

Homelessness and housing allocations in the Housing Bill [Bill 44 of 1995/96]

Research Paper 96/10

23 January 1996



Parts VI and VII of the Housing Bill, which was presented on 18 January 1996, will establish a new framework for the allocation of housing by local authorities and replace the existing provisions on homelessness in Part III of the *Housing Act 1985*.

This paper updates information in Library Research Paper 94/92 on the history of the legislation governing homelessness, as well as on trends and policy initiatives in this area, before going on to explain the Bill's main provisions and summarising the reactions of housing commentators to Parts VI and VII. The Bill is due to be debated on Second Reading on 29 January 1996.

Those parts of the Bill which deal with the social rented sector (including Housing Benefit administration) and the conduct of tenants, houses in multiple occupation, the private rented sector and leasehold reform, are discussed in Library Research Papers 96/12 and 96/11 respectively.

Wendy Wilson
Education and Social Services Section

House of Commons Library

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

CONTENTS

| | Page |
|--|-------------|
| I Summary | 1 |
| II Legislation on homelessness | 3 |
| A. History | 3 |
| B. Department of Environment Circular 18/74 | 3 |
| C. The Housing (Homeless Persons) Act 1977 | 4 |
| D. Amendments to the Act and Code of Guidance | 7 |
| E. The 1977 Act (as amended) in outline | 9 |
| III The Government Review 1988 | 14 |
| IV Trends in homelessness | 15 |
| * A. Number of statutory homeless | 15 |
| B. Households in temporary accommodation | 17 |
| C. Immediate causes of homelessness | 18 |
| D. Housebuilding completions | 19 |
| E. Demographic changes | 19 |
| V Homeless and housing policy | 20 |
| A. Government initiatives | 20 |
| B. The debate on homeless policy and levels of housing need | 22 |
| VI The Government Review 1994 | 28 |
| VII The Bill (Parts VI and VII) and detailed reactions | 33 |
| A. The allocation of council housing (clauses 122-135) | 33 |
| B. Homelessness (clauses 136-169) | 35 |
| 1. Definition of homelessness | 35 |
| 2. Provision of advisory services | 35 |
| 3. Eligibility of assistance (persons from abroad) | 35 |
| 4. Definition of intentional homelessness | 37 |
| 5. Duty owed to persons deemed to be unintentionally homeless and in priority need | 37 |
| 6. Discharge of duty to unintentionally homeless households in priority need | 40 |
| 7. Applicants' right to request a review of decision | 43 |
| VIII General reactions to the 1994 Review and the Bill | 43 |
| A. References to the 1988 Review | 43 |
| B. Evidence of 'queue jumping' and 'widespread abuse' | 44 |
| C. Calls for reform | 49 |

| | | |
|-----------|---|-----------|
| D. | The Children Act 1989 and community care | 50 |
| E. | Financial implications | 51 |
| F. | The AWUA judgement | 52 |

*** figures provided by Bryn Morgan of the Social and General Statistics Section**

I Summary

The duties of local housing authorities towards homeless people were first introduced by the *1977 Housing (Homeless Persons) Act*. This Act was later consolidated into Part III of the *Housing Act 1985*.

During his speech to the Conservative Party Conference on 7 October 1993 the then Minister for Housing, Sir George Young, announced the Government's intention to reform the homelessness legislation 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.

A consultation paper which set out the Government's proposals, *Access to Local Authority and Housing Association Tenancies*, was published on 20 January 1994. Following consultation, which ended on 18 March 1994, Sir George Young announced the Government's intention to proceed with reforming the legislation in a statement to the House on 18 July 1994. This was further confirmed in the White Paper, *Our Future Homes, Opportunity, Choice, Responsibility* (27 June 1995).

The Housing Bill, Parts VI and VII of which will enact these reforms, was presented on 18 January 1996. In regard to homelessness and allocation policies the Bill will:

- confine local authorities' duty to one of securing accommodation for a minimum period of 12 months for unintentionally homeless applicants who are in priority need and for whom there is no suitable alternative accommodation available within the authority's area to which they could reasonably go;
- make waiting lists the sole route by which people may secure a local authority tenancy;
- remove the right of certain persons from abroad to assistance under the homelessness legislation;
- extend the definition of intentional homelessness to include situations where a person enters an agreement that results in his losing accommodation in order to take advantage of the homelessness legislation;

Research Paper 96/10

- give dissatisfied homeless applicants the right to have decisions on their homeless applications reviewed by the local authority.
- place a duty on local authorities to make advisory services available to help prevent homelessness.

II 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 96/10

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.

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.

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;

¹ DOE Circular 18/74 *Homelessness*

² David Hoath *Homelessness* 1983 p.6

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."³

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".⁴ 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.⁵

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, 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

³ HC Deb 18.2.77 cc 898-9

⁴ HC Deb 18.2.87 c.905 and c.972

⁵ HC Deb 8.7.77 cc 1607-1673

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.⁶

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.

⁶ 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.⁷

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.⁸ The amendment was accepted by the House of Commons.⁹ 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.¹⁰

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

⁷ see *Journal of Social Welfare Law*, September 1986 pp 305-310 for more detail on the Pulhofer case

⁸ HL Deb 28.10.86 cc 647-654

⁹ HC Deb 3.11.86 cc 739-746

¹⁰ *R v Broxbourne BC ex parte Willmoth* (1989) 22 HLR 118, CA

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 1993.¹¹

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*. Up until a recent House of Lords decision it had been argued that this Act could provide a means by which an intentionally homeless family could 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 had 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.

¹¹ see Library Research Note 92/85 *Housing for Homeless Asylum Seekers*

The question of whether an intentional decision could be overridden by duties under the *Children Act* was considered by the House of Lords in July 1994.¹² In this case the family had been deemed to be intentionally homeless by Northavon District Council and had approached the social services department (SSD) of Avon County Council who felt that the children of the family were in need under s.17(1) of the Children Act. The SSD requested the housing department to provide accommodation for the family under s.27 of the Children Act. This request was refused on the ground that the council could not offer any further help without breaking the rules which applied to people on the waiting list. The family sought judicial review of this decision. That application was dismissed. The Court of Appeal quashed the council's decision not to consider the s.27 request and the council appealed to the House of Lords. The Lords held that s.27 of the 1989 Act imposes a limited duty of cooperation between authorities but does not amend the powers or duties of those authorities under other statutes; thus, the housing authority was not under a duty to provide permanent accommodation or temporary accommodation beyond the period it thought appropriate under s.65(3)(a) of the *Housing Act 1985*.

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.¹³

The impact of the *Awua* judgement¹⁴ is discussed later in the paper on page 52.

