



Allocating social housing (England)

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This note outlines the legal framework contained in Part 6 of the *1996 Housing Act* (as amended) within which local authorities allocate their housing stock. Nominations by local authorities to stock owned by housing associations (also known as private registered providers of social housing) are allocated within the same legal framework.

Local authorities have always had a good deal of discretion in relation to their housing allocation policies; this discretion has been extended by measures included in the *Localism Act 2011*. Following a consultation exercise, the Government issued new statutory guidance, [Allocation of accommodation: Guidance for local housing authorities in England](#) in June 2012. Authorities are obliged to have regard to this guidance when devising and implementing their schemes.

The Government launched a consultation exercise on proposals to issue new statutory guidance “to help local authorities make full use of their new allocation freedoms by tailoring their allocation priorities to meet the needs of their local residents and their local communities.” One of the proposals involved amending existing guidance to “strongly encourage all local authorities to adopt a two year residency test as part of their qualification criteria.” Consultation closed on 22 November 2013 and new supplementary statutory guidance was published in December 2013: [Providing social housing for local people](#).

On 9 March 2015 the Government announced an intention to ‘ensure local connection requirements do not prevent social tenants from moving into the area to take up work or apprenticeship opportunities.’

Background to the changes introduced by the *Localism Act* can be found in [Library Research Paper 11/03](#). Information on the eligibility of EU nationals and non-EU nationals to apply for social housing can be found in [EU migrants: eligibility to apply for social housing \(England\)](#) (SN04737) and [Eligibility to apply for social housing: persons from abroad \(non-EEA\)](#) (SN05433).

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1 The legal framework for allocating social housing

1.1 An overview

Part 6 of the *1996 Housing Act* (as amended) governs the allocation of local authority housing stock; it was substantially amended, with effect from 31st January 2003, by the *2002 Homelessness Act* and, more recently, by the *Localism Act 2011*.¹

Local authorities are not under a duty to maintain a housing register (often referred to as a housing waiting list) but must have an allocation scheme for determining priorities between applicants for housing and which sets out the procedure to be followed when allocating housing accommodation.²

Authorities must ensure that when allocating their stock they only allocate to “eligible persons” as defined in section 160ZA of the 1996 Act.³ They must also only allocate to “qualifying persons”⁴ but, subject to the centrally determined eligibility criteria and any

¹ Sections 145-147 of the *Localism Act 2011* were brought into force on 18 June 2012 by the *Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitory Provisions) Order 2012* S.I. 2012/1463

² Section 166A of the *Housing Act 1996*

³ This section (and regulations made under it) provides for certain persons from abroad not to be eligible for an allocation of social housing.

⁴ Section 160ZA(6) *Housing Act 1996*

regulations made by the Secretary of State,⁵ authorities are free to decide what classes of person are and are not “qualifying persons” for the purposes of their allocation schemes.⁶

Information on defining eligibility in terms of access to social housing for EEA nationals and Persons Subject to Immigration Control can be found in Library notes SN/SP/4737, [EU migrants: entitlement to housing assistance \(England\)](#) and SN/SP/5433 [Entitlement to social housing: persons from abroad \(non-EEA\)](#), respectively. The then Housing Minister, Mark Prisk, provided an overview of the entitlement of EEA nationals to apply for social housing in response to a PQ:

Mr Frank Field: To ask the Secretary of State for Communities and Local Government for what reasons an EEA national exercising their right to freedom of movement as a self-sufficient person may (a) need and (b) be entitled to social housing.

Mr Prisk: There is no entitlement to social housing.

European economic area nationals who have a right to reside in the UK on the basis that they are self-sufficient are eligible for social housing, if they are habitually resident in the common travel area (the UK, Channel Islands, Isle of Man and Republic of Ireland). To be considered self-sufficient, a person must have (i) sufficient resources not to become a burden on the social assistance system of the UK and (ii) comprehensive sickness insurance cover in the UK.

To be allocated social housing an eligible applicant must also meet the local authority's own qualification criteria and have sufficient priority under the local authority's allocation scheme.

An allocation scheme must be framed to ensure that certain categories of people are given 'reasonable preference' for social housing, because they have an identified housing need, including people who are homeless, overcrowded households, and people who need to move on medical or welfare grounds.⁷

As noted in the PQ reproduced above, every local authority allocation scheme in England must ensure that “reasonable preference” is given to certain categories of applicant as set out in sub-section 166A(3) of the 1996 Act:

(a) people who are homeless (within the meaning of Part 7);

(b) people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any such 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 any grounds relating to a disability); and

(e) people who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others).

⁵ This regulation making power has not, as yet, been used.

