# Housing Law Practitioners' Association

**Minutes of the Meeting held on 16 January 2013**
**University of Westminster**

## Homelessness Suitability and Private Rented Sector Discharge

Speakers: **Liz Davies, Garden Court Chambers**
**Sally Morshead, Shelter**

Chair: **Dominic Preston, Doughty Street Chambers**

**Chair:** My name is Dominic Preston from Doughty Street Chambers and I would like to welcome you to tonight's meeting. Could I first ask if anyone has any corrections to the minutes of the last meeting held on 21 November? If not, I would like to introduce tonight's meeting on the topic of Homelessness Suitability and Private Rented Sector Discharge. The first speaker is Sally Morshead, a managing solicitor at Shelter London legal team and she will be followed by Liz Davies, a barrister at Garden Court Chambers and co-author of the Housing Allocations and Homelessness book.

**Sally Morshead:** I will talk about suitability and leave Liz to deal with Part 7, the changes brought in by the Localism Act and particularly private rented sector offers.

As I am sure you all know, in deciding what is "suitable" local authorities must have regard to certain specific factors set out in legislation: the 2006 Homelessness Code of Guidance and 2012 Supplementary Guidance that came out following the Localism Act amendments in November and suitability provided under Part 7, whether temporary or not so temporary. Interestingly, the Code of Guidance which dates from 2006 has survived the Localism Act unchanged although it has been supplemented by the Supplementary Guidance. All features of the accommodation must be taken into account and accommodation must be suitable for the applicant with his or her particular needs and circumstances. As a minimum it should be free of Category 1 hazards, which is in paragraph 17.15 of the Code. The definition of that is in Section 2 of the Housing Act 2004 and it is really a rather complicated procedure where the environmental health department determines whether there is a Category 1 hazard. This is well summarised in the notes to Section 2 in the encyclopaedia and will include such things as damp, overcrowding, excess cold, asbestos, carbon monoxide, entry by intruders, noise, personal hygiene facilities, risk of accident and fire, although the level of harm likely to be suffered must be high for it to be categorised as a Category 1 hazard.

We still have the Homelessness (Suitability of Accommodation) Order 1996 which is useful. All the applicants' resources and essential expenses including their reasonable living expenses must be taken into account and this is where arguments tend to arise. For example we very often have clients who have cars in order to get to work and local authorities regard the cost of a car as exorbitant for somebody on a low income. Having said that, the person may need the car in order to get to work and sometimes you have to come up with really quite detailed information showing that alternative transport would be more expensive and less feasible, particularly taking into account things like child care and the need to get children to and from school. So that is very important and the kind of issue we have endless very detailed arguments about.

Interestingly, paragraph 17.40 of the 2006 Code has remained. In discussions with Shelter the DCLG refused to put this particular test in the 2012 Suitability Order but despite taking that approach they did not amend the Code. It may be because the approach was not to amend the Code but was to issue Supplementary Guidance instead. It is good because it represents a welcome recognition that household income should not fall below subsistence level. However, this does not seem very workable with the housing benefit cap and the setting of the local housing allowance at the lowest 30% of market rent which came in in April 2012 and which is only going to get worse when the total family benefits cap of £500 a week comes in in April 2013. It is impossible to see how many people will avoid falling below this subsistence level. The incentive to local authorities in London and other expensive areas is to send people to other parts of the country and perhaps they can use paragraph 17.40 to justify this. Certainly we have experience of a case involving Newham in which they did not

specifically refer to 17.40 but they did say that a family with three children would be subject to the £500 per week total benefits cap in April 2013 and therefore would not be able to afford any accommodation which they could provide. Newham said it would be irresponsible to place families in accommodation which they could not afford as they would be denied settled accommodation where they could meaningfully develop their lives. So instead of being able to meaningfully develop their lives in London they were expected to do so in Birmingham or Manchester.

Two quite old but very important cases; *R v Brent LBC ex parte Omar* and *R v Lewisham LBC ex parte Dolan*, Omar is the case that we rely on as showing that it is really that particular applicant the local authority had to look at and that person's features. Dolan is interesting because it establishes that they have to do a composite assessment of medical, social and other factors and they cannot just compartmentalise by looking at aspects of that person in isolation.

Two interesting cases on page 4 of the notes; *Wandsworth LBC v Watson* which makes clear that a fear of violence can make a property unsuitable, not necessarily the risk of that violence itself, but *Ahmed v Leicester BC* was slightly less helpful because the local authority's decision was upheld as they had taken the view that the fear was not reasonably held and that was a view that the local authority were entitled to take.

Moving on to *Slater v Lewisham LBC*, this was a case in which the issue was whether it was reasonable for the applicant to accept the offer. Since amendment by the Localism Act authorities can only take into account obligations in respect of existing accommodation in deciding whether it is reasonable to accept accommodation, so other reasons why it might not be reasonable to accept are no longer relevant. However, the Supplementary Guidance at paragraph 22, which is on page 5 of the notes, states that subjective suitability issues such as fear of racial harassment are factors which the local authorities must take into account when determining suitability. Paragraph 22 refers to paragraph 17.6 of the 2006 code, which is on page 2 of the notes, as highlighting this but actually when you read it, it does not seem to say that at all and refers only to the actual risk of violence or harassment. Nevertheless and despite this, it seems clear that this Slater test, which is very useful, and this quote from Lord Justice Ward "whether a right-thinking local authority would conclude that it was reasonable that *this applicant*" to accept taking into account the applicant's subjective fears and beliefs remains and it is something that we should highlight if at all possible.

*Ravichandran and another v LB Lewisham* is a case which is rather similar to Slater and, again, it was one where the local authority had not considered whether it was reasonable to accept the offer and this just repeats what I have just said about subjective suitability, ie what that person believes and fears is relevant.

It is very important to gather as much information as possible about the needs and characteristics of your particular client. If possible, back it up with evidence from doctors and other suitably qualified people. It is often difficult to find a point of law in a suitability challenge and success often depends on providing the local authority with as much material as possible.

There are three cases on page 6 of the notes about travellers and they show that in general they can often insist on accommodation on caravan sites despite a cultural aversion to bricks and mortar accommodation. In the absence of particular circumstances rendering bricks and mortar accommodation unsuitable, such offers would be acceptable if the authority had no spare capacity on sites. In all three cases it was held that the travellers could not insist on the authority buying property for the purpose of creating new sites or otherwise using its powers to provide extra sites.

A case on page 7, *Sharif v Camden London Borough Council*, is where the applicant was the carer for her father and younger sister. The council offered two flats on the same floor of a building but that was held not to be accommodation in which the household could live together. I understand that is to be heard in the Supreme Court tomorrow and I do not know whose case that is but it is an interesting one to watch.

Moving on to the issue of bed and breakfast, authorities cannot use bed and breakfast accommodation for families except if there is no other accommodation available and then only for six weeks. Bed and breakfast is defined as accommodation which is not separate and self-contained and where there is a sharing of cooking facilities, toilet or personal washing facilities. The big drawback is this rule does not apply to local authority and RSL owned accommodation so you could have a client in a grotty hostel which is not self-contained and unfortunately you cannot rely on the Suitability Order 2003. We often do find that local authorities put people in bed and breakfast accommodation when

they should not do and it is certainly worth challenging. There is a very, very good Ombudsman's report that came out in December involving Croydon which is at the bottom of page 8 of the notes. A family were assaulted in their home by three armed men and had to move out to stay with the applicant's mother. Croydon offered no accommodation at all for over a month and then bed and breakfast on the third floor with no lift and disrepair. It was eight months before self-contained accommodation was offered. The Ombudsman recommended that Croydon pay £2,500 compensation, review its procedures and provide staff training on the use of bed and breakfast so that is very positive.

Section 208 of the 1996 Act is a very important Section about location. Authorities must provide all accommodation in their area as far as reasonably practicable and I suppose the question remains whether Section 208 is in fact pretty meaningless in the current climate. It is very difficult to challenge a well reasoned decision to house outside the area. Many authorities are taking the approach that they cannot house all applicants in their area and only those with strong reasons for remaining in the area or in surrounding areas will be offered accommodation locally where there is severe pressure on housing, for example in London and the South East. Possibly we can argue that authorities have turned Section 208 on its head; some seem to be saying that applicants will be housed outside their area unless exceptional circumstances require housing in the area and there is an argument that this is wrong. However, I think it is difficult to avoid the economic argument that it is genuinely not reasonably practical sometimes, particularly without access to detail of the authority's finances. Newham in the case that I referred to earlier said that they had a net spend of £2.2 million in 2012/13 on temporary accommodation and it is difficult to argue that authorities could do more to secure affordable housing, for example by arrangements with private landlords and further subsidy, when we are looking at the problem from the outside as the applicant's advisors and we do not really know what is going on inside.

There is a lot of guidance in the Code and Supplementary Guidance about location and in essence authorities should house in the area when there is good reason to do so. It will be up to the applicant to show why he/she needs to be housed in the area, for example medical treatment, education, employment, support. All the reasons you would expect for housing in area are mentioned in the Guidance. So as well as being in the Guidance it is in the 2012 Order but the Guidance provides far more detail. Paragraph 48 of the Supplementary Guidance may be useful; this is on page 11 of the notes. Accommodation out of the area which is further away than other available accommodation is not likely to be suitable. Now we could use this when arguing on behalf of London applicants housed in Birmingham or Manchester, however it may not make that much difference to clients where they are if they are outside London because they will still need to start afresh, create new support networks, send their children to different schools and all those things that are so difficult.

Paragraph 50 is also interesting and refers to the need to reach the normal workplace; this rather implies that authorities must assume that applicants will continue in their employment and provide accommodation which is close enough for them to reach that workplace. This could be very useful for working clients and in practice authorities may have to accept that working applicants must be housed in the area or close to it. In contrast, paragraph 51 recognises that previous caring arrangements may become unsustainable and simply requires local authorities to consider the costs of that, so that is an interesting contrast with paragraph 50.

Paragraph 56 on page 12 seems to be encouraging authorities to consider employment opportunities outside their area for applicants and this is somewhat suspicious as I really do not think local authority housing departments should be adopting the role of job centre, but we will see what happens with that. I have not noticed it happening in practice.

These are really the only two important cases that I know about on location, they are both reasonably old; R *v Enfield LBC ex parte Yumsack* from 2002 and *R (Calgin) v Enfield LBC* from 2005. In both cases the local authority involved was Enfield and in both cases the accommodation offered was in Birmingham. Yumsack, the earlier case, was successful and it was quite a strong case on the facts for remaining in London. The authority had not justified its decision by providing evidence showing that it was not reasonably practicable to house in Enfield and we may have to look at Yumsack again because today it is probably quite easy for authorities to show that they have got accommodation in certain areas; it is simply not affordable for applicants. Calgin was unsuccessful; possibly by 2005 Enfield had got its act together. It had a policy on out of area placements which prioritised those with particular reasons for staying in the borough. It was scrutinised, the Court broadly accepted it and stated that cost was a relevant consideration and it is likely that Courts will be even more willing to accept the importance of cost considerations in the light of the increased gap between rents and

benefits which exists in 2013. Now if anybody has any clues as to how we can challenge what is likely to be an awful lot of shipping people away from where they want to be we would be interested to know.

