
HOMELESSNESS ACT 2002

1 SUMMARY

- 1.1 This report updates Members on changes to housing legislation introduced by the Homelessness Act 2002. The Head of Revenue and Housing Management has recently reported on the effects of this Act on housing allocations.

2 BACKGROUND

- 2.1 Policies to amend the approach to, and law dealing with, homelessness have been signalled in a series of documents over recent years - "Quality and Choice: A Decent Home for All", "Supporting People - Policy into Practice" and the Rough Sleepers Unit Strategy "Coming in from the Cold". Earlier this year the report "More than a Roof - a report into tackling homelessness" was published by the Department for Transport, Local Government and the Regions.
- 2.2 The Housing Act 1996 identified those people for whom the local authority have a duty to provide advice and/or assistance in the event of homelessness.
- 2.3 To qualify for assistance, in addition to being homeless, an applicant also has to be:
- 'eligible' for housing assistance ie, not excluded due to immigration status, and,
 - in 'priority need': this includes households with a pregnant woman, households with dependent children, households including a person who is 'vulnerable' due to reasons such as old age, mental illness or physical disability, and households made homeless in an emergency such as a fire, and,
 - not homeless intentionally: the applicant must not have deliberately done, or failed to do, anything in consequence of which s/he ceases to occupy accommodation.
- 2.4 Whether an applicant meets all or only some of these criteria has determined whether the local authority has a duty to provide assistance with obtaining accommodation for a minimum two year period or whether the duty is to provide advice in helping the applicant find his/her own accommodation.
- 2.5 The Homelessness Act 2002 and associated Orders introduce several significant changes:-

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- There is a new duty to provide accommodation indefinitely for unintentionally homeless people in priority need (previously this was limited to two years, unless renewed following a review).
 - A new power is introduced to allow the provision of accommodation to unintentionally homeless people who are not in priority need, where there is suitable available housing.
 - The definitions of “priority need” for housing are extended to new groups of vulnerable homeless people.
 - Councils have a new duty to review homelessness and to publish a strategy to tackle and prevent it.

- 2.6 Local housing authorities will now be required to take a long-term, strategic approach to tackling homelessness in all its forms, with particular emphasis on prevention. In doing so, they will be able to call on the help of other departments and agencies in developing a multi-agency response to homelessness in their area.

Over time, these reforms aim to change the way that homeless services are delivered, with the focus shifting away from reactive response to a strategic response based on early intervention, and the development of support services to help those who have been rehoused to sustain their tenancies.

- 2.7 By way of additional background information, an introduction to the Homelessness Act 2000 which has been produced by Shelter is appended.

3 HOMELESSNESS REVIEWS AND STRATEGIES

- 3.1 The Homelessness Act 2002 requires a transformation of homelessness services, so that they focus on enabling people to find and maintain a suitable home. The emphasis should be on:

- shifting away from managing homelessness as a crisis event;
- preventing homelessness; and
- providing support services to homeless people.

- 3.2 In summary, the Act requires Local Housing Authorities (LHAs) to:

- carry out and publish a homelessness strategy based on the results of a review, by 31 July 2003;
- keep the strategy under review and consult on and amend it from time to time; and
- publish a new strategy at least every 5 years.

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- 3.3 Social Services Authorities (SSAs) are required to provide such assistance as the LHA reasonably requires in carrying out the review and drawing up the strategy. Once the strategy is agreed, both the LHA and SSA must take it into account in the exercise of their functions.
- 3.4 The Act requires the **review** to cover:
- The current and likely future levels of homelessness in the District;
 - Activities undertaken to prevent homelessness, secure that accommodation is available to homeless people and provide support to homeless people;
 - The resources available to the LHA, SSA, other public agencies, voluntary organisations and others for such activities.
- 3.5 The Act requires the **strategy** to cover:
- Preventing homelessness;
 - Securing that sufficient accommodation is, and will be available for people who are (or may become) homeless;
 - Securing the satisfactory provision of support services (defined as advice, information and assistance) for homeless people;
 - Specific objectives to be pursued and specific action to be taken by the LHA, SSA and, with their approval, by any public authority, voluntary body or other person capable of contributing to the objectives; and
 - How the objectives might be met by different organisations working together.
- 3.6 The review and strategy must cover all categories of people who are (or are likely to become) homeless. This includes priority and non-priority homeless people, families with children, couples and single people, intentionally and unintentionally homeless people and people at risk of becoming homeless.
- 3.7 The Act strongly emphasises the importance of Social Services and Housing working together to support vulnerable people, and especially to avoid the danger of people falling between the responsibilities of the two services.
- 3.8 The Homelessness Strategy will need to inform, and be informed by, other strategies, action plans and work programmes, for example, the Crime & Disorder Reduction Strategy.
- 3.9 The Government has said that by March 2004, no household containing children should be housed in bed and breakfast