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

¹²*R v Northavon DC ex parte Jimmy Smith*, HoL 14 July 1994 [26 HLR 695]

¹³ see CHAR *The Children Act 1989 - A new agenda for young homeless people?* July 1993

¹⁴ *R v Brent LBC ex parte Awua* [1995] HLR 453

Research Paper 96/10

- (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.

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:

Research Paper 96/10

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-

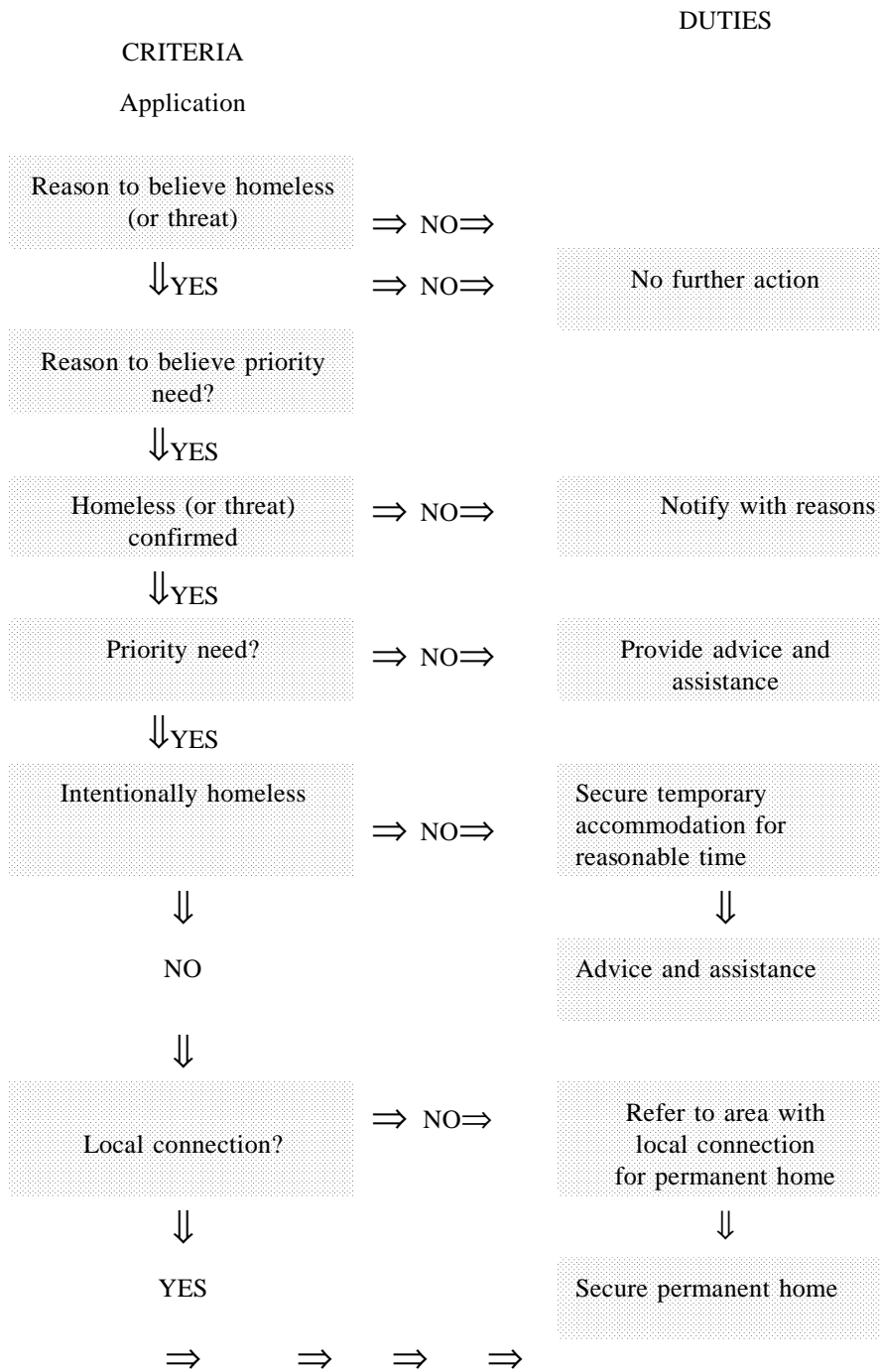
- (a) because he is, or in the past was, normally resident in that district, and that residence is or was of his own choice, or
- (b) because he is employed in that district, or because of family associations, or because of special circumstances.

- (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.

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

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

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



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

¹⁷ *Homelessness 14.5.91*

III 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.

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

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.

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

IV Trends in homelessness

A. Number of statutory homeless

Until recently the number of households accepted as statutorily homeless by local authorities had increased steadily since 1978; the thirteen quarters ending in June 1995 saw successive reductions in the number of acceptances in England. In the September quarter of 1995 authorities accepted responsibility to secure accommodation for 31,530 households; this was 1,580 (5%) more than in the June quarter and 260 (1%) more than in the same quarter in 1994. Acceptances in the September quarter were some 6,620 (17%) less than in the peak quarter of March 1992.

Some commentators feel the reduction in acceptances reflects a hardening of local authorities' attitudes when interpreting the legislation in order to save money. A 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.²³ 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 over the page:

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

²³ Shelter *Homelessness in the 1990s* 1994

Local Authority homelessness acceptances: England and Wales: 1980-94

| | England (a)(b) (households) | Wales (households) | England & Wales(c) (households) |
|------|--------------------------------|-----------------------|------------------------------------|
| 1980 | 60,400 | 5,450 | 65,850 |
| 1981 | 66,990 | 5,460 | 72,450 |
| 1982 | 71,620 | 5,610 | 77,230 |
| 1983 | 75,470 | 5,010 | 80,480 |
| 1984 | 80,500 | 5,000 | 85,500 |
| 1985 | 91,010 | 5,370 | 96,380 |
| 1986 | 100,490 | 5,970 | 106,460 |
| 1987 | 109,170 | 5,680 | 114,850 |
| 1988 | 113,770 | 6,820 | 120,590 |
| 1989 | 122,180 | 7,810 | 129,990 |
| 1990 | 140,350 | 9,960 | 150,310 |
| 1991 | 144,780 | 9,840 | 154,620 |
| 1992 | 142,890 | 10,270 | 153,160 |
| 1993 | 132,380 | 11,130 | 143,510 |
| 1994 | 122,660 | 10,290 | 132,950 |

Notes: (a) From the second quarter of 1991, in England the definition of acceptances was altered to exclude intentionally homeless. These figures are all adjusted to the new basis.
 (b) A new reporting system was introduced for non-metropolitan districts from the fourth quarter of 1980 and for other authorities from the third quarter of 1982. As a result figures for 1980 to 1982 are not strictly comparable with those for later years.
 (c) Scottish figures are generally only available on a financial year basis.

