**HOUSING LAW PRACTITIONERS’ ASSOCIATION**

**SUITABILITY AND PRIVATE RENTED SECTOR OFFERS**

**THE NEW RULES**

Materials

1. Law:
   1. **Part 7 Housing Act 1996** as amended by ss.148 – 149 Localism Act 2011 (see Appendix);
   2. **Homelessness (Suitability of Accommodation) (England) Order 2012**, SI 2012/2601;
   3. **Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012, SI 2012/2601 (8 November 2012)** DCLG;
2. Commentary:
   1. *Homelessness and Allocations*, Arden, Orme and Vanhegan (LAG);
   2. *Housing Allocation and Homelessness*, Luba and Davies (Jordans).

Jurisdiction

1. LA 2011 amendments only in force for applications to local housing authorities in England. In Wales, the **Code of Guidance for Local Authorities Allocation of Accommodation and Homelessness** (Welsh Government, August 2012) states:

“*The Localism Act 2011 contains provisions which, when commenced will remove the qualifying conditions for offers of private sector accommodation in both England and Wales. The Welsh Government has not yet decided to commence the Act*.” (para 16.35).

Commencement

1. See **The Localism Act 2011 (Commencement No 2) and Transitional Provisions) (England) Order 2012** SI 2012/2599.
2. In general, for applications to local housing authorities in England made on or after **9 November 2012**.
3. But note transitional provision at Reg 3:

*“The amendments made by sections 148 and 149 of the Act do not apply to a case where–*

*(a) a person (“the applicant”) has applied to a local housing authority for accommodation, or for assistance in obtaining accommodation, under Part 7 of the 1996 Act; and*

*(b) a duty of the local housing authority to secure that accommodation is available for the applicant’s occupation under Part 7 of the 1996 Act(3) including on an interim or temporary basis has arisen and has not ceased,*

*before the commencement date*.”

**CHANGES**

Amendments to s.193 ie to the main housing duty

1. See paras 9 – 29 of the **Supplementary Guidance**, which reminds local housing authorities that the ability to make private rented sector offers is a power, not a duty (para 14).
2. Section 193(3A) is repealed. The local housing authority is no longer under any obligation to give the applicant a coy of the statement in the allocation scheme on choice. See paras 16 – 17 **Supplementary Guidance**.
3. New wording for s.193(5): end of duty as a result of refusal of s.193(2) offer. See paras 18 – 19 **Supplementary Guidance**.
4. Section 193has been amended to remove the words “*in a restricted case”* at section 193(7AA) and replace the words “*private accommodation offer”* with “*private rented sector offer”*. See paras 23 – 29 **Supplementary Guidance**.
5. This enables local housing authorities to bring the main housing duty to an end by an offer of a suitable assured shorthold tenancy, whether it is accepted or refused. The old provisions which dealt with ‘qualifying offers’ will no longer be needed and have been repealed.
6. To be a “private rented sector offer” the offer must be —
   1. it is an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant's occupation,
   2. 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 this section to an end, and
   3. the tenancy being offered is a fixed term tenancy (within the meaning of Part 1 of the Housing Act 1988) for a period of at least 12 months (s.193(7AC).
7. For the duty to come to an end as a result of a refusal of a private rented sector offer, the authority must have informed the applicant in writing of:
   1. The possible consequence of refusal or acceptance of the offer; and
   2. That the applicant has the right to request a review of the suitability of the accommodation; and
   3. (except for restricted cases), the effect under s.195A of a further application to a local housing authority within two years of acceptance of the offer (s.193(7AB).
8. The current double check contained in section 193(7F) - that accommodation offered in order to end the main housing duty must be *both* suitable for the applicant and reasonable for him/her to accept –is amended by the removal of the second condition. [Although the modified section 193(8) protects the applicant who cannot extricate themselves from a current contractual commitment in order to accept the offer]. This will potentially give local authorities greater flexibility in making offers which serve to bring the duty to an end but note the **Supplementary Code of Guidance’s** advice that those issues are relevant to the decision on suitability of the offer (at para 22).
9. Section 202(1) is amended so that any decision of a local housing authority as to the suitability of a private rented sector offer can be subject to a request for a review (s.202(1)(g)). This means that the applicant can accept the offer and request a review of its suitability. What happens if the review is successful?

Private rented sector offer

1. Defined at s.193(7AC) above.
2. Must be suitable for the needs of the applicant and of his or her household (see Sally Morshead paper). Note that includes that it must be affordable (**Homelessness (Suitability of Accommodation) Order 1996**, SI 1996/3204).
3. Reg 2 of the **Homelessness (Suitability of Accommodation) (England) Order 2012** on location applies to all offers of accommodation made under **Part 7 Housing Act 1996**.
4. Specifically for private rented sector offers, the local housing authority must be satisfied that each of the 10 mattes set out at Reg 3 **Homelessness (Suitability of Accommodation) (England) Order 2012** is met.

