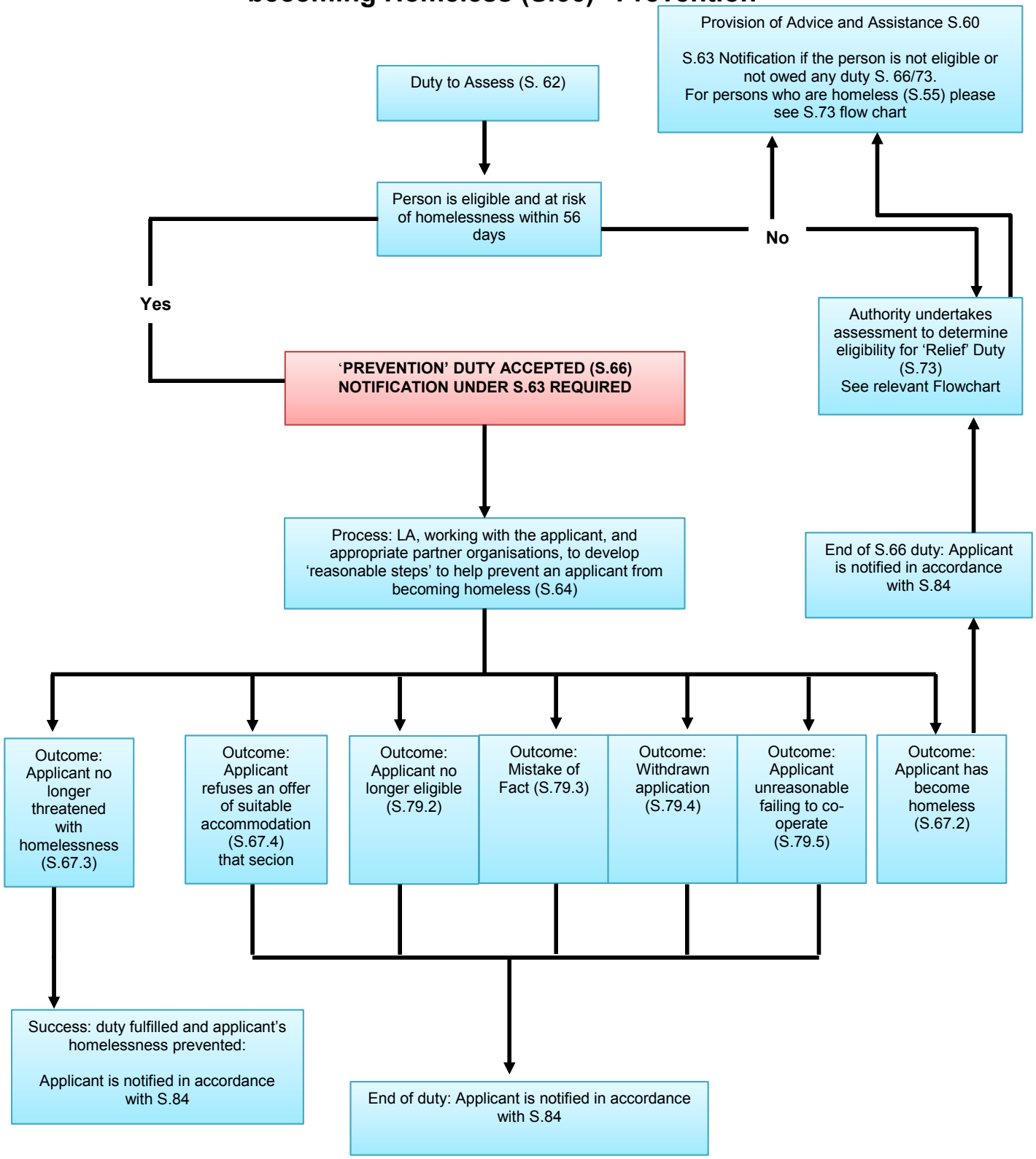
Tel:xxxxxxxxxx

Email: Housing@Council.gov.uk

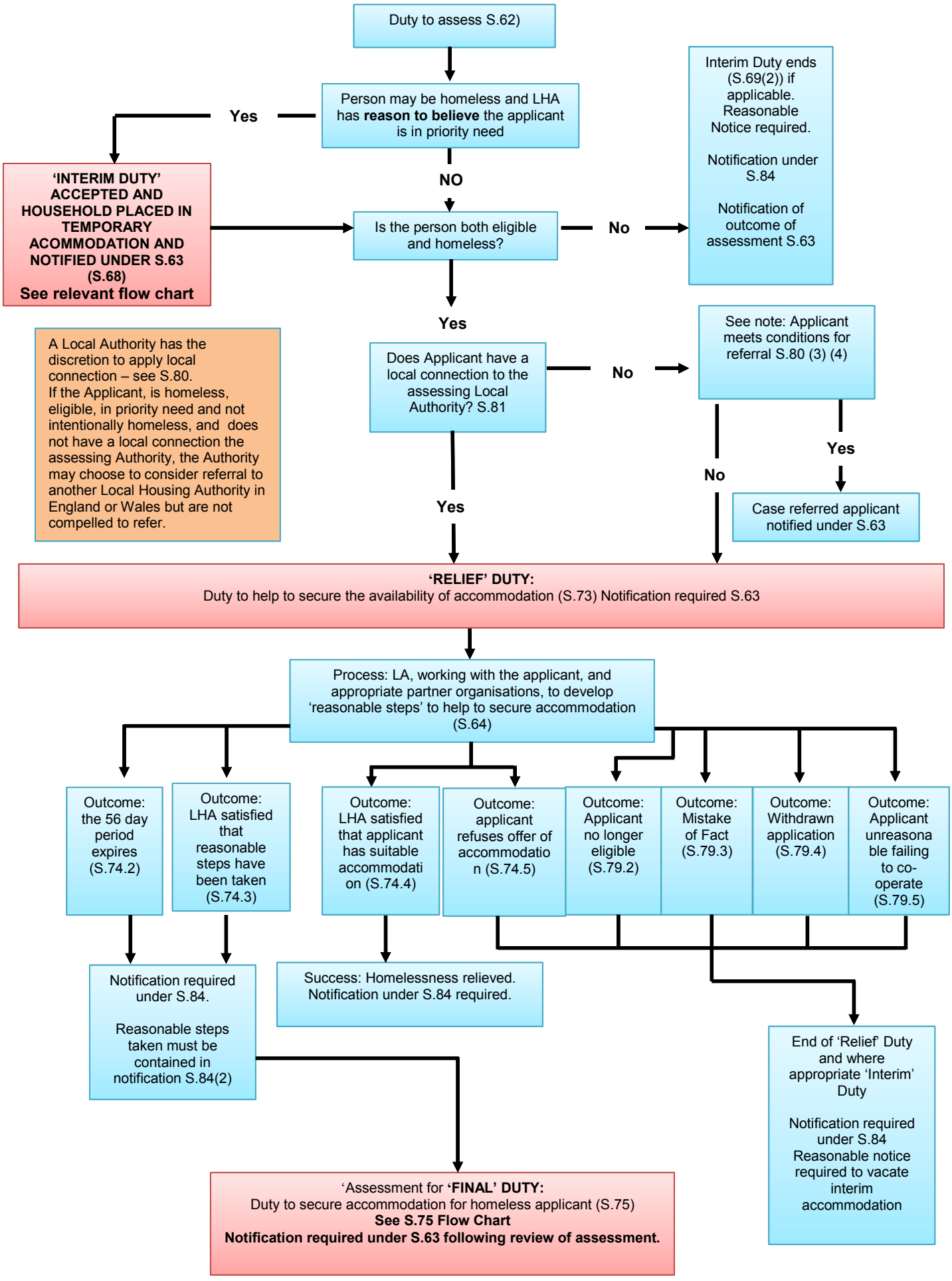
Yours Sincerely

Mr H Solutions