Moving on to reviews, suitability is subject to review like other decisions under Part 7 and statutory appeal under Sections 202 and 204, unless you are arguing about suitability of Section 188 accommodation which will be the interim accommodation when you apply or pending a review decision, in which case you have to take judicial review. One important factor, the offer of accommodation made under Section 193 has to inform the applicant of the possible consequence of refusing the offer. Just occasionally they do not do this and it is worth checking. And, of course, an applicant who is offered accommodation which they believe to be unsuitable can ask for a review of it whilst accepting it at the same time. That is often or usually the best advice because reviews of suitability are so uncertain.

There is no duty to give reasons on suitability unless the decision on suitability is demonstrably out of line with local authority policy. That comes from the cases of *R v Kensington and Chelsea RLBC ex parte Grillo* and *Akhtar v Birmingham CC* which are on page 15 of the notes. Or the circumstances are such that reasons clearly need to be given which I think is likely to be rare; there is the case of *R v Islington LBC ex parte Okocha* where there was some offensive, racist graffiti on the property that was offered. The local authority simply washed it off and re-offered the property without giving any reasons at all and that was quashed so that is possibly a quite unusual set of facts.

*R v Wycombe DC ex parte Hazeltine* is an interesting case because in that case it was held that the authority had to keep the offer open while the applicant had a chance to get further medical evidence.

Procedures on offers and acceptance; *R (Khatun, Zeb & Iqbal) v Newham LBC and Office of Fair Trading* was the case which said that it was acceptable for local authorities to require applicants to accept an offer and sign a tenancy agreement without actually having seen it at all. Contrast that with the 2006 Code at paragraph 14.18 which recommends that applicants are given a chance to view the property. I think it is unusual for people to be forced to accept offers that they have not even seen but quite remarkably Newham seemed to get away with it. It does not seem to fit very well with Hazeltine, a much earlier case, because on the basis of Khatun she would simply have had to accept it without viewing it and would have been forced to accept it before seeking medical evidence and there would have been no question of the offer being held open. But quite possibly things changed between 1993 and 2004 and have changed yet again.

*R v Westminster CC ex parte Zaher* is important because it establishes that suitability is a continuing obligation and if there is a change in circumstances then the local authority has to reconsider and this is mirrored in paragraph 17.8 of the Code, which is on page 16 of the notes.

On review the authority must generally look at the facts at the date of the offer or the other decision on suitability rather than the date of the review, as with most homelessness decisions. *Omar v Westminster CC* was a case with a premature baby who, when the property was offered, was being seen weekly at a neo-natal clinic and the accommodation offered was nine miles away. That was not the case at the date of review because the baby's condition had improved but the Court held that the authority should have looked at the situation when the property was offered and at that point nine miles was far too far for the family to travel and the decision was quashed. Contast that with *Sahardid v Camden LBC*, which is on page 17 also, where the child had turned five shortly before the date of the review and the local authority's policy was to offer two bedroom accommodation to families with a child of five or over. So in that case it was held that the facts at the date of review were relevant and the authority had to take into account the fact that the child had turned five. This is a fairly commonsense approach rather than making the family apply instantly for a transfer but it does not seem to sit very well with Omar.

*Boreh v Ealing LBC* is similar to Omar in some senses, which established that any proposals for adaptation at the time of offer could be taken into account but only if they were certain, binding and enforceable so vague promises to carry out adaptations would not be enough for the local authority to rely on. Occasionally you may have a case where the authority has so clearly not provided suitable accommodation that it is suitable for judicial review rather than review and county court appeal. It really will have to be a case where there is an admission on the part of the authority that suitable accommodation has not been provided or the facts are so stark that there is no other conclusion possible. The cases of *R (Khan) v Newham LBC* and *R v Newham LBC ex parte Begum and Ali* fell into this category. In Khan they had accepted the full housing duty and yet the property offered clearly

did not meet the family's needs. There was a further hurdle as to whether the court should make a mandatory order and there were various factors to be considered, but the court held that they should make an order and the authority's lack of resources was not relevant when considering suitability; the duty was absolute. Similarly in Begum, there was a family of ten in a four bedroom house and the court held that it would not enforce the duty unreasonably and recognised that what might be unsuitable for a longer period might be acceptable as a brief interim measure. However, the duty to provide suitable accommodation could not be deferred and the authority had not shown it had done all it could to provide suitable accommodation. But beware, the cases of *R (Chowdhury) v Newham LBC* and *R v Merton LBC ex parte Sembi* show that the choice between judicial review and review or appeal may be a difficult one. In most cases it is safer just to apply for review and following that a county court appeal, if possible. You could ask for temporary accommodation pending the review under Section 188(3) and, potentially, judicially review a negative decision on that if you need to get the client moved urgently. Obviously there are certain problems with that approach as well but it is a tricky one.

Suitability of interim accommodation, as I said earlier, you cannot have a review in a county court appeal so your only remedy is judicial review. *R v Newham LBC ex parte Sacupima* held that financial constraints and limited housing availability were relevant but there was a line to be drawn below which the standard of accommodation could not fall. Finances were relevant but they will not assist the authority if the accommodation provided is grossly unsuitable.

**Liz Davies:** What will you need in order to deal with the new rules, the amendments to Part 7 of the Housing Act 1996? There is an obvious point; you still need everything you already had. Most of Part 7 has not been amended, the sections dealing with priority need, intentionality, all of those sections that we are very familiar with, they have not been amended, and you will still need them. You will still need the 2006 Code; you will still need all the statutory instruments relating to suitability previous to 2012 to which Sally referred. Then, in order to get yourself up to speed with the changes, you will need the amended text of Part 7 and the appendix that I have given to you is not the whole of Part 7, it is the sections of Part 7 that have been amended by the Localism Act. You will need the new Suitability Order which Sally has already talked about, the 2012 Suitability Order with (Suitability for Accommodation) in brackets and also in brackets (England) Order 2012. And you will need the Supplementary Guidance from the DCLG which deals with all of the changes, so both suitability of private rented sector offers and reapplications within two years. You may want to find those materials in one of two books or you may not. I will say no more than that.

When does it start? First of all the amendments have not come into force in Wales; it is a matter for the Welsh Government whether or not they bring the amendments into force in Wales. They still have the primary legislation, Part 7, and the second piece of primary legislation, the amending legislation, the Localism Act, also applies to Wales but is to be brought into force by the Welsh Government. The Welsh Government says in the Welsh Code I have given to you at paragraph 3, "The Welsh Government has not yet decided to commence the Act" and I think it is appropriate to read it in both ways. You could read it as the Welsh Government has not yet decided when to commence the Act or you could read it as the Welsh Government has not yet decided whether to commence the Act. It seems to me that both of those things are up in the air. Last year the Welsh Government consulted on a housing bill which does include greater use of the private rented sector for homelessness applications. That consultation closed towards the middle of last year and we will wait to see if the Welsh Government comes out with its own housing bill, ultimately Housing Act, which would mean a very different housing law regime in Wales as a result of devolution. The two jurisdictions in England and Wales are growing steadily further apart. So anybody who has made an application to a local housing authority in Wales or has been referred to a local housing authority in Wales under local connection, one of the reasons why that happens is, of course, some asylum seekers are dispersed to Wales for their asylum seeking accommodation and then come back to London and then get referred back to Swansea or Cardiff. If you are dealing with the law in Wales it is the unamended Part 7.

For England the amendments came into force on 9 November of last year and apply broadly, and this is the main date for you to have in your mind, to all applications made to local housing authorities in England on or after 9 November 2012. That is the key thing to remember. Anybody who has applied on or after 9 November will fall under the new rules. Nearly everybody whose application was before 9 November will fall under the old rules, but if you look at paragraph 6 of my notes there is a slightly complicated transitional provision right at the bottom; the paragraph that starts *"The"* in italics. The amendments do not apply to a case where a person has applied to a local housing authority under Part 7 before the commencement of the Act, in other words they have made an application before 9 November and a duty of the local housing authority to secure that accommodation is available, has

arisen and has not ceased. So for most people who have made an application for homelessness assistance before 9 November, they will also have had some sort of duty to provide interim accommodation or they may have, before 9 November, received their Section 184 decision and be entitled to some sort of accommodation duty, whether it is the main housing duty or the intentional homelessness short-term duty. They will therefore not fall under the new rules. But there might be the rare case where somebody made an application before 9 November and was not accommodated before 9 November and, indeed, there was no accommodation duty arising before 9 November. In other words it is not disputed between the applicant and the local authority that there was no duty to accommodate them, but then at some point post 9 November the Section 184 decision is made; it is decided that the person is owed the main housing duty and they become accommodated, they will fall under the new rules.

The broad thing for you to remember is the key date of 9 November; there may be the odd person who applied before 9 November. You would immediately then think the old rules applied, but because there was no accommodation duty owed to that person before 9 November they will fall under the new rules if the main housing duty subsequently applies. There is not going to be very many of those and we will see them fairly soon; they are not going to turn up in two or three years' time. If they turn up in the system at all we will see them in the next couple of months. The reason I say it will be very, very unusual is you are thinking, I have got lots of clients who make an application and the local authority does not owe an interim accommodation duty under Section 188 because they do not have a priority need, but the new rules only apply to people whom the local authority subsequently find are owed the main housing duty which must mean that they have a priority need. Only people who have a priority need are owed the main housing duty. So the very rare person who is caught ends up having a priority need and being owed the main housing duty but, bizarrely, at the time they made their application for accommodation before 9 November then their accommodation duty was owed. I have not seen anybody in this position and I do think it is unlikely.

Moving on to the amendments, I suggest you follow the text of Section 193 itself. The appendix is a separate document but the pagination continues because I put them altogether so the appendix starts at page 5, even though it looks like the first page, and Section 193 is down at the bottom of that first page. So what are the amendments? If you turn over to the second page of the appendix, which is paginated as page 6, you will see that there are various different fonts and type applied to the text of Section 193. The sub-sections which are in italics are sections that are repealed by the Localism Act so do not apply to anyone who applied on or after 9 November, ignoring the odd transitional case. The new Sections, principally, have square brackets around them and, unhelpfully, do not seem to have the number of the sub-section, it has been transposed after the first word of the sub-section. But if you look half way down you will see a sub-section that starts "The" and then there are square brackets and round brackets 5. That is actually the new sub-section 5.

So the first point to note towards the top of page 6 is that sub-section 3A has been repealed. Local authorities are no longer under any obligation to give applicants who are owed the main housing duty a copy of their statement on whether or not they have choice in their allocation scheme. It was obviously something that we saw all the time and litigated about all the time. That no longer applies; that is not just some sort of technical amendment. The reason why it no longer applies is because people owed the main housing duty are quite unlikely to have a reasonable preference within the allocation scheme and so their prospects of queuing and waiting for a council or housing association tenancy are greatly diminished. As a result of that the Government did not see any point in telling homeless applicants who are owed the main housing duty about how the allocation scheme works. So that is the first amendment.