accommodation except in an emergency, and only then for a maximum of 6 weeks. The strategy will need to take account of this target.

- 3.10 Following publication of the Homelessness Strategy the LHA will be required to take it into account when exercising all of its housing functions, e.g. we will need to consider the impact of housing management practices, such as treatment of rent arrears cases.
- 3.11 There will also be the expectation of liaison with other council departments, e.g. Legal Services and the prosecution of landlords alleged to have carried out illegal evictions.
- 3.12 Engagement with agencies that provide help and support to homeless people will be required.
- 3.13 The work that was undertaken two years ago in conducting the pilot Best Value Review of homelessness and housing advice services provides a good foundation for the review and production of the strategy, but further work will be needed.

4 RESOURCE IMPLICATIONS

- 4.1 It is not possible to say at this stage whether there will be any resource implications, as this will depend on the strategy the Council finally adopts. For example, the way in which housing advice is provided – in house, or externalised, at what level, etc.- is likely to have a significant influence on costs. Similarly, the inclusion of new categories of homeless persons in the priority need group is likely to lead to increased demands.
- 4.2 Interim accommodation in bed and breakfast hotels is very expensive and any savings that can be made by giving advice which helps prevent homelessness or the use of more suitable, self contained accommodation, will help reduce the total cost.

5 CRIME AND DISORDER IMPLICATIONS

- 5.1 There are strong linkages between effective homelessness and housing advice services and reducing crime and disorder.

6 RECOMMENDATION

6.1 It is proposed that this Committee **RESOLVES**

- (1) That an interim report on the issues arising from the development of the homelessness strategy be brought to this Committee in Spring 2003.
- (2) That the draft homelessness strategy be reported to this Committee in June 2003.

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Background Papers:

None.

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THE HOMELESSNESS ACT *an introduction*

This briefing provides an introduction to the Homelessness Act. It is the first in a series of materials that Shelter will be producing for local authorities and other agencies involved in implementing the Act. Further information about these materials and our plans for supporting those organisations with a role to play in implementing the Act can be found at the end of this briefing.

Summary

The Homelessness Act amends Parts VI and VII of the Housing Act 1996 which sets out the current legislative framework for assisting homeless people and allocating social housing. The main changes are:

- New duties on local authorities to carry out reviews and publish strategies to tackle and prevent homelessness.
- A new duty to provide long term accommodation for unintentionally homeless people in priority need and other reforms to strengthen the homelessness safety net.
- The extension of priority need for housing to new groups of vulnerable homeless people (by regulation).
- Reforms to the framework for allocating social housing.

These changes will significantly alter the homelessness landscape. Local housing authorities will now be required to take a long term, strategic approach to tackling homelessness in all its forms, with particular emphasis on prevention. In doing so, they will be able to call on the help of other departments and agencies in developing a multi-agency response to homelessness in their area.

Over time, we believe these reforms will change the way that homeless services are delivered, with the focus shifting away from crisis management to a strategic response based on early intervention and the development of support services to help those who have been rehoused to sustain their new homes.

The Act should also be considered in the context of other key developments. A Homelessness Directorate has been established within the DTLR and a new ministerial committee has been set up to give homelessness a new focus across government.

In March 2002, the Secretary of State made a statement outlining the Government's new approach to tackling homelessness. This included a commitment to end the use of bed and breakfast for homeless families with children by March 2004. The statement was accompanied by the report *More than a roof* which sets out ambitious new policy proposals that will complement the statutory framework contained in the Homelessness Act.

Taken together, we believe these developments indicate that homelessness is moving up the political agenda and into the mainstream of social policy.



Homelessness reviews and strategies

The Act requires every local authority to carry out a review of homelessness in its area and to develop a strategy for tackling it. These important new provisions are aimed at promoting a strategic approach to managing homelessness.

