

Local Authorities' Duties to the Homeless

Research Paper 94/92

19 July 1994



During his speech to the Conservative Party Conference on 7 October 1993 the Minister for Housing, Inner Cities and Construction, Sir George Young, announced the Government's intention to reform the homelessness legislation (Part III of the *Housing Act 1985*) on the ground that the current provisions give homeless people an advantage over other households in housing need in the allocation of social rented housing. The consultation paper setting out the Government's proposals was issued on 20 January 1994; following consultation, which ended on 18 March 1994, Sir George Young announced the Government's conclusions in a statement to the House on 18 July 1994. This paper updates Library Research Paper 94/65; it gives background to the Government's recent proposals and includes an outline of the outcome of the consultation process. Information on the issue of single homelessness and rough sleepers can be found in Research Paper 94/89.

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CONTENTS

	Page
1	Legislation on homeless 1
	A. History 1
	B. Department of Environment Circular 18/74 1
	C. The Houseing (Homeless Persons) Act 1977 2
	D. Amendments to the Act and Code of Guidance 5
	E. The 1977 Act (as amended) in outline 7
II	The Government Review 1988 12
*III	Trends in homelessness 13
	A. Number of statutory homeless 13
	B. Immediate causes of homelessness 14
	C. Households in temporary accommodation 15
	D. Housebuilding completions 16
	E. Demographic changes 17
IV	Homelessness and housing policy 17
	A. Government initiatives 17
	B. The debate on homelessness policy 19
V	The Government Review 1994 25
	A. Reasons for the review 25
	B. Issues and responses raised by the review 27
	1. References to the 1988 review 27
	2. Evidence of "queue jumping" and "widespread abuse" 28
	3. Calls for reform 32
2	4. The Children Act 1989 and community care 32
	5. Financial implications 33
	C. The proposals and reactions in detail 34
	1. A new duty to provide emergency assistance 34
	2. The extent of the duty to persons needing assistance 36
	3. Discharge of duty towards homeless people 38
	4. Eligibility for assistance 43
	5. Local connection 45
	6. Location of accommodation provided as emergency assistance 46
	7. Priority need 47

8.	Intentionality	47
9.	Persons from abroad	48
10.	Notifications and appeals	48
11.	Allocating local authority properties	49
12.	Allocating housing association properties	51
13.	Joint local authority and housing association waiting lists	51
D.	The outcome of the review	52
VI	Bibliography	56

*Statistics supplied by Bryn Morgan, Social and General Statistics Section

I. Legislation on homelessness

A. History

Local authorities' duties towards homeless people can be traced back to the *Old Poor Law* which was consolidated by the *Elizabethan Poor Law Act 1601*. Under this Act the parish was obliged to accommodate certain paupers who could not support themselves; persons seeking the help of one parish could be exported to another parish if they had a "settlement" there, i.e. an earlier connection such as birth or an apprenticeship. Pressures of the Industrial Revolution led to the replacement of outdoor relief by the workhouse system under the *1834 Poor Law Amendment Act*. This Act was designed to make the poor less eligible for relief and to deter people from becoming homeless. Responsibility for poor relief was transferred from individual parishes to "unions" managed by Boards of Guardians who were elected to represent whole groups of parishes.

After the First World War the workhouse system was gradually dismantled as local authorities took over the duties of the Boards of Guardians. The *National Assistance Act 1948* brought an end to the poor law (s.1) and was intended to herald the dawn of a more humane approach to the problems of vagrancy and homelessness. Section 21 of the 1948 Act placed a limited duty on local authorities to provide both residential and temporary accommodation. Residential accommodation had to be provided for "persons who by reason of age, infirmity or any other circumstances are in need of care and attention which is not otherwise available to them" (s.21(1)(a)); temporary accommodation had to be provided for "persons who are in urgent need thereof, being need arising in circumstances which could not reasonably have been foreseen or in such other circumstances as the authority may in any particular case determine" (s.21(1)(b)). The provision of accommodation under the 1948 Act was made a social services function by the *Local Authority Social Services Act 1970*.

B. Department of Environment Circular 18/74

During the 1960s and early 1970s concern with the problem of homelessness increased and the loose drafting of s.21(1)(b) of the 1948 Act caused difficulties. There was doubt over whether cases of eviction came within the local authority duty and uncertainty over the "temporary" nature of accommodation provided.

Research Paper 94/92

In early 1974 the DOE issued Circular 18/74¹ which urged that primary responsibility for accommodating the homeless should be shifted from social service authorities to housing authorities; the social services role should be restricted to providing supporting services to those in housing difficulties, providing residential accommodation for the elderly and infirm under s.21(1)(a) of the 1948 Act and providing temporary accommodation to deal with sudden largescale emergencies and disasters.

The Circular urged authorities to adopt a wider view of their general duty to consider housing conditions and needs when allocating property. It suggested that where resources were stretched first claim on housing should be given to groups such as families with dependent children living with them or in care; adult families or people living alone who became homeless in an emergency e.g a fire or flood or who were vulnerable owing to old age, disability, pregnancy or other special reasons. The Circular advised that the cause of homelessness should be disregarded. However, as the Circular could not transfer the legislative duty to aid the homeless away from social services some families found themselves caught between social service departments pointing to the Circular and housing departments pointing to the 1948 Act. Thus the homelessness legislation was in need of overhaul. As David Hoath notes:

"The confusion existing prior to the *Housing (Homeless Persons) Act 1977* stemmed from fundamental uncertainty as to whether homelessness was a problem of social need and therefore the concern of the social services department, or part of the general duty placed on housing authorities under the *Housing Act 1957*."²

In response the Government announced a wide-ranging review of the law relating to the provision of accommodation for the homeless.³

C. The Housing (Homeless Persons) Act 1977

This Act was originally introduced as a Private Members Bill by Stephen Ross, Liberal MP for the Isle of Wight. It received Government support and support from the Conservative Party, although the latter expressed reservations.

¹ DOE Circular 18/74 *Homelessness*

² David Hoath *Homelessness* 1983 p.6

³ HC Deb 10.6.74 c.445

The aim of the Act was to clarify the law concerning local authorities' duties towards the homeless and to impose these duties firmly on housing rather than social service departments; it repealed s.21(1)(b) of the 1948 Act. Stephen Ross described the intentions behind his Bill as follows:

"The need of most homeless people is a permanent solution to their problem which they have been unable to arrange for themselves...What emerged from the responses to the Government's Review [1975] was a unanimous call by the local authority associations and the voluntary movement for a new legislative framework to change the outdated concept that homelessness was a social work problem and to place it clearly in the sphere of housing. That is what my Bill aims to do."⁴

In brief the 1977 Act placed a duty on local housing authorities to secure permanent accommodation for unintentionally homeless people who are in priority need (further detail on the operation of the Act is given later in the paper).

The Bill suffered modifications during its passage, most notably the addition of the concept of "intentionality". Local authorities and the Opposition were concerned about the additional financial burdens of the Act and its effect on traditional allocation policies; the homeless were seen as being brought to the "front of the queue" ahead of deserving waiting list applicants. Under this pressure the concept of "intentional homelessness" was developed in order to guard against "scroungers" and "rent dodgers".⁵ Local authorities were given no duty to permanently rehouse people who were deemed to have become homeless intentionally. This provision was added at the Report Stage of the Bill.⁶

There was also concern that homeless people without a local connection with an area would be allocated housing ahead of local people on the waiting list. Thus the Bill was amended at Report Stage to enable councils to refer applicants to another local authority in certain limited circumstances. The Act came into force in England and Wales on 1 December 1977 and in Scotland on 1 April 1978. The Northern Ireland Housing Executive took over responsibility for housing homeless households under the *Housing (Northern Ireland) Order 1988*.

Initially housing pressure groups were concerned that these amendments would considerably weaken the force of the Act; however, only a small proportion of applicants have been deemed intentionally homeless, although proportions vary considerably between authorities,

⁴ HC Deb 18.2.77 cc 898-9

⁵ HC Deb 18.2.87 c.905 and c.972

⁶ HC Deb 8.7.77 cc 1607-1673

Research Paper 94/92

and few applicants are the subject of referrals to other areas. The Act did not provide for an appeals procedure but judicial review of local authorities' decisions has resulted in the development of a considerable body of case law. The Act was designed to be implemented with reference to a Code of Guidance issued by the Secretary of State. The first Code of Guidance was issued in 1978.

The Government made a commitment to review the operation of the 1977 Act. On 13 May 1982 Michael Heseltine, then Secretary of State for the Environment, announced that there would be no major changes arising from the review:⁷

Housing (Homeless Persons) Act 1977

Mr. Durant asked the Secretary of State for the Environment when he will be announcing the Outcome Of the review of the operation of the Housing (Homeless Persons) Act 1977 in England and Wales.

Mr. Heseltine: The review has now been completed. After full and careful consideration the Government have decided that there should be no amendment of the primary legislation at this stage. However, they recognise the concern which has been expressed about some aspects of the operation of the Act. They are satisfied that these can be largely met by the following measures which have been, or will be taken:

(a) To ensure that authorities are clear about the extent of their duties, the ways in which they may fulfil them, and the very wide discretion they have to deal with abuse, the Government intend to tighten the code of guidance. We shall consult those principally concerned about the amendments which will cover more fully such matters as intentional homelessness.

(b) The problems associated with authorities' responsibilities towards council tenants who become homeless through rent arrears will be alleviated by the proposed new housing benefit scheme which will in most cases cover the full rent and rate liability in respect of the 1-6 million or so tenants in England and Wales in receipt of supplementary benefit. The present powers of benefit officers to make a deduction from supplement benefit towards past arrears will continue under the new arrangements.

(c) As far as the financial burden on authorities is concerned, housing management costs arising from housing applications from the homeless which may be debited to an authority's housing revenue account are reckonable for housing subsidy. In addition, net expenditure falling outside the HRA is eligible for rate support grant. On capital account, because the operation of the Act imposes greater cost burdens on some authorities than on others, and in order to reflect more accurately the demands placed on authorities by the homeless, we have agreed with the local authority associations in England

a revised homelessness indicator for the 1982-83 HIP allocations.

(d) A number of measures we have initiated to increase the availability of short-term rented accommodation and of low-cost home-ownership opportunities, as well as our substantially increased expenditure on hostel accommodation, will be of benefit to those who are in non-priority groups for the purposes of the homeless persons legislation including single homeless people. We do not propose to extend the priority groups.

(e) Recent decisions in the Court of Appeal and the House of Lords have established that there are safeguards in the Act against abuse by those who are intentionally homeless whether they are already in this country or whether they come from abroad. It is therefore important that immigrants should make proper arrangements for their accommodation before they arrive in this country. To stress this we have accordingly revised the texts of leaflets issued by our embassies overseas to prospective immigrants. There have also been changes in the immigration rules since the 1977 Act which have the general effect of making it necessary for those who wish to obtain admission of their dependants to the United Kingdom for settlement to be able to demonstrate that they can accommodate them without recourse to public funds in accommodation that they own or occupy themselves.

In addition to the measures outlined here, we shall continue to monitor the Act's operation.

⁷ HC Deb 13.5.82 cc 317-8W

D. Amendments to the Act and Code of Guidance

The 1977 Act was consolidated into Part III of the *Housing Act 1985*. The *Housing and Planning Act 1986* amended the definition of homelessness in response to the House of Lord's decision in the case of *R v LB Hillingdon ex parte Pulhofer* (1985) 3 ALL E.R. 734, C.A; (1986) 1 ALL E.R. 467, HL.

This case involved a married couple and two young children who were occupying one room in a guest house; they sought help from the local authority under Part III of the 1985 Act alleging that they were homeless although they were occupying a room. The Court of Appeal reversed the original decision of the Divisional Court in favour of the Pulhofers, declaring that accommodation for the purposes of s.58 of the Act did not mean appropriate or suitable accommodation. This view was upheld by the House of Lords; Lord Brightman stated that issues of the appropriateness or reasonableness of the applicants' current accommodation were irrelevant. Moreover Lord Brightman was "troubled at the prolific use of judicial review" to challenge local authority decisions.⁸

Housing pressure groups were concerned that this judgement would restrict the effectiveness of the homelessness legislation and, in particular, that local authorities would discharge their homelessness duties by placing families in bed and breakfast accommodation on an indefinite basis. The House of Lords amended the *Housing and Planning Bill 1985/86* against Government advice that action was premature.⁹ The amendment was accepted by the House of Commons.¹⁰ Its supporters stressed that the intention was to restore the law to what it had been considered to be before the Pulhofer judgement. The amendment clarified that a person can not be treated as having accommodation unless it is accommodation which is reasonable for him to continue to occupy in relation to the general housing circumstances prevailing in the district of the local authority to which he has applied (ss58(2A)&(2B)). It also clarified that accommodation provided by the local authority must be "suitable" with regard to the responsibilities of councils for overcrowding and unfitness legislation (s.69).

The question of what amounts to "accommodation which is reasonable to continue to occupy" has now been tested in several court cases. The most notable of these cases established that violence or threats of violence from someone living outside an applicant's home could render the accommodation not reasonable to occupy.¹¹

⁸ see *Journal of Social Welfare Law*, September 1986 pp 305-310 for more detail on the Pulhofer case

⁹ HL Deb 28.10.86 cc 647-654

¹⁰ HC Deb 3.11.86 cc 739-746

¹¹ *R v Broxbourne BC ex parte Willmoth* (1989) 22 HLR 118, CA

Research Paper 94/92

The most recent amendments to the homelessness legislation were included in the *Asylum and Immigration Appeals Act 1993* which received Royal Assent on 2 July 1993. Sections 4 and 5 and Schedule 1 to this Act modified the duties of housing authorities towards homeless asylum seekers and their dependents; these provisions came into effect on 26 July 1993.¹²

The 1978 Code of Guidance was revised in 1983 with minor changes; it was substantially revised in a third edition published in 1991. This edition of the Code places more emphasis on the quality of service which authorities should provide to homeless applicants; it sets specific standards which are expected of authorities when dealing with homeless people. The new Code also reflects the body of homelessness case law which has built up over the years. Supplementary guidance to the Code has now been issued to take account of the changes made by the *Asylum and Immigration Appeals Act 1993* and the Court of Appeal's judgement in *R v Secretary of State for Environment ex parte Tower Hamlets* (1993) CA . In this case the Court of Appeal upheld Tower Hamlet's policy of checking the immigration status of homeless applicants and declared paragraph 4.11 of the Code to be wrong in law.

