

# Allocation of Accommodation: Choice Based Lettings Code of Guidance for Local Housing Authorities



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Department for Communities and Local Government

Page 2

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# Chapter 1

## Purpose of the code

- 1.1 The Secretary of State is issuing this guidance to local housing authorities in England (referred to in this guidance as “housing authorities”) under s.169 of the Housing Act 1996 (the 1996 Act). Housing authorities must have regard to this guidance for the purposes of exercising their functions under sections 167(1A) and 167(2E) of the 1996 Act. This guidance is also relevant to the duties in sections 193(3A) and 195(3A) of the 1996 Act.
- 1.2 This code of guidance (“the Code”) provides information about those factors which housing authorities should take into account in framing their allocation scheme to offer a choice of accommodation to applicants, and factors which they may wish to consider. Accordingly the guidance is primarily for those authorities which have in place or propose to have in place a policy of offering choice to applicants. It is not a substitute for legislation and in so far as it comments on the law can only reflect the Department’s understanding at the time of issue. Housing authorities will still need to keep up to date with any developments in the law in this area.
- 1.3 Housing authorities which offer a choice of accommodation to applicants continue to allocate accommodation within the meaning of Part 6 of the 1996 Act and must comply with the provisions of Part 6. This guidance is therefore supplementary to the Allocation of Accommodation Code of Guidance for Local Housing Authorities<sup>1</sup> issued in November 2002 (referred to in this guidance as the “Allocations Code”).

## Who the guidance is for

- 1.4 This guidance is specifically for housing authority members and staff. It is also of direct relevance to registered social landlords (referred to as RSLs). Where a housing authority requests it, RSLs have a duty under section 170 of the 1996 Act to co-operate to such extent as is reasonable in the circumstances in offering accommodation to people with priority under the authority’s allocation scheme. Other private landlords may also work in partnership with housing authorities to enable applicants to be offered a choice of accommodation and this guidance may be of interest to these landlords.

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<sup>1</sup> *Allocation of Accommodation Code of Guidance for Local Housing Authorities*, ODPM 2002.

- 1.5 Many of the activities covered by this guidance require joint planning and operational co-operation between housing authorities and other bodies. These are likely to include social services departments, health authorities, other referral agencies and voluntary sector organisations, and RSL “HomeBuy Agents”<sup>2</sup>, although this list is not exhaustive. This guidance will be relevant to these organisations as well.

## Legislation in context

- 1.6 In framing their allocation scheme to offer a choice of accommodation to applicants, housing authorities should ensure that their policies and procedures are compatible with obligations imposed on them by other existing legislation, in addition to Part 6 of the 1996 Act, including but not limited to:
- The Race Relations Act 1976 (in particular s.71)
  - The Disability Discrimination Act 1995 (in particular s.49A)
  - The Sex Discrimination Act 1975 (in particular s.76A)
  - The Equality Act (Sexual Orientation) Regulations 2007 (in particular regulations 5 and 8)
  - The Human Rights Act 1998
  - The Freedom of Information Act 2000 (in particular s.19)
  - The Data Protection Act 1998 (see paragraph 5.36 below)
- 1.7 Section 71 of the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000) requires specified bodies, including local authorities, to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between people of different racial groups. The aim of this provision is to make the promotion of racial equality central to the way relevant services are designed and delivered. Local authorities are also required to publish a race equality scheme which must be reviewed every three years. Policies and procedures on offering choice to housing applicants should have regard both to wider duties imposed on public bodies in terms of race relations, and to the local authority’s own race equality scheme.
- 1.8 Section 49A of the Disability Discrimination Act 1995 (inserted by the Disability Discrimination Act 2005) introduces a new duty to promote disability equality which is applicable to all public bodies, including housing authorities. This duty came into force in December 2006. It includes, amongst other things, the requirement to have due regard to:

<sup>2</sup> HomeBuy Agents are appointed RSLs which provide a point of contact for affordable housing options in a given area in England and handle the application process for the Open Market and New Build Homebuy products.



- the need to promote equality of opportunity between disabled persons and other persons
- the need to eliminate unlawful discrimination and
- the need to take steps to take account of disabled persons disabilities, even where that involves treating disabled persons more favourably than other persons

1.9 The Equality Act (Sexual Orientation) Regulations 2007 (which are made under section 81 of the Equality Act 2006) make it unlawful to discriminate on the grounds of sexual orientation in the provision of goods, facilities and services, the disposal and management of premises and the exercise of public functions (amongst other things). Sexual orientation is defined in section 35 of the Equality Act 2006 as meaning an individual's sexual orientation towards persons of the same sex as him or her, persons of the opposite sex, or both. Lesbian, gay and bisexual applicants may often be reluctant to access services, including social housing, for fear of discrimination and/or fear of a lack of awareness or sensitivity to their issues among housing and support providers. Housing authorities should be aware of this when framing their allocation policies and when considering the support and assistance available to applicants (see further Chapter 5).

1.10 Section 19 of the Freedom of Information Act 2000 requires public authorities to adopt and maintain a scheme which relates to the publication of information by the authority, and to publish information in accordance with that scheme. The publication scheme must specify the classes of information which the authority publishes or intends to publish; the manner in which information of each class is, or is intended to be, published; and whether the material is, or is intended to be, available to the public free of charge or on payment. The type of information covered by a publication scheme would include the authority's allocation scheme. This is in addition to the duties under section 168 of the Housing Act 1996 to make information available about the authority's allocation scheme.

1.11 The following guidance on the equalities duties is available on the Equality and Human Rights Commission website at [www.equalityhumanrights.com](http://www.equalityhumanrights.com):

- The Duty to Promote Disability Equality: Statutory Code of Practice
- Housing and the Disability Equality Duty: A guide to the Disability Equality Duty and Disability Discrimination Act 2005 for the social housing sector
- Gender Equality Duty: Code of Practice for England and Wales
- The gender equality duty and local government: Guidance for public authorities in England
- The Statutory Code of Practice on Racial Equality in Housing (England).

- 1.12 The policies and procedures on offering a choice of accommodation should be seen in the context of the authority's other housing functions. They should be compatible with the local authority's housing strategy and the relevant regional (and sub-regional) housing strategy. Since the allocation of accommodation under Part 6 is one of the ways in which the main homelessness duty can be discharged, the policies and procedures on choice should also be considered as part of the housing authority's homelessness strategy.
- 1.13 For a wide range of vulnerable people, housing, care and support are inextricably linked, and housing authorities will want to consider how their policies on offering choice to applicants interacts with other programmes of care and support.

# Chapter 2

## **Overview of the legislative provisions in Part 6 of the 1996 Act relating to offering choice to applicants and the Government's "choice based lettings" policy**

### Introduction

2.1 This chapter provides an overview of the Government's policy on offering social housing tenants a choice of accommodation and sets out the obligations imposed on, and powers granted to, housing authorities under Part 6 of the 1996 Act which are particularly relevant to offering choice.

### Housing authority's obligations under s.167(1A) of the 1996 Act and powers under section 167(2E)

2.2 Sections 167(1A) and 167(2E) of the 1996 Act were inserted by section 16 of the Homelessness Act 2002 ("the 2002 Act").

2.3 Section 167(1A) provides that an allocation scheme must include a statement as to the housing authority's policy on offering people who are to be allocated housing accommodation a choice of accommodation, or the opportunity to express preferences about the accommodation to be allocated to them. This means that the housing authority must take a policy decision on this issue and address it within their allocation scheme.

2.4 A policy of allowing applicants an opportunity to express their preferences on areas or types of property is not the same as offering applicants a choice of accommodation. In the Secretary of State's view all housing authorities should adopt an allocation scheme which offers a choice of accommodation and she has set a target for all housing authorities to have done so by 2010. In the meantime, however, housing authorities which do not offer a choice of accommodation should consider giving the applicant an opportunity to express preferences in relation to accommodation. This means allowing the applicant to express a preference about, for example, the location and type of accommodation to be allocated. Wherever possible, such preferences should be taken into account in allocating accommodation to that person.

- 2.5 Section 167(2E) provides that an allocation scheme may contain provision about the allocation of particular accommodation to a person who makes a specific application for that accommodation. This is intended to facilitate choice by providing for the adoption of “advertising schemes” whereby applicants can apply for particular properties which have been advertised as vacant by the housing authority.
- 2.6 Section 167(2E) does not specify how authorities should offer a choice of accommodation. However, in the Secretary of State’s view the most effective way of doing so is by adopting an advertising scheme and accordingly she expects that all housing authorities will adopt allocation policies and procedures which incorporate an advertising scheme.

## Definition of “choice based lettings scheme”

- 2.7 The term “choice based lettings scheme” will be used in this guidance to mean that an authority has adopted allocation policies and procedures which incorporate an advertising scheme.

## The Government’s policy on offering a choice of accommodation to applicants

- 2.8 The Secretary of State believes that allocation policies for social housing should provide for applicants to be given more of a say and a greater choice over the accommodation which they are allocated, while continuing to ensure that the primary purpose of social housing is to meet housing need. This is the best way to ensure sustainable tenancies and to build settled, viable and inclusive communities. Research carried out for Communities and Local Government<sup>3</sup> into the longer impact of choice based lettings found that tenants who were offered a choice of accommodation were more likely to be satisfied with their home and remain in that home for a longer period. Satisfied tenants, it is suggested, are more likely to meet their tenancy obligations and maintain the property in good condition.
- 2.9 In January 2005, ODPM published *Sustainable Communities: Homes for All*<sup>4</sup>. Paragraphs 5.18 to 5.21 of that document set out the Government’s choice based lettings policy objectives. These objectives are:
- to make it as easy as possible for applicants and tenants to move between local authority, housing association and privately owned accommodation by encouraging the extension of choice based lettings to cover low cost home ownership options and properties for rent from private landlords, as well as social housing

<sup>3</sup> *Monitoring the Longer Term Impact of Choice Based Lettings*, Heriot-Watt University and BMRB, October 2006

<sup>4</sup> *Sustainable Communities: Homes for All*, Office of the Deputy Prime Minister, January 2005.

- to develop choice based lettings schemes on a regional and/or sub-regional basis, recognising that housing markets do not follow local authority boundaries
- to support prospective applicants to choose the housing option which is best for them, including: promoting a wide range of options within the district (including low cost home ownership, mutual exchange, the private sector); providing information about 'staying put' options such as aids and adaptations; mobility schemes, including moves from high to low demand areas; property shops and housing advice centres

# Chapter 3

## Choice based lettings: general

### The extent of a policy to offer choice to applicants

- 3.1 Where housing authorities adopt a policy of offering a choice of accommodation, the policy should, as far as possible, extend to all applicants and to all available accommodation. Policies which restrict choice to certain categories of applicant or certain types of dwelling are likely to be more difficult for applicants to understand, and may be regarded as less open and transparent. Local authorities should ensure that any policy of restricting choice does not have a discriminatory impact on a particular group or community.
- 3.2 The fact that certain applicants – for example, people with physical or mental impairments – may have difficulty in making an application for accommodation without assistance, should not preclude them from being offered a choice of accommodation. Instead applicants should have access to any necessary assistance to enable them to make an application (see paragraphs 5.22 to 5.28). Likewise, the fact that certain applicants may have difficulty in living independently in the community without care and/or support should not preclude them from being offered a choice of accommodation. Rather housing authorities should work together with other relevant agencies and providers to ensure that people can apply for appropriate accommodation and receive the support and care necessary to allow them to live as independently as possible. To this end, wherever practicable, specialist and supported accommodation should be advertised to extend choice to as many people as possible. However, where specialist or supported accommodation is advertised alongside other accommodation, it is important to make clear that only those applicants with relevant housing and/or support needs may apply for it. This may be done, for example, by making clear in the details of the advert that only certain categories of applicants will be considered for the accommodation (see paragraphs 4.62, 4.72 and 4.73).
- 3.3 There may be occasions, however, when it is not advisable or practicable to offer a choice of accommodation to a particular applicant or category of applicants. This category could include sexual or violent offenders where the need to manage the risk which they pose to other individuals or the community in general could limit the amount of choice they can reasonably be allowed. Applicants who pose a risk should not necessarily be precluded from taking part in a choice based lettings scheme but it may be necessary to restrict the properties they can apply for or reserve the right to reject their bid<sup>5</sup> in certain circumstances. Housing authorities must ensure that they have given due consideration to any application made in accordance with the

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<sup>5</sup> For a definition of “bid” see paragraph 3.7 below.

procedural requirements of their allocation scheme (see s.166(3) of the 1996 Act). It therefore follows that, where an authority decides to reject a bid on risk grounds which would otherwise have been successful, the applicant should be informed of the reasons for the decision and preferably informed of the properties they can bid for.