The special provisions if re-application within two years

1. To meet concerns about the possible early failure of private sector tenancies which have brought the duty to an end, there is a new section 195A in these terms allowing the section 193 duty to be resurrected if an applicant applies as homeless again within two years (even if the applicant no longer has priority need but provided that s/he has not become homeless intentionally). See paras 30 – 33 **Supplementary Guidance**.
2. Note the very specific application at s.195(1A). The special provisions only apply if:
   1. A new application is made by the person who accepted the private rented sector offer;
   2. On a date up to and including two years from the date of acceptance of the private rented sector offer
3. The application can be made to any local housing authority.
4. In these circumstances, except where the applicant is a restricted case, the main housing duty will apply without the applicant having to have a priority need. The tests of homelessness, eligibility and becoming homeless intentionally still apply.
5. If the applicant is threatened with homelessness, the duty at s.195 will apply without the applicant having to have a priority need.
6. In addition, and also except where the applicant is a restricted case, an applicant is deemed to be:
   1. threatened with homelessness at the date when a valid s.21 notice is served; and
   2. homeless at the date at the date for possession in the notice (see paras 37 – 39 **Supplementary Guidance**).
7. A new section 188(1A) ensures that interim accommodation is provided to the non-priority applicants to whom new section 195A may apply pending the outcome of the re-application.
8. The conditions for referral provisions in section 198 are amended to enable the return of those who become homeless again within 2 years of the private sector placement (s.198(2ZA)). These conditions apply irrespective of local condition but note that the local housing authority retains a discretion at s.198(1) whether or not to refer.
9. Note that these special provisions apply only once (s.195A(6)).

The new issues

1. Suitability of accommodation: tension between affordability, location and any other reason why accommodation may or may not be suitable.
2. Applicants who accept a private rented sector offer are no longer owed a homelessness duty and therefore do not have reasonable preference for an allocation by virtue of being homelessness (s.166A(3)(a)) or being owed a Part 7 duty (s.166A(3)(b)). It would be expected that they are not, initially at least, housed in insanitary, overcrowded or unsatisfactory housing conditions and so they are unlikely to have any reasonable preference for an allocation.
3. The concern is a revolving door of applicants housed in minimum term private rented sector offers and consequent fresh applications for homelessness assistance.

**Liz Davies**

**Garden Court Chambers**

**15 January 2012**

**APPENDIX**

**relevant provisions of Part 7 Housing Act 1996**

**as amended**

Interim duty to accommodate

Interim 188 duty to accommodate in case of apparent priority need

(1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him under the following provisions of this Part.

But [(1A) if the local housing authority have reason to believe that the duty under section 193(2) may apply in relation to an applicant in the circumstances referred to in section 195A(1), they shall secure that accommodation is available for the applicant's occupation pending a decision of the kind referred to in subsection (1) regardless of whether the applicant has a priority need.]2

(2) The duty under this section arises irrespective of any possibility of the referral of the applicant’s case to another local housing authority (see sections 198 to 200).

(3) The duty ceases when the authority’s decision is notified to the applicant, even if the applicant requests a review of the decision (see section 202).

The authority may [secure]1 that accommodation is available for the applicant’s occupation pending a decision on a review.

Amendment

1 Word substituted: Homelessness Act 2002, s 18(1), Sch 1, paras 2, 8.

2 Sub-section inserted: Localism Act 2011, s 149(1), (2), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012. SI 2012/2599.

For England only: Transitional provisions, SI 2012/2599; The amendments made by sections 148 and 149 of the Act do not apply to a case where—(a) a person (‘the applicant’) has applied to a local housing authority for accommodation, or for assistance in obtaining accommodation, under Part 7 of the 1996 Act; and (b) a duty of the local housing authority to secure that accommodation is available for the applicant’s occupation under Part 7 of the 1996 Act including on an interim or temporary basis has arisen and has not ceased, before the commencement date.

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Duty to persons with priority need who are not homeless intentionally

(1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally.

…1

(2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.