Sources: *HC Deb 18 January 1993 c126w*
DoE Information Bulletin 446/95 Households found accommodation under the homelessness provisions of the 1985 Housing Act: England
Welsh Housing Statistics 1995, Welsh Office

B. Households in temporary accommodation

The number of households placed in temporary accommodation at the end of September 1995 (46,160) was 410 (1%) more than at the end of June. Prior to this the numbers in temporary accommodation had fallen in each of the previous eleven quarters. The current figure is 19,340 (30%) below the peak level of 65,500 at the end of September 1992. The June 1995 quarter saw an increase in the number of households placed in bed and breakfast accommodation of 8 per cent (350) over the previous quarter; the September quarter saw a 9 per cent increase on this (440). The peak level was reached in September 1991 (13,550). Over half the households in temporary accommodation at the end of September 1995 were in London. Figures on households in temporary accommodation in England are set out in the table below:

Homeless households in temporary accommodation at end of year: England: 1980-94

| | Bed and breakfast | Hostels (a) | Private sector leasing (b) | Other (b) | Total |
|------|----------------------|-------------|-------------------------------|-----------|--------|
| 1980 | 1,330 | 3,380 | .. | .. | .. |
| 1981 | 1,520 | 3,320 | .. | .. | .. |
| 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 | .. | 25,130 | 45,270 |
| 1991 | 12,150 | 9,990 | 23,740 | 14,050 | 59,930 |
| 1992 | 7,630 | 10,840 | 27,910 | 16,690 | 63,070 |
| 1993 | 4,900 | 10,210 | 23,270 | 15,200 | 53,580 |
| 1994 | 4,330 | 10,020 | 17,050 | 16,360 | 47,760 |

Notes: (a) includes women's refuges
 (b) figures for dwellings leased by local authorities from private landlords are not available prior to 1991 and are included in other accommodation before this date

Sources: DoE Information Bulletin 446/95 *Households found accommodation under the Homelessness Provisions of the 1985 Housing Act: England*
 HC Deb 17 April 1991 c186w

C. 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. Homelessness arising from the termination of an assured shorthold tenancy increased in the second quarter of 1995 to 12.2 per cent of acceptances from 8 per cent in the previous quarter. The table below gives a breakdown of the reasons given for the loss of settled accommodation by households accepted for permanent rehousing in 1994:

**Households accepted for permanent rehousing by local authorities:
Reasons for loss of last settled home: 1991/92-94/95: per cent**

| | 1991/92 | 1992/9 3 | 1993/9 4 | 1994/95 |
|--|---------|-------------|-------------|---------|
| Parents no longer able/willing to accommodate | 29% | 27% | 24% | 20% |
| Other relatives of friends no longer able/willing to accommodate | 14% | 13% | 13% | 13% |
| Breakdown of relationship with partner: | | | | |
| - violent | 10% | 11% | 14% | 15% |
| - non-violent | 6% | 6% | 6% | 6% |
| Mortgage arrears (repossession or other loss of home) | 11% | 9% | 8% | 8% |
| End of shorthold tenancy | 5% | 7% | 9% | 10% |
| Loss of other rented or tied accommodation | 3% | 2% | 2% | 2% |
| Other | 14% | 16% | 16% | 16% |

Sources: DoE Statistical Bulletin 446/95

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.²⁴ The table below compares housebuilding completions in 1979 with completions in 1994/95:

Housebuilding: Permanent Dwellings Completed: England: 1979 and 1994/95

| | 1979 | 1994/95 (a) |
|------------------------|----------------|----------------|
| Local Authority | 66,720 | 888 |
| New Towns | 7,140 | - |
| Housing Associations | 16,280 | 30,146 |
| Government Departments | 920 | - |
| Private Sector | <u>118,390</u> | <u>122,727</u> |
| Total | <u>209,460</u> | <u>153,761</u> |

Notes: (a) provisional

Source: *Housing and Construction Statistics Great Britain*

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."²⁵

²⁴ for example, John Greve *Homelessness in Britain* February 1990

²⁵ Audit Commission *Housing the Homeless: The Local Authority Role* 1989 para 37

V Homelessness and housing policy

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 (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".²⁶

The Government's medium term strategy for dealing with statutory homelessness was outlined as follows in the DOE's 1991 Annual Report:²⁷

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:²⁸

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

²⁶ DOE *Annual Report 1992* para 7.39

²⁷ DOE *Annual Report 1991* para 7.45

²⁸ HC Deb 26.5.93 cc 611-12

Research Paper 96/10

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 under used 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.

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.

In 1994 the then Under-Secretary of State for the Environment, Tony Baldry, made the following statement on the impact of the Government's policies on homelessness:²⁹

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 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.

²⁹ HC Deb 26.1.94 c.386

B. The debate on homeless policy and levels of housing need

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.³⁰ Recent estimates put the number of public sector tenants who have bought their homes since 1979 at over 1.5 million.³¹

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".³² 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.³³ Research by the Audit Commission in 1989 reached the following conclusions on action needed to deal with homelessness:³⁴

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.

³⁰ see, for example, John Greve *Homelessness in Britain*, February 1990

³¹ HC Deb 1.12.93 c.1019

³² Shelter *Homes cost less than homelessness* 1992 p.13

³³ *Ibid*, pp 11-12

³⁴ Audit Commission *Housing the Homeless: The Local Authority Role* 1989 p.2

Research Paper 96/10

The Public Accounts Committee (PAC) considered Government policy on homelessness in 1990 and reported its conclusions in May 1991.³⁵ A summary of the PAC's main conclusions and recommendations is reproduced below:³⁶

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 disappointing, however, that the first schemes did not provide the expected number of properties used to house

³⁵ PAC Twenty-second Report *Homelessness* 23 May 1991, HC 447

³⁶ *Ibid*, pp v-vii

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.³⁷

In October 1992 the Housing Corporation published research carried out on its behalf into methods of conducting social housing needs assessments.³⁸ While essentially a critique of previous estimates of housing need, this report concluded that an average of 102,500 new social housing homes needed to be built in England in each year until 2001.³⁹ The report discussed the impact of a reduction in new social sector output, maintaining the status quo and increasing output to around 100,000 units per annum in the three scenarios reproduced below:⁴⁰

- 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.