- 3.4 Local authorities may wish to reserve the right to make direct lets to manage the risk posed by some applicants or for other management reasons.<sup>6</sup> Examples might include: people whose property has been compulsorily purchased (where the local authority is required to offer a specific property to meet the legal requirements) or reluctant decants (ie people who have been required to leave their original property to facilitate an area regeneration scheme, for example, and who are reluctant to participate in the bidding process to move out of temporary into permanent accommodation); people seeking a move under a witness mobility scheme; and MAPPA<sup>7</sup> clients who pose a very serious risk to the community.
- 3.5 Housing authorities should try to keep to a minimum the circumstances in which choice may have to be restricted and should ensure that these are clearly set out in the published allocation scheme.

## Applications for housing accommodation

- 3.6 Section 166(3) of the 1996 Act requires a housing authority to consider every application for an allocation of accommodation, provided it is made in accordance with the procedural requirements of the allocation scheme.
- 3.7 Applying for an allocation of accommodation where an authority operates a choice based lettings scheme will normally involve applicants in a two-stage process: in the first instance they will be required to apply to join the scheme; and in the second stage they will be required to express an interest in particular accommodation (a process which may be referred to as “bidding”) if they wish to be considered for an allocation of that accommodation. It is important that the procedural requirements of the allocation scheme cover both parts of this process and distinguish clearly between them.

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<sup>6</sup> For the purposes of this guidance, the term “direct let” refers to accommodation which is not let through the authority’s choice based lettings scheme, that is to say where the applicant is not offered a choice of accommodation. Where a letting does not constitute an allocation under Part 6 of the 1996 Act (eg, where an existing tenant is moved for management reasons, rather than at his/her own request, or where the letting is excluded from Part 6 by virtue of regulations made under s.160(4) of the 1996 Act) it will be referred to as a “management let”.

<sup>7</sup> Multi Agency Public Protection arrangements for assessing and managing the risks posed by sexual and violent offenders.

## Open v. closed advertising

- 3.8 Housing authorities are encouraged to adopt an 'open advertising' approach whereby all applicants and interested members of the wider local population can find out about vacancies which are advertised (eg in a local newspaper or on a public website). Open advertising is more likely to engender trust and confidence in the choice based lettings scheme. It also helps ensure that applicants, and those who may be considering applying for social housing, are aware of what accommodation is, or is likely to become, available, thus making it easier for authorities to manage expectations.

## Eligibility

- 3.9 Housing authorities must ascertain if an applicant is eligible for an allocation of accommodation, or whether he or she is excluded from an allocation under s.160(A)(1), (3) or (5) of the 1996 Act. Housing authorities may also decide to treat an applicant as ineligible for an allocation because of serious unacceptable behaviour under s.160A(7) of the 1996 Act.
- 3.10 Section 160A of the 1996 Act prevents an authority from allocating housing to a person who is not eligible. In the Secretary of State's view, an authority should consider an applicant's eligibility, both:
- a. at the time he or she applies to join the choice based lettings scheme; and
  - b. at the point at which he or she is considered for an allocation of particular accommodation.

It is important to consider whether an applicant is eligible at registration because an applicant who is accepted onto a choice based lettings scheme has a reasonable expectation that he or she will be eligible to be allocated accommodation under that scheme. However, it is also important to check again on the applicant's eligibility when considering making an allocation to him or her, particularly where a substantial amount of time has elapsed since the applicant registered with the scheme.

- 3.11 Where a housing authority concludes, at the time that the applicant joins the scheme, that he or she is a person from abroad but is nonetheless eligible for housing, it is recommended that the authority inform the applicant that changes to his or her immigration status or the statutory eligibility criteria prior to an allocation could affect his or her eligibility.



## Offers of accommodation and refusals

3.12 As a general rule, accommodation which has been advertised should be offered to the bidder who:

- has the highest priority under the allocation scheme, and
- matches the lettings criteria for that property

So, for example, a couple without children will not usually be permitted to bid successfully for property which has more than one bedroom. In some circumstances, it may be appropriate to attach more restrictive lettings criteria to individual properties, for example, where a s.106 agreement is in place, or where the property belongs to an RSL which operates different and more restrictive eligibility criteria. Where this is the case, the advert should, wherever possible, set out clearly the particular criteria which apply to that property (see paragraph 4.71). However, there may be other reasons why it would be necessary or advisable to reject a bid which would otherwise have been successful: where, for example, the property would not be suitable for that particular applicant (see paragraphs 3.3 and 4.77 about applicants who pose a risk to others and themselves). However, an authority should not reject such a bid, unless there are sound reasons for doing so, in accordance with the allocation scheme. Where an authority does pass over a bid which would otherwise have been successful, they should provide the applicant with the reasons for this decision.

3.13 Housing authorities should not, as a matter of course, impose penalties on applicants who refuse an offer of accommodation which they have applied for under a choice based lettings scheme<sup>8</sup>. This is particularly the case where applicants are expected to apply for properties before they have had a chance to view them. Rather, authorities should ensure that applicants receive sufficient information about the property which is advertised to enable them to make an informed decision as to whether or not to bid for it. This is the best way to ensure that applicants do not bid for properties which do not meet their needs or aspirations.

3.14 The Secretary of State is aware that some authorities restrict the number of bids which applicants can make at any particular time. There may be sound reasons for doing this: for example, to limit the number of refusals; and to minimise the administrative burden, and/or potential for delay, associated with managing a large number of bids. However, authorities are reminded that such an approach may restrict the amount of choice available to applicants, and may distort the feedback on properties which have been let. Authorities should also bear in mind that some applicants will be better equipped than others to use their limited bids to the best effect. Where authorities decide to restrict the number of bids which applicants can make, they should ensure that applicants who might be disadvantaged by such an approach have access to the appropriate advice and assistance to enable them to

<sup>8</sup> For further advice on offers of accommodation to applicants owed the main homelessness duty, see paragraphs 4.50 to 4.59

participate effectively.

- 3.15 As stated at paragraph 3.11 of the Allocations Code, applicants must be allowed a reasonable period to make a decision about accommodation offered to them under Part 6 of the 1996 Act. This applies equally to accommodation offered under a choice based lettings scheme. The Secretary of State considers that the fact that an applicant has expressed an interest in particular accommodation by bidding for it should not be treated as meaning that he or she has made a final decision to accept it. This is particularly the case where applicants have not had the opportunity to view the property before submitting an application.
- 3.16 Some applicants may require a longer period than others. For example, applicants requiring additional assistance and/or support may wish to take advice in making their decision. Housing authorities should allow sufficient time for such applicants to arrange for an adviser or advocate (who may be a friend or family member) to accompany them when viewing accommodation. This would be in line with a housing authority's duty to make reasonable adjustments for disabled people, including changes to their practices policies and procedures. Applicants may also need more time to view properties, where they need to travel long distances to do so (see further at paragraph 7.17).

# Chapter 4

## Choice based lettings: policy content and scheme design

### Introduction

- 4.1 The main way in which a choice based lettings (CBL) approach differs from a traditional, officer-led approach to the allocation of accommodation is that it requires the applicant to play an active part in the allocation process. Accordingly, it is crucial that the processes and procedures for allocating accommodation, including the system used for prioritising applicants, are transparent and easy to understand and use. This points to having a simple process for determining an applicant's priority.
- 4.2 However, it is important that those in greater housing need are not disadvantaged by the introduction of choice based lettings. Whilst the Secretary of State recommends that authorities take the opportunity to simplify their processes and procedures wherever possible, authorities are reminded that they must comply with the requirements of Part 6 of the 1996 Act, and in particular the requirement to ensure that reasonable preference for an allocation is given to those in the reasonable preference categories.
- 4.3 The main aim of this chapter, therefore, is to provide guidance on how authorities can reconcile the twin aims of offering applicants a choice of accommodation and simplifying their allocation scheme, with the need to ensure that priority for accommodation goes to those with greater housing need.

### Self-assessment and comparative need

- 4.4 The Secretary of State recognises that, in offering applicants a choice of accommodation, some who wish to be allocated accommodation more quickly may decide to bid for vacancies for which there is likely to be less demand. In making decisions of this nature, applicants are said to be “self-assessing” their needs. Enabling applicants to make an informed choice about their accommodation is at the heart of choice based lettings. This would include allowing applicants to make reasonable compromises: eg a disabled applicant bidding for a first floor flat provided there is a lift, or a family bidding for a property which does not have sufficient bedrooms where the landlord is prepared to extend the loft. However, it is important that authorities do not frame their allocation scheme so that self-assessment by applicants becomes a substitute for a proper assessment of comparative housing need<sup>9</sup>. Rather allocation schemes must be framed so that authorities are able to

<sup>9</sup> R. (A) v. Lambeth London Borough Council, R. (Lindsay) v. Lambeth London Borough Council [2002] EWCA Civ 1084.

identify comparative housing need and ensure that those in greater housing need are given the appropriate priority for housing which meets their needs.

## Assessing housing need

4.5 As stated in paragraph 3.7 above, a choice based lettings scheme involves what is essentially a two-stage process:

- (1)  
the initial application stage when an applicant joins the scheme and his or her eligibility and priority are assessed and
- (2)  
the bidding stage when an applicant bids for properties which are advertised

This two-stage process allows for a simplified process of determining priority at the initial stage and then, if necessary, a more detailed look at relative priority between shortlisted applicants once bids have been submitted.

4.6 Whatever system of prioritisation is adopted, it is important that housing authorities have in place mechanisms for assessing applicants' housing need and identifying those who are in greater housing need. Application forms should require sufficient detail about an applicant's personal circumstances to enable an authority to assess their housing need, or to identify those cases where further investigation may be needed. In the Secretary of State's view, good liaison between housing authorities and other landlords and agencies (eg social services, primary care trusts, prisons and probation), including information sharing protocols, will be essential. Medical and welfare panels may have a role to play in assessing applicants who have been referred to the authority by another agency, or whose application suggests that there is a medical or welfare need. Some applicants may not wish to refer to a medical or welfare condition on the application form or may not be aware that they have such a condition, for example if they are suffering from a mental illness. Housing officers who have direct contact with the applicant, either face to face or over the telephone, may be well placed to identify such applicants and should receive appropriate training on how to deal with such a situation.