[(3) The authority are subject to the duty under this section [in a case which is not a restricted case]2 until it ceases by virtue of any of the following provisions of this section.]3

*[(3A) The authority shall, on becoming subject to the duty under this section, give the applicant a copy of the statement included in their allocation scheme by virtue of section 167(1A) (policy on offering choice to people allocated housing accommodation under Part 6).]*4, 15

In [(3B) this section ‘a restricted case’ means a case where the local housing authority would not be satisfied as mentioned in subsection (1) without having had regard to a restricted person.]5

(4) …6

*(5) The local housing authority shall cease to be subject to the duty under this section if the applicant, having been informed by the authority of the possible consequence of refusal [and of his right to request a review of the suitability of the accommodation],*7 *refuses an offer of accommodation which the authority are satisfied is suitable for him and the authority notify him that they regard themselves as having discharged their duty under this section.*

The [(5) local housing authority shall cease to be subject to the duty under this section if –

(a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant,

(b) that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer, and

(c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section.]16

(6) The local housing authority shall cease to be subject to the duty under this section if the applicant –

(a) ceases to be eligible for assistance,

(b) becomes homeless intentionally from the accommodation made available for his occupation,

(c) accepts an offer of accommodation under Part 6 (allocation of housing), or

[(cc) accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord,]8

(d) otherwise voluntarily ceases to occupy as his only or principal home the accommodation made available for his occupation.

[(7) The local housing authority shall also cease to be subject to the duty under this section if the applicant, having been informed of the possible consequence of refusal [or acceptance]17 and of his right to request a review of the suitability of the accommodation, refuses a final offer of accommodation under Part 6.

(7A) An offer of accommodation under Part 6 is a final offer for the purposes of subsection (7) if it is made in writing and states that it is a final offer for the purposes of subsection (7).]9

[(7AA) *In a restricted case*18 the authority shall also cease to be subject to the duty under this section if the applicant, having been informed [in writing]19 of the matters mentioned in subsection (7AB) –

(a) accepts a *private accommodation offer* [private rented sector offer],20 or

(b) refuses such an offer.

(7AB) The matters are –

(a) the possible consequence of refusal [or acceptance]21 of the offer, and

(b) that the applicant has the right to request a review of the suitability of the accommodation[, and

(c) in a case which is not a restricted case, the effect under section 195A of a further application to a local housing authority within two years of acceptance of the offer.]22

(7AC) For the purposes of this section an offer is a *private accommodation offer* [private rented sector offer]23 if –

(a) it is an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become, 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 this section to an end, and

(c) the tenancy being offered is a fixed term tenancy (within the meaning of Part 1 of the Housing Act 1988) for a period of at least 12 months.

(7AD) In a restricted case the authority shall, so far as reasonably practicable, bring their duty under this section to an end as mentioned in subsection (7AA).]10

*[(7B) The authority shall also cease to be subject to the duty under this section if the applicant accepts a qualifying offer of an assured shorthold tenancy which is made by a private landlord in relation to any accommodation which is, or may become, available for the applicant’s occupation.*

*(7C) The applicant is free to reject a qualifying offer without affecting the duty owed to him under this section by the authority.*

*(7D) For the purposes of subsection (7B) an offer of an assured shorthold tenancy is a qualifying offer if –*

*(a) 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 this section to an end;*

*(b) the tenancy being offered is a fixed term tenancy (within the meaning of Part 1 of the Housing Act 1988 (c 50)); and*

*(c) it is accompanied by a statement in writing which states the term of the tenancy being offered and explains in ordinary language that –*

*(i) there is no obligation to accept the offer, but*

*(ii) if the offer is accepted the local housing authority will cease to be subject to the duty under this section in relation to the applicant.*

*(7E) An acceptance of a qualifying offer is only effective for the purposes of subsection (7B) if the applicant signs a statement acknowledging that he has understood the statement mentioned in subsection (7D).*24

(7F) The local housing authority shall not –

(a) make a final offer of accommodation under Part 6 for the purposes of subsection (7); [or]25

[(ab) approve a *private accommodation offer* [private rented sector offer]26;]11 *or*

*(b) approve an offer of an assured shorthold tenancy for the purposes of subsection (7B),*27

unless they are satisfied that the accommodation is suitable for the applicant and that *it is reasonable for him to accept the offer* [subsection (8) does not apply to the applicant]28.]12

*(8) For the purposes of [subsection (7F)]13 an applicant may reasonably be expected to accept an offer …14 even though he is under contractual or other obligations in respect of his existing accommodation, provided he is able to bring those obligations to an end before he is required to take up the offer.*

This [(8) subsection applies to an applicant if –

(a) the applicant is under contractual or other obligations in respect of the applicant’s existing accommodation, and

(b) the applicant is not able to bring those obligations to an end before being required to take up the offer.]29

(9) A person who ceases to be owed the duty under this section may make a fresh application to the authority for accommodation or assistance in obtaining accommodation.

The [(10) appropriate authority may provide by regulations that subsection (7AC)(c) is to have effect as if it referred to a period of the length specified in the regulations.

Regulations (11) under subsection (10) –

(a) may not specify a period of less than 12 months, and

(b) may not apply to restricted cases.

