

Code of Guidance on Homelessness



Guidance on legislation, policies and practices
to prevent and resolve homelessness



SCOTTISH EXECUTIVE

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to prevent and resolve homelessness

May 2005

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MINISTERIAL FOREWORD

I'm pleased to publish this new edition of the statutory Code of Guidance on homelessness.

Tackling homelessness is central to the Scottish Executive's strategy for providing routes out of poverty and disadvantage, and promoting economic inclusion. We have put in place forward-looking and ambitious policies to prevent and alleviate homelessness, including legislation which has improved homeless people's rights.

This Code has been updated to reflect the legislative changes. It provides practical guidance on how the legislation and related policies should be implemented. It supports our objective that homeless people receive readily accessible services tailored to their needs.

Around the country, skilled staff in statutory and voluntary organisations are working in partnership across disciplines to deliver holistic homelessness services. They are providing services directed at addressing the underlying problems that cause homelessness and assisting people threatened with homelessness. Many statutory and voluntary organisations are developing good practice as these services develop. This Code also summarises some of this practice so that everyone can access it and learn from it.

I am confident that this Code will be a valuable resource to complement the progressive homelessness legislation and assist with meeting its requirements.



MALCOLM CHISHOLM
Minister for Communities
May 2005

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Chapter 1

Introduction

CHAPTER 1 – INTRODUCTION

1.1 The purpose of this Code is to help guide local authorities in their duties to homeless and potentially homeless people. This Code of Guidance replaces the previous version issued in 2004 and has been updated to reflect legislative change, notably through the Homelessness etc (Scotland) Act 2003. Annex A summarises the main legislative changes to date. The Code also reflects best working practice in areas such as cooperation with other parts of local and national government, and other agencies.

1.2 The Homelessness Task Force established by the Executive in 1999 published two reports with far-reaching implications for homelessness policy. Its initial report¹ produced recommendations which were taken forward in the Housing (Scotland) Act (2001). The final report of the Homelessness Task Force,¹ published in February 2002, contained 59 further recommendations "on how homelessness in Scotland can best be prevented and, where it does occur, tackled effectively". Five of these recommendations were taken forward through the Homelessness etc (Scotland) Act 2003. The remaining recommendations of the Homelessness Task Force are being taken forward by the Scottish Executive in partnership with local authorities and others, and the latest annual report of the Homelessness Monitoring Group² sets out progress against each.

1.3 These are far-reaching changes which should be seen in the context of the full recommendations set out in the reports of the Homelessness Task Force and in particular the emphasis now placed on finding solutions to people's housing and related needs, and preventing homelessness from occurring, rather than on systems designed to ration people's entitlement.

Scope of guidance

1.4 Part II of the Housing (Scotland) Act 1987 (as amended by the 2001 and 2003 Acts) sets out the powers and duties of local authorities in dealing with applications from people seeking help on the grounds that they are homeless or threatened with homelessness.

1.5 Section 37(1) requires local authorities to have regard to Guidance issued by the Secretary of State in the exercise of their homelessness functions. This Code provides such guidance. While local authorities have discretion to deal with each application on its merits in making decisions under the 1987 Act, failure to have regard to the terms of the guidance may give grounds for judicial review of a local authority's decision. Local authorities have a statutory responsibility to prevent and alleviate homelessness. The Code should be used as a supporting document for local authority staff in carrying out relevant activities and discharging this responsibility, and should be seen as a repository of guidance and best practice to cover different scenarios. To this end the Executive will aim to update the Code regularly.

1.6 The Code sets out a summary of legislative duties with supporting explanation and guidance. It is principally intended for local authority staff dealing with homelessness policy and responsible for making decisions on homelessness applications. It should be emphasised, however, that a local authority's duties towards a homeless person are corporate in nature and not solely the responsibility of the housing department. This corporate approach is a key feature of local homelessness strategies.

^{1, 2} See annex C for weblink to this document.

1.7 The Code is also relevant to other agencies and individuals, including Registered Social Landlords, elected council members and other council officials as well as to a range of others involved in tackling homelessness in the statutory and voluntary sectors.

Regulation and inspection

1.8 The Housing (Scotland) Act 2001 gives Communities Scotland the role of regulating Registered Social Landlords (RSLs) and the landlord, homelessness and factoring services of local authorities. Communities Scotland's purpose as a regulator is to promote quality, continuous improvement and good practice in these services, for the benefit of current and future tenants, and other service users. One way it does this is through the inspection of RSLs and local authorities. Inspections provide an in-depth assessment of an organisation, its service quality and its ability to improve. Communities Scotland's Guide to Inspection describes how it carries out inspections.

1.9 Communities Scotland published Performance Standards with the Convention of Scottish Local Authorities (CoSLA) and the Scottish Federation of Housing Associations (SFHA). These standards set out joint expectations for the performance of all social landlords and homelessness functions: there are nine standards on local authorities' homelessness strategies and their delivery of services to people who are homeless; and one standard on RSLs' duties to help local authorities discharge their duties to people who are homeless.

1.10 The inspection process is built around an assessment of how well these standards are being met, and inspectors will take account of the Code of Guidance when assessing landlords' performance in meeting the needs of homeless people.

1.11 The Guide to Inspection, and the Performance Standards are available on Communities Scotland's website.³

The future

1.12 Over the coming period it is expected that there will be a need to update the Code on a regular basis. These updates will derive from:

further legislative change as the 2003 Act is fully commenced and its provisions take effect;

specific additional guidance developed in particular areas; and

key messages emerging from local authorities' homelessness strategies as these are implemented.

1.13 The web version of the Code can be found at <http://www.scotland.gov.uk/library5/housing/cogh-00.asp> and will be updated on an *ad hoc* basis. When it is updated, each local authority will be notified. Hard copy updates of individual chapters will be supplied at yearly intervals to key contacts within each organisation.

Definitions

1.14 Throughout the Code,

"the 1987 Act" means the Housing (Scotland) Act 1987;

"the 2001 Act" means the Housing (Scotland) Act 2001; and

"the 2003 Act" means the Homelessness etc (Scotland) Act 2003.

³ See annex C for weblink

Chapter 2

Prevention of homelessness

CHAPTER 2 – PREVENTION OF HOMELESSNESS

2.1 **Summary** – this chapter describes the action to be taken by local authorities to prevent homelessness arising in the first place and then recurring. It gives guidance on the different types of advice and information that should be provided to people in different situations in order to prevent homelessness. It also discusses the Anti-Social Behaviour (Scotland) Act 2004 which make provisions for different types of tenancy and support for people subject to ASBOs. It gives guidance on how homelessness may be prevented from recurring through providing support to help people settle in their tenancies.

2.2 Prevention of homelessness should be a key strategic aim which local authorities and other partners pursue through the local homelessness strategy. All local authority departments and all relevant local agencies should work together to prevent homelessness occurring wherever possible. It is also vitally important that, where homelessness does occur and is being tackled, consideration is given to the factors which may cause repeat homelessness and action taken to prevent homelessness recurring. Preventing homelessness is important to alleviate the misery that homelessness causes. It also helps to prevent the additional problems that can be caused by being homeless (such as health problems, losing employment, and losing contacts with support networks). It is also important to allocate resources to preventing homelessness to reduce pressure on health, housing, social work, employment and justice services in the longer term.

2.3 The Scottish Executive has published guidance on carrying out assessments of homelessness within a local authority and on the development of homelessness strategies. This guidance on assessments emphasises the importance of paying particular attention to the identification of those at risk of homelessness; and the identification of services and provisions which prevent homelessness. The guidance on development of strategies stresses that local authorities should prioritise the prevention of homelessness in this process, and in so doing should identify actions which will make early and effective interventions to support people at risk of becoming homeless.

Advice and information

2.4 Local authorities have a duty under section 2 of the 2001 Act to secure that advice and information about the prevention of homelessness and any services which may assist in the prevention of homelessness is available free of charge to any person in the authority's area. Guidance on the form and content of this advice and information has been published by the Scottish Executive.⁴ The guidance requires that local authorities ensure that provision meets the standards set out in the Scottish National Standards and Good Practice Guidance for Housing Information and Advice Services.⁵ Chapter 10 discusses this further.

2.5 Local authorities should take a pro-active approach to the provision of advice and information. Local authorities should therefore publicise information on the services available to homeless people, in ways and places which ensure maximum accessibility. For example publicity via telephone directories, or in telephone kiosks, post offices, rail or bus stations, accident and emergency departments and GP surgeries should be considered as well as the provision of advice in more formal settings such as the offices of voluntary organisations or the local authority.

4, 5 See annex C for weblink

2.6 All relevant information should be available online, in relevant minority ethnic languages and should be otherwise accessible to people from black and minority ethnic communities and to people with disabilities. The aim should be to encourage early approaches by those at risk of homelessness, when their problems may be less serious and therefore easier to tackle.

2.7 Local authorities should consider appropriate ways of communicating and providing advice and information to young people, to ensure that they have access to it.

2.8 Publicity should:

- make clear the circumstances which would make a person eligible for homelessness assistance;
- recognise that there are different types of homelessness;
- take account of the stigma which may be attached to services badged as homelessness services; and
- take account of the different perceptions of homelessness which may prevail in different communities.

2.9 Voluntary bodies, which may be the first contact for homeless people, are key providers of specialist expertise and services and joint publicity arrangements may be more effective than each body issuing separate publicity for its own services. A communications strategy should therefore be considered as part of the development of the wider homelessness strategy.

Accommodation/advice and assistance

2.10 If someone is threatened with homelessness unintentionally (i.e. likely to become homeless within 2 months) and is in priority need, then the local authority has a duty to take reasonable steps to secure that accommodation does not cease to be available. More generally, the local authority has a duty to give advice and assistance to anyone threatened with homelessness.

2.11 Under section 32(2) of the Housing (Scotland) Act 1987, where a local authority is:

- satisfied that an applicant in priority need is threatened with homelessness (i.e. likely to become homeless within 2 months); and
- satisfied that he or she did not become threatened with homelessness intentionally;

it must take reasonable steps to try to ensure that accommodation does not cease to be available for occupation by the applicant.

2.12 Section 32(4) provides that the section 32(2) duty does not affect any right of the local authority (under any contract, enactment, or rule of law) to secure vacant possession of accommodation. However, local authorities should also bear in mind their strategic responsibility for preventing homelessness, and repeat homelessness, when considering action in any particular case.

2.13 As is set out more fully in Chapter 9, section 32(5) excludes from the definition of accommodation, any accommodation which is overcrowded and a danger to health, does not meet any special needs of the household or which it is otherwise not reasonable for the applicant to occupy. Obtaining such accommodation for an applicant, or enabling them to remain in such accommodation, does not fulfil a local authority's duty and a person in this situation would still be homeless.

2.14 If someone is threatened with homelessness and is not in priority need, or is in priority need but threatened with homelessness intentionally then, under section 32(3) the local authority has a duty to provide advice and assistance that is appropriate in the circumstances. The purpose of this advice and assistance should be to support attempts by the applicant to secure that accommodation does not cease to be available for his or her occupation. See chapter 10 for further guidance on the provision of advice and assistance.

2.15 The accommodation obtained for a person threatened with homelessness need not be his or her existing accommodation, although in practice this will often be the best option; assuming that it is reasonable for the applicant to continue to occupy it. If the local authority concludes that the loss of the applicant's present accommodation cannot be avoided, it should consider what duties it would have towards him or her if the person becomes homeless and act quickly to prevent homelessness - and particularly rooflessness - actually occurring. In either case, local authorities should intervene as early as possible.

2.16 As part of their assessment of the causes and nature of homelessness in their area, and the subsequent development of strategies, local authorities and their partners should identify and focus on actions which can be taken to prevent homelessness amongst particularly vulnerable groups. Service providers should also be aware that these households may also be susceptible to repeat homelessness and that therefore sustained support may be required alongside resolving accommodation issues.

2.17 Particular circumstances, such as the loss of tied accommodation, may be particularly relevant in some local authorities but some common causes of homelessness are set out below:

Relationship breakdown

2.18 Many people become homeless due to the breakdown of family relationships - e.g. divorce, separation or disagreements between siblings or parents and offspring. Such a domestic dispute may come to a local authority's attention in a number of ways and many cases intervention to prevent the break up of the household may not be appropriate. However, the authority should always act to ensure that long periods of homelessness, and in particular rooflessness, are avoided. Where allegations of abuse are involved it would be wholly inappropriate for the authority or another agency to intervene to keep the household together and such an intervention may in fact lead to an exacerbation of the situation. In particular the alleged perpetrator of violence should not be approached for a view. Service providers should, however, consider whether the person who has experienced abuse would find it helpful to keep in touch with other close relatives or friends and the implications for the provision of accommodation and services.

2.19 Advice may be required by a member of the household on, for example, his or her rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. However, exercising these rights should not be made a condition of access to services. It may also be useful to ask a relevant voluntary body, such as a Women's Aid group in the case of domestic abuse, or the social work department, to help in appropriate circumstances, and particularly if there are children in the household.

2.20 Particular problems may arise in the case of older people, for example where the person has been dependent on their spouse for the house or to handle financial affairs. Such help, for example counselling or basic housing support, may be required urgently.

2.21 Generally, if it is appropriate, and if it is requested by both parties, assistance should be directed towards relieving tension within the household so as to enable the household to continue to live together.

2.22 If the local authority is satisfied that the situation warrants making accommodation available, its agreement to secure another house within a definite period of time may be preferable to transferring those involved into some interim short-term accommodation while more lasting arrangements are established. However, local authorities must not put pressure on people to remain in or return to their previous houses if that would cause distress. In particular, when a person is seeking refuge because of a fear of abuse there will be an immediate need for rehousing.

2.23 A local authority can use its powers under paragraph 15 of Schedule 2 to the 2001 Act (which effectively replaces the old powers under paragraph 16 of Schedule 3 to the 1987 Act) to transfer the tenancy of the house to (i) the tenant's spouse (or former spouse), or (ii) someone who has been living with the tenant as a spouse, where the potential transferee has applied to the landlord for the transfer because of relationship breakdown. Note that this includes same-sex couples. However, the powers under that paragraph can only be used where the sheriff is satisfied that it is reasonable to evict the tenant and that other accommodation is available for the tenant. Temporary accommodation may be needed for the person receiving the tenancy until the other person leaves. For the avoidance of doubt, the person leaving should be asked to renounce any occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. Particularly when children or other dependants remain with the applicant, such a transfer can minimise any resulting homelessness.

2.24 In other cases it may be possible for the authority or another service provide to intervene to prevent family breakdown and resulting homelessness. Local authorities should consider whether it is appropriate for them or another agency to provide relationship counselling or mediation services. Even where the family ceases to live together, these measures can help prevent homelessness by enabling family support to continue. This support is particularly important for young people leaving the family home. It may also be appropriate to consider other forms of support – such as drug or alcohol counselling – where these may help to resolve underlying tensions. However, as noted above, the provision of support should never be an alternative to rehousing where there is a risk of abuse.

Leaving institutions

2.25 People may become homeless on leaving:

- hospital
- prison
- local authority care
- the armed forces.

2.26 In order to prevent this, close links between local authority departments, hospitals, primary care and community health services, prisons and the armed forces should be established locally as part of the development of the homelessness strategy.

2.27 Discharge protocols should be in place, including provision for the involvement of all relevant agencies in pre-discharge assessments and the formulation of any through-care and after-care plans. Such protocols should be developed within the framework of the local homelessness strategy.

2.28 Local authorities and other agencies should note the following points:

- Pre-discharge discussions are vital, particularly where individuals may be reluctant to reveal housing difficulties for fear these could delay their discharge.
- Advance planning will be required to ensure accommodation is available, in some cases planning will be required to take place several years in advance where new accommodation has to be provided, particularly specialist accommodation.
- Even where accommodation is already available, it will be necessary in some cases to check that this is still suitable (for example for a person who has become physically disabled) or that support services are in place (for example for a discharged psychiatric patient). In some cases, it will also be necessary to check the availability of move-on accommodation which the discharged person may need at a later date because of likely changes in his or her condition after discharge; and always where discharge accommodation is only available for a limited period.
- In certain cases, a community care needs assessment will be required. (see paragraphs 4.44-4.49 in Chapter 4)
- In all cases, it will be important to establish early on in which area the person wishes to live. People may not have a local connection with the area in which an institution is located. Even if they do, it may be better for them to return to the area where they lived previously. The housing options guides published by HomePoint could be used as a resource to help the person decide.
- Care plans should provide for the position to be reassessed if a tenancy is in danger of not being sustained (particularly if this is due to part of the care package not being delivered).

2.29 Difficulties in dealing direct with a person at risk of homelessness, for example because he or she is living in a long-stay hospital or other institution or serving with the armed forces some distance from the local authority, should not prevent their receiving the assistance to which they are entitled under homelessness legislation, or under other legislation such as the Mental Health (Care and Treatment) Scotland Act 2003. Protocols and other working arrangements put in place under the local homelessness strategy should address access issues.

Leaving hospital

2.30 All Health Boards have developed health and homelessness action plans which should set out how they plan to ensure that the health needs of homeless people are met. Local authorities should liaise closely with Health Boards and individual hospitals in order to develop discharge protocols, and these may be included as part of the action plans. Sections 53 and 57 of the Adults with Incapacity (Scotland) Act 2000 provide for welfare and/or financial intervention and guardianship orders to enable decisions to be made about the personal welfare, including health, and the management of property and financial affairs for adults whose capacity to do so is impaired. The Act imposes a duty on local authorities to apply for an order under these sections where it appears that an order is necessary and no application has or is likely to be made.

2.31 Arrangements for accommodation in the community should be made as quickly as possible, to prevent people being kept inappropriately in hospital.

Leaving prison

2.32 Many prisoners do not have secure accommodation available on their release, making it less easy for them to integrate successfully into the community and increasing the risks of both homelessness and re-offending. Local authorities should therefore work together with prisons, social work departments and voluntary organisations to put in place measures to prevent people becoming homeless on release from prison. Local authorities and prisons should try and anticipate future problems by considering what action is needed from the beginning of a prisoner's sentence, rather than waiting until release.

2.33 Particular difficulties may arise when an offender is detained for more than the 13 week period for which he or she is entitled to housing benefit while detained. The only exception to this 13-week limit is for prisoners on remand who may be entitled to up to 52 weeks of housing benefit. As a minimum people in this position should be warned of the possibility of the cessation of housing benefit, and the need to consider their future housing situation. If the sentence is only slightly longer than 13 weeks then local authorities or RSLs should consider making arrangements in order to help the offender from getting into debt and allowing the offender to move back into their existing accommodation.

2.34 Local authorities should also consider, for prisoners previously living in local authority housing, such possibilities as allowing them to sublet their house during their sentence, or coming to an agreement under which they give up their present tenancy but are given an equivalent house on release. Naturally, such arrangements may not be appropriate if the prisoner has a family living with him or her who would be affected by such a change, or it would be undesirable for the prisoner to return to their home area on release. However, these arrangements can be of benefit not only to the tenant but also to the authority in terms of reducing rent arrears and avoiding abandonments.

2.35 Social work departments have access to a limited amount of accommodation for those who are released from custody or subject to supervision as part of a court order. Priority is given to those who are subject to a condition of residence imposed by the courts or Parole Board or the Secretary of State, as social work departments have a duty to supervise these orders.

2.36 Local authorities should work closely with prisons in their area in order to ensure that prisoners approaching release are fully aware of their housing options and are given as much assistance as possible in securing accommodation, in order to ensure they do not become homeless on release. Housing advice services are now available throughout the Scottish prison estate and local authorities should do as much as possible to assist these services and make connections to services in the community. Where necessary to avoid homelessness on release, local authorities should also consider whether homelessness assessments could be carried out prior to release, either by local authority staff based in the prison on a fixed or visiting basis or by prison-based staff on behalf of the local authority.

2.37 Local authorities should also be aware that prisoners currently held in other areas might also wish to make an application to them on release. They should therefore consider the need to liaise with all Scottish prisons and establish a first point of contact in these circumstances.

2.38 Local authorities and other agencies should also consider the need to ensure that a prisoner's possessions are secure during their sentence. People leaving prison often find it very difficult to re-establish themselves in the community and this can be exacerbated where they have lost all their possessions.

2.39 Most local authorities will have established a multi-agency sex offenders protocol to ensure that housing of sex offenders on release is handled sensitively and that appropriate support and supervision is in place. All local authorities should consider establishing such a protocol and all staff handling homeless applicants should be familiar with it. The Chartered Institute of Housing have published guidance on housing sex offenders⁶ and this guidance should be made available to all staff handling homeless applicants, as well as relevant partners, such as other housing providers.

2.40 For further information on prison-based housing advice services please contact the Social Care Advisor at the Scottish Prison Service.⁷

Leaving care

2.41 Many children and young people previously looked after by a local authority are particularly vulnerable and need support. Local authorities' duties and powers to provide for this group are set out in the Children (Scotland) Act 1995. Local authorities have a duty to make the welfare of the child their paramount consideration when making a decision relating to a child being looked after under the 1995 Act. In addition, the 2003 Act extends priority need to include all young people aged 18-20 who were in care at the time of leaving school. See paragraph 6.13 in chapter 6 for more details.

2.42 Scottish Executive guidance published in March 2004 "Supporting Young People Leaving Care in Scotland: Regulations and Guidance on Services for Young People Looked After by local authorities"⁸ makes clear that local authorities have a role as a corporate parent to these young people, particularly those who cannot return to their families. This means that the local authority should look after these children as any other parents would look after their own children. The approach taken should therefore reflect the fact that the provision of care and support for young people by their parents does not generally cease at a particular age and may continue long after a young person has reached adulthood; and adapts to meet the changing needs of the young person as they develop.

6, 8 See annex C for weblink

7 See annex B for contact details

2.43 Under the regulations and guidance, young people leaving care should be allocated a **pathway co-ordinator**. This person, who may but need not be an officer of the local authority, provides support and advice to the young people in planning and making the move from care to independent living. The pathway co-ordinator is also responsible for co-ordinating the provision of services identified in the plan agreed by the local authority and the young person.

2.44 In addition, under the regulations and guidance, the young person is entitled to a supporter, who will be a different person from the pathway co-ordinator. The **young person's supporter** can provide support in a range of ways, including accompanying the young person to meetings with professionals.

2.45 When working with young people leaving care every effort should be made to ensure that housing/homelessness services co-ordinate with other services. It is crucial that housing, social work and other departments work together in exercising their respective functions in relation to young people being looked after, or previously looked after, and children in need under the 1995 Act. This applies during the time when the young person is being looked after, when they are approaching when they cease to be looked after and in the transition to independent living. Liaising and working with the pathway co-ordinator is the recommended way of achieving this. It is good practice to ask the young person whether they have a pathway co-ordinator and a supporter and to seek to involve these individuals in assisting the young person with their housing need. More generally, whenever young people make contact with local authorities and other related bodies, they should receive appropriate guidance and advice at that point.

2.46 Local authorities should have regard to the Guidance referred to in paragraph 2.42 above. This contains guidance on the following areas:

- The principles which should guide the provision of throughcare and aftercare of these young people
- The legal framework
- Involvement of young people
- Categories of young people to be supported
- Responsible local authority
- Assessing the needs of young people and pathway planning
- Pathway co-ordinator and young person's supporter
- Manner in which financial assistance is to be provided
- Accommodation
- Right to appeal and make complaints
- Information gathering and sharing

2.47 Although the legal duties set out in this guidance only apply to young people, who cease to be looked after beyond school leaving age local authorities should adopt a flexible approach which takes account of their broader duties to prevent homelessness and the need to find sustainable approaches when considering other cases. Local authorities should also take a corporate responsibility for ensuring that regular checks are made on the housing circumstances of those who have left care for at least two years after they do so. The emphasis should be on sustaining housing arrangements which meet the needs of the individual or on providing constructive arrangements where they do not. Contingency arrangements should also be put in place in case of emergencies – and young people leaving care should be aware of these arrangements.

2.48 In no circumstances should children leave the care of a local authority without alternative accommodation appropriate to the assessed needs of the young person being in place. In no circumstances should children have to be taken into care purely as a result of their household becoming homeless. Under section 19 of the 1995 Act, housing and social work departments have a duty to co-operate on Children's Services Plans. These should also be clearly linked to local homelessness strategies.