Another significant development in the interpretation of the homelessness legislation has been the enactment of the *Children Act 1989*. It has been argued that this Act may provide a means by which an intentionally homeless family can gain local authority housing. Section 20(1) places a duty on social service departments to provide accommodation for children in need within their areas who require accommodation as a result of there being no person who has parental responsibility for them; who are lost or abandoned; or where the person caring for them is prevented from providing suitable accommodation or care. While s.20(1) only refers to the accommodation of children it should be read in conjunction with sections 23 and 17 of the Act.

Section 23 defines the various ways in which accommodation may be provided by social services and states "unless it is not reasonably practicable and consistent with the child's welfare the local authority shall make arrangements to enable the child to live with a parent or someone who has parental responsibility for him". Section 17(1) makes it the general duty of every local authority to safeguard and promote the welfare of "children in need" in their areas and to promote the upbringing of such children by their families where this is consistent with their welfare. This can be done by providing a range of appropriate services including "assistance in kind or in exceptional circumstances cash" and thus may involve the provision of or payment for accommodation. It has been suggested that if a social services department interpreting these sections were to provide for children of an intentionally homeless family by separating them from their parents they would be acting in contravention of the spirit of the Act. Section 27 of the 1989 Act imposes a duty on local housing authorities to co-operate with social services in carrying out functions under the Act unless it is incompatible with their own duties and functions. The question of whether an intentional decision can be overridden by duties under the *Children Act* should be settled by the House of Lords later this year when

¹² see Library Research Note 92/85 *Housing for Homeless Asylum Seekers*

it rules on an appeal by Northavon DC against a decision which held that the council was wrong to refuse to help an intentionally homeless household with children.¹³

The *Children Act* was welcomed by agencies working with young homeless people as its provisions were thought to provide greater access for these groups to local authority housing and support services; evidence seems to suggest that this has not happened in practice.¹⁴

E. The 1977 Act (as amended) in outline

When a local authority is approached by an applicant and there is reason to believe that he is homeless the Act obliges the authority to carry out appropriate inquiries into whether the applicant is actually homeless, whether he is in priority need and whether he is intentionally homeless (s.62).

Section 58 sets out the circumstances in which someone is to be regarded as homeless:

- 58.**-(1) A person is homeless if he has no accommodation in England, Wales or Scotland.
- (2) A person shall be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which it is reasonable for that person to reside with him-
- (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or
 - (b) has an express or implied licence to occupy, or in Scotland has a right or permission or an implied right or permission to occupy, or
 - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
- (2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy
- (2B) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for assistance in obtaining accommodation.]
- (3) A person is also homeless if he has accommodation but-
- (a) he cannot secure entry to it, or
 - (b) it is probable that occupation of it will lead to violence from some other person residing in it or to threats of violence from some other person residing in it and likely to carry out the threats, or
 - (c) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.
- (4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

¹³ *Inside Housing* "Lords to settle Northavon test case on Children Act" 25.3.94

¹⁴ see CHAR *The Children Act 1989 - A new agenda for young homeless people?* July 1993

Research Paper 94/92

Even if an applicant is homeless he will only be provided with housing if he is deemed to be in priority need. The priority need categories are set out in s.59:

Priority need for accommodation

59.-(1) The following have a priority need for accommodation-

- (a) a pregnant woman or a person with whom a pregnant woman resides or might reasonably be expected to reside;
- (b) a person with whom dependent children reside or might reasonably be expected to reside;
- (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
- (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.

(2)The Secretary of State may by order made by statutory instrument-

- (a) specify further descriptions of persons as having a priority need for accommodation, and
- (b) amend or repeal any part of subsection (1)

(3)Before making such an order the Secretary of State shall consult such associations representing relevant authorities, and such other persons, as he considers appropriate.

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

As inquiries concerning an applicant's status may take some time, an authority which believes that an applicant may be homeless and in priority need must ensure that accommodation is made available pending the outcome of inquiries (s.63).

A local authority's duties towards the homeless are set out in s.65 of the Act. The responsibilities of the local authority depend on whether or not the person concerned is judged to be in priority need or intentionally homeless:

Duties to persons found to be homeless

65.-(1) This section has effect as regards the duties owed by the local housing authority to an applicant where they are satisfied that he is homeless.

(2)Where they are satisfied that he has a priority need and are not satisfied that he became homeless intentionally, they shall, unless they notify another local housing authority in accordance with section 67 (referral of application on grounds of local connection), secure that accommodation becomes available for his occupation.

(3)Where they are satisfied that he has a priority need but are also satisfied that he became homeless intentionally, they shall-

- (a) secure that accommodation is made available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and
- (b) furnish him with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

(4)Where they are not satisfied that he has a priority need, they shall furnish him with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

Intentional homelessness is defined in s.60:

Becoming homeless intentionally

60.-(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2) A person becomes threatened with homelessness intentionally if he deliberately does or fails to do anything the likely result of which is that he will be forced to leave accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(3) For the purposes of subsection (1) or (2) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

(4) Regard may be had, in determining whether it would have been reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he applied for accommodation or for assistance in obtaining accommodation.

S. 67 provides that an applicant may be referred to another local authority with which there is a local connection, provided that there is no connection with the referring authority. S.61 defines local connection:

Local connection

61.-(1) References in this Part to a person having a local connection with the district of a local housing authority are to his having a connection with that district-

(a) because he is, or in the past was, normally resident in that district, and that residence is or was of his own choice, or

(b) because he is employed in that district, or because of family associations, or because of special circumstances.

(2) For the purposes of this section-

(a) a person is not employed in a district if he is serving in the regular armed forces of the Crown;

(b) residence in a district is not of a person's own choice if he becomes resident in it because he, or a person who might reasonably be expected to reside with him, is serving in the regular armed forces of the Crown.

(3) Residence in a district is not of a person's own choice for the purpose of this section if he, or a person who might reasonably be expected to reside with him, became resident in it because he was detained under the authority of an Act of Parliament.

(4) The Secretary of State may by order specify other circumstances in which-

(a) a person is not to be treated for the purposes of this section as employed in a district, or

(b) residence in a district is not to be treated for those purposes as of a person's own choice.

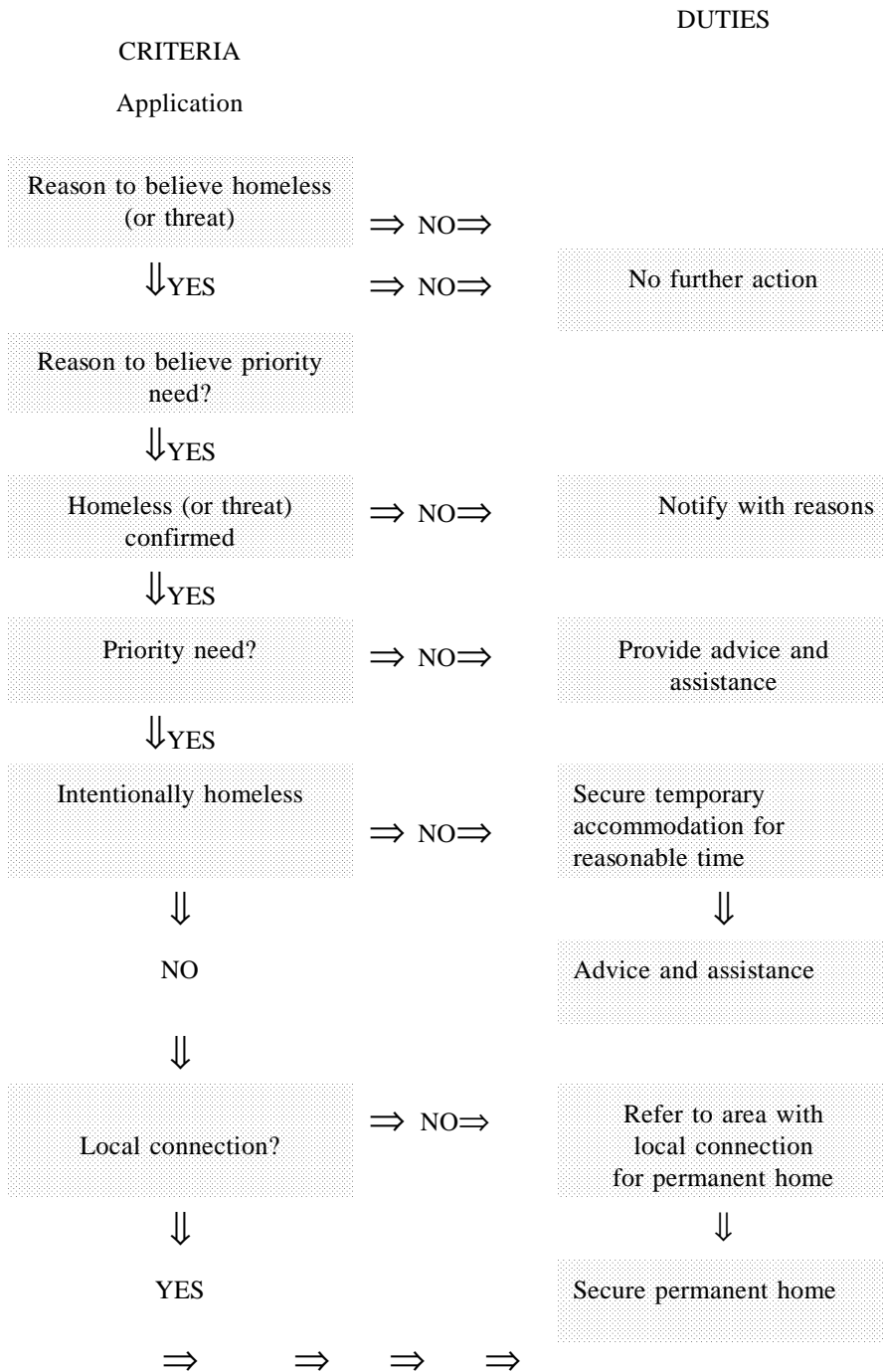
(5) An order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Research Paper 94/92

There is a local authority agreement which defines local connection more precisely¹⁵. This is generally adhered to, although courts have made it clear that it should be interpreted flexibly.

¹⁵ Local Authority Associations *Joint agreement on procedures for referrals of the homeless*, 1977

The diagram below illustrates the criteria which applicants must fulfil and the local authorities' duties at each stage of the application process:¹⁶



A number of studies have been carried out into the operation of the homelessness legislation, most of which have found a wide variation in the way local authorities interpret and discharge their responsibilities to homeless people. These studies are discussed in detail in Library Background Paper No 270.¹⁷

¹⁶ DOE *The Government's Review of the Homelessness Legislation* 1989 p.3

¹⁷ *Homelessness* 14.5.91

II. The Government Review 1988

During the summer of 1988 it became clear that the Government was undertaking an internal review of the homelessness legislation. The results of this review were published in 1989.¹⁸ Initially there was concern amongst housing organisations that the Government intended to redefine homelessness as rooflessness and that the local connection provisions would be considerably tightened.¹⁹ In the event, the review concluded that "the legislation has worked reasonably well and should remain in place as a long-stop to help those who through no fault of their own have become homeless."²⁰ Chris Patten, then Secretary of State for the Environment, set out the main conclusions of the review and announced extra funding for homelessness in a Parliamentary Answer:²¹

Mr. Maples: To ask the Secretary of State for the Environment if he has completed his review of the homelessness legislation; and if he will make a statement.

Mr. Chris Patten: We are publishing the full conclusions of our Review of the homelessness legislation today, and copies have been placed in the Library of the House.

Our review has looked at the role and purpose of the homelessness legislation and at its effects. The legislation - now part III of the Housing Act 1985 - was enacted in 1977 as the Housing (Homeless Persons) Act, an all-party measure. Briefly, it requires local housing authorities to find accommodation for people they judge to be homeless according to the criteria specified in the Act.

We believe that the Act remains important, as a "long stop" measure to help people in need who have become homeless through no fault of their own. The present terms of the Act strike a reasonable balance between the interests of the genuinely homeless and others in housing need. We do not intend therefore to change the law, but we have proposals to make it work better.

We have also concluded that local councils remain the right bodies to take the lead responsibility in helping homeless people, and some of them are very good at it. However, it is clear from my Department's research and other reports that there is room for improvement. Some councils need to be much faster processing applications, for example; some need to try harder to keep families out of temporary accommodation like bed and breakfast; and in general all councils ought to aim for a better, more consistent service. I propose to amend the code of guidance (to which councils must have regard) and my Department will shortly put a draft out for consultation.

The pressures of homelessness vary around the country. Statistics are neither as reliable nor as sensitive as I would like. For example, those figures most quoted - the numbers of homeless acceptances - be affected as much by local policy as by real needs. But it is apparent that the problems are concentrated in London and the southeast. I propose to designate those regions as - pressure areas - and to target to them additional resources and help. In particular, we are providing an extra £250 million for these areas over the next two years - £148 million next year, and £102 million in 1991-92 - to help councils and housing associations provide more homes for homeless people. This £250 million is on top of the major increase in the Housing Corporation's programme which will be more than doubled from £815 million this year to £1,736 million in 1992-93. We are reviewing with the Housing Corporation and the National Federation of Housing Associations how this programme can best be distributed to make the maximum impact on housing need, including homelessness.

We must also make the most of the housing we already have, and this means effective management. Councils and housing associations have empty houses they must bring into use and the extra resources will help where necessary. Helping tenants to move, where they want to, is also important especially if this frees vacancies in the pressure areas. I will provide 100 per cent funding and support for a new mobility organisation, formed from the three existing bodies, to provide a better targeted service.

I will continue to encourage the important contribution of the voluntary sector and greatly increased grant aid will be available from next year for homelessness projects. We also want to stop people becoming homeless, as well as helping them when they have got to crisis point. Good practical advice can be vital and I want to set up a comprehensive, national service. Urgent discussions will be held with the National Association of Citizens' Advice Bureaux and other voluntary bodies.

There is concern - which we share - about proper protection and help for young people who leave home and come to live in our inner cities. This affects the responsibilities of a number of Departments, which are reviewing at present the way their policies work together. The Government will make further announcements about this soon.