In meeting their duties under this part of the Act, authorities must consider homelessness in its broadest sense and not just limit their activities to people who are unintentionally homeless and in priority need. This provides an opportunity to re-direct the response of homelessness services from crisis intervention to prevention and to focus on the important role of support services in helping people to maintain their homes.

The reviews and strategies must be based on the following objectives:

- Preventing homelessness.
- Securing accommodation for those who are or may become homeless.
- Providing support for people who are or may become homeless, or who have previously been homeless and need support to prevent them from becoming homeless again.

There is also a strong emphasis on partnership and multi-agency working, with specific duties on social services to assist the housing authority.

Homelessness reviews

A homelessness review must include an assessment of:

- The current and likely future levels of homelessness in the area.

- Any activities that contribute to the prevention of homelessness and the provision of accommodation and support.
- The resources available to the local housing authority, the social services authority and other public bodies, voluntary organisations and individuals for carrying out those activities.

Copies of the results of the review must be made available to the public.

Homelessness strategies

Having carried out a review, the local authority must develop a strategy for tackling homelessness. As well as requiring social services authorities to provide assistance in developing its strategy, the housing authority must also consult other local authorities, public bodies, voluntary organisations and individuals with a role to play in meeting its objectives.

Authorities must publish their strategy within a year of the Act coming into force and keep it under review. It may be modified at any time and must be renewed at intervals of not more than five years. It must also be made available to the public.

Housing and social services authorities must take the strategy into account in the exercise of their functions. A strategy can, with their approval, also identify any specific action other bodies are expected to take.



Other changes to the homelessness legislation

The Act makes a number of amendments to Part VII of the Housing Act 1996, which sets out the current legal framework in relation to homelessness. These changes will significantly strengthen the homelessness safety net, ensuring that more protection is provided for those most in need and that minimum standards of service are delivered to all homeless people.

The changes include a new duty to meet the Labour Party's 1997 Manifesto commitment to provide settled accommodation for unintentionally homeless people in priority need. The rights of homelessness people are also strengthened in other key respects and some of the more bureaucratic features of the current legislation are removed.

The main duty to provide housing

The Act replaces the current duty on local authorities to provide housing for unintentionally homeless people in priority need for a period of two years with a new ongoing accommodation duty. The circumstances in which this duty is brought to an end are broadly the same as under the 1996 Act. The main change is that applicants may accept a 'qualifying' offer of an assured shorthold tenancy from a private landlord, but are free to reject such an offer without this affecting the local authority's duty to accommodate them.

The current restrictions that require local authorities to assess whether other suitable accommodation is available and prevent them from using their own stock to house homeless people for more than two years in any three year period have been abolished.

People who are homeless as a result of violence

The Act expands the definition of homelessness to include those who are no longer able to occupy their home as a result of

any form of violence, or threat of violence that is likely to be carried out (under the 1996 Act, the definition only included those experiencing domestic violence). It also specifically prevents applicants from being referred back to another authority if this would put them at risk of further violence.

Homeless people who are not in priority need

The Act strengthens the duties on local authorities to assist homeless people who are not in priority need in a number of key respects:

- The previous duty to provide such advice and assistance as is considered appropriate in the circumstances is replaced by a clear duty to provide advice and assistance.
- Before advice and assistance is provided, an assessment of the applicant's needs must now be carried out.
- The advice and assistance provided must include information about the availability, location and sources of accommodation appropriate to the applicant's needs.

These provisions are designed to ensure that advice and assistance provided to non-priority homeless applicants meets basic minimum standards. As well as those who are unintentionally homeless but not in priority need, they also apply to people who are intentionally homeless and those who are threatened with homelessness but not in priority need.

The Act also gives local authorities new powers to provide accommodation for people who are unintentionally homeless but not in priority need (or who are threatened with homelessness) where they have sufficient stock available to do so.

Reviews of suitability

The Act reverses a judgment in the Court of Appeal (*Alghula v City of Westminster*, 2001)



that made it unlawful for an applicant to request a review of the suitability of a property and move in to it. This restores the right of homeless applicants to challenge the suitability of accommodation, without leaving them at risk of losing it if they are unsuccessful. This provision came into force as soon as the Act received Royal Assent.