The second amendment is the new sub-section 5 of Section 193. This is the sub-section that allows the local authority to decide that the main housing duty has come to an end because the applicant has refused a suitable offer of main housing duty accommodation, Section 193 accommodation. What we sometimes colloquially call temporary accommodation but temporary and permanent are words that really no longer apply to any sort of homelessness application. So sub-section 5 allows the authority to discharge duty where there has been a refusal of suitable Section 193 accommodation. Sub-section 5 has been reworded principally, I think, to make it much clearer, so you will see that the duty can only come to an end under sub-section 5 if those three sub-paragraphs have been complied with by the local authority, that the applicant has been informed of the possible consequence of refusal or acceptance and of his/her right to request a review of the suitability of the accommodation and that the applicant has refused an offer of accommodation. You do sometimes get disputes between local authorities and applicants about whether they actually refused or whether they said I want time to think about it and the local authority construed that as a refusal. And then (b), the offer of accommodation

is neither a Part 6 offer so it is not an offer under the allocation scheme nor is it a private rented sector offer, which we will look at in a moment. The authority notifies the applicant that they regard themselves as ceasing to be subject to the duty under this Section. Only if all of those conditions are satisfied, along with the condition that the accommodation offered and refused was suitable for the needs of the applicant, can the main housing duty be brought to an end as result of the applicant's refusal of that accommodation. So that, I think, is clearer than the previous sub-section 5 and in a sense that is quite helpful.

We then go on to private rented sector offers. You may want to note, if you look at the bottom of Section 193 in the appendix, that we still do have sub-section 7. Sub-section 7 is the power for a local housing authority to decide that the Section 193 duty has come to an end as a result of a refusal of a suitable Part 6 offer and most of the cases that Sally was talking about come about as a result of refusals of council or housing association tenancies. Obviously no client refuses those properties if they have had legal advice. What they usually do is refuse the properties before they see a lawyer or housing advisor and then come to us with the discharge of duty decision by which time it is too late to resurrect that offer. The point I am making is that local authorities remain free to make Part 6 offers, offers of their own accommodation under a secure tenancy or of what we still call a housing association property under an assured tenancy through the allocation scheme to homeless applicants who are owed the main housing duty. So they are still able to do that. To what extent they are going to do that is an open question; it is an unknown question. Are local authorities going to decide on a case by case basis: this person can stay on our allocation scheme and we will continue to provide Section 193 accommodation for this family until they get to the top of the list and they get a direct offer or one of their bids has been successful, but this family we are going to make a private rented sector offer? How are local authorities going to decide on a case by case basis? Are they going to have a policy by which they say for instance people who are in employment, large families, other people who might have difficulty maintaining private rented sector tenancies we will not make private rented sector offers to; we will allow them to remain in Section 193 accommodation whilst they stay on the allocation scheme? Are they going to have those policies? If they do have those policies are they going to publish them? One would expect those policies to be published in the homelessness strategy which each local authority is required to have and is required to renew regularly but I am not aware, and local authorities have had so much to do in gearing themselves up to deal with these changes, whether or not they have thought to review their homelessness strategy, which involves a great deal of consultation. But certainly I think one of the points when confronted with somebody who may have refused a private rented sector offer, or indeed accepted it but wants to challenge the suitability, is to try and track down what the local authority's policy is on when they will make private rented sector offers and when they will make Part 6 offers.

That was a slightly convoluted way of getting us to private rented sector offers, which start towards the top of page 7 of the appendix. It is astonishingly tortuous Parliamentary drafting. The previous concept of qualifying offer were offers of assured shorthold tenancies in the private rented sector which could be offered to homeless applicants and if they accepted it, then the Section 193 duty would come to an end but there was no compulsion on them to accept it. If they refused it, the duty did not come to an end so there were no consequences; they were not going to lose their Section 193 accommodation. So qualifying offers are now repealed, there is no longer such a concept of qualifying offers. What the Parliamentary draftsman has done is to take at sub-section 7(AC) the definition of private accommodation offers which were offers made to restricted cases. Qualifying offers are repealed further down the page. So they have taken that existing definition and turned it into private rented sector offers. Private rented sector offers can only be an offer of an assured shorthold tenancy. If your private landlord is offering something else that is not an assured shorthold, perhaps because there is a residential landlord, it will not be a private rented sector offer. It has to be made by a private landlord to the applicant in relation to any accommodation which is or may become available for the applicant's occupation. So it does not even need to be available immediately at the date the offer is made if it is going to become available shortly. It has to be 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. So you might expect there to be some sort of written agreement between the authority and that landlord; one would expect it to be on the fairly standard form that the authority then sends out to any landlord with whom it is entering into this sort of agreement. But they cannot just pick a landlord out of the blue; there has to be some process of arrangements entered into and it has to be a fixed term tenancy for at least twelve months. That is in the statute; there is provision in Section 193 for the Secretary of State to make regulations increasing that minimum term. The Secretary of State has not decided to do so. So for the foreseeable future, I am not suggesting to you that the Secretary of State is going to turn round and make these regulations any minute now, then a private rented sector offer has to be at least twelve months but does not need

to be longer than twelve months. If it is a six month tenancy it will not be a private rented sector offer and if your client refuses it there will not be consequences. If it is a twelve month tenancy or an eighteen month tenancy or a two year tenancy or perhaps even a five year tenancy and the other conditions of sub-section 7(AC) are fulfilled then it will be a private rented sector offer.

What happens once you have a private rented sector offer? Just look back up to sub-section 7(AA). You will see that "in a restricted case" is repealed. I said that the Parliamentary draftsman had taken the existing provision for making private accommodation offers to restricted cases and just altered it. The authority shall also cease to be subject to the duty under this Section if the applicant has to be informed in writing of 7(AB), which I am coming to in a minute, and the applicant either accepts a private rented sector offer or refuses it. And what does the applicant have to be told about, that's in 7(AB). Possible consequences of refusal; if you refuse this offer we no longer have a duty to accommodate you and you are out on your own. The possible consequences of acceptance of the offer are that you have the right to accept this offer and you will have the right to request a review of the suitability of the offer if you accept it. The applicant has the right to request a review of the suitability of the accommodation and, for most cases except restricted cases, the effect under Section 195(A) of a further application to a local housing authority within two years of acceptance of the offer. I will tell you about Section 195(A) in a moment but those are the three things that have to be notified to the applicant in writing before the main housing duty can come to an end as a result of the applicant's refusal or, indeed, acceptance of a private rented sector offer.

So that is an explanation of private rented sector offers. We will come on to specific suitability in a moment; Sally has dealt with most of it. As previously said, qualifying offers are repealed. If you turn over to page 8 and you look at sub-section 7(F), the requirement that it must have been reasonable for the applicant to accept the accommodation is repealed; that requirement is no longer there except in a very limited form in the new sub-section 8. You will see that there is an old sub-section 8 that was repealed because that is in italics, that should be sub-section 8, this sub-section applies to an applicant if the applicant is under contractual or other obligations in respect of the applicant's existing accommodation and is not able to bring those obligations to an end before being required to take up the offer. So somebody who is in Section 193 accommodation, perhaps under a fixed term tenancy because that is accommodation with a private landlord, there is still another four months of that fixed term tenancy to run. The private rented sector offer would start immediately, there is no break clause, the landlord is not prepared to allow the tenant just to end the fixed term tenancy early, then it will not be reasonable to accept. But otherwise the general test about whether or not it was reasonable to accept is repealed. Sally made the point that the Supplementary Code of Guidance that was issued to deal with the changes brings it back in to the Guidance because it talks in very general terms about reasonable to accept; it does not just limit it to whether or not an applicant can terminate her contractual obligations but obviously that is Guidance and Parliament's intention has to be said to be very clear.

You will also note, down again towards the bottom of page 8 of the appendix, the existing sub-section 9 has not been repealed and I think sub-section 9 is very useful for people who have turned down offers and received discharge of duty letters. Sub-section 9 says a person who ceases to be owed the duty under the Section may make a fresh application to the authority for accommodation or assistance in obtaining accommodation. So somebody foolishly turns down an offer; they get a letter saying you now need to be out, our duty to you has come to an end. You now need to be out of your main housing duty accommodation in the next seven days. And they come and see you six days later and you are busy writing letters; you want a review of the decision that the duty had come to an end, you are busy making all the points that you possibly can about why the accommodation that they refused is not suitable and you are asking for the Section 193 accommodation to continue whilst the local authority continues the review. The local authority says no, we are not continuing this accommodation. Your client knew seven days ago that she had to get out; we will require her to leave wherever it is she is tomorrow and she will be on the streets. Various courses of action, one is often a Children Act application, but another one is fine, on the seventh day you leave the hostel, you are then homeless, you go back to the local authority and you say, with the help of your lawyer, "I am making a new application for homelessness assistance." The local authority says, "No you are not, we discharged duty, go away". And you produce the letter from your lawyer that says I understand that a new homelessness application has to be accepted if there are new facts and that those new facts were not present when I made my first homelessness application.

Clearly there are new facts. The reason why you are now homeless is because you turned down the offer of accommodation. You only got that offer of accommodation after you had made your first homelessness application or you would not have had an offer of accommodation in the first place. So

they have to accept a new application; they hate that. They are very reluctant to do that at all. If it appears that your client may have a priority need they have to provide interim accommodation while they are considering the application, making enquiries into it and notifying your client of a Section 184 decision. They may feel that they can notify your client of a Section 184 decision very quickly indeed, within a matter of hours or two days, but until they have notified them they have an interim accommodation duty. If they ended up notifying your client that she is intentionally homeless because she turned down the offer of suitable accommodation and therefore she lost the Section 193 accommodation, then she is intentionally homeless. She will ask for a review of that, but assuming that she has a priority need they still have a duty to provide accommodation for a short period of time for such a period as they consider will give her a reasonable opportunity to secure her own accommodation. So it is always worth considering advising your client to make a fresh application for homelessness if you cannot keep the Section 193 accommodation going.

I was digressing then because that, of course, is existing law. Still on the amendments, the one other point that you will want to see is towards the back of the appendix on page 16; it is Section 202 which is the right to request a review of the decision. You will see at sub-section 1(G) you have a right to request a review of any decision of a local housing authority as to the suitability of accommodation offered by way of a private rented sector offer within the meaning of Section 193. So there is no question that they have a right to request a review of suitability of private rented sector offers. They would be doing so under that sub-paragraph if they have accepted the offer and requested a review. If they have refused the offer they will end up with the request for a review being in respect of the discharge of duty decision.

Two points on suitability of private rented sector offers; still on the appendix on page 18, the new Suitability Regulations contain two important matters. Paragraph 2 of the Regulations applies to all offers of accommodation not just private rented sector offers and that is about location. Location will be the new battlefield and local authorities when making any offer of accommodation under Part 7 must take into account the location, including where it is outside the district, the distance of the accommodation from its own district, disruption to employment, care and responsibilities, education, proximity, accessibility of the accommodation, medical facilities, other support proximity and accessibility of the accommodation to local services, amenities and transport. So they have to think about all of those things. I imagine that they are already drawing up standard letters that say we have thought about all of these things and we are still deciding that the only suitable accommodation is one hundred miles away from where we are. But they do have to think about location and that is something that I think we will have some litigation on.

Moving on to page 19, private rented sector offers, there is a check list of ten factors, each of which has to be satisfied before a private rented sector offer can be suitable. That, again, is something to look at very carefully indeed. You will want to know that the local authority satisfied itself of all of these factors which broadly relate to the physical condition of the property, the fitness of the landlord to manage it and the concerns that one has about private rented sector property. You will want to know that the authority has decided in relation to the accommodation that is being offered to this applicant that all of these ten factors have been satisfied. You will expect to see a checklist. You will want to know whether they just asked the landlord or whether they went round and inspected the accommodation. My view is I do not think they can survive a challenge if they did not inspect that accommodation and that each of those ten factors was met. Having nine of them met was not enough. So that is private rented sector offers and their suitability.