In (12) subsection (10) ‘the appropriate authority’ –

(a) in relation to local housing authorities in England, means the Secretary of State;

(b) in relation to local housing authorities in Wales, means the Welsh Ministers.]30

Amendment

1 Words repealed: Homelessness Act 2002, s 18(2), Sch 2.

2 Words inserted: Housing and Regeneration Act 2008, s 314, Sch 15, Pt 1, paras 1, 5(1), (2), with effect from 2 March 2009 (except in relation to applications for an allocation of social housing or housing assistance (homelessness) or for accommodation made before that date) (SI 2009/415, art 2).

3 Sub-section substituted: Homelessness Act 2002, s 6(1); for transitional provision see s 6(2) thereof.

4 Sub-section inserted: Homelessness Act 2002, s 18(1), Sch 1, paras 2, 13.

5 Sub-section inserted: Housing and Regeneration Act 2008, s 314, Sch 15, Pt 1, paras 1, 5(1), (3), with effect from 2 March 2009 (except in relation to applications for an allocation of social housing or housing assistance (homelessness) or for accommodation made before that date) (SI 2009/415, art 2).

6 Sub-section substituted (by sub-section (3)): Homelessness Act 2002, s 6(1); for transitional provision see s 6(2) thereof.

7 Words inserted: Homelessness Act 2002, s 8(1).

8 Sub-section inserted: Homelessness Act 2002, s 7(1), (2); for transitional provision see s 7(6) thereof.

9 Sub-sections substituted: Homelessness Act 2002, s 7(1), (3); for transitional provision see s 7(6) thereof.

10 Sub-sections inserted: Housing and Regeneration Act 2008, s 314, Sch 15, Pt 1, paras 1, 5(1), (4), with effect from 2 March 2009 (except in relation to applications for an allocation of social housing or housing assistance (homelessness) or for accommodation made before that date) (SI 2009/415, art 2).

11 Words inserted: by the Housing and Regeneration Act 2008, s 314, Sch 15, Pt 1, paras 1, 5(1), (6). Date in force: 2 March 2009 (except in relation to applications for an allocation of social housing or housing assistance (homelessness) or for accommodation made before that date): see SI 2009/415, art 2

12 Sub-sections inserted: Homelessness Act 2002, s 7(1), (4); for transitional provision see s 7(6) thereof.

13 Words substituted: Homelessness Act 2002, s 7(1), (5); for transitional provision see s 7(6) thereof.

14 Words repealed: Homelessness Act 2002, ss 7(1), (5), 18(2), Sch 2; for transitional provision see s 7(6) thereof.

15 Sub-section (3A) repealed: Localism Act 2011, ss 148(1), (2), 237, Sch 25, Pt 22, with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012. SI 2012/2599.

16 Sub-section (5) in italics substituted by subsection (5) in square brackets: Localism Act 2011, s 148(1), (3), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012. SI 2012/2599.

17 Words inserted: Localism Act 2011, s 148(1), (4), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

18 Words repealed: Localism Act 2011, ss 148(1), (5)(a), 237, Sch 25, Pt 22, with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

19 Words inserted: Localism Act 2011, s 148(1), (5)(b), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

20 Words in italics substituted by those in square brackets: Localism Act 2011, s 148(1), (5)(c), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

21 Words inserted: Localism Act 2011, s 148(1), (6)(a), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

22 Paragraph inserted: Localism Act 2011, s 148(1), (6)(b), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

23 Words in italics substituted by those in square brackets: Localism Act 2011, s 148(1), (7), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

24 Sub-sections (7B) to (7E) repealed: Localism Act 2011, ss 148(1), (8), 237, Sch 25, Pt 22, with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

25 Word inserted: Localism Act 2011, ss 148(1), (9)(a), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

26 Words in italics substituted by words in square brackets: Localism Act 2011, ss 148(1), (9)(b), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

27 Paragraph and the word ‘or’ repealed: Localism Act 2011, ss 148(1), (8), 237, Sch 25, Pt 22, with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

28 Words in italics substituted by words in square brackets: Localism Act 2011, ss 148(1), (9)(d), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

29 Sub-section (8) in italics substituted for that in square brackets: Localism Act 2011, ss 148(1), (10), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

30 Sub-sections inserted: Localism Act 2011, ss 148(1), (11), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

For England only: Transitional provisions, SI 2012/2599; The amendments made by sections 148 and 149 of the Act do not apply to a case where—(a) a person (‘the applicant’) has applied to a local housing authority for accommodation, or for assistance in obtaining accommodation, under Part 7 of the 1996 Act; and (b) a duty of the local housing authority to secure that accommodation is available for the applicant’s occupation under Part 7 of the 1996 Act including on an interim or temporary basis has arisen and has not ceased, before the commencement date.