Leaving the armed forces

2.49 While members of the armed forces may not establish a local connection through the fact of their service in the area, the household may establish a local connection in other ways – for example their children may be at school there. In other cases the most sustainable solution may be for a person who has served in the armed forces to return to an area where they lived previously, even if this was some years ago. Therefore, applications for housing from those serving with the armed forces who are due for discharge, or from former wives of service personnel who are required to vacate married quarters, should be treated sympathetically, even if they have not established a local connection, in line with the guidance contained in Circular, Env 26/1993 – Housing for People Leaving the armed forces.⁹

2.50 Where people leaving the armed forces are in a position where their licence to occupy service accommodation is due to expire and they have no other accommodation they should be regarded as being threatened with homelessness. Local authorities should be aware of certificates of cessation of entitlement to occupy service accommodation which may be forwarded by the applicant several months in advance of an individual or family leaving service accommodation, in order to allow early action to be taken to prevent homelessness occurring. However, the absence of such a form should not lead to an assumption that the applicant is not threatened with homelessness or homeless on application to the local authority, and presentation of a certificate is not a condition of receiving assistance.

2.51 Local authorities should also consider forming links with veterans' benevolent and charitable organisations in their area, in order that they are aware of the particular issues facing people who have left the armed forces, and the range of assistance that is available. Such issues may include illness as a result of serving in the forces, and subsequent vulnerability.¹⁰

⁹ See annex C for details

¹⁰ See annex B for contact details

Landlord action and court orders

2.52 Many people become homeless as a direct result of eviction from a tenancy or otherwise losing their right to occupy a property. Many of these situations arise as a result of rent arrears, with fewer attributable to anti-social behaviour. In many cases, sensitive housing management policies and early identification of tenants in difficulty may enable the local authority to take appropriate measures to remedy the breach of tenancy and thus prevent an eviction, which should be a last resort. Through the local homelessness strategy, the local authority and other local agencies, should provide for specific concentrated support programmes for people threatened with eviction. Such programmes should include the provision of independent advice and representation where appropriate. Communities Scotland's report and study on evictions¹¹ presents many recommendations on good practice for local authorities and other landlords to use in order to cut down on rent arrears and prevent evictions.

2.53 Scottish Executive guidance on the development of homelessness strategies emphasises that local authorities should work with other local landlords in conducting reviews of arrears management and anti-social behaviour policies in order to ensure that these do not lead to unnecessary or avoidable homelessness. Local authorities should also take a corporate approach to tackling rent arrears and anti-social behaviour in such a way as to avoid homelessness where possible. Relevant individuals and departments should ensure that policies are coherent and should consider the development of protocols to cover cases where there may be a perceived conflict.

Rent arrears

2.54 General guidance on dealing with rent arrears was set out in Good Practice Note 2 Rent Arrears Management (March 1994). Relevant points are summarised below.

2.55 Local authorities should do all they can to prevent arrears arising and to recover them when they do. There have been adverse comments by the Judiciary about the practice of some landlords raising Actions for Repossession, obtaining Decree and only then negotiating regarding instalment payments. Landlords should try to negotiate with tenants prior to obtaining decree, so that the court may deal with any dispute on the level of contribution towards arrears should the negotiations not be successful.

2.56 The lower the level of debt, the more likely the local authority is to recover the arrears. So it is important for a local authority to identify difficulties quickly and to arrange to discuss matters with tenants. Reliance solely on routine procedures (such as successive computer-produced letters) is less likely to secure the results desired. Most arrears appear to arise through accidents of circumstance, or because tenants get into difficulty with the general management of their affairs. If that is what has happened, early personal contact may prevent more acute difficulties later. If tenants are wilfully refusing to pay rent (although able to do so) early action by local authorities can help to avoid the accumulation of large debts, and improve the chances of a tenant bringing his or her affairs into proper order. Some tenants will need general financial advice, perhaps from a specialist agency, and arrears letters should draw tenants' attention to sources of independent advice.

¹¹ See annex C for weblink

2.57 Some of the measures by which local authorities have been able to control rent arrears are set out below. They are commended to all local authorities. Again, Communities Scotland's report and study on evictions is also relevant.

- Prospective tenants should be made fully aware of the commitment they are taking on, not only for rent but for council tax, electricity, gas and any extra payments for such things as common services.
- Missed payments, as well as the total of a tenant's outstanding debts, may give an early warning of difficulties ahead, and enable special arrangements to be made for rent collection, including direct payments of housing benefit to the landlord.
- There should be protocols for obtaining social work advice, if and when it is appropriate, including safeguards for confidentiality of client information.
- It is important to check that the tenant is receiving all benefits payments to which he or she is entitled. If applicants are not receiving their entitlement in full, they should be advised to apply immediately and given assistance to do; and thereafter priority should be given to such applications. Delays in processing housing benefit claims can cause rent arrears or exacerbate tenants' problems in dealing with rent arrears. All homelessness strategies should include standards and targets for processing housing benefit claims. It should also be noted that section 12 of the Homelessness etc (Scotland) Act 2003 allows for sheriffs to take into account delays or failures in housing benefit administration when deciding whether to make an order for possession. Section 12 came into force in July 2004.
- Tenants who get into difficulties should be encouraged to approach housing department staff and other advice agencies for advice.
- Following up rent arrears vigorously, including selective visiting, may avoid the debt getting out of hand.
- Tenants should be made aware of the possibility of applying for time to pay directions from courts to allow them to pay off their debts over a planned period of time.

2.58 A local authority may still have duties to a tenant evicted for rent arrears if he or she applies under the homelessness legislation. However, if the arrears were deliberately built up by the tenant, in full knowledge of the consequences, he or she may be held to be intentionally homeless (but each case must be judged on its individual merits). (See also paragraph 7.17 in Chapter 7).

Anti-social Behaviour Orders and their effect on tenancies

2.59 **What are ASBOs?** Anti-social behaviour orders (ASBOs) are preventative orders designed to protect people in the community from further acts or conduct that would cause them alarm or distress. Breach of an ASBO is a criminal offence. ASBOs were introduced by the Crime and Disorder Act (1998) and can be applied for by local authorities and RSLs. Interim orders were introduced in 2003. The Antisocial Behaviour etc. (Scotland) Act 2004 extended ASBOs to 12-15 year olds and introduced ASBOs on conviction in the criminal court. The ASBO provisions in the 2004 Act have come into effect and will replace those in the Crime and Disorder Act 1998 as they relate to Scotland. Guidance on the new provisions has been published.¹²

¹² See annex C for weblink

2.60 **ASBOs and their effect upon tenancies** – RSLs and LAs have the power to change a tenant's tenancy if the tenant or someone in their household has an ASBO. This means that if a tenant or someone else in their household has a full ASBO then the relevant tenancy can be converted from a Scottish secure tenancy (SST) to a short Scottish secure tenancy. This conversion cannot be made on the basis of an interim ASBO. New tenants can also be offered short SSTs if they or members of their household are subject to an ASBO, or if they have been evicted from previous accommodation anywhere in the UK within the past 3 years. The link between ASBOs and security of tenancy exists in relation to ASBOs made on persons 12 or over and in respect of ASBOs made on conviction (though the behaviour should be related to the tenancy). This link between change in tenure and ASBOs is not automatic and depends on the landlord.

2.61 The landlord must provide support appropriate to enabling the tenants to help them sustain the tenancy and convert to a full SST. The types of support envisaged should all fall within the broad definition of "housing support services" and might include, for example, alcohol/debt/family counselling, or social work support. Landlords should make sure that the support it considers appropriate to enable conversion to an SST is linked to its stated objectives in granting a short SST. In other words, the landlord should make clear that the short SST is being granted because of certain behaviour and that it will convert to an SST in 12 months or the landlord will offer a full SST before that time, provided that the behaviour is altered and that the landlord will make certain support available specifically to help the tenant to successfully convert to an SST.

2.62 The short SST will convert automatically to a full SST after 12 months, if there has been no repetition of antisocial conduct. If there has been antisocial behaviour during the short SST or if the terms of the ASBO have been broken then the tenancy can be ended, leading to subsequent eviction of the tenant and their household. The LA or RSL must apply for a court order to end this type of tenancy but the grounds for eviction are mandatory and the tenant has no right of appeal. If the landlord wants to prevent the short SST from converting to a full SST he or she needs to take action, otherwise the conversion will happen automatically.

2.63 Should the tenant refuse support offered by the landlord, it will be for the landlord to decide whether it wishes to offer the short SST on the basis that the behaviour will improve without support or whether it wishes to make acceptance of support a condition of the short SST offer.

2.64 If the behaviour that led to an ASBO is unrelated to the tenancy then landlords should not exercise their power to convert the tenancy to a short SST. An example of this might be when a member of the household gets an ASBO for antisocial behaviour that was committed outwith the vicinity of the accommodation. An ASBO awarded as a result of antisocial behaviour in a pub that is not near to the accommodation should not be seen as related to the tenancy. Interim ASBOs can also be applied for by LAs or RSLs and these do not impact upon the type of tenancy.

2.65 These powers have a double effect. First, it allows tenants with anti-social tendencies to receive support to enable them to sustain a tenancy in a responsible manner and to convert to a full Scottish secure tenancy after a period of up to 12 months. Secondly, it enables landlords to downgrade a tenancy from the full Scottish secure tenancy for tenants who are anti-social, thereby making it easier for the landlord to end the tenancy, as a last resort, should the anti-social behaviour continue. The use of short SSTs is designed to prevent eviction in the first instance and give the tenant time to sort out problems without immediate fear of eviction.

2.66 The above powers on converting tenancies hold even if the person in the household subject to an ASBO is under 16 years old. If the tenancy is ended as a result of the child's breaking the terms of his or her ASBO then the household may be deemed to have made themselves intentionally homeless, however this should not automatically be assumed and each case should be considered carefully. See chapter 7 for further guidance on deciding if someone is intentionally homeless. Even if the local authority is satisfied that the homelessness was intentional, the applicant is still entitled to receive temporary accommodation, and advice and assistance from the local authority (see chapter 9). The local authority may also have continuing duties to children and young people under the terms of the Children (Scotland) Act 1995.

2.67 It is important that those requiring community care or other support, for example, because of mental health problems, are referred for an assessment of their needs rather than being the subject only of punitive sanctions. Referrals to local community mental health services will be appropriate in most cases.

2.68 Guidance on the use of short SSTs can be found in SEDD Circular 6/2002: Housing (Scotland) Act 2001: Scottish Secure and Scottish Short Secure Tenancy.¹³

2.69 Antisocial behaviour which could lead to eviction is not of course confined to local authority tenants, or indeed social housing. Local authorities may wish to arrange for private sector landlords, housing associations and the police to be aware of what support or intervention can be offered by social work or housing departments or other agencies to deal with other tenures.

Closure notices

2.70 Part 4 of the Antisocial Behaviour Act 2004 gives police the powers to close premises which cause significant and persistent disorder or serious nuisance to the local community. Statutory guidance on this part of the Act has been published¹⁴ and this says that if premises are closed then people staying in those premises may be threatened with homelessness. Police should work with local authorities to inform the latter of any potentially homeless people as far as possible in advance of issuing the closure notice. This should allow local authorities to work with the affected people to prevent homelessness and find new accommodation if needed.

^{13, 14} See annex C for weblink

Harassment/illegal eviction

2.71 If a tenant gives up a tenancy because of harassment or illegal eviction, the courts may award damages. Where there is evidence of harassment the local authority should encourage the tenant to report this to the police. Harassment is a criminal offence under section 22 of the Rent (Scotland) Act 1984. It is widely defined and, besides violence or intimidation, could include cutting off gas and electricity supplies or failure to carry out or complete necessary repairs. Further information is available from The Scottish Executive booklets "Help for Homeless People" and "Protection against Harassment and Unlawful Eviction". Local authorities should refer those affected by illegal evictions or harassment to sources of advice and support which will help those affected to take appropriate action.

2.72 Under section 11 of the 2003 Act the local authority should be notified when a landlord raises proceedings for possession. Ministers have the power to prescribe the form of notice to be used and the manner in which they should be given. This section of the Act is not yet in force (the Executive plans to make relevant regulations in 2005) – however local authorities should consider the following guidance in order to make preparations for commencement.

2.73 On receiving notification, the local authority should take as pro-active an approach as possible to prevent homelessness occurring. For instance it may be appropriate for the authority to make initial contact with all households involved, and to make more concerted efforts where the household involved is already known to the homelessness service. Authorities may wish to offer to negotiate with the landlord on the tenant's behalf, or to arrange for the provision of housing support services, advocacy or other services as relevant to the particular case. The local authority should also consider ways in which this information can be used to monitor local allocation policies and the effectiveness of initial solutions to homelessness and can otherwise feed into the development and review of their homelessness strategy.

Helping owner occupiers to avoid homelessness

2.74 If a house owner is threatened with homelessness because the mortgage lender is taking legal action to repossess the house, the local authority may be able to help in a variety of ways. For example the local authority can help negotiate with the mortgage lender. Even if repossession cannot be avoided, local authorities can help to plan for it in advance, for example through helping to set up a tenancy. This may avoid the need to rehouse people in temporary accommodation. Help may also be available under the Mortgage to Rent scheme. To be eligible under the scheme the owner must have sought financial advice and be unable to "trade down" to a cheaper house in the locality. There must also be a good reason why the household should remain in the local area. An owner who satisfies these and other conditions of the scheme can apply for a social landlord to buy the house, with the owner becoming the tenant. The purchase would be subsidised from Scottish Executive funds to allow any necessary repairs to be carried out and to allow the landlord to keep the rent at an affordable level. The scheme is administered by the Mortgage to Rent scheme team in Communities Scotland, who can provide further information.¹⁵

¹⁵ See annex B for contact details

2.75 The Mortgage Rights (Scotland) Act 2001 came into force on 3 December 2001. Its purpose is to help households who find themselves in mortgage difficulties. The Act provides, among other things, new powers to allow the courts to consider the debtor's circumstances when the lender has applied for a repossession order. It enables the court to decide whether an order should be made delaying the repossession to give the debtor time to find alternative accommodation or, where possible, to get their mortgage back on track. This may enable local authorities to assist in opening discussions between the lender and the mortgage holder to seek to prevent homelessness. An explanatory booklet on the Act is available from the Scottish Executive.¹⁶

Prevention of recurrence of homelessness

2.76 While the actions discussed so far in this chapter may prevent homelessness arising in many cases, local authorities cannot hope to succeed in all cases. Equal attention should therefore be given to ensuring that homelessness – and in particular rooflessness – does not recur, as this can be extremely harmful for the individuals involved and is also expensive in terms of public resources. The assessment of the causes of homelessness within the authority will help to pinpoint local priorities for action.

2.77 In considering resettlement, local authorities and partner agencies should bear in mind the key principles set out by the Homelessness Task Force:

- Solutions to homelessness should be based on a thorough assessment of the household's needs, including support needs. The specific needs of families with children should not be overlooked.
- The objective should always be to find sustainable solutions which enable homeless people to be reintegrated back into the community and which are likely to last in the longer term.
- Joint working is crucial in addressing complex or multiple needs.
- Provision of social work advice and assistance/community care and other support issues.

2.78 In addition to a general duty to promote social welfare in making available advice, guidance and assistance, social work departments have an emergency power under section 12 of the Social Work (Scotland) Act 1968 to assist persons in need in certain circumstances. Section 12 enables local authorities to give cash to, or in respect of, any person aged at least 18 years who is in need within the meaning of the Act, and requiring assistance in exceptional circumstances constituting an emergency, and where to do so would be more cost effective than giving assistance in another form. Local authorities should have regard to other means of assistance available to the person in need, and to whether any assistance given should be repaid.

2.79 Section 140 of the Local Government Etc. (Scotland) Act 1994 gives local authorities discretionary powers to assist voluntary organisations to provide for individuals. This can also include assistance in asserting these rights or fulfilling these obligations, either by making or receiving communications on the clients behalf, or by making representations.

¹⁶ See annex C for weblink

2.80 While homeless people as such are not a community care client group, homelessness officers should be alert to the possibility that some will require community care, health, or other support, to live successfully in the community; and refer them to the appropriate agency. Such referrals should be covered by protocols established as the homelessness strategy is developed. Support packages must cater for the individual needs of each household – and service providers should enter into a dialogue with the recipient of services to agree to the adjustment of support levels over time. In some cases a formal community care assessment will be required. See also paragraphs 4.44–4.49 in Chapter 4.

Independent living skills

2.81 Some homeless people, particularly young people or those having spent substantial periods sleeping rough or in temporary or institutional accommodation, may need to learn or relearn basic independent living skills, including budgeting, if they are to sustain their tenancy. In such cases provision of services to teach these skills by the local authority, or voluntary or other organisations, will be a cost effective investment.

2.82 Homelessness officers should ensure that applicants placed in accommodation have advice on the running costs of that accommodation, including the full costs of running that property (heating and lighting costs, repairs and maintenance liabilities, service charges, and any initial costs such as rent deposits or rent in advance) and advice on meeting these costs, including advice on any housing or other benefits to which they may be entitled. Travel costs to employment, education, or training may also be relevant in some cases.

Location and support networks

2.83 In considering rehousing, local authorities and housing associations should recognise the importance of ensuring that tenancies are unlikely to be sustained if people feel isolated from friends, relatives, and other formal or informal support networks. Problems may also be caused if accommodation is located too far from their employment, or education or training establishments, or health services which are used frequently.

Social networks

2.84 Many people who have experienced homelessness will have lost or be deprived of, their social networks of families, friendships or work. The circumstances and trauma of homelessness frequently leads to feelings of isolation and loneliness before and after resettlement. Ensuing depression and mental health problems are common. There is overwhelming evidence demonstrating that isolation and loneliness are major factors in resettlement breakdown.

2.85 The strength of a person's social networks should be an integral part of the assessment of their needs and of the support offered them in temporary accommodation and during resettlement. Where individuals and families (including children) do not have strong positive social networks, local authorities should consider whether a befriending, mentoring or mediation service may be appropriate to enable them to build or rebuild social bonds. Local authorities should develop practical local measures to enable people affected by homelessness to (re)build social networks.

2.86 The Scottish Social Networks Forum is being formed to support the development of befriending, mentoring and mediation services for homeless people by:

- raising awareness of the important role these services can play;
- testing and developing approaches which support the building of social networks;
- sharing good practice and information; and
- providing a forum for discussion and support.

2.87 A national co-ordinator has been appointed, based at the Rock Trust.¹⁷

Furniture

2.88 Some homeless people, including those made homeless from furnished accommodation, may have little or no furniture of their own. Roofless people in particular may lack such basic necessities as pots and pans. One solution is to provide furnished tenancies, either within the local authority's own stock or by arrangements with private or public sector providers. Another is to provide "starter packs" containing essential items.

2.89 Communities Scotland runs a furnished tenancies scheme to which local authorities can apply for assistance with costs for "essential goods" such as cookers and fridges. Local authorities can provide grants to the housing providers of their choice. These are for permanent or temporary accommodation and all homeless people are eligible. Local authorities may find these grants particularly useful in situations where homeless people are ineligible to access grants for furniture from the benefits system.

2.90 The guidance for the furniture tenancy scheme advises service providers to utilise local furniture recycling projects in order to establish furnished tenancies or to help people who are resettling from homelessness to source specific items of furniture. A national furniture co-ordinator is in place, based at Community Re-cycling Network Scotland.¹⁸

Rent deposit/guarantee schemes

2.91 In order to maximise access to the private rented sector, every local authority should ensure that people at risk of homelessness or those resettling from homelessness can access a local rent guarantee/deposit scheme. Access to the scheme should be provided as early as possible and local authorities should consider marketing the scheme in such a way as to ensure that the potential for early involvement is maximised. Authorities should also satisfy themselves that the applicant has the means to continuing making rental payments once they have gained access to accommodation. Local authorities may wish to contact the National Rent Deposit Forum for further details.¹⁹

Employment

2.92 For many people resettling from homelessness a job will be an important factor in determining whether or not accommodation is sustained. Local authorities and partners should therefore consider whether any members of the household require assistance to maintain or find employment. For homeless people who have complex needs, or who have been homeless or roofless for a significant length of time, pre-vocational support will be essential.

^{17, 18, 19} See annex B for contact details

2.93 Local authorities should ensure that they have close links with local offices of the Benefits Agency and Jobcentre Plus and also with the local enterprise company and careers services, as well as with local businesses and voluntary organisations who may be able to offer employment, training or pre-vocational activity.

2.94 For further information and advice local authorities should contact the Scottish Homelessness and Employability Network.²⁰

Health

2.95 Unmet health needs may interfere with an individual's ability to sustain accommodation. Local authorities should record information about the GP registration of all those who are assessed as homeless and should offer information about local health services to homeless people rehoused outwith their existing GP area. NHS boards are now required to consider and plan for the needs of homeless people in their areas through the use of "Health and Homelessness" standards. Local authorities should also maintain close links with local healthcare providers.²¹

²⁰ See annex B for contact details

²¹ See annex C for weblink

Chapter 3

Ways of working

3.1 **Summary** – this chapter sets out how relevant parts of local authorities should work in partnership to deliver effective services to homeless people, and gives advice on drawing up relevant protocols on working together and sharing information. The Homelessness Task Force emphasised the need for homelessness services to be provided in partnership and in a way which responds to the individual needs of each applicant. Local authorities should therefore assess the applicant household's needs in their entirety and should work in partnership across departments and with other agencies to meet those needs, and in such a way that applicants feel valued and respected.

Partnership working

3.2 The defining characteristic of homeless people is that they need a home, and homeless people as such should not necessarily be regarded as a community care client group or in need of other types of support. However, it must be acknowledged that homeless people may require housing support services, social work support, health care, assistance in rebuilding social networks and accessing employment and training opportunities and a range of other support services.

3.3 Housing departments must co-operate as necessary with other council departments and landlords and a wide range of statutory, voluntary and private sector agencies in order to ensure that the support which is required is provided. Other departments must also ensure that they deliver services and adopt policies which are consistent with the aim of preventing and tackling homelessness. Effective co-operation is particularly important when such support is required to prevent homelessness occurring in the first place or to ensure the homeless person can maintain him or herself in a new home, and does not become homeless again.

3.4 Scottish Executive guidance on the development of homelessness strategies contains further guidance on ensuring broad corporate awareness of prevention, risk and the causes of homelessness within the local authority. It also emphasises the importance of working in partnership with other statutory and voluntary organisations and contains an illustrative list of organisations who should be involved in the development of the homelessness strategy and the role they can fulfil.

3.5 The research carried out for the Homelessness Task Force concluded that good joint working between agencies working with homeless people requires:

- good communication between agency staff and between staff and service users including regular face to face meetings;
- a clear commitment to working together to improve service delivery
- close working relationships in which people feel able to be open and honest about difficulties and concerns;
- having clear and agreed roles, aims and boundaries that are adhered to; and
- trust.

3.6 Through the development of their homelessness strategies local authorities and partners should consider ways in which these requirements can be met. In particular local authorities should ensure that there is provision for joint training approaches which involve all sectors and providers with a role to play in delivering the homelessness strategy. As a minimum, training should cover the definition of homelessness, risk assessment techniques to help "first-to-know" agencies to respond effectively, needs assessment, support packages, consultation techniques, information sharing and how to help and empower homeless people to find appropriate solutions. All partners should be involved in jointly assessing training needs and arranging for these needs to be met.

3.7 Strategies should also provide for the development and agreement of inter-agency protocols, particularly where these are necessary to clarify arrangements for preventing homelessness. Such protocols should cover basic contact details, information sharing and procedures for swift communication of any new developments (e.g. new legislation) alongside more detailed information regarding operational practices. The implementation of these protocols should be monitored in order that they can be revised if necessary. All protocols and partnerships should be periodically evaluated. For further guidance on protocols governing local authority/RSL arrangements for implementing section 5 of the 2001 Act see paragraphs 9.72-9.73 in Chapter 9.

3.8 All protocols, and wider arrangements, should take account of the need to develop an information sharing regime which preserves client confidentiality, without erecting barriers to timely action to help homeless people.

3.9 The Data Protection Act 1998 does not prevent data sharing if a data protection regime is in place to ensure that data held about individuals is treated properly. The Chartered Institute of Housing in Scotland carry out training for housing professionals on the Data Protection Act²² which may be a useful source of reference. However legal advice should be taken at the point when protocols are being agreed. See paragraphs 4.27-4.30 in chapter 4 on sharing of information for some further guidance.

3.10 Local authorities and partners should work towards establishing a common definition of vulnerability in order to ensure that all the needs of the household can be met. However agencies should also be aware that partners may be working to different legislative definitions for certain aspects of their work. Whilst every attempt should be made to take a flexible approach, and to find a solution which best meets the need of the homeless household, agencies should be aware that these differences may affect the criteria used in different assessments.

3.11 All partners should also be involved in monitoring implementation of the strategy and should be represented on any fora established for this purpose.