What are the special provisions? What is, as it were, the carrot as against the stick of the private rented sector offer? In Parliament, when the Localism Act was being debated, concern was expressed that there would be a revolving door of homeless applicants; that there would be a homeless application, private rented sector offer made, somebody stayed for twelve month, the tenancy comes to an end at the end of the twelve months, the tenant would be out on the street, back to another homeless application and so forth. The Minister said during the Localism Act debates that the Section 195(A) would mean that the main housing duty remains with the original local housing authority for a two year period. That is a rather generous way of describing Section 195(A) but let us have a look at it on page 12 of the appendix. So when does Section 195(A) apply at all? Again, you have got to transpose the numbers in brackets to before the letters. Sub-section 1 states that if, within two years beginning with the date on which an applicant accepts an offer that is a private rented sector offer, the applicant re-applies for accommodation then the various special provisions of Section 195(A) will apply. So it has to be the applicant, the person who was the applicant in the first homeless application and who had therefore accepted the private rented sector offer. It has to be that same person who re-applies; it cannot be their partner, it cannot be somebody else in the household. All of

those people could make an application for homelessness subsistence but it would be treated in the normal way and the special provisions of Section 195(A) will not apply. They will only apply if the person making the new application is the same applicant. The new application has to be within two years of the date that the applicant accepted the private rented sector offer, not signed the tenancy, not moved in, not started paying rent; but the date when they accepted the private rented sector offer. Because Section 195(A) is more generous than local housing authorities would want to be if they are applying minimum standards, if I can put it that way, then local housing authorities will be on the lookout to see whether or not Section 195(A) does apply or not. So they are not going to say, "Well, we know that actually you accepted the property two years and one month ago but we will still treat you as falling under Section 195(A) because the tenancy only started one year and eleven months ago." They will not going do that, or I would doubt that they will do that. So the special provisions only apply if the application is made within two years of the date of acceptance. Two years and one day? Normal rules under Part 7.

The application is like any homeless application, it can be made in any form, and it does not need to be in writing. Although it is helpful to fill in an application form that is not the test of whether an application is made. All those usual rules apply and, of course, the application can be made to any local housing authority. One would expect, therefore, that in the next three or four years local authorities outside London will be receiving homelessness applications from people who originally applied to a London local authority and then accepted a private rented sector offer outside London. That assured shorthold tenancy then came to an end and rather than the applicant returning to London to make her new homeless application she just goes along to the local homeless persons unit in the district where she has had her private rented sector offer. So the applications can be made to any local authority; it does not have to be the original one. It can, of course, include the original one but it could be any one.

And what is the sop? What is the carrot? If you look towards the end of sub-section 1, providing that the applicant is homeless, providing that she is eligible and providing that she is not homeless intentionally, so those three tests still apply, the priority need test no long applies. The main housing duty will be owed regardless of whether the applicant had a priority need. We need to think about who in fact that will benefit. If a family with young children was given a private rented sector offer then two years later they will have slightly older children but they will still be children and still have a priority need. So this carrot benefits people who had a priority need when they made their first application and were given a private rented sector offer but no longer have a priority need; they will still be entitled to the main housing duty. I do not think there are many of those people around, but the obvious scenario is on the first application they were teenage children and the teenage children have now grown up. Another scenario would be where children or vulnerable people have left the household. But the carrot is you no longer need to have a priority need.

The other carrot is about Section 21 notices and I think lobbying from HLPA and from Shelter got this into Section 195(A) so we should say thank you for that. If somebody falls within Section 195(A) and they have been given a Section 21 notice to leave their accommodation, then if you look at sub-section 4 that person will be treated as threatened with homelessness from the date on which that notice is given. And no discretionary decisions by the local authority to whom this new application has been made; none of this well, you have got a Section 21 notice but we are going to try and talk to the landlord and persuade the landlord not to go to court and let you stay in the property. As a matter of law once the notice is given the applicant is threatened with homelessness. What happens with all those fixed term tenancies where the Section 21 notice is served right at the beginning of the tenancy? There they are in their fixed term tenancy and they are threatened with homelessness. Then if you go up to sub-section 2, once the date for possession in the Section 21 notice has passed then the applicant is homeless and, again, they just are. None of this well, we are not sure the landlord is going to evict you. The applicant is homeless once the date for possession in the Section 21 notice has been passed. That is helpful; it only applies to people who fall within the special provisions at Section 195(A). If somebody makes an application two years and one day after accepting a private rented sector offer they cannot get the benefit of the special provision about Section 21. None of these points apply to restricted cases. The wording on restricted cases is incredibly complicated and I will not go into that. You just need to make a mental note that these special provisions do not really apply to restricted cases.

The very last amendment on page 14 of the appendix is Section 198. We normally talk about this as the local connection provision but it is a bit more than that; it is safer to call it the conditions for referral provision because Section 198 has always contained the ability of a local authority to refer the main housing duty if somebody does not have a local connection with them but does have a local

connection with another local authority. We are very comfortable and used to that. The new sub-section 2(ZA), again the numbers and the letters have been transposed, the conditions for referral of a case to another authority are also met if the application is made within the period of two years beginning on the date. So it is a Section 195(A) case and 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. In other words, a London local authority provides private rented sector offers in cities in the West Midlands and people travel up to the West Midlands. They accept their private rented sector offers and say the private rented sector offer comes to an end after twelve months they go along to the city in the West Midlands and they make their new homeless application and they say, "I gather I don't need to have a priority need and you've got to treat me as homeless because the date in the Section 21 notice has expired". The town in the West Midlands, let us call it Stoke, ums and ahs a bit and accepts that the applicant is homeless, is eligible and did not become intentionally homeless. It was not that person's fault that the landlord wanted the property back so the town in the West Midlands owes the applicant the main housing duty, whether or not she has a priority need, but because she falls within sub-section 2(ZA) they can then refer the main housing duty back to the original local authority. At which point you say, "But she's just lived for the last twelve months in Stoke, hasn't she got a local connection with Stoke?". Yes she has; that does not matter because the condition for referral of people who fall within Section 195(A) applies regardless of local connection; it is a separate and freestanding condition for referral. Stoke does not have to refer; there is a discretion whether or not to refer. They could decide to perform the main housing duty and make an offer, whether private rented sector or Part 6 accommodation, to the applicant themselves or they could send a letter off to the London local authority and say that the performance of the main housing duty now lies with that London local authority. Question, does that London local authority then say, "Well, of course, come back to Newham and we will make you an offer of accommodation in Newham" or do they say, "Just stay where you are, we will ring back in about forty-five minutes. Oh look, we have got a landlord in Stoke"? They have performed their new main housing duty without the applicant having ever left Stoke. I will leave you to think about that.

The last point about Section 195(A) is this only happens once. If somebody makes a Section 195(A) application, falls within it, gets a new private rented sector offer that then comes to an end in a year's time, she goes back to the homeless unit and makes a fresh application for homelessness assistance. She can do all that but she will not be entitled to the special provisions under Section 195(A); she will still have to have a priority need in order to get a main housing duty.

So the battleground is going to be suitability of accommodation; the tension between the fact that with housing benefit changes, cuts, what did the man from the Government call them at the HLPA conference back in December? He started to call them housing benefit cuts and corrected himself very quickly. With the housing benefit cuts the extent to which private rented accommodation in London is affordable to anyone on benefit is a very, very unlikely prospect. So affordability on one side goes towards accommodation being offered outside London, outside most of the big cities, actually. Location and all of the law on suitability goes the other way and that is going to be the tension. The very last point is of course that none of these people will have have a reasonable preference under the allocation scheme. Once they have accepted a private rented sector offer they are no longer subject to a Part 7 duty, which is one of the ways you get a reasonable preference, they are not homeless and, arguably, they are not in insanitary, overcrowded or other unsatisfactory accommodation because if it was that it would not have been a suitable private rented sector offer. So they are never going to get a reasonable preference on the allocation scheme. Welcome to the brave new world of the private rented sector.

**Chair:** I would now like to invite questions from the floor for either Liz or Sally.

**Emma Collins, G T Stewart Solicitors:** I was just wondering about what the situation would be if a client was offered a private accommodation in satisfaction of the Section 193 duty, signed a twelve month tenancy, requested a suitability review which was not successful and then the council decided that the accommodation was not, in fact, suitable so they then become stuck in this twelve month tenancy?

**Liz Davies:** You have hit the nail on the head there. Arguably, because what happens then is, as you say, the client is stuck in the fixed term tenancy. That means that she has a contractual liability to pay rent for the rest of the term which is probably eleven months. Our client cannot discharge that liability without housing benefit, without living there so query, what happens? Do all private rented sector offers therefore have to contain a break clause for a tenant who exercises those circumstances? And if not, are they automatically not suitable for the lack of the break clause? Do local authorities have to

agree that they will indemnify the landlord in case that happens and the tenant wants to move and thereby avoid discharging her liability to pay rent? What is interesting about that is not only what actually happens if that scenario occurs, there she is in the fixed term tenancy which the local authority has decided is not suitable, but when she is being made the offer of the private rented sector it could be argued that as a matter of principle, because this scenario may arise, then the private rented sector offer is only suitable if (i) there is a break clause and (ii) there is an indemnity.

**Michael Hyde, Lamb Building Chambers:** The only point I would add to that as well in response to the query is of course a landlord always has to mitigate their loss, albeit that there is a contractual obligation to pay rent in theory for twelve months. I think it would be hard for a landlord to appear before a judge on any money claim saying he is entitled to the full twelve months amount where, living in London, your rent is a relatively low rate. They ought to be able to find somebody to move into the premises relatively quickly thereafter and bring any loss down. So your client may not be exposed to such a great liability in the long run were they to bring an end to the tenancy agreement as quickly as possible.

**Chair:** I am going to follow up on the question of what is your experience of what local authorities are doing? Are they turning to these private rented sector offers or are they sticking with their old allocation policy? It seems to me the way that we would find out is because the two go hand in hand; they will want to offer private rented sector accommodation because they are changing their allocation policy. So it seems to me that the hint is going to come from the allocation policies. The only information I have, and I welcome comments from the floor, we have heard that Newham are interested in it and that has been in the press. At conference Camden gave an indication that they had actually gone to their tenants and their tenants did not particularly want it and therefore they appeared to be unlikely to change their allocations to any great extent; they were still looking to offer security of tenure through Part 6. I know that Lewisham were changing their policy, the draft was on the website for about two minutes and I did not manage to get hold of it. If anybody knows what that draft looks like I would be grateful. But I am just wondering whether there are any other authorities out there that perhaps the membership is aware of?

**Tony Martin, Merton Law Centre:** Where I live in Hammersmith and Fulham they have managed their allocation scheme and have written to everybody who is presently in temporary accommodation, despite the fact that they were owed a duty before November 2012, to tell them that unless they hear from the council again they will have been removed from the allocation scheme at the end of March without offering any right of review and without any definite decision that they had been removed. This raises a whole lot of questions about the lawfulness of such an action.