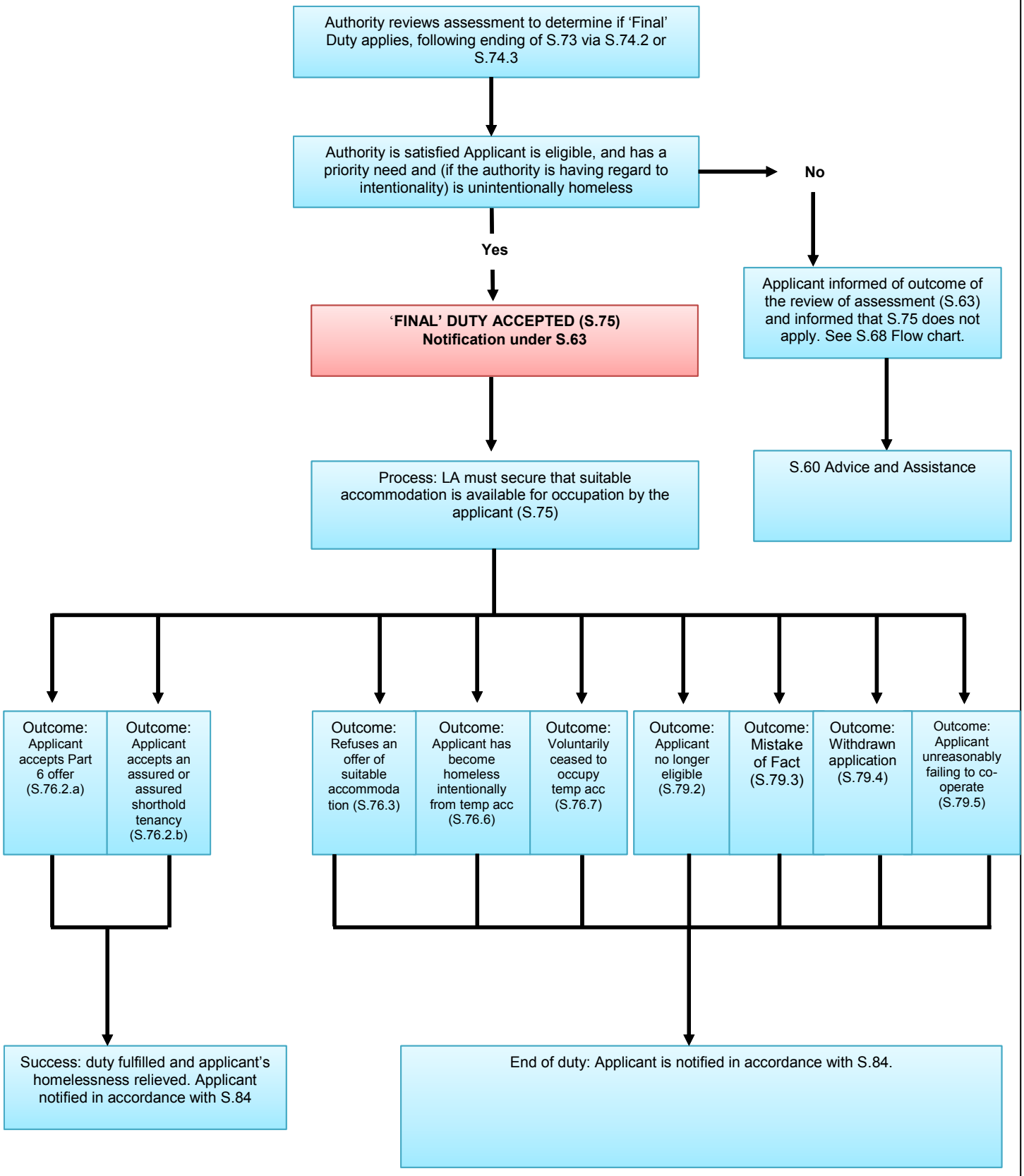
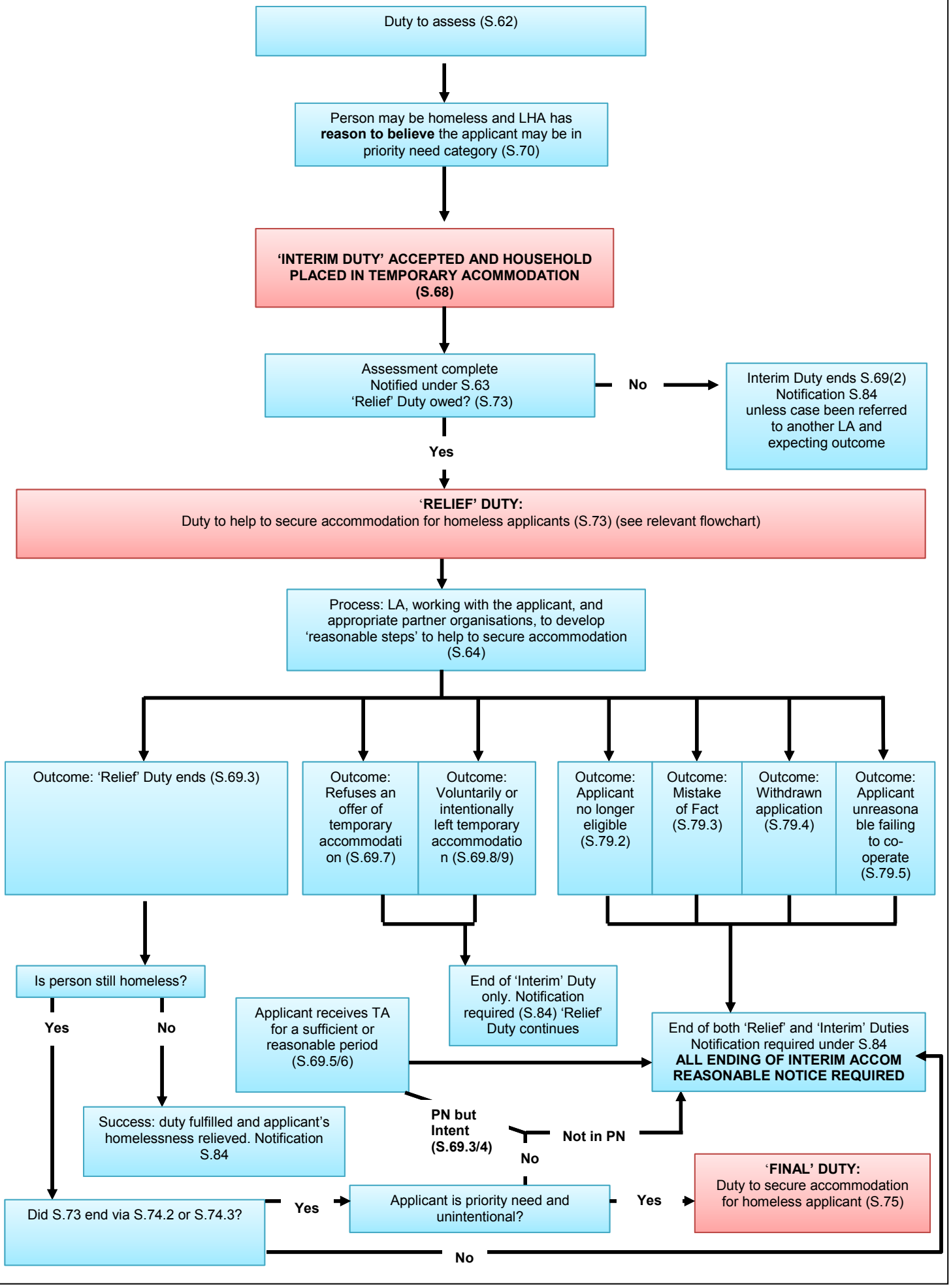
Housing (Wales) Act 2014 – Duty to Help to Prevent an Applicant from becoming Homeless (S.66) "Prevention"



- Housing (Wales) Act 2014 – Duty to help to secure accommodation for homeless applicants (S.73)"Relief Duty"



. Housing (Wales) Act 2014 –Duty to secure accommodation for applicants in priority need when the duty in S.73 ends - S.75 "Final Duty"



Housing (Wales) Act 2014 – Interim Duty to Accommodate… (S.68)