

*These notes refer to the Homelessness Act 2002 (c.7)
which received Royal Assent on 26th February 2002*

HOMELESSNESS ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

13. With the exception of *sections 1 to 4*, which are free-standing provisions, all sections and Schedules in the Act amend or repeal existing provisions on homelessness and the allocation of housing accommodation contained in Parts 6 and 7 of the 1996 Act (and, in one case, section 106 of the Housing Act 1985).

Homelessness

14. *Section 1* imposes a duty on housing authorities to carry out a homelessness review and formulate and publish a homelessness strategy based on the result of the review.
15. A homelessness strategy must be published at least every five years. The first strategy must be published within one year of commencement of the section. The social services authority must give such assistance as the housing authority may reasonably require in relation both to the carrying out of the reviews and the formulating and publishing of the strategy. Housing and social services authorities must take into account the homelessness strategies in carrying out their functions.
16. *Section 2* defines "homelessness review" as a review by the housing authority of:
- the levels, and likely future levels, of homelessness in their district;
 - the actions being taken to prevent homelessness, to secure that accommodation is or will be available and to provide advice, information or assistance to those who are homeless or most at risk of becoming homeless; and
 - the resources available to the authority and other bodies for carrying out the above actions.
17. It also sets out the places where the results of the review must be made available for public inspection and provides for members of the public to have a copy of those results (on payment of a reasonable fee if the housing authority requires).
18. *Section 3* defines "homelessness strategy" by setting out the matters it must cover, namely:
- the prevention of homelessness;
 - securing that sufficient accommodation is available for those who are homeless, or most at risk of becoming homeless; and
 - the provision of satisfactory services to such people.
19. A strategy may include specific objectives and activities to be carried out by:
- the housing and social services authorities;
 - other appropriate public authorities; or

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- appropriate voluntary organisations including registered social landlords and homelessness charities.
20. In formulating its strategy, a housing authority must consider the ways in which the objectives of the strategy can be achieved by the various authorities and other bodies and organisations working together. It must also keep its strategy under review and may modify it. However, before publishing a strategy, or any modification to it, an authority must consult, as it considers appropriate, the authorities and organisations mentioned in the previous paragraph. Again a housing authority must make available for inspection, and provide - on request and on payment of a reasonable fee - copies of documents published under this section.
 21. *Section 5* provides authorities with a power to secure accommodation for applicants who are not in priority need and are not homeless intentionally, where previously they had no power to do so.
 22. Equally where an applicant is in similar circumstances, but only threatened with homelessness, an authority may take reasonable steps to secure that he continues to be housed in his current accommodation.
 23. *Section 6* amends the provisions of Part 7 of the 1996 Act which govern the period for which housing authorities are under a duty to secure accommodation for applicants who are unintentionally homeless and in priority need.
 24. Previously, section 193(3) of the 1996 Act provided that the duty was owed for a two year period and section 194 enabled (but did not oblige) housing authorities to continue to secure accommodation after the end of that period.
 25. *Section 6(1)* removes the two year time limit by substituting a new duty to secure accommodation until any of the circumstances specified in section 193 of the 1996 Act cause the duty to cease. In consequence of the abolition of the two year period, the power in section 194 is repealed by *section 6(3)*. Transitional provisions in *subsections (2) and (4)* provide that people accommodated under either section 193 or 194 immediately prior to commencement of this section are owed the new duty.
 26. *Section 7* amends section 193(6) to (8) of the 1996 Act which set out the events which bring the main homelessness duty to an end. *Subsection (2)* provides additional circumstances under which that duty ceases, namely where an applicant accepts an offer of an assured tenancy, which is not an assured shorthold tenancy, from a private landlord.
 27. Section 7(3) replaces section 193(7) of the 1996 Act and sets out further circumstances under which the main duty to secure accommodation ceases. The new provision clarifies the ending of the main homelessness duty where the applicant refuses an offer of suitable accommodation allocated under Part 6. The housing authority has to notify the applicant in writing that the offer is a final offer and that the duty will end if it is refused. It must also notify the applicant of his right to request a review of the suitability of the accommodation.
 28. *Section 7(4)* inserts new subsections before section 193(8) of the 1996 Act. These provide that where accommodation is made available to an applicant by a private landlord as a result of an arrangement between the housing authority and the landlord, the authority's homelessness duty under section 193 can be brought to an end if the applicant accepts an offer of an assured shorthold tenancy. The provisions make clear that an applicant is free to reject such an offer without this affecting the duty owed to him by the authority under section 193. They also provide that the acceptance of such a shorthold tenancy is not effective unless the tenancy is for a fixed term and the applicant confirms in writing that he understands the effect of accepting the offer (ie that it will bring to an end the section 193 homelessness duty owed to him by the authority).