**Chair:** One of which, one must presume, is a change in the allocation policy.

**Tony Martin, Merton Law Centre:** The allocation policy has been changed, they consulted on that and the new allocation policy is restricted to people who have been in the armed forces or who are in employment or have some kind of community activity. Clearly the focus for people getting back on will be community involvement because that seems to be a more open category than most. Nonetheless it still begs the question as to whether you can simply remove people from your allocation scheme without telling them and without offering them the right of review.

**Chair:** Also how you go about discharging Section 193(2) though I think Nearly Legal sent round a document which suggested that offers should be made in the private sector, in other words encouraging people rather than discharging properly. Again, I would welcome any other thoughts before we close the question and answer session.

**Nik Antoniades, Shelter:** In response to a previous comment about mitigation of loss, my understanding is that there is no duty on the part of the landlord to mitigate their loss unless there has been a surrender, so unless anyone disagrees can we please disregard the comment?

**Chair:** If there are no other questions I would like to express our thanks to both speakers and move on to the information exchange.

I have received a note from David Carter who has told me that he has just settled a case with Cambridge County Council concerning contracting out. If you have nothing else left in your Section 204 appeal and you are against Cambridge there is a possibility that you can get it quashed and start again with some fresh information. The reason is that they have contracted out over the last year and a half all of their Section 202 review decisions to a firm in Liverpool and, unfortunately, failed, unlike

Westminster on this issue, to get the relevant authority from the council. In fact it was just a housing manager who contracted out and got in this firm to make their decisions. Now that means that if you have nothing else to say and you think that you might get some fresh information on a decision and maybe get it changed that is your route to get the decision quashed. It was only a settlement but they paid costs and they are obviously worried about it so if you are involved in anything with Cambridge County Council then please consider that. David Carter was involved so you welcome to contact him at Doughty Street Chambers.

The only other case of interest that I am aware of is, I think, Malik which was in the Court of Appeal yesterday. That is the Heathrow squatters' case which has some issues on Article 8 and particularly the degree to which it applies to landlords. But I think probably the more interesting area that is going to be of relevance when it does come out is that I understand there is a possibility of a decision on whether the case of McPhail and persons unknown is still good law in the light of Pinnock. That is the case that says that any case against a trespasser who never had any previous rights in the property results in an immediate possession order so is there discretion to extend the time for any possession?

**Giles Peaker, Anthony Gold Solicitors:** I am reporting on behalf of Justin Bates from the Housing Law Reform Sub-committee. We responded to the Communities and Local Government Select Committee who have made a call for evidence in respect of regulating the private sector. We have put in a submission recommending consideration of rent controls and mandatory landlord licensing. We will see if we can get invited in front of them as well but at the moment the written submission is in.

We have also responded to the Ministry of Justice on the judicial review proposals which I take it everybody knows about and it is a submission which, to put it politely, criticises the evidence base that the MOJ put forward and, indeed, the need for reforms. We suggested that changing the law on continuing illegality where the suggestion is that there should be a time limit from when the continuing illegality started, thereby making the whole point of the continuing illegality pointless, made no sense whatsoever.

On Monday the Prevention of Social Housing Fraud Bill passed the Lords and is now awaiting Royal Assent, so it will make it a criminal offence to sub-let a secure or assured tenancy contrary to the terms of the tenancy. On conviction you would be required to pay all of your unlawful profits to the landlord and there will also be a freestanding power to apply for such a repayment order. The housing association or council can apply for a repayment order even without a conviction by way of a county court application. What is not entirely clear is whether the standard of proof will then be criminal or civil so we will have to see on that one.

**Katie Brown, Philcox Gray Solicitors:** I am standing in for Sara Stephens who is the Legal Aid representative on the Executive Committee and cannot be here tonight. She has two points for members; the first is that there will be new LSE forms from 1 April this year to reflect the changes in the Legal Aid Act. There will be no transitional period as with previous form changes so we will need to start using the new forms absolutely from 1 April 2013. There have also been contract notices sent out to everyone who bid for the housing and debt face to fact contracts so hopefully everyone has heard the great news of getting a contract. If information has been asked for by the LSC then apparently you have to respond by 25 January but, apparently again, that is not a hard deadline. Sara says that the ultimate deadline apparently is 31 March so I am not quite sure whether those firms who do not comply or who do comply on 31 March will actually get their contracts or not.

There are also some other current issues, the Regulations going through in the House of Lords and the Welfare Benefits Amendment Order, but I think that has all been in the news already.

**Chair:** Thank you once again to the speakers and to you all for attending. The date of the next meeting is 20 March and the topic is Impact of Benefit Reform.

**Shelter**

# Suitability of Accommodation

## 1. Discharge of duties to the homeless: Housing Act 1996 Part 7

An authority may discharge their housing functions (i.e. duties or powers) under Part 7 only in the following ways:

- by securing that suitable accommodation provided by them is available; or
- by securing that the applicant obtains suitable accommodation from some other person; or
- by giving the applicant such advice and assistance as will secure that suitable accommodation is available from some other person.

**(s.206(1), HA 1996)**

In determining whether accommodation is `suitable' for a person, authorities shall have regard to legislation (in the Housing Acts 1985 and 2004) on slum clearance; overcrowding; housing standards; mandatory licensing of houses in multiple occupation; selective licensing; and management orders (**s.210(1)**).

Chapter 17 of the Homelessness Code of Guidance (2006) (the Code) deals with suitability. The **Homelessness (Suitability of Accommodation) (England) Order 2012**, SI 2601/2012 has been in force since 9 November 2012 and supplementary guidance on that order and on the Localism Act 2011 has been issued (the Supplementary Guidance).

The requirement of suitability applies in respect of all duties and powers to secure accommodation under Part 7, including interim duties under s.188(1) and s.200(1). The accommodation must be suitable in relation to the applicant and to all members of his or her household who normally reside with him or her, or who might reasonably be expected to reside with him or her (Code, para 17.2).

### *General criteria*

The Code provides as follows:

> **17.4** Space and arrangement will be key factors in determining the suitability of accommodation. However, consideration of whether accommodation is suitable will require an assessment of all aspects of the accommodation in the light of the relevant needs, requirements and circumstances of the homeless person and his or her family. The location of the accommodation will always be a relevant factor…
>
> **17.5** Housing authorities will need to consider carefully the suitability of accommodation for applicants whose household has particular medical and/or physical needs. The Secretary of State recommends that physical access to and around the home, space, bathroom and kitchen facilities, access to a garden and modifications to assist sensory loss as well as mobility need are all taken into account. These factors will be especially relevant where a member of the household is disabled.

**17.6** Account will need to be taken of any social considerations relating to the applicant and his or her household that might affect the suitability of accommodation. Any risk of violence or racial harassment in a particular locality must also be taken into account. Where domestic violence is involved and the applicant is not able to stay in the current home, housing authorities may need to consider the need for alternative accommodation whose location can be kept a secret and which has security measures and staffing to protect the occupants.

**17.7** Accommodation that is suitable for a short period, for example bed and breakfast or hostel accommodation used to discharge an interim duty pending inquiries under s.188, may not necessarily be suitable for a longer period, for example to discharge a duty under s.193(2).

**17.15** The Secretary of State recommends that when determining the suitability of accommodation secured under the homelessness legislation, local authorities should, as a minimum, ensure that all accommodation is free of Category 1 hazards. In the case of an out of district placement it is the responsibility of the placing authority to ensure that accommodation is free of Category 1 hazards.

***Affordability***

The **Homelessness (Suitability of Accommodation) Order 1996** (SI 1996 No. 3204) provides that, in determining whether it would be, or would have been, reasonable for a person to occupy accommodation and in determining whether accommodation is suitable for a person, a housing authority must take into account whether the accommodation is affordable by him or her, and in particular must take account of:

(a) the financial resources available to him or her, including, but not limited to:

- salary, fees and other remuneration;
- social security benefits;
- payments due under a court order for the making of periodical payments to a spouse or a former spouse, or to, or for the benefit of, a child;
- payments of child support maintenance due under the Child Support Act 1991;
- pensions;
- contributions to the costs in respect of the accommodation which are or which might reasonably be expected to be made by other members of the household;
- financial assistance towards the costs in respect of the accommodation, including loans provided by a local authority, voluntary organisation or other body;
- benefits derived from a policy of insurance*)*;
- savings and other capital sums.

(b) the costs in respect of the accommodation, including, but not limited to:

- payments of, or by way of, rent;

- payments in respect of a licence or permission to occupy the accommodation;
- mortgage costs;
- service charges;
- mooring charges payable for a houseboat;
- site payments for a caravan or a mobile home;
- council tax;
- payments by way of deposit or security;
- payments required by an accommodation agency;

(c) maintenance payments made under court order for a a spouse or former spouse, or child to, or payments of child support maintenance required to be made under the Child Support Act 1991; and

(d) his or her other reasonable living expenses.

The following paragraph of the Code still survives:

**17.40** In considering an applicant's residual income after meeting the costs of the accommodation, the Secretary of State recommends that housing authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income-based jobseekers allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit. This amount will vary from case to case, according to the circumstances and composition of the applicant's household. …Housing authorities will need to consider whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials. The Secretary of State recommends that housing authorities avoid placing applicants who are in low paid employment in accommodation where they would need to resort to claiming benefit to meet the costs of that accommodation, and to consider opportunities to secure accommodation at affordable rent levels where this is likely to reduce perceived or actual disincentives to work.

*Cases*

**R v Brent LBC ex parte Omar** (1991) 23 HLR 446, QBD. O was a refugee from Somalia. She was offered accommodation on an estate which was alleged to be filthy and infested with cockroaches. It reminded the applicant of her incarceration in prison. She refused the offer, supported by medical and psychiatric evidence of her suicidal feelings. The court held that, in assessing the suitability of accommodation, an authority was bound to take into account the personal circumstances of the applicant and her/his household.

**R v Lewisham LBC ex parte Dolan** (1992) 25 HLR 68, QBD. The council's decision that an offer was suitable was quashed on the basis that it had compartmentalised social and medical factors and not brought them together for a composite assessment.

**Wandsworth LBC v Watson** [2010] EWCA Civ 1558. W refused an offer on the basis that she feared violence in that area, although she had not mentioned the area previously as an area which she wished to avoid. She requested a review of the suitability of the offer. A charity wrote to the Council on her behalf stating that she was an extremely vulnerable young woman with mental health problems, and that it was impossible for her to occupy the flat because of her fear of violence in that locality. The Council decided that the property was suitable because there was no evidence of a risk of violence. On appeal, the county court judge found that the Council's decision was perverse, in that it had failed to mention the evidence from the charity.

The Court of Appeal held that the judge had failed to apply the correct approach to the decision. She had taken the view that Council should have given more weight to the Charity's letter. The review officer's conclusion was one which was reasonably open to him. As a general rule, if fears such as those of W were genuinely held owing to mental illness or vulnerability, and that condition was supported by medical evidence, this was a matter which the authority should take into account when considering its duty. In this case, however, W's mental health had not been raised in support of her appeal to the county court and so could not be considered on appeal.