²² See annex C for weblink

3.12 In some cases a legal duty to give such assistance as is reasonable in the circumstances may exist:

- Section 38 of the 1987 Act provides that if a local authority requests another local authority in Scotland, or a local housing or social services authority in England or Wales, or Communities Scotland, or a registered housing association, to assist it in carrying out its homelessness functions under the Act; the body receiving that request must co-operate in giving whatever assistance is reasonable in the circumstances.
- Requests by English and Welsh local authorities of Scottish bodies are covered by a reciprocal provision in section 213 of the Housing Act 1996.
- The duty to meet requests placed by section 38(a) on a local authority, Communities Scotland or a registered housing association relates to the full range of a local authority's homelessness functions, including making inquiries, providing accommodation and assistance, and referring an unintentionally homeless person in priority need to another local authority.
- Under section 38(c) a local authority can be asked to assist with the protection of the property of a person who is homeless or threatened with homelessness. Local authorities should be particularly aware of the need to protect the property of people entering prison, in order that it can be accessed on release, to facilitate resettlement. (see paragraphs 2.32-2.40 in Chapter 2 for more detailed guidance on how to resettle ex-prisoners).
- Section 39 of the Act empowers local authorities to give assistance to voluntary bodies' services for homeless people, including advice, advocacy and accommodation services, by way of grant or loan, or by giving such bodies the use of premises, or the services of local authority staff, or by making available furniture or other goods as a gift or loan or otherwise.

3.13 However, the absence of a formal legal duty should not act as a barrier to joint working. Rather this should be predicated on meeting local needs, as identified by the homelessness assessment required by section 1 of the 2001 Act, and implementing effectively the actions set out in the homelessness strategy. Local authorities can enter into contractual or other arrangements with external bodies for the provision of homelessness services.

Involving people affected by homelessness

3.14 The Homelessness Task Force recommended that the objectives of increasing homeless people's control and extending their choices, and achieving the effective participation of people affected by homelessness in the development of future policy, practice and service delivery should be widely promoted and given practical effect in all activities directed at tackling homelessness.

3.15 Local authorities and other partners should ensure that the views of homeless people, people at risk of homelessness and people resettling from homelessness are reflected in the development of the homelessness strategy. Agencies should explore different ways in which people using their services can be involved in the design, delivery and management of these services. Agencies should also seek feedback from users of their services as part of their monitoring and evaluation processes, and be prepared to describe changes which have come about as a result of client feedback.

3.16 Care should be taken to ensure that homeless people are not prevented from moving on from homelessness due to their involvement in developing homelessness policy or services, nor that participating gives, or is perceived to give, any unfair advantage to a participating homeless household.

Providing an individual response

3.17 All services should ensure that they are promoting and practising values which deliver responsive and personalised services. Staff should ensure that accommodation and services are offered on the basis of a thorough assessment of the applicant's needs and that these needs are addressed in a holistic fashion. The emphasis should be on finding sustainable solutions – not on a rigid application of the legislation which does not take into account the individual circumstances of the household (although an individual's entitlements should never be undermined).

3.18 Action should be taken promptly to prevent homelessness occurring where this is a risk. Agencies must work together to find creative and lasting solutions, rather than allow organisational barriers to get in the way of helping the applicant. The needs of all members of the household should be taken into account – where necessary intensive interpersonal support should be available to parents and children, both on an individual basis and as a family, for example.

3.19 Service providers should maintain the highest standards at all times. In particular they should ensure that they are complying with the Performance Standards set by Communities Scotland (discussed in paragraph 1.11 in chapter 1). A range of information on the Standards, self assessment, good practice examples and other reference materials is available online²³ The Scottish Housing Best Value Network²⁴ is also a useful resource for local authorities wishing to benchmark and improve their performance. The network incorporates a homelessness sub-group. The National Care Standards will also be relevant to some services – further information can be found on the Care Commission's website.²⁵

3.20 Members of staff should make serious efforts to ensure that clients feel valued and respected – and this ethos should be encouraged as part of staff training. Homelessness applicants should be at the centre of service provision and staff should ensure that the applicant is kept well informed as to local policies and procedures and that the process of making a decision on their application is clearly explained in terms that they can easily understand. Care should be taken to ensure that materials and communications are appropriate for, and accessible to, a diverse range of clients. Particular attention should be paid to ensuring that the different experiences of homelessness and service requirements of people of differing age, family background, race, disability, gender, sexual orientation and belief are recognised.

²³ See annex C for weblink

²⁴ See annex B for more details

²⁵ See annex C for weblink

Chapter 4

Handling of applications

CHAPTER 4 – HANDLING OF APPLICATIONS

4.1 **Summary** – this chapter discusses how initial approaches should be handled, including the recording of the results of inquiries. The inquiries which local authorities must undertake into applications under the homelessness legislation are discussed in Chapters 5 to 8.

4.2 It is important that homeless applications are considered in the overall context of providing a service to those in housing need. Staff should adopt a person-centred approach in order to deliver a response tailored to the needs of the individual applicant. Staff should be aware that where a person has applied for accommodation, or for assistance in obtaining accommodation, and there is reason to believe that they are in fact homeless or threatened with homelessness then inquiries must be carried out to ascertain the duty owed to the household under the homelessness legislation.

4.3 Initial identification of homelessness or threatened homelessness may be via the housing department or other routes such as social work or youth services. Local authorities have a corporate responsibility towards the applicant to ensure they are helped appropriately and effectively, and all relevant departments must play a part in discharging this responsibility. Chapter 3 gives guidance on how different parts of local authorities should work together.

4.4 Local authorities have a duty to provide good quality objective housing advice on a range of housing options of which accessing local authority or housing association accommodation via a homeless application is one. Staff responsible for dealing with a homeless application should be trained to ensure provision of such advice. At all times, staff must be aware that should an individual wish to make a homeless application, they are within their legal rights to do so, and housing staff must accept that application. Staff should ensure that applicants are aware of their legal rights or where they may receive information on these. Staff should also be able to advise applicants on how to contact independent advocates or advisors.

Avoidance of first screening of applicants

4.5 The principal aim for staff in local authority housing offices should be to identify a housing solution for a homeless individual that reflects their needs. Staff should work to find the best way to achieve that solution. To do this, staff should ensure that all relevant information is provided to the individual, including their legal right to make an application, so that the individual can make an informed choice.

4.6 There are a number of key points that staff should follow:

- No homeless person should ever be refused the right to make a homeless application.
- Particular care should be taken to ensure receptionists or general inquiry staff do not carry out any informal "first screening" of applicants, either deliberately or unwittingly, for example, by advising them in advance that they are likely to be re-housed in a difficult to let area or in a location many miles from where they wish to stay.
- Staff should not assume that every individual who enters a local authority office is aware of their legal right to make a homelessness application. Prominently displayed notices should make it clear that applicants are entitled to an interview with a homelessness officer.
- At all times, staff should give factual information to members of the public on the application process, as well as giving information to people on their legal right to apply.

4.7 Staff should receive training, if required, in the handling of such applications, including where to refer applications.

Discrimination

4.8 It is essential that applications are handled in a non-discriminatory way, at minimum taking account of local authorities' duties under relevant equal opportunities legislation, for example:

- The Sex Discrimination Act 1975 covers discrimination on account of gender.
- The Race Relations Act 1976 (which was amended by the Race Relations (Amendments) Act 2000) places a general duty on local authorities to make appropriate arrangements with a view to securing that their functions are carried out with due regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons of different racial groups.
- The Disability Discrimination Act 1995 prevents discrimination against disabled people in the sale or letting of houses.

4.9 As a matter of good practice local authorities should consider all equalities issues, not just those enshrined in legislation, when handling applications.

4.10 It should also be noted that section 106 of the 2001 Act requires the encouragement of equal opportunities and the observance of equal opportunity requirements in the provision of housing and related services by Registered Social Landlords and in the exercise of the functions given under the 2001 Act by local authorities. The definition of "Equal opportunities" is taken from the Scotland Act (1998) and means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions and "equal opportunities requirements" means the requirements of the law for the time being relating to equal opportunities. The 2001 Act also requires homelessness strategies to state how the local authority is complying with its duty under section 106 so far as relating to matters in the strategy.

Staff training

4.11 It is important that homelessness officers are trained in the requirements of the homelessness legislation, the Code of Guidance, anti-discrimination legislation, and the local authority's own housing and homelessness policies. Training in awareness raising and practice issues as well as clear staff support arrangements will also be helpful in ensuring staff are able to assist applicants proactively.

4.12 Staff should be able to provide at least Type 1 (as defined in Homepoint's National Standards for Housing Information and Advice²⁶) advice on homelessness and other associated areas of housing law. They should also know how to access Types 2 and 3 advice if necessary. They should also be aware of the requirements of legislation and policies which may be relevant to particular cases, for example community care legislation or the Children (Scotland) Act 1995; and of local authority departments and independent agencies to which applicants should be referred for specialist advice and assistance where necessary. Where possible training should be carried out in partnership with other local agencies who will have a role in the assessment process.

4.13 Staff should have good interviewing skills and be equipped to deal with people who are distressed, embarrassed or confused. Where the first point of contact is a receptionist or member of staff dealing with other inquiries, the aim should be to refer the applicant to a homelessness officer as soon as possible (including those trained to deal with homelessness applications as part of their general duties).

4.14 Reception staff should always be alert to the possible wider needs of applicants in order to be able to provide a sensitive and appropriate initial response. Adoption of HomePoint's National Standards for Housing Information and Advice provides a useful and relevant framework for assessing training needs against a set of agency and staff competencies. Supervision and support of staff will enable the development of best practice in handling applications.

4.15 See paragraph 3.6 in Chapter 3 for guidance on ensuring a joint partnership approach to training.

Explanation of procedures

4.16 At the initial interview, each applicant should receive a clear and simple explanation of the local authority's procedures for handling homelessness applications, including the various steps involved and likely timetables for each; and of the decisions a local authority can take on the application. Applicants should be advised of what they should expect at each stage of the process including information on any rights they may have.

4.17 Staff should be mindful that they do not overwhelm applicants with too much information and it may be more appropriate to give explanations at different key stages in the interview. For some applicants who are particularly upset or distressed it may be appropriate to deal with the initial "crisis" e.g. commencing the application, taking basic details and arranging temporary accommodation but continue inquiries another day. However the applicant should be made aware of their options and rights before arranging temporary accommodation.

²⁶ See annex C for weblink

4.17 Explanations should be presented in a manner which is accessible to the applicant. There should be a written as well as a verbal explanation of the procedures and leaflets may be useful. These should be available in the main community languages.

Sequence of inquiries

4.18 The following sets out the sequence of inquiries at present. As the 2003 Act is commenced, local authorities' duties will change, in particular as progress is made towards the 2012 target of removal of priority need. Further guidance will be issued in the future.

4.19 When a person applies to a local authority under the homelessness legislation, it has to make inquiries into the application in sequence. It has to have reason to believe that the applicant is homeless or threatened with homelessness and it shall make necessary inquiries to satisfy itself that this is the case. If so, there shall be inquiries as to whether the applicant has a priority need and whether he or she became homeless or threatened with homelessness intentionally. The local authority may decide to inquire whether the applicant has a local connection with another local authority in Scotland, England, or Wales. The local authority will also need to check whether the applicant is a person subject to immigration control, and if so whether he or she is eligible for assistance under the homelessness legislation (see chapter 13 for more details).

4.20 Local authorities should adopt targets for completion of each stage of the process and should monitor these. They should aim to:

- interview and carry out an initial assessment of an application on the day of application or on the first working day thereafter in the case of applications made out of office hours or in circumstances where the applicant is particularly distressed;
- complete their inquiries within 28 days, unless there are legitimate reasons for taking longer; and
- issue decisions within one working day of the completion of inquiries.

Progress of applications

4.21 Applicants should be given some indication of the likely length of time the application process will take, and should be kept well informed of the progress of their application, and what inquiries the local authority will make at each stage of the process. Staff should contact the applicant in person if possible throughout the process, or by other means agreed with the applicant, for example by letter, telephone or text message. Inquiries into applications should be careful, but not over elaborate. A long period of uncertainty is bad for the applicant, and may cost the local authority money as it has a duty to secure that accommodation is made available while completing its inquiries. Staff should indicate to the applicant when a final decision may be made in order to reduce uncertainty and to give the applicant time to make any arrangements that they may need to make.

Recording

4.22 Where an application is made this should be recorded through the electronic case-based HL1 returns to the Scottish Executive Housing Statistics branch. It should be noted that the final section of the HL1 (dealing with the rehousing outcome) should not be completed until the case has been closed – i.e. the local authority has discharged its duty in its entirety.

4.23 This recording system also enables local authorities to identify repeat applications – these may suggest a need to review current policies. Local authorities should also consider bespoke standard monitoring systems which allow them to ensure that appropriate policies and procedures are implemented, including, where appropriate, referrals to other bodies.

4.24 Authorities may also wish to record information relating to enquiries which do not result in a formal homelessness application. Over-elaborate recording systems are to be avoided, but it is important that recording systems are capable of demonstrating clearly the enquiries that have taken place, the decisions reached and the reasons for these decisions.

4.25 The name of the officer who interviewed the applicant should be included in any record for ease of reference at a later date, as should the applicant's contact details and the best way of contacting him or her, e.g. by telephone or in writing. Recording systems should also allow for the recording of case notes and follow up notes so that applicants can have enquiries dealt with effectively even when their case officer is not available.

4.26 All housing advice that is provided to applicants should be noted as a matter of record. This is particularly important for non-priority applicants and priority applicants who are assessed as being intentionally homeless, where the type of advice and assistance they are entitled to is prescribed by ministerial regulation.

Sharing of information

4.27 Assessment interviews may involve asking applicants personal, and possibly distressing questions, and should therefore be conducted in private. Interviews must never be conducted where the interview might be overheard, and should be held in a private interview room or in an office not otherwise open to the public.

4.28 When collecting information as part of an assessment local authorities should ensure that applicants know why the information is being collected and what it will be used for. Local authorities should obtain an applicant's written consent to information being shared with other agencies, and any implications likely to arise from this, and should ensure that they comply with the terms of data protection legislation. An applicant may have good reason for not wanting to share certain information with other parties, for example in cases of abuse, and their right to confidentiality should be respected.

4.29 In order to facilitate effective case management local authorities should establish protocols and procedures for the sharing of information about homeless applicants between Housing Departments, Social Work, housing support providers and other relevant agencies. Such protocols should contain agreements as to the type of information to be shared and the stage at which this is to be done.

4.30 In all cases information should only be shared where it is of direct relevance to the receiving agency – for instance it is good practice to share information about a new tenant with their landlord if this is relevant to sustaining the tenancy, or for housing management purposes, but not otherwise.

Support for applicants

4.31 All applicants should be advised that they can be accompanied during any interview relating to their application by a friend or advocate, who can speak for them if required. Applicants should always have the opportunity to explain their circumstances fully. Applicants should be informed that they can ask to see a homelessness officer of either sex, and this wish will be met wherever possible.

4.32 Consideration should also be given to interviewing applicants with young children and staff should do all they can to ensure that the interview is as comfortable as possible for parents and children. A play area or toys to keep children entertained while the applicant is being interviewed can help make the experience less stressful.

4.33 If an applicant becomes distressed during an interview, consideration should be given to continuing at a later time although this should not delay settlement of the applicant in temporary accommodation.

4.34 Arrangements must be in place to ensure support is available to those with literacy difficulties, whose first language is not English, or have other difficulties in expressing themselves. For example written documentation should be reinforced with a verbal explanation and the officer dealing with the case should check the applicant understands any advice being offered or any options proposed.

4.35 Local authorities should ensure that those applicants for whom English is not their first language have access to an interpreter – either one nominated by the local authority or by the applicant, or services like Language Line. Where applicants bring in a friend or relative to interpret they should always be given the option of using a trained interpreter. Even if an applicant prefers to use a friend to interpret the case officer should consider using a trained interpreter if there are concerns that the applicant does not fully understand the advice they are being given.

4.36 People with hearing or speech difficulties, mental health problems or learning disabilities, may also need an intermediary or advocate. Appropriate provision for deaf applicants, e.g. provision of sign language interpreters, should be considered if necessary. Homelessness staff should also be alert to the need that some more vulnerable applicants may also require an assessment of their housing support or health needs while others may need to be referred for community care assessments.

4.37 It is important assessments are carried out quickly to avoid the client forming a dependency on their temporary accommodation which may make subsequent moves more difficult to manage. (see also chapter 9, paragraphs 9.5–9.36 on temporary and interim accommodation).

Cases involving abuse

4.38 Individuals who have experienced abuse may contact the local authority. In considering a homelessness application, staff should interpret abuse widely to include any form of violence, harassment, threatening conduct and any other behaviour giving rise or likely to give rise to physical or mental injury, fear, alarm or distress and not just domestic, racial or sexual abuse. Staff should be aware of the different types of abuse and responses they may require.

4.39 If the applicant reports abuse, the local authority should take reasonable steps to obtain information to support the applicant's case and consider all available evidence and information relating to the circumstances of each case. However, a local authority should never seek proof from an alleged perpetrator and if it proves impossible or inappropriate to obtain confirming evidence the applicant's expressed fears should be considered as sufficient evidence. For example, if the only way to obtain confirming evidence is by asking the alleged perpetrator then this should be deemed to be inappropriate.

4.40 In cases involving violence or threats of violence, or sexual or other abuse the applicant may be in considerable distress. All local authorities should ensure an appropriately trained officer is available to applicants and wherever possible in such cases, a person of the same sex as the applicant should conduct the interview, if this is in line with the applicant's wishes. There should be arrangements for assistance to be available, if required, from statutory or voluntary services.

4.41 Applicants should be advised of their rights to take action against the perpetrators of abuse, but it is for them to decide whether to use these rights in the light of their individual circumstances, bearing in mind that they may fear this will provoke further abuse. In cases of sexual abuse, particularly of children or young people, the person suffering abuse may be reluctant to mention this initially. Homelessness officers should therefore be alert to the possibility that there may be reasons, e.g. for leaving a family home abruptly, which the applicant is not divulging.

4.42 Homelessness officers are not equipped to inquire into allegations of assault or abuse. Joint protocols with Social Work should be considered as should joint training in child protection procedures. Staff should recognise that different forms of abuse may require very different responses – for example childhood sexual abuse requires different handling to external neighbour violence. See paragraph 3.6 in Chapter 3 for guidance on ensuring a joint partnership approach to training.

4.43 If the applicant alleges assault or sexual abuse of a child, the homelessness officer should advise him or her of the homelessness officer's responsibility to discuss this with the social work department, so that any necessary help and protection for the child and applicant can be arranged. Homelessness officers should ensure that they have telephone contact numbers and addresses of local services to which those who have experienced violence or sexual abuse can be referred, for example women's refuges, and other services specialising in violence or sexual abuse.

Links with community care assessments

4.44 All local authorities should have a mechanism for assessing housing support needs under Supporting People arrangements. Homelessness officers should be trained to look for triggers that would indicate that an applicant may benefit from some degree of housing support in the short or longer term. Assessing and recording housing support needs and making arrangements for housing support services should be carried out by the homelessness officer, where possible, and be built into the housing advice/homeless application process.

4.45 Where applicants have more profound or complex needs that may benefit from community care services, from social work, health or other agencies, local authorities should ensure that a seamless referral process, that builds on information already gathered through previous assessments, is in place. Such needs may be particularly likely to come to light when assessing whether a person is vulnerable and hence in priority need, or an assessment may be required before an applicant is assigned specialist housing, for example housing designed for ambulant disabled people. An assessment of community care needs can also prevent homelessness, particularly when a vulnerable individual is threatened with eviction.

4.46 Even if the local authority has no further duties under the homelessness legislation because the person is neither homeless nor threatened with homelessness, a referral for advice or assistance under other legislation, for example the Social Work (Scotland) Act 1968, Children (Scotland) Act 1995 or the NHS and Community Care Act 1990, may be appropriate. Housing staff are an important point of contact for people with other community care health or support services.

4.47 From April 2004, all people with community care needs seeking help from social work, health or housing services, and who may require the services of more than one professional discipline or agency, have been entitled to a Single Shared Assessment. According to the individual's needs, this may be a simple or comprehensive assessment with any specialist assessments that are required, and including assessment of the person's financial circumstances. The assessment is undertaken by the most appropriate person in social work, health or housing, the "lead assessor", who will be responsible for co-ordinating assessment contributions and care planning and applying the arrangements for accessing services. Single Shared Assessment should give access to a range of community care services without the need for agencies to duplicate assessments or for people to repeat their details to each service with which they have contact.

4.48 Homelessness officers, and other housing staff, will need to be familiar with the local arrangements for Single Shared Assessment and for referring to other services, and their expected role in this. Appropriately trained or experienced staff may be involved in undertaking simple assessments or contributing their specialist knowledge to comprehensive assessments, allocating resources, planning and facilitating housing support.²⁷

4.49 Social work departments should be aware that homeless people are often in urgent need of accommodation and may require a fast track assessment and they should build this into the arrangements for Single Shared Assessment. This is particularly true of roofless people seeking entry to emergency accommodation with support. Housing and social work departments may delegate authority to decide on immediate admissions to voluntary and other bodies running emergency accommodation where the need is urgent.

²⁷ See annex C for weblink

False or misleading statements

4.50 The applicant is obliged by section 40(2) of the Act to notify the local authority as soon as possible of any change in the facts material to his or her application which occurs before he or she receives notification of the local authority's decision on his or her application (but not changes arising after the decision is notified). The local authority has a duty to explain to the applicant, in ordinary language, that he or she must report such changes in their circumstances, and that if this is not done the applicant would be guilty of an offence. The applicant will not be guilty if he or she can show that they had a reasonable excuse for not notifying a change, or that the necessary explanation was not given by the local authority (section 40(3)).

4.51 The explanation given by the local authority under section 40 should also cover information about the penalties for giving false or misleading statements. Such explanations should be handled sensitively so as not to intimidate applicants or imply dishonesty; and homelessness officers should ensure an applicant is clear what kind of changes should be reported to the local authority. An applicant cannot be expected to know every circumstance which would be relevant to his or her application.

4.52 Under section 40(1) of the Act, a person is guilty of an offence if he knowingly or recklessly makes a statement which is false, or knowingly withholds information which the local authority has reasonably required him to give it, with the intention of inducing the local authority to believe that he or another person is:

- homeless or threatened with homelessness or;
- has a priority need or;
- not homeless, nor threatened with homelessness, intentionally.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding Level 5 on the standard scale (currently £5,000) (section 40(4)).

Chapter 5

Inquiries into homelessness

CHAPTER 5- INQUIRIES INTO HOMELESSNESS

5.1 **Summary** – this chapter gives guidance on the inquiries a local authority should make into homelessness. This chapter includes guidance on issues of definition such as what is meant by "homelessness" and the broad definition of "family" under the legislation, what is meant by normally or reasonably residing with an applicant, and when it is not reasonable for an applicant to continue to occupy a house.

5.2 Local authorities should bear in mind throughout their inquiries that they should take action where appropriate to prevent homelessness occurring and to meet the broader needs of the applicant.

5.3 Someone is homeless under section 24 of the 1987 Act if he or she has no accommodation in the United Kingdom or elsewhere which he or she (together with any person who normally resides with the applicant as a family member, or in circumstances in which the local authority considers it reasonable for that person to reside with the applicant) is entitled or permitted to occupy in one of the following ways:

- is entitled to occupy by virtue of an interest in it (for example as an owner or tenant) or by virtue of a court order;
- has a right or permission, or an implied right or permission, to occupy (for example as a lodger or an employee with a service occupancy); or
- currently occupies as a residence by virtue of some protection given by law. The person may have a positive right to occupy the accommodation, or may be protected only by a restriction on another person's right to repossess the accommodation.

5.4 When investigating whether accommodation is available outside the UK for the applicant, local authorities should be sensitive in the manner in which they approach the applicant. Staff should be aware of potential cultural sensitivities or language barriers during such investigations. Given the difficulty in ascertaining whether accommodation outside the UK is available, if evidence is not readily available, it should be assumed that the applicant does not have access to accommodation elsewhere. If the authority considers that there is accommodation available for the applicant then that accommodation is subject to the same tests as accommodation in the UK, i.e. it must be reasonable to occupy as set out in paragraphs 5.11 and following.

Family membership

5.5 Local authorities should be aware of the complex family structures that exist for example stepfamilies, foster relationships, and other established relationships.