³⁷ Ibid, paras 7-8

³⁸ Christine Whitehead and Mark Kleinman *A Review of Housing Needs Assessment October 1992*

³⁹ for a summary of how this figure was reached see *Inside Housing* "Assessing housing need" 9.10.92

⁴⁰ *A Review of Housing Needs Assessment pp 15-16*

The Corporation's findings reinforced those of the 1992 Audit Commission study⁴¹ and confirmed other researchers' calls for the provision of 100,000 units per year.⁴²

In May of 1995 the DoE published details of how it had calculated the need for various forms of housing tenure over the ten year period from 1991.⁴³ The method of assessing housing need adopted by the Department involved:

- 1)estimating the overall growth in households over the 10 years 1991-2001 by looking at past trends in the proportion of people in each age group which formed separate households;
- 2)estimating the proportions of each type of household which could be expected to become owner-occupiers over the period, and the number of those households who could be expected to do so by buying their existing social rented home;
- 3)estimating the change over the period in the number of people likely to be housed in the private rented sector;
- 4)considering what changes over the period were likely to occur in the housing stock through demolitions; and thereby
- 5)arrive at an estimate of the additional households over the period 1991-2001 which might be expected to look to social rented housing for their accommodation.

The DoE's analysis concluded that additional demand for social lettings lies within the range of 60,000 to 100,000 a year.⁴⁴ The paper goes on to state:

"This compares with estimated output of social housing from central and local government expenditure over the next three years of a little over 60,000 a year on average. This allows adequate scope for the private sector to provide solutions where possible."

Housing commentators have welcomed the DoE's analysis of housing needs data but have questioned several of the assumptions on which the Department's predictions are based. It has been pointed out that the analysis does not take account of existing excess demand for social rented housing which is illustrated by the number of 'concealed' households living in temporary and shared accommodation. The National Federation of

⁴¹ *Developing Local Authority Housing Strategies*

⁴² 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*

⁴³ *Provision for Social Housing, Background Analysis, Households in England, their housing tenure, and the housing stock, 1991-2001 (Dep 1638)*

⁴⁴ para 11

Research Paper 96/10

Housing Association's (NFHA) response noted that research commissioned by that organisation, and carried out by Steve Wilcox, produced an estimate of over 500,000 households who needed access to social housing in 1993. Adding this data to the DoE's projections gives an additional 50,000 dwellings needed in each year over the ten year period.⁴⁵

The DoE's model also assumes that existing patterns of housing tenure will continue, including rates of owner occupation. This is questioned on the ground that several factors are likely to inhibit the growth of owner occupation such as increased job insecurity, the need for employment mobility and changes in eligibility for mortgage interest payments for unemployed people. The *Housing Finance Review 1994/95*⁴⁶ identified that, but for right to buy sales, home ownership would have levelled off and even declined slightly since 1988. Thus it is argued that no increase in owner occupation should be assumed and that the DoE's estimate of need should be increased by 20,000 dwellings per year to take account of this.⁴⁷

The NFHA concluded that the DoE's predictions should be revised upwards to a total requirement of at least 130,000 - 150,000 new units each year. The Chartered Institute of Housing (CIH) has reached a figure of 143,514 for the total annual requirement for new social housing in Great Britain; the CIH's analysis is summarised below:⁴⁸

HOW MANY HOMES NEED TO BE BUILT?

We have calculated that if the provision of affordable homes is to keep pace with government estimates of future household formation in England, 120,000 new social rented homes need to be delivered every year. Based on government estimates of future household formation to 2006, the Chartered Institute believes that expected demand for private housing will not be sufficient to house all new families forming over the next decade. Below average activity in both the rented and mortgage sectors of the private market will place further demand on social rented housing.

Expectations that the rising rates of owner occupation of the 1980s will continue, are confounded by Government figures: Between 1991 and 1993 the percentage of married couples under the age of 30 choosing to become owner occupiers fell from 70.6% to 69.5%. The transition to a low inflation economy and future demographic trends, coupled with government policies to remove Income Support from home owners lead us to believe these are structural rather than cyclical changes. Higher numbers of home owners are generated solely by a forecast increase in the numbers of households, rather than any rise in people's desire to take on a mortgage. The Institute has assumed stable rates of owner occupation for households under 45 and

⁴⁵NFHA Briefing *Housing need: the NFHA's response to Government predictions*, May 1995

⁴⁶Joseph Rowntree Foundation, p.68

⁴⁷NFHA's response

⁴⁸CIH Briefing *How much housing investment do we need*, November 1995

carried forward the rates for older groups from 1991, effectively assuming no net change of tenure for over 45s.

Within the existing framework the private rented sector is not expected to expand during the next decade. At best, we can only expect the decline in supply during the 1980's not to resume. Private renting will not fill the continuing gap between total households and owner occupiers. Future demand will have to be met by the social rented sector, if major problems of homelessness and over-crowding are to be avoided.

The shortage of affordable housing is not just a problem for the future. There are presently 300,000 households over and above the number of available homes in England. According to the DoE there are an additional 150,000 households sharing with another family and a further 5,000 families living in Bed & Breakfast.

Over the next decade many houses will need to be demolished. Based on the DoE's prediction, we estimate over 140,000 extra houses will need to be built just to replace those demolished.

Recent calculations of the needs of households forming in Wales and Scotland raise the annual requirement by another 10,000 and 13,200 respectively. The total annual requirement for new social housing in Great Britain is 143,514.

The DoE's estimate of the additional social housing units required is above the average number of non-private sector housing starts for the last three years (41,000).⁴⁹ The Environment Select Committee is currently inquiring into levels of housing need.⁵⁰

VI The Government Review 1994

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 1993.⁵¹ On publication of the consultation paper⁵² the Minister made the following statement to the House:⁵³

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.

⁴⁹*Housing and Construction Statistics, December quarter 1994, part 1*

⁵⁰further analysis of housing need can be found in a report by Alan Holmans for the Joseph Rowntree Foundation, *Housing Demand & Need in England 1991-2001*, 1995

⁵¹ *Conservative Party News* 7.10.93 Rt Hon Sir George Young Bt MP

⁵² DOE *Access to Local Authority and Housing Association Tenancies* 20.1.94

⁵³ HC Deb 20.1.94 cc 842-4W

Research Paper 96/10

Sir George Young: I have placed in the Library of the House today copies of a consultation paper setting out the Government's 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 as statutorily homeless accounts for an ever-increasing 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 referred 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.⁵⁴

The paper went 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".⁵⁵

The paper suggested that the homelessness route into social housing had become more attractive than applying on local authority and housing association waiting lists as it gave rise to a statutory right to housing. Research conducted by the DOE was 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.⁵⁶ In conclusion the paper noted 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.⁵⁷

The main elements of the proposals were:⁵⁸

- 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.

⁵⁴ *Access to Local Authority and Housing Association Tenancies* para 1.1

⁵⁵ *Ibid*

⁵⁶ *DOE Routes into local authority housing ; a study of local authority waiting lists and new tenancies* January 1994

⁵⁷ *Access to Local Authority and Housing Association Tenancies* para 2.9

⁵⁸ *Ibid*, para 3.2

Research Paper 96/10

The DoE received over 10,000 responses to the consultation paper; Sir George Young announced the Government's conclusions in the statement below:⁵⁹

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. There 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.⁶⁰

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.