Appeals of homelessness decisions

The Act makes two changes to the process for appealing to the county court on a point of law after a review of a homelessness decision has been carried out:

- The period within which an applicant can appeal can now be extended beyond the current 21 day limit, with the permission of the court. Before extending this period, the court must be satisfied that there is good reason to do so.
- Where a local authority refuses to accommodate an applicant during the appeals process, the applicant can now apply to the county court for an order to require the authority to do so (previously they had to apply to the High Court).

These changes will strengthen the ability of homeless people to challenge decisions about their homelessness.

The Act also clarifies various anomalies in the powers available to local authorities to accommodate applicants pending a review or appeal of a homelessness decision.

Homeless families with children

The Act strengthens the current duty on housing authorities and social services authorities (and housing departments and social services departments in unitary authorities) to co-operate when a family will not be provided with accommodation under the main homelessness duty and there are children involved.

Where a family with children is found to be intentionally homeless or ineligible for

assistance due to their immigration status, the housing department must, with the applicant's consent, inform social services about the facts of the case at an early stage and notify them of their subsequent decision. The housing department must also provide 'such advice and assistance as is reasonable in the circumstances' in helping social services exercise their functions to children in need under the provisions of the Children Act where they request them to do so.

These provisions form part of the response to a number of court judgments which have had the effect of limiting the assistance social services are required to provide to children in need of accommodation under the Children Act. The effect of these judgments will be overcome by a separate amendment to section 47 of the Children Act which will make it clear that housing assistance can be provided by social services to children in need. This will be achieved by an amendment to the Adoption and Children Bill.

Taken together, these provisions will promote a more effective response to homelessness where children are involved.



Priority need

Regulations will extend the number of homeless people with a 'priority need' for accommodation who are entitled to be re-housed under the homelessness legislation. The aim of these changes is to ensure that the most vulnerable people and those who have been found to be most at risk of ending up on the streets are given maximum protection.

The regulations will extend priority need to:

- 16 and 17 year olds who are not defined as relevant children under the Children (Leaving Care) Act.
- 18-21 year olds leaving care who are former relevant children.
- People who are vulnerable as a result of violence or threats of violence.
- People who are vulnerable as a result of leaving prison, the armed forces or care.

It is important to note that any homeless applicant falling within the first two categories will automatically be considered to have a priority need for accommodation. Applicants in the second two groups must also be regarded as vulnerable in order to be considered to be in priority need.

The allocation of housing

The Act makes significant changes to the legal framework governing the allocation of social housing set out in Part VI of the Housing Act 1996. As the Government's housing policy statement *The way forward for housing* made clear, meeting housing need remains the overriding priority for allocations policy. The changes introduced by the Act aim to achieve this intention whilst creating a less prescriptive legal framework to give local authorities more flexibility to develop alternative approaches to lettings, with particular emphasis on increasing choice for applicants. The new provisions will apply both to new applicants and existing tenants wanting a transfer.

Applying for housing

The Act abolishes the requirement to have a single housing register and creates a new general right to be considered for housing. This is designed to remove the power of local authorities to operate 'blanket bans' excluding certain categories of people from appearing on the housing register, a practice that has undermined the intention that meeting housing need should be the overriding priority in the allocation of social housing.

Local authorities must ensure that advice and information is available about the right to apply for accommodation and provide 'necessary' assistance to those who may have difficulty in applying (for example, those who do not have English as their first language).

Allocations schemes

Local authorities will be required to maintain and publish an allocation scheme that sets out their policy for determining the priority given to individual applications. The scheme must include a statement of the authority's policy on giving choice to applicants or allowing them to express a preference in the allocation of their housing. The authority must also ensure that, at the request of the



applicant, information is made available about how their application is likely to be treated, whether appropriate accommodation is likely to be available and how long they may have to wait to be housed.

Eligibility

New eligibility criteria replace the provisions in the 1996 Housing Act relating to 'qualifying persons'. Local authorities must not allocate housing to people who are ineligible for benefits due to their immigration status (for example, people seeking asylum) or those who have not passed the habitual residence test.

Authorities may also determine that an applicant is ineligible if they are guilty of 'unacceptable behaviour' that makes them unsuitable to be a tenant. Unacceptable behaviour is defined as behaviour which, if the applicant (or a member of their family) were a secure tenant of the local authority, would entitle the authority to a possession order.