¹⁸ DOE *The Government's Review of the Homelessness Legislation* November 1989

¹⁹ *Roof* "Rubbishing the Act" Nov/Dec 1988

²⁰ DOE 1989 p.21

²¹ HC Deb 15.11.89 cc 243-44W

We believe it is essential to make this concentrated attack on the problems of homelessness, but these must not be regarded as separate issues, outside the scope of housing policies in general. We cannot just try to treat symptoms, when causes lie deeper. The real and long-term remedies

are to be found in effective housing strategy, based on the contributions of the private and the public sectors, on the harnessing of the market to deliver opportunities and choice, on the targeting of resources to meet needs and on the efficient management of the stock. That is the strategy of the Government and we shall pursue it vigorously for the benefit of the community and those who are homeless or in need.

There is concern amongst some housing commentators that after having received a clear endorsement from this relatively recent review the homelessness legislation should once again be subject to scrutiny and possible reform.²²

III. Trends in homelessness

A. Number of statutory homeless

Until very recently the number of households accepted as statutorily homeless by local authorities had increased steadily since 1978; the last seven quarters have seen successive reductions in the number of acceptances in England. Acceptances in the December quarter of 1993 saw a 21 per cent reduction on the peak of quarterly acceptances which was reached in March 1992 (38,150). Sir George Young has hailed this trend as "continuing proof of the effectiveness of the policies to increase the supply of affordable housing that the Government has been developing for a number of years".²³

Some commentators, however, feel the reduction in acceptances reflects a hardening of local authorities' attitudes when interpreting the legislation in order to save money. A recent survey by Shelter found that 57 per cent of responding inner London councils and 42 per cent of metropolitan districts admitted that tougher policies may have deterred homeless people.²⁴ Councils also thought the growth in housing association homes and reduction in mortgage repossessions were important factors. Figures on the number of homeless acceptances since 1980 are set out in the table below:

²² see for example *Inside Housing* "Singled out for unfair treatment" 15.10.93

²³ DOE Press Release *Sir George Young pleased by sustained fall in homelessness figures* 15.3.94

²⁴ Shelter *Homelessness in the 1990s* 1994

Local Authority homelessness acceptances by country: 1980-93

	England (households)	Wales (households)	Scotland (households)	Great Britain (households)
1980	62,290	5,446	8,105	75,841
1981	70,010	5,462	8,149	83,621
1982	67,000	5,611	9,303	81,914
1983	78,240	5,008	8,919	92,167
1984	83,550	4,999	9,727	98,276
1985	93,980	5,371	12,406	111,757
1986	103,560	5,965	13,349	122,874
1987	112,440	5,683	12,637	130,760
1988	117,500	6,818	12,601	136,919
1989	126,680	7,794	14,391	148,865
1990	145,800	8,670	15,056	169,526
1991	149,670	9,813	15,688	175,171
1992	148,250	10,270	17,575	176,095
1993	139,790	10,879

Notes: figures include intentionally homeless found temporary accommodation pending enquiries

Sources: DoE, Welsh Office, Scottish Office

These figures exclude homeless people who do not qualify for assistance e.g because they are not in priority need, and "hidden homelessness" i.e people living temporarily with relatives or friends.

B. Immediate causes of homelessness

The main reasons given by applicants as the immediate cause of their homelessness have remained remarkably consistent over the years. The breakdown of relationships with parents, relatives or friends accounts for the highest proportion of requests for assistance; the next most important factor is the breakdown of relationships with partners. Mortgage default is two to three times more common than rent arrears as a reported reason for homelessness and its importance has risen recently. The table below gives a breakdown of the reasons given for the loss of settled accommodation by households accepted for permanent rehousing in 1993:

**Households accepted for permanent rehousing by local authorities:
Reasons for loss of last settled home: 1993: %**

	Greater London	Other Metropolitan Districts	Non- Metropolitan Districts	England
Parents no longer able/willing to accommodate	26	26	23	24
Other relatives or friends no longer able/willing to accommodate	22	13	11	14
Breakdown of relationship with partner:				
- violent	12	17	12	13
- non-violent	3	7	7	6
Mortgage arrears (repossession or other loss of home)	6	6	12	8
Rent arrears	3	2	1	2
Other reasons for loss of rented or tied accommodation	15	12	23	17
From an institution/newly formed household/split household/refuge	8	5	3	5
Other	14	13	8	11

Sources: DoE Statistical Bulletin 15/3/94

C. Households in temporary accommodation

The number of households placed in temporary accommodation at the end of December 1993 (54,010) had fallen by 5 per cent since the end of September 1993 and by 14 per cent since December 1992.²⁵ The use of bed and breakfast accommodation has been reduced by 63 per cent from its peak level in 1991. Figures on households in temporary accommodation in England are set out in the table below:

²⁵ DOE Information Bulletin 178, 15.3.94

**Homeless households in temporary accommodation:
England: 1980-93**

	Bed and Breakfast	Hostels (a)	Other (b)	Total
1980	1,330	3,380	-	4,170
1981	1,520	3,320	-	4,840
1982	1,640	3,500	4,200	9,340
1983	2,700	3,400	3,740	9,840
1984	3,670	3,990	4,640	12,300
1985	5,360	4,730	5,830	15,920
1986	8,990	4,610	7,190	20,790
1987	10,370	5,150	9,240	24,760
1988	10,970	6,240	12,890	30,100
1989	11,480	8,020	18,400	37,900
1990	11,130	9,010	25,030	45,170
1991	12,120	10,070	37,360	59,820
1992	7,630	10,840	44,600	62,740
1993	5,000	10,290	38,720	54,010

Notes: (a) includes women's refuges
(b) excluding "homeless at home"

Sources: *DoE Statistical Bulletin 15/4/94 and earlier issues*

D. Housebuilding completions

Research into the underlying causes of homelessness has tended to identify the reduction in council house building since 1979 as one of the main contributory factors.²⁶ The table below compares housebuilding completions in 1979 with completions in 1993:

²⁶ for example, John Greve *Homelessness in Britain* February 1990

Housebuilding: Permanent Dwellings Completed: England: 1979 and 1993

	1979	1993 (a)
Local Authority	66,724	1,235
New Towns	7,142	-
Housing Associations	16,275	29,578
Government Departments	924	-
Private	118,392	114,848
Total	209,457	145,661

Notes: (a) Provisional

*sources: Housing and Construction Statistics: Great Britain:
1979-89 and December Quarter 1993 Part 1*

E. Demographic changes

During the period in which social housing construction has been reduced, demographic and social changes have led to an increased rate of household formation (1.8 million extra households were created between 1981 and 1991). The Audit Commission has concluded that it is not easy to establish close correlations between recent increases in homelessness and demographic trends; however, its 1989 report noted "it seems likely that the growth [*in homelessness*] has been influenced by growing numbers of people in their 20s - the time at which most new households are formed."²⁷

III. Trends in homelessness

A. Government initiatives

The Government's response to increasing numbers of homeless acceptances by local authorities throughout the 1980s was to announce a short term initiative in autumn 1989 aimed at reducing local authorities' dependence on the use of bed and breakfast accommodation as temporary housing in the "pressure areas" of London and the South-East

²⁷ Audit Commission *Housing the Homeless: The Local Authority Role* 1989 para 37

(see Chris Patten's statement on page 11). Under this initiative £309m was made available over 1990/91 and 1991/92 to local authorities for schemes to bring empty properties back into use and for cash incentive schemes which free public sector property by helping existing tenants to move into the private sector. Of these extra resources £236m went to local authorities as supplementary credit approvals and the remaining £73m went to housing associations via the Housing Corporation. The DOE's 1992 Annual Report noted that these schemes "deliver new lettings at a much lower cost than new construction".²⁸

The Government's medium term strategy for dealing with statutory homelessness was outlined as follows in the DOE's 1991 Annual Report:²⁹

7.45 For the medium term, the increase in public expenditure provision for development of new subsidised rented housing by housing associations, together with the other measures to improve supply of rented housing including deregulation of the private rented sector and cash incentives to encourage better-off tenants to leave subsidised housing, are all designed to help cater for demand from households applying as homeless, and in particular to limit the need for them to spend extended periods in temporary accommodation. While these measures take effect, the Government has taken more immediate action to assist with meeting the needs of homeless people in those areas where they are not at present satisfactorily met, in particular by making better use of the existing social rented housing stock.

Current Government measures aimed at bringing empty public and private sector stock back into use are set out in the following Parliamentary Answer:³⁰

17.Mr. Booth: To ask the Secretary of State for the Environment if he will make a statement about unused public and private sector housing.

Sir George Young: The Government's aim is to bring a decent home within the reach of every family. To do this, it is important that we make full use of the existing housing stock and help homeless families by bringing empty property back into use.

My right hon. Friend the Chancellor of the Exchequer announced in his autumn statement last November the provision of £627 million additional resources in England in 1992-93 to boost the housing market. £577 million of this, provided through the Housing Corporation, enabled housing associations to buy some 18,000 new, empty or repossessed properties.

In addition, local authorities have been allowed to spend virtually all the capital receipts they accrue between 13 November 1992 and the end of December 1993. This represents a substantial increase in local authorities' spending power and I hope that they will make effective use of the extra receipts, particularly in the areas of renovation and maintenance which

would contribute to bringing back into productive use some of the 74,000 empty local authority flats and houses.

Resources for the estate action and housing action trusts programmes—£356 million and £87 million respectively in 1993-94—will assist in reducing the number of empty units in the larger and more difficult local authority estates.

The Government are keen to stimulate growth in the private rented sector. Deregulation of rents and the availability of shorthold tenancies for new private tenancies has removed one of the constraints which previously inhibited potential landlords. We offer a number of incentives to private individuals and institutions to make underused property available for rent: we are making £25 million available over three years to encourage retailers to let flats over their shops; tax incentives have been introduced to encourage householders to take in lodgers—from April 1992 gross rental income of up to £3,250 per annum has been exempt from income tax, following the success of pilot schemes last year we have expanded the housing associations as managing agents nationwide; and the business expansion scheme has realised about £1.25 billion in new investment, some of which has gone to purchasing empty or repossessed properties for renting.

²⁸ DOE Annual Report 1992 para 7.39

²⁹ DOE Annual Report 1991 para 7.45

³⁰ HC Deb 26.5.93 cc 611-12

Finally, a task force on Government Departments' empty houses has been set up to agree a programme of disposals of the 26,000 empty homes identified which are not needed immediately for operational purposes and to help bring them back into housing use.

On the development of new social housing for rent, Sir George Young recently stated that the Government's manifesto commitment to provide 153,000 new affordable homes over three years to 1994-5 would be exceeded by some 20,000 dwellings.³¹

Earlier this year the Under-Secretary of State for the Environment, Tony Baldry, made the following statement on the impact of the Government's policies on homelessness:³²

All the evidence suggests that our policies are working. The number of households accepted as homeless in 1992 was 2 per cent less than in the previous year, the first fall recorded since the homelessness legislation was introduced in 1977, and the latest figures show that that downward trend is continuing.

There has been a reduction in the number of households accepted as homeless in the previous 12 months for the past six years and the number of households in bed-and-breakfast accommodation has increased dramatically by more than 40 per cent. in the last year.

Lettings, the currency that really matters to those in housing need, were more than 500,000 in social housing in 1992-93, a clear increase on our estimate of 473,000 in 1980. That is a substantial increase, notwithstanding right-to-buy sales. Sometimes Opposition Members like to argue that right-to-buy sales have decreased the housing stock. What is important is the number of lettings and that has increased substantially.

Our objective is to ensure that a decent home is within the reach of every family. Clearly, a considerable part of this debate has been devoted to access to social housing and to the recent consultation paper published by my right hon. Friend. That consultation paper seeks to ensure fair access to subsidised rented housing and measures to prevent homelessness and to increase the supply of affordable housing.

B. The debate on homeless policy

A substantial body of research exists into the underlying causes of homelessness, in the main this research identifies two key factors behind the growth of homelessness in the 1980s and early 1990s: the reduction in the development of new social housing for rent (see p.16 for figures on social housing construction) coupled with the depletion of the existing social housing stock by sales under the right-to-buy.³³ Recent estimates put the number of public sector tenants who have bought their homes since 1979 at over 1.5 million.³⁴

³¹ HC Deb 1.12.93 cc 1032-3W

³² HC Deb 26.1.94 c.386

³³ see, for example, John Greve *Homelessness in Britain*, February 1990

³⁴ HC Deb 1.12.93 c.1019

Research Paper 94/92

A 1992 report by Shelter notes "the key factor which underlies the increase in homelessness is that insufficient accommodation is available at prices or rents which ordinary people can afford".³⁵ Shelter makes reference to the cuts in social rented housing development between 1979 and 1991, sales under the right-to-buy and also the failure of the private rented sector to produce enough affordable lettings to meet the demand for housing from homeless households.³⁶ Research by the Audit Commission in 1989 reached the following conclusions on action needed to deal with homelessness:³⁷

PERMANENT HOUSING

In the long run there is a need for more permanent housing at prices that those who are now homeless can afford. Local authorities can provide some now, by making better use of existing resources. They can:

- increase the proportion of lettings allocated to homeless households where these are held at a low level;
- reduce the period during which properties are kept vacant between lettings;
- ensure that squatted properties and those let to 'unauthorised tenants' are reduced to a minimum;
- create a limited number of additional relets through incentives to tenants in family-sized council properties to buy on the private market or to move to a smaller property.

ACTION BY CENTRAL GOVERNMENT

But all these measures together will still leave a sizeable problem in a few authorities. In those authorities with the severest problems of homelessness, investment is required in homes at prices affordable by the homeless if the gap between the number of eligible applicants and the availability of lettings is to be bridged. This investment need not be channelled through local authorities but, to be effective, it must result in an increase in the number of properties available to local authority housing departments for homeless households. A relatively modest adjustment of priorities could, however, make a major impact on the most socially damaging aspects of the problem.