## Prioritising applicants

- 4.7 In framing their allocation scheme to determine priorities in the allocation of housing, housing authorities must ensure that reasonable preference is given to the following categories of people, as set out in s167(2) of the 1996 Act:
- (a) people who are homeless (within the meaning of Part 7 of the 1996 Act); this includes people who are intentionally homeless, and those who are not in priority need;
  - (b) people who are owed a duty by any housing authority under section 190(2), 193(2) or 195(2) of the 1996 Act (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any housing authority under section 192(3);
  - (c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
  - (d) people who need to move on medical or welfare grounds, including grounds relating to a disability; and
  - (e) people who need to move to a particular locality in the district of the housing authority, where failure to meet that need would cause hardship (to themselves or to others).
- 4.8 In addition, section 167(2) gives housing authorities the power to frame their allocation schemes so as to give additional preference to particular descriptions of people who fall within the reasonable preference categories and who have urgent housing needs.
- 4.9 Paragraph 5.9 of the Allocations Code sets out a number of considerations to which housing authorities should have regard in framing their allocation scheme to give effect to s. 167(2). These are equally relevant where a housing authority offers a choice of accommodation and accordingly are reproduced, as follows:
- a) the scheme must include mechanisms for:
    - i) ensuring that the authority assess an applicant's housing need; and
    - ii) identifying applicants in the greatest housing need;
  - b) the scheme must be framed so as to give reasonable preference to applicants who fall within the categories set out in s.167(2), over those who do not;
  - c) the reasonable preference categories must not be treated in isolation from one another. Since the categories can be cumulative, schemes must provide a clear mechanism for identifying applicants who qualify under more than one category, and for taking this into account in assessing their housing need;

- d) there is no requirement to give equal weight to each of the reasonable preference categories. However, housing authorities will need to be able to demonstrate that, overall, reasonable preference for allocations has been given to applicants in all the reasonable preference categories. Accordingly it is recommended that housing authorities put in place appropriate mechanisms to monitor the outcome of allocations; and
- e) a scheme may provide for other factors than those set out in s.167(2) to be taken into account in determining which applicants are to be given preference under a scheme, provided they do not dominate the scheme at the expense of those in s.167(2).

4.10 Otherwise, it is for housing authorities to decide how they give effect to the provisions of s.167(2) of the 1996 Act in their allocation scheme.

## Points-based approaches

4.11 Many housing authorities have adopted a points-based approach to the prioritisation of applicants. Points-systems can be complex and consequently lacking in transparency and difficult for applicants to understand. Housing authorities which have, or propose to adopt, a choice based lettings scheme and which choose to operate a points-based system should consider whether there is any scope to simplify that system.

## Banding approaches

4.12 An appropriate method of applicant prioritisation could be a system that groups applicants into a number of “bands” that reflect different levels of housing need or relative priorities within a housing authority’s allocation scheme. Such systems are commonly referred to as “banding schemes”. Generally speaking banding schemes are simpler for applicants to understand and simpler for housing authorities to operate than points-based systems.

4.13 Paragraphs 4.14 to 4.45 below provide guidance on factors and issues which authorities should take into account in framing an appropriate banding scheme.

### **PRIORITISING APPLICANTS**

4.14 A banding scheme must be framed so as to ensure that applicants with reasonable preference are given a head start over those who do not have reasonable preference. Likewise, those who fall within more than one reasonable preference category, and therefore have reasonable preference on a cumulative (or composite) basis, must be given greater priority over those who have reasonable preference on a single, non-urgent basis. Accordingly banding schemes must, provide a way of taking cumulative preference into account when assessing applicants’ priority.

4.15 In the Secretary of State's view, a banding scheme will normally need to distinguish between at least four broad levels of priority in order to comply with the requirements of s.167, as follows:

- people who do not have reasonable preference
- people who have reasonable preference on a single, non-urgent basis
- people who fall within more than one reasonable preference category and who therefore have reasonable preference on a cumulative (or composite) basis
- people who have additional preference (being persons with urgent housing needs)

4.16 Where an applicant's circumstances change, an authority should reassess his or her housing need and consider whether it is necessary to place the applicant in a different band. Generally speaking the onus is on applicants to inform the authority when there is a relevant change in their circumstances. However, it would be good practice for an authority to check periodically whether there has been a change in the circumstances of applicants on the waiting list and indeed whether applicants wish to remain on the waiting list. This offers an authority an opportunity to discuss broader housing options with those applicants who are unlikely to be allocated accommodation in the near future. In the case of applicants who have been assessed as in urgent housing need, authorities are encouraged to review their circumstances more frequently.

4.17 At the point of evaluating the bids, authorities should check whether the circumstances of the prospective successful bidder have changed in any material way. This will be relevant to determine:

- whether the applicant is still eligible to be allocated the accommodation (where relevant)
- whether the size of the applicant household matches the property advertised
- whether the applicant household meets any other specific letting criteria set out in the advert
- whether the applicant has the appropriate priority under the banding scheme

## **THE COMPLEXITY OF THE ALLOCATION SCHEME**

4.18 A banding scheme must be consistent with and give effect to the principles in the authority's allocation scheme for determining priorities for an allocation. The greater the number and complexity of these principles, the more complex the banding scheme will normally need to be.

4.19 Complexity may be provided for either by increasing the number of bands or by employing mechanisms for differentiating between applicants in the same band (see paragraph 4.23 and 4.34 below). While a scheme which involves a large number of bands may seem more complex, it is likely to be easier for applicants to understand than a scheme which has only a limited number of bands but a complex mechanism for determining priorities within those bands.

### **REASONABLE PREFERENCE**

4.20 A banding scheme must be framed so as to ensure that, overall, reasonable preference is given to applicants who fall within the reasonable preference categories over those who do not. This does not preclude a scheme from providing for other factors than those set out in s.167(2) of the 1996 Act to be taken into account in determining which applicants are to be given preference for an allocation. However, it does mean that a scheme must not include, within the same band, people with reasonable preference and people who do not have reasonable preference.

### **CUMULATIVE PREFERENCE**

4.21 A banding scheme must allow for greater priority to be given to those applicants in the reasonable preference categories who have been assessed as having “cumulative” or “composite” preference.

### **ADDITIONAL PREFERENCE**

4.22 Applicants entitled to additional preference should normally be given the highest level of priority within a banding scheme, since they will have been assessed by the authority as having the most urgent housing need.

### **DETERMINING PRIORITIES BETWEEN HOUSEHOLDS IN THE CUMULATIVE AND ADDITIONAL PREFERENCE BANDS WITH DIFFERENT LEVELS OF HOUSING NEED**

4.23 Authorities should make provision for identifying those households within the cumulative preference band who (while not entitled to additional preference under the allocation scheme) have more pressing housing needs than other households in the same band, and for ensuring that they are given greater priority for an allocation.

4.24 Additional bands: One approach would be to create additional bands or to create sub-bands within the cumulative preference band. This would inevitably mean a more complex banding scheme but would ensure that the bid assessment process remains simple to administer and that feedback is transparent.

4.25 Re-assessment at short-listing stage: Another approach would be to distinguish between applicants who have cumulative preference at the point of determining between applicants who have bid for a property. This would involve re-assessing applicants in the cumulative preference band who had been shortlisted in order to determine which of those applicants have the most pressing housing needs. This would enable the authority to maintain a simple banding scheme. While it could make the bid assessment process more cumbersome to administer, this would only be in those instances where more than one applicant in the cumulative preference band submitted a bid.





- 4.26 If an authority decides to adopt such an approach, it is important that this is clearly spelled out in its allocation scheme, including the criteria to be used by the authority in determining which applicant has the most urgent housing needs.
- 4.27 As this approach could otherwise render feedback information less transparent, authorities might wish to include another column/symbol in the feedback information to indicate that factors other than waiting time had been taken into account in prioritising the successful bid.
- 4.28 In areas of very high demand for social housing, where even applicants in the additional preference band may have to wait significant periods for suitable accommodation, the local authority may also need to put in place mechanisms for choosing between persons entitled to additional preference to identify those applicants with greater need and ensure that they are given greater priority for an allocation.

### **PRIORITY CARDS AND BANDING SCHEMES**

- 4.29 Some housing authorities make use of time-limited “priority cards”, often in conjunction with a banding approach, as a means of prioritising applicants in urgent housing need. While such time-limited priority cards may be used to accord greater priority to certain households within a band, the Secretary of State is of the view that an alternative approach which increases the number of bands in the scheme is likely to be simpler for applicants to understand and for authorities to operate. Where priority cards are used, the following principles should be observed.
- 4.30 Time-limited priority cards are likely to be most appropriate for applicants who have urgent housing needs, such as victims of domestic violence or hate crime who need to move quickly. Time-limited priority cards will be less appropriate as a means of prioritising applicants who have specific, long-term rather than acute, housing needs and who may have to wait a long time before appropriate housing is available, such as disabled applicants who require accessible accommodation, or applicants who require large family-size accommodation, where the accommodation is in short supply.
- 4.31 Time limits should be reasonable and appropriate. For example, they should reflect the amount of time it is likely to take for accommodation appropriate to the applicant’s needs to become available. It is essential that, where the applicant does not make use of the priority card within the specified time limit, there is a mechanism for reconsidering his or her housing needs and the need for any assistance, and for extending the time limit where this is appropriate (for example, where it is determined that the applicant continues to have urgent housing needs).

4.32 One benefit of a priority card system is that it enables housing authorities to keep a closer eye on priority applicants and, in doing so, to identify those who may be having difficulty applying because they have a need for assistance which they are not receiving (see paragraphs 5.22 to 5.28 below).

### **BACK-DATING APPLICANTS**

4.33 Some choice based lettings schemes use a method of “back-dating” an application (thereby making it seem as though the person has accrued more waiting time than is really the case) as a way of giving more priority to applicants with greater housing need, in cases where applicants with different levels of housing need are in the same band. Such an approach lacks transparency and is not recommended. It could confuse applicants and is likely to make monitoring and “feedback” information unreliable.

### **DETERMINING PRIORITIES BETWEEN HOUSEHOLDS WITH A SIMILAR LEVEL OF NEED**

4.34 When operating a banding scheme it is important to have a mechanism for determining allocation priorities between two or more households with similar levels of need. The simplest way of doing this is by taking into account the length of time they have been waiting for an allocation (in the case of new applicants this will normally be the date of their original application and in the case of transferring tenants, the date they applied to transfer). The Secretary of State considers that such an approach would be sensible and fair. It also renders “feedback” information more meaningful by helping applicants assess how long they are likely to have to wait to be allocated accommodation.

4.35 If prioritising applicants within a band by waiting time only would produce unfair results (for example, because applicants would not be allocated accommodation in accordance with their level of housing need), the local authority should consider creating an additional band or using another mechanism to determine priorities within the band.

### **AREAS OF LOW DEMAND**

4.36 In districts where there is low demand for social housing, applicants entitled to reasonable preference are likely to be housed relatively quickly and there will generally be less need to differentiate between different degrees of housing need. In these circumstances, it may be appropriate to operate a simple banding system involving only two bands: one for applicants with reasonable preference and one for those who do not have reasonable preference. However, local authorities need to recognise that even in those areas where there is less pressure on social housing, there may be some applicants who are in particularly urgent housing need, or who are in housing need and require a specific type of property which is in shorter supply, such as a large family house or adapted accommodation. Where a housing authority operates a simplified banding scheme of this kind, they should still have in place a system for identifying both:

- those applicants with urgent housing need who need to move quickly
- those who have cumulative housing need ( ie applicants who fall within more than one reasonable preference category)

and for ensuring that they are given greater priority for an allocation.

4.37 The local authority's scheme should be flexible enough to ensure that where such a situation arises, it can prioritise the household with greater housing needs over other households with less urgent need. This might be by means of a time-limited priority card (see paragraphs 4.29 to 4.32 above); or by making a direct let<sup>10</sup> outside the choice based lettings scheme. The latter approach may be more appropriate where the need to find alternative accommodation is extremely urgent as in the case of a victim of domestic violence whose life might be at risk if they remain where they are. Some schemes take into account different degrees of priority by "back-dating" the application; this is not recommended for the reasons given in paragraph 4.33.