**Ahmed v Leicester BC** [2007] EWCA Civ 843. A was a single mother of Somali origin with three young children. She was offered a four-bedroomed house and was initially happy with it. On a second visit to the property she found it had been vandalised. Three teenagers approached her and told her that this was not the right area for her and they threatened to burn the property down if she moved in. She refused the offer as she feared violence and damage to the property if she moved in. The Council wrote a letter discharging its duty and upheld its decision on review. A appealed.

The main issue on appeal was therefore whether or not the council had properly dealt with the issue of whether it had been reasonable for Mrs A to have accepted the offer as was required under section193(7F). The Court of Appeal, dismissing A's appeal, said that the Council had applied an objective test, based on all the available evidence as to the reasonableness of the appellant's decision to reject the offer of accommodation. A belief may be genuinely held without being a reasonable belief. Although the Court was prepared to accept that A may have genuinely feared for her safety and that of her family if she accepted the offer, the evidence summarised in the Council's decision letter permitted it to reach the decision that the fear was not a reasonable one and that it would have been reasonable to accept the offer.

**Slater v Lewisham LBC** [2006] EWCA Civ 394**.** S asked not to be rehoused in the New Cross area of the Council's district because she feared violence from her ex-partner D, who she believed had been living with friends in that area. She received an offer in that area and rejected it. On appeal to the county court, the Council's evidence was that it did not have sufficient reason to believe that D was living in New Cross. The Council believed that he was living at his parents' home or with a female friend in Sydenham.

S's appeal was allowed by the county court judge. The Council's appeal to the Court of Appeal was dismissed. In deciding that it had discharged its duty under section 193(7F), the Council must be satisfied both that the accommodation is "suitable for the applicant" *and* that "it is reasonable for him to accept the offer" . Lord Justice Ward said:

"In judging whether it was reasonable to refuse such an offer, the decision-maker must have regard to all the personal characteristics of the applicant, her needs, her hopes and her fears and then taking account of those individual aspects, the subjective factors, ask whether it is reasonable, an objective test, for the applicant to accept. The test is whether a right-thinking local authority would conclude that it was reasonable that *this applicant* should have accepted the offer of *this* accommodation."

On the evidence there was no real prospect that the Council, acting rationally and with the benefit of further reasonable enquiries, could conclude that it was satisfied that it was reasonable for S to accept the offer of accommodation.

The requirement in section 193(7F) that authorities must be satisfied, when making a final offer under Part 6 or a private rented sector offer, that it is reasonable for the applicant to accept the offer has been amended so that only contractual and other obligations in respect of existing accommodation can be taken into account. However, the Supplementary Guidance states:

**22** This change **does not mean** that those subjective suitability issues which have become associated with 'reasonable to accept', such as those discussed in *Ravichandran and another v LB Lewisham* or *Slater v LB Lewisham* are not to be taken into account. The intention is that these factors as already highlighted in paragraph 17.6 of the Homelessness Code of Guidance for Local Authorities (for example, fear of racial harassment; risk of violence from ex-partner's associates) continue to be part of those factors/elements an authority consider in determining suitability of accommodation.

**R v Southwark LBC ex parte Solomon**, *Legal Action*, June 1994, p.13, QBD. S refused an offer of permanent accommodation which was in an area of the borough where friends of her violent ex-partner lived and which was frequented by him. The Council decided that it had discharged its duty, on the basis that the presence of friends of a partner in the area (as opposed to relatives) could not make accommodation unsuitable. The decision was quashed. The Council had failed to consider matters such as the frequency of visits made by the partner to his friends and the degree of risk to which S might be exposed.

**R v Hackney LBC ex parte Tonnicodi** *Legal Action March 1998, p.15*
In assessing what size of accommodation would be suitable for the applicant, the authority should have asked whether it was reasonable for the applicant's friend to live with him as a carer or companion.

**Williams v Birmingham CC** [2007] EWCA Civ 691. W was a single parent with two children. She was offered a property which was far from her five year old son's

school. She refused the offer and applied for a review of the Council's decision to discharge its duty. The decision was upheld and W appealed. The Court of Appeal held that some further enquiries could have been made about the travel problems which would arise if the son remained at his school, but that the enquiries made were adequate. The Council could have helped the applicant to improve her case and to expand on her travel problems but as a matter of law it was not compelled to do so. However, the "crunch point" was that W could have avoided any possible transport difficulties by finding a school closer to the home offered. The Council took the view that changing schools would have no long-term detrimental effect on the boy, who was not at that stage at any crucial period of his schooling. That view was a permissible one on the evidence. Hence there was no unfairness in the Council's procedure.

**Opeyokun v Lewisham LBC** *Legal Action November 2003, page 16 Bromley County Court.* The Council provided accommodation under section 193 by way of an RSL assured shorthold tenancy in the neighbouring borough of Greenwich. O moved there and placed her son, who had behavioural difficulties, in the local school where he settled well. Some time later, O was offered alternative accommodation in Lewisham which would require the son to change schools. The Council's decision as to suitability was quashed. It had not considered securing the provision of private sector accommodation outside its area.

**Sheridan and others v Basildon District Council** [2012] EWCA Civ 335. S was a member of a travelling family who had been cleared from an unauthorised site at Dale Farm. Following a homelessness application he was made an offer of Council accommodation. He rejected the offer on the ground that he had an aversion to `bricks and mortar' accommodation. S had always lived in caravans and mobile homes and had a number of medical and psychiatric problems.

It was also argued for S that the Council could not rely upon the absence of any available caravan pitches when that state of affairs was arguably the consequence of its own failure to use its powers to provide sites for those who need them. The Council's Homelessness Strategy simply stated that there was no suitable land for mobile accommodation.

The Court of Appeal dismissed S's appeal. Where an authority had proper regard to a traveller's cultural way of life by making proper enquiries as to whether accommodation in the form of a caravan site could be made available, but it was unable to do so, the provision of bricks and mortar accommodation would nevertheless comply with both section 193 and Article 8, even though S had a cultural aversion to being housed in such accommodation. It would only be if there were other particular circumstances which rendered such accommodation unsuitable, such as evidence of the risk of psychiatric harm, that the offer might be challenged on judicial review grounds.

In relation to the Council's failure to provide enough sites for travellers in its area, the Court held that it was unrealistic to expect a housing officer on a section 202 review to conduct a general inquiry into strategic questions about the adequacy of site provision and the preparation of a homelessness strategy. Those were matters which fell well outside the expertise of a housing officer. A homelessness review was intended to have a much narrower focus of whether an offer of accommodation

from within the authority's existing resources met the applicant's needs. The Court also rejected a further argument that the Council should have considered acquiring land in order to provide a site for the applicants.

See also **Lee v Rhondda Cynon Taff CBC** [2008] EWCA Civ 1013 and **Codona v Mid-Bedfordshire DC** [2004] EWCA Civ 925. In both cases the Council's provision of bricks and mortar accommodation was upheld.

**Orejudos v Kensington & Chelsea RLBC** [2003] EWCA Civ 1967, *Legal Action December 2003 p.16* O's section 193 accommodation was in a bed and breakfast hotel with a condition that he sign the hotel register each day and sleep there each night unless he provided an explanation in advance for his absence. After being warned, he was absent on ten occasions, giving explanations only on three of them. The booking was cancelled and it was decided that he had become homeless intentionally under section 193(6)(b). The condition was reasonable and did not make the accommodation unsuitable.

**Sharif v Camden London Borough Council** [2011] EWCA Civ 463. S was the carer for her father and younger sister. In 2009, the Council offered S two flats in the same building. It was envisaged that one flat would be occupied by S and her sister and the other by her father. The flats were some yards apart, but on the same floor. S refused the offer and requested a review. The decision was upheld and her appeal to the county court was dismissed.

The Court of Appeal upheld her appeal. The policy of the 1996 Act was to ensure that families remained living together. The offer of two flats did not amount to the provision of accommodation which S and her father were to occupy "together with" one another. The Council's appeal to the Supreme Court is to be heard on 17 January 2013.

***Restrictions on the use of bed and breakfast accommodation***

Reg 3 of the **Homelessness (Suitability of Accommodation)(England) Order 2003** SI 3326/2003 provides that for the purpose of discharging homelessness duties, bed and breakfast accommodation is *not to be regarded as suitable* for an applicant with family commitments.

An applicants with family commitments is an applicant –

- who is pregnant;
- with whom a pregnant woman resides or might reasonably be expected to reside; or
- with whom dependent children reside or might reasonably be expected to reside.

The restriction does not apply –

- where no accommodation other than bed and breakfast is available for occupation by an applicant with family commitments, ***and***

- the applicant occupies such accommodation for ***no more than 6 weeks*** in total. (reg 4)

"Bed and breakfast accommodation" means accommodation (whether or not breakfast is included) –

- which is not separate and self-contained premises; and
- in which any one of the following amenities is shared by more than one household:
  - a toilet;
  - personal washing facilities;
  - cooking facilities.

The restriction does not apply to accommodation owned by a local authority, registered social landlord or voluntary organisation.

The Code:

> **17.34** The Secretary of State considers that the limited circumstances in which B&B hotels may provide suitable accommodation could include those where:
>
> (a) emergency accommodation is required at very short notice (for example to discharge the interim duty to accommodate under s.188); or
>
> (b) there is simply no better alternative accommodation available and the use of B&B accommodation is necessary as a last resort.
>
> **17.35** The Secretary of State considers that where housing authorities are unable to avoid using B&B hotels to accommodate applicants, they should ensure that such accommodation is of a good standard … and is used for the shortest period possible. The Secretary of State considers that where a lengthy stay seems likely, the authority should consider other accommodation more appropriate to the applicant's needs.

Housing authorities should have regard to the recommended minimum standards for Bed and Breakfast accommodation set out in Annex 17 of the Code of Guidance when assessing whether such accommodation is suitable.

On 12 December 2012 the Local Government Ombudsman found that there had been maladministration by Croydon Council in its dealings with a family which had become homeless when armed men broke into their property and assaulted them. The Council took over a month to offer any accommodation at all and then offered bed and breakfast on the third floor with no lift, which was also in a poor condition. 8 months later, and following numerous requests from the applicant and her solicitor, self contained accommodation was offered. See Report 11 005 774.

***Location of accommodation***

Section 208(1), HA 1996, provides:

"So far as reasonably practicable, an authority shall, in discharging their housing functions, secure that accommodation is available for the occupation of an applicant in their district."

The Code:

**ACCOMMODATION SECURED OUT OF DISTRICT**

**16.7** Section 208(1) requires housing authorities to secure accommodation within their district, in so far as is reasonably practicable. Housing authorities should, therefore, aim to secure accommodation within their own district wherever possible, except where there are clear benefits for the applicant of being accommodated outside of the district. This could occur, for example, where the applicant, and/or a member of his or her household, would be at risk of domestic or other violence in the district and need to be accommodated elsewhere to reduce the risk of further contact with the perpetrator(s) or where ex-offenders or drug/alcohol users would benefit from being accommodated outside the district to help break links with previous contacts which could exert a negative influence.

**16.8** Where it is not reasonably practicable for the applicant to be placed in accommodation within the housing authority's district, and the housing authority places the applicant in accommodation elsewhere, s.208(2) requires the housing authority to notify the housing authority in whose district the accommodation is situated of the following:

i) the name of the applicant;
ii) the number and description of other persons who normally reside with the applicant as a member of his or her family or might reasonably be expected to do so;
iii) the address of the accommodation;
iv) the date on which the accommodation was made available;
v) which function the housing authority is discharging in securing the accommodation.

