

## APPENDIX IV

### Details of what is legally required to be provided and what matters are discretionary under the scheme

The new statutory guidance *Fair and flexible: statutory guidance on social housing allocations for local authorities in England* was issued in December 2009 and covers a number of issues. This guidance replaces parts of the *Code of Guidance on the Allocation of Accommodation* which was issued in November 2002.

This is statutory guidance provided under s.169 of the Housing Act 1996 (the 1996 Act). It applies to local authorities in England. Local authorities are required to have regard to this guidance in exercising their functions under Part 6 of the 1996 Act. In so far as this guidance comments on the law it can only reflect DCLG's understanding of the law at the time of issue. Local authorities will still need to keep up to date on any developments in the law in these areas.

In summary:

- (i) It sets out the Government's strategic view of the objectives and outcomes which local authorities must and those they should seek to achieve in their allocation policies. These are:
  - providing support for those in greatest housing need, including people who have experienced homelessness
  - ensuring allocation policies comply with equality legislation
  - promoting greater choice for prospective and existing tenants
  - creating more mixed and sustainable communities
  - promoting greater mobility for existing tenants
  - making better use of the housing stock
  - supporting people in work or seeking work
  - delivering policies which are fair and considered to be fair
- (ii) It sets out the importance of local authorities' responsibilities under the Local Government Act 1999 (as amended by the Local Government and Public Involvement in Health Act 2007) to involve, inform and consult with local people; and it draws attention to the main legislative provisions governing the allocation of social housing, including the requirement to provide for 'reasonable preference'.
- (iii) It emphasises the importance of communicating facts about allocations (including regular updates on how properties have been allocated), to

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tackle false perceptions which may arise about the way social housing is allocated.

- (iv) It highlights the implications of the House of Lords judgment in the case of *R (on application of Ahmad) v Newham LBC* , which, among other things, removes the requirement to provide for cumulative preference to be taken into account in prioritising applicants.
- (v) It reinforces the flexibilities local authorities have within the allocation legislation to meet local pressures by:
  - adopting local priorities alongside the statutory reasonable preference categories
  - taking into account other factors in prioritising applicants, including waiting time and local connection
  - operating local lettings policies
- (vi) It emphasises the importance of close working between authorities and registered social landlords.