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29. In both the case of a final offer of accommodation under Part 6 and the offer of an assured shorthold tenancy secured by the housing authority, the offer is not effective unless the authority are satisfied that the accommodation is suitable for the applicant and it would be reasonable for him to accept it.
30. *Section 8* makes provision in respect of reviews as to suitability of accommodation and came into force on Royal Assent on 26th February 2002. *Subsection (1)* amends section 193(5) and (7)(a) of the 1996 Act to provide that the main homelessness duty cannot be brought to an end unless the applicant has been informed of his right to request a review of the suitability of the accommodation offered.
31. *Subsection (2)* amends section 202 of the 1996 Act (right to request a review of decisions) and provides that an applicant offered accommodation under section 193(5) (temporary accommodation to carry out the main homelessness duty) or 193 (7) (an offer of an allocation under Part 6 that would bring the main homelessness duty to an end) may request a review of the suitability of that accommodation whether or not he has accepted the offer.
32. *Section 9* repeals section 197 of the 1996 Act which, in cases where other suitable accommodation was available for occupation by an applicant, replaced any duty for the housing authority to secure accommodation by a duty simply to provide advice and assistance to enable the applicant to obtain accommodation himself. In consequence, all applicants accepted by authorities as eligible, unintentionally homeless and having a priority need will be owed the stronger duties in section 193 (homelessness) or section 195 (threatened with homelessness). *Section 9* also provides that a person owed the section 197 duty immediately before commencement of the section is owed the section 193 duty or the section 195 duty, as the case may be, on commencement.
33. *Section 10* deals with persons claiming to be homeless who are at risk of violence. It amends section 177 of the 1996 Act to provide that, for the purposes of determining homelessness, it is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to violence or threats of violence against him or someone with whom he usually resides or might reasonably be expected to reside. Previously the provision applied only to cases of domestic violence. A consequential amendment is made to the conditions in section 198 of the 1996 Act for the referral of an applicant from one housing authority to another.
34. *Section 11* inserts a new section 204A of the 1996 Act. Section 204 gives a homeless applicant the right to appeal to the county court against a housing authority's decision on his case on a review under section 202. Under section 204(4) a housing authority has a power to accommodate an applicant pending his appeal where it previously had a duty to accommodate him under sections 188, 190 or 200. New section 204A gives applicants, among other rights, the right to appeal to the county court against a decision by a housing authority not to exercise its power under section 204(4) to accommodate him or to exercise it only for a limited period. If the court quashes that decision, it may order the housing authority to accommodate the applicant for a specified period. However, before doing so, the court must be satisfied that the applicant's ability to pursue his main appeal would be substantially prejudiced if he were not so accommodated.
35. *Section 12* inserts a new section 213A into the 1996 Act. Subsection (2) of section 213A requires housing authorities to have arrangements in place to ensure that the relevant social services authority are made aware of cases where the housing authority are dealing with an application from an applicant whose household includes a child under age 18, and the authority have reason to believe that they may be homeless (or threatened with homelessness) intentionally, or may be ineligible for housing assistance. The housing authority would also have to inform the social services department of the decision taken on the homelessness application. Subsection (3) places a requirement on unitary authorities to have similar arrangements for the referral of the facts of such cases by the housing department to the social services department.