## Allocating outside the reasonable preference categories

### QUOTAS AND TARGETS

4.38 It is important that priority for accommodation goes to those in greater housing need. However, this does not mean that, in operating a choice based lettings scheme, every property which is advertised must be allocated to the applicant with the greatest housing need, or only to those in the reasonable preference categories. An allocation scheme may include other policy objectives, such as:

- ensuring a balance between meeting the housing needs of existing tenants and new applicants
- promoting more sustainable and balanced communities

4.39 One way of meeting these objectives might be to aim for a certain proportion of lettings to be made to applicants who have no identified housing need or only low-level need.

4.40 Authorities should not set rigid quotas which could restrict their ability to meet the requirement to give reasonable preference overall to applicants in the reasonable preference categories; or seriously impede the ability of applicants in housing need to access appropriate accommodation. However, they may wish to set broad targets which should be published as part of the authority's allocation scheme.

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<sup>10</sup> See note 6 on page [13].

4.41 Where an authority sets targets in respect of applicants who do not have reasonable preference, it must ensure that these do not dominate the scheme, or undermine the authority's ability to ensure that reasonable preference is given to those in the reasonable preference categories. Accordingly, in setting targets, authorities should take into account:

- the size and composition of the waiting list (ie the proportion of applicants in the reasonable preference categories, and the proportion of existing tenants seeking a transfer and new applicants who do not have identified housing needs; and also the size and type of properties which the different categories of applicants require)
- the profile of their stock and the vacancies which are likely to become available

4.42 Authorities should avoid setting targets which result in the more popular or scarce types of property being allocated disproportionately to those who are not in identified housing need. It is also important not to set targets which could discriminate, either directly or indirectly, on racial or other equality grounds.

4.43 Authorities should monitor their allocation outcomes so that the targets can be altered, should there be any risk that the reasonable preference requirements will not be met.

## **LOCAL CONNECTION**

4.44 Section 167(2A) provides that authorities may frame their allocation scheme to take into account certain factors, including local connection, for the purposes of determining relative priorities between applicants in the reasonable or additional preference categories. Where they do this, authorities should bear in mind that this is likely to result in greater complexity within their banding schemes.

4.45 However, for some authorities, local connection may be a policy priority. While there is nothing to prevent authorities framing their allocation scheme to include local policy priorities such as this, they must ensure that these do not dominate the scheme, and that overall the scheme operates to give reasonable preference to people in the reasonable preference categories.

## **FIRST-COME, FIRST-SERVED**

4.46 Paragraph 5.27 of the Allocations Code recognises that it may be appropriate to go outside the reasonable preference categories to allocate hard-to-let accommodation. Accordingly, choice based lettings schemes which offer such accommodation on a "first-come, first-served" basis will usually be appropriate. Housing authorities should have a system in place to identify hard to let properties, and this should be published as part of their allocation scheme to ensure transparency when such homes are allocated. For example, a hard-to-let property might be one which had already been advertised under the choice based lettings scheme and had received no expressions of interest.

## Waiting time based schemes

4.47 Some choice based lettings schemes prioritise applicants primarily by waiting time, with those in the reasonable preference categories being given time limited priority cards. In the Secretary of State's view such schemes would not be appropriate where there is high demand for social housing and/or where a significant proportion of applicants are in urgent housing need. Furthermore, such schemes are unlikely to meet the requirement to provide for "cumulative preference" to be taken into account (see paragraph 5.9(c) of the Allocation Code) unless they also include mechanisms which enable the authority to:

- identify applicants who fall within more than one of the reasonable preference categories
- ensure that such applicants are given greater priority for an allocation where this is justified

4.48 It is recommended that authorities adopt a scheme which prioritises applicants according to housing need in place of a scheme based primarily on waiting time.

## Monitoring

4.49 When operating a choice based lettings scheme, whatever system of prioritisation is adopted by a housing authority, it is imperative that robust monitoring mechanisms are in place in order to demonstrate that overall reasonable preference is given to those in the reasonable preference categories, and that the authority is able to meet the priorities and principles set out in its allocation scheme.

## Choice for applicants owed the main homelessness duty

4.50 By virtue of sections 193(3A) and 195(3A) of the 1996 Act, housing authorities are required to give people, to whom they owe a homelessness duty under sections 193 or 195, a copy of the statement included in their allocation scheme under s.167(1A) about their policy on offering choice or the opportunity to express preferences about Part 6 housing accommodation. Housing authorities must therefore ensure that their allocation scheme addresses the extent to which they are able to offer choice (or the ability to express preferences) to people to whom they owe one of these homelessness duties (see paragraph 5.7 of the Allocations Code of Guidance).

4.51 The Secretary of State considers that people owed the main homelessness duty (under s.193(2)) should, wherever possible, be offered a choice of Part 6 accommodation where they are awaiting an allocation that will bring the homelessness duty to an end.

- 4.52 Authorities are reminded that the main homelessness duty may also be brought to an end where the applicant accepts a 'qualifying offer' of an assured shorthold tenancy made by a private landlord (in accordance with section 193(7B)-(7F)).
- 4.53 Some people owed the main homelessness duty may need advice and assistance in order to participate actively in a choice based lettings scheme. Authorities are, therefore, advised to pay particular attention to the guidance in paragraphs 5.22 to 5.28 to ensure that people owed the main homelessness duty are not disadvantaged under a choice based lettings system.
- 4.54 The Secretary of State recognises that in certain circumstances (for example, where there is a shortage of social housing and/or where applicants owed the main homelessness duty do not have high priority under an authority's allocation scheme) providing choice for applicants owed the main homelessness duty for an unrestricted period could mean that such applicants wait an unreasonably long time before they are offered suitable Part 6 accommodation. This is unlikely to be in the best interests of applicants or authorities, particularly where it leads to extended periods in temporary accommodation. Accordingly, authorities will need to consider whether, in these circumstances, it would be appropriate to limit the period during which applicants can exercise choice and refuse offers without bringing the homelessness duty to an end.
- 4.55 Applicants should not be put under pressure so that they feel constrained to bid for accommodation that may not be suitable for them and their household. This would be unacceptable for the applicant and would not discharge the homelessness duty (which requires that the authority is satisfied that the accommodation offered is suitable). Accordingly, the period during which they are allowed to take part in the choice based lettings scheme (referred to hereafter as "the bidding period") should be realistic. In determining how long the bidding period should be, authorities should take into account the pressure on social housing in the district and the time it would normally take before an opportunity to bid on a suitable property became available for someone with similar priority under the scheme. Larger households and those with special needs which are difficult to meet (eg those who need accessible accommodation) may need a longer time to bid for properties since the availability of suitable vacancies is likely to be limited.
- 4.56 It is important that there is a process for examining why an applicant has failed to be successful in being offered a suitable CBL property during the bidding period. Where it becomes clear that nothing suitable has been advertised during the bidding period; that the applicant has not fully understood what he or she was expected to do under the scheme; or that the applicant was incapable of accessing the scheme without advice and assistance, the authority should consider extending the period. The authority should also address any need for further advice and assistance to enable the applicant to participate effectively in the choice based lettings scheme.

4.57 Where the authority does not extend the bidding period, they should ensure that the applicant is aware that the period has ended and that he or she will no longer be able to bid for properties. The authority should also ensure that the applicant is aware of what is to happen next. Since the authority is still under a duty to secure that accommodation is available for occupation by the applicant, the options available to the authority are to offer the applicant:

- an allocation of suitable accommodation under Part 6 in accordance with the applicant's priority under the allocation scheme or
- a "qualifying offer" of an assured shorthold tenancy in the private rented sector

The tenant should be made aware that the offer of Part 6 accommodation is a "final" offer which will bring the authority's duty to an end (see following paragraph). In respect of a qualifying offer the duty only ends where the tenant accepts the offer.

4.58 Where the authority makes a "final" offer of accommodation under Part 6, the main homelessness duty will come to an end if:

- the applicant accepts the offer, or
- having been informed of the possible consequences of refusal and of the right to request a review of the suitability of the accommodation, the applicant refuses the offer

Under section 193(7A), an offer of accommodation is a "final" offer of accommodation only if it is in writing and states that it is a "final" offer for the purposes of section 193(7). However, by section 193(7F) of the 1996 Act, an authority cannot make a "final" offer unless they are satisfied that the accommodation is suitable for the applicant and that it is reasonable for the applicant to accept the offer.

4.59 Where the homelessness duty has come to an end following refusal of a final offer, applicants should not be precluded from participating in the choice based lettings scheme – although it should be made clear to them that they will no longer have the reasonable preference which had been accorded to them as a person who was owed the main homelessness duty.

## Providing choice for disabled people with access needs

4.60 Section 167(2)(d) of the 1996 Act provides that people who need to move on "medical and welfare" grounds must be given reasonable preference for an allocation. Section 167(2) has been revised (by section 223 of the Housing Act 2004) to make clear that "medical and welfare grounds" include grounds relating to a disability. The amendment, which came into effect on 27 April 2005, is intended to ensure that disabled people with access needs are given appropriate priority for social housing.



- 4.61 The Secretary of State encourages housing authorities to include accessible properties (ie housing which has been designed or adapted to meet the needs of disabled people) within their choice based lettings scheme. She believes that this is the best way to ensure that disabled people have the widest possible choice of accommodation.
- 4.62 The Secretary of State believes that accessible housing should be allocated to people with relevant access needs. Accordingly, the Secretary of State encourages housing authorities to design their choice based lettings scheme in such a way that priority for accessible accommodation is given to people who have access needs. This is consistent with the duty to promote disability equality. One way to do this would be by means of the advertising criteria.
- 4.63 While it would be lawful to provide that only disabled people can apply for accessible vacancies, it would not be lawful to provide that disabled people can only apply for accessible property. However, where a disabled applicant applies for accommodation which does not meet his or her access needs, the housing authority will need to take into account whether it is reasonable and practicable to adapt that property when assessing his or her bid (and must do so in accordance with their duties under the Disability Discrimination Act 1995 and the Housing Grants, Construction and Regeneration Act 1996). If it is reasonable and practicable for the property to be adapted, the disabled applicant should be considered for the vacancy on the same basis as other applicants who have submitted a bid. Where there is a shortage of accessible property, and failure to adapt a property would lead to unreasonable delays in housing for a disabled person then the local authority should take steps to identify properties which are suitable to be adapted, and consider giving priority to disabled persons who bid for such properties.
- 4.64 Where an accessible property is advertised, it is important that the property is identified as such in the advertisement and that the advertisement gives sufficient information about the level of adaptations and/or accessibility features in the accommodation for disabled applicants to make an informed decision on whether or not to apply for the particular property. In the Secretary of State's view, this is the best way to ensure that:
- the most effective and efficient use is made of accessible housing stock; and
  - disabled people are allocated accommodation which meets their needs, while giving them the widest possible choice and a greater say over where they live

- 4.65 In the case of accessible accommodation, it is also particularly important to include information about external access to the property (eg whether there is a ramp up to the property and whether there is accessible parking nearby) and relevant information about the surrounding area (eg are local shops and public transport easily accessible).
- 4.66 Housing authorities are also encouraged to maintain lists or databases of accessible housing within their district. This is likely to be of assistance to disabled applicants even where property is allocated under a choice based lettings scheme. Disabled applicants should be able to see the full range of accessible properties (the number and type of properties; accessibility features and level of adaptations of each property; and location) and be informed about the time they are likely to wait for any type of property to become available. Such information can assist people in determining whether to apply for a particular vacancy which is advertised.
- 4.67 Disabled people may need additional assistance and support to participate in a choice based lettings scheme on an equal footing with other applicants. The nature and degree of assistance they require will depend on the nature and degree of their disability. The following is a non-exhaustive list of the type of assistance and support which housing authorities should consider making available, some of which they will, in any case, be required to do under disability equality legislation:
- advising individual disabled applicants when suitable accessible property is about to or has been advertised
  - making arrangements to enable applicants with disabilities to visit properties
  - ensuring that websites are accessible for people who have visual impairments or learning disabilities
  - using symbols rather than words in adverts
  - providing large print maps on websites
  - enabling text messaging for people who have hearing impairments
  - providing documents in large or clear print, Moon or Braille
  - making information available on computer disk or audiotape
  - training appropriate staff in the use of British Sign Language and/or Makaton
  - ensuring that advice and information is available over the telephone – for those who cannot use a website or cannot get to a property or advice shop easily
  - mailing out literature to the housebound and physically disabled
  - ensuring that people with learning disabilities who do not have support from any other source (eg friend, relative or social worker) are assigned a suitably trained member of staff to support them.