The grounds under which a local authority would be entitled to a possession order are those set out in section 84 of the Housing Act 1985 and include, for example, rent arrears, neighbour nuisance and breach of tenancy conditions. However, the Minister made clear in Parliament that a number of factors must be considered by local authorities before deciding that they would be entitled to a possession order. These include:

- The circumstances of the applicant such as their health, whether they have dependents etc.
- Whether the authority would be entitled to an outright order (the Minister made it clear that being entitled to a suspended order would not be sufficient).
- The applicant's behaviour at the time of the application.

The applicant must be notified of the decision and the grounds for it, and be informed of their right to a review.

Reasonable preference

The Act retains the principle that allocations schemes must give priority to those most in need by giving them 'reasonable preference'. The groups to whom reasonable preference should be given have been amended and now include:

- Homeless people.
- People living in insanitary, overcrowded or otherwise unsatisfactory housing.
- Those who need to move on medical or welfare grounds.
- People who need to move to a particular area to prevent hardship (to themselves or others).

Additional priority can be given to people within these groups with particularly urgent housing needs.

It is important to note that reasonable preference should now be given to all homeless people, not just those who are unintentionally homeless and in priority need.

Adjusting and removing priority

The Act sets out various factors that may be included within a local authority's allocation scheme to adjust the priority given to applicants who fall within the reasonable preference categories. These factors are:

- The financial resources available to the applicant.
- Any local connection they have with the authority.
- 'Any behaviour' that affects an applicant's suitability to be a tenant.

There is also a power to remove all preference from applicants who are guilty of unacceptable behaviour that makes them unsuitable to be a tenant. The test used and the principles that apply are exactly the same as those used at the eligibility stage. Again, the applicant must be notified of the decision and the grounds for it, and be informed of their right to a review.



Shelter's plans for implementing the Homelessness Act

Shelter is keen to work in partnership with local authorities and other agencies with a role to play in implementing the Homelessness Act. We will be producing a range of other written materials including:

- Detailed commentaries on reviews and strategies and the changes to the legislative framework concerning homelessness and allocations for managers in local authorities and other agencies.
- Detailed briefings, factsheets and bulletins on the provisions of the Act for housing advice workers and other specialist audiences.
- A document bringing together the provisions of the Homelessness Act and Parts VI and VII of the Housing Act 1996 under one roof.

In addition to these materials, our programme for implementation includes:

- **Website** our dedicated website www.homelessnessact.org.uk will be updated to provide detailed information, practical help and a secure forum for sharing best practice. Log on now to register your interest.

- **Training** we are running definitive courses on housing and homelessness legislation. To find out more go to www.shelter.org.uk/training

- **Seminars** we are planning a range of events for councillors and other key players at a strategic level.

- **Support for local authorities** new staff will be employed in our housing aid centres to work directly with local authorities in implementing the Act.

- **Research and policy work** we will be commissioning research and carrying out policy work to monitor how the Act is being implemented and to develop responses to key issues that arise.

- **Information for homeless people** working in partnership with other agencies, we will produce materials to raise awareness of the Act among people who are homeless or in housing need.

For more information, please log on to our dedicated website www.homelessnessact.org.uk



About Shelter

Shelter is a national campaigning charity that works with over 100,000 homeless or badly housed people every year. We aim to provide practical support and innovative services for people in housing need and to use the evidence gathered from this work to campaign for long-term changes to reduce and prevent homelessness.

We believe that everyone should be able to live in a decent and secure home that they can afford, within a socially mixed neighbourhood where they feel safe, can work and fulfil their potential.

Our practical work includes:

- Over 50 housing aid centres providing information, advice and advocacy to people with housing problems.
- *Shelterline*, a free national helpline, providing advice and information 24 hours a day, 365 days a year.
- *Innovative Homeless to Home* projects that work with formerly homeless families helping them to settle in their new home and community.
- The *Street Homelessness Project* which works with local authorities and other voluntary organisations to develop local strategies for reducing street homelessness.
- The *National Homelessness Advice Service* providing advice and training on housing and homelessness to all citizens advice bureaux.
- *Homework*, a project that seeks to prevent homelessness by providing opportunities for young people to learn about housing and homelessness in schools.

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