5.6 Under section 83 of the 1987 Act, as amended, someone is a member of another person's family if:

- they are married or living together as husband and wife or are in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex;
- one is the child of the other (whether or not the child's parents are married);
- one is the stepchild of the other;
- one is the grandchild of the other;
- one is the brother or sister of the other; and
- one is the nephew or niece of the other.

5.7 Relationships by marriage are to be treated as if they were relationships by blood – for example, a parent-in-law must be treated as a parent. Similarly, for example, a half sister must be treated as a sister. Someone brought up as if they were a child of the family should be considered part of the family for example foster or step children or children of a partner.

Residing with applicant

5.8 People other than family members who might be regarded as reasonably residing with the applicant might include dependent foster children living with their foster carers; formal or informal carers including people residing with the family to help care for dependent children, or other companions. Households which are split up for no other reason than that they have nowhere to live together should be regarded as one household.

5.9 Following a relationship breakdown particular care should be taken in assessing with whom a child should be treated as living. In reaching its decision, a local authority should take account of any residence and contact orders (if any) made by the courts. However, it should be noted that the "no order" principle in the Children (Scotland) Act 1995 states that children should not be subjected to legal proceedings when voluntary living arrangements suffice. An authority should not insist, therefore, that an applicant seeks a formal court order as evidence of the arrangements which may have been agreed informally.

5.10 Orders or other voluntary arrangements may provide for alternating residence with each parent, in which case the period spent with each parent or guardian is relevant. Sometimes children who would normally reside with an applicant are being looked after by a local authority for reasons, for example abuse by a parent, which would make it unreasonable for them to stay with the applicant.

When is it not reasonable for an applicant to continue to occupy a house?

5.11 Sections 24(2A) and (2B) of the 1987 Act provide that a person is to be treated as homeless even if he or she has accommodation, if it would not be reasonable for the person to continue to occupy it. What is "reasonable" is a matter for judgement and will depend in some cases on the personal circumstances of the applicant – for example what might be reasonable for adults may not be for a household containing children, and mainstream housing may not be suitable for someone with physical impairments. This last point may apply even more to caravans and mobile homes.

5.12 Under section 24(2B) a local authority may have regard to the general circumstances prevailing in relation to housing in the local authority's area, in determining whether it is reasonable for a person to continue to occupy accommodation. Different tests of "reasonableness" should not be applied to different categories of applicant, e.g. applications from private tenants should be dealt with on the same basis as those from tenants of local authorities or RSLs.

5.13 Examples of how the 'unreasonable to occupy' test might be applied are given below.

- The **accommodation is below the tolerable standard (BTS)**, as defined in section 86 of the Act. However, the fact that accommodation fails to meet the tolerable standard does not necessarily mean that a person cannot reasonably occupy it. Whether it is reasonable for a person to occupy accommodation below the tolerable standard will depend on the reason, or reasons, for failure to meet the tolerable standard and subsequent actions of the local authority (i.e. the local authority has a duty to close, demolish or improve the property under section 85 of the Act). It will further depend on the severity and expected duration of the problem, or the degree to which the particular individual or family concerned suffers serious inconvenience or a threat to health. Information about the severity of the problem may be available from environmental health officers.
- The applicant is living in **bed and breakfast accommodation**, which is not overcrowded within the meaning of Part VII of the 1987 Act. Bed and breakfast accommodation should be used only as a last resort in the absence of other options, particularly for households with vulnerable people. In fulfilment of their duties under section 29 of the 1987 Act, local authorities cannot place households with children and pregnant women into unsuitable accommodation unless exceptional circumstances apply, where both unsuitable accommodation and exceptional circumstances are defined in the relevant legislation (the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004). See paragraphs 9.7-9.28 in chapter 9 for more information.
- The applicant is living in a **hostel or other accommodation** such as a women's refuge, which is not intended to provide long-stay accommodation. Often there will be a fixed limit to the time a person can stay. The same general point applies to caravans and mobile homes without a permanent or long-term site.
- There is **external violence, including racial or other harassment**. Local authorities should respond sympathetically to applications from people who are in fear of external violence. The absence of previous violence does not prove that these fears are unjustified. (see Chapter 4, Handling Applications)

Even if an applicant has obtained an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 guaranteeing his or her occupancy rights, or an interdict against molestation by a former partner, this may not always be sufficient to make it reasonable to expect him or her to continue to occupy the house.

- Continued occupation of the accommodation poses a **substantial risk to a person's health**, which could include their mental health.
- The accommodation is **impracticable** for a particular applicant because of his or her **physical infirmities or disabilities**.

5.14 It must be emphasised that these are examples. It is not possible to give a comprehensive list, and sympathetic judgement must always be exercised.

Who else is homeless under the Act?

5.15 Section 24(3) of the 1987 Act defines as homeless someone who has accommodation but cannot use it for one of the reasons listed below.

- He or she cannot secure entry to it (section 24(3)(a)). This includes those who have a legal entitlement to accommodation to which they are unable to secure entry - such as unlawfully evicted tenants or occupiers who for some practical reason cannot immediately be restored to occupation of their homes.
- An attempt to continue living in the accommodation would be likely to be met with violence or threats of violence likely to be carried out from someone else living in it, or from someone who previously lived with the applicant, whether in their present accommodation or somewhere else (sections 24(3)(b) and (bb)).
- He or she has a mobile home, caravan, houseboat or other moveable structure but has no place where he or she is entitled or permitted both to put it or moor it and to live in it, (section 24(3)(c)). For example; temporary mooring for holiday use would not be sufficient. Naturally, a person would be homeless if evicted from the mobile accommodation itself.

This provision has particular relevance to gypsies/travellers, who should be considered for housing under the homelessness legislation, if they wish it, on the same basis as anyone else. However, while some gypsies/travellers want to settle in houses, conventional housing will not meet the needs of those who want to live in a caravan in order to maintain their traditional way of life. Gypsies/travellers who move into a house for lack of any alternative may find it difficult to settle, and for them the most satisfactory solution may be a place on a local authority site for gypsies/travellers. Where a pitch is not available on a local authority site, the local authority may wish to consult private interests to see if a site can be found.

- The accommodation is both overcrowded within the meaning of section 135 of the Act and may endanger health, (section 24(3)(d)). Both overcrowding and a danger to health must be present. Overcrowding standards are set out in sections 136 and 137 of the Act: if either of the standards (the room standard or the space standard, respectively) is contravened, there is overcrowding.

Homelessness officers should be familiar with the overcrowding legislation and able to apply it. A strict application of these standards may require an inspection of the accommodation, and perhaps measurement of the size of the rooms. In practice, and certainly always if there are reasons to suppose the application is urgent, the local authority should consider taking any interim action that is necessary, such as the provision of temporary accommodation. There are no legislative standards for danger to health, and the local authority should consider such factors as the effect of dampness or condensation on respiratory disease suffered by occupants. It should also include the possibility of danger to mental health. Even if there is no statutory overcrowding, local authorities must consider whether it is unreasonable to occupy the accommodation.

- It is not permanent accommodation, in circumstances where, immediately before the commencement of his occupation of it, a local authority had a duty under section 31(2) in relation to him.

This ensures that people who are owed a duty under section 31(2) are to be treated as being homeless if they are provided with accommodation which is not permanent accommodation. This means that a local authority's duty under section 31(2) continues until permanent accommodation is secured. Permanent accommodation is defined in broad terms to acknowledge a range of situations which could reasonably be considered to be permanent accommodation and, therefore, end the local authority's duty under section 31(2) See paragraphs 9.37-9.38 in chapter 9 for more detail on the definition of permanent accommodation.

Is the applicant threatened with homelessness?

5.16 A person is defined in the Act as being threatened with homelessness if he or she is likely to become homeless (as defined above) within two months. Local authorities should bear in mind that the earlier that action is taken, the greater the likelihood that measures to avert homelessness will be effective. Local authorities should therefore not wait until homelessness has actually occurred before providing assistance.

Chapter 6

Inquiries into priority need

CHAPTER 6 – PRIORITY NEED

6.1 **Summary** – this chapter defines the different categories of priority need and gives guidance on how a local authority could decide if an applicant were in priority need.

6.2 In its final report the Homelessness Task Force recommended that the rights possessed by those assessed as being in priority need under the 1987 Act should be extended to all those assessed as homeless and that the priority need distinction should, therefore, be eliminated. Powers to take forward this recommendation were taken in the 2003 Act and a target date of 2012 for priority need abolition was set. Interim measures are likely to be introduced before then to widen the category of priority need and further guidance will be issued. This chapter sets out the current legislative position. Local authorities should bear in mind that they should seek to meet the wider housing and support needs of all applicants regardless of their priority status.

Current position – categories of priority need

6.3 The Housing (Scotland) Act 1987 (as amended) sets out categories of homeless persons who must be considered as having a priority need for housing. Below is a list of these categories, and paragraph 193 provides further guidance on each category:

- a pregnant woman or a person with whom a pregnant woman resides or might reasonably be expected to reside
- a person with whom dependent children reside or might reasonably be expected to reside
- a person who is vulnerable as a result of—
 - old age;
 - mental illness;
 - personality disorder;
 - learning disability;
 - physical disability;
 - chronic ill health;
 - having suffered a miscarriage or undergone an abortion;
 - having been discharged from a hospital, a prison or any part of the regular armed forces of the Crown; or
 - other special reason
- a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or any other disaster
- a person with whom a person referred to in section 25(1)(c) or (d) of the 1987 Act resides or might reasonably be expected to reside
- a person aged 16 or 17
- a person aged 18 to 20 who by reason of the circumstances in which the person is living, the person runs the risk of sexual or financial exploitation or involvement in the serious misuse of alcohol, any drug (whether or not a controlled drug within the meaning of the Misuse of Drugs Act 1971 (c.38)) or any volatile substance

- a person aged 18 to 20 who, at the time when the person ceased to be of school age (within the meaning of section 31 of the Education (Scotland) Act 1980 (c.44)) or at any subsequent time, was looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c.36)) and the person is no longer being so looked after
- a person who runs the risk of domestic abuse (within the meaning of section 33(3) of the 1987 Act)
- A person who, by reason of that person's religion, sexual orientation, race, colour or ethnic or national origin runs the risk of violence, or is, or is likely to be, the victim of a course of conduct amounting to harassment.

6.4 The following provides some guidance on the categories of priority need:

- a pregnant woman or a person with whom a pregnant woman resides or might reasonably be expected to reside

This applies regardless of the stage of pregnancy or the woman's age.

- a person with whom dependent children reside or might reasonably be expected to reside

6.5 The 1987 Act does not define dependent children, but local authorities should treat as dependent all children of 15 or less; and all others of 18 or less who are either receiving or about to begin full-time education or training or are for some other reason unable to support themselves. Dependent children need not be the children of the applicant (for example foster children). Where parents have joint or shared custody, local authorities should consider the periods for which a child is resident with each parent. Formal legal custody arrangements should not be required and local authorities should take full account of voluntary arrangements that have been agreed. (see Chapter 5 paragraphs 5.8–5.10)

6.6 The Act does not require that the children should be living with the applicant at the time of the applicant's request for assistance – they may for instance be living temporarily with other relatives because of the applicant's homelessness, or the applicant may be seeking a residence order and waiting for a legal decision, and such children would usually 'reasonably be expected' to live with the applicant. The starting assumption should be that it is reasonable that an applicant's children should live with the applicant; and the practice of splitting families because of their homelessness is not acceptable, even for short periods.

- a person who is vulnerable as a result of –
 - old age;
 - mental illness;
 - personality disorder;
 - learning disability;
 - physical disability;
 - chronic ill health;
 - having suffered a miscarriage or undergone an abortion;
 - having been discharged from a hospital, a prison or any part of the regular armed forces of the Crown; or
 - other special reason

6.7 A person is considered vulnerable when they are less able to fend for themselves so that they may suffer in a situation where another homeless person would be able to cope without suffering. The above categories detail specific circumstances which may lead to vulnerability. The meanings of the categories are not defined in the legislation and local authorities should seek proper and relevant advice in relation to an applicant's vulnerability.

6.8 This might include seeking advice from, amongst others, health, social work or housing professionals. Where relevant advice conflicts the local authority may choose which advice to follow while showing that it has properly considered the position.

6.9 There is no set age at which vulnerability may occur and local authorities should consider the applicant's circumstances fully. It may be appropriate to seek specialist advice in considering the above conditions which are likely to have different impacts according to their nature and the particular circumstances of the applicant. Factors which might be relevant to consider include how long ago the events occurred.

6.10 As the "vulnerability" categories are not defined in legislation local authorities should avoid blanket policies and instead focus on the individual applicant's circumstances. These might include the community in which they live and attitudes towards their circumstances, for example to mental illness.

6.11 In particular the 1987 and 2003 Acts do not define the category of 'other special reason' and it is not possible to list all potential special reasons for vulnerability. It is important to exercise sympathetic discretion, taking into account the particular circumstances of each person and asking for expert advice if needed. There is no bar to local authorities assessing other applicants as being vulnerable for 'special reason' in the light of the legislation, case law and their particular circumstances, and hence in priority need. Each local authority will have to exercise common sense and judgement in determining whether a particular applicant is vulnerable.

6.12 Former asylum-seekers who have been granted refugee status or humanitarian protection or other leave to remain in the UK may be eligible for homelessness assistance (see chapter 13 for more details) and may be homeless as a result of having to leave accommodation which was provided for them (i.e. NASS accommodation) when they were pursuing their asylum claim. They may well have experienced persecution in their country of origin or severe hardship in their efforts to reach the UK and may be vulnerable as a result. In assessing applications from this client group, housing authorities should give careful consideration to the possibility that they may be vulnerable as a result of another special reason.

- a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or any other disaster.

6.13 In larger-scale emergencies, the obligations of the local authority under the Act may be discharged by action under section 84 of the Local Government (Scotland) Act 1973 – for instance, by the provision of special forms of temporary accommodation. Paragraph 9.20 in chapter 9 below gives guidance on how the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 makes an exception to allow the use of “unsuitable” accommodation in the case of this sort of emergency.

- a person with whom a person referred to in section 25(1)(c) or (d) of the 1987 Act resides or might reasonably be expected to reside, that is those persons who are vulnerable or who are homeless or threatened with homelessness as a result of an emergency (see above)
- a person aged 16 or 17.
- a person aged 18 to 20 who by reason of the circumstances in which the person is living, the person runs the risk of sexual or financial exploitation or involvement in the serious misuse of alcohol, any drug (whether or not a controlled drug within the meaning of the Misuse of Drugs Act 1971 (c.38)) or any volatile substance. Risk may not be immediately apparent and each case should be considered on its merits and the risk assessed according to the individual's circumstances.
- a person aged 18 to 20 who, at the time when the person ceased to be of school age (within the meaning of section 31 of the Education (Scotland) Act 1980 (c.44)) or at any subsequent time, was looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c.36)) and the person is no longer being so looked after.

6.14 It should not be assumed that simply because an applicant is over a specified age limit in the two categories above that he or she is not in priority need; vulnerability for other special reason may be apparent in other young people.

- a person who runs the risk of domestic abuse (within the meaning of section 33(3) of the 1987 Act). This definition follows that set out in the Protection from Abuse (Scotland) Act 2001 which sets out that “abuse” includes violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress.
- a person who, by reason of that person's religion, sexual orientation, race, colour or ethnic or national origin runs the risk of violence, or is, or is likely to be, the victim of a course of conduct amounting to harassment.

6.15 References to conduct, course of conduct and harassment are to be construed in accordance with section 8 of the Protection from Harassment Act 1997. Section 8 of that Act sets out that “conduct” includes speech; “harassment” of a person includes causing the person alarm or distress; and a course of conduct must involve conduct on at least two occasions.

Future changes

6.16 The 2003 Act enables the Scottish Ministers to abolish the priority need test so that the accommodation and services currently available to those in priority need are available to all those assessed as homeless. The legislation requires Ministers to publish a statement, by 31st December 2005, setting out an action plan for the abolition of the priority need test. Local authorities' homelessness strategies should set out the actions required to achieve the target of abolishing priority need in 2012. Further information on the abolition of priority need is available from Scottish Executive Homelessness Team. Further guidance will be issued when changes are made to the priority need test.

Chapter 7

Inquiries into intentionality

CHAPTER 7 – INQUIRIES INTO INTENTIONALITY

7.1 **Summary** – this chapter sets out guidance on how a local authority should inquire into intentionality, and provides guidance on different criteria for deciding intentionality.

7.2 While most applicants are unintentionally homeless, the intentionality criteria allows local authorities to distinguish between the case of a person who has become homeless through no fault of their own, and the case of a person, who through deliberate action or inaction, has contributed to their homelessness. Whether or not someone is found to be intentionally homeless the local authority should seek to find solutions to the person's homelessness and offer support to address any difficulties that they face.

7.3 Where an applicant has been found to be homeless, or threatened with homelessness, and in priority need, the local authority must then assess whether the applicant became homeless or threatened with homelessness intentionally. Intentionality depends on the applicant having acted, or failed to act, deliberately, and being aware of all the relevant facts. A person is not intentionally homeless if it would not have been reasonable for him or her to continue to occupy their previous accommodation.

7.4 Local authorities should have regard to all the circumstances of an applicant before reaching a decision on intentionality, and each case should be decided on its merits. Even if the local authority is satisfied that the homelessness was intentional, the applicant is still entitled to receive temporary accommodation, and advice and assistance from the local authority (see chapter 9). The local authority may also have continuing duties to children and young people under the terms of the Children (Scotland) Act 1995.

7.5 The circumstances in which a person is to be regarded as having become intentionally homeless or threatened with homelessness are set out in section 26 of the 1987 Act. There are three requirements – all of which must be satisfied.

- **the applicant, if homeless, must deliberately have done, or failed to do, something in consequence of which he or she has ceased to occupy accommodation which was at the time available to them.** To be intentionally threatened with homelessness, an applicant must deliberately have done or failed to do something the likely result of which was that he or she will be compelled to leave accommodation (section 26(2)).
- **it must have been reasonable for the applicant to have continued to occupy the accommodation.** The local authority may have regard to the general circumstances prevailing in relation to its area in applying this test (section 26 (4)).
- **the applicant must have been aware of all the relevant facts before taking or failing to take the deliberate actions referred to above.** An act or omission in good faith on the part of a person unaware of any relevant fact is not to be regarded as deliberate.

7.6 Homelessness officers must consider all the circumstances of an applicant before coming to a decision on intentionality. They should not simply apply standard criteria. They must also be alert to the danger of a precipitate finding of intentional homelessness.

7.7 It is for the local authority to satisfy itself whether an applicant became homeless or threatened with homelessness intentionally. There is no onus on the applicant to satisfy the local authority that he or she did not become homeless intentionally.

Criteria for determining intentionality

7.8 The following points are relevant in determining whether an act or omission was deliberate.

- **An applicant must have deliberately done or failed to do something which resulted in homelessness or threatened homelessness.** He or she would not be intentionally homeless if he or she had not acquiesced in the action or omission leading to homelessness. For example, if an applicant's partner has failed to pay rent, or defaulted on loan or mortgage repayments, or given up a tenancy, without the knowledge of the applicant, the applicant cannot be held to be intentionally homeless. Similarly, the applicant would not normally be intentionally homeless if he or she was aware of his or her partner's actions, but took reasonable steps to prevent it. Legally, any responsibility to find a home for the applicant remains even if the partner whose acts or omissions were responsible for the homelessness in the first place remains in the household, and so will benefit from the local authority's discharge of that responsibility.
- **The person concerned should have acted or failed to act in a way which that person knew could result in homelessness.** So, for example, a mentally ill person, or someone with learning disabilities, may well have been unlikely to have acted deliberately, and so should not be treated as intentionally homeless. Similarly, where a person has been evicted for anti-social behaviour local authorities should take account of contributory factors including the effects of any mental illness or learning disability (see paragraphs 2.59 onwards in chapter 2 for more guidance on anti-social behaviour and homelessness). Even if the applicant seems to be homeless only because of his or her financial (or other) imprudence or lack of foresight, it should not be automatically decided that the homelessness was intentional.

7.9 Other factors relating to an applicant that an authority may wish to take into account are youth; inexperience; education; or health (including whether or not there is a history of substance abuse).

7.10 This list of relevant factors is not intended to be exhaustive, and local authorities must consider all the circumstances of each case, not just single factors.

Leaving temporary accommodation

7.11 In general, a person who has to leave temporary accommodation because his or her right to live there has expired, should not be regarded as being intentionally homeless, for example if a short assured tenancy has expired and not been renewed. However, if a person gave up permanent accommodation, the circumstances which led the person to leave the permanent accommodation will determine whether homelessness was intentional. For instance, a person who gave up permanent accommodation for an extended holiday with the expectation of subsequently applying as homeless might be regarded as intentionally homeless; while someone who moved to obtain employment in the belief that permanent accommodation would be available, but who was made redundant, might not.

7.12 A homeless person who leaves temporary accommodation provided pending discharge of a permanent accommodation duty should not be considered to have become intentionally homeless. Under section 32A(2) of the 1987 Act a person may not be found intentionally homeless from interim accommodation.

Financial difficulties

7.13 A person who chooses to sell his or her home, or who has lost it because of wilful and persistent refusal to pay rent; or who has shown such disregard of advice as to amount to neglect of his or her affairs; may well be regarded as having become homeless intentionally. If, however, a person's house was sold because he or she could not keep up the loan repayments, or he or she got into rent arrears because of real personal or financial difficulties (for example, if he or she has become unemployed, or is working part time, or has reduced income following death of a partner or relationship breakdown), their acts or omissions should not be regarded as having been deliberate. A person should not be regarded as intentionally homeless if he or she was unable to obtain accommodation because of the loss of a rent deposit which was not due to a deliberate act or omission on his or her part, nor should a lost deposit be regarded as rent arrears.

7.14 There is no absolute test of whether someone is in real financial difficulties – as distinct from the reasons for such difficulties. However, areas that should be considered include whether, if he or she continued to pay the housing costs, the amount of disposable income left would be equal to or less than the amount which someone reliant entirely on benefit would be entitled to receive in income support. It should be borne in mind that young people under 25 receive a lower rate of housing benefit.

7.15 Account would need to be taken in applying this test of other necessary costs incurred by the applicant, for example care costs, and benefit or other income available to meet them. (It would also be relevant if the rent paid was excessive.) Second mortgage costs related to legitimate housing costs should be taken into account as should the fact that housing debt is likely to be only one part of a multiple debt problem and other creditors may also have a claim on someone's income.

7.16 No distinction should be made between public and private sector tenants, or between the local authority's own tenants and other public sector tenants. Regardless of whether the applicant is intentionally homeless, if they have become homeless because of financial problems, it is good practice to consider whether the applicant could benefit from debt counselling or other advice.

Rent arrears

7.17 It should not be assumed automatically that an applicant is intentionally homeless where they have lost their accommodation because of rent or mortgage arrears. Reasons should be fully explored and decisions made as to whether arrears resulted from deliberate acts or omissions.

Young people

7.18 Failed tenancies are a common occurrence for young people when they first leave home, especially if they have not had much in the way of support to sustain a tenancy. Local authorities should consider the position sensitively and only make a finding of intentionality where there is compelling evidence that the applicant deliberately refused to accept advice or engage with agencies who could provide support and were aware of the consequences of their actions.

7.19 A young person who has a clash of lifestyle with his or her parents should not automatically be considered intentionally homeless and equal weight should be given to both the young person's views and the views of the parent(s).

Tied accommodation

7.20 A person who becomes homeless or threatened with homelessness as a result of losing tied accommodation including loss of accommodation on retirement, should not normally be considered as intentionally homeless. Neither should a local authority expect a person to continue in employment, if it would be unreasonable for them to remain in the job simply in order to keep the accommodation, or if the circumstances would have given them grounds for claiming constructive dismissal.

7.21 Local authorities should encourage tied tenants who know that they will have to leave a tied tenancy some time in advance, for example on retirement, to seek advice from the local authority or other sources on the housing options open to them, to minimise the chances of their becoming homeless when the tenancy ends.

Special cases

7.22 Someone who has left home because of domestic abuse should never be regarded as having become homeless intentionally, because it would clearly not be reasonable to have stayed at home. Similar rules should be applied to those who leave because of external violence or threats, for example racial attacks or anti-social neighbours.

7.23 An applicant who has not exercised his or her occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 should not be regarded as intentionally homeless for that reason, regardless of why those rights were not exercised. In relevant cases, advice should be made available to applicants on what their rights are under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, and how they can enforce these rights if they wish.

Period for which intentionality lasts

7.24 If a local authority decides that a person became homeless intentionally, the person should not be considered to be intentionally homeless for all time; nor should a fixed period of disqualification be applied.