## Local lettings policies and advertising criteria, labelling

- 4.68 Section 167(2E) of the 1996 Act enables housing authorities to allocate particular accommodation to people of a particular description, whether or not they fall within the reasonable preference categories. This is the statutory basis for so-called “local lettings policies”. Local lettings policies may be used to achieve a wide variety of housing management and other housing policy objectives. So for example, local lettings policies may be used to reduce the proportion of older children/young adults on an estate to reduce the incidences of anti-social behaviour; or to deal with concentrations of deprivation by setting aside a proportion of vacancies for applicants who are in employment.
- 4.69 Local lettings policies may be operated in conjunction with a choice based lettings scheme. However, authorities need to bear in mind that any local lettings policy will restrict the choice available to some applicants, and may lead to choice based lettings schemes which are more complex and less transparent.
- 4.70 Where operating local lettings policies, housing authorities will need to ensure that, overall, reasonable preference for allocations is given to applicants in the reasonable preference categories; and that their local lettings policies do not discriminate, directly or indirectly, on racial or other equality grounds.<sup>11</sup> Consequently, it will not usually be appropriate to apply local lettings schemes to more than a limited part of a local authority’s stock (or stock to which the authority has nomination rights). Local lettings policies should be monitored as to their effectiveness and reviewed regularly so that they can be revoked where they are no longer appropriate or necessary.
- 4.71 Where authorities intend to operate local lettings policies, this should be made clear on the face of the allocation scheme. However, since local lettings policies will often be time limited, it may not be practicable for the detailed policies to be included in the allocation scheme. One way to get around this would be for the allocation scheme to include a general statement about the intention to implement local lettings policies and to set out the detail of any local lettings policy in a separate document or documents which could be revoked or revised as appropriate. Where this approach is adopted, local lettings policies should be published and should include an explanation of the policy which should be evidence based wherever possible.

## Advertising criteria – “restrictive labelling”

- 4.72 Where accommodation is allocated by means of a choice based lettings scheme, housing authorities may wish to attach criteria (known as “advertising criteria” or “restrictive labelling”) to particular accommodation which is advertised specifying, for example, that:

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<sup>11</sup> Paragraph 5.26 of the Allocations Code of Guidance issued in November 2002.

- only people of a particular description may apply for that particular accommodation or
- people of a particular description will be given preference for that particular accommodation

4.73 Restrictive labelling may be used, for example, to give effect to a local lettings policy (see paragraphs 4.67 to 4.71) or to a target-based system (see paragraph 4.38 to 4.43), or to match people with access needs to accessible accommodation. It is important that the practical application of such labelling should be operated in accordance with criteria or policies which are set out clearly in the authority's allocation scheme, and that the effect should not be directly or indirectly discriminatory. Where an authority uses restrictive labelling, it should monitor the impact to ensure that it continues to comply with its duty to give reasonable preference to applicants in the reasonable preference categories.

## Restricting choice

4.74 The fact that a housing authority adopts a policy of offering choice does not mean that applicants should be able to express an interest in and be considered for any and every available vacancy.

4.75 In framing and operating a policy of choice, a housing authority should be mindful of the need to ensure that there are no adverse implications for the good use of their stock and that it does not conflict with their ability to continue to provide for housing need.

4.76 So, for example, applicants should not be permitted to apply for vacancies which would result in statutory overcrowding. Conversely authorities will normally wish to ensure that applicants are not permitted to apply for vacancies which would result in under-occupation, although there may be occasions where this makes good housing management sense (eg in the case of hard-to-let properties or where the authority wishes to bring down the child density ratio on an estate). The information which is provided when a property is advertised ("the advertising criteria") should assist applicants in establishing whether or not they are entitled to express an interest in a particular vacancy.

4.77 The duty to confer reasonable preference on certain categories of people means that an authority should ensure that they are allocated accommodation which meets their identified needs. It is for the authority to make a final judgement on whether it is appropriate to allocate particular accommodation to a particular individual even under a choice based lettings scheme. So, for example, an authority may decide that it is inappropriate to house a drug user on an estate which is known to have a large proportion of other users or where there is a known drug dealer. However, it is important that an authority does not second-guess an individual's needs and should normally take into account his or her views before making a final decision. The authority may find that the drug user's main source of support lives on that estate

as well.

4.78 There may be policy justification for designing a choice based lettings scheme to ensure that not all the popular properties go to those in greater housing need (eg by providing that priority cards will cease to have effect where more than a specified number of bids are received for an advertised vacancy). However, such an approach may limit the scope for those who must be given reasonable preference for an allocation to access housing which meets their needs, and may, for example, inadvertently lead to concentrations of homeless applicants in unpopular areas or in areas where there is already a high concentration of deprivation. Where authorities do adopt such an approach, it should be monitored carefully to ensure, for example, that it does not produce outcomes which are discriminatory on racial or other grounds, or conflict with the authority's ability to continue to provide for housing need. Such an approach is not recommended in areas where there is high demand for social housing or where a large proportion of housing applicants are in housing need.

## Choice and mobility

4.79 The Government wants to see choice based lettings schemes develop which offer new and existing social housing tenants the opportunity to apply for available vacancies in other local authority areas. The greater the opportunity for social housing mobility, the wider the choice of accommodation available to people who are seeking a new home.

4.80 One way of increasing the opportunities for mobility between local authority areas is to develop choice based lettings schemes on a regional or sub-regional basis and guidance on how to do this is contained in Chapter 7. However, even where housing authorities do not participate in regional or sub-regional choice based lettings schemes, there are ways in which they can frame their allocation scheme to increase the opportunities for mobility across local authority boundaries. These would include:

- dispensing with a local connection requirement; or restricting such a requirement to particular properties or particular parts of the district (for example, properties in high demand or small rural villages)
- using s.167(2E) (local lettings policies) to ensure that particular properties are allocated to essential workers, such as nurses, fire fighters, or teachers, regardless of whether they are currently resident in the authority's district
- ensuring that, where people are given reasonable preference because they have a need to move to a particular locality in the authority's district (where failure to meet that need would cause hardship, s.167(2)(e)), this applies equally to people who are not resident in the district

- developing reciprocal arrangements with other authorities or RSLs to set aside a certain proportion of their lettings for inter-borough nominations (for more detail on cross-boundary allocations, see paragraph 7.15-7.17)
- setting a target for a certain proportion of lettings to be made to applicants who have no local connection with the district

# Chapter 5

## Managing a Choice Based Lettings scheme

### Consultation

- 5.1 Paragraphs 6.4-6.6 of the Allocations Code provide guidance on considerations which authorities should take into account when consulting on changes to their allocation scheme, or before they adopt a new scheme, and this will include the adoption of a policy of offering choice to applicants.
- 5.2 Authorities are required to consult RSLs with which they have nomination arrangements. When considering whether to adopt a policy of offering choice to applicants, authorities are urged to go further than the statutory requirement to consult and explore the possibility of entering into partnership with all or most of the RSLs in their district so as to offer all those who are seeking social housing the widest possible choice of accommodation. It is important to do this at an early stage, so that RSLs are given the opportunity to contribute to the design of the choice based lettings scheme.
- 5.3 Organisations and individuals who provide advice and support to applicants will be crucial to the success of a choice based lettings scheme. In addition to their relevant statutory partners (such as social services, prisons, probation and primary care trusts) and voluntary bodies which provide care and support, authorities should consider whether there are other organisations which represent the interests of existing or potential applicants who may be socially excluded or disadvantaged by a choice based lettings system. Examples may include groups which represent ethnic minority communities, the gypsy and traveller community, veterans, ex-offenders, and drug or alcohol misusers. Bodies which represent the views of older people and people with physical and learning disabilities and mental health problems, and their carers, should also be included. Involving these groups will help authorities meet their race equality, disability and gender equality duties.
- 5.4 Authorities are also urged to consult existing tenants, applicants and residents. It may also be helpful to involve users in designing and testing various aspects of the scheme, in particular any supporting technology (eg a website). It will be particularly helpful to involve users who may have particular communication requirements, for example, people with visual impairments, those with learning disabilities, or those who cannot understand or speak English well, as well as people with poor literacy and computer skills.

## Information, advice and assistance/support

- 5.5 Section 166(1) of the 1996 Act provides that housing authorities must ensure that advice and information about the right to apply for accommodation is available free of charge to everyone in their district.
- 5.6 Housing authorities should also ensure that sufficient information is available to all applicants to enable them to apply for accommodation. This includes general information about the procedures for applying to go on the scheme and for applying for advertised vacancies; information about how applicants are prioritised under the scheme and how successful applicants are selected; and the rationale for advertising criteria, for example that priority for bungalows is given to older people or those with disabilities (see paragraphs 4.72 to 4.73 above). Information about review procedures should also be included. If RSL vacancies are included in the scheme, it will be helpful for applicants to know whether each RSL operates specific exclusion policies and, if so, what these are. Information should be easy to understand and should be available in translation where relevant and in alternative formats (Braille; large print, and audiotapes etc).
- 5.7 It is also important that information can be accessed by all applicants. Choice based lettings schemes which rely entirely, or to a large extent, on web-based information, for example, may restrict participation by applicants who have difficulty accessing or operating a computer. Likewise, authorities which rely on local papers or freesheets to advertise accommodation should ensure that they are widely available at locations across the district, or directly mailed to applicants who would otherwise have difficulty accessing them (eg the housebound). Prisoners are a particular group who are likely to have difficulty accessing information. This is because many prisoners cannot obtain newspapers or access the internet, neither can they contact the choice based lettings scheme directly. One way around this might be to arrange for housing advice surgeries in prison. Such outreach work might also be appropriate in the case of other applicants who are traditionally considered to be hard to reach, such as the gypsy and traveller community.
- 5.8 Ideally information should be available using a variety of media, including printed hard copy form, on a website or via the telephone. While authorities should provide user-friendly information about their choice based lettings scheme, this is in addition to, rather than an alternative to, the duties in sections 167 and 168 to have and publish an allocation scheme. However, in the spirit of openness and to ensure that applicants have access to as much information as possible, authorities are also encouraged to publish their allocation scheme on their website as well as in hard copy form.



5.9 Applicants also need information about particular vacancies which are advertised in order to determine:

- whether they are entitled to bid for the property
- whether the property meets their needs and any other requirements and
- what their likelihood of success would be if they expressed an interest for the property
- information in the advert will be important and should include basic details about the property such as:
  - location
  - type (flat, bungalow etc)
  - size (eg number of bedrooms)
  - floor, and whether or not it has a lift
  - type of heating
  - whether it has a garden
  - the amount of rent payable

The information required will depend on the nature of the applicant. So, for example, disabled applicants will need to know about the type and level of adaptations. The more information provided (eg about the condition of the property or about access to services) the easier it is for applicants to make an informed decision. Information about local services and opportunities, such as transport, education and employment, may be provided through signposting to other websites, for example. Advertising criteria could be used to indicate what type of applicant is entitled or excluded from bidding for a property, or who will be given preference for a property. Authorities must be careful to ensure that advertising criteria are not unlawfully discriminatory. Adverts should be unambiguous and easy to understand. Authorities should consider how to address the needs of applicants, for example, who are deaf, who are blind or partially sighted, who have learning disabilities, or who cannot read English. Symbols rather than words, the use of Braille and translations may all assist; or information on available vacancies could be provided to applicants by telephone.