³⁵ Shelter *Homes cost less than homelessness* 1992 p.13

³⁶ Ibid, pp 11-12

³⁷ Audit Commission *Housing the Homeless: The Local Authority Role* 1989 p.2

The Public Accounts Committee (PAC) considered Government policy on homelessness in 1990 and reported its conclusions in May 1991.³⁸ A summary of the PAC's main conclusions and recommendations is reproduced below:³⁹

On extent and causes of homelessness

- (i) We are gravely concerned that homelessness has more than doubled over the last decade or so and is continuing to rise at a higher rate than before. Our concern is underlined by the fact that the official statistics may well significantly understate the true scale of homelessness, since they are confined to those applying as homeless and accepted as having a priority need, the existing statutory definition can be interpreted differently and inaccurately by the local authorities concerned, and rough sleepers and other groups are excluded (paragraph 10).
- (ii) There is an urgent need for more reliable informants and analysis on levels, distribution and causes of homelessness. Such information is the key to effective and well-targeted action, using resources to best effect. We recommend that the Department should improve and expand their statistical data accordingly, including the specific relevance of the different factors affecting housing supply and demand (paragraph 11).
- (iii) We expect associated research into homelessness to be undertaken urgently against a firm timetable, with appropriate publication of results (paragraph 12).

On Department of the Environment action

- (iv) We note the improvements being made in the Department's arrangements for allocating resources to local authorities for general housing purposes and we support the aim of targeting resources increasingly on authorities with the worst housing problems, including homelessness (paragraph 29).
- (v) We note the measures the Department are now taking to tackle homelessness and we expect them to keep the position under close review and to take further action as necessary, with due urgency (paragraph 30).
- (vi) We regard it as unsatisfactory, however, that the Department have not set clear, quantified targets for the extra homes these substantial expenditure programmes are expected to provide and the impact on the numbers who are homeless. It is not good enough to operate on the basis of a broad aim of getting the numbers down, as this does not constitute effective financial management (paragraph 30).
- (vii) We emphasise once again the importance we attach to setting demanding but attainable targets as a basis for monitoring performance and results, taking necessary action to keep programmes on course, and ensuring proper Parliamentary and public accountability for the economic, efficient and effective use of the substantial resources involved. We expect the Treasury to remind departments generally on these points (paragraphs 30 and 31).
- (viii) We expect the Department to review their homelessness programmes accordingly with a view to setting appropriate targets and timescales. We consider that these, together with the results achieved, should be published in the Department's annual report on their expenditure plans presented to Parliament (paragraph 31).
- (ix) We note the Department's view that cash incentive schemes to encourage council tenants to give up accommodation offer excellent value for money and that they have increased the grants available. It is

³⁸ PAC Twenty-second Report *Homelessness* 23 May 1991, HC 447

³⁹ *Ibid*, pp v-vii

Research Paper 94/92

disappointing, however, that the first schemes did not provide the expected number of properties used to house the homeless, and we expect the Department to monitor this aspect closely as they review the emerging results of the revised arrangements (paragraph 32).

- (x) We note that short-term leasing has made a valuable contribution to avoiding the use of unsatisfactory bed and breakfast accommodation. We expect the Department to watch developments closely under their revised subsidy arrangements to ensure that, whilst maintaining necessary controls over expenditure, short-term leasing remains a viable alternative to bed and breakfast accommodation (paragraph 33).
- (xi) We are surprised to find that so little is known about the availability of the 31,000 government residential properties which stand empty. We expect the Treasury to institute and oversee a programme of urgent action by the relevant departments to establish how far such properties, pending disposal, are being or could be used to house the homeless, particularly those in bed and breakfast accommodation (paragraph 34).
- (xiii) We note the Department have acted to remove uncertainties over the funding arrangements for voluntary bodies and to streamline procedures and that they hope there will be no more problems in future (paragraph 35).

On efforts by local authorities and housing associations

- (xiii) We attach considerable importance to the Department's revised code of guidance in securing a more consistent, systematic and fair approach to dealing with homelessness. We expect the Department to monitor closely the application of the revised code by local authorities (paragraph 48).
- (xiv) We are very concerned about the extensive use of bed and breakfast accommodation which is often very expensive and unsuitable for families, and at a cost of £ 15,000 per family a year is bad value for money. We expect the Department to establish how some authorities in pressure areas are able to tackle their problems whilst making little or no use of such accommodation and to take steps to ensure that any lessons are applied elsewhere (paragraph 49).
- (xv) We note the Treasury's assurances that, within the total resources made available, local authorities are free to tackle homelessness by capital expenditure on building or renovation, rather than incurring heavy recurrent costs on bed and breakfast. But local authorities face difficulties and uncertainties here, and we recommend that the Department should issue revised advice and guidance on what is allowable and the approach they expect to be adopted in making decisions between the options and priorities involved (paragraph 50).
- (xvi) We note the steps being taken by the Department to encourage better management of local authority housing and expect these and other measures to be pressed forward, not only by the Department but by local authorities themselves. We recommend further efforts to establish how some authorities successfully manage their housing stock with very low vacancy rates and to disseminate best practice in these and other areas of housing management. Particular attention should be given to under-occupancy (paragraph 51).
- (xvii) We note that an increasing share of housing associations' new stock programme is now targeted towards schemes for homeless families. We recommend that they should set firm targets for the number of lettings going to the homeless and monitor achievements (paragraph 52).
- (xviii) We expect the Housing Corporation to monitor the effects of the new finance regime on rent levels and review any implications for the grant arrangements (paragraph 52).

The DOE's evidence to the PAC expressed the view that the decline in total rented accommodation had made a smaller contribution to homelessness than might have been expected as since 1980 the actual number of lettings had only reduced from 530,000 to

500,000 a year in the public and private rented sectors. The DOE focused on the rate of growth of single person households and lone parent families as one of the important factors behind increases in homelessness.⁴⁰

In October 1992 the Housing Corporation published research carried out on its behalf into methods of conducting social housing needs assessments.⁴¹ While essentially a critique of previous estimates of housing need, this report concluded that an average of 102,500 new social housing homes are needed in England per year until 2001.⁴² The report discussed the impact of a reduction in new social sector output, maintaining the status quo and increasing output to around 100,00 units per annum in the three scenarios reproduced below:⁴³

- i) the Kleinman and Whitehead basic mechanistic model where required new social sector output during the 1990s is only of the order of 25,000 units pa. Such a scenario would result in a very considerable tightening of the housing system as compared to current conditions and would imply generating additional private sector units within the existing stock as well as large scale reductions in the vacancy level. This would undoubtedly put pressure on prices and more particularly on access, both to private and social sector housing. Waiting lists, homelessness and density of occupation would all increase. Indeed it is not reasonable to imagine that the housing system could work with such low levels of vacancy;
- ii) maintaining the current level of social sector provision, implying perhaps 400,000 to 500,000 additional units in the decade, together with a growing emphasis on using existing private sector stock for shared ownership and other socially assisted transfer schemes. This scenario would also be consistent with the low vacancy rate/high owner-occupation propensity run of the Kleinman and Whitehead model. Again the evidence suggests that this level of provision would be little more than enough to maintain the status quo in terms of waiting lists, homelessness, concealed households and other measures of stress. Indeed if private investment were to continue at its currently depressed levels for a significant period these indicators would almost certainly worsen. Moreover the emphasis on transfer, unless it itself generated further private investment, would further tighten the match between dwellings and households, reducing vacancies and increasing access and mobility difficulties;
- iii) increasing social provision to around 100,000 units per annum - the best point estimate from the range of projections. This would in principle provide adequate accommodation for the vast majority of those currently regarded as in need on the narrow definitions set out in section 2, as well as for the projected addition in the number of households. Such provision would have to be accompanied by a successful rehabilitation programme to bring the majority of unfit units (ie those that are not scheduled to be replaced) and fit units in disrepair or without amenity up to standard. Thus, even this level of social provision implies a far more active improvement policy than that currently being implemented or even discussed.

⁴⁰ Ibid, paras 7-8

⁴¹ Christine Whitehead and Mark Kleinman *A Review of Housing Needs Assessment* October 1992

⁴² for a summary of how this figure was reached see *Inside Housing* "Assessing housing need" 9.10.92

⁴³ *A Review of Housing Needs Assessment* pp 15-16

Research Paper 94/92

The Corporation's findings reinforced those of the 1992 Audit Commission study⁴⁴ and confirmed other researchers' calls for the provision of 100,000 units per year.⁴⁵ Estimates of the shortfall in the provision of social housing have been raised in several PQs, a selection of which are reproduced below:

Mr. John Evans: To ask the Secretary of State for the Environment what steps his Department will take to counteract the recent Audit Commission's optimistic forecast of a shortfall of 12,000 social lettings each year; and if he will comment on the report.

Mr. Baldry: The Audit Commission's report "Developing Local Authority Housing Strategies", including the discussion of supply and demand for social housing, is a useful contribution to public debate on housing policy. Besides the recommendations addressed to central Government, which we shall consider carefully, the report contains many recommendations for local authorities on how they could make more elective use of their existing stock of housing and other resources.

[HC Deb 11.6.92 c.260W]

15. **Mr. Raynsford:** To ask the Secretary of State for the Environment when he will publish estimates of the need for social housing in England.

Sir George Young: We publish projections of future household numbers based on demographic trends. It is not practical to sub-divide that and make a single estimate of the need for social housing because of the subjective judgment involved in assessing who should have access to social housing and the volatility of some of the factors influencing any assessment, such as house prices, incomes and interest rates.

[HC Deb 15.7.92 c.1136W]

Mr. Raynsford: Will the Secretary of State tell the House of the estimates of housing need in Britain that have been produced by a series of organisations, including the Institute of Housing, and, most recently, estimates produced for the Housing Corporation by Mark Kleinman and Christine Whitehead? Will the right hon. and learned Gentleman confirm that they all make it clear that at least 100,000 new homes are needed each year for rent? Therefore, on the basis of the Secretary of State's projections this afternoon, there will be a serious shortfall over the next three years, which will mean that the problems of homelessness will get worse. When will the Government recognise that their programme is inadequate?

⁴⁴ *Developing Local Authority Housing Strategies*

⁴⁵ for example, Association of District Councils *Bridging the Affordability Gap in 1990*, 1991, National Housing Forum *Housing Needs in the 1990s*, 1989, National Federation of Housing Associations *Inquiry into British Housing: second report 1992*

Mr. Howard: Estimates of need vary widely. If the hon. Gentleman is seriously interested in making a constructive contribution to the resolution of such problems, I invite him to devote a little more of his time and attention to the solutions to the problems-solutions such as those that I mentioned earlier.

[HC Deb 9.12.92 cc 838-9]

V. The Government Review 1994

A. Reasons for the review

Sir George Young first announced the Government's intention to reform the homelessness legislation during his speech to the Conservative Party Conference on 7 October 1993.⁴⁶ On publication of the consultation paper⁴⁷ the Minister made the following statement to the House:⁴⁸

Mr. Deva: To ask the Secretary of State for the Environment when he proposes to publish his consultation paper about reforming the homelessness legislation; and if he will make a statement.

Sir George Young: I have placed in the Library of the House today copies of a consultation paper setting out the Governments proposals to reform the homelessness legislation, to introduce arrangements that ensure fair access to local authority and housing association accommodation for all who need it, to make better use of the private sector, and to encourage local authorities to play a more active role in the prevention of homelessness.

The current homelessness legislation provides an important safety net for families and vulnerable individuals who find themselves at risk of losing their home. But the homelessness legislation also provides those people, once they are accepted as statutorily homeless, with access to a permanent home ahead of others in as great or greater need who are on the housing waiting list. The Government believe that there should be a distinction between providing the necessary assistance for those faced with the prospect

of having nowhere to live, and providing access to permanent housing. The tenancy of a council or housing association property is a real asset. We want to ensure that these tenancies go to those with the best claim to them.

We want a fairer system, in which, while retaining essential safeguards, local authorities have the flexibility to allocate the long term housing under their control to those with the best claim to it. Once a household has been given help in finding suitable short or medium term accommodation, its claim to permanent housing will be assessed alongside others on the waiting list who may be living in difficult circumstances, but who are not in need of immediate help; we propose to develop able to manage their allocations.

I have also placed in the Library of the House today newly published research report on the allocation of local authority housing. It shows clearly that those entering council housing through the homelessness route do so more quickly than those relying on the waiting list. Consequently, the homelessness route has become increasingly attractive. The housing of those accepted statutorily homeless accounts for an ever-increasing

⁴⁶ *Conservative Party News* 7.10.93 Rt Hon Sir George Young Bt MP

⁴⁷ DOE *Access to Local Authority and Housing Association Tenancies* 20.1.94

⁴⁸ HC Deb 20.1.94 cc 842-4W

Research Paper 94/92

proportion of lettings, and in some parts of the country is now virtually impossible for anyone other than statutorily homeless households to obtain a council or housing association tenancy.

Our proposals will continue to provide for families and vulnerable individuals who are without other suitable accommodation in a crisis; it is not acceptable that such people should have nowhere to live. For some disabled, elderly or mentally ill people, who have no prospect of ever finding accommodation for themselves, a local authority's duty to provide accommodation will be enduring.

An essential element of our strategy for meeting the needs of those who are badly housed is to make the best use of all forms of existing housing stock. This is not confined to local authority and housing association property. There is considerable scope for developing the private rented sector to meet housing needs. Our proposals therefore encourage partnerships between local authorities and private landlords in order to increase access to good quality housing in the private rented sector. We also envisage a more positive role for local authorities in ensuring the provision of housing advice that will help prevent people becoming homeless.

The Government are proposing a fairer and more effective system for meeting the housing needs of those who rely on rented housing, within the resources available. Our proposals would allow local authorities to make better use of the stock at their disposal, and end the unfairness that occurs under present arrangements.

My right hon. Friend the Secretary of State for Wales is placing in the Library of the House a consultation paper setting out parallel proposals for

Wales. He and I are sending copies of our consultation papers to all hon. Members with English or Welsh constituencies respectively. We both look forward to a constructive public debate on these proposals.