7.25 If a further application is made then that application should be considered on its merits. If there is reason to believe that there has been a change of circumstance, for example if through social work support the behaviour of a person evicted for anti-social behaviour has improved, or if some genuine efforts are being made to reduce rent arrears, then there may well be sufficient grounds to merit a review of the earlier decision, taking into account the altered circumstances. Applicants should be given a clear indication of what change of circumstances would allow them to apply again or have their case reconsidered.

Future changes

7.26 The Homelessness etc (Scotland) Act 2003 provides for changes to the intentionality regime. These are:

- changing the duty to investigate intentionality to a power to do so; and
- changing the duty owed to intentionally homeless households, requiring local authorities to grant a short Scottish secure Tenancy (SST) with housing support to these households. Where this short SST remains in place for a year then the household will be entitled to a full SST. If the short SST fails then the local authority will continue to have a duty to provide non-tenancy accommodation and support, but not to provide a tenancy (although it may do so if it wishes). Similarly, where the applicant is intentionally homeless but also subject to an ASBO or has been evicted for anti-social behaviour in the last 3 years, the local authority is not required to grant a short SST with support but must still provide non-tenancy accommodation and such support as it considers appropriate. In addition, see paragraph 67-74 on ASBOs and subsequent homelessness.

7.27 The relevant provisions of the 2003 Act have not yet been commenced but local authorities should be aware of, and preparing for, implementation including development of services. Work is being undertaken at present looking at models of accommodation and support for intentionally homeless households. Further guidance will be issued as the 2003 Act is commenced.

Chapter 8

Inquiries into local connection

CHAPTER 8 – LOCAL CONNECTION

8.1 **Summary** – this chapter defines “local connection” and sets out local authorities’ powers with respect to applicants who are deemed not to have a local connection.

8.2 In looking to provide sustainable housing solutions for applicants it will generally be best for an application to be dealt with by the local authority to which it is made. Most homeless people apply to their local authority for assistance and those who apply elsewhere generally have a good reason for doing so. This chapter sets out guidance on the operation of the local connection provision in the 1987 Act.

Local authorities’ powers concerning local connection

8.3 A local authority has a power, but not a duty, to refer an applicant to another local authority in Scotland, England and Wales if it thinks the applicant does not have a local connection with it and does have a local connection with another authority. In exercising its discretion a local authority should take particular care to operate in a non-discriminatory way.

8.4 Only applicants who are assessed as being in priority need and unintentionally homeless may be referred to another authority (section 33(1) of the 1987 Act).

8.5 The local authority which first receives the application must carry out the inquiries into homelessness, priority need and intentionality; and it will generally be necessary to pursue questions about local connection only if there is reason to suppose they will be relevant.

8.6 If the applicant, or any person who might reasonably be expected to reside with the applicant, has a local connection with the area of the local authority to which the application is made, then the duty to secure permanent accommodation will remain with that local authority. Even if a case is referred to another authority on local connection grounds, an applicant may be able to reapply to the original local authority if circumstances change, for example if he or she finds permanent employment in that local authority’s area. A local authority which accepts a referral will be responsible for any further decisions or inquiries relating to that application. However the homelessness decision of the notifying authority cannot be revised by the authority accepting the referral.

8.7 If the applicant has no previous local connection anywhere in Scotland, England or Wales, the responsibility for dealing with the application rests with the local authority he or she applied to.

8.8 When an applicant does not have a local connection with the authority applied to, but does have a local connection with more than one other local authority, the local authority receiving the application should weigh up all the relevant factors in deciding which other local authority to refer the application to. Relevant factors should include the views of the applicant.

8.9 Where a local authority refers an application to another local authority on the basis of local connection the notifying authority is obliged, under section 34, to secure that accommodation is available for the applicant's occupation until the outcome of the referral is decided. Local authorities should bear in mind the possibility that transitional arrangements may be required when this duty expires (e.g. where the conditions for referral are satisfied but the notified authority has not yet provided accommodation or where the conditions are not accepted and the notifying authority does not have permanent accommodation available).

Domestic abuse

8.10 An applicant cannot be referred to another local authority if there is a risk of domestic abuse, to either the applicant or anyone who might reasonably be expected to reside with him or her (section 33(2)(c)) in that other local authority's area. The definition in the Protection from Abuse (Scotland) Act 2001 applies. This sets out that "abuse" includes violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress. A person is at risk of abuse if that person runs the risk of abuse from someone with whom they would otherwise reasonably be expected to reside, or with whom they formerly resided. (see paragraph 4.38 onwards in chapter 4).

Definition of local connection

8.11 Local connection is defined in section 27(1) of the 1987 Act as a connection which a person has with an area:

- because he or she is or was in the past normally resident in it, and this residence was of his or her own choice; or
- because he or she is employed in it; or

8.12 Normal residence might be taken as residence for at least 6 months during the previous 12 months, or not less than 3 years during the previous 5 years. Periods of temporary residence of the applicant's own choice should be taken into account in this calculation.

8.13 Employment or residence in a local authority area because of service in the regular armed forces does not establish a local connection, nor does detention under statutory provision such as in a prison or mental health institution. However, previous connection, for example established before joining the forces, or through subsequent family association should be taken into account.

8.14 If an applicant is a former asylum seeker and has been housed previously in NASS (National Asylum Support Service) accommodation, the applicant has not formed a local connection with the relevant Local Authority in which the NASS accommodation is situated (section 7 of the 2003 Act). This is because the applicant had no element of choice as to where the NASS accommodation was provided. (A former asylum seeker may be subsequently eligible for assistance under the homelessness legislation if they have been granted leave to remain - see chapter 13 for more details.)

- because of family associations; or

8.15 Family associations normally arise when an applicant or other member of the household has family members who have been resident in an area for at least 5 years. However, the residence of children in another local authority should not be taken into account where there are reasons, such as previous abuse for example, for not placing children with one or both of their parents, in which case their position may have to be considered separately. Applicants should not be referred to another local authority because of family associations if they object.

- because of any special circumstances.

8.16 Special circumstances might include, for example, the need for continuing provision of education or health treatment for a household member in a particular local authority area; or where there is no current local connection with any area, that the applicant was brought up in an area or had lived there for a considerable time in the past. The latter consideration may be particularly relevant to persons who have lived abroad for some time, or been serving with the armed forces. Local authorities should treat applications from former members of the armed forces sympathetically, particularly where they have no real connection with another area.

8.17 There is no bar to a local authority making arrangements for another local authority to take responsibility for an applicant household, if this accords with the wishes of the applicant. If an applicant who is threatened with homelessness has a local connection elsewhere, the local authority to which the application is made should alert the other local authority at an early stage, and seek an agreement in principle that the responsibility for rehousing the applicant, if required, should fall to that other local authority.

8.18 Alternatively a local authority may wish in some circumstances to consider an out-placement in another authority. (see paragraphs 9.83–9.86 in chapter 9)

Special cases

8.19 Local authorities should take account of changes in employment patterns, for example the greater use of fixed term contracts and part-time working. While casual employment may or may not be regarded as establishing local connection, depending on the individual circumstances, temporary employment for a substantial period should be considered. Part-time employment should be considered on the same basis as full-time employment, and brief breaks in employment in an area, for example between temporary contracts, might be ignored. Where a person works in more than one centre, regard should be had to the location of their principal place of work, or to their main base for travelling workers.

8.20 Local authorities should also take into account any known risk of external violence to the applicant when deciding whether to refer an application to another local authority.

Arrangements in case of a dispute

8.21 Scottish Ministers have power to make a statutory instrument setting out arrangements to establish if local connection exists where the two local authorities cannot agree. These arrangements may either be those agreed directly between the two local authorities or under procedures set out in agreements between local authority associations in Scotland, England and Wales. The current provisions are in the Homelessness (Decisions on Referrals) Order 1998 (SI 1998/1578) and the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 (SI 1999/71) for applications to English and Welsh local authorities; and by the Homelessness (Decisions on Referrals) (Scotland) Order 1998 (SI 1998/1603) for applications to Scottish local authorities.

8.22 Where the two local authorities cannot agree on whether a local connection exists, the question shall be decided by a person appointed by the two authorities. However if no such person has been appointed within 21 days of the notification that the opinion of the notifying authority that there is a local connection the President of COSLA (or the President's nominee), will appoint a person from a standing panel to make a final and binding decision on disputes between the local authorities. For cross border disputes, the person deciding the dispute is drawn from a panel appointed jointly by COSLA and the other local authority associations. There is also an agreement between the local authority associations on referral procedures.

Future changes

8.23 Powers to modify use of local connection - to ensure homeless people to have as much choice as possible, including choice in respect of the Council to which they apply - were introduced under the 2003 Act but have not been commenced to date. Further guidance will be issued at the point at which changes are brought into force.

Chapter 9

Accommodation

CHAPTER 9 – ACCOMMODATION

9.1 **Summary** – this chapter sets out a local authority's accommodation duties towards applicants who are homeless or threatened with homelessness, and guidance on how the duties are fulfilled. It includes guidance on the new Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004.

9.2 When securing accommodation for applicants the priority for local authorities must be to minimise the risk of homelessness recurring. This is not only in the interests of the applicant, who should be able to establish, or re-establish, a settled way of life, but also in the interests of local authorities, as repeated applications give rise to additional administrative costs.

9.3 Accordingly, when making accommodation available, local authorities should always seek to secure long-term solutions to homelessness. This should include consideration of the wide range of factors which may impact on resettlement – in particular the household's requirements in terms of proximity to family and friends and the accessibility of healthcare, employment, education and training and support providers.

Local Authority Accommodation Duties

9.4 Local authorities have a range of accommodation duties under the homelessness legislation and these are described below in paragraphs 9.5 to 9.42. All references are to the 1987 Act unless otherwise stated.

Interim Duty To Accommodate (section 29 of the 1987 Act as amended by section 9 of the 2003 Act)

9.5 If an authority has reason to believe an applicant is homeless it has an interim duty to secure accommodation until it has reached a final decision on their application. This duty continues during the process of review if one is requested.

9.6 Where the authority's decision is that it has a duty to provide accommodation under section 31 the interim duty continues until the section 31 duty is discharged. Ministers have the power to specify by statutory instrument accommodation which cannot be used to fulfil this interim duty – this power was used to make the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004:

The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004

9.7 Many local authorities, through their homelessness strategies, have been reducing the use of B&B accommodation for homeless families with children. The Homelessness etc. (Scotland) Act 2003 contained a provision which allowed Scottish Ministers to create regulations which would limit the use of B&B across Scotland, establishing consistency in this area of homelessness practice.

9.8 The Executive has made a new Order on standards which temporary accommodation for households with children and pregnant women must meet. The purpose of this Order is to put an end to the routine use of B&Bs and other unsuitable accommodation for these households:

9.9 Under this Order (which came into force in December 2004) local authorities cannot put households with children and pregnant women into "unsuitable" temporary accommodation unless exceptional circumstances apply. Exceptional circumstances are intended to give flexibility to councils when meeting their new duty, as well as giving families the ability to exercise choice in whether to stay in unsuitable accommodation beyond 14 days.

9.10 The Order is made under section 29 of the 1987 Act (as amended by the 2001 and 2003 Acts) which gives local authorities the duty to provide accommodation to people who apply for homelessness assistance whilst their applications are being assessed, until it has reached a final decision on their application. This duty continues during the process of review if one is requested.

9.11 Where the authority's decision is that it has a duty to provide permanent accommodation under section 31 the interim duty to provide temporary accommodation continues until the section 31 duty is discharged.

9.12 Note that these regulations do not just cover B&Bs, but go wider to cover any temporary accommodation used by LAs in fulfilling this duty.

9.13 The regulations set out what is meant by unsuitable accommodation and then specify the "exceptional circumstances" in which this unsuitable accommodation can be used. In all other circumstances, unsuitable accommodation cannot be used. Some exceptional circumstances have an associated time limit of 14 days, others do not.

9.14 In the Order unsuitable accommodation is defined by reference to three different types of standards:

9.15 the "physical" standard; (section 2(3)(a) of the Order) : accommodation must:

- **be within the local authority's area.** This is to prevent households with children being placed out of area and into accommodation where other clients may pose a risk to children, which the local authority may not be aware of. It also helps to preserve access to support services offered by the local authority;
- **provide adequate bedrooms and adequate toilet and personal washing facilities for the exclusive use of the household.** LAs should use their own HMO standards when considering if accommodation meets this standard;
- **provide adequate cooking facilities** – as above facilities should meet HMO standards. Note that cooking facilities can be shared with other households in the accommodation – subject to what HMO standards define;
- **provide the use of a living room** (the purpose of this is to allow any children space to play and do homework) – again, as with the cooking facilities, this does not have to be for the exclusive use of the household;
- **be usable by the household for 24 hours a day.** The purpose of this is to prevent households being locked out of the accommodation for part of the day, as can be common practice in some sorts of temporary accommodation.

9.16 the "proximity" standard (section 2(3)(b) of the Order): accommodation must:

- have health and education facilities and services in the locality which are being used or might reasonably be expected to be used by the applicant. These facilities must be accessible from the accommodation, taking into account the distance of travel, by public or local authority-provided transport. (Some authorities provide travel expenses to families to help children access schools that may otherwise be out of reach because they are living in B&B accommodation.)

The purpose of this is to allow households to access the same types of services that they have used in the past or can be expected to use in the near future. This is because many households who become homeless and are moved to temporary accommodation lose access to schools, and health provision. Whilst it is ideal for households to continue to be able to access the same facilities that they've accessed in the past – it is recognised that this is not always possible. So it is acceptable under this standard to ensure that similar facilities are accessible. LAs should also ensure that the facilities which are being counted as being accessible must be genuinely accessible to the household. It is no good ensuring that a household is near a GP if that particular GP will not allow the household onto their list.

9.17 the "safety" standard (section 2(3)(c) of the Order):

- accommodation must be suitable for occupation for use by children. The purpose of this is to ensure that the Local Authority is satisfied that overall, the accommodation does not pose significant risk. Local authorities will need to use their judgment in deciding the possible risk posed by any sort of accommodation, ideally after carrying out a risk assessment both of the accommodation and also of the people associated with the accommodation – residents and workers.

9.18 If the accommodation does not meet these standards then it is unsuitable accommodation in terms of the Order.

9.19 The Order provides for exceptional circumstances in which accommodation which does not meet the physical and/or proximity standards may be used. **Note that the safety standard must always be met.** Local authorities may use unsuitable accommodation which fails the physical and/or proximity standard if one or more of the following exceptions applies:

9.20 Exception 3(3)(a). **Where a local authority has reason to believe that an applicant may be homeless or threatened with homelessness as a result of an emergency such as a flood, fire or other disaster.** The use of unsuitable accommodation is not subject to a time limit in this case.

9.21 Exception 3(3)(b). **Where the local authority makes available accommodation which meets all the standards and the applicant expresses a wish to be placed in unsuitable accommodation.** This is not subject to a time limit. The purpose of this is to allow for the fact that some applicants may choose to stay in unsuitable accommodation if it offers other advantages, for example proximity to family or employment. In this circumstance the applicant must have been offered suitable accommodation by the local authority – i.e. there must have been a genuine choice made available to the applicant. In addition, this must be an informed and uncoerced decision by the applicant, it must be subject to regular review, and the applicant must have had access to independent housing advice before making the decision. Note that the safety standard must still be met.

9.22 Councils should ensure that the family has sufficient time to consider whether or not they wish to stay in the B&B. For example, contacting the family within two days of the 14 day deadline for them to leave, and asking whether or not they want to stay or not, will not give enough time for the family to consider the offer of suitable accommodation, and obtain independent advice to inform their decision. Best practice would suggest that on the point of entry to the B&B, the family's options are explained to them, and they can spend the 14 days accessing housing advice and considering those options.

9.23 Exception 3(3)(c). **Where the accommodation is either a women's refuge or is owned by a local authority in which services are provided to a household for the purposes of health, child care or family welfare.** The purpose of this is to allow women's refuges or local authorities to continue to use accommodation which may not meet all the standards but which nevertheless offers other advantages to the household. A lot of LA-owned accommodation has associated services and many LAs consider it preferable for households to stay in such accommodation if they have issues which can be addressed through these support services.

9.24 Exception 3(3)(d). **Where the applicant applies to the local authority for assistance outwith normal business hours.** In this circumstance unsuitable accommodation can only be used for 14 days. The intention is for this exception to be used in the case of emergency "out of hour" presentations.

9.25 Exception 3(3)(e). **Where there is no other accommodation suitable for occupation by an applicant with family commitments available to a local authority.** In this circumstance unsuitable accommodation can only be used for 14 days.

9.26 If more than one exceptional circumstance applies, then the one which has no time limit will override one which does have a time limit. For example if a household presents as out of hours and expressly wishes to stay in particular accommodation which fails standards (but not the safety standard described at paragraph 9.17 which must always be met) when other accommodation which meets all standards has been offered to them, then no time limit will apply.

9.27 The time limit of 14 days for some exceptional circumstances applies during any one period of homelessness, ie from presentation to resolution.

9.28 If a woman staying in temporary accommodation becomes pregnant then the local authority will be expected to act in accordance with the Order when they become aware of the pregnancy.

Referral to another local authority (section 34)

9.29 Where a local authority refers an application to another local authority on the basis of local connection (see chapter 8), the referring authority is obliged, under section 34, to secure that accommodation is available for the applicant's occupation until the outcome of the referral is decided. Local authorities should bear in mind the possibility that transitional arrangements may be required when this duty expires (e.g. where the conditions for referral are satisfied but the notified authority has not yet provided accommodation or where the conditions are not accepted but the notifying authority does not have permanent accommodation available immediately).

Temporary Accommodation with advice and assistance (section 31(3))

9.30 Where the applicant is assessed as not having a priority need for accommodation or as being intentionally homeless, the duty is to secure that accommodation is made available for such a period as will give the applicant a reasonable opportunity to find alternative accommodation for him or herself.

9.31 These applicants must also be given advice and assistance in their attempts to find alternative accommodation, as set out in the Homeless Persons Advice and Assistance (Scotland) Regulations 2002 (see Chapter 10).

Discharge of temporary accommodation duty

9.32 A 'reasonable opportunity', should be assessed in terms of the circumstances of the applicant, including consideration of factors (such as disability, addiction, mental health problems, chaotic lifestyle) which may adversely affect their ability to secure accommodation; and also local housing conditions including how readily alternative accommodation is available in the area.

9.33 In any situation where an authority has provided advice and assistance which takes account of the availability of alternative accommodation, and takes account of the circumstances of the applicant, but no reasonable options have been identified, the applicant cannot then be deemed to have had a 'reasonable opportunity' of securing accommodation. The local authority's duty to provide accommodation therefore continues in this instance.

9.34 Where an applicant has a reasonable opportunity to secure accommodation and fails to take this opportunity the local authority's duty to provide accommodation ends. If the applicant then re-applies and is assessed again as homeless but not in priority need, or in priority need but intentionally homeless, the authority should assess whether the 'reasonable opportunity' afforded to the person is still valid and relevant to the applicant's circumstances.

9.35 In cases where the applicant's circumstances have changed, or where the advice and assistance is no longer relevant or current, then the authority will be obliged to accommodate them for a further period which is considered will give a reasonable opportunity of securing accommodation. Conversely, if the applicant's circumstances have not changed, and the advice and assistance previously offered remains the most up-to-date and relevant possible, then local authority may be deemed to have discharged its duty.

9.36 A house let expressly on a temporary basis, for a term of less than 6 months, to fulfil a local authority's duties under Part II of the 1987 Act will not constitute a Scottish secure or an assured tenancy.

Permanent accommodation (section 31(2) of the 1987 Act)

9.37 The 2001 Act amended the 1987 Act to clarify that where the applicant is assessed as having a priority need for accommodation and unintentionally homeless the authority has a duty to secure the provision of permanent accommodation. This removes the position established in the case of *R v London Borough of Brent ex parte Awua* (the "Awua judgement") where the House of Lords had decided the accommodation did not need to be permanent or settled.

9.38 Permanent accommodation is defined by section 31(5)(a) and (b) as accommodation secured by a Scottish Secure Tenancy or, in the private sector, by an assured tenancy which is not a short assured tenancy. Section 31(5)(c) allows for the provision of a short Scottish Secure Tenancy where a member of the applicant's household is subject to an ASBO or where an order for repossession has been made against the prospective tenant(s), within the past 3 years, on grounds of anti-social behaviour or illegal/immoral activity.

The Homeless Person Interim Accommodation (Scotland) Regulations 2002.

9.39 Local authorities may provide accommodation other than permanent accommodation in the circumstances prescribed by The Homeless Person Interim Accommodation (Scotland) Regulations 2002. These circumstances are:

- a) a housing support services assessment for an applicant has concluded that the applicant or any other person residing with that applicant requires housing support services which cannot reasonably be provided within permanent accommodation; and
- (b) as a result of that housing support services assessment, the local authority is providing an applicant or any person residing with that applicant with interim accommodation together with housing support services in connection with that interim accommodation which include-
 - (i) all services required in terms of the housing support services assessment;
 - (ii) access to independent advocacy and information services in connection with the services;
 - (iii) a timetable, agreed with the applicant, for the provision of the interim accommodation and housing support services;
 - (iv) an end or review date for the provision of services and interim accommodation, which date shall not be later than a date six months from the date on which the interim accommodation was first provided;
 - (v) a written record of the housing support services assessment, the services that are to be provided and the timetable; and
 - (vi) a mechanism to monitor the use of interim accommodation and the long term outcomes for each applicant.

9.40 Local authorities should ensure that the individual circumstances of the applicant are examined on a case by case basis and that the regulations are not invoked automatically for certain categories of applicants (e.g. young people or people with learning difficulties).

Threatened with homelessness (section 32(2) of the 1987 Act)

9.41 Where an applicant is still in accommodation but is assessed as being unintentionally threatened with homelessness and in priority need, a local authority has a duty under to ensure that accommodation does not cease to be available for occupation.

9.42 If it is not possible to prevent the loss of the accommodation, the authority must ensure that other housing becomes available. Unless there is a change of circumstances the household will still be in priority need and unintentionally homeless and therefore this accommodation should be provided on a permanent basis.

Provision of accommodation

Temporary and interim accommodation

9.43 Homeless people should not be placed in temporary accommodation unnecessarily, and their time there should be as short as possible. Care should also be taken to avoid moves between temporary placements particularly for households with children. Moves are disruptive, and can exacerbate existing social or health problems including mental illness, hinder continuity of education and employment, can lead to repeat homelessness and in the worst cases can cause families to split up. Temporary accommodation will also tend to be more expensive than permanent accommodation, particularly if there are moves from one temporary accommodation to another.

9.44 However, it is recognised that homeless people may sometimes need to be accommodated in temporary accommodation until permanent accommodation becomes available; or in interim accommodation for the purposes of providing support which will enable them to sustain a tenancy in the long term.

9.45 In all cases the ultimate aim should be to move residents of temporary or interim accommodation on to permanent accommodation, as quickly as possible whilst also ensuring that this is only done at a time when the household is able to sustain permanent accommodation. The objective should be to enable people to have a home of their own which meets their needs, and enables them to live independently. Care should be taken to provide for the particular needs of families, young people and groups who currently find it difficult to access or sustain any form of accommodation – such as people with problematic alcohol or drug use, people with mental health problems and people with challenging behaviour.

Bed and breakfast

9.46 It is essential that local authorities explore all alternatives to bed and breakfast hotels or other similar establishments, and use them only as a last resort. They are expensive, and can never be regarded as a permanent home for applicants. If local authorities do arrange bed and breakfast in guest houses or hotels, they should ensure that it is for as short a period as possible. The arrangements must allow homeless people to use the rooms during the day and should include access to cooking facilities.

Hostels

9.47 Local authority hostels, or hostels run by voluntary bodies, can be a useful form of short-term accommodation, as long as these hostels are reasonably small-scale and are an appropriate environment in which to deliver support if required. They may therefore be appropriate for the needs of some individuals. Different models of hostel accommodation may be suitable for different applicants: for example, small high-support units may suit some young people or communal accommodation can enable households at crisis point to have some relief for a short period from coping alone; and the company of other people who have gone through similar problems can be helpful.

9.48 However, local authorities should be clear which people are suitable for each hostel (outside bodies will have admission criteria for their own hostels), and seek to place people according to such factors as their support needs, if any, and the likely length of stay. Hostels required to register with the Care Commission under the Regulation of Care (Scotland) Act 2001 (the Act) will be regulated by the Commission against the requirements of the Act, its associated regulations and the relevant National Care Standards.