## Information and advice about stock availability and other housing options

5.10 Many housing authorities have found that the introduction of choice based lettings has led to an immediate and significant increase in the number of applications for social housing. In some areas, this has included a marked rise in the numbers of applications from people who are traditionally under-represented in social housing, such as people in employment, indicating that choice based lettings schemes can have a positive impact on the way social housing is viewed. However, it is also clear that housing authorities

which introduce choice based lettings schemes need to put in place strategies to manage expectations, recognising that those who bid unsuccessfully over a long period of time may become frustrated or disillusioned.

5.11 An applicant has the right to information to help him or her assess whether accommodation appropriate to his or her needs is likely to be made available and, if so, how long this is likely to take. “Feedback” about advertised properties which have been let (see paragraphs 5.14 to 5.18 below) may assist applicants to assess how long they are likely to have to wait for a particular type of property or property in a particular location. Authorities should also consider making available general information about the profile of their stock. This might include the type, size and location of the stock, whether it is accessible or could be adapted, whether there is access to a shared or private garden, and how old it is. In the case of stock which is in short supply, an indication of how frequently it is likely to become available would also be helpful.

5.12 Some applicants may have to wait a considerable time before appropriate accommodation is made available to them, particularly in areas of high demand for social housing and/or where the applicant has low priority. In some cases, applicants may have little prospect of ever being allocated accommodation. It could assist such applicants to know about other appropriate housing options which might be available to them. This might include:

- private rented accommodation
- low cost home ownership options
- mobility schemes which enable applicants to move out of the district
- home improvement schemes or aids and adaptations services which enable applicants to remain in their existing accommodation for longer

Authorities are encouraged to make general information about housing options available to all applicants, for example, when they apply to join a choice based lettings scheme, or more generally via the website or weekly freesheets. Authorities are also encouraged to offer more specialised housing options advice to individual applicants whenever this may be appropriate (for example, in the case of applicants who bid frequently but without success).

## Advice

5.13 A choice based lettings approach requires applicants to be more proactive than a traditional allocations approach in which allocation decisions are made by housing officers on the basis of need. For this reason all applicants may need advice as well as information to assist them to participate successfully. This is likely to be particularly important for applicants when they first join a choice based lettings scheme. Advice could be provided by staff of the authority or another partner landlord, or by the voluntary sector. It is likely to be most effective if the person providing the advice has appropriate housing related experience and is properly trained to sensitively meet the needs of a diverse client group.

## Information about accommodation which has been allocated under a choice based lettings scheme – “Feedback” information

5.14 It is recommended that housing authorities publish information about accommodation which has been allocated through a choice based lettings scheme (more commonly known as “feedback”). This might specify the number of applications/bids received for the property and give an indication of the reason why the property was allocated to the successful applicant which will normally relate to their level of priority under the scheme. An example might be the band and waiting time of the applicant, or their points level. This information can be extremely useful both to those applicants who have expressed an interest in the vacancy, because it notifies them that the particular vacancy has been let, and to applicants generally, because it assists them to make judgements about what sort of property to bid for in future. Since this information is likely to be of interest to most if not all applicants, it should be easily accessible and authorities may want to consider using a variety of media, such as the local newspaper and website.

5.15 However, housing authorities need to bear in mind that section 166(4) prohibits them from divulging to other members of the public that a person is an applicant for social housing, unless they have the applicant’s consent. Furthermore, authorities should process any personal data which they hold about applicants consistently with the Data Protection Act 1998. This means that, where housing authorities publish information about particular accommodation which has been allocated under a choice based lettings scheme, they must be careful not to provide information which would enable a member of the public to ascertain the identity of the individual applicant who has been allocated the accommodation. In particular, housing authorities should guard against providing information which might put the successful applicant at risk of violence or intimidation by other individuals or members of the public. In extreme cases, it may be advisable not to publish the fact that a property has been let. However, authorities should avoid doing this unnecessarily as it is likely to detract from the transparency of the scheme.

- 5.16 Where direct lettings are made for whatever reason, information about these lettings should normally be published alongside information about lettings made through the choice based lettings scheme. If providing information about individual lettings could lead to intimidation or harassment, or otherwise put vulnerable tenants at risk, then it might be preferable to generalise the feedback information, for example by publishing the number of direct lets made in any period.
- 5.17 Individual applicants who have expressed an interest in a particular vacancy but are unsuccessful may want more personalised feedback, for example, about their relative position on the shortlist, or on why they were unsuccessful. It would be helpful if authorities were able to provide this wherever possible. Authorities should also consider providing more detailed feedback to all unsuccessful bidders at regular intervals – perhaps after they have submitted a certain number of unsuccessful bids. This might involve advising applicants about the need to change their bidding strategy, or providing them with advice about alternative housing options available to them, eg low cost home ownership options or the private rented sector (see paragraph 5.12 above).
- 5.18 Authorities may wish to go further and extract generalised information from feedback data to help inform applicants' bidding strategies generally. For example, authorities could produce and publish tables giving estimated waiting times by estate or parish and/or property type.

## Application form

- 5.19 While application forms should not be so complex/complicated that applicants have difficulty in completing them, it is important that they are drafted to obtain sufficient information from applicants to enable authorities to identify those applicants who are likely to have:
- priority under the authority's scheme and/or
  - difficulty in making an application or choosing their accommodation without additional assistance
- and to assess an applicant's access or support needs, or at least to alert authorities to the need to make further inquiries.
- 5.20 Application forms should also obtain sufficient information to enable authorities to determine applicants' eligibility and to monitor the fairness of allocations and compliance with equal opportunities requirements. So, for example, information about ethnicity, disability and gender should be collected through the application form. Best practice might also encourage the collection of data by age, religion and sexual orientation.

5.21 Where application forms obtain sufficiently detailed information, they can be a useful tool in assessing the housing needs of the district.

## Support and assistance

5.22 Section 166(1)(b) of the 1996 Act requires a housing authority to secure that any necessary assistance is made available free of charge to persons in its district who are likely to have difficulty in making an application without assistance. Paragraph 6.9 of the Allocations Code provides that, where authorities adopt an allocation policy which requires the active participation of housing applicants in choosing their accommodation, the level of assistance needed by those who are likely to have difficulty in making an application will normally be greater, and housing authorities will need to provide for this. In providing for this, authorities are advised to consider:

- which individuals or group of applicants are likely to have difficulty in making an application without assistance
- how to identify individuals who need assistance
- what type and level of assistance are they likely to require and
- whether that assistance is currently available and from what organisation

5.23 Some people in the reasonable preference categories may need a high level of additional assistance. In such cases failure to provide such assistance could result in an individual failing to participate in the choice based letting scheme. Authorities must ensure that applicants are given the assistance they need to make certain they receive the reasonable preference to which they are entitled.

5.24 However, housing authorities are advised not to equate those who may have difficulty in participating in a choice based lettings scheme with those who are in the reasonable preference categories. It is not necessarily the case that only those in the reasonable preference categories will have difficulty participating in a choice based lettings scheme; neither is it necessarily the case that everyone in the reasonable preference categories will need assistance to participate. The following is a list of people who may have difficulty in making an application without assistance of some sort – the list is illustrative and not exhaustive:

- those for whom English is not their first language (eg refugees)
- people who have literacy problems
- people with learning disabilities
- people who lead chaotic lifestyles, such as those who misuse drugs or alcohol
- people with mental health problems

- those who are currently undergoing a crisis in their lives and for whom their housing situation may be only one of many problems, such as victims of domestic violence
- those who are socially excluded such as rough sleepers
- the gypsy and traveller community
- older people and those suffering from a long-term disability
- vulnerable young people

5.25 The appropriate type and level of assistance will depend on the type of difficulty the applicant is likely to experience. In some cases it may simply be a matter of ensuring that information and advice is available in translation or that people are given information about translation services; or that any relevant written material is delivered to those who are housebound. However, someone with a severe learning disability or acute mental health problem is likely to require intensive support throughout the process.

5.26 It is important that housing authorities work together with social services, prisons, probation and relevant health bodies and professionals, other housing providers, the community and voluntary sector, and carers and users groups to:

- identify which applicants are likely to need assistance in order to choose accommodation that is appropriate to their needs and
- ensure that suitable assistance is available

5.27 An authority may provide assistance itself. This could include a range of activities, from training applicants on use of the website, for example, to operating housing advice surgeries in prisons, making home visits to those with chaotic lifestyles, or making bids on applicants' behalf (with their agreement). However, while, under s.166(1)(a), an authority must secure that assistance is available, there is no requirement for the authority to provide that assistance itself. Where an authority relies on other organisations and individuals to provide such assistance, the authority will need to be very careful to ensure that the support needs of all applicants can be addressed. Authorities should consider and provide for the training needs of organisations and individuals (eg social services, prisons, probation, mental health teams, voluntary agencies, advocates and carers) about how the choice based lettings scheme operates in order to help them advise and assist their clients, friends and family.

5.28 Authorities should consider maintaining a list of applicants who require assistance and support. In many cases it may be relatively simple to identify those individuals who need assistance at the initial application stage. However, this may not always be the case. Similar considerations are likely to apply as those set out in paragraph 4.6 about assessing need. Otherwise, an applicant's behaviour may give an indication that they have a need for assistance which is not being met. So, for example, the fact that an applicant in priority housing need has failed to bid at all or bids for inappropriate accommodation is a good indication that the person may be experiencing difficulties.

## Undue influence

5.29 Housing authorities should ensure that, when providing information, advice and assistance, they do not seek to unduly influence an applicant's choice of accommodation. So, for example, authorities which act as "proxy bidders" on behalf of vulnerable applicants, will need to safeguard against bidding for properties which do not meet the applicants' needs and aspirations.

## Monitoring

5.30 Authorities are encouraged to monitor their choice based lettings schemes.

Monitoring will assist authorities in assessing:

- whether the scheme is meeting its aims and objectives and working well or
- whether changes need to be made

Data collected may help to inform the authority's homelessness strategy as well as its wider housing strategy. In particular, data on which types of properties are hard to let or in short supply, and which areas are unpopular, will feed decisions on new stock, redevelopment and redesignation, or demolition. Data – appropriately generalised – could also form part of customer feedback at regular intervals.

5.31 Monitoring is crucial to ensure that authorities comply with:

- the duty to give reasonable preference to certain applicants
- the various equality duties

5.32 The following is a range of matters which authorities could usefully include in their monitoring arrangements – it is illustrative and not exhaustive:

- **Housing management performance** – relet times, refusals
- **Support mechanisms** – are the mechanisms which are put in place to support applicants to participate in choice based lettings effective?