The consultation paper refers to:

"The shortcomings of the existing arrangements which have, in recent years, blurred the distinction between local authorities' responsibility for providing emergency assistance for families and other vulnerable people who lose their homes through no fault of their own, and for providing subsidised rented accommodation for people whose overall housing needs are substantial and enduring."⁴⁹

The paper goes on to state "Under current legislation, what should be a safety net has become a fast track into such tenancies, with consequences that are often seen as unfair".⁵⁰

⁴⁹ *Access to Local Authority and Housing Association Tenancies* para 1.1

⁵⁰ *Ibid*

The paper suggests that the homelessness route into social housing has become more attractive than applying on local authority and housing association waiting lists as it gives rise to a statutory right to housing. Research conducted by the DOE is quoted to illustrate that people using the waiting list route had to wait nearly twice as long (on average 1.2 years as against 0.7 years) as people rehoused under the homelessness legislation.⁵¹ In conclusion the paper notes that some of the fears expressed during the 1977 Act's passage through Parliament concerning its potential abuse by applicants and the effect on waiting lists were now justified.⁵²

The main elements of the proposals are:⁵³

- to confine local authorities' duty to one of securing accommodation for a limited period for applicants who are in priority need, in an immediate crisis that has arisen through no fault of their own, and who have no alternative accommodation available to which they could reasonably be expected to go;
- to make waiting lists the sole route by which people may be allocated a secure local authority tenancy, so that everyone in need of such accommodation has a fair chance of securing it, according to their housing needs, their resources and the length of time they have been waiting for such housing;
- to encourage local housing authorities to help lower income households to find accommodation to suit their needs - whether as a tenant of a local authority or a housing association, or in the private rented sector, or in a shared ownership scheme - by providing more user friendly approaches such as common waiting lists and housing advice centres.

B. Issues and responses raised by the review

1. References to the 1988 review

In their responses to the consultation document a number of commentators have noted the absence of any reference to the 1988 review of the homelessness legislation which concluded that "the majority of households who get help through the homelessness route are people with a genuine urgent requirement for housing, who would expect to receive a high priority in any needs-based system of housing allocation" and also that "the legislation has worked reasonably well and should remain in place as a long-stop to help those who through no fault

⁵¹ DOE *Routes into local authority housing ; a study of local authority waiting lists and new tenancies* January 1994

⁵² *Access to Local Authority and Housing Association Tenancies* para 2.9

⁵³ *Ibid*, para 3.2

of their own have become homeless".⁵⁴ Shelter's response points out that these conclusions are in direct contradiction with those of the current consultation paper.⁵⁵

2. Evidence of "queue jumping" and "widespread abuse"

Commentators have also questioned the existence of any evidence on which to base claims that the legislation is open to "widespread abuse" or that different categories of households in need are "treated unfairly".⁵⁶ The consultation paper notes that while the total number of new lettings of local authority property has remained relatively steady over the last ten years the proportion of these going to households accepted by local authorities as statutorily homeless has more than doubled, from less than 20 per cent in 1983/84 to over 45 per cent in 1992/93.⁵⁷ The fact that increased numbers of new lettings have been allocated to homeless households in recent years is rejected by several commentators as evidence of abuse of the system. The Labour controlled Association of Metropolitan Authorities (AMA) states:

"Abuse of the system is the least plausible potential explanation of the rise in homelessness over the last decade. Paragraph 2.3 of the consultation paper itself lists a range of factors which have contributed to an increase in the demand for social housing during the 1980s. An increased rate of household formation has been accompanied by an increasingly polarised income distribution and, until recently, rising house prices and costs of access to owner occupation. There is a remarkable congruity of research findings from sources as diverse as the Audit Commission, Institute of Housing, and Association of District Councils (ADC) of an annual shortfall in the social housing supply of around 50,000 units. The Government is alone in refusing to accept that the supply of social housing is seriously deficient".⁵⁸

Details of the number of dwellings let to homeless and waiting list applicants for 1978-9 and each subsequent year are set out in the PQ below:⁵⁹

Mr. Battle: To ask the Secretary of State for the Environment -if he will list for 1978-79 and each subsequent year for which data are available, the total number of dwellings let to new tenants by (a) local authorities and (b) housing associations, and of these, in each case, the number let to (i) homeless applicants and (ii) applicants from the waiting list, and the number which were first lettings of (iii) newly built and (iv) newly modernised buildings.

⁵⁴ DOE *The Government's Review of the Homelessness Legislation* November 1989

⁵⁵ *Shelter Access to Local Authority and Housing Association Tenancies : Shelter's response* March 1994

⁵⁶ for example, Chartered Institute of Housing *The homelessness review : the response of the housing profession* March 1994

⁵⁷ *Access to Local Authority and Housing Association Tenancies* para 2.5

⁵⁸ *AMA DOE consultation paper : response of the Association of Metropolitan Authorities* March 1994

⁵⁹ HC Deb 9.2.94 cc 299-300W

Sir George Young: The numbers of local authority lets to new tenants in England and the numbers of these lets which were to (a) households accepted under the homelessness provisions of the Housing (Homeless Persons) Act 1977 or the Housing Act 1985 and (b) applicants from the waiting list are given in the table. No information is collected centrally on lettings of newly built or newly modernised local authority dwellings.

Thousands

Local authority lettings

	<i>New lettings</i>	<i>Of which to homeless households</i>	<i>Of which to waiting list applicants</i>
1978-79	289	38	185
1979-80	275	41	171
1980-81	275	44	174
1981-82	251	45	167
1982-83	256	49	173
1983-84	246	49	161
1984-85	240	54	156
1985-86	247	63	153
1986-87	244	67	149
1987-88	242	74	142
1988-89	236	73	139
1989-90	229	80	125
1990-91	240	87	126
1991-92	239	109	112
1992-93	230	104	111

Source. *HIP1* returns.

The available information on housing associations lettings to new tenants in England is set out below. The figures for new lettings in the years before 1989-90 are estimates.

Housing association lettings

000s

	<i>New lettings¹</i>	<i>Of which to households accepted as homeless by local authorities</i>	<i>First lettings to new tenants newly built</i>	<i>newly rehabilitated</i>
1978-79	34	n/a	n/a	n/a
1979-80	37	n/a	n/a	n/a
1980-81	42	n/a	n/a	n/a
1981-82	43	n/a	n/a	n/a
1982-83	45	n/a	n/a	n/a
1983-84	47	n/a	n/a	n/a
1984-85	49	n/a	n/a	n/a
1985-86	51	n/a	n/a	n/a
1986-87	52	n/a	n/a	n/a
1987-88	54	n/a	n/a	n/a
1988-89	57	n/a	n/a	n/a
1989-90	60	n/a	n/a	n/a
² 1990-91	63	9	14	3
1991-92	71	15	20	3
² 1992-93	91	23	29	3

Figures for the number of housing association new lets in years before 1989-90 are estimates based on the data for England and Wales available for these years.

²Information on the number of first lettings of newly built and newly rehabilitated properties in 1992-93 that were to new tenants is provisional. *Sources:* New lettings and new lettings to homeless applicants-Housing Corporation HAR10/1.

First lettings of newly built/rehabilitated dwellings-National Federation of Housing Associations CORE database.

Although homeless households have taken up an increasing number of social housing vacancies, research in this area has not established that households routinely contrive homelessness in order to gain social housing more quickly than would otherwise be the case if they applied via the waiting list. Studies have tended to conclude that a majority of people housed as homeless were already registered on a local authority waiting list and were experiencing high levels of housing need. The Audit Commission examined the proposition that households registered on a waiting list become discouraged and present themselves as homeless in an attempt to receive priority:⁶⁰

52. It is an over-simplification to depict the allocation of council housing as a competition between homeless applicants and those on the waiting list, with the local authority holding the ring. There is a wide overlap between people on the waiting list and the homeless. In 58 per cent of authorities in the Audit Commission survey, more than half of households accepted as homeless were on the waiting list before they became homeless. Homelessness procedures are more accurately seen as one among several different means of determining priorities in the allocation of council housing. The other common methods are:

- points schemes, where the relative priority of applicants is assessed by awarding points for a variety of factors including bad housing conditions, overcrowding, personal factors such as health and length of time spent on the list or living in the area;
- date order schemes where applicants are offered vacancies according to the date on which they joined the list;
- group schemes where numbers of properties are allocated to certain groups. These groups might be based on types of household, or on types of housing need;
- 'merit' schemes where officers, councillors or both decide on individual cases on their merits.

In practice many authorities use a combination of these schemes. For example, an authority might operate a date order scheme but have special provisions for certain applicants, such as urgent medical cases, to go to the top of the list.

53. The term 'waiting list', with its implication of a queuing system, is not an accurate description of three out of the four schemes. Only date order schemes can be represented as a queuing system. Although some weight may be given in the other schemes to length of time on the list, it is not usually the overriding consideration. In fact, giving priority to homeless applicants can be perfectly consistent with points, group and merit allocation systems. Even date order schemes usually have provisions to take account of housing need, perhaps by operating different lists or only allowing those people onto

⁶⁰Audit Commission *Housing the Homeless: The Local Authority Role* 1989

the list who are judged to be in need. They also usually have provisions for urgent cases to go to the top of the queue.

54. The point is important because decisions about the standard of service given to homeless applicants and, for example, the length of time they spend in temporary accommodation, might be influenced by misconceptions about one orderly queue of applicants who are waiting their turn and another group of homelessness applicants who are 'queue-jumping'. Indeed, all the officers interviewed during the study believed that the great majority of homeless households currently being accepted for housing in their authority were people to whom the council would in any event have given priority.

The inter-relation between homeless and waiting list policies and how these can best be balanced by local authorities was discussed in research commissioned by the DOE in 1989, an extract from which is reproduced below:⁶¹

Local authorities face demands for housing from many applicants other than the homeless. In seeking to balance the claims of homeless people and applicants on the waiting list many difficult issues must be confronted. Fundamental is the issue of fairness between applicants in roughly comparable circumstances, one of whom (as a result of knowing the system or of genuine necessity) becomes homeless, and one of whom does not. The latter will never be housed if all vacancies go to the homeless. If there is no movement on the waiting list, the incidence of homelessness is likely to increase. Some people will lose their home while waiting, and some will be tempted to 'contrive' homelessness because they see no hope of being housed in any other way.

The difficulty of the decisions to be made by local authorities are a direct consequence of the shortage of accommodation, particularly for families. Competing demands may not be capable of satisfactory resolution, but decisions can be made in a more coherent way. If homelessness is to become the main or only route to council housing in some areas, local authorities will have to adapt their attitudes and policies. The homeless persons unit and its staff should not be seen as separate from mainstream housing management. Indeed, for some authorities it is the mainstream activity.

Where homeless cases represent a small minority of all allocations, they can have absolute priority. Where there are greater competing demands one approach would be to organize the waiting list on a comprehensive and carefully defined priority basis. Such a scheme recognizes that homelessness is not an absolute priority, and that there are certain people on the waiting list with at least an equal claim to rehousing.

A prioritized waiting list may help to balance the competing demands of those who are homeless and those in equivalent circumstances on the waiting list; it can achieve some movement on the waiting list, and thereby decrease the tendency of those on the waiting list to redefine themselves as homeless. It can also resolve the treatment of the homeless at home (giving equal treatment for those living at home in equivalent circumstances but not 'homeless'). However, the implication of giving homeless people anything less than absolute priority for rehousing is that, unless the supply of accommodation is expanded, they will spend more time in temporary accommodation.

*Routes into Local Authority Housing*⁶² found that the average time spent on housing waiting lists by sampled applicants was just under three years and that this was very similar to the 1986 situation.⁶³ This average masks the fact that waiting times differ greatly between different areas of the country.

⁶¹ DOE *Living in Temporary Accommodation : A survey of homeless people* 1989 p.153

⁶² DOE January 1994 para 4.7.1

⁶³ DOE *Queuing for housing: a study of council housing waiting lists* 1988

The London Boroughs Association (LBA)⁶⁴ notes in its response to the consultation paper, "with nearly 38,000 households in some form of temporary accommodation in London and many applicants in severe housing need effectively excluded from the waiting list it is disingenuous to claim that there is no need to reconsider the impact of the legislation and to query whether it is achieving its aims."⁶⁵

3. Calls for reform

A frequently raised issue in a number of responses to the consultation paper is the fact that there has been no widespread demand for changes in the homelessness legislation to limit the rights of homeless people. The Chartered Institute of Housing's (CIOH) response states "to our knowledge, other than the London Boroughs Association and two well known London Boroughs, no housing organisation has called for such radical change".⁶⁶

The CIOH conducted a survey of 50 housing authorities at the end of 1993 to which it received 32 responses. The survey set out 4 options which it thought the Government might be considering to reform the homelessness legislation and Code of Guidance and asked authorities to comment on the likely effect of each. Of the 4 options 90 per cent of the respondents were firmly against any move to make the housing duty discretionary, temporary or both. Problems were envisaged with the need for extra hostel places; the lack of security experienced by some private tenants; the administrative costs of rehousing people more than once, the supply of rented housing and the length of time it would take to rehouse people adequately in the private sector.⁶⁷

4. The Children Act 1989 and community care

Respondents to the consultation paper have noted its lack of reference to the *Children Act* and local authorities duties under the *NHS and Community Care Act 1990*. Conflicts which have arisen between the existing homelessness legislation and the *Children Act* are discussed on page 7; some respondents feel that the current proposals further contradict the 1989 Act's emphasis on the need to provide children and their carers with long term settled accommodation in order to promote their welfare. There is concern that, by limiting the duty to provide statutory homeless people with only emergency assistance, this will increase the

⁶⁴ the LBA represents mainly Conservative controlled authorities

⁶⁵ LBA *Access to Local Authority and Housing Association Tenancies : Response by the London Boroughs Association* March 1994

⁶⁶ CIOH *The Homelessness Review: The Response of the Housing Profession* March 1994

⁶⁷ CIOH *"Homelessness - tackling the definition instead of the problem?"* 1993

potential for the *Children Act* to be used to challenge local authorities' decisions with a view to securing permanent accommodation for households with children.⁶⁸

The Association of London Authorities (ALA)⁶⁹ has expressed the following reservations over the inter-relationship of the proposals with community care duties:

"The emphasis of the community care policy is on enabling people to remain in their own residential accommodation rather than enter residential care. It therefore follows that public housing policy is key to enabling people to live in suitable accommodation, and that it will be necessary to ensure that people can make use of domiciliary care services and that accommodation should be adapted as necessary to enable continued life in the community.

The ALA is concerned that the consultation paper does not consider whether private landlords will be able or willing to offer long term security of accommodation, can enable access by domiciliary care agencies and support services, be willing to offer the assistance needed by vulnerable groups, or be willing to undertake the conversion or adaptation of property on behalf of people who require assistance.