9.49 Move-on arrangements should be clearly planned from the time the homeless person first enters the hostel – move on will vary according to the individual's needs, for example from direct access to medium term supported accommodation, in addition to move on permanent accommodation. The management of hostels should be resident centred, and staff trained in the necessary skills according to the needs of the residents. In some cases, support services will be supplied by social work, health, training or other agencies.

9.50 Regulations will be made under section 7 of the 2001 Act which will set out standard terms to apply to occupancy agreements between hostel residents and providers. Guidance will be issued when the regulations are made.

Lodgings

9.51 For some homeless applicants, particularly single people without support needs, lodgings in privately owned accommodation may offer suitable housing. Local authorities should seek to establish and maintain links with owner occupiers and other potential landlords who are willing to offer lodgings to homeless people. Authorities should ensure that the accommodation offered is of an acceptable standard.

Private sector leasing

9.52 The leasing of private sector accommodation can add to the supply of good quality temporary accommodation, including in sparsely populated areas where normal lets may occur infrequently. In particular, it can be used in rural areas to continue 'winter only' lets over the summer where the occupants would otherwise become homeless. However, such leases may be expensive, though usually cheaper than bed and breakfast. There may be advantages to the local authority undertaking the management of the property itself rather than leaving this to the landlord. This is particularly useful where several successive placements are expected during the course of a lease, or support services have to be provided.

Mobile homes

9.53 Although mobile homes or caravans may sometimes provide temporary accommodation for single people or childless couples; or in remoter areas to allow people to remain close to families, friends or employment, they are generally not satisfactory, even as temporary housing. Any mobile homes used must be built to modern day standards with high levels of insulation, security and stability, and sites must conform to "Scottish Executive Model Standards for licensed residential caravan sites, holiday caravan sites and touring caravan sites" [SDD Circular 17/1990].

Local authority stock

9.54 Where a local authority is using its own stock to provide temporary or interim accommodation, it should ensure that this allows a balance to be struck with duties to provide permanent accommodation to other applicants. A regular turnover of council properties used for temporary accommodation should be considered, to avoid particular dwellings being identified and possibly stigmatised as 'homeless accommodation', while allowing a cost-effective life span for individual properties. Local authorities may also wish to consider engaging the local communities in which these properties are located in order to counter any negative stereotyping of homeless people.

Permanent accommodation

9.55 Section 32(5) states that a local authority cannot fulfil its accommodation duties to a homeless household through the provision of accommodation which is overcrowded within the meaning of section 135, may endanger the health of the occupants, does not meet any special needs of the household or is not reasonable for the applicant to occupy.

9.56 Under section 32(8) of the 1987 Act any accommodation provided must be suitable for occupation by any children in the household so far as is consistent with their best interests.

9.57 Local authorities' duty to secure accommodation for unintentionally homeless people in priority need would be fulfilled by a single offer of housing, even if this is refused by the applicant, provided that the offer was a reasonable one. Homeless people should however be treated on the same basis as other housing applicants to local authorities in relation to the number of offers of accommodation they receive, where the local allocation policy is offers based.

Determining a reasonable offer

9.58 In general local authorities should take into account the importance of offering homeless people a genuine choice of accommodation, as this is more likely to ensure sustainable resettlement. In meeting urgent homelessness cases, local authorities may have to use what houses may be immediately available, including non-council housing. However, in considering what is a reasonable offer, local authorities should take into account the particular circumstances and needs of the applicant and their household. (see also chapter 5).

9.59 Local authorities should also take into account the sustainability of the accommodation for that particular applicant. Examples of poor practice might include placing people in hard to let housing which may merely exacerbate the problems which led to homelessness in the first place, leading to homelessness recurring; or placing families with social or other problems in the same area, which can cause problems for both those from the area itself and for housing management.

Reasonable preference

9.60 Local authorities and Registered Social Landlords have a duty under section 20 of the 1987 Act to give reasonable preference in the selection of their tenants to people assessed as being homeless.

9.61 It should be noted that this reasonable preference extends to all those who are assessed as homeless, regardless of the outcome of further assessment into priority need or intentionality. Homeless people should always be included in local authorities' mainstream allocation system as from the date of their application, rather than at a later date. This duty to give reasonable preference also extends to those occupying houses which are overcrowded, below the tolerable standard, or provide unsatisfactory housing conditions, and to large families.

9.62 What degree of preference is 'reasonable' is a matter of judgement but, at the very least, homeless people should not be given lesser preference than the other specified groups. These reasonable preference requirements do not prevent priority being given to other groups of applicants besides those listed in section 20, and local authorities still have to consider applications from homeless or other people on their individual merits. Scottish Executive guidance on the "Housing (Scotland) Act 2001 – Housing Lists and Allocations" was issued in February 2002.²⁸

²⁸ See annex C for weblink

Choice-based lettings

9.63 There is a growing interest in choice-based approaches to lettings. Any scheme operated *must* meet statutory requirements particularly in terms of assessing and prioritising applicants who meet the reasonable preference criteria. A choice-based system must be consistent with statutory duties under the homelessness legislation, including discharge of any duty owed.

Accommodation held by RSLs/voluntary organisations/private landlords

9.64 Under section 35, the local authority has freedom to fulfil duties to provide accommodation for homeless people either by making use of council housing or by obtaining accommodation from other providers in the social rented or private sectors.

9.65 Where a local authority has a duty under section 31(2) to secure the provision of accommodation for an applicant in priority need, a Registered Social Landlord in its area must, within a reasonable period, comply with an authority's request to provide this accommodation unless it has a good reason for not doing so (section 5 of the Housing (Scotland) Act 2001).

9.66 The Scottish Executive has issued guidance under section 5(7) of the Housing (Scotland) Act 2001²⁹ on the length of the reasonable period and on what constitutes good reasons for non-compliance with a request. This sets out that where a request is made, an RSL should comply by providing accommodation within 6 weeks unless it has a good reason for not doing so. The guidance states that where an RSL is unable to make appropriate accommodation available within 6 weeks this shall constitute a good reason for non-compliance. The RSL shall also have a good reason for non-compliance if the only accommodation it has available is of a specialist nature and this is not appropriate for the applicant.

Arbitration

9.67 Section 6 of the Housing (Scotland) Act 2001 allows Ministers to set a period within which the local authority and RSL should reach agreement as to whether the reason is good before arbitration is triggered. The time period is set, by the Housing (Scotland) Act 2001 (Appointment of Arbiter) Order 2002, as 5 working days.

9.68 Communities Scotland has issued a Guidance Note on Homelessness Arbitration (CSGN2002/12)³⁰ which provides information on the procedure to be adopted for appointing an arbiter, the remuneration and other expenses which may be paid to an arbiter, payment of other expenses in respect of arbitration, the procedure to be followed at arbitration and the maximum length of time of the arbitration procedure.

9.69 If the parties cannot agree on an arbiter, the Regulation and Inspection Division of Communities Scotland must, on the request of the local authority, appoint an arbiter – information on the procedures to be followed are contained in the Guidance Note referred to in the previous paragraph.

^{29, 30} See annex C for weblink

9.70 Local authorities should enter into constructive and supportive relationships with RSLs in their area to ensure that the arbitration process is only invoked as a measure of last resort. Section 5 of the 2001 Act requires that a RSL must comply with any reasonable request for information about its stock made by a local authority for the purposes of coming to a decision about rehousing a homeless person. It also requires a local authority to have regard to the wider availability of accommodation in its area when requesting that an RSL provide accommodation.

9.71 Local authorities should take into account the view of the applicant and should also be prepared to take a flexible approach to withdrawing requests where necessary, in the light of new information. An example might be where the authority is made aware that the applicant perpetrated an act of domestic abuse against a person residing in the area.

Protocols between LAs and RSLs

9.72 Local authorities and RSLs should agree protocols to underpin the legislative requirements and to provide a framework for the day to day administration of requests to provide accommodation. These protocols should govern liaison arrangements, exchange of stock and tenancy information, the referral process, arbitration and the tracking and monitoring of referrals. A model protocol has been published by COSLA and SFHA³¹ which can be tailored to reflect agreements reached following discussions at a local level – nothing contained in local protocols should conflict with national legislation or guidance, which must always take precedence.

9.73 RSLs will also be an important source of temporary accommodation for homeless people who are not in priority need or are intentionally homeless. Local authorities should seek to negotiate referral arrangements for temporary accommodation for homeless people with associations in their areas, where these do not already exist.

Other sources of accommodation

9.74 Local authorities should ensure that empty houses within their stock are used wherever practicable to help to relieve homelessness in their areas, either by housing homeless households in them directly, or by relieving pressure elsewhere to create room for homeless people. Local authorities should not impose unreasonable restrictions on subletting or other forms of multiple occupancy in their own stock (or indeed in the private rented sector). Subject to the available resources, Cash Incentive Schemes can help to release existing council housing for homeless people and other applicants. Transfers within a council's stock can make available suitable housing for homeless people, while also meeting the needs of other tenants.

9.75 Voluntary bodies may offer another source of accommodation, especially those which specialise in housing people with special needs. Local authorities have powers under section 39(2) to assist voluntary bodies to tackle homelessness, including making available staff, assistance, premises, furniture or other goods.

³¹ See annex C for weblink

9.76 Accommodation in the private rented sector will be an option for some applicants. The local authority should build up contacts with reputable private landlords. Many private landlords can offer accommodation quickly, and sometimes outside working hours, or on public holidays. The local authority may be able to arrange contracts with private landlords to provide such a service; and can, if necessary, use its powers under sections 24–26 of the Local Government Act 1988, with the Secretary of State's consent, to give assistance to private landlords in providing it, for example by paying for rent deposits or rent in advance. However, any arrangements made with private landlords should be linked to minimum standards both in terms of the physical condition of the property and the tenancy agreements offered to tenants. Many private landlords will only provide Short Assured Tenancies; in such circumstances the local authority will not have fulfilled its duty to applicants to whom they owe a duty of permanent accommodation.

9.77 All local authorities should provide access to a rent deposit or guarantee scheme in order to allow homeless people, and others in housing need, to access private sector rented housing more easily. See paragraph 2.91 in Chapter 2 for further information.

9.78 For some people house purchase may be a possibility, at least after their immediate problems have been resolved. A mortgage or loan can help to establish a family permanently in the private sector. Local authorities may wish to offer advice to formerly homeless families on purchasing a house, when their housing and financial situation has stabilised. Local authorities may find it useful to develop close links with the local property market. Information on sources of advice on all options for financing house purchase should be made freely available to homeless people, especially those financial packages which may be attractive to people on lower incomes such as shared ownership. Advice and information on shared ownership is available from Communities Scotland and the Scottish Federation of Housing Associations.

Out-of-area placement

9.79 As a general rule a local authority should always rehouse a homeless household within its own area, particularly where temporary accommodation is being provided. However in rare cases the local authority may need to consider placing homeless people in another local authority's area, although this should only be done only with the household's consent. The local authority should retain responsibility for such outplacements. Note that the Homeless persons (Unsuitable Accommodation) (Scotland) Order 2004 defines the use of temporary out-of-area placements as "unsuitable accommodation" for households with children or pregnant women which can only be used in the exceptional circumstances defined in this Order – see paragraphs 9.7–9.28 for more details.

9.80 Outplacements may be appropriate in cases of, for example, domestic abuse or external violence, or in the case of an ex-prisoner who would face local hostility if returned to his home area. In some cases such an outplacement may be nearer to the applicant's home area than a placement elsewhere in the local authority's area or provide suitable accommodation or access to healthcare which is not currently available in the placing local authority's area.

9.81 When considering an out of area placement, the local authority should consider the costs to the household, such as increased travelling costs or in some cases disruption of education and employment; and to itself of for example maintaining contact with the household and offering any support required. It should also notify the local authority in whose area the household is placed (though that local authority cannot block the placement). If there is any risk associated with the placement then it should notify the local authority in whose area the household is placed of the placement and also of the associated risk. Local authorities should consider what sort of arrangements need to be put in place to ensure that other local authorities are informed promptly of out of area placements.

9.82 In considering an out of area placement for persons made homeless by domestic abuse or external violence, local authorities should give first importance to the expressed fears and wishes of those concerned. Local authorities should adopt the general rule that the new location should remove them from the range of the perpetrators of the violence. The application of this rule should take account of the particular circumstances, for example likely travel routes for the person who has suffered the abuse or violence and for the perpetrator.

Charges

9.83 An applicant can be asked to pay a reasonable charge for any accommodation provided directly by the local authority; or a reasonable amount for accommodation supplied by another housing provider but paid for by the local authority (section 35(2) of the 1987 Act). In deciding what is reasonable, the local authority should take account of what the applicant can pay in the longer term. If an applicant is being asked to pay for accommodation provided by or paid for by the local authority then the applicant should be informed in advance of the cost of the accommodation. They should also be assisted when applying for Housing Benefit to cover the cost of such accommodation. The local authority should take account of, and advise of, the likely level of Housing Benefit when considering charges.

Special circumstances

9.84 Local authorities should make specific provision for the accommodation and support of homeless people with disabilities and respond quickly to requests for adaptations to housing stock which will prevent the occupier from becoming homeless. People with disabilities can be statutorily homeless if they are unable to occupy their present accommodation without excessive hardship or risk to personal safety (see paragraph 5.13 in chapter 5).

9.85 Local authorities should also be sensitive to the needs of people who have become homeless as a result of domestic abuse. Local authorities should ensure that safe emergency supported accommodation is available for those who have experienced domestic abuse, taking into account the diverse needs of disabled people, people from black and minority ethnic groups and those with addiction problems. Women's Aid refuges are a useful source of temporary accommodation for women, children and young people who have experienced domestic abuse, and local authorities may find it cost effective to assist voluntary bodies to provide such specialist provision. Beyond securing the provision of emergency accommodation the local authority should also ensure the availability of suitable long term accommodation and support, taking account of the views of the applicant and the paramount importance of minimising the risk of further incidents of abuse and/or homelessness. (See paragraph 9.80 above on the use of outplacements in cases of domestic abuse.)

9.86 If social work department considers that a person needs a greater degree of care and support than is available, it may offer that person a place in accommodation provided by them under section 59(2)(a) of the Social Work (Scotland) Act 1968, or for young people under the Children (Scotland) Act 1995, in response to the local authority's duty under the homelessness legislation.

Maintaining contact with rehoused homeless people

9.87 When homeless people have been rehoused either permanently or temporarily the local authority should maintain contact with them, particularly in the early weeks, to enable them to settle and to ensure early action is taken to avoid their becoming homeless again. This is particularly important for people who are not rehoused in local authority stock, and will be essential where the local authority is organising support for them. The co-operation of the social work department, local Health Board, appropriate voluntary organisations and other local agencies should be sought as required.

9.88 These arrangements will of course also be useful for many people who are not rehoused under the homelessness legislation but are otherwise vulnerable – e.g. young people moving into their first tenancy or people who have recently left institutional surroundings (hospital, prison, local authority care or the armed forces.)

Chapter 10

Advice and assistance

CHAPTER 10 – ADVICE AND ASSISTANCE

10.1 **Summary** – this chapter explains the legislation on, and gives guidance on, the scope of local authorities' advice and assistance duties under the 1987 Act. Good quality advice and assistance play a key role in preventing homelessness, alleviating it when it does occur and helping people to sustain their accommodation and is an important element of local homelessness strategies.

10.2 Offering good quality advice and assistance involves not only implementing the regulations but should involve the local authority being proactive in its approach and actively seeking a resolution to the applicant's needs.

10.3 Local authorities should also have regard to their wider duty under section 2 of the 2001 Act to secure that:

- advice and information about homelessness and the prevention of homelessness; and
- any services which may assist a homeless person or assist in the prevention of homelessness is available free of charge to any person in the authority's area.

Separate guidance has been issued on this duty. The guidance requires that local authorities ensure that provision meets the standards set out in The Scottish National Standards and Good Practice Guidance for Housing Information and Advice Services. The principles for good quality provision are:

- *Equal opportunities* – by meeting the needs of the whole community, regardless of tenure, location, ethnicity and particular needs.
- *Accessibility* – by being available to all and provided in locations and using methods and forms of dissemination that are appropriate to particular needs.
- *User-centred services* – by ensuring that advice puts the needs of the service user first and is free of the views, prejudices or vested interest of the adviser or agency.
- *Choice* – by offering as far as possible a range of providers, including at least one that is independent of the providers of housing services, which can advocate on behalf of service users.
- *Confidentiality* – through clear policies that guarantee users privacy and confidentiality as well as access to their personal files.
- *Accountability* – by ensuring clarity and transparency of purpose, activity and accountability to stakeholders, including service users, the general public, commissioners and relevant interest groups (whether community-based or national bodies or professional associations).

- *Best value and effectiveness – by optimising:*
 - resource use through ensuring management effectiveness
 - effective and integrated services through joint working and sharing of information, training and expertise
 - professional competence, by ensuring staff have access to training, information resources, effective and supportive case management and opportunities for networking and liaison
 - best practice, by adopting and implementing the Standards and other relevant standards of competence.
- *Reflective services* – through comprehensive monitoring of casework and ensuring opportunities for user feedback to inform service review and development.

10.4 The local authority also has general powers under section 88 of the Local Government (Scotland) Act 1973 to give advice, either directly or through other bodies, on other matters relating to local government services, such as community care (for example, alcohol or drugs issues, disability, old age, mental health) or other services such as welfare rights, debt advice or environmental health services.

10.5 The nature of the advice and assistance needed by a person who is homeless or faces homelessness is likely to vary from local authority to local authority, and from case to case. Advice should be individually tailored and should be wide-ranging and comprehensive. It should respond to the whole needs of the individual and involve the range of allied services to meet these needs either locally or nationally.

10.6 Advice to homeless people should be part of a general strategy for the provision of housing advice, including support for independent agencies where appropriate. Homelessness officers should be able to deal with at least the main non-housing items likely to arise on the spot, but should also know when and how to refer people to other advice agencies for specialist advice.

10.7 Advice and assistance must be available and accessible to all people. This may require the use of interpreters, translations of documents and material being available in alternative formats (e.g. Braille or audiotape) when appropriate.

10.8 Applicants receiving advice and assistance remain responsible for obtaining, or retaining, accommodation themselves (although the local authority must provide temporary accommodation for a sufficient period to give the applicant a reasonable opportunity to secure their own accommodation). However, local authorities should respond in a proactive way, actively assisting applicants, with the aim of ensuring that applicants find accommodation with security of tenure.

10.9 Under the 1987 Act, if a local authority is satisfied that an applicant is homeless but either:

- is not satisfied that he or she has priority need; or
- is satisfied that he or she has priority need but became homeless intentionally;

then the local authority's duty under sections 31(3) and (4) of the Act is to ensure that the applicant is given at minimum advice and assistance as set out in the guidance referred to in paragraph 10.3 in any attempts the applicant makes to secure accommodation.

10.10 Where the conditions set out above apply to an applicant who is threatened with homelessness, under section 32(3) advice and assistance has to be provided to help that person to secure that accommodation does not cease to be available for their occupation. This need not be their existing home, but this is usually the best option. If the period is greater than two months then the local authority should nonetheless actively seek to prevent homelessness occurring. In such cases local authorities should ensure they are assisted in gaining access to appropriate services.

10.11 Section 35(1)(c) of the 1987 Act indicates that a local authority may fulfil duties to secure accommodation for an applicant by providing advice and assistance to enable him or her to obtain accommodation from another housing provider.

10.12 In fulfilling this duty the local authority should actively assist the applicant to make contact with alternative housing providers (for example by offering to make an appointment for them). Local authorities need to ensure that information about other providers is regularly kept up to date. Local authorities should consider developing a housing options guide which clearly outlines the options open to any person in housing need in their local area, including for example different tenure options and access to appropriate grants.

10.13 **The Homeless Persons Advice and Assistance (Scotland) Regulations 2002 (SSI 2002 No.414)** prescribe the types of advice and assistance that local authorities must provide at minimum to homeless applicants and applicants threatened with homelessness who are either not in priority need or, if in priority need, have become homeless intentionally. Below, these categories of advice and assistance as prescribed in the regulations are set out in bold.

Advice

10.14 The advice to be provided is:

- **Housing advice appropriate to local housing conditions and the applicant's circumstances which may include:**
 - **Advice on the availability of permanent accommodation provided by local authorities or registered social landlords;**
 - **Advice on the availability of temporary accommodation provided by local authorities, registered social landlords and other private, public or voluntary bodies;**
 - **Advice on nomination procedures, waiting lists and any restrictions imposed by landlords;**
 - **Advice on specialist, supported or furnished accommodation;**
 - **Advice on services provided by estate agents and accommodation agencies; and**
 - **Advice on owner occupation including shared ownership and the availability of grants for owner occupation, improvement, repair and adaptation.**

10.15 In giving housing advice the authority should include information on:

- how long it may take to be offered one of the local authority's own houses;
- the possibilities (including the risks) of taking a tenancy or flat in the private rented sector and advice about both assured tenancies and short assured tenancies;
- private landlords who let out rooms and any restrictions they may impose;
- accommodation agencies or estate agencies which provide services without charge or with minimal charges. It is illegal for accommodation agencies to charge for finding accommodation; and
- the possibilities of accessing licensed houses in multiple occupation where appropriate.

10.16 Good liaison with other housing providers should be maintained, and local authorities should be able to direct applicants to accommodation which the homelessness officer knows to be suitable and to have vacancies. A common housing register, or at least a common database on available accommodation, may be helpful in achieving this. Both private and social housing providers should be covered.

- **Advice on social issues appropriate to an applicant's circumstances including advice on services provided by specialist agencies or bodies dealing with health, welfare or other social issues.** This should include advice on support and care packages to enable people to sustain tenancies.
- **Financial advice appropriate to an applicant's circumstances, which may include –**
 - advice on the availability of personal benefits, grants and loans directly or indirectly related to the provision of housing;
 - advice on rent and mortgage arrears and the financial implications of home ownership;
 - advice on the management of personal finance;
 - advice on rent guarantee and deposit schemes; and
 - advice on specialist agencies providing financial advice to individuals.

10.17 Rent guarantee and deposit schemes may help homeless people to obtain accommodation in the private rented sector. In securing private rented sector accommodation every effort should be made to maximise security of tenure.

- **Legal advice appropriate to an applicant's circumstances which may include:**
 - advice on court proceedings;
 - advice on legal rights including –
 - advice on the availability of legal aid; and
 - advice on the availability of independent advice and advocacy.

10.18 Many legal matters affect housing. Probably the most important arise for tenants faced with eviction, and tenants should be advised that a court order will almost always be required in addition to a notice to quit, and an order will be granted by the court (in respect of any type of tenancy) only if the landlord proves his or her case, and usually only on a limited number of grounds. A court order may also be required in most cases where there is no formal tenancy agreement. Legal advice on whether an action can be defended is important.

Assistance

10.19 The types of assistance set out in regulation that must be provided by local authorities are:

- providing a personal interview at such a time and place, and with a local authority officer of such sex, as the applicant may reasonably request;
- providing an interpreter or an independent personal representative for an applicant at any interview if a request is made by the applicant to that effect;

Any appointment should be set up at a time convenient both for the applicant and their personal representative

- providing a written record of any interview held under this regulation in an appropriate form for the applicant including Braille, translation or large print;
- providing a follow up interview to review progress;

This should normally be held within 4 weeks, regardless of whether the applicant has requested it.

- arranging and facilitating interviews and appointments with other independent providers of housing financial or legal services; and
- providing access to mediation services for family and neighbour disputes and harassment.

10.20 Local authorities should bear in mind that temporary accommodation arrangements may well result in the applicant becoming homeless again, thus creating both problems for the applicant and renewed expense for the public purse. If resources permit, and the applicant wishes, contact should be maintained with the applicant until suitable stable accommodation is found.

10.21 Local authorities and other agencies should carefully record all advice and assistance offered, and monitor their service in relation to race equality and other equalities requirements.

Chapter 11

Notification and review of decisions

CHAPTER 11 – NOTIFICATION AND REVIEW OF DECISIONS

11.1 **Summary** – this chapter sets out the legal requirements relating to notification and review as well as guidance on practice – good decision-making should lead to fewer requests for review.

The notification of the homelessness decision to an applicant and the manner in which it is given plays an important part in ensuring that effective solutions to an individual's housing situation are found as well as minimising the likelihood of the need for a review of a decision.

11.2 It is essential that in communicating its decision on an application the local authority ensures its response:

- is clear, easy-to-understand and as helpful to the applicant as possible;
- contains full explanation of the reasons for the decision reached and what happens next;
- provides advice on what the applicant should do if they are dissatisfied with the decision; and
- provides advice on options for the applicant if the decision is that they are not homeless or that the local authority does not have a duty to secure permanent accommodation for the applicant.