The 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 in the consultation paper to reinforce the safety net for vulnerable homeless people.

⁵⁹HC Deb 18.7.94 cc21-23

⁶⁰Deposited Paper NS 10156

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.

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 to be available for vulnerable people who cannot be expected to make their own arrangements.

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.

However, it has never been our intention that the Government should be involved in the details of allocation policy. Regulations would prescribe only minimum provisions—for example, to outlaw discriminatory practices, such as requiring a five year minimum residence qualification.

Research Paper 96/10

We shall be inviting the Housing Corporation to take account of the new duties on local authorities in the statutory guidance that it issues to housing associations, so that it can continue to work in an effective partnership with local authorities.

The proposal to encourage local authorities and housing associations to establish joint waiting lists was largely welcomed, although housing associations especially were keen that it should be voluntary, and the Government are happy to give reassurance on that matter.

Many of the Government's proposals will require primary legislation and we intend to introduce that when parliamentary time permits; as is currently the case, the legislation will extend to both England and Wales. In the meantime, we are considering what administrative action might be taken to further our objectives.

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.

Parts VI and VII of the Housing Bill will give effect, with some changes, to the proposals set out in the consultation paper.

VII The Bill (Parts VI & VII) and detailed reactions

A. The allocation of council housing (clauses 122-135)

Local authorities currently 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.

Part VI of the Bill will establish a new framework for the allocation of housing accommodation by local housing authorities. All authorities will be required to establish and maintain a register of persons to whom housing may be allocated (clause 125). Authorities will have discretion over the form in which the register is kept but regulations may prescribe certain information which it must record. With certain exceptions, an authority will only be able to allocate a secure or introductory tenancy⁶¹ within its own stock, or make nominations to assured tenancies in stock provided by registered social landlords, to persons on the housing register. The exceptions to this rule are listed in clause 123 and include cases of succession and assignment by way of exchange. Authorities will no longer be able to provide a secure tenancy to homeless households solely on the basis that they are homeless. Clause 124 empowers the Secretary of State to prescribe certain classes of persons to whom an authority may not allocate housing accommodation.

Clause 128 will require authorities to establish and operate schemes for the allocation of their housing stock. The Secretary of State will issue regulations setting out the principles with which these schemes must accord; subject to this, authorities will have discretion over how their schemes are framed.

Clauses 126, 127 and 129 cover the operation of housing registers, information about the registers and information about allocation schemes.

Clause 132 will make it a criminal offence for a person to knowingly or recklessly make a false statement or withhold relevant information when applying for housing under Part VI.

When responding to the consultation paper the local authority associations were concerned that any statutory provisions covering allocation schemes should be limited, and that local authorities should be given sufficient flexibility and discretion to frame schemes with local needs and circumstances in mind.⁶²

The local authority associations are opposed to the removal of their duty to give 'reasonable preference' to homeless households when making allocation decisions. The degree of flexibility which authorities will retain in practice will depend on the contents of the regulations which the Secretary of State will be empowered to issue under this part of the Bill.

⁶¹see Research Paper 96/12 on the social rented aspects of the Bill

⁶²ADC & AMA response to *Access to Local Authority and Housing Association Tenancies*

B. Homelessness (clauses 136-169)

Part VII of the Bill will replace the existing provisions in Part III of the *Housing Act 1985*.⁶³ Most of the existing provisions are simply re-enacted, subject to the following main changes.

1. Definition of homelessness

Currently a person is regarded as homeless if he has no accommodation available for his occupation in England, Wales or Scotland. Clause 136(1) will extend this definition to cover the 'UK or elsewhere.' This means, for example, that if a person has accommodation abroad which is deemed to be available for his occupation he may, in future, not qualify for assistance as a homeless person.

The Secretary of State is to be empowered to prescribe by order circumstances in which it should be regarded as reasonable or not reasonable for a person to continue to occupy accommodation (clause 137). This is relevant to the decision of whether or not someone is actually homeless.

2. Provision of advisory services

Clause 139 will place a duty on local housing authorities to make advisory services available to help prevent homelessness. These services need not be provided directly by local authorities. The Bill makes provision for the Secretary of State or authorities to issue grants or loans to voluntary organisations concerned with homelessness (clause 140).

The introduction of a new duty to ensure the provision of housing advice services to aid the prevention of homelessness has been broadly welcomed; however, the provision of advice is viewed by housing organisations as no substitute for a statutory right to permanent housing for homeless people.⁶⁴

3. Eligibility for assistance (persons from abroad)

Clause 145 will remove eligibility for assistance to persons from abroad who are ineligible for social assistance as specified in regulations to be issued by the Secretary of State.

⁶³see section II(E) of this paper

⁶⁴for example, Shelter's briefing on the Housing Bill, 18.1.96

Under Part III of the *Housing Act 1985* local authorities must arrange permanent accommodation for individuals and households who are unintentionally homeless and who fall into a priority need category. The categories of priority need are set out in section 59 of the Act and include:

- pregnant women;
- people with dependent children;
- people who are vulnerable owing to old age, physical or mental ill health or some other special reason; and
- people made homeless in an emergency, e.g. a fire or flood.

Since the enactment of the *1993 Asylum and Immigration Appeals Act*⁶⁵ local authorities have had a duty to make enquiries about an applicant's immigration status if there is reason to believe that the applicant is an asylum seeker. Homeless asylum seekers may apply for assistance but they will only be granted temporary accommodation pending a Home Office decision on their asylum status. Additionally, local authorities are only obliged to provide asylum seekers with temporary accommodation where they are satisfied that there is no accommodation, however temporary, which it would be reasonable to expect the applicants to occupy.⁶⁶

The case of *R v Secretary of State for the Environment ex parte Tower Hamlets* [1993] CA, established that local authorities have no duty to provide housing under Part III to someone held by the immigration authorities, or by the local authorities themselves, to be an illegal entrant (or an overstayer).

The move to remove coverage of the homelessness legislation from certain categories of persons from abroad is regretted by organisations working with the homeless. There is concern that it will lead to a direct increase in homelessness and that families and vulnerable people will be left roofless and without a safety net.

Housing authorities have questioned the desirability of measures which will encourage them to determine the immigration status of housing applicants.

⁶⁵26 July 1993

⁶⁶these amendments to the 1985 Act are discussed in Library Research Note 92/85 *Housing for Homeless Asylum Seekers*

4. Definition of intentional homelessness

Clause 150 will extend the definition of intentional homelessness to situations where a person enters an agreement that results in his losing accommodation in order to take advantage of the homelessness legislation. People will also be treated as intentionally homeless where they are given advice or assistance under clause 155 (see below) and they fail to secure accommodation 'in circumstances in which it was reasonably to be expected that he would do so' and they make a further application for assistance as homeless.