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Duties in case of threatened homelessness

(1) This section applies where the local housing authority are satisfied that an applicant is threatened with homelessness and is eligible for assistance.

(2) If the authority –

(a) are satisfied that he has a priority need, and

(b) are not satisfied that he became threatened with homelessness intentionally,

they shall take reasonable steps to secure that accommodation does not cease to be available for his occupation.

…1

(3) Subsection (2) 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.

[*(3A) The authority shall, on becoming subject to the duty under this section [in a case which is not a restricted threatened homelessness case]2, give the applicant a copy of the statement included in their allocation scheme by virtue of section 167(1A) (policy on offering choice to people allocated housing accommodation under Part 6).*]3, 12

(4) Where[, in a case which is not a restricted threatened homelessness case,]4 in pursuance of the duty under subsection (2) the authority secure that accommodation other than that occupied by the applicant when he made his application is available for occupation by him, the provisions of section 193(3) to (9) (period for which duty owed) …5 apply, with any necessary modifications, in relation to the duty under this section as they apply in relation to the duty under section 193 [in a case which is not a restricted case (within the meaning of that section)]6.

Where, [(4A) in a restricted threatened homelessness case, in pursuance of the duty under subsection (2) the authority secure that accommodation other than that occupied by the applicant when he made his application is available for occupation by him, the provisions of section 193(3) to (9) (period for which duty owed) apply, with any necessary modifications, in relation to the duty under this section as they apply in relation to the duty under section 193 in a restricted case (within the meaning of that section).

In (4B) subsections *(3A) to* [(4) and]13 (4A) ‘a restricted threatened homelessness case’ means a case where the local housing authority would not be satisfied as mentioned in subsection (1) without having had regard to a restricted person.]7

(5) If the authority –

(a) are not satisfied that the applicant has a priority need, or

(b) are satisfied that he has a priority need but are also satisfied that he became threatened with homelessness intentionally,

they shall [provide him with (or secure that he is provided with) advice and assistance]8 in any attempts he may make to secure that accommodation does not cease to be available for his occupation.

[(6) The applicant’s housing needs shall be assessed before advice and assistance is provided under subsection (5).

(7) The advice and assistance provided under subsection (5) must include information about the likely availability in the authority’s district of types of accommodation appropriate to the applicant’s housing needs (including, in particular, the location and sources of such types of accommodation).]9

[(8) If the authority decide that they owe the applicant the duty under subsection (5) by virtue of paragraph (b) of that subsection, they may, pending a decision on a review of that decision –

(a) secure that accommodation does not cease to be available for his occupation; and

(b) if he becomes homeless, secure that accommodation is so available.]10

[(9) If the authority –

(a) are not satisfied that the applicant has a priority need; and

(b) are not satisfied that he became threatened with homelessness intentionally,

the authority may take reasonable steps to secure that accommodation does not cease to be available for the applicant’s occupation.]11

Amendment

1 Words repealed: Homelessness Act 2002, s 18(2), Sch 2.

2 Words inserted: Housing and Regeneration Act 2008, s 314, Sch 15, Pt 1, paras 1, 6(1), (2), with effect from 2 March 2009 (except in relation to applications for an allocation of social housing or housing assistance (homelessness) or for accommodation made before that date) (SI 2009/415, art 2).

3 Sub-section inserted: Homelessness Act 2002, s 18(1), Sch 1, paras 2, 14(a).

4 Words inserted: Housing and Regeneration Act 2008, s 314, Sch 15, Pt 1, paras 1, 6(1), (3)(a), with effect from 2 March 2009 (except in relation to applications for an allocation of social housing or housing assistance (homelessness) or for accommodation made before that date) (SI 2009/415, art 2).

5 Words repealed: Homelessness Act 2002, s 18(2), Sch 2.

6 Words inserted: Housing and Regeneration Act 2008, s 314, Sch 15, Pt 1, paras 1, 6(1), (3)(b), with effect from 2 March 2009 (except in relation to applications for an allocation of social housing or housing assistance (homelessness) or for accommodation made before that date) (SI 2009/415, art 2).

7 Words inserted: Housing and Regeneration Act 2008, s 314, Sch 15, Pt 1, paras 1, 6(1), (4), with effect from 2 March 2009 (except in relation to applications for an allocation of social housing or housing assistance (homelessness) or for accommodation made before that date) (SI 2009/415, art 2).