Independent advice

11.3 Applicants should be informed that they can seek independent legal or other advice on the decision if dissatisfied, and also independent representation in review procedures.

Notification

11.4 When its inquiries into a homeless application are complete, the local authority is required by section 30 of the 1987 Act to notify the applicant of its decision on:

- whether the applicant is homeless or threatened with homelessness;
- if homeless or threatened with homelessness whether the applicant has a priority need;
- if the applicant is in priority need whether the applicant is judged to have become homeless or threatened with homelessness intentionally; and
- whether it has notified or intends to notify another local authority of the application, because it believes the applicant has a local connection with that local authority, and not with itself.

11.5 The local authority must also notify the applicant, and give reasons for its decision:

- if it is not satisfied that the applicant is homeless or threatened with homelessness;
- if it is not satisfied that the applicant has a priority need;
- if it is satisfied that the applicant became homeless or threatened with homelessness intentionally; or
- if a referral to another local authority on local connection grounds has been or is to be made.

11.6 A local authority should inform an applicant of its decision – whether favourable or unfavourable – as quickly as possible. Normally, a decision should be notified within 28 days of the application. Where the decision will take some time because special inquiries have to be carried out, an interim reply should be sent, explaining fully the reasons for the delay.

11.7 All notifications must be in writing and where an applicant's first language is not English, a translation should be provided.

11.8 If a notification is not received by an applicant it can be treated as being given to him or her only if it has been made available at the local authority's office for a reasonable period for collection either by the applicant, or on their behalf. A 'reasonable period' for the collection of a notification letter from the local authority's office is considered to be 28 days.

11.9 The decision letter should state whether placement of an applicant in accommodation completely fulfils the local authority's duties or, if an interim reply is sent, whether it is only a temporary placement pending further action, such as completion of inquiries.

11.10 Where the local authority is making an offer of accommodation under the homelessness legislation, the letter should set out why it thinks the house is reasonable for the applicant. Letters should give names and telephone numbers of the relevant officer, and also advise applicants on sources of independent advice such as solicitors, Citizens Advice Bureaux or housing advice centres.

11.11 If the applicant telephones for a decision, the local authority should take the opportunity to confirm the address to which the written notification required by statute should be sent, since homeless people will often move between a series of 'care of' or other temporary addresses. The address to which written notification should be sent, and a telephone contact number if desired by the applicant, should be ascertained at the time of the initial interview.

11.12 A checklist of the information that should be included in the decision letter can be found at the end of this chapter.

Review of decisions

11.13 Local authorities must notify the applicant that there is a right to review of the decision, the time within which a request for a review should be made and of any advice and assistance that is available to the applicant in connection to the review.

11.14 Local authorities have a duty to review homelessness decisions, if requested, under section 35A of the 1987 Act. This states that:

- decisions on duties (if any) owed to applicants who are homeless or threatened with homelessness;
- the decision to notify another local authority that the local authority believe that the conditions for referral of an application to that other local authority have been met;
- the determination of whether the conditions for referral of an application to another local authority are satisfied; and
- where accommodation is secured for the applicant, whether the provision of that accommodation discharges the authority's duty to the applicant are all open to review.

11.15 A request for a review should be made within 21 days of the applicant being notified of the authority's decision, or a longer period if the authority allows this.

11.16 The procedure for the review is set out in section 35B of the 1987 Act. This specifies that the person who carries out the review should be senior to the person who made the decision that is under review, and should also have had no involvement in the making of the decision.

11.17 The authority is (or either of the authorities are, as the case may be) under a duty to notify the applicant of the decision reached on review. If the decision is to confirm the original decision on any issue against the interests of the applicant, or to confirm a previous decision to either notify another authority or that the conditions are met for the referral of the case, then the authority should also notify the applicant of the reasons for the decision.

11.18 Notice of the decision will not be treated as given unless the reasons for the decision are given. Notice must be given in writing and shall, if not received by the applicant, be treated as having been given only if it is made available at the authority's office for a reasonable period for collection by the applicant or on behalf of the applicant.

11.19 Under section 29 of the 1987 Act temporary accommodation should be provided to applicants requesting a review of the decision of the authority until they have been notified of the review decision of the authority and, if appropriate, the reasons for the decision.

11.20 Applicants should be advised that they have a right to temporary accommodation while the review is being carried out.

11.21 There is no right to request a review of a decision reached on review.

11.22 Each local authority will wish to consider the most suitable review procedure for its circumstances, but it should incorporate the following features:

- it should be as speedy as is consistent with a full and fair hearing of the case, bearing in mind that an applicant will often be in urgent need;
- the applicant should be fully informed of the points to be considered in the review, and given a reasonable period to prepare his or her case;
- information on the availability of independent advocacy in the area should be provided;
- the applicant should have the right to be accompanied by a friend, adviser or legal representative, and to have an interpreter if his or her first language is not English;
- people with, for example hearing or speech difficulties, mental health problems or learning disabilities may also need an intermediary;
- the applicant should be able to make verbal as well as written representations;
- suitable training should be given to those reviewing decisions who should be able to consider the merits of the case, and to substitute their own decision for the original one, or to carry out further investigations; as well as considering such matters as whether proper and unbiased procedures were followed, whether all relevant and no irrelevant factors were taken into account, and whether the decision was within the local authority's powers;

- sometimes those reviewing a decision may decide that, while the decision was correct, the case was handled insensitively, or no information, or inadequate information, was provided to the applicant, and that an apology should be offered to the applicant for these inadequacies;
- the written notification of the review decision should include full and clear explanations of the reasons behind the decision and set out clearly which parts of the original notification are, and are not, being changed; and
- arrangements should be in place for ensuring that the implications of review decisions for decisions on, or the handling of, future applications are drawn to the attention of homelessness officers and senior officers.

11.23 Local authorities should publicise the right to request a review and the procedures for the review ensuring these are available in accessible and easily understandable format.

11.24 It is important that an applicant is not disadvantaged by requesting a review and it would be expected in normal circumstances that a local authority should hold a property offered pending the outcome of the review. Ensuring that the review is carried out promptly will minimise the period where there may be any loss of rental income for the landlord.

11.25 Review notification letters should advise applicants of their right to go to the Scottish Public Services Ombudsman if they are dissatisfied with the way in which their application has been handled.

Judicial review

11.26 Applicants unhappy with a decision may seek judicial review. In a judicial review the court cannot substitute its own opinion for that of the decision makers. However, it can strike down a decision on the grounds that the decision maker has exceeded or abused his powers, or failed to perform the duty delegated or entrusted to him, or exhibited bias. The court's decision may affect the particular case only, but it may also have wider implications for the local authority's policies and procedures. For example, it may call in question the legality of a current policy being applied, or indicate shortcomings in the local authority's procedures.

Checklist for decision letter

11.27 The following is a simple checklist of the minimum basic information a model decision letter should contain. It is not exhaustive and depending on the applicant's circumstances and the decision reached, additional or alternative information might also be necessary.

Have you:

- Set out clearly your decision as to whether or not the applicant is
 - Homeless?
 - Priority need?
 - Intentionally homeless?
- Set out whether or not you have investigated local connection and if so whether or not you intend to refer the applicant to another authority?
- Provided clear reasons for your decision including matters which you took into account?
- Explained what happens next and any actions that the applicant is required to take?
- Informed the applicant of their right to request a review of your decision, including review of the accommodation offered?
- Set out clearly the procedures for review including likely timescales?
- Provided details of where the applicant can access further advice or information, including independent sources in the area?
- Provided full contact details for the applicant to use if they wish to discuss anything in your letter?
- Checked that the letter is in a form which is accessible and understandable to the applicant?

Chapter 12

Protection of property and action on unoccupied houses

CHAPTER 12 – PROTECTION OF PROPERTY AND ACTION ON UNOCCUPIED HOUSES

12.1 **Summary** – this chapter sets out the local authority's duties relating to protection of an applicant's property and action regarding property which is unoccupied. If homeless people are to set themselves up successfully in a new home, they are likely to need all or most of their existing possessions. Therefore, the preservation of their possessions benefits not only the applicant themselves, but can produce savings to the public purse in terms of homelessness recurring, or the need for such support as provision of furniture.

12.2 If the local authority has reason to believe that an applicant is homeless or threatened with homelessness, and they also have a duty to find accommodation for him or her, then if:

- there is a danger of loss of, or damage to, the applicant's moveable property because of his or her inability to protect and deal with it; and
- no other suitable arrangements have been or are being made to protect it;

the local authority has a duty to take reasonable steps to prevent the loss of the property, or to prevent or mitigate damage to it (sections 36(1) and (2) of the 1987 Act). 'Moveable property' includes, for instance, furniture, pots and pans, and clothing, though not fixtures. The duty also extends to the property of anyone who might reasonably be expected to reside with the applicant (section 36(8)).

12.3 Even if the local authority is not subject to a duty to accommodate an applicant, it has power to take any reasonable steps to protect the applicant's property.

12.4 Homelessness officers should always check whether there is a need to protect the property of applicants. If there is, and this need is not being met, they should advise the applicant of the service for protection of property including any charges. Local authorities should also consider arranging for such property to be insured against loss or damage while it is in their care. For the service itself the local authority can use a private provider.

12.5 Reasons for an applicant being unable to protect his or her property, apart from lack of funds and storage space, could include being placed in temporary accommodation with little or no storage space, or incapacity due to such causes as mental illness or learning disability. Many applicants will of course prefer to make their own arrangements with friends or relatives or private providers.

12.6 As a matter of good practice the local authority should also consider providing assistance with the kennelling of any pets that an applicant may have if they are not able to keep them in their temporary accommodation.

Cessation of duty

12.7 The duty or power to protect an applicant's property ceases when the local authority has reason to believe there is no longer any risk of loss or damage to it (section 36(5) of the 1987 Act). This will normally be the case where the applicant finds permanent accommodation where he or she can put their possessions.

12.8 Local authorities must notify the applicant of the fact they no longer have a duty or power to protect his or her property, and the reason for believing the risk of loss or damage has disappeared (sections 36(6) and (7) of the 1987 Act). However, any property already placed in storage by the local authority can continue to be kept in store, subject to the original conditions including charges (with any necessary modification).

12.9 Applicants should be warned in good time that the local authority's duty to protect their property is coming to an end, so they can make alternative arrangements. However, applicants may need a reasonable period to, for example, arrange for furniture to be moved to their new home, and local authorities should therefore consider storing property for a transitional period if necessary, subject to appropriate charges.

12.10 Where an applicant has had belongings placed in storage by the local authority and is moving into permanent accommodation, the authority should consider assisting with the delivery of their belongings. This can help facilitate a quick move into the new tenancy thereby freeing up temporary accommodation and reducing storage costs.

Powers of entry

12.11 Under section 36(3) of the 1987 Act local authorities have powers of entry, at reasonable times, to an applicant's present or last home, in order to protect his or her property; and power to deal with the property in any way which seems reasonably necessary. They may store the property or arrange for it to be stored.

12.12 Use of this power may be appropriate where the applicant has to be placed in furnished accommodation such as bed and breakfast for a period. It may also be useful where an applicant has difficulty in recovering his property from a landlord, though it should be remembered that a landlord may have a claim on it for debts owed by the applicant.

Charges and disposal of property

12.13 Local authorities have power under section 36(4) of the 1987 Act to impose, as a condition for agreeing to protect property, a reasonable charge for storing protected property, and can dispose of the property in circumstances which the local authority specifies in advance. Provided it so specifies in advance, the local authority can dispose of property if it has lost all contact with the applicant, in order to recover storage charges or other debts owed to it.

12.14 Any charges levied on individual applicants should take account of what (if anything) they can reasonably be expected to pay, as well as storage costs; and applicants should be advised of these charges in advance. Private sector storage providers may be the most cost effective option, if the number of cases is few. An appropriate minimum period before disposal of stored property in cases where the local authority has lost contact with the applicant is 6 months. Local authorities should attempt to contact the applicant or other agencies who might have contact with the applicant (for example Social Work) before disposing of their belongings. Before selling stored property to recover storage charges or other debts owed by the applicant, the local authority should consider the likely proceeds and costs of disposal; together with any danger that the applicant's loss of these possessions will make a recurrence of homelessness more likely, leading to further costs.

Action on unoccupied houses

Power to repossess social rented tenancy

12.15 Under sections 17 and 18 of the 2001 Act, local authorities or registered social landlords can repossess a house let under a Scottish secure tenancy, if they have reasonable grounds to believe that it is unoccupied, and that the tenant does not intend to occupy it as his or her home. To do so they must give the tenant 4 weeks notice and make the necessary inquiries to satisfy themselves of the position. At the end of this 4 week period, if the landlord is satisfied that the house is unoccupied and the tenant does not intend to occupy it as his or her home, he can bring the tenancy to an end immediately by serving a further notice on the tenant. Further possession proceedings are not required. The Scottish Secure Tenancies (Abandoned Property) (Scotland) Order 2002 (SSI 2002 No. 313) provides that the serving of a notice in terms of that order shall be served by posting it to the tenant in a recorded delivery letter, addressed to the tenant at his or her last known address, or by leaving the notice at that address.

12.16 A tenant aggrieved by a termination of his tenancy under section 18 can appeal to the sheriff under section 19 within 6 months of the termination. If the appeal is successful the court will order the tenancy should continue or that the landlord should provide other suitable accommodation if the house that has been repossessed is no longer available. The court can make further orders, for example to instruct a landlord to forego rent due for the period of apparent abandonment. It should be noted that the equivalent provisions for Scottish Homes secure tenants are contained within sections 49 and 50 of the 1987 Act.

12.17 Paragraph 5 of Part I of Schedule 2 to the 2001 Act also allows a sheriff to grant to a landlord repossession of a house let under a Scottish secure tenancy where the tenant (and his spouse/partner) have been absent without a reasonable cause for a continuous period exceeding 6 months, or have ceased to occupy it as their principal home. Temporary absence for a period in institutional care would normally be considered to be a reasonable cause.

12.18 Social landlords have duties to secure the property of tenants of abandoned houses, and in the first place to check that they really are abandoned. Premature repossession could cause homelessness, and in some cases there may also be fears for a tenant's safety.

12.19 For anyone who is, or may be, in hospital, or a residential or other institution, the landlord should check with the relevant health or social work agency whether the person is expected to return. Inter-agency consultation is particularly important where the person does not accept that his or her move to institutional care is permanent, or he or she may recover at some future date. A proper check should also be made that the person is no longer in the house, particularly when there is any reason to suspect illness, (including mental illness) or other problems.

12.20 Where a relative or friend of the tenant says the tenant is giving up a tenancy, the landlord should check if that person has the necessary authority to do so, preferably in writing. In this type of case a landlord should not accept the keys of a house and termination of a tenancy, without receipt of written or other acceptable confirmation from the tenant or someone properly authorised to act for the tenant. Again, where a person has been received into institutional care, the landlord should check the position if possible with the person him or herself, and with the relevant health or social work agency, prison or other agency.

Powers of entry to secure house

12.21 Section 17(2) of the 2001 Act gives the landlord of a house let under a Scottish secure tenancy reasonably believed to be both unoccupied and that the tenant does not intend to occupy it as his or her home, the power to enter the house to secure the house, and any fittings, fixtures or furniture, against vandalism.

12.22 Clear procedures should be in place for deciding when to use this power, and for checking first that the house is unoccupied and the tenant does not intend to return to it as his or her home. On the other hand, landlords may wish to consider using this power when a tenant's removal has attracted local publicity which would alert burglars and others to the house being empty. Sensible precautions should also be taken to avoid damage such as turning off gas, electricity or water, removing perishable foodstuffs, securing the property and informing the police.

Safe custody of property

12.23 Section 18(4) of the 2001 Act gives Scottish Ministers power to make an order making provision for the landlord:

- to secure the safe custody and delivery to the secure tenant of any property found in a house repossessed under section 18;
- to levy charges for doing so; and
- if the tenant has not arranged for delivery within the period specified in the order, to dispose of the property and recover any rent or costs owing to the landlord by the tenant.

12.24 This power has been exercised by the Scottish Secure Tenancies (Abandoned Property)(Scotland) Order 2002 (SSI 2002/313). This order provides that the tenant must be advised by notice that if he does not collect his property within a specified time (6 months, unless the value of the property would not, in the opinion of the landlord, exceed the amount which the landlord would be able to deduct for any costs incurred and any arrears of rent) it may be disposed of in accordance with the Order. Property of a value insufficient to cover the cost of storage may be disposed of in the most expedient manner (but see paragraphs 12.13-12.14 above).

12.25 The landlord may deduct his expenses and the amount of any arrears of rent from the proceeds of sale of any property to which this order applies. Finally the Order requires landlords to maintain a register containing information about the houses in which property has been found: the register must be open to public inspection and the information on it held for 5 years.

Chapter 13

Local authorities' duties towards persons subject to immigration control and persons from EEA member states

CHAPTER 13 – LOCAL AUTHORITIES' DUTIES TOWARDS PERSONS SUBJECT TO IMMIGRATION CONTROL AND PERSONS FROM EEA MEMBER STATES

13.1 **Summary** – the purpose of this chapter is to define which categories of people subject to immigration control are eligible for homelessness assistance, and to define duties which local authorities have to those people who are eligible for assistance. It also defines the rights that EEA nationals have in regard to homelessness assistance, in Scotland.

13.2 This chapter also provides brief definitions of relevant terms such as "asylum seekers", and "refugees". It also provides advice for practitioners to decide if an applicant is eligible, and information on how to check on someone's immigration status.

13.3 There is other information elsewhere in the Code relating to refugees or people with leave to remain who were former asylum seekers:

- a) chapter 6 (on priority need) explains that former asylum seekers who have been granted leave to remain may have priority need as a result of being vulnerable due to their past experiences; and
- b) chapter 8 (on local connection) explains that refugees who were former asylum seekers do not form a local connection with the area in which they stayed in NASS accommodation when they were asylum seekers.

13.4 The following appendices to this chapter provide more detailed information on specific topics:

- Appendix 13A – a complete list of persons subject to immigration control who are eligible for homelessness assistance (from SI 2000 No. 706).
- Appendix 13B – how to identify the main classes of person subject to immigration control.
- Appendix 13C – advice on how to get information from the Immigration and Nationality Department (IND) in the Home Office, or from the National Asylum Support Service (NASS) on a person's immigration status.
- Appendix 13D – a definition of the Common Travelling Area, and a list of member states of the European Economic Area (EEA).
- Appendix 13E – guidance on "habitual residence".

Definition of immigration control

13.5 A person subject to "immigration control" is a person who requires leave to enter or remain in the UK (whether or not leave has been given). All persons who are not British citizens, foreign nationals with the right of abode in the UK, or nationals of EEA member states (these are listed in Appendix 13D) are subject to immigration control.

13.6 A person subject to immigration control will not be lawfully present unless they have "leave to enter or remain" (this generic term comprises several different specific categories). Asylum seekers are likely to have temporary admission only, and not have leave to enter or remain.

Eligibility for homelessness assistance for persons subject to immigration control

13.7 A person who is subject to immigration control is generally not eligible for homelessness assistance and may only be eligible if they fall within a category of person specified by SI 2000 No. 706 (made under the Immigration and Asylum Act 1999). The rules governing eligibility are complex, therefore LAs will need to have processes in place to carry out appropriate inquiries. Staff may need appropriate training to carry out inquiries, and this training may need to include not just aspects of housing and immigration law, but also in how to carry out assessments in a sensitive manner taking into account the fact that some people subject to immigration control may have been forced to leave their home countries under difficult circumstances. Staff may also need training in how to work with interpreters and will need to know how to signpost people who are ineligible for help from LAs but who may be able to get help from other agencies (see paragraph 13.17 below for more details). In addition, if an applicant is uncertain about whether they have leave to enter or remain, then staff should carry out appropriate enquiries.

13.8 See appendix 13A for a complete list of the classes of persons specified under these regulations. The main classes are:

- Refugees – A person who has been granted refugee status in the UK as a result of the upholding of his asylum claim.
- Humanitarian protection or Discretionary Leave – A person who has been granted Humanitarian Protection or Discretionary Leave and whose right is not subject to a condition requiring him to maintain and accommodate himself and his dependents without recourse to public funds. Note that "Humanitarian Protection" replaced "Exceptional Leave to Remain" as of 1 April 2003. Discretionary leave may be granted in exceptional circumstances for people with no international protection needs but where there are other reasons for allowing them to stay, e.g. strong compassionate grounds.
- Exceptional leave to enter or remain – A person who has been granted exceptional leave to enter or remain (ELR) in the UK and whose right is not subject to any condition requiring him to maintain and accommodate himself and his dependents without recourse to public funds. Some former asylum seekers with ELR may still present as homeless and other people who are not asylum seekers may still be granted ELR, with or without conditions attached.
- A person who has current or indefinite leave to enter or remain in UK, and who is habitually resident (guidance on "habitually resident" is given in Appendix 13E) in the Common Travel Area (CTA – this is defined in Appendix 13D) and who has no conditions restricting access to public funds – but there are some restrictions to this – see appendix 13A for details.
- A person who is a national of a country which has ratified the European Convention on Social and Medical Assistance (ECSMA), or the Council of Europe Social Charter (CESC) (see Appendix 13D for list of countries) and who is lawfully present in the United Kingdom and who is habitually resident in the CTA.

13.9 See appendix 13B for advice on determining whether the applicant falls into one of the above categories.

What is the link between asylum seekers, refugees and persons granted other forms of leave to remain?

13.10 An asylum seeker is a person who has made a formal application for asylum and who is waiting for a decision on their application. Asylum seekers are persons subject to immigration control with temporary admission but not leave to enter or remain in the UK.

13.11 A person becomes an asylum seeker when his or her claim for asylum has been recorded by the Home Secretary, and he or she remains an asylum seeker until such time as that application has been finally resolved (including the resolution of any appeal). The recording, consideration and resolution of such claims is a matter for the Home Office Immigration and Nationality Directorate (IND).

13.12 If a person's claim for asylum is upheld he ceases to be an asylum seeker and is granted refugee status. In some situations even where a person's asylum claim is not upheld, the Home Secretary will decide it is appropriate to grant that person another form of leave to remain, either humanitarian protection or discretionary leave (these two categories replace the old category of exceptional leave to remain; ELR).

Duties of LAs to persons subject to immigration control – general

13.13 A local authority is not entitled to give assistance under the homelessness legislation towards applicants who are persons subject to immigration control, unless the applicant is a person who falls within a class of persons specified by the Secretary of State as listed in paragraph 13.8 above or in appendix 13A. Local authorities will therefore need to satisfy themselves whether homeless applicants are persons subject to immigration control and, if so, whether they are 'ineligible persons'. However if the LA has reason to believe that an applicant is homeless, then the duty to provide temporary accommodation still applies unless and until the LA is satisfied that they are ineligible.

13.14 Humanitarian protection, discretionary leave and exceptional leave to enter or remain apply for a specified period of time; usually up to 3 years. On expiry of these provisions, a person may apply for an extension or for Indefinite Leave to Remain; ILR. If they apply, their entitlements to housing, employment and welfare benefits continue until a final negative decision is received from the Home Office.

Duties of LAs to persons subject to immigration control – asylum seekers

13.15 The position for asylum seekers is different than that for other persons subject to immigration control. Asylum seekers are not eligible for homelessness assistance unless they fall into one of the categories defined in paragraphs 8-9 in Appendix 13A. These categories are likely to apply to a very small number of asylum seekers. Special provisions apply to these asylum seekers (but not others) who may be eligible for homelessness assistance as defined in Appendix 13A. For those classes of asylum seekers who may be eligible for homelessness assistance, they are not eligible for homelessness assistance if they have any other accommodation available, however temporary. However if the LA has reason to believe that an applicant is homeless, then the duty to provide temporary accommodation still applies unless and until the LA is satisfied that they are ineligible.

13.16 If a person is ineligible for housing assistance then they may still be eligible for other types of assistance, and LAs may have duties to provide other types of assistance. This also applies to the dependents of any applicants.

13.17 LAs are not entitled to help asylum seekers who are not eligible for assistance. People in this category (which includes all asylum seekers who have applied for asylum after April 2000) should be referred to the Scottish Refugee Council for advice and assistance and/or to make an application for NASS housing and support. (SRC is contracted by Home Office to provide this service as "Reception Assistant").