The actual impact of clause 150 will largely depend on how it is interpreted by local authorities. The Government's intention appears to be to limit the scope for collusion between families and friends. There is concern that this will lead to authorities refusing to assist people who are asked to leave by their parents or friends (currently the most significant cause of homelessness) and that this will, in turn, deter people from offering short term help to people who would otherwise be roofless.

5. Duty owed to persons deemed to be unintentionally homeless and in priority need

These persons will retain their entitlement to assistance with accommodation only if it is deemed that there is no suitable alternative accommodation available to them within the local authority's area (clause 151). Clause 155 will reduce the duty to owed to unintentionally homeless applicants to providing only appropriate advice and assistance where the authority *is* satisfied that other suitable accommodation is available for occupation within the area.

Where an authority is satisfied that there is no other suitable accommodation available within the area, the duty to unintentionally homeless applicants who are in priority need will be to secure that accommodation becomes available for their occupation for a minimum period of 12 months (clause 151). Thereafter, the authority may continue to secure accommodation, providing that, at least every two years it satisfies itself that the person remains entitled (clause 152).

Prior to the *Awua* judgement (see page 52) people housed as homeless had to be provided with "suitable" accommodation; the case of *R v LB Camden ex parte Wait* (1986) 18 H.L.R. 434, established that authorities should ensure that indefinite accommodation was available in order to properly discharge their duties.

The reduction of this duty to one of securing suitable accommodation for a minimum period of 12 months is not welcomed by a majority of local authorities and other housing bodies, despite the fact that the Government has accepted that the duty to provide emergency

assistance could recur if a household continues to meet the necessary criteria.⁶⁷ Local authorities believe that the duty to secure suitable temporary housing for homeless applicants will produce a "revolving door" of homelessness as people placed in good quality temporary homes will be unlikely to gain priority for social housing on a housing register.⁶⁸

Sir George Young made the following comments in response to concerns raised over the removal of authorities' duty to secure permanent accommodation:⁶⁹

"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."

The Association of London Authorities (ALA) made the following comments on the potential impact of the proposal to remove homeless households' right to permanent housing:⁷⁰

"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 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.

⁶⁷ *Access to Local Authority and Housing Association Tenancies*, para 6.6

⁶⁸ *Inside Housing* 13.10.95 "Despair as DoE homeless plan branded revolving door"

⁶⁹ HC Deb 26.1.94 c.314

⁷⁰ ALA's response para 5.2.1

Research Paper 96/10

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 to the consultation paper noted 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."⁷¹

Research by Shelter into the impact of living in temporary accommodation on school age children has found:⁷²

- that families in temporary accommodation face difficulties when trying to keep their children in existing schools and also if they try to move them nearer to the temporary address;
- families who choose to keep a child at their 'old' school face additional expenditure on transport;
- when homeless families are moved they have problems finding a new school place. Schools are often full; therefore, children may spend periods out of school;
- missed school time, infrequent and late attendance hinder homeless pupils' progress. Academic continuity is often interrupted by frequent changes of school;
- conditions in temporary accommodation (especially B&B hotels) make it difficult for pupils to work at home;
- homeless pupils may find it difficult to participate fully in the life of the school.

⁷¹Children's Society *Response to the DOE Consultation Paper : Access to Local Authority and Housing Association Tenancies* March 1994

⁷²*No Place to Learn, 1995*

Attention has been drawn to the impact of this proposal on local authorities' duties under the *Children Act 1989* (see pages 8-9 and 50).

The removal of the duty to secure accommodation for these applicants even for a limited period, where an authority is satisfied that there is suitable alternative accommodation available within its area, is widely viewed as a seriously retrograde step. The degree of subjectivity involved in deciding whether alternative suitable accommodation is available was raised by a number of respondents to the consultation paper. Once again, the actual impact of this provision will depend on how it is interpreted in practice.

6. Discharge of duty to unintentionally homeless households in priority need

Clause 161 specifies the methods by which authorities will be able to discharge their duties to these applicants.

The duty on local authorities (prior to the *Awua* judgement)⁷³ was to "secure" suitable accommodation for households accepted as homeless; however, there was 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.

Clause 161 will limit the way in which authorities may discharge their duties to unintentionally homeless applicants to either:

:

- providing a short term tenancy in local authority stock;
- securing suitable accommodation from some other person; or
- providing advice and assistance to enable the applicant to secure accommodation from some other person.

In deciding how to discharge their duties the consultation paper advised "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".⁷⁴ The potential placement of homeless households in private sector tenancies is a highly controversial aspect of the Bill. Part III of the Bill will reverse the current position so that, with limited exceptions, all private sector tenancies created after the Bill comes into effect will be assured shorthold tenancies. These

⁷³see page 52

⁷⁴*Access to Local Authority and Housing Association Tenancies* para 7.1

tenancies give landlords an automatic right of repossession after the expiry of six months.⁷⁵ Twelve per cent of households accepted as homeless in the second quarter of 1995 were homeless as a result of losing a shorthold tenancy.

A number of authorities already use private sector accommodation in order to discharge their duties to the homeless;⁷⁶ Shelter's objections to this practice are reproduced below:⁷⁷

"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."

The question of whether the private rented sector actually has the capacity to house the number and type of households who present as homeless has also been 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 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."⁷⁸

Research has shown that private sector landlords who let properties as a sideline activity are generally reluctant to let properties for social housing purposes unless they are indemnified against arrears and unless they get a guarantee that the property will be returned in the state in which it was let.⁷⁹ The same research found that larger 'business landlords' were more willing, and able, to accept housing benefit claimants and other tenants who might be considered to have 'social housing needs'.⁸⁰

The London Research Centre (LRC) compiled a snapshot profile of tenants who moved into the private rented sector after the beginning of 1989 compared with the characteristics of

⁷⁵see Library Research Paper 96/11

⁷⁶Roof "Let them go private" September/October 1993

⁷⁷Shelter's response para 7.3

⁷⁸ADC's response para 3.10

⁷⁹DoE *In From the Cold - Working with Private Landlords*, June 1995, para 4.20

⁸⁰Ibid

tenants who moved into the social rented sector during the same period.⁸¹ 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.⁸²

The issue of private sector rent levels was 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."⁸³ Shelter's research into the financial implications of housing homeless people in the private rented sector is discussed on page 51.

The Government's recent measures to limit housing benefit payments⁸⁴ has led housing commentators to suggest that this could completely undermine the homelessness reforms as private landlords will be unlikely to offer tenancies to homeless people without guaranteed rent payments.⁸⁵ On the proposals to limit the housing benefit entitlement of single people under the age of 25 Shelter has commented:⁸⁶

"Cuts to housing benefit this January and proposed cuts to housing benefit for single people under 25 from October 1996 will directly hit homeless people who are referred to the private rented sector. They will have to make up rents from other benefits or face rent arrears, eviction and further homelessness. Alternatively, they will be forced into the cheapest and poorest accommodation."