8 Words substituted: Homelessness Act 2002, s 18(1), Sch 1, paras 2, 14(b).

9 Sub-sections inserted: Homelessness Act 2002, s 18(1), Sch 1, paras 2, 14(c).

10 Sub-section inserted: Homelessness Act 2002, s 18(1), Sch 1, paras 2, 14(d).

11 Sub-section inserted: Homelessness Act 2002, s 5(2).

12 Sub-section repealed: Localism Act 2011, ss 149(1), (3)(a), 237, Sch 25, Pt 22, with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

13 Words in italics substituted by words in square brackets: Localism Act 2011, s 149(1), (3)(b), with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

For England only: Transitional provisions, SI 2012/2599; The amendments made by sections 148 and 149 of the Act do not apply to a case where—(a) a person (‘the applicant’) has applied to a local housing authority for accommodation, or for assistance in obtaining accommodation, under Part 7 of the 1996 Act; and (b) a duty of the local housing authority to secure that accommodation is available for the applicant’s occupation under Part 7 of the 1996 Act including on an interim or temporary basis has arisen and has not ceased, before the commencement date.

195A

Re-application after private rented sector offer

If (1) within two years beginning with the date on which an applicant accepts an offer under section 193(7AA) (private rented sector offer), the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the local housing authority –

(a) is satisfied that the applicant is homeless and eligible for assistance, and

(b) is not satisfied that the applicant became homeless intentionally,

the duty under section 193(2) applies regardless of whether the applicant has a priority need.

For (2) the purpose of subsection (1), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) has been given is to be treated as homeless from the date on which that notice expires.

If (3) within two years beginning with the date on which an applicant accepts an offer under section 193(7AA), the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the local housing authority –

(a) is satisfied that the applicant is threatened with homelessness and eligible for assistance, and

(b) is not satisfied that the applicant became threatened with homelessness intentionally,

the duty under section 195(2) applies regardless of whether the applicant has a priority need.

For (4) the purpose of subsection (3), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 has been given is to be treated as threatened with homelessness from the date on which that notice is given.

Subsection (5) (1) or (3) does not apply to a case where the local housing authority would not be satisfied as mentioned in that subsection without having regard to a restricted person.

Subsection (6) (1) or (3) does not apply to a re-application by an applicant for accommodation, or for assistance in obtaining accommodation, if the immediately preceding application made by that applicant was one to which subsection (1) or (3) applied.]1

Amendment

1 Section inserted: Localism Act 2011, s 149(1), (4) with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012. SI 2012/2599.

For England only:Transitional provisions, SI 2012/2599; The amendments made by sections 148 and 149 of the Act do not apply to a case where—(a) a person (‘the applicant’) has applied to a local housing authority for accommodation, or for assistance in obtaining accommodation, under Part 7 of the 1996 Act; and (b) a duty of the local housing authority to secure that accommodation is available for the applicant’s occupation under Part 7 of the 1996 Act including on an interim or temporary basis has arisen and has not ceased, before the commencement date.

198

Referral of case to another local housing authority

(1) If the local housing authority would be subject to the duty under section 193 (accommodation for those with priority need who are not homeless intentionally) but consider that the conditions are met for referral of the case to another local housing authority, they may notify that other authority of their opinion.

…1

(2) The conditions for referral of the case to another authority are met if –

(a) neither the applicant nor any person who might reasonably be expected to reside with him has a local connection with the district of the authority to whom his application was made,

(b) the applicant or a person who might reasonably be expected to reside with him has a local connection with the district of that other authority, and

(c) neither the applicant nor any person who might reasonably be expected to reside with him will run the risk of domestic violence in that other district.

The [(2ZA) conditions for referral of the case to another authority are also met if –

(a) the application is made within the period of two years beginning with the date on which the applicant accepted an offer from the other authority under section 193(7AA) (private rented sector offer), and

(b) neither the applicant nor any person who might reasonably be expected to reside with the applicant will run the risk of domestic violence in the district of the other authority.]3

[(2A) But the conditions for referral mentioned in subsection (2) [or (2ZA)]4 are not met if –

(a) the applicant or any person who might reasonably be expected to reside with him has suffered violence (other than domestic violence) in the district of the other authority; and

(b) it is probable that the return to that district of the victim will lead to further violence of a similar kind against him.

(3) For the purposes of subsections (2)[, (2ZA)]5 and (2A)[, *and for the purpose of subsection (4A)(c)*]6 ‘violence’ means –

(a) violence from another person; or

(b) threats of violence from another person which are likely to be carried out;

and violence is ‘domestic violence’ if it is from a person who is associated with the victim.]2

(4) The conditions for referral of the case to another authority are also met if –

(a) the applicant was on a previous application made to that other authority placed (in pursuance of their functions under this Part) in accommodation in the district of the authority to whom his application is now made, and

(b) the previous application was within such period as may be prescribed of the present application.