Inquiries

13.18 It is not specified at which stage the LA should inquire into the applicant's immigration status. However, local authorities should make these inquiries at an early stage, perhaps at the point when they have reason to believe an applicant is homeless or threatened with homelessness, and therefore the question of what duties are owed to the applicant arise. It is essential that these inquiries are carried out in a non-discriminatory way, in accordance with all relevant race relations legislation (see paragraphs 4.8-4.10 in chapter 4 above for more details).

13.19 If there is any uncertainty about a person's immigration status then staff are recommended to contact the Home Office Immigration and Nationality Directorate or the NASS outreach regional team in Glasgow (see Appendix 13C for details of how to contact IND or NASS). Staff should advise the applicant if they are going to contact IND.

13.20 As mentioned above in chapter 6, former asylum seekers who are eligible for homelessness assistance such as refugees or other people with leave to remain or enter may have priority need by virtue of being vulnerable due to their past experiences in their home countries. Local authorities should be aware of, and sensitive to, the fact that applicants may not find it easy to explain what has happened to them in their home countries.

Applicants from EEA countries (including the EU)

13.21 A person who is from one of the EEA member states (which includes the EU – see Appendix 13D for list of member states of the EEA) is eligible for assistance.

13.22 The "A8" member states are eight of the countries which joined the EEA on 1 May 2004. They are: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia. Nationals from these countries have the same rights to housing and homelessness assistance as nationals from other EEA states. Note that this is different from the situation in England where regulations (SI 2004 No. 1235) have been made to disallow persons from EEA member states from being eligible for homelessness assistance unless they satisfy certain conditions.

13.23 This situation may change in the future and the Scottish Executive will keep LAs informed of any changes.

13.24 In May 2006 Home Office brought into force legislation (SI 2006/1003) which transposed EC Directive 2004/38. This Directive consolidates the right of citizens of the European Union (and their family members) to move and reside freely within the territory of EU Member States. The relevant aspects of Home Office's legislation are:

a) an "initial right to reside" now exists for EEA citizens for up to 3 months if they fulfil certain criteria. Different criteria apply to citizens of the "old" EU countries and those of the A8 states (The Code of Guidance explains these categories). Citizens of the "old" EU countries obtain the right to reside if they are a worker, a job-seeker, self-sufficient, self-employed, a student, or a family member of any of these classes. Citizens of the A8 states

need to be a worker and registered on the Workers Registration Scheme, or self-sufficient in order to have the right to reside;

b) there is an "extended right to reside" for some classes of EEA citizens if they reside in the UK for more than 3 months and less than 5 years;

c) there is a "permanent right to reside" for some classes of EEA citizens who have been in the UK for more than 5 years and fulfil the criteria, and;

d) this legislation also specifies that if an EEA citizen does not have the right to reside in the UK they become subject to immigration control.

13.25 EEA citizens who are subject to immigration control come within the scope of the Asylum and Immigration Act 1999. The effect of this Act is that persons subject to immigration control are not eligible for homelessness assistance in Scotland unless they come within a specified class of persons. Relevant existing legislation (SI 2000/706) made under this Act allows certain classes of persons subject to immigration control to obtain access to homelessness assistance in Scotland.

13.26 One of the classes of persons in SI 2000/706 who are eligible for homelessness assistance in Scotland is a person who is a national of a country which has ratified the European Convention on Social and Medical Assistance (ECSMA) or the Council of Europe Social Charter (CESC) and who is lawfully present in the United Kingdom and who is habitually resident in the CTA (Common Travel Area).

13.27 There is case law (the Court of Appeal decision on Abdi and Ismael, April 2006) which has the effect of ensuring that EEA nationals who are persons subject to immigration control are eligible for homelessness assistance because they are nationals of countries which have ratified the ECSMA or CESC.

13.28 To summarise, EEA nationals who are not persons subject to immigration control are still eligible for homelessness assistance because there is nothing which restricts that right. EEA nationals who are persons subject to immigration control are eligible because they are nationals of countries which have ratified the ECSMA or CESC.

Appendix 13A – people subject to immigration control who are eligible for homelessness assistance:

The classes of persons subject to immigration control who are eligible for assistance are specified under SI 2000 No. 706 (made under the Immigration and Asylum Act 1999). Below is a short description of these classes. See SI 2000 No. 706 for the actual wording for each class:

1. A person who is a refugee. i.e. a person who has been granted refugee status in the UK as a result of the upholding of his asylum claim.
2. A person who has been granted exceptional leave to enter or remain (ELR) in the UK *and* whose right is not subject to any condition requiring him to maintain and accommodate himself and his dependents without recourse to public funds. (Note that Humanitarian Protection and Discretionary Leave have now replaced ELR).
3. A person who has been granted current or indefinite leave to enter or remain in UK, *and* who is habitually resident in the Common Travel Area. But a person whose leave to enter or remain depends on an undertaking by another person (the sponsor) who is responsible for his maintenance and accommodation, *and* who has been resident in UK for less than 5 years, *and* whose sponsor is still alive is not eligible.
4. A person who left Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.
5. A person who is a national of a country which has ratified the European Convention on Social and Medical Assistance (ECSMA), or the Council of Europe Social Charter (CESC) and who is lawfully present in the UK *and* who is habitually resident in the Common Travel Area. Note that this category *excludes* people from Switzerland. Note that it *includes* people from Croatia and Turkey, even though these countries are not in EEA.
6. A person who is on an income-based jobseekers allowance, but not those who have been given *limited* leave to enter or remain in UK, or who are temporarily without funds because funds from abroad have been disrupted.
7. A person who claims asylum within three months of the Secretary of State (of Home Office) declaring that his country had undergone such a fundamental change that he would not normally order the return of a person to that country *and*
 - (i) who was in GB when this declaration was made, and
 - (ii) whose asylum claim has not yet been decided or abandoned

(the Secretary of State has made two such declarations in the past, one concerning Zaire and one concerning Sierra Leone, both in 1997). In order to qualify under this criteria an applicant would have to have claimed asylum in 1997, and still be awaiting a decision.

8. A person who has claimed asylum *and*
 - (i) whose claim was recorded on or before 2nd April 2000 *and*
 - (ii) who made a claim for asylum on his arrival in the UK from a country outside the Common Travel Area *and*
 - (iii) whose claim is not yet decided or abandoned.
9. A person who has claimed asylum *and*
 - (i) who made a relevant claim on or before 4th February 1996 *and*
 - (ii) who was on 4th February 1996 entitled to benefit under regulation 7A of the Housing Benefit (General) Regulations 1987 (Persons from abroad) or regulation 7A of the Housing Benefit (General) Regulations (Northern Ireland) 1987 (Persons from abroad).

Appendix 13B - how to identify the main classes of person subject to immigration control.

Refugee Status

1. A person granted refugee status has been recognised as a refugee in accordance with the criteria set out in the 1951 United Nations Convention relating to the status of refugees and granted asylum in the United Kingdom. A person granted refugee status will have been issued by the Home Office with a letter headed Grant of Asylum and (sometimes but not always) marked ICD0725 validated by an Immigration and Nationality Directorate (IND) date stamp. New regulations mean that this letter in itself is not proof of refugee status, and should be accompanied by an Immigration Status Document (ISD), a passport-like document with photograph. But people granted refugee status or other leaves to remain prior to 2003 may only have a decision letter, and no ISD.

A Person who has Exceptional Leave to Enter or Remain in the UK

2. Exceptional leave to enter or remain in the UK may be granted to asylum seekers who are refused asylum (ie not given refugee status) and other persons where there are compelling, compassionate circumstances which justify granting leave to enter or remain on an exceptional basis.

3. Exceptional leave to enter or remain is sometimes granted initially for 12 months only, and the person will have the opportunity of seeking renewal for a further three years, prior to full settled status being granted (i.e. indefinite leave to remain with no limitation or condition). Housing authorities should note that persons holding exceptional leave to enter or remain (even where this may be time limited) will be eligible for homelessness assistance unless it is subject to a condition requiring them to maintain and accommodate themselves (and their dependants) without recourse to public funds.

4. Persons holding exceptional leave to enter or remain which is time limited should not be treated as a person holding limited leave to enter or remain in the UK (who will not be eligible).

5. Former asylum seekers granted exceptional leave to enter or remain will have been issued with a letter (marked GEN 19 in the top right-hand corner) showing the date until which leave to enter or remain has been granted. This letter will have been validated by an IND date stamp.

A person who has humanitarian protection or discretionary leave to enter or remain in the UK

6. People granted humanitarian protection or discretionary leave will be issued a standard format letter by the Immigration, and Nationality Directorate (IND) at the Home Office that makes clear that they have been granted leave under one of other of these policies. The letter will be similar in format to the standard letter previously issued to people granted exceptional leave, and it will show the date on which leave to enter or remain will expire.

7. In addition to this letter, an Immigration Status Document should also be issued.

8. See Annex C for web-link to guidance from ODPM on these new categories of humanitarian protection and discretionary leave.

A Person who has Indefinite or Current Leave to Enter or Remain in the United Kingdom which is not subject to any limitation or condition

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

Asylum seekers (see appendix 13A for details of which asylum seekers may be eligible)

10. Asylum seekers are unlikely to have possession of their passport since this will generally be lodged with IND when they make an asylum application. Instead they may have an Application Registration Card (ARC) or a standard acknowledgement letter (SAL) or other letter from IND in connection with the asylum claim. Application Registration Cards are increasingly replacing standard acknowledgement letters. Other documents which an asylum seeker may produce include a Form IS 96 (used by the Home Office to notify a person that he or she has been granted temporary admission to the UK) and a GEN 32 (used by the Home Office to provide an applicant with a date for attending the Asylum Screening Unit for an interview). Information on Application Registration Cards can be found at: http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/application_registration.html

Appendix 13C - how to contact the home office immigration and nationality directorate and the national asylum support service.

IND

1. The Home Office's Immigration and Nationality Directorate (IND) will exchange information with Local Housing Authorities subject to relevant data protection and disclosure policy requirements being met and properly managed, provided that the information is required to assist with the carrying out of statutory functions or prevention and detection of fraud.
2. The Evidence and Enquiries Unit (EEU) will provide a service to local housing authorities to confirm the immigration status of an applicant from abroad (Non Asylum Seekers). In order to take advantage of the service, local housing authorities first need to register with this unit at:

Evidence and Enquiries Unit
Immigration and Nationality Directorate
C Block 3rd Floor
Whitgift Centre
Wellesley Road
Croydon CR9 2AT
either by letter or fax: 020 8604 5783.

3. Registration details requires by the EEU's Local Authorities' Team are:
 - (a) Name of enquiring local housing authority on headed paper,
 - (b) Job title/status of officer registering on behalf of the local housing authority,
 - (c) Names of local housing authority staff and their respective job titles/status who will be making enquiries on behalf of the local housing authority.
4. Once the local housing authority is registered with the EEU, then the authorised personnel can make individual enquiries by letter or fax, but replies will be returned by post.

NASS

5. In cases where the EEU indicate that the applicant may be an asylum seeker, enquiries of their status can be made to the National Asylum Support Service (NASS) by Fax: 020 8633 0014. Copies of the EEU's correspondence must accompany the request. It may be easier to check a person's status through the NASS outreach regional team in Glasgow. See Annex B for contact details.

Appendix 13D – definition of the Common Travel Area, list of member states of the EEA, and countries not in EEA which have ratified the ESC and the ECSMA charters.

Common Travel Area

UK,
Channel Islands,
Isle of Man and
Republic of Ireland

EEA including A8 (A8 countries are marked with *):

Austria,
Belgium
Cyprus
Czech Republic*
Denmark
Estonia*
Finland
France
Germany
Greece
Hungary*
Iceland
Ireland
Italy
Latvia*
Liechtenstein
Lithuania*
Luxembourg
Malta
Netherlands
Norway
Poland*
Portugal
Slovakia*
Slovenia*
Spain
Sweden.

Note that Switzerland is not a member of the EEA but Swiss nationals do have the same rights as other EEA nationals under reciprocal agreements between the EU and Switzerland.

Non EEA states which have ratified ECSMA and ESC:

Croatia and
Turkey.

Appendix 13E – guidance on habitual residence

The term habitual residence is intended to convey a degree of permanence in the person's residence in the CTA; it implies an association between the individual and the country and relies substantially on fact. When deciding whether an applicant is habitually resident, housing authorities should take account of the applicant's period of residence and its continuity, his employment prospects, his reason for coming to the UK, his future intentions and his centre of interest.

A person cannot claim to be habitually resident in any country unless he has taken up residence and lived there for a period. There will be cases where the person concerned is not coming to the UK for the first time, but is resuming a previous period of habitual residence. Annex 22 of the English Code of Guidance²⁷ provides detailed guidance on the factors that a housing authority should consider in determining whether an applicant is habitually resident in these circumstances. However, the fact that a person has ceased to be habitually resident in another country does not imply habitual residence in the country to which he has travelled.

A person who is in stable employment is more likely to be able to establish habitual residence than a person whose employment is, for whatever reason, transitory (for example, an au pair or someone who on a fixed, short-term contract). Equally, a person, one of whose apparent aims in coming to the UK is to claim benefits, is less likely to be able to establish habitual residence. A person who intends to take up permanent work is more likely to be able to establish habitual residence, as is a person who can show that he has immediate family or other ties in the UK.

²⁷ See annex C for details of weblink

Annex A

Summary of legislative changes

ANNEX A

SUMMARY OF LEGISLATIVE CHANGES

The following is a summary of the changes introduced by the Housing (Scotland) Act 2001 and Homelessness etc (Scotland) Act 2003 – it is not intended to be detailed legal advice on the provisions.

Housing (Scotland) Act 2001

- **Section 1** requires local authorities to assess the levels of homelessness in their area and produce homelessness strategies. Guidance has been issued which incorporates the recommendations of the Homelessness Task Force and stresses the need for the development and delivery of strategies to be a corporate undertaking and to involve partnership working with agencies external to the local authority.
- **Section 2** requires local authorities to provide information and advice about homelessness free of charge – guidance on the form and content of this has been issued.
- **Section 3** makes a number of alterations to the Housing (Scotland) Act 1987. These have the effect of:
 - Changing the **definition** of homelessness to ensure that people with reasonable accommodation overseas cannot apply as homeless.
 - Ensuring that people who are assessed as having a priority need and unintentionally homeless are entitled to **permanent accommodation**, setting out a definition of permanent accommodation and stating that if this is not provided the applicant should continue to be assessed as homeless. This section also gives local authorities the discretion to place someone in interim accommodation where there is a duty to provide permanent accommodation – regulations setting out the circumstances in which this can be done have been issued.
 - Lengthening the period during which people can be assessed as 'threatened with homelessness' from 28 days to 2 months.
 - Requiring that anyone who is assessed as homeless has a right to **temporary accommodation** whilst enquiries are made.
 - Requiring that all homeless people are entitled to a minimum of **temporary accommodation, advice and assistance** – the type of advice and assistance to be provided is set out in regulations.
 - Requiring that accommodation offered is **reasonable to occupy and meets any special needs** the applicant may have.
 - Requiring local authorities to have regard to **the best interests of children** in exercising their functions.
- **Section 4** gives applicants the right of **internal review of a decision**.
- **Section 5** provides that **Registered Social Landlords** must comply with a local authority's request to provide accommodation unless there is a 'good reason' not to – guidance on what constitutes a 'good reason' has been issued.
- **Section 6** sets out the procedures for **arbitration** where there is a disagreement between the local authority and the RSL – Communities Scotland have issued guidance on this.

- **Section 7** gives Ministers the power to issue regulations setting out **minimum terms of occupancy** for persons living in hostels and other short-term accommodation. These regulations have not yet been made.

Homelessness etc (Scotland) Act 2003

Section 1 expands priority need categories to include those currently listed in the 1997 version of Code of Guidance – i.e. all those who are under 18 or who have been subject to harassment or domestic abuse, people under 21 who are vulnerable to financial or sexual exploitation or involvement in substance misuse due to their living circumstances and anyone who is vulnerable as a result of personality disorder, leaving hospital, prison or the armed forces, having suffered a miscarriage or undergone an abortion or chronic illness. This section came into force on 30 January 2004.

Section 2 gives Ministers the power to specify a time from which priority need is to be abolished. Ministers are required to take into account whether local authorities can reasonably be expected to perform their duties before making this change. This section came into force on 30 January 2004.

Section 3 gives Ministers the duty to consult on and publish a statement setting out the measures to be taken to achieve the abolition of priority need. This statement must include a target date for abolition of no later than the end of 2012 and set interim objectives towards the achievement of this target. This section came into force on 30 January 2004.

Section 4 gives local authorities a discretionary power, rather than the current duty, to investigate whether a household is intentionally homeless. This section is not yet in force.

Section 5 and section 6 change the provision given to intentionally homeless households. When these sections come into force, local authorities will be under a duty to grant a short Scottish Secure Tenancy (SST) with housing support to these households. Where this short SST remains in place for a year then the household will be entitled to a full SST. If the short SST fails then the local authority will continue to have a duty to provide accommodation and support, but not to provide a tenancy. However where the applicant is intentionally homeless but also subject to an ASBO or has been evicted for anti-social behaviour in the last 3 years, the local authority is not required to grant a short SST with support but must still provide non-tenancy accommodation. These sections are not yet in force.

Section 7 provides that accommodation provided for asylum seekers under the Immigration and Asylum Act 1999 (i.e. NASS accommodation) does not constitute accommodation of the applicants' own choice so does not establish a local connection. This section came into force on 30 January 2004.

Section 8 gives Ministers a flexible power to modify the application of the local connection provisions of the 1987 Act. This power can be exercised in a variety of ways – local connection can be suspended altogether, and reactivated again or it can be applied differently between certain local authorities or for certain categories of applicant. The Bill requires that Ministers consult on and make a statement setting out the circumstances in which, and the criteria by reference to which, the power is to be exercised. This section is not yet in force.

Section 9 gives Ministers the powers to specify accommodation that is NOT suitable as interim accommodation. This section came into force on 30 January 2004. An Order laid under this section specifying unsuitable temporary accommodation and the exceptional circumstances in which it may be used came into force in December 2004. See chapter 9 for more details of LAs' duties under this Order.

Section 10 amends various parts of the 1987 Act to replace references to domestic "violence" with references to domestic "abuse". This enables consistency with the wording in section 25 and extends the references to include behaviour other than physical violence. This section came into force on 30 January 2004.

Section 11 requires landlords to notify the relevant local authority when they raise repossession proceeding. This section is not yet in force.

Section 12 requires that sheriffs should consider reasonableness in repossession proceedings where rent arrears are due to a delay or failure in Housing Benefit. This section came into force in July 2004.

Annex B

Summary of contacts referred to in the code

ANNEX B – SUMMARY OF CONTACTS REFERRED TO IN THE CODE

Paragraph 2.40: social care advisor for the Scottish Prison Service;
Tony McNulty, Social Care Adviser, Scottish Prison Service, Calton House,
5 Redheughs Rigg, EH12 9HW

Paragraph 2.51: Veterans Agency: 0800 169 2277 (free helpline)
e-mail help@veteransagency.gsi.gov.uk
website <http://www.veteransagency.mod.uk>
SSAFA Forces Help provide housing advice: tel 020 7403 8783

Paragraph 2.74: Mortgage to rent team at Communities Scotland:
tel 0131 479 5188 or e-mail mortgagetorent@communitiesscotland.gov.uk

Paragraph 2.87 – Scottish Social Networks Forum Co-ordinator at Rock Trust – Lesley Stenhouse
on 0131 557 4059 (switchboard) 0131 524 9869 (direct) 07977 987 308 (mobile) or
email lesley.stenhouse@rocktrust.org

Paragraph 2.90 – National furniture co-ordinator – Lindsay Chalmers tel: 07980 895182
or e-mail: lindsay@crns.org.uk or see website <http://www.morethanfurniture.org.uk>

Paragraph 2.91 – contact the National Rent Deposit Forum's Development officer (Scotland)
at scotland@nrdf.org.uk or see website <http://www.nrdf.org.uk>.

Paragraph 2.94 contact the Scottish Homelessness and Employability Network at SHEN
tel 0131 226 4383 or see website <http://www.shen-scotland.org>.

Paragraph 3.19 contact the Scottish Housing Best Value Network at Research & Development
Co-ordinator, SHBVN, School of the Built Environment, Heriot-Watt University, Riccarton,
Edinburgh, EH14 4AS. Telephone: 0131 451 4603

Or see website at <http://www.sbe.hw.ac.uk/shbvn/index.htm>

Appendix 13C

Paragraph 5 – NASS outreach regional team:

Colin Mitchell

Outreach Team Leader

Festival Court

200 Brand Street

Glasgow G51 1DH

tel: 0141 419 1321

email: colin.mitchell@homeoffice.gsi.gov.uk

Annex C

Summary of links to documents and organisations referred to in the code

ANNEX C – SUMMARY OF LINKS TO DOCUMENTS AND ORGANISATIONS

Paragraph 1.2 – the final report of the Homelessness Task Force is at <http://www.scotland.gov.uk/library3/society/htff-00.asp>

Paragraph 1.2 – the latest annual report of the Homelessness Monitoring Group is at <http://www.scotland.gov.uk/library5/housing/hhp-00.asp>

Paragraph 1.11 and 3.19 – Communities Scotland Guide to Inspections and Performance Standards is at <http://www.inspection.communitiesscotland.gov.uk>

Paragraphs 2.4 and 10.3 – link to statutory Guidance on national standards for advice and information

Paragraphs 2.4 and 4.12 – link to HomePoint national standards for housing advice and information is at <http://www.homepoint.communitiesscotland.gov.uk/homepoint/>

Paragraph 2.39 – CIH guidance on housing sex offenders is at <http://www.cih.org/publications/pub512.htm>

Paragraph 2.42 – "Supporting Young People Leaving Care in Scotland: Regulations and Guidance on Services for Young People Looked After by Local Authorities" is at <http://www.scotland.gov.uk/library5/education/syplc-00.asp>

Paragraph 2.49 – Guidance for local authorities on housing for ex-service personnel is not on the Internet so please contact the Homelessness Team, Scottish Executive for a hard copy.

Paragraph 2.52 – Communities Scotland thematic study on evictions is at <http://www.communitiesscotland.gov.uk/web/FILES/completethematic.pdf>

Paragraph 2.59 – Guidance to Anti-Social Behaviour Act 2004 is at <http://www.scotland.gov.uk/library5/social/gaba-00.asp>

Paragraph 2.68 – Guidance on Scottish Secure and Short Scottish Secure Tenancies (SEDD circular 6/2002) is at <http://www.scottishexecutive.gov.uk/library5/housing/ssss-00.asp>

Paragraph 2.70 – Guidance on closure notices is at <http://www.scotland.gov.uk/library5/social/asbcp-00.asp>

Paragraph 2.75 – Explanatory booklet on Mortgage Rights (Scotland) Act 2001 is at <http://www.scotland.gov.uk/library5/development/mrsa-00.asp>

Paragraph 2.95 – Further information on health and homelessness issues can be accessed at www.show.scot.nhs.uk/sehd/healthandhomelessness/

Paragraph 3.9 – Link to information on training on Data Protection Act by CIH is at http://www.cih.org/home_scotland/em005.htm

Paragraph 3.19 - link to Care Commission National Care Standards is at <http://www.carecommission.com/>

Paragraph 4.48 - link to Scottish Executive Guidance on Single Shared Assessment of Community Care Needs, 2001; Circular No:CCD 8/2001 is at <http://www.show.scot.nhs.uk/sehd/publications/DC20011129CCD8single.pdf>

Paragraph 9.62 - link to statutory guidance on the "Housing (Scotland) Act 2001 - Housing Lists and Allocations" issued in February 2002 is at <http://www.scotland.gov.uk/library3/housing/hlaa-00.asp>

Paragraph 9.66 - link to statutory guidance on section 5 referrals from LA to RSLs and what constitutes a good reason for refusal is at <http://www.scotland.gov.uk/library5/housing/homelessupdate.pdf>

Paragraph 9.68 - link to Communities Scotland's Guidance Note on Homelessness Arbitration (CSGN2002/12) can be found on this page: <http://www.communitiesscotland.gov.uk/Web/Site/Publications/Publications.asp>

Paragraph 9.72 - information on model protocol between RSLs and LAs can be found at <http://www.sfha.co.uk/sfha.asp?pg=4#>

Appendix 13B guidance from ODPM on new categories of humanitarian protection and discretionary leave. http://www.odpm.gov.uk/stellent/groups/odpm_housing/documents/downloadable/odpm_house_609335.pdf

Appendix 13E: Link to Annex 22 of English Code of Guidance and test for habitual residence: http://www.odpm.gov.uk/stellent/groups/odpm_homelessness/documents/page/odpm_home_601514.pd

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