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.⁸⁷ 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.⁸⁸

⁸¹LRC *Homelessness in London Bulletin* Special Edition, February 1994

⁸²Ibid

⁸³Ibid

⁸⁴see Library Research Paper 95/67, p.14

⁸⁵see *Inside Housing* "Benefit clampdown could threaten Government's homelessness review" 4.3.94

⁸⁶Shelter Briefing on The Housing Bill ,18.1.96

⁸⁷DoE *English House Condition Survey 1991*, para 7.22

⁸⁸Ibid, figure 7.11

The implications of the use of private sector accommodation on black and ethnic minority households were covered by the ALA and AMA responses to the consultation paper. The ALA pointed out that homelessness disproportionately affects these groups for a variety of reasons, one of which is discrimination in the private rented sector; there was concern that the consultation document contained no mention of the potential problems which these groups may face in seeking and maintaining suitable alternative accommodation.⁸⁹ On the possible use of accommodation agencies to secure accommodation for homeless applicants Shelter has commented:⁹⁰

"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."

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.

7. Applicants' right to request a review of decision

Clause 160 will give applicants a new right to request an internal review of a local authority's decision on a homeless application within 14 days of being notified of the decision.

The introduction of this right is generally welcomed. 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.

VIII General reactions to the 1994 review and the Bill

A. References to the 1988 review

In their responses to the consultation document a number of commentators 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

⁸⁹AMA's response para 3

⁹⁰Shelter's response para 24.2

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 of their own have become homeless".⁹¹ Shelter's response pointed out that these conclusions were in direct contradiction with those of the consultation paper.⁹²

B. 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".⁹³ The consultation paper noted 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 1992/93.⁹⁴ 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) response to the consultation document stated:

"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".⁹⁵

The AMA and the Association of District Councils (ADC) carried out a survey of member authorities (352 of which 197 responded)⁹⁶ in January and February 1995. The aim of the survey was to examine local authorities' allocation practices to see if there is any evidence of unfairness in the treatment of homeless and waiting list applicants. The survey found:⁹⁷

⁹¹DOE *The Government's Review of the Homelessness Legislation* November 1989

⁹²Shelter *Access to Local Authority and Housing Association Tenancies : Shelter's response* March 1994

⁹³for example, Chartered Institute of Housing *The homelessness review : the response of the housing profession* March 1994

⁹⁴*Access to Local Authority and Housing Association Tenancies* para 2.5

⁹⁵AMA *DOE consultation paper : response of the Association of Metropolitan Authorities* March 1994

⁹⁶response rate of 56%

⁹⁷AMA *Fair and Seen to be Fair: A Survey of Local Authority Housing Allocations Practices*, June 1995

Research Paper 96/10

- that two out of three authorities (66%) have already combined homeless and other applicants into a single list, and of these 42% operate a combined list for homeless, waiting list and transfer applicants;
- that authorities assess relative priority between homeless and other applicants using a variety of methods; only 13% of authorities reported that homeless applicants automatically received priority;
- the proportion of lettings made to homeless applicants has remained consistent at around 25% over 1991-1994. Lettings to homeless households declined slightly between 1992/93 and 1993/94 while lettings to waiting list applicants increased during the same period. There are considerable regional variations in the percentage of lettings made to homeless applicants;
- 15% of authorities reported that homeless applicants are not housed more quickly than waiting list applicants requiring the same size and nature of accommodation, a further 32% reported that they are housed only slightly more quickly;
- 44% of authorities reported that homeless applicants were offered a restricted choice of area compared with other applicants;
- 82% of authorities reported that homeless applicants received fewer reasonable offers than other applicants;
- 36% of authorities reported that constraints on area or quality of accommodation offered to homeless applicants were an important factor causing them to be rehoused more quickly than other applicants.

The survey results led the AMA/ADC to conclude:

"The survey results presented in this report undermine any claim that there is widespread unfairness in access to local authority and housing association tenancies, and thus the claim that the homelessness legislation is an obstacle to the achievement of fairness in allocations."

The Churches National Housing Coalition (CNHC) also carried out a sample survey of 18 authorities in 1995. The information provided by the authorities in this survey revealed great

disparities in the proportion of offers made available to homeless households compared to households registered on the waiting list:⁹⁸

| | % of new council lets to homeless 1994/95 | change since 1990/91 | % to those from waiting list 1994/95 | change since 1990/91 |
|-------------|---|-------------------------|--|-------------------------|
| Beverly | 17 | -4 | 38 | 0 |
| Bury | 30 | 1 | 30 | -2 |
| Cambridge | 17 | N/A | 42 | N/A |
| Crawley | 16 | -5 | 21 | 14 |
| Derby | 20 | 2 | 36 | -4 |
| Ealing | 45 | 3 | 23 | 20 |
| Kingston | 33 | 6 | 10 | -1 |
| Lancaster | 19 | N/A | 34 | N/A |
| Leeds | 16 | 0 | 39 | 1 |
| Oxford | 24 | -1 | 21 | -6 |
| Reading | 21 | -6 | 11 | -3 |
| Rotherham | 4 | 1 | 48 | -21 |
| Sheffield | 12 | -3 | 38 | -2 |
| Tandridge | 19 | N/A | 15 | N/A |
| Teinbridge | 23 | -1 | 15 | 1 |
| Trafford | 27 | -1 | 28 | 2 |
| West Oxon | 16 | N/A | 29 | N/A |
| Winchester | 12 | 6 | 19 | -20 |
| Mean | 20 | -2 | 28 | 0 |

(not weighted)

Only 6 out of the 18 authorities in the survey gave a higher percentage of lettings to homeless households than to those from the waiting list. The CNHC report concludes:

"It would therefore not be accurate to say that homeless households are increasingly being prioritised ("jumping the queue") to the detriment of households on the waiting list."

⁹⁸ *People Need Homes*, October 1995

Commenting on factors which prevent more people from being housed from waiting lists the CNHC report observes:

"Contrary to the Government's assertion, the number of people taking the "homelessness route" into council housing does not appear to be a significant factor in determining the ability of those on the waiting list to get housed. Derby, with the highest level of homeless acceptances, was the fourth best authority at rehousing people from the waiting list (7.8 per thousand), whilst Beverly, with the lowest level of homeless acceptances was eighth worst at rehousing (3.2 per thousand).

The main factor in determining the speed with which people get rehoused from the waiting list is, quite simply, the amount of housing available. The five authorities with the largest percentage of housing in council ownership had the best record at rehousing people from the waiting list, even though these included four of the five who also had the highest relative levels of homeless acceptances."

Even if one accepts that homeless households, particularly within certain areas, 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 in 1989:⁹⁹

"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.