36. Subsection (5) of section 213A also places a new duty on the housing authority to provide advice and assistance to the social services authority, where the latter are aware of a decision by the housing authority that a household that includes a child under 18 is unintentionally homeless (or threatened with homelessness) or ineligible for housing assistance, and the social services authority ask for assistance in the exercise of their functions under Part 3 of the Children Act 1989. Subsection (6) places a requirement on unitary authorities to have similar arrangements to ensure that the housing department provides advice and assistance to the social services department on request.

Allocations under Part 6 of the Housing Act 1996

37. *Section 13* amends section 159 of the 1996 Act (allocation of housing accommodation) to provide that an allocation of accommodation to an existing tenant falls within Part 6 of the 1996 Act where the allocation involves a transfer of accommodation made in response to an application by the transferee. All other allocations made to existing tenants remain outside Part 6.
38. *Section 14* provides that authorities are no longer required to maintain a housing register (and, in consequence, sections 161 to 165 of the 1996 Act are repealed).
39. *Section 14* also inserts a new section 160A into the 1996 Act. Section 160A concerns eligibility for an allocation of accommodation (and replaces section 161). Any person is eligible unless they are subject to immigration control, or they are fall within a class of persons from abroad prescribed by the Secretary of State as ineligible. If they are a person subject to immigration control they are eligible if they fall within a class of persons prescribed by the Secretary of State as eligible.
40. Section 160A also provides that housing authorities may treat an applicant as ineligible for accommodation if he or a member of his household has been guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the authority. Unacceptable behaviour can only be behaviour that would entitle the housing authority to a possession order if the applicant were a secure tenant of the authority.
41. The housing authority must notify the applicant in writing where it decides that he is ineligible, or to be treated as ineligible, giving grounds for their decision. Applicants who consider they should no longer be treated as ineligible by a housing authority may make a fresh application for an allocation.
42. *Section 14* also provides that those who, immediately prior to commencement of the section, were either on the housing register, or had made an application to be put on the housing register which had not been determined, must be treated on commencement as having applied to the housing authority for housing accommodation.
43. *Section 15* substitutes new section 166 (applications for housing accommodation) for that relating to information about the housing register (in consequence of the abolition of the requirement to maintain a register).
44. New section 166(1) concerns the provision of advisory services. Housing authorities must ensure that advice and information is available free to everyone in its district about the right to make applications for housing accommodation. Housing authorities must also ensure that any necessary assistance is available free of charge to those within their district who are likely to have difficulty in making an application.
45. Under new section 166(2) applicants are required to inform applicants of the rights they have under new section 167(4A) (see paragraphs 50 and 51 below). Under new section 166(4) authorities are prohibited from divulging to the public (without his consent) that a person has applied for housing.
46. *Section 16* amends section 167 of the 1996 Act (allocation in accordance with allocation scheme). Section 167(2) is substituted by new provisions that set out revised categories of applicants who must be given reasonable preference in allocations. These are:

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- people who are homeless;
 - people owed certain homelessness duties;
 - people living in unsatisfactory housing conditions (including insanitary or overcrowded housing);
 - people with a particular need to move on medical or welfare grounds; and
 - people with a particular need to move to avoid hardship to themselves or others.
47. New section 167(2) also provides that allocations may be framed so as to give additional preference to particular descriptions of people who fall within the reasonable preference categories and have urgent housing needs.
48. *Section 16(3)* inserts new subsections (2A) to (2D) in section 167 of the 1996 Act to supplement the provisions on the giving of reasonable preference in an allocation scheme.
49. New subsection 167(2A) provides that allocation schemes may include provision for determining priorities as between applicants who fall within the reasonable and additional preference categories. The factors which can be taken into account in determining priorities may include:
- the financial resources available to an applicant to meet his housing costs;
 - any behaviour of a person (or a member of his household) which affects his suitability to be a tenant; or
 - any links which a person has with the local authority district.
50. New subsections 167(2B) to 167(2D) provide that nothing in new section 167(2) requires a scheme to provide for any preference to be given to any person if the housing authority is satisfied that he (or a member of his household) is guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant and that at the time his case is considered he does not deserve to be accorded any preference.
- The test of unacceptable behaviour set out in new section 160A (8) (see paragraph 40 above) applies here.
51. *Section 16(3)* also inserts new section 167(2E) which provides that, subject to new section 167(2), allocation schemes may contain provisions about allocating particular accommodation to:
- persons who make a specific application for that accommodation; or
 - persons of a particular description (whether or not they fall within the reasonable preference categories).
52. *Section 16(4)* inserts a new subsection 167(4A). This requires allocation schemes to be framed to give an applicant the right to request information which will enable him to assess how his application is likely to be treated (for example, whether he will attract reasonable preference), whether appropriate accommodation is likely to be made available and, if so, when. In addition, authorities are required to notify an applicant in writing of any decision that he is not to be given preference because of unacceptable behaviour, and the grounds for the decision.
53. New section 167(4A) also requires allocation schemes to be framed so as to secure that an applicant for housing accommodation has the right to request the authority to inform him of any decision about the facts of his case which have been, or are likely to be, taken into account in considering whether to allocate accommodation to him. Schemes must also be framed so as to secure that applicants have the right to request a review of

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decisions not to give any preference under new section 167(2C), decisions about the facts of their case and decisions to treat as ineligible under section 160A(9)).

Wales

54. Functions under Parts 6 and 7 of the 1996 Act are exercisable, as respect Wales, by the National Assembly for Wales pursuant to the National Assembly for Wales (Transfer of Functions) Order 1999. *Section 17* provides that the reference in that Order to the 1996 Act is treated as a reference to the Act as amended by the Act.
55. *Section 18(1)* gives effect to *Schedule 1* which contains minor and consequential amendments. In particular, there are amendments to sections 193 and 195 of the Housing Act 1996 which require housing authorities to provide applicants owed duties under those sections with a copy of a statement of its policies on offering choice to applicants for an allocation of accommodation under Part 6. There are amendments to sections 190, 192 and 195 which place stronger duties on authorities to provide advice and assistance to applicants who are homeless or threatened with homelessness, but who either do not have priority need or have become homeless or threatened with homelessness intentionally. The amendments set out specific requirements for an assessment of the applicant's housing needs and the provision of information about the likely availability of appropriate accommodation.
56. The Schedule also amends section 204 of the 1996 Act (right of appeal to the county court) by giving the court power to allow an appeal to be brought after the time normally allowed for such an appeal has expired. It also substitutes a new section 209 (which limits the type of tenancies that can be offered to homeless households by a private landlord). It removes the restrictions in that section relating to the granting of assured tenancies where a registered social landlord assists a housing authority discharge its homelessness functions. There are also amendments which consolidate authorities' powers to accommodate certain applicants pending a review by the authority and an appeal to the county court of the decision on the homelessness case. These provide that, pending reviews and appeals, authorities have a discretionary power to accommodate all applicants who have priority need and are homeless. They also clarify that the power to accommodate pending an appeal does not depend on whether the power to accommodate pending the review had been exercised.
57. *Section 20* deals with commencement and other matters. *Subsection (1)* provides for the Act (except section 8 and paragraphs 3 and 7 of Schedule 1) to be brought into force by order. Section 8 and paragraphs 3 and 7 of Schedule 1 came into force on Royal Assent on 26th February 2002. *Subsection (2)* provides the Secretary of State with power to make transitional provisions by statutory instrument. As respects Wales, these powers are exercisable by the National Assembly for Wales.
58. *Subsection (4)* provides that the provisions of the Act do not affect section 216(2) of the 1996 Act (transitional provisions which apply in relation to applications for accommodation or assistance made before commencement of Part 7 of the 1996 Act).
59. *Section 21* provides that the Act extends to England and Wales only. It also applies the legislation to the Isles of Scilly with a power for the Secretary of State to modify the application by order.