[*(4A) The conditions for referral of the case to another authority are also met if –*

*(a) the local housing authority to whom the application has been made and another housing authority have agreed that the case should be referred to that other authority;*

*(b) that other authority has provided written confirmation of the agreement to the local housing authority; and*

*(c) neither the applicant nor any person who might reasonably be expected to reside with him will run the risk of domestic violence in the district of that other authority.*

*(4B) When reaching the agreement referred to in subsection (4A)(a), the local housing authority to whom the application was made and the other authority need not have regard to –*

*(a) any preference that the applicant, or any person who might reasonably be expected to reside with him, may have as to the locality in which the accommodation is to be secured; or*

*(b) whether the applicant, or any person who might reasonably be expected to reside with him, has a local connection with the district of any local housing authority.*]7

(5) The question whether the conditions for referral of a case are satisfied shall be decided by agreement between the notifying authority and the notified authority or, in default of agreement, in accordance with such arrangements as the Secretary of State may direct by order.

(6) An order may direct that the arrangements shall be –

(a) those agreed by any relevant authorities or associations of relevant authorities, or

(b) in default of such agreement, such arrangements as appear to the Secretary of State to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as he thinks appropriate.

(7) No such order shall be made unless a draft of the order has been approved by a resolution of each House of Parliament.

Amendment

1 2002, s 18(2), Sch 2. Words repealed: Homelessness Act

2 2002, s 10(2). Sub-sections substituted: Homelessness Act

3 Sub-section inserted: Localism Act 2011, s 149(1), (5), (6) with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

4 Words inserted: Localism Act 2011, s 149(1), (5), (7) with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

5 Words inserted: Localism Act 2011, s 149(1), (5), (8) with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

For England only: Transitional provisions, SI 2012/2599; The amendments made by sections 148 and 149 of the Act do not apply to a case where—(a) a person (‘the applicant’) has applied to a local housing authority for accommodation, or for assistance in obtaining accommodation, under Part 7 of the 1996 Act; and (b) a duty of the local housing authority to secure that accommodation is available for the applicant’s occupation under Part 7 of the 1996 Act including on an interim or temporary basis has arisen and has not ceased, before the commencement date.

Modification

6 1999/3126, art 1(2), 2, Original sub-section (3) as modified: SI 3(a).

7 1999/3126, art 1(2), 2, 3(b). Modifying sub-sections 4A and 4B: SI

For England only, this section is modified in relation to asylum-seekers who are eligible for housing assistance as a result of regulations made under s 185(2) of the Housing Act 1996, and who are not made ineligible by s 186 (or any other provision) of that Act: Homelessness (Asylum-Seekers) (Interim Period) (England) Order 1999, 1999/3126, arts 1(2), 2, 3. That Order shall cease to have SI effect on the date on which s 186 of the Housing Act 1996 is repealed by the Immigration and Asylum Act 1999, s 117(5).

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Right to request review of decision

(1) An applicant has the right to request a review of –

(a) any decision of a local housing authority as to his eligibility for assistance,

(b) any decision of a local housing authority as to what duty (if any) is owed to him under sections 190 to 193 and 195 [and 196]1 (duties to persons found to be homeless or threatened with homelessness),

(c) any decision of a local housing authority to notify another authority under section 198(1) (referral of cases),

(d) any decision under section 198(5) whether the conditions are met for the referral of his case,

(e) any decision under section 200(3) or (4) (decision as to duty owed to applicant whose case is considered for referral or referred), …2

(f) any decision of a local housing authority as to the suitability of accommodation offered to him in discharge of their duty under any of the provisions mentioned in paragraph (b) or (e) [or as to the suitability of accommodation offered to him as mentioned in section 193(7)]3 [, or

(g) any decision of a local housing authority as to the suitability of accommodation offered to him by way of a *private accommodation offer* [private rented sector offer]8 (within the meaning of section 193)]4.

[(1A) An applicant who is offered accommodation as mentioned in section 193(5)[, (7) or (7AA)]5 may under subsection (1)(f) [or (as the case may be) (g)]6 request a review of the suitability of the accommodation offered to him whether or not he has accepted the offer.]7

(2) There is no right to request a review of the decision reached on an earlier review.

(3) A request for review must be made before the end of the period of 21 days beginning with the day on which he is notified of the authority’s decision or such longer period as the authority may in writing allow.

(4) On a request being duly made to them, the authority or authorities concerned shall review their decision.