⁹⁹Audit Commission *Housing the Homeless: The Local Authority Role 1989*

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 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:¹⁰⁰

"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."

¹⁰⁰DoE *Living in Temporary Accommodation : A survey of homeless people 1989* p.153

Research Paper 96/10

*Routes into Local Authority Housing*¹⁰¹ 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.¹⁰² This average masks the fact that waiting times differ greatly between different areas of the country.

The London Boroughs Association (LBA)¹⁰³ noted 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."¹⁰⁴

C. Calls for reform

A frequently raised issue in a number of responses to the consultation paper was the fact that there had been no widespread demand for changes in the homelessness legislation to limit the rights of homeless people. The Chartered Institute of Housing's (CIH) response stated "to our knowledge, other than the London Boroughs Association and two well known London Boroughs, no housing organisation has called for such radical change".¹⁰⁵

The CIH 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.¹⁰⁶

On publication of the Bill the Chair of the ADC, Paul Jenks, remarked:¹⁰⁷

¹⁰¹DoE January 1994 para 4.7.1

¹⁰²DOE *Queuing for housing: a study of council housing waiting lists* 1988

¹⁰³the LBA represents mainly Conservative controlled authorities

¹⁰⁴LBA *Access to Local Authority and Housing Association Tenancies : Response by the London Boroughs Association* March 1994

¹⁰⁵CIH *The Homelessness Review: The Response of the Housing Profession* March 1994

¹⁰⁶CIH "Homelessness - tackling the definition instead of the problem?" 1993

¹⁰⁷ADC/AMA Press Release 19.1.96 *Associations urge government to see sense on homelessness plans*

"When will the Government see sense? Why has it ignored the responses of 10,000 organisations involved with homeless people, which unreservedly condemned these proposals? It appals me that these proposals have come this far when everyone who has any knowledge of the needs of homeless people has told the Government that they would spell absolute disaster."

D. The Children Act 1989 and community care

Respondents to the consultation paper 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 8; 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 temporary assistance, this will increase the potential for the *Children Act* to be used to challenge local authorities' decisions with a view to securing permanent accommodation for households with children.¹⁰⁸

The Association of London Authorities (ALA)¹⁰⁹ 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."¹¹⁰

¹⁰⁸ CIH's response p.3

¹⁰⁹ the ALA represents mainly Labour controlled authorities

¹¹⁰ ALA *Review of the homelessness legislation* March 1994 para 5.6.2

E. Financial implications

The consultation paper advised that the proposed changes to the homelessness legislation would reduce the number of households for whom local authorities would be required to provide assistance and that this in turn would produce savings. The paper noted that even if there were no reduction in the numbers qualifying for assistance, savings would result from the placement of households in private rented accommodation as this was cheaper, even after allowing for the cost of housing benefit claims, than placing a household in local authority housing.¹¹¹ The Bill notes that the provisions contained in Parts VI and VII, "should not have a significant effect on central or local government expenditure."

The LBA regarded the consultation paper's conclusion as "premature" on the basis that housing benefit expenditure would be likely to increase, as would expenditure on rent guarantees and the provision of advice and assistance; the association felt there would be costs associated with developing local authority waiting lists and 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.¹¹² The ADC pointed 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 eligibility assessment process.¹¹³

Shelter commissioned a research project in the autumn of 1994 to examine the implications of developments in housing policy and changes in the housing market on housing affordability and housing benefit dependency in the private rented sector. On the financial implications of housing homeless people in the private rented sector the study concluded:¹¹⁴

"If all of those currently rehoused as homeless in the social rented sector (90,000 households in a year) were accommodated for an average of one year in the private rented sector, the cost of their HB would more than double, an increase of £118 million. If some remained in the private rented sector for longer, it would not be long before this measure had cost more than the £200 million that new HB regulations are intended to save. It would be better for homeless households and other groups with low or insecure homes to continue to have access to affordable social housing. The social sector can do this job both more economically and more effectively."

¹¹¹*Access to Local Authority and Housing Association Tenancies* para 27.1

¹¹²LBA's response para 25

¹¹³ADC's response para 7.2

¹¹⁴*Too High a Price*, 1995

F. The Awua judgement

On 6 July 1995 the House of Lords gave judgement in a case concerning Victoria Awua, a single parent found intentionally homeless by Brent LBC. It has been suggested that this case has rendered any change to the homelessness legislation unnecessary.¹¹⁵

The case involved an appeal by Ms Awua against a finding of intentional homelessness. Brent council declared her to be intentionally homeless because she was evicted from temporary accommodation (short-life housing) provided by Tower Hamlets LCB, after refusing an offer of permanent housing. The point in question was whether someone could be deemed intentionally homeless for losing accommodation that was not intended to be a permanent or indefinite home. The Court of Appeal upheld Brent's decision and Ms Awua appealed to the House of Lords.

Lord Hoffman (with whom the remainder of the committee agreed) held that Brent was entitled to take the view that she had ceased to occupy the short-life accommodation in consequence of her refusal of the permanent offer. This was viewed as accommodation which was available for her occupation and which it would have been reasonable for her to continue to occupy until a permanent offer was made. When giving the leading speech Lord Hoffman analysed the distinction between accommodation which is 'settled' and that which is temporary or otherwise 'unsettled'. Although he began with the definition of accommodation in s.60 of the 1985 *Housing Act* (which deals with intentionality) he went on to consider 'accommodation' in s.58 (which sets out the circumstances in which someone should be considered to be homeless) and also the same term in s.65, which describes how local authorities should discharge their duties to homeless applicants. By disapproving the distinction between settled and temporary accommodation the House of Lords removed the requirement that unintentionally homeless people should be provided with something other than temporary accommodation. In summary:

"A person may be housed in something less than settled accommodation, may not be homeless in something less than settled accommodation, and may be intentionally homeless from something less than settled accommodation: but s/he will still need to secure something that is at least settled accommodation in order to break the chain in a period of intentional homelessness."¹¹⁶

The Awua decision was greeted with dismay by the majority of local housing authorities and organisations which campaign on behalf of the homeless.¹¹⁷ It was felt that the case made the Government's reforms to the homelessness legislation redundant. The DoE issued an explanatory paper in October 1995 in which it stated that the duty which will be placed on authorities to secure accommodation for unintentionally homeless households for a minimum of 12 months will "remove any uncertainty created by the recent House of Lords judgement in the Awua case."¹¹⁸

¹¹⁵*R v LB Brent ex parte Awua* [1995] HLR 453

¹¹⁶*Legal Action "Homelessness a step backwards"* August 1995

¹¹⁷*Housing Associations Weekly* 14.7.95 "Shelter slams Lords ruling on homelessness"

¹¹⁸*Reform of access to social housing*, 5.10.95