⁶ Section 160ZA(7) *Housing Act 1996*

⁷ HC Deb 22 April 2013 cc585-6W

The scheme may also be framed so as to give additional preference to particular descriptions of people within this subsection (being descriptions of people with urgent housing needs).⁸

[See section 2.5 of this note for amendments to section 166A(3) in respect of armed (or reserve) forces personnel with urgent housing needs]

On 9 March 2015 the Government announced that it would introduce ‘Right to Move’ regulations to ‘ensure local connection requirements do not prevent social tenants from moving into the area to take up work or apprenticeship opportunities.’⁹ It appears that the ‘reasonable preference’ categories will be amended so that the ‘hardship’ criteria in section 166A(3)(e) will cover those moving for work (see **section 2.4** below). It is expected that the new regulations will be laid before the end of March 2015.

Annex 1 to the June 2012 [statutory guidance](#) provides an illustrative list of the sort of criteria that might be used to determine whether households should be afforded reasonable preference under categories (c) and (d).

Allocation schemes may also be framed so as to give additional preference to particular descriptions of people within these categories (being descriptions of people with urgent housing needs).

Section 168 of the 1996 Act requires authorities to publish a summary of their allocation scheme and to provide a copy of the summary (free of charge) to any member of the public who requests one.

Allocation schemes can allow for authorities to take account of additional factors when determining priority for housing between applicants in the reasonable (or additional) preference categories.¹⁰ The legislation provides examples such as financial resources, behaviour and local connection.

Local authorities in England must have regard to their homelessness strategies, tenancy strategies and the London housing strategy (where appropriate), when preparing or modifying their housing allocation schemes.¹¹

1.2 Transfer applications

Existing local authority tenants may apply to transfer to alternative accommodation within the landlord’s stock. The *2002 Homelessness Act* brought transfer applications within the ambit of Part 6 of the 1996 Act to ensure that the housing needs of existing tenants and new applicants were assessed on the same basis.

The *2011 Localism Act* amended section 159 of the 1996 Act so that transfer applications from existing tenants in social housing no longer have to be assessed on the same basis as households applying on the housing register, unless the authority is satisfied that the household applying for a transfer should be given reasonable preference in accordance with section 166A(3).

⁸ Inserted by section 147 of the *Localism Act 2011*

⁹ [DCLG, Press Release](#), 9 March 2015

¹⁰ Section 166A(5) of the *Housing Act 1996*

¹¹ Section 166A(12)

The decision to exclude most transfer applications from housing allocation schemes was taken in order to stimulate mobility by enabling existing tenants to move more easily within the sector. A perception had developed that it was difficult for transfer applicants to secure a move because allocation schemes tended to prioritise applicants with the highest level of housing need.

The statutory guidance does not cover how authorities should set up and administer applications for transfers from households that do not fall into a reasonable preference category.

A poll of 111 social landlords conducted by the Chartered Institute of Housing (CIH) and reported in *Inside Housing* (February 2015), found that only 30% of respondents had used flexibilities introduced by the *Localism Act* to assess transfer applications separately.¹² The CIH has published a best practice guide: [How to promote mobility amongst existing tenants](#) (February 2015).

2 Defining “qualifying persons”

The *Localism Act 2011* has restored the power that local authorities enjoyed between 1997 and 2003 to exclude, by class, certain applicants that they designate as “non-qualifying persons.” They now have a power to prescribe, by class, the only applicants entitled to be allocated social housing under their allocation schemes.

The only statutory limit on the exercise of these powers is that they cannot be used to treat applicants who are ineligible by virtue of their immigration status, as qualifying persons. There is also a need for authorities to take account of their equality duties under the *Equality Act 2010*. They should seek to avoid provisions that may be directly or indirectly discriminatory. When developing their schemes authorities must also take account of:

- their homelessness strategies;
- their tenancy strategies;¹³ and
- In the case of authorities in London, the London Housing Strategy.

Authorities now have scope to adopt some potentially restrictive policies around the definition of qualifying persons. The following sections (2.1 – 2.8) consider some of the factors that authorities might consider when seeking to define who may or may not qualify to apply for social housing. The [statutory guidance](#) contains advice for authorities on the defining “qualifying persons.”

In recognition of the fact that giving local authorities the power to exclude certain categories of people from their housing waiting lists could result in some groups being unable to access social housing, the Secretary of State has retained regulation making powers to prescribe classes of people who are or are not qualifying persons, or criteria which authorities cannot use to determine who is or is not a qualifying person.¹⁴ This power has not yet been used.