Amendment

1 Words substituted: Homelessness Act 2002, s 18(1), Sch 1, paras 2, 16.

2 Word repealed: Housing and Regeneration Act 2008, s 321(1), Sch 16.

3 Words inserted: Homelessness Act 2002, s 8(2)(a).

4 Sub-section inserted: Housing and Regeneration Act 2008, s 314, Sch 15, Pt 1, paras 1, 7(1), (2). Date in force: 2 March 2009 (except in relation to applications for an allocation of social housing or housing assistance (homelessness) or for accommodation made before that date): see SI 2009/415, art 2.

5 314, Sch Words substituted: Housing and Regeneration Act 2008, s 15, Pt 1, paras 1, 7(1), (3)(a). Date in force: 2 March 2009 (except in relation to applications for an allocation of social housing or housing assistance (homelessness) or for accommodation made before that date): see SI 2009/415, art 2.

6 Words inserted: Housing and Regeneration Act 2008, Sch 15, Pt 1, paras 1, 7(1), (3)(b). Date in force: 2 March 2009 (except in relation to applications for an allocation of social housing or housing assistance (homelessness) or for accommodation made before that date): see SI 2009/415, art 2.

7 Sub-section inserted: Homelessness Act 2002, s 8(2)(b).

8 Words in italics substituted by words in square brackets: Localism Act 2011, s 149(1), (5), (9) with effect from 9 November 2012 in relation to England (not yet Wales), Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 (SI 2012/2599).

For England only: Transitional provisions, SI 2012/2599; The amendments made by sections 148 and 149 of the Act do not apply to a case where—(a) a person (‘the applicant’) has applied to a local housing authority for accommodation, or for assistance in obtaining accommodation, under Part 7 of the 1996 Act; and (b) a duty of the local housing authority to secure that accommodation is available for the applicant’s occupation under Part 7 of the 1996 Act including on an interim or temporary basis has arisen and has not ceased, before the commencement date.

Homelessness (Suitability of Accommodation) (England) Order 2012

SI 2012/2601

|  |  |  |  |
| --- | --- | --- | --- |
|  | *Made* | *11th October 2012* |  |
|  | *Laid before Parliament* | *17th October 2012* |  |
|  | *Coming into force* | *9th November 2012* |  |

The Secretary of State in exercise of the powers conferred by sections 210(2)(a), (2)(b) and 215(2) of the Housing Act 1996, makes the following Order:

1 Citation, commencement and application

(1) This Order may be cited as the Homelessness (Suitability of Accommodation) (England) Order 2012 and comes into force on 9th November 2012.

(2) This Order applies in relation to England only.

2 Matters to be taken into account in determining whether accommodation is suitable for a person

In determining whether accommodation is suitable for a person, the local housing authority must take into account the location of the accommodation, including –

(a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority;

(b) 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 or members of the person’s household;

(c) the proximity and accessibility of the accommodation to medical facilities and other support which –

(i) are currently used by or provided to the person or members of the person’s household; and

(ii) are essential to the well-being of the person or members of the person’s household; and

(d) the proximity and accessibility of the accommodation to local services, amenities and transport.

3 Circumstances in which accommodation is not to be regarded as suitable for a person

For the purposes of a private rented sector offer under section 193(7F) of the Housing Act 1996 accommodation shall not be regarded as suitable where one or more of the following apply –

(a) the local housing authority are of the view the accommodation is not in a reasonable physical condition; or

(b) the local housing authority are of the view that any electrical equipment supplied with the accommodation does not meet the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994; or

(c) the local housing authority are of the view the landlord has not taken reasonable fire safety precautions with the accommodation and any furnishings supplied with it;

(d) the local housing authority are of the view the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation;

(e) the local housing authority are of the view the landlord is not a fit and proper person to act in the capacity of landlord, having considered if the person has –

(i) committed any offence involving fraud or other dishonesty, or violence or illegal drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);

(ii) practised unlawful discrimination on grounds of sex, race, age, disability, marriage or civil partnership, pregnancy or maternity, religion or belief, sexual orientation, gender identity or gender reassignment in, or in connection with, the carrying out of any business;

(iii) contravened any provision of the law relating to housing (including landlord or tenant law); or,

(iv) acted otherwise than in accordance with any applicable code of practice for the management of a house in multiple occupation, approved under section 233 of the Housing Act 2004;

(f) the accommodation is a house in multiple occupation subject to licensing under section 55 of the Housing Act 2004 and is not licensed;

(g) the accommodation is a house in multiple occupation subject to additional licensing under section 56 of the Housing Act 2004 and is not licensed;

(h) 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;

(i) the accommodation is or forms part of relevant premises which do not have a current gas safety record in accordance with regulation 36 of the Gas Safety (Installation and Use) Regulations 1998; or

(j) the landlord has not provided to the local housing authority a written tenancy agreement, which the landlord proposes to use for the purposes of a private rented sector offer, and which the local housing authority considers to be adequate.