The notice must be given in writing within 14 days of the accommodation being made available to the applicant.

**16.9** The Secretary of State considers that applicants whose household has a need for social services support or a need to maintain links with other essential services within the borough, for example specialist medical services or special schools, should be given priority for accommodation within the housing authority's own district. In particular, careful consideration should be given to applicants with a mental illness or learning disability who may have a particular need to remain in a specific area, for example to maintain links with health service professionals and/or a reliance on existing informal support networks and community links. Such applicants may be less able than others to adapt to any disruption caused by being placed in accommodation in another district.

**ACCESS TO SUPPORT SERVICES**

**16.10** The Secretary of State recommends that housing authorities consider what arrangements need to be in place to ensure that households placed in temporary

accommodation, within their district or outside, are able to access relevant support services, including health, education and social services. The Secretary of State considers that all babies and young children placed in temporary accommodation, for example, should have the opportunity to receive health and developmental checks from health visitors and/or other primary health care professionals. See Chapter 4 for further guidance on securing support services.

**LOCATION OF ACCOMMODATION**

**17.41** The location of the accommodation will be relevant to suitability and the suitability of the location for all the members of the household will have to be considered. Where, for example, applicants are in paid employment account will need to be taken of their need to reach their normal workplace from the accommodation secured. The Secretary of State recommends that local authorities take into account the need to minimise disruption to the education of young people, particularly at critical points in time such as close to taking GCSE examinations. Housing authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities, and, wherever possible, secure accommodation that is as close as possible to where they were previously living, so they can retain established links with schools, doctors, social workers and other key services and support essential to the well-being of the household.

The above criteria have now been given legislative form in the Homelessness (Suitability of Accommodation) (England) Order 2012. Reg. 2 provides as follows:

**"***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."

The Supplementary Guidance provides:

> **47** Location of accommodation is relevant to suitability. Existing guidance on this aspect is set out at paragraph 17.41 of the Homelessness Code of Guidance offers. The suitability of the location for all the members of the household must be considered by the authority. Section 208(1) of the 1996 Act requires that authorities shall, in discharging their housing functions under Part 7 of the 1996 Act, in so far as is reasonably practicable, secure accommodation within the authority's own district.
>
> **48** Where it is not possible to secure accommodation within district and an authority has secured accommodation outside their district, the authority is required to take into account the distance of that accommodation from the district of the authority. Where accommodation which is otherwise suitable and affordable is available nearer to the authority's district than the accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the authority has a justifiable reason or the applicant has specified a preference.
>
> **49** Generally, where possible, authorities should try to secure accommodation that is as close as possible to where an applicant was previously living. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Local authorities are required to take into account the significance of any disruption with specific regard to employment, caring responsibilities or education of the applicant or members of their household. Where possible the authority should seek to retain established links with schools, doctors, social workers and other key services and support.
>
> **50** In assessing the significance of disruption to **employment**, account will need to be taken of their need to reach their normal workplace from the accommodation secured.
>
> **51** In assessing the significance of disruption to **caring responsibilities**, account should 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.
>
> **52** 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.
>
> **53** Account should also be taken of medical facilities and other support currently provided for the applicant and their household. Housing authorities should consider the potential impact on the health and well being of an applicant or any person reasonably expected to reside with them, were such support removed or medical facilities were no longer accessible. They should also consider whether similar facilities are accessible and available near the accommodation being offered and whether there would be any specific difficulties in the applicant or person residing with them using those essential facilities, compared to the support they are currently receiving. Examples of other support might include support from particular individuals, groups or organisations located in the area where the applicant currently resides: for example essential support from relatives or support groups which would be difficult to replicate in another location.

**54** Housing authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities, where possible.

**55** Whilst authorities should, as far as is practicable, aim to secure accommodation within their own district, they should also recognise that there can be clear benefits for some applicants to be accommodated outside of the district. This could occur, for example, where the applicant, and/or a member of his or her household, would be at risk of domestic or other violence in the district and need to be accommodated elsewhere to reduce the risk of further contact with the perpetrator(s) or where exoffenders or drug/alcohol users would benefit from being accommodated outside the district to help break links with previous contacts which could exert a negative influence. Any risk of violence or racial harassment in a particular locality must also be taken into account. Where domestic violence is involved and the applicant is not able to stay in the current home, housing authorities may need to consider the need for alternative accommodation whose location can be kept a secret and which has security measures and staffing to protect the occupants.

**56** 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.

**57** Where it is not reasonably practicable for the applicant to be placed in accommodation within the housing authority's district, and the housing authority places the applicant in accommodation in another district, section 208(2) **requires the housing authority to notify in writing within 14 days of the accommodation being made available to the applicant the housing authority in whose district the accommodation is situated.**

**58** Local authorities are reminded that in determining the suitability of accommodation, affordability must be taken into account. This aspect of suitability must continue to form part of your assessment when considering the location of accommodation.

*Cases*

**R v Enfield LBC ex parte Yumsak** [2002] EWHC 280. Y had three children aged 7, 6 and 3. She had been housed in the Council's area by Social Services until she was granted indefinite leave to remain. On her application as a homeless person the authority decided to provide her with temporary accommodation in Birmingham pending a decision on her application. Y objected because she had no friends in Birmingham; she suffered from epilepsy; her children's schooling would be interrupted; and the children's father wished to maintain contact with them and he lived in London.

Soon after moving to Birmingham Y suffered two epileptic attacks. She had no friends or family to turn to. Y's solicitor asked the council to reconsider its decision. The council responded that it had considered all the circumstances but was satisfied that the accommodation in Birmingham was suitable for the family's needs. Y sought judicial review of the decision to place her in Birmingham.

The Court considered that, while Y did not have relatives in the Enfield area, she was a single mother with three small children who spoke little English. She had

friends in north London, but not in Birmingham. It was difficult for the father to keep in touch. The placement involved further changes of schools for two of the children. The council furnished no evidence that the only way of meeting its duties was to send Y to Birmingham, where there was no identified community speaking her language.

It was held that the decision was *Wednesbury* unreasonable. If the authority had properly taken account of all the relevant information, it could not have sent the family to Birmingham. The court found that a human rights challenge also succeeded. The council had accepted that article 8 was engaged by the placement because of the fracture to contact with the father. A declaration was granted that the decision to secure temporary accommodation in Birmingham was not a lawful discharge of the council's duties under s.188.

**R (Calgin) v Enfield LBC** [2005] EWHC 1716. Mr and Mrs C were accepted as homeless by Enfield and offered temporary accommodation under s.193 HA 1996 in two-bedroomed accommodation in Birmingham owned by Enfield. They challenged the lawfulness of Enfield's out of area placement policy by way of judicial review.

In terms of what was reasonably practicable the Court held that "cost cannot be an improper or irrelevant consideration"; "the question of available resources must be relevant" (para 32), especially as the accommodation still had to be suitable.

The Court also considered whether councils had a continuing obligation to try and marry accommodation to each applicants' needs, but concluded that "it would be wholly impractical for the council to have to continually reassess whether the accommodation being provided was the best fit for the clients". However the Court held that "the council does have to keep under general review the question of reasonable practicability" (para 65). On the facts the policy was not unlawful.

***Pets***

The Code:

**17.42** Housing authorities will need to be sensitive to the importance of pets to some applicants, particularly elderly people and rough sleepers who may rely on pets for companionship. Although it will not always be possible to make provision for pets, the Secretary of State recommends that housing authorities give careful consideration to this aspect when making provision for applicants who wish to retain their pet.

## 2. Reviews of suitability

**Section 202(1)** provides that an applicant has the right to request a review of any decision made by a local housing authority:

…

(b) on what duty (if any) is owed to him/her under

- **ss.190** and **191** (intentional homelessness)
- **s.192** (no priority need and not intentionally homeless)
- **s.193** (the "full" housing duty)
- **s.195** (threatened with homelessness)
- **s.196** (threatened with homelessness intentionally)

…

(e) as to the duty owed on a "local connection" referral (**ss.200(3)** and **(4)**)

(f) as to the suitability of accommodation offered to him/her 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/her as mentioned in section 193(7), or

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

There is no right of statutory review of the suitability of accommodation provided under s.188 (interim accommodation pending decision or temporary accommodation provided pending review) or s.200(1) (temporary accommodation pending decision on local connection referral). Challenges to the suitability of such accommodation must be brought by way of judicial review.

Any offer of accommodation made under the section 193 homelessness duty must inform the applicant of his/her right to request a review of the suitability of the accommodation and of the possible consequence of refusing the offer (see s.193(5) and (7)). The reference to section 193(7) above confirms that there is a right of review of the suitability of accommodation offered under an authority's allocation scheme where this will also constitute a discharge of an existing homelessness duty.

Section 202(1A) provides:

> "An applicant who is offered accommodation as mentioned in section 193(5) or (7) or (7AA) may … request a review of the suitability of the accommodation offered to him whether or not he has accepted the offer."

Note the question of establishing from what date the 21 day time limit runs, in situations where accommodation is provided under one of the relevant duties, but without formal notification of the right of review. Does the time limit begin to run until the Council has turned its mind to the issue of suitability, which it may not do until challenged? And see **R v Westminster CC ex parte Zaher** (below).

***Reasons***

An authority is not under a general duty to give reasons for its decision that accommodation is suitable, unless the decision is `demonstrably out of line' with the policy of the authority (**R v Kensington and Chelsea RLBC ex parte Grillo** (1995) 28 HLR 94, CA and **Akhtar v**

**Birmingham CC** [2011] EWCA Civ 383. But compare **R v Islington LBC ex parte Okocha** [1997] 4 CL 329, QBD. In this case, an applicant was offered accommodation where the doors and windows had been daubed with racist graffiti, and slogans and threats had been posted inside. She appealed against the offer. The Council cleaned away the offensive material and decided to re-offer the accommodation to her. The decision was quashed. It was held that the failure to give reasons for the decision (to re-offer the property) was unfair and unreasonable.

***Specialist evidence of unsuitability***

> **R v Wycombe DC ex parte Hazeltine** (1993) 25 HLR 313, CA. An offer should be kept open while relevant material is being considered. In this case, the council had given the applicant 24 hours to accept the accommodation offered, but she needed more time to obtain evidence from an educational psychologist as to the likely effects on her child of living on a particular estate.

***Time to consider?***

The Code:

> **14.18** The Secretary of State recommends that applicants are given the chance to view accommodation before being required to decide whether they accept or refuse an offer, and before being required to sign any written agreement relating to the accommodation (e.g. a tenancy agreement).

But contrast:

> **R (Khatun, Zeb & Iqbal) v Newham LBC and Office of Fair Trading** [2004] EWCA Civ 55. All three claimants were owed the full s.193 duty. They were notified that they were to be transferred to alternative temporary accommodation under a private leasing scheme and were given appointments to collect the keys and sign up for the tenancies. They were informed that if they failed to contact the council or keep the appointments, their temporary accommodation would be cancelled immediately and the offers withdrawn. The Council stated that the (unidentified) accommodation was considered suitable, but that a review of suitability could be requested within twenty-one days.
>
> On attending the Council offices, the applicants were told to sign tenancy agreements there and then, without being allowed to see the accommodation, and that if they did not do so, their temporary accommodation would be terminated immediately and the offers withdrawn. The claimants challenged the Council's practice. The Council argued that they had taken i the Code of Guidance (see above) into account in formulating their scheme, but were entitled not to apply it because of the need to meet the government's target for moving people out of bed and breakfast accommodation.
>
> The Court of Appeal held that the council's policy was lawful. Authorities were not required to permit applicants to view accommodation which they believed was suitable for them. It was for the council to assess suitability. It was always open to the applicant to seek a review of suitability.