The consultation paper does not consider the important role of joint assessment by housing and social services, and it does not consider how different interpretations of Government legislation are to be resolved. The consultation paper does not consider how delays in assessment are to be resolved given that community care assessments necessarily take longer to conduct as it will involve the contribution of NHS, social services and voluntary sector agencies, financial assessment, and (as required by law) to take account of the wishes of users and carers."⁷⁰

5. Financial implications

The consultation paper advises that the proposed changes to the homelessness legislation should reduce the number of households for whom local authorities will be required to provide assistance and that this in turn will produce savings. The paper notes that even if there is no reduction in the numbers qualifying for assistance, savings will result from the placement of households in private rented accommodation as this is cheaper, even after allowing for the cost of housing benefit claims, than placing a household in local authority housing.⁷¹

The LBA regards this conclusion as "premature" on the basis that housing benefit expenditure is likely to increase, as is expenditure on rent guarantees and the provision of advice and assistance; there will be costs associated with developing local authority waiting lists and

⁶⁸ CIOH's response p.3

⁶⁹ the ALA represents mainly Labour controlled authorities

⁷⁰ ALA *Review of the homelessness legislation* March 1994 para 5.6.2

⁷¹ *Access to Local Authority and Housing Association Tenancies* para 27.1

there is also potential for additional demands to be placed on other services such as social services, environmental health (to check private sector housing conditions) and tenancy relations.⁷² The ADC points out that any savings resulting from a reduction in the number of households requesting assistance could be counterbalanced by the increased cost of implementing a more complicated assessment of eligibility process.⁷³

Currently homelessness is a prominent element of both the general needs index (GNI), used to distribute capital allocations to councils, and also the housing needs indicator (HNI), which does the same for housing associations. These indices are undergoing a review and the possibility that changes in local authorities' duties towards the homeless could result in homelessness being removed as a measure from these indices has given rise to serious concern amongst the local authority associations. Will Tuckley of the ALA has noted that the indicators in the GNI which measure the ratio of family homelessness against available supply and numbers in temporary accommodation take up 20 and 8 per cent of the index respectively. In the 1994/95 financial year these indicators have controlled the distribution of £290m, therefore, any allocation losses arising from a diminution in the importance of homelessness as a measure of need could be particularly severe.⁷⁴

The LBA's response states that its members have "very serious concerns about the implications on the allocation of housing resources. It is essential that distribution does not direct capital allocations away from the areas of most severe housing need merely because the factors measuring homelessness will no longer apply and yet, because London has such a high rate of homelessness compared to other regions, this is exactly what will happen."⁷⁵

C. The proposals and reactions in detail

1. A new duty to provide emergency assistance

Currently local authorities are obliged to secure suitable accommodation for applicants who are assessed as being unintentionally homeless and in priority need. If a local authority has reason to believe that an applicant is homeless and in priority need it must ensure that accommodation is made available pending the outcome of enquiries into the applicant's status (see page 8).

⁷² LBA's response para 25

⁷³ ADC's response para 7.2

⁷⁴ see *Inside Housing* "More need less cash" 18.3.94

⁷⁵ LBA's response para 25

The consultation document states that homelessness under the 1985 Act is very broadly defined and proposes to reduce local authorities' duties to assisting only applicants and their households who have "no accommodation of any sort available for occupation, provided this situation has arisen unintentionally".⁷⁶ The duty to assist an applicant will not start until an assessment has been made and the authority is satisfied that the necessary criteria have been met.⁷⁷

Commentators have expressed concern over the redefinition of homelessness; it has been widely suggested that applicants will need to be literally roofless before emergency assistance is given⁷⁸ and that local authorities' efforts to prevent homelessness will be undermined:

"The proposal reverses one of the main achievements of the homelessness legislation which is to require local authorities to pre-empt the actual event of homelessness. The proposal to only make the duty arise when "no accommodation of any sort is available" would greatly intensify the pressure and stresses experienced by households. Moreover, it would give rise to situations where local authorities would have little, if any, notice of families' impending homelessness situation. It will hinder attempts to prevent homelessness and will make securing emergency accommodation very difficult. It will also increase the likelihood of local authorities using bed and breakfast as it is the easiest form of temporary accommodation to secure at short notice".⁷⁹

The removal of the duty to provide temporary accommodation pending enquiries has given rise to the suggestion that this could leave households "on the streets" while their eligibility for housing is determined.⁸⁰ The Minister has rejected these suggestions:

"In a civilised society, there is no question of vulnerable people, which includes families with children, not having a home. I regret and deplore the scaremongering that many people have indulged in since the paper was published."⁸¹

Despite the Minister's assurances, the AMA is of the view that the removal of the duty to provide accommodation pending enquiries undermines the Government's claim that the proposals will "safeguard the safety net" for homeless people.⁸²

⁷⁶ *Access to Local Authority and Housing Association Tenancies* para 5.1

⁷⁷ *Ibid*, para 5.2

⁷⁸ for example, *Shelter Access to Local Authority and Housing Association Tenancies : Shelter's Response* March 1994

⁷⁹ *ADC A Response to the DOE Consultation Paper* March 1994

⁸⁰ *Ibid*, para 3.3

⁸¹ HC Deb 26.1.94 c.314

⁸² AMA's response para 42

2. The extent of the duty to persons needing assistance

Under existing provisions people housed as homeless must be provided with "suitable" accommodation; the case of *R v LB Camden ex parte Wait* (1986) 18 H.L.R. 434, established that authorities must ensure that indefinite accommodation is available in order to properly discharge their duties.

The consultation document proposes that this duty be reduced to one of securing accommodation for a limited period while the person finds alternative accommodation; views are sought on how long an authority's duty to secure accommodation should last.⁸³ The Government accepts that the duty to provide emergency assistance could recur if a household continues to meet the necessary criteria.⁸⁴

During a recent debate in the House the Minister made the following comments in response to concerns raised over the use of temporary accommodation:

One of the other issues which was raised immediately after the publication of the document was the concern about the use of temporary accommodation. There is nothing temporary about the accommodation that authorities will be expected to provide in discharging their duty. I do not think that one can regard an assured shorthold in the private rented sector which runs for a minimum of six months, and often for many years, as temporary, other than in the sense that it does not guarantee the tenure of that property for life."⁸⁵

The degree of subjectivity involved in deciding whether a household has had a reasonable opportunity and has made a genuine attempt to find alternative accommodation is raised by a number of respondents. There is concern that these decisions will be subject to legal challenges and that local authorities' administrative costs will be increased.⁸⁶ The Association of London Authorities (ALA) makes the following comments on the potential impact of the proposal on homeless households:⁸⁷

Homeless people may end up in a never ending cycle: temporary accommodation, followed by a move to a short term tenancy, then should they lose this tenancy, more temporary accommodation, followed by another short term tenancy, and so on. Each change of housing

⁸³ *Access to Local Authority and Housing Association Tenancies* 6.1-6.5

⁸⁴ *Ibid*, para 6.6

⁸⁵ HC Deb 26.1.94 c.314

⁸⁶ ADC's response paras 3.5-3.6

⁸⁷ ALA's response para 5.2.1

could involve a geographical move, possibly involving significant distances within the "region" in which re-housing is permitted.

The ALA do not believe that the private rented sector can provide permanent housing for the majority of homeless families, especially for those with several children. Landlords have shown a considerable reluctance to house families with children, who they believe to be disruptive to other tenants, and liable to damage furniture and fittings. The ALA believes that for these families, the "revolving door" of housing is almost inevitable, given the difficulties they will face finding appropriate housing in the private sector.

These households may well be denied access to any local authority waiting list as they are never able to stay in one place for long enough to satisfy the residence requirements and progress to the top of the list. Even if they do satisfy the residence requirement, as a result of their frequent moves, they will have acquired few points for time waiting for housing, and may never be housed through the waiting list.

The effects of temporary accommodation on homeless people have been well researched. The disruption in stability and security has huge effects on the whole family, whose access to health care and support from other agencies, such as social services will be interrupted and made difficult. Many doctors refuse to take on people without a permanent address. The tragic potential of what can happen as a result of insufficient co-ordination between council services was demonstrated in Greenwich by the death of Kimberley Carlisle, a little girl whose family had been rehoused by Westminster into Greenwich, without properly notifying the social services department so the necessary support could be provided.

People in temporary accommodation experience disruption to all aspects of their lives. They find it impossible to plan for the future when they do not know where they will be living. The resulting stress and insecurity leads to anxiety and depression. Should the household be housed distant from their friends and relatives, the isolation will add to the problem. People from different cultural backgrounds, especially those who were not fluent in English face special difficulties. There is considerable evidence that these factors lead to increased ill health, including depression and other forms of mental ill health. The situation can put a huge strain on a person's ability to hold down a job, and place extreme stress on relationships, which often disintegrate. Living in temporary accommodation carries a significant stigma, which affects all the family including children at school.

The effects on children will be especially acute. Living in insecure accommodation has a profound effect on their physical, emotional and social development. This in turn can lead to behavioral problems. The effects of living in temporary accommodation when young can blight a persons life for years to come, and could deny a child a reasonable chance of life in the future.

The Children's Society has expressed particular concern over the impact of living in temporary accommodation on the schooling and health of children. The society's response notes that "moving housing is one of the most stressful experiences an individual undergoes, these proposals could easily result in families moving from one form of temporary accommodation to another in a permanently rootless state."⁸⁸

⁸⁸ Children's Society *Response to the DOE Consultation Paper : Access to Local Authority and Housing Association Tenancies* March 1994

Attention has been drawn to the impact of this proposal on local authorities' duties under the *Children Act 1989* (see pages 6 and 31).

3. Discharge of duty towards homeless people

The existing duty on local authorities is to "secure" suitable accommodation for households accepted as homeless; however, there is no requirement that the homeless be housed in local authority owned property. In the vast majority of cases local authorities do use their own housing stock; nominations to housing associations have also played an increasing role.

The consultation document proposes various options on how local authorities may discharge their duty to provide emergency accommodation for homeless people. In deciding how to discharge their duties the paper advises "authorities will want to take account of both the needs of the particular household, and the cost effectiveness of the different housing options available to them".⁸⁹ The suggested options include:

- a short term tenancy in local authority stock;
- a short term tenancy in housing association stock;
- a placement in property owned by a private landlord.

A number of authorities already use private sector accommodation in order to discharge their duties to the homeless;⁹⁰ responses to the paper have repeated objections raised in relation to this practice:

"Homeless families, like anyone else, need security in their home environment. Potential or actual disruption every six or even twelve months makes settled family life extremely difficult. In cases where the incidence of homelessness has been particularly traumatic (for example domestic violence cases), stability is needed to rebuild lives, particularly where children are involved. Nineteen per cent of Shelter's cases are households who have experienced eviction, harassment or poor conditions in the private sector which has led them to seek our advice on alternatives. Shelter has countless examples of the private sector failing to provide the stability which is so essential to children's schooling and health care, as well as to the employment chances of their parents".⁹¹

The question of whether the private rented sector actually has the capacity to house the number and type of households who present as homeless is also raised:

"The suggestion that households can be placed directly in the private rented sector suggests a pool of accommodation waiting to be occupied. This is not the case in most areas of the country. Although it is recognised that there has been a recent increase in short term lets and

⁸⁹ *Access to Local Authority and Housing Association Tenancies* para 7.1

⁹⁰ *Roof* "Let them go private" September/October 1993

⁹¹ Shelter's response para 7.3

that a number of these are currently being renewed, there must be doubt that this will continue once the market for private sales improves. Moreover, it must be pointed out that many landlords will simply not accept households who are dependent on benefits, irrespective of rent deposits or guarantees."⁹²

Research carried out by the Office of Population Censuses and Surveys (OPCS), on behalf of the DOE, found that 483,000 new lets were created between 1988 and 1990; however, most of these had been rented prior to 1988 (the deregulation of new private sector lets under the *Housing Act 1988* came into force on 15 January 1989). The OPCS also found that some 175,000 tenancies were created in property that had not been let prior to 1988 but the researchers could not identify whether these lets had come from a pool of privately-owned empty homes or from owners letting their homes as a result of the downturn in the housing market.⁹³

A survey of managing agents carried out by the Joseph Rowntree Foundation (JRF) and the Association of Residential Letting Agents in March/April 1993 found that lettings per agent increased in 1992 by an average of 13 per cent; however, the survey noted that about one fifth of landlords were ex-owner occupiers who were unable or unwilling to sell their homes and that the number of letting could fall when house prices pick up.⁹⁴ A number of housing commentators believe that significant growth in the private rented sector will come about only as a result of investment incentives such as capital allowances.⁹⁵

⁹² ADC's response para 3.10

⁹³ OPCS *Private Renting in England in 1990* September 1992

⁹⁴ JRF Housing Research Findings No 90, May 1993

⁹⁵ see JRF Housing Research Finding No 95, July 1993; *Financial Times* "In search of the private landlord" 1.6.93

Research Paper 94/92

The London Research Centre (LRC) has compiled the following snapshot profile of tenants who moved into the private rented sector after the beginning of 1989 compared with the characteristics of tenants who have moved into the social rented sector during the same period.⁹⁶

Tenants who moved into their homes after the end of 1988 - profiles of key characteristics of social renters who were previously homeless and private renters

	Social renters previously homeless	Private renters
Average no. people in work per household	0.4	1.0
Average annual gross household income	£ 8,500	£ 22,200
Average no. years in present home	2	1
Average no. years in present borough	16	5
Average no. years in London	31	13
Average weekly rent	£ 53	£ 123
Percentage of households with children	70	17
Percentage of hhlds preferring private renting	0	14
Percentage of black, Asian & other ethnic minorities	53	31
Percentage of heads of hhld professional/managerial	6	28
Total number of households	78,000	205,000
Number of interviews conducted	280	449
Effective sample size	136	358

Source London Housing Survey 1992, London Research Centre

The LRC's research concluded that social renters are four times as likely to have children and that they have strong local connections with the borough in which they live. Private renters were found to be much more mobile and were nearly five times more likely to be professionals or managers and were far more likely to be in work; their average gross household incomes and rents were around two and half times those of social renters.⁹⁷

⁹⁶LRC *Homelessness in London Bulletin* Special Edition, February 1994

⁹⁷ Ibid

The issue of private sector rent levels is raised in several responses to the consultation paper. The LRC's survey found that the average private sector rent is 77 per cent of the gross income of the average social renter, leading to the conclusion that "directing homeless households into the private sector will therefore almost certainly require a substantial increase in expenditure on Housing Benefit."⁹⁸ Shelter's comments on rent levels in the private sector are reproduced below:⁹⁹

The 1992 Family Expenditure Survey found that the average cost of furnished private rented accommodation was over £72 per week. Shelter's research looked at actual rents charged by accommodation agencies for family sized accommodation in ten towns and cities across Britain. We discovered that the average rent for a family house ranged from £82 per week in Liverpool to £131 per week in Brighton. Forthcoming Shelter research also found that where local authorities place homeless people in the private rented sector the average rent was £105 per week. These figures compare with average council rents of £33 per week and housing association rents of £45 per week.