- **Nomination arrangements** – the number of successful nominations, proportion going to people in the reasonable preference categories, number of failed nominations and reasons for the failure
- **Lettings outcomes, policies and quotas** – the proportion of lettings (and separately, direct lettings outside CBL<sup>12</sup>) overall going to, for example: homeless applicants and other applicants in the reasonable preference categories; applicants on the “assisted list”; transferring tenants and new applicants; and the size and quality of properties going to each group. More specifically the proportion of disabled applicants let accessible properties, and conversely the proportion of accessible properties let to disabled applicants
- **Comparative data** about applicants on the waiting list should also be collected. Taken together the waiting list and lettings data may be used to determine whether existing lettings policies and quotas are effective or whether they need to be revised. For example, are existing policies having a disproportionate impact on certain groups or communities, are disabled people having to wait disproportionately long for suitable property, is the authority still able to give effect to its duty to give reasonable preference?
- **Ethnicity data** – particularly numbers on the waiting list, lettings outcomes, and bidding behaviour. The website of the Equalities and Human Rights Commission provides good practice on monitoring ethnicity and the categories to use
- **New communities** – authorities should identify the existence of any new communities within the district and monitor their involvement in choice based lettings. Authorities which use the census categories to define ethnicity may need to reconsider their ethnicity categories as the census categories do not capture this level of detail
- **Community cohesion issues** – whether ethnic minority applicants are moving into predominantly white areas and vice versa
- **Other equality and diversity data** – in particular disability, age and gender. Again this should include numbers on the waiting list, lettings outcomes, and bidding behaviour
- **Potentially disadvantaged/assisted list applicants** – given the pro-active nature of CBL, it is particularly important to monitor the activity levels (ie bidding) and lettings outcomes for potentially disadvantaged groups. Authorities may be able to use demographic and socio-economic data on new applicants to assist in identifying potentially disadvantaged applicants
- **Tenancy sustainment** – are tenancies lasting longer or are there more applications to transfer

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<sup>12</sup> See footnote 6 on page [13] for the meaning of “direct let”.



- **Bidding behaviour** – ie the number or proportion of households which are actively bidding in any given period. This can be compared to the numbers on the housing waiting list; and can also be used to look at patterns of bidding over time. Also the proportion of applicants in various categories (eg homeless households, other reasonable preference categories, on the “assisted list”, and minority ethnic applicants) who are not bidding or bidding infrequently and what reasons they are giving for not bidding
- **Inter-authority, or inter-regional mobility** – ie numbers/proportions of out-of-borough applicants on the waiting list, making bids, and achieving lettings
- **Customer satisfaction** – do applicants find the system easy to understand and to use, are ethnic minority applicants and/or disabled applicants as satisfied with the system and/or outcomes as other groups

5.33 Authorities which are introducing a choice based lettings scheme are strongly encouraged to establish a baseline to monitor from; and to retain historical data from the period before the choice based lettings scheme is introduced for comparative purposes.

5.34 Rigorous management of the waiting list is important to ensure that the usefulness of waiting list numbers, as a measure of local housing need and/or an indicator of demand, is not compromised. Authorities are also reminded that data protection legislation (see following paragraphs) requires that personal information is kept up-to-date and is not held for longer than necessary. It is, therefore, strongly recommended that authorities review their waiting list on an annual basis.

## Information sharing and data protection

5.35 Housing authorities may need to share information about applicants with other agencies and organisations, for example, to ensure that applicants are properly assisted to participate in a choice based lettings scheme and that they are housed appropriately. Such organisations could include social services, other statutory agencies, and voluntary agencies. Information sharing between housing authorities and partner RSLs will be particularly important and failure to get this right could undermine the success of a choice based lettings scheme. Adopting effective information sharing protocols can help ensure that housing authorities and other agencies are clear about the type of information which can be shared with whom and for what purposes.

5.36 In devising information sharing protocols, and when passing on information about individual applicants, housing authorities will need to be mindful of their responsibilities under the Data Protection Act 1998. However, this should not be seen as a complete barrier to sharing any information. If landlords are unclear about their obligations and responsibilities under the Act they should contact the Information Commissioner. Advice on data sharing can also be found on the website for the Department for Constitutional Affairs:  
[www.dca.gov.uk/foi/sharing/toolkit/infosharing.htm](http://www.dca.gov.uk/foi/sharing/toolkit/infosharing.htm)

# Chapter 6

## Delivering choice in partnership with Registered Social Landlords (RSLs) and Private Sector Landlords

### Joint/partnership CBL schemes with RSLs

6.1 The Secretary of State recommends that housing authorities work together with RSLs in their district to provide joint choice based lettings schemes which extend to all or the majority of the social housing vacancies to ensure that:

- best use is made of the available social housing in the district and
- applicants are offered the widest choice of accommodation and, as far as possible, a single point of access to that accommodation

6.2 However, where RSLs are involved in choice based lettings schemes with one or more housing authorities, the housing authorities will need to ensure that this does not affect their ability to meet their statutory obligations under Part 6 of the 1996 Act.

### Statutory framework for co-operation

6.3 Section 170 of the 1996 Act provides that where a housing authority so request, an RSL must co-operate to such extent as is reasonable in the circumstances in offering accommodation to people with priority under the authority's allocation scheme. Similarly, s.213 of the 1996 Act provides that where an RSL has been requested by a housing authority to assist them in the discharge of their homelessness functions under Part 7, it must also co-operate to the same extent.

6.4 The Housing Corporation has issued regulatory guidance which sets out the requirements on RSLs in respect of local authority nominations (Housing Corporation Regulatory Circular 02/03, February 2003). This provides that in areas where evidence of local housing need is reflected in local planning criteria for affordable housing provision, nomination agreements should provide for 50 per cent or more of true voids for nominations. The circular recognises that agreed percentages may be considerably higher in areas of housing stress.

6.5 Housing authorities which have, or plan to adopt, a choice based lettings scheme will want to ensure that RSLs agree that those vacancies to which the authority has nomination rights are made available through the scheme. The Secretary of State would also encourage housing authorities to negotiate with RSLs to make their other vacancies available through a joint choice based lettings scheme as well. However, it is important that where RSLs let all or the majority of their stock through a joint choice based lettings scheme, there is a means for distinguishing those RSL vacancies to which the authority has nomination rights. It is in the interest of housing authorities, RSLs, applicants and tenants to be clear about the basis on which a tenancy is being allocated, not least in those instances where an applicant may seek to challenge the basis on which a property has been let. One way of distinguishing between the different types of letting would be to have one section of the newsletter or website for local authority lettings which would include “nomination” lettings, and a separate section for other RSL lettings. In the local authority section, the relevant RSL landlord would be identified in the advertisement for each individual “nomination” letting.

## Applicant prioritisation and eligibility criteria

- 6.6 Housing authorities must comply with the requirements of Part 6 of the 1996 Act when they nominate an applicant to be the tenant of an RSL. This means that when advertising vacancies through a choice based lettings scheme to which the authority has nomination rights, it is important that applicants for those vacancies are prioritised in accordance with s.167 of the 1996 Act.
- 6.7 Under s.160A(7) of the 1996 Act, housing authorities are entitled to treat applicants as ineligible (ie to exclude them from an allocation) where they have been guilty of serious unacceptable behaviour. RSLs may operate exclusion policies which are wider than the provisions in s.160A(7). Where this is the case, the exclusion policy of each participating RSL should be clearly set out in the published CBL scheme details. In addition, where this is feasible, the exclusion criteria applied by an RSL should be stated in the advertisement of any relevant vacancy, so that applicants are clear about the basis on which the property is offered.

## Nomination agreements

- 6.8 A local authority nominates a person to RSL accommodation when it does so “in pursuance of any arrangements (whether legally enforceable or not) to require that housing accommodation, or a specified amount of housing accommodation, is made available to a person or one of a number of persons nominated by the authority”, (s.159(4)).

- 6.9 It is important that nomination agreements are in place between the housing authority and all RSLs participating in a joint choice based lettings scheme. This is the case even where RSL partners have agreed to put all or the majority of their stock through the choice based lettings scheme.
- 6.10 Such agreements should set out the proportion of lettings that will be made available; any criteria which the RSLs have adopted, following consultation with the housing authority, for accepting or rejecting nominees; and how any disputes about suitability and eligibility will be resolved.
- 6.11 When negotiating nominations agreements, housing authorities should try to ensure that criteria for rejecting nominees are kept to a minimum. This will be particularly important where the housing authority have transferred their housing stock.
- 6.12 Housing authorities should ensure that the details of nominated households given to RSLs are accurate, comprehensive and up-to-date, and in particular provide information about any vulnerability, support needs and arrangements for support, where this information is available. To prevent new tenancies from failing and to minimise the likelihood of the RSL rejecting a nomination, housing authorities should ensure, wherever possible, that adequate support packages are in place for applicants who need them before a nominee is expected to take up their tenancy.
- 6.13 Housing authorities should ensure that robust monitoring arrangements are in place to monitor effective delivery of the terms of the nomination agreement or protocol. This will be crucial, to ensure that housing authorities can demonstrate that they are meeting their statutory obligations under Part 6, and in particular the requirement to give reasonable preference to persons in the categories set out in s.167(2). Monitoring arrangements should cover successful and “failed” nominations.
- 6.14 A “failed” nomination occurs when an RSL applies its own criteria to reject an applicant who has applied for particular accommodation and who would otherwise be allocated that accommodation, because he or she has appropriate priority under the choice based lettings scheme and is eligible for an allocation under Part 6. It is particularly important to monitor failed nominations to identify whether any particular applicants in the reasonable preference categories are being consistently denied access to accommodation for which they should be given priority.
- 6.15 The monitoring arrangements will also need to cover nominations to any RSL stock which is not included in the joint choice based lettings scheme.

## Common housing registers

- 6.16 Where housing authorities and RSLs pool together their available accommodation in a single choice based lettings scheme, they are advised to consider developing a single list or database of all applicants who have applied and been accepted onto the joint choice based lettings scheme (referred to here as “a common housing register”).
- 6.17 A common housing register is a useful administrative tool which facilitates the operation of a joint choice based lettings scheme and improves co-ordination between participating landlords. For applicants, a common housing register, together with a single application form, provides a single point of access to all participating landlords and obviates the need to register separately with each of them. For housing authorities, a common housing register provides a more reliable assessment of housing need in their district, providing important information for the development of their housing strategy, and enabling the best use to be made of existing stock. However, it is important to remember that applicants on the common housing register who wish to bid for local authority allocations (including RSL vacancies to which the local authority has nomination rights) will need to meet the section 160A eligibility criteria.

## Stock transfer, contracting out

- 6.18 Choice based lettings schemes which involve a housing authority and partner RSLs may operate in different contexts, including where the housing authority has contracted out some of its allocation functions and/or where the housing authority has transferred part or all of its stock.
- 6.19 Housing authorities which have transferred all or part of their stock, as well as those which have contracted out allocation functions, retain their statutory obligations regarding the allocation of accommodation, homelessness and the provision of housing advice. They also retain the responsibility for broader strategic duties such as the duty to undertake a periodic review of housing conditions and to consider aggregate housing needs.
- 6.20 All housing authorities are required to have an allocation scheme regardless of whether or not they retain ownership of the housing stock and whether or not they contract out the delivery of any of their allocation functions. Authorities are prohibited from contracting out certain allocation functions, including adopting and altering the allocation scheme, which includes the principles on which the scheme is framed.

6.21 In so far as a joint choice based lettings scheme applies to accommodation which is allocated within the meaning of s.159, housing authorities must ensure that:

- the principles of the choice based lettings scheme, and in particular the principles for determining priorities between applicants, comply with the requirements of Part 6 of the 1996 Act
- the principles of the choice based lettings scheme are set out in the authority's allocation scheme and
- accommodation which is allocated within the meaning of s.159 under a choice based lettings scheme is allocated in accordance with the authority's allocation scheme and in accordance with the requirements of Part 6

6.22 In circumstances where a stock transfer landlord – or an RSL to which a housing authority has contracted out some of its allocation functions – has, or proposes to, set up or participate in a choice based lettings scheme, housing authorities are strongly advised to actively participate in the scheme as well. This is the best way to ensure that they can properly carry out their statutory allocation and homelessness functions and duties as well as their strategic housing responsibilities.