***Is there a continuing right to review of suitability?***

> **R v Westminster CC ex parte Zaher** [2003] EWHC 101. The council accepted a full homelessness duty under s.193. Despite initial objections by Z about the location of the accommodation on offer, he accepted out of area accommodation in October 2001. The difficulties faced by Z and his family because of the location of the accommodation intensified. Z asked the council to move him and his family to alternative accommodation. The court held that Z could ask the council to reconsider the suitability of his accommodation. The Council's obligation to provide suitable accommodation was a continuing obligation. However, it was necessary that there be a substantial change in the applicant's circumstances in order to trigger the duty to reconsider suitability.

The Code:

> **17.8** As the duty to provide suitable accommodation is a continuing obligation, housing authorities must keep the issue of suitability of accommodation under review. If there is a change of circumstances of substance the authority is obliged to reconsider suitability in a specific case.

Where a family has been accepted as homeless on the basis that it is not reasonable for them to continue to occupy their accommodation because of overcrowding, it may be permissible for the local authority to require them to remain in their current accommodation for the time being, until suitable accommodation can be found for them: **Birmingham CC v Ali and others** [2009] UKHL 36.

***Procedural issues***

> **Omar v Westminster CC** [2008] EWCA Civ 421. The Council offered O, his wife and his new born son a property over nine miles away from the Council's area. O considered it unsuitable and refused the offer, because his son had been born prematurely and the baby's discharge summary from the hospital recorded that he should be seen weekly at a neo-natal clinic. O requested a review.
>
> On making further enquiries, the Reviewing Officer was informed by the hospital that no developmental problems had so far been detected and that the family would be no less able to cope than any other family with a new baby. The review decision upheld the original decision of suitability.
>
> The Court of Appeal held that what facts were to be taken into account at the time of the review decision depended on what was being reviewed and would be dictated by what fairness and common sense required. A reviewer was entitled to have regard to facts that had come to light since the original decision if those facts had existed at the time of the original decision. In suitability cases, the correct question for the reviewer was whether the decision had been right at the time it was taken. Facts which were in existence at that date might be examined even though they had not been discovered until later.

In this case, however, the Reviewing Officer had made his decision in the light of the hospital's answer to his request for further information. He should have looked at the position as it was when the decision had been made. At the time of that decision O's son was being taken for hospital testing on a weekly basis, and at that time there was a question as to whether the accommodation offered was suitable. The appeal was allowed.

**Sahardid v Camden LBC** [2004] EWCA Civ 1485; *Legal Action*, *Jan. 2005, p.29* On a review of suitability the reviewing officer had overlooked the fact that S's son had turned 5 three days before the review decision was notified. The child's age had to be taken into account because the Council's own allocation scheme provided for such a household to have two bedrooms. The Council's contention that the applicant should simply pursue a transfer to larger accommodation was rejected.

**Boreh v Ealing LBC** [2008] EWCA Civ 1176. B was disabled and used a wheelchair. B rejected an offer on the grounds that it had a large step at the front door and no ramp. The Council concluded that the property was suitable because the owner had agreed to supply a ramp. The Court of Appeal held that the suitability of accommodation was not to be judged exclusively by the condition of the accommodation at the time of the offer, but should also take into account any adaptations or alterations that were proposed, provided that it was clear to the applicant that any such proposals were certain, binding and enforceable. The review officer was obliged to review whether the house offered to B was suitable, taking into account any proposals to adapt it which the authority had made by the date of the offer. If the authority subsequently proposed any adaptations, they were irrelevant to the review and had to be ignored. At the time of the Council's decision letter, the property was not suitable, and the Council had not discharged its duty towards B.

**Maswaku v Westminster CC** [2012] EWCA Civ 669 M applied to Westminster but was offered temporary accommodation in Dagenham. The offer letter informed her that, should she refuse it, she would have to find her own accommodation. She declined the offer on the basis that Dagenham was too far away: her children were in a nearby school and she was enrolled at a local college. M's appeal to the Court of Appeal was dismissed. The offer letter complied with s.193(5), because it clearly set out that M would have to find her own home if she declined the offer. It was sufficient for the solicitors to have been advised of their right to make representations on behalf of their client. There was no deficiency in the original decision as it had properly considered the difficulties which M might experience in travelling from Dagenham.

## 3. Judicial review of failure to provide suitable accommodation

In some circumstances a challenge may be brought by way of judicial review rather than by statutory review and county court appeal. The critical issue appears to be: has the Council

failed – either by its own admission or unarguably – to provide suitable accommodation such that a mandatory order to require them to do so is justified?

*Cases*

**R (Khan) v Newham LBC** *Legal Action*, *October 2001, p.16,* QBD. K applied for judicial review of the Council's failure to secure suitable accommodation for his family. The Council had accepted the full housing duty towards K, together with his wife and four children, aged 10, 7, 5 and eighteen months. They had been placed in unsuitable temporary accommodation, where kitchen and bathroom facilities were shared with another family, and there were no facilities for washing clothes. There were 10 people sharing one kitchen and two toilets. The accommodation was in Ilford, Essex, and the children had an hour's journey to travel to their primary school in Newham.

The issue was whether or not the court should grant a mandatory order. In exercising its discretion, the court should consider (1) the nature of the temporary accommodation occupied; (2) the length of time for which the Council had been in breach of the duty; (3) the efforts made by the Council to find suitable accommodation; (4) the likelihood of accommodation becoming available in the near future; and (5) any particular factors in relation to the individual case.

The Council's argument that lack of available resources was a relevant consideration was rejected. A mandatory order was granted, requiring the Authority to provide suitable accommodation within two months.

**R v Newham LBC ex parte Begum and Ali** (2000) 32 HLR 808, QBD. Mrs B and Mr A had six children aged between 3 and 17, together with Mr Ali's 14 year old half brother and his mother, who was disabled. They applied as homeless, and the council accepted a duty towards them. The council arranged a six-month assured shorthold tenancy of a four bedroomed house. The council accepted that the property was not large enough, but claimed that because of the severe shortage of larger properties in its area, the particular accommodation was `the most suitable property available for you at this time'. It argued that it was doing its best to find accommodation, but that no suitable accommodation was presently available. It was held that the housing duties in the Act could not be deferred. No court would enforce the duty unreasonably. It may be reasonable to expect a family to put up with conditions for a short period which would be clearly unsuitable if they had to be tolerated for a number of weeks. But there is a line to be drawn below which the standard of accommodation cannot fall. In this case, the council was unable to show that it had done all that it could to provide suitable accommodation.

***Judicial review or statutory review and appeal?***

**R (Chowdhury) v Newham LBC** *Legal Action*, *November 2002, p.24* On presenting as homeless, C and her family were provided with bed and breakfast accommodation outside the borough in a single room with a fridge and a microwave. There was no space for

furniture other than beds. A decision was made to accept the full duty, but no steps were taken to secure the provision of alternative accommodation under s.193. It was held that leaving the family in the interim accommodation arguably did not amount to a decision about suitability and therefore it was not appropriate to seek a statutory review. Further, it was arguable that the conditions at the hotel warranted judicial review in any event (cf **R v Newham LBC ex parte Begum and Ali** above).

Compare **R v Merton LBC ex parte Sembi**, *Legal Action*, *July 1999, p.23*. The applicant, who was disabled by polio, had been placed in a home for the elderly and terminally ill pending an offer of adapted long-term accommodation. It was held that the suitability of the accommodation could be challenged only by the statutory review process and subsequent county court appeal.

## 4. Suitability of interim accommodation (s.188)

The suitability of interim accommodation can be challenged only by judicial review. The standard of suitability may be lower, according to the length of time for which the household is likely to remain in the accommodation.

*Cases*

**R v Ealing LBC ex parte Surdonja** (1999) 31 HLR 686, QBD. Rooms provided for a young family in two separate hotels were neither suitable nor `available' to the family as a whole. The court also found that a lack of resources does not obviate the need to perform the duty by the provision of suitable accommodation.

**R v Newham LBC ex parte Sacupima** (2001) 33 HLR 1 CA. While financial constraints and limited housing stock are matters which may be taken into account in determining suitability, 'one must look at the needs and circumstances of the particular family and decide what is suitable for them, and there will be a line to be drawn below which the standard of accommodation cannot fall'.

Sally Morshead
Shelter, 16 January 2013

# HOUSING LAW PRACTITIONERS' ASSOCIATION SUITABILITY AND PRIVATE RENTED SECTOR OFFERS THE NEW RULES

Materials

1. Law:
    a. **Part 7 Housing Act 1996** as amended by ss.148 – 149 Localism Act 2011 (see Appendix);
    b. **Homelessness (Suitability of Accommodation) (England) Order 2012**, SI 2012/2601;
    c. **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:
    a. *Homelessness and Allocations*, Arden, Orme and Vanhegan (LAG);
    b. *Housing Allocation and Homelessness*, Luba and Davies (Jordans).

Jurisdiction

3. 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

4. See **The Localism Act 2011 (Commencement No 2) and Transitional Provisions) (England) Order 2012** SI 2012/2599.

5. In general, for applications to local housing authorities in England made on or after **9 November 2012**.

6. 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

7. 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).

8. 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**.

9. 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**.

10. 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**.

11. 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.

12. To be a "private rented sector offer" the offer must be —

    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 (s.193(7AC).

13. 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:
    a. The possible consequence of refusal or acceptance of the offer; and
    b. That the applicant has the right to request a review of the suitability of the accommodation; and
    c. (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).

14. 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).

15. 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

16. Defined at s.193(7AC) above.

17. 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).

18. 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**.

19. 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

20. 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**.

21. Note the very specific application at s.195(1A). The special provisions only apply if:

    a. A new application is made by the person who accepted the private rented sector offer;
    b. On a date up to and including two years from the date of acceptance of the private rented sector offer

22. The application can be made to any local housing authority.

23. 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.

24. If the applicant is threatened with homelessness, the duty at s.195 will apply without the applicant having to have a priority need.

25. In addition, and also except where the applicant is a restricted case, an applicant is deemed to be:

    a. threatened with homelessness at the date when a valid s.21 notice is served; and
    b. homeless at the date at the date for possession in the notice (see paras 37 – 39 **Supplementary Guidance**).

26. 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.

27. 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.

28. Note that these special provisions apply only once (s.195A(6)).

<u>The new issues</u>

29. Suitability of accommodation: tension between affordability, location and any other reason why accommodation may or may not be suitable.

30. 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.

31. The concern is a revolving door of applicants housed in minimum term private rented sector offers and consequent fresh applications for homelessness assistance.

**<u>Liz Davies</u>**
**<u>Garden Court Chambers</u>**
**<u>15 January 2013</u>**

# 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.

### 193

### 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.

## 195

## 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).

## 202

## 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.