Shelter is concerned that homeless families will be directed to a more expensive sector which presents two specific problems. First, high rents place homeless families in a vicious poverty trap. According to the Department's own figures, more than eighty per cent of homeless applicants are eligible for housing benefit to meet the rent. In many cases, if someone in the household gets a job the problem of affordability becomes acute as housing benefit is withdrawn at the rate of 65p for each £1 of increased income. Consequently, a lower paid household, especially one with children, can be little better off following an increase in gross earning because of the extra income tax and national insurance they have to pay and the reduction in benefits they suffer. At its most extreme, people who receive Family Credit as well as housing and council tax benefits can be left with only 3p each week from a £1 a week increase in gross earnings (after income tax and national insurance). About 500,000 households had marginal deduction rates of seventy per cent or more in 1992/93, according to Treasury figures. This poverty trap deters people on benefit from seeking work, and worsens as rents rise.

A second and increasingly common difficulty concerns the restriction of housing benefit by local authorities. Under Regulation 11 of the (HB) General Regulations local authorities have a duty to restrict housing benefit if they consider the rent to be unreasonably high, or the accommodation unreasonably large. Where the rent is restricted, it is invariably the tenant who has to meet the shortfall. In 1992/93, twenty nine per cent of private tenants whose rents were referred to the Rent Officer had their rents reduced for housing benefit purposes. Homeless people in this situation must either make up the difference between their benefit and their rent, usually out of income support, or face eviction for rent arrears and homelessness. As the cases already quoted indicate, this is a widespread problem.

Our concern is heightened by recent press reports suggesting the introduction of maximum rent levels and further Rent Officer powers to deem a rent exceptionally high. Moves of this kind may force homeless households placed in the private rented sector by local authorities into cheaper, overcrowded and poorer quality accommodation.

⁹⁸ Ibid

⁹⁹ Shelter's response paras 7.8-7.11

Research Paper 94/92

Recent reports of the Government's intention to limit housing benefit payments has led housing commentators to suggest that this could completely undermine the homelessness review as private landlords will be unlikely to offer tenancies to homeless people without guaranteed rent payments.¹⁰⁰

Another concern which has been expressed in relation to extending the use of private rented accommodation is the general condition of properties in this sector. The English House Condition Survey 1991 found properties in the private rented sector to be in the worst condition, with an unfitness rate of 20 per cent.¹⁰¹ Of the total number of occupied unfit dwellings (1,354,000), 20.5 per cent of these were found to be in the private rented sector compared with 5.5 per cent owner occupied and 6.9 per cent of local authority dwellings.¹⁰²

The LBA's response notes that "the Government needs to consider how to ensure minimum standards of health and safety if greater use of the private sector is to be made. There could be resource implications if local authorities have to expand their housing inspection programmes."¹⁰³

The implications of the use of private sector accommodation on black and ethnic minority households is discussed in the ALA and AMA responses. The ALA points out that homelessness disproportionately affects these groups for a variety of reasons, one of which is discrimination in the private rented sector; there is concern that the consultation document contains no mention of the potential problems which these groups may face in seeking and maintaining suitable alternative accommodation.¹⁰⁴ On the proposed use of accommodation agencies to secure accommodation for homeless applicants Shelter comments:

"Of particular concern is the poor track record of agencies with regard to racial discrimination which has been widely documented. A Commission for Racial Equality investigation in September 1990 found that more than a fifth of accommodation agencies surveyed consistently treated ethnic minority customers less favourably than their white counterparts. A National Consumer Council report in 1988 found a range of unethical and illegal conduct ranging from unlawful procurement of advance payments to misleading descriptions of accommodation."¹⁰⁵

A possible disincentive to granting short term tenancies in local authority and housing association stock is the fact that this will reduce the number of properties available to people from the waiting list and so could defeat the Government's aims. Shelter is of the opinion that as the proposed emergency assistance duty is virtually identical to the present duty

¹⁰⁰ see *Inside Housing* "Benefit clampdown could threaten Government's homelessness review" 4.3.94

¹⁰¹ DOE *English House Condition Survey* 1991, para 7.22

¹⁰² *Ibid*, figure 7.11

¹⁰³ LBA's response para 7

¹⁰⁴ AMA's response para 3

¹⁰⁵ Shelter's response para 24.2

towards intentionally homeless households it will lead to greater use of bed and breakfast accommodation; Shelter believes that the high revenue costs of B&B will be compensated for by the convenience of this option for relatively short periods of time.¹⁰⁶ The Minister rejected Shelter's comments in a recent DOE Press Release:¹⁰⁷

"The new provisions for those without accommodation will not provide a direct route into housing for life (which not everyone needs). But they will ensure that those who need it have a reasonable and settled home for a reasonable period. I would not expect, as Shelter suggests, that in most cases this would be a hostel, refuge, or B&B; it would generally be a self-contained house or flat. Indeed we have seen a reduction of 41% in the use of bed and breakfast in the past 12 months, and I have made it clear that I want this progress to continue."

4. Eligibility for assistance

Under the existing legislation, a person qualifies for assistance if he or she has no interest in a property, nor a licence to occupy. The Government is proposing that someone who is asked to leave by family or friends should no longer automatically qualify for assistance. This immediate cause of homelessness accounts for the largest proportion of people applying to local authorities for assistance; 36 per cent of households accepted as statutorily homeless in England in the last quarter of 1993 lost their last settled home because parents, relatives or friends were no longer able or willing to accommodate them.¹⁰⁸

The consultation document proposes that local authorities may be given discretion to not provide emergency assistance to people excluded by family or friends where they conclude that the people involved "could continue to live together without undue strain". Alternatively, the paper suggests that local authorities could require relatives to obtain an eviction order before accepting someone as in need of emergency assistance.¹⁰⁹

People who live with relatives or friends and who pay no rent are "bare licensees" who have only permission to occupy their accommodation. When this permission is revoked, either verbally or in writing, they have no further rights of occupation. The 1991 Code of Guidance

¹⁰⁶ Shelter's response para 7.15

¹⁰⁷ DOE Press Release *Housing Minister sets record straight* 24.2.94

¹⁰⁸ DOE Information Bulletin 178 15.3.94

¹⁰⁹ *Access to Local Authority and Housing Association Tenancies* para 8.3

Research Paper 94/92

points out that authorities should be alert to the possibility of collusion between relatives and children where it is claimed that the child has been asked to leave the home; however, the Code goes on to say that in these circumstances "authorities should not ask applicants to obtain a court order; sufficient evidence of homelessness is provided by confirmation of the termination of the applicant's licence".¹¹⁰

This guidance is based on case law; the courts have pointed out in several cases that once a licence is properly terminated, the occupant becomes in effect a trespasser and it is unreasonable to expect someone to remain in occupation.¹¹¹

Respondents to the consultation paper are concerned that there is no widespread evidence of the collusion and abuse to which the paper refers; there is a belief that the requirement to obtain a court order will act as a disincentive to families to temporarily assist relatives and will merely increase the work of the courts if applications for orders are entertained.¹¹² The Children's Society comments:

The suggestion that the local authority would have discretion as to whether or not to accept a family which has been asked by family or friends to leave their present accommodation as being in need of emergency assistance would leave families at the mercy of a very subjective assessment. A proper assessment of whether a family can live together without undue strain would need to take into account psychological dynamics as well as the amount of space at their disposal. Local authorities with their limited budgets may be tempted to make decisions about whether or not they have a duty to help a household based on their own available resources rather than the needs of the household in question."¹¹³

The Law Society's response states:

"This proposal does not correlate with the existing law regarding the scope of measures to protect occupiers from eviction which excludes occupiers living with family or friends from protection. If introduced it is likely to lead to an increase in work for court staff; more pressure on existing listing arrangements and the incurring of unnecessary costs for the parties involved."¹¹⁴

¹¹⁰ Homelessness Code of Guidance 1991 para 5.5

¹¹¹ for example, *R v Portsmouth CC ex parte Knight* (1983) 80 LS Gaz 2444; 10 H.L.R. 115, Q.B.D; *R v Surrey Heath BC ex parte Li* (1984) 16 H.L.R. 79, Q.B.D; *R v LB Hammersmith and Fulham ex parte O'Sullivan* (1991) EGCS 110, Q.B.D.

¹¹² ADC's response para 3.15

¹¹³ Children's Society *Response to the DOE Consultation Paper* March 1994 para 2.25

¹¹⁴ The Law Society *The Response of the Law Society to the Consultation Paper Access to Local Authority and Housing Association Tenancies* March 1994 para 13

The consultation document also proposes that emergency assistance should not be given to any person who has "any form of accommodation available, however temporary the tenure".¹¹⁵ The document notes that this will reverse the decision of the House of Lords in *Din v LB Wandsworth* (1983) 1 A.C. 657, which held that short term hostels did not constitute "accommodation" for the purposes of the Act. The paper advises that accommodation must however be "reasonable for the person to occupy" and gives examples of space, health and hygiene standards.¹¹⁶

Respondents are concerned that this will encourage authorities to avoid responsibility towards people who apply as homeless and who make temporary arrangements pending investigations. Some commentators feel that it could lead to the "silting up" of short term hostels which rely on local authorities to provide move-on accommodation.¹¹⁷

In addition, the consultation paper proposes that applicants should not be found to be in need of assistance where there is alternative accommodation available.¹¹⁸ Failure to act on advice given to assist in the securing of accommodation is suggested as a possible ground for treating a person as having accommodation and therefore not in need of assistance.¹¹⁹

The ADC's response notes that this proposal raises a number of fundamental concerns:

"Households would have to become roofless to prove that their homelessness is genuine. The latter is a possibility because there is no intention that the authority should satisfy itself that alternative suitable accommodation can actually be secured and accessed by the household, but merely that it should make a general judgement as to whether such accommodation is likely to be available."¹²⁰

5. Local connection

Under existing arrangements local authorities have discretion to refer applicants who have no local connection with their area arising from residence, employment, relatives or some other special reason, to an authority where such a connection does exist. The conduct of these referrals is governed by a voluntary joint Local Authority Association agreement which has been in place since 1977.

¹¹⁵ *Access to Local Authority and Housing Association Tenancies* para 8.4

¹¹⁶ *Ibid*, para 8.5

¹¹⁷ AMA's response para 58

¹¹⁸ *Access to Local Authority and Housing Association Tenancies* para 9.1

¹¹⁹ *Ibid*, para 9.4

¹²⁰ ADC's response para 3.18

The consultation paper notes that the present arrangements appear to be working satisfactorily; however, it seeks views on whether a degree of prescription on matters such as qualifying length of residence might be appropriate.

In general respondents have supported the proposal to keep the existing arrangements in place, but the paper's acceptance that out of borough placements could become more common if they represent good value for money has led to the suggestion that disputes over responsibility will arise when a family is still eligible for assistance at the end of a relatively long-term out of borough placement.¹²¹

The LBA is in favour of reconsidering some aspects of the definition of local connection such as the qualifying length of residence and whether employment in an area should be included.¹²²

6. Location of accommodation provided as emergency assistance

While it is not unusual for homeless households to be placed in temporary accommodation outside the area of the authority to which they applied for assistance under the existing provisions, particularly in London, permanent accommodation is more often than not allocated from the local authority's stock and, therefore, applicants usually find themselves back in their local area.

The consultation paper accepts that ensuring value for money in securing accommodation for households to whom they have a duty could involve authorities using out of borough placements "where an authority has exhausted all cost effective opportunities within its own area".

This proposal has led to concern over the potential it could offer to local authorities to "export" their homeless households. The disruption caused to households by being forced to move out of their local area is noted in the Children's Society response:

"We would argue that out of area placements should only be made if acceptable to the family/individual concerned. Generally such placements are costly to families in terms of loss of immediate support networks and disruptions to existing health care, child care and educational arrangements and represent enforced mobility for families and individuals involved."¹²³

¹²¹ ADC's response para 3.23

¹²² LBA's response para 10

¹²³ Children's Society response para 2.29

7. Priority need

The consultation document makes no proposals to redefine the categories of priority need. Some respondents have suggested that the categories should be widened to include groups such as single 16 and 17 year olds. The LBA states, "the opportunity should be taken to clarify the current anomalies and conflicts between the different housing and social service Acts, especially in relation to assessment of need and definitions of vulnerability. Consideration should be given to the inclusion of single people in need of care and attention as specified under S.42 *National Health Service and Community Care Act 1990* or children as specified under S.20 *Children Act 1989*."¹²⁴ Respondents have noted that the main obstacle to extending the priority need categories has been the limited supply of social rented housing and that this obstacle would be removed by the introduction of a more restricted duty to provide only emergency assistance.

Respondents have welcomed the Government's recognition that some people with a mental illness or with learning difficulties may be unable to secure their own accommodation and that local authorities will still be able to provide these people with a long term tenancy; some have argued that this discretion should be extended to cover all applicants.

The Government's suggestion that very young single mothers should be allocated supervised hostel places or house-sharing arrangements has generally been met with a favourable response with the proviso that it is only used in appropriate cases.

8. Intentionality

The consultation document proposes that the current provisions on intentionality should remain in place (see page 9). The concept of intentionality will be extended to include instances where an applicant refuses to take up suitable alternative accommodation which, in the local authority's view, is reasonably available.

The LBA's response requests clarification of the intentionality provisions to prevent applicants "shopping around" various local authorities in search of a favourable decision. The LBA is also of the view that intentionally homeless households should not be entitled to temporary accommodation for even a limited period.¹²⁵ The other local authority associations are concerned that this limited right will be removed.¹²⁶

¹²⁴ LBA's response para 12

¹²⁵ Ibid, para 13

¹²⁶ AMA's response para 71

9. Persons from abroad

The Government does not believe that persons granted leave to enter the UK on the understanding that they will have no recourse to public funds should be entitled to emergency housing assistance.¹²⁷ The paper also outlines the Government's intention to redefine homelessness so that people who have accommodation abroad which they can reasonably be expected to occupy will not qualify for assistance; currently people are treated as homeless if they have no accommodation in England, Scotland or Wales.