## Private sector landlords

6.23 Private rented sector housing already performs an important role in providing accommodation for those in housing need. In particular, the private rented sector can provide types and sizes of dwellings which may not be readily available within the social rented sector. For those who have lower priority under an authority's allocation scheme, and who may have to wait a considerable time before they are allocated a social tenancy, a vacancy in the private rented sector may offer a quicker and equally suitable housing solution. The private rented sector can also provide a way into independent living for vulnerable households, particularly where it is coupled with appropriate housing related support. Accordingly, the Secretary of State is of the view that it is appropriate and beneficial for vacancies in the private rented sector to be advertised through an authority's choice based lettings scheme, wherever possible, in order to ensure that all applicants have the widest possible range of housing options.

6.24 Where private rented sector vacancies are advertised in a choice based lettings scheme, authorities should consider putting in place appropriate safeguards to ensure that the housing on offer meets satisfactory standards of condition and management. Where authorities make extensive use of the private rented sector in their housing options approach, appropriate safeguards are likely to be in place already. In these circumstances, the Secretary of State believes private rented vacancies should be included, wherever possible, within the choice based lettings scheme.

6.25 Otherwise, housing authorities should consider putting in place such safeguards with a view to incorporating private rented vacancies within their choice based lettings scheme as soon as this is appropriate.

6.26 A nomination to a private sector landlord is outside the scope of Part 6 of the 1996 Act, and the letting is likely to take the form of an assured shorthold tenancy. Accordingly, where vacancies in the private rented sector are advertised as part of a choice based lettings scheme, the differences between the types of tenure should be made clear to applicants. In particular, authorities should ensure that applicants are aware of:

- the fact that the tenant will acquire more limited tenancy rights than in respect of local authority or RSL accommodation and
- the basis on which the landlord will select the successful bid, if this differs from the basis on which successful bids for social housing vacancies are selected

6.27 When advertising private sector vacancies, authorities will want to ensure that the advertisement includes broadly the same information about the particular vacancy – in terms of the size and nature of the property and level of rent – as for social rented vacancies (see paragraph 5.9). Additional information which it would be helpful to provide in the advertisement include:

- the name of the landlord or letting agent responsible for managing the property
- the form of the tenancy
- any restrictions on who may apply for the property, in particular whether applicants in receipt of Local Housing Allowance will be considered

6.28 In order to minimise confusion for applicants, authorities should consider creating within their advertising a separate and distinct section for private rented vacancies, rather than advertising them together with social rented vacancies. This might include general information about matters which would be of interest to applicants, such as:

- the particular features of assured shorthold tenancies
- a summary of the accreditation scheme, or other standards or safeguards in place
- the availability of rent deposits/bonds and guarantees
- information about tenancy deposit protection
- any housing related support available for private tenants
- any dispute resolution/mediation service (between landlord and tenant)
- an explanation of Local Housing Allowance and current rates



# Chapter 7

## Regional and sub-regional choice based lettings schemes

### Policy objective

7.1 The Government's policy objective is for choice based lettings schemes to develop on a sub-regional and/or regional basis. The Secretary of State believes that such schemes, involving a partnership of housing authorities and registered social landlords – and working together with private landlords wherever possible – are the best way to achieve the greatest choice and flexibility in meeting tenants' housing needs.

7.2 There are likely to be a number of benefits from larger, sub-regional or regional schemes which span housing authorities' boundaries:

- they bring together a larger pool of available housing, giving tenants more choice and helping to ease localised problems of high demand
- they break down artificial boundaries and recognise existing housing and labour markets
- they enable greater mobility
- for RSLs, they reduce the costs and complexities associated with being involved in several different schemes and
- they enable partners to share the costs associated with developing and implementing choice based lettings schemes

### Different models of sub-regional and regional CBL

7.3 The Secretary of State recognises that housing authorities which plan to set up a sub-regional or regional choice based lettings scheme should have the flexibility to determine how far they wish to coordinate their allocation functions with partner authorities, in line with local policy objectives. In some instances, authorities may decide to retain their own individual allocation schemes. In other circumstances, authorities may decide to adopt a single regional or sub-regional allocation scheme.

## Delegating functions to a central body

- 7.4 A common feature of most sub-regional or regional choice based lettings schemes is likely to be the designation of a single body or organisation to carry out some of the administrative tasks in relation to the scheme. There are two principal options available to housing authorities seeking to delegate their allocation functions to a central body. The constitution of the central body will depend to a large extent on who the partners to the scheme are and which functions the partners choose to delegate to the body.
- 7.5 Firstly, housing authorities have powers to delegate some of their allocations functions to another body under the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 (“the Contracting Out Order”). Schedule 1 of the Order lists the allocation functions which cannot be contracted out, namely: adopting or altering an allocation scheme; consulting with relevant RSLs before adopting or altering an allocation scheme; and making the allocation scheme available at the authority’s principal office, or providing a copy of the scheme on request.
- 7.6 Housing authorities may wish to use the powers under the Contracting Out Order to delegate allocation functions to an RSL or to a special purpose vehicle set up specifically for this purpose. The functions which could be delegated would include, for example, the central advertising of available properties on behalf of all partners, processing of applications and the compiling of a shortlist of bids for each advertised vacancy. Alternatively, housing authorities have the power to delegate to another housing authority under s.101 of the Local Government Act 1972.
- 7.7 Secondly, local authorities have general powers to work together in the discharge of their functions<sup>13</sup>. Subject to the constitutional arrangements of the authorities concerned, an authority may be able to arrange for the discharge of its functions by another authority, or two or more authorities may be able to arrange for the joint discharge of their functions by a joint committee. These powers could be used to establish a regional or sub-regional choice based lettings scheme involving two or more housing authorities which could be operated either by a lead authority discharging the functions of the other authorities, or by a joint committee set up by all the partner authorities. If the authorities wished to do so, they could delegate all of their Part 6 functions to this type of central CBL body.

<sup>13</sup> In most cases, the relevant statutory powers will be sections 101 and 102 of the Local Government Act 2000. These sections apply to local authorities which have adopted new constitutions which provide for “executive arrangements”. Local authorities which have not adopted executive arrangements have similar powers under s.101 of the Local Government Act 1972. In practice, most local authorities in England do now have executive arrangements in place.

7.8 Housing authorities may not use these general powers to operate a regional or sub-regional choice based lettings scheme together with RSLs or private sector landlords as partners to the scheme. However, it would be possible to include within such a scheme RSL vacancies to which a local authority had nomination rights (see paragraphs 6.8 to 6.15).

## Regional and sub-regional allocation schemes

7.9 Where two or more housing authorities operate a choice based lettings scheme on a regional or sub-regional basis, they are encouraged to consider the benefits of adopting a single, common allocation scheme across all the participating authorities. Such an approach should have a number of advantages for local authorities and RSL partners, and for applicants. For instance, it is likely to:

- be more efficient and cost-effective for landlords
- be more transparent and simpler to understand for applicants, particularly those seeking to move between local authority districts
- promote greater mobility and thus provide greater choice for applicants

7.10 In the Secretary of State's view, the requirements:

- in section 167(1) for every local housing authority to have an allocation scheme, and
- in section 167(8) to allocate in accordance with that scheme

can be effectively discharged by two or more local authorities acting jointly to produce a common allocation scheme. Where a joint regional or sub-regional allocation scheme is adopted by partner authorities, it is important that this is clearly stated on the face of the document. The allocation scheme should explain, for example, that it is a joint scheme for the region or sub-region made up of the named authorities. The role of any central body allocating on behalf of the partner authorities should also be outlined in the joint allocation scheme.

7.11 When framing a joint allocation scheme, housing authorities must ensure that reasonable preference is secured for all applicants to the partner authorities who are entitled to it under section 167 of the 1996 Act. In particular, the joint allocation scheme will still need to meet the requirement for reasonable preference to be secured for "people who need to move to a particular locality in the district of the housing authority, where failure to meet that need would cause hardship (to themselves or to others)" (section 167(2)(e)). One way this could be achieved in the context of a sub-regional or regional allocation scheme would be to give reasonable preference to an applicant who needs to live in a specific area within the region or sub-region when the applicant bids for a property advertised in that area.

- 7.12 Where authorities enter into a joint scheme, the same allocations criteria will apply to all allocations in the region, since authorities can only allocate in accordance with their scheme (s.167(8)). The only exception to this will be where the common allocations scheme itself makes provision for local differences under s.167(2E) (ie where the scheme provides for local lettings policies). This would allow authorities to continue to give priority to people with a local connection when allocating accommodation in certain rural parishes, for example.
- 7.13 Where authorities have adopted a joint allocation scheme, a person who applies for housing under the scheme should be treated as applying to all of the partner housing authorities. This would argue strongly for the partner authorities adopting a common housing register and a single application form. Once the application was accepted, the applicant would then be entitled to bid for vacancies advertised by all of the partner authorities, including partner authorities with which the applicant had no previous connection.
- 7.14 Another option would be for partner authorities to maintain separate allocation schemes but for each authority to adopt the same banding scheme or points system, preferably together with a common housing register, across the partner authorities. This would have a number of benefits, particularly where partner authorities also delegate their allocation functions to a central body. For partner authorities and the central body, it would be more cost-effective and easier to administer. For applicants, it would be easier to understand and to operate, particularly for those seeking to move across local authority boundaries. It could also be the first step towards a common allocation policy across the region or sub-region.

## Cross-boundary mobility

- 7.15 Housing authorities which are partners in a regional or sub-regional scheme may wish to maintain separate allocation schemes but provide for cross-boundary mobility, that is to say they may wish to make it easier for applicants living within one partner authority's district to apply for and be allocated accommodation in the district of another partner authority. Authorities who have chosen not to adopt a joint allocation scheme are strongly urged to consider the advantages to applicants of facilitating mobility in this way.
- 7.16 The arrangements for cross-boundary mobility must be capable of being operated in line with the statutory requirements of Part 6. Authorities should note the following points in particular:
- if allocations under a particular allocation scheme are usually subject to a local connection rule, the scheme should make specific provision for dealing with cross-boundary moves

- an authority cannot rely on its partner authority's assessment of the applicant's priority, since it can only allocate in accordance with its own scheme. In practice, both authorities may have delegated some of their allocation functions to a central body (see paragraphs 7.4 to 7.8 above). Where this is the case, since the central body only has the powers which are delegated to it, it will still have to consider each application in accordance with the allocation scheme of the allocating authority
- any provision for cross-boundary moves must not affect the authority's ability to ensure reasonable preference for the classes of person specified in s.167(2). This is unlikely to be a problem if the cross-boundary applicants are all persons who are entitled to reasonable preference
- the basis for determining priority between cross-boundary applicants should be set out in the allocation scheme

7.17 Applicants who are looking to make longer distance moves may need information and support to help them do so. This may simply mean access to information about the new area which they are less likely to be familiar with. This might include information on schools, health facilities, transport, training and employment. Applicants may also need more time to view properties, where they need to travel long distances; and authorities should consider whether there is other support which it would be appropriate to offer. Partner authorities should build these factors into the sub-regional or regional choice based lettings scheme. Partner authorities should ensure that there is close co-operation between the choice based lettings scheme and other statutory and voluntary agencies, to ensure that applicants with care and support needs can be enabled to move across local authority boundaries. Housing authorities should also consider developing links with the providers of other services operating in partner authority areas. Examples might be training and education providers, as well as employers.

## RSL involvement in regional CBL schemes

7.18 Where RSL property is advertised through a joint choice based lettings scheme by housing authorities which each have their own allocation scheme, the partners in the scheme should be clear as to which housing authority is the nominating authority. There should be clear information available for applicants as to which authority's allocation scheme applies to that property (and therefore how priority will be determined).

7.19 Housing authorities are encouraged to work with their local HomeBuy Agents on sub-regional or regional choice based lettings schemes. HomeBuy Agents are appointed RSLs funded by the Housing Corporation (in future the Homes and Community Agency) who provide a "one stop shop" and point of contact in a given area in England for all applicants for the Government funded HomeBuy programme.