Shelter is concerned that the removal of entitlement to any assistance in these circumstances will leave families roofless and essentially without a safety net.¹²⁸

10. Notifications and appeals

The consultation paper requests comments on how a simplified procedure for notifying households of the outcome of their applications for housing assistance can be achieved. It also invites views on whether local authorities should be required to have their own appeal mechanisms for handling disputes.

The local authority associations are in favour of moves to simplify the notification process; however, opposition has been expressed to any attempts to reduce the duty to keep adequate records of applications and to supply sufficient information about decisions and the reasoning behind them.¹²⁹

Most of the local authority associations regard the establishment of an internal appeals mechanism as a matter of good practice as long as they are not viewed as a substitute for external challenges through the judicial system. The Law Society has long advocated that homeless applicants should have a right of appeal to the county court as a quicker, less costly and more effective means of challenging homelessness decisions.¹³⁰

¹²⁷ *Access to Local Authority and Housing Association Tenancies* para 14.1

¹²⁸ Shelter's response paras 14.1-3

¹²⁹ AMA's response para 72

¹³⁰ Law Society's response para 16

The LBA rejects the need for an internal appeals mechanism which it feels could be used by applicants as a means of delaying the impact of negative decisions.¹³¹

11. Allocating local authority properties

The Government proposes that all allocations of secure tenancies in local authority stock and nominations made to housing association assured tenancies will be made to people who are registered on a housing waiting list; it will no longer be possible for statutorily homeless applicants, with certain limited exceptions, to be allocated a secure tenancy as a result of being homeless.

Local authorities have a great deal of discretion over the allocation of their housing stock; section 22 of the *1985 Housing Act* merely requires that certain categories of people be given "reasonable preference" in the allocation process, i.e:

- persons occupying insanitary or overcrowded houses;
- persons with large families;
- persons living in unsatisfactory housing conditions; and
- persons to whom a duty is owed by virtue of Part III of the 1985 Act.

It is left up to each authority to devise its own system to ensure that these groups are given "reasonable preference" in the allocation process. The most commonly used system involves awarding applicants points for certain aspects of housing need, e.g. disrepair and overcrowding; applicants with the highest points levels receive priority for housing.

The Government proposes to replace s.22 with a new basis for the allocation of social housing which will:¹³²

- i) require authorities to allocate (with limited exceptions) secure tenancies of their own property and all their nominations to assured housing association tenancies to those whose names appear on a nominated housing waiting list (which may be held by the authority or by its agent);

¹³¹ LBA's response para 16

¹³² *Access to Local Authority and Housing Association Tenancies* para 20.2

Research Paper 94/92

- ii) establish the broad principles in accordance with which authorities should give priority in the allocation of housing and nominations;
- iii) specify the limits to the conditions which an authority may set about who may or may not appear on a housing waiting list;
- iv) require authorities to publish their rules for the allocation of accommodation, and to adhere to these rules.

The consultation paper suggests that the Government will specify minimum requirements for a framework for housing allocation policy; the form and content of the new waiting list will be left as a matter for each local authority to decide. While the paper accepts that allocation policies should be geared towards those in housing need it also states that "allocations should balance the intensity of housing need with the length of time spent in need".

The local authority associations are of the view that housing need and conditions vary so widely across the country that it is not feasible to specify a statutory system which would be relevant to all authorities. Their responses note that any statutory provisions should be limited and that local authorities should be given sufficient flexibility and discretion to deal with local needs and circumstances.

The Government's emphasis on time spent on the waiting list as a factor to be considered in rehousing decisions has received a negative response from the AMA and ADC. Its relevance as a measure of housing need is questioned and it is pointed out that the Audit Commission has previously identified date order schemes as an inefficient basis for the allocation of housing.¹³³ There is concern that date order schemes will encourage people to register on the housing list "just in case" and will discriminate against people in need who are relatively new to the local authority area.

There is some confusion over how homeless households placed in temporary housing association or local authority tenancies will be catered for on the waiting list. Shelter notes that if the emergency accommodation provided is adequate but of a short term nature they will be unlikely to receive priority on the waiting list before becoming homeless again.¹³⁴

¹³³ Audit Commission *Developing Local Authority Housing Strategies 1992*

¹³⁴ Shelter's response para 20.8

12. Allocating housing association properties

Currently housing associations are required to have allocation policies and procedures which accord with the framework set out in the Tenants' Guarantee. The Housing Corporation expects associations to make half of their lettings (net of transfers) available to households nominated by a local authority.

The Government intends that associations should continue to assist local authorities in providing accommodation for people in need. It is proposed that the Tenant's Guarantee guidance on allocations will be amended; associations will be expected to follow the same general approach as will apply to prioritising allocations in the local authority sector.

A number of respondents have raised the same concerns over developing centrally driven allocation policies for housing associations as they have in relation to local authorities. The National Federation of Housing Associations (NFHA) has suggested that greater central control of allocations could run counter to associations' status as independent bodies; there is also concern that central allocation policies would be problematic for those associations which cater for specific groups outside the usual range of waiting list criteria.¹³⁵

One change which the NFHA has requested in respect of allocation policies is the removal of the local authority finance regulation which requires that nomination rights gained in exchange for land disposals be exercised on the site concerned.¹³⁶

13. Joint local authority and housing association waiting lists

The consultation paper proposes that local authorities should be encouraged to establish joint waiting lists of applicants in collaboration with the housing associations operating in their area.

The prospect of a single waiting list as the sole route for access to social housing has not been widely welcomed by housing organisations due to the potential for inflexibility and lack of discretion; however, merit is seen in the development of common registration schemes under which a standard application form is issued by all housing agencies within an area and the administration of which is carried out by one body. Common registration schemes have been developed by Bristol, Teignbridge and Wrekin District Councils. None of these schemes requires that the participating bodies employ exactly the same criteria for allocations.

The advantages of a common registration scheme include the simplification of consumer access to social housing, the reduction of duplication and the assistance it can provide in the

¹³⁵ *Housing Association Weekly* "Access to LA and HA lettings" 15.4.94, para 1.16

¹³⁶ *Ibid*, para 3.1

assessment of local housing need. Commentators are of the view that collaboration on joint lists should be allowed to take place voluntarily¹³⁷ and that there is scope for further evaluation of their suitability and usefulness.¹³⁸

D. The outcome of the review

Following consideration of the responses to the consultation document, of which there were over 10,000, Sir George Young announced the Government's conclusions in the statement below:¹³⁹

The Minister for Housing, Inner Cities and Construction (Sir George Young): With permission, Madam Speaker, I should like to make a statement about the Government's proposals for reform of the homeless legislation in England and Wales.

On 20 January, we issued a consultation paper with proposals to reform the homeless legislation so that, in future, there would be a single route for everyone seeking a secure or assured tenancy in local authority or housing association accommodation. My right hon Friend the Secretary of State for Wales issued a similar consultation paper at the same time.

Our main objectives in bringing forward the proposals were to enable local authorities to operate fairer allocation policies, while maintaining an effective safety net for families and vulnerable people who become homeless through no fault of their own. Nothing in the responses to the consultation paper challenges the logic of those objectives.

The present notion that households accepted by local authorities as homeless must be given "permanent accommodation" was not envisaged when the present statutory duty was created in 1977. It has grown up through case law, requiring long-term, settled accommodation. 'Mere is no reason why a household in suitable accommodation should be given a secure or assured tenancy for life merely because at some stage it has been accepted as statutorily homeless. That approach is not fair to people on the housing waiting list.

Our consultation paper attracted some 10,000 responses. I am arranging for a list of respondents to be placed in the Library of the House and copies of the responses themselves will be available for public

inspection in my Department's library. A summary of what we intend to do in the light of the consultation, and a copy of my statement, have been placed in the Library and the Vote Office.

Many of the responses did not address the actual proposals, but responded to misleading claims by lobby organisations. Others wrote in about hypothetical effects of our policy. As I made clear to the House on 26 January, it is not and never has been our intention that families and other vulnerable people should be left to live on the streets or in unsatisfactory accommodation—as some of the more alarmist propaganda from our opponents has suggested.

'Re consultation paper set out 10 main proposals, many of which were welcomed by those who commented on them. A number of local authorities said that their present practice in relation to homelessness was not far from what the Government were proposing. Indeed, while there was much pleading for the status quo from vested interests, they offered no real answer to the main flaw in the current legislation—that those who apply for assistance as homeless gain priority in the queue for local authority tenancies at the expense of others who have comparable underlying housing needs.

We have taken careful account of those responses to the consultation paper that made substantive comments on our proposals. Part of our intention had been to give greater discretion to local authorities in the accommodation of homeless households, but many respondents asserted that that would place too great a responsibility on individual authorities. Accordingly, we concluded that we should modify the proposals ii., the consultation paper to reinforce the safety net for vulnerable homeless people.

We therefore decided that a local housing authority's new duty towards a household in need of assistance should start, as it does now, when an authority has reason to believe that someone may be homeless and in priority need, prior to assessment of the household's circumstances.

¹³⁷ ADC's response para 4.22

¹³⁸ AMA's response para 86

¹³⁹ HC Deb 18.7.94 cc21-23

The consultation paper invited views about how long the duty to secure accommodation should last. We have concluded that local authorities' new duty should be to secure accommodation for a minimum period of a year for applicants and their households in priority need who have no suitable accommodation available to occupy, provided that the situation has arisen unintentionally.

Some households may be able to remain in the accommodation indefinitely—for instance, if they obtain an assured shorthold tenancy that is renewed. Others may find themselves accommodation on their own initiative; and it is right that people should be encouraged to take responsibility for their own housing where they can.

Also, in most parts of the country a 12-month period on the housing waiting list will be long enough for someone with real housing needs to obtain a local authority or housing association tenancy. However, if the household continues to need assistance, the duty will recur, subject to a review of the applicant's circumstances. Such a review would be needed within two years.

The consultation paper proposed that a local authority would not have a duty to provide assistance to a person who has any form of accommodation available. The Government recognise the good work of women's refuges and other short-stay, direct-access, hostel-type accommodation. We do not want that type of accommodation to silt up through lack of move-on accommodation. Accordingly, we have concluded that local authorities' duty to secure accommodation should extend to people in refuges, direct-access hostels and other short-stay places such as bed-and-breakfast hotels.

The consultation paper proposed that someone who asked to leave by family or friends should no longer be automatically entitled to assistance. We have considered a number of ways of implementing that proposal, and have concluded that the best

approach may be to modify claim provisions on intentionality so that they can take proper account of why accommodation is being withdrawn. That should minimise the scope for abuse. We shall also tighten the code of guidance to urge authorities to investigate such applications more thoroughly than many have done in the past.

A number of respondents expressed concern that the consultation paper made little reference to care in the community or Children Act responsibilities. That was because our proposals are fully consistent with authorities' responsibilities under community care legislation and the Children Act. We remain committed to ensuring that suitable housing continues

I confirm the proposition in the Consultation paper that people who are granted entry to the United Kingdom on the understanding that they will have no recourse to public funds should not be entitled to assistance under the new legislation. We also intend to implement the proposal that local authorities should be required to have their own appeals mechanisms for handling disputes. As the consultation paper says, we do not propose to disturb the current principles for deciding which local authority is responsible for someone seeking accommodation.

The Government intend to proceed with their principal proposal that, for new applicants, local authorities should only allocate secure tenancies in their own stock and the nominations that they make to housing association assured tenancies through a waiting list. Local authorities will have discretion over the allocation policies that they use to determine people's position on the list within the bounds set out in legislation. I emphasise that the proposed new system would allocate tenancies to those - people in housing need more fairly than the present arrangements. We intend to proceed with our plans to improve the fairness of local authorities' allocation policies, while at the same time maintaining a safety net for families and vulnerable people who become homeless. I commend our reforms to the House.

Research Paper 94/92

The main changes which are now proposed to the homelessness legislation are summarised below:

- A homeless household will only be entitled to assistance if there is no suitable alternative accommodation available which the household could reasonably occupy.
- When a local authority accepts responsibility for securing accommodation for a homeless household, it will be required to find accommodation for a minimum of 12 months; if still involved in the provision of such accommodation after two years, it will be required to review the household's circumstances.
- The duty to secure accommodation could recur if, after the initial period of duty ends, the person passes the necessary tests (i.e is unintentionally homeless, having no alternative accommodation available, and being in priority need).
- Where people are asked to leave by relatives or friends, consideration is being given to allowing local authorities to take account of the intentions of the landlord as well as the intentions of the homeless person. This provision is aimed at reducing instances of collusion.
- Persons from abroad admitted to the UK on the understanding that they will have no recourse to public funds will not be entitled to assistance under the homelessness legislation.
- Local authorities will be required to establish formal internal appeals mechanisms for people applying as homeless.
- Local authorities will only be able to allocate secure tenancies in their own stock, and make nominations to housing association assured tenancies, to people on their waiting lists.
- Local authorities' allocation policy must accord with any terms and conditions set out in regulations made by the Secretary of State.
- A duty is to be placed on local authorities to secure provision of housing advisory services to assist people in finding accommodation and preventing homelessness.

The Government proposes to start development work on the following areas prior to the introduction of any legislation:

- The development of a more comprehensive set of advisory services to prevent homelessness.
- The promotion of common waiting lists, held jointly for a local authority and housing associations in its area, on a voluntary basis.
- The encouragement of local authorities in the development of more rational allocation systems for local authority housing.
- The encouragement of local authorities in the development of partnerships with the private rented sector.
- The development of rent guarantee (or rent deposit) arrangements as an aid to making better use of the private rented sector for those in housing need.
- Promotion of the private rented sector for re-housing the homeless, within the constraints of the present legislation.

The Government has decided not to delay local authorities' duty to accommodate homeless applicants until an assessment has been carried out (discussed on pp 33-5 of this paper); the duty to provide assistance whilst applications are under consideration is to remain in place.

The Government has also decided that persons occupying temporary accommodation, such as women's refuges, direct-access hostels and bed & breakfast hotels, should still be regarded as homeless (see p.44).

Primary legislation to implement these reforms is to be introduced as soon as parliamentary time permits.

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