¹² *Inside Housing*, “Few social landlords make use of tenant transfer freedom,” 6 February 2015

¹³ Section 150 of the *Localism Act 2011*

¹⁴ Section 160ZA *Housing Act 1996* (inserted by the *Localism Act 2011*)

Research conducted by *Inside Housing* (reported in April 2014) found that 126 English local authorities had used powers to limit access to social housing by amending their allocation policies:

Seventy-seven councils that provided detailed figures informed 113,049 people that they no longer qualify for social housing for reasons including a lack of connection to the local area and anti-social behaviour.¹⁵

There have been challenges to local authority allocation schemes. In November 2014 the [Court of Appeal ruled](#) that Hammersmith and Fulham Council's disqualification of a homeless mother living in temporary accommodation with her daughter from its housing register was unlawful. The council's allocation scheme had failed to meet the requirement to afford certain homeless applicants 'reasonable preference'.¹⁶

2.1 Unacceptable behaviour

Prior to the *Localism Act* authorities were able to treat someone as ineligible for housing because of previous unacceptable behaviour¹⁷ or reduce the priority of these applicants under section 167 of the 1996 Act. Sub-sections 160A(8) – (11) defined the type of behaviour that an authority could take into account when deeming an applicant to be ineligible for an allocation of housing and provided for the applicants to be notified (in writing) of such a decision and to make a fresh application in certain circumstances.

The *Localism Act* removed these provisions. Authorities are still able to refuse to consider applications on the basis of past behaviour but it is now left up to authorities how to define this behaviour.

2.2 Local connection

Under the previous rules authorities were unable to refuse to consider applications for housing from people without a local connection. However, in determining relative priorities for an allocation, authorities *were* able to have regard to whether or not applicants had a local connection with the district.

The *Localism Act* has given authorities power to define qualifying persons as those with a local connection. For example, the London Borough of Ealing's [Housing allocations policy \(revised October 2013\)](#) provides that, except in certain limited circumstances, applicants who have not resided in the borough for the last five years may not apply for social housing. Basildon's [Housing Allocations Policy](#) (October 2014) specifies a continuous residency requirement in the borough of seven years (with certain exceptions).

On 14 October 2013 the Government launched a consultation exercise on proposals to amend the statutory guidance on housing allocations.¹⁸ The consultation paper contained a proposal to encourage authorities to operate a two year residency test with certain exceptions. New supplementary guidance was published in December 2013: [Providing social housing for local people](#). As with the main guidance, local authorities are obliged to have regard to it in exercising their functions under Part 6 of the 1996 Act. The supplementary guidance states:

¹⁵ Inside Housing, "Councils bar 113,000 from waiting lists," 25 April 2014

¹⁶ [2014] EWCA Civ 1438

¹⁷ Section 160A(7) of the *Housing Act 1996*

¹⁸ DCLG, [Providing social housing for local people](#), 14 October 2013

The Secretary of State believes that including a residency requirement is appropriate and strongly encourages all housing authorities to adopt such an approach. The Secretary of State believes that a reasonable period of residency would be at least two years.¹⁹

Housing authorities may wish to consider whether there is a need to adopt other qualification criteria alongside a residency requirement to enable and ensure that applicants who are not currently resident in the district who can still demonstrate a strong association to the local area are able to qualify. Examples of such criteria might include:

- family association – for example, where the applicant has close family who live in the district and who have done so for a minimum period of time
- employment in the district – for example, where the applicant or member of their household is currently employed in the district and has worked there for a certain number of years²⁰

The guidance emphasises the need for any residency requirements to include exceptions for members of the regular and reserved Armed Forces and to be flexible enough to allow for special circumstances; for example where people need to move to another area to escape violence or harm. It is for local authorities to develop their own exceptions to a residency requirement in the light of local circumstances.

The [summary of responses to the consultation](#) was published in April 2014 (i.e. after the publication of the guidance). On local connection, the summary states that ‘the majority of those who expressed a view – and in particular local authority respondents – were in favour of a residency test.’²¹

The Housing Law Practitioners Association expressed concerns over how the introduction of residency requirements might interact with local authorities’ duties to assist, in certain circumstances, out-of-area homeless applicants, EU citizens and travellers:

The HLPAs response said: ‘We fear that it will prove impossible to craft a lawful policy, having regard to the various groups of people for whom it would plainly be unlawful to require them to demonstrate two years residency in the area.’²²

The lawyers acting for Ms Jakimaviciute in her 2014 case against Hammersmith and Fulham Council²³ argued that the ruling could have wider implications for councils that have introduced residency requirements under the *2011 Localism Act*.

Ben Chataway, the barrister who represented Ms Jakimaviciute and who is challenging Ealing’s scheme, said councils’ residency requirements could conflict with last week’s ruling.

This is because councils have a duty to give four groups of people - including homeless and overcrowded households - a priority or ‘reasonable preference’ over other applicants on their allocation schemes.

¹⁹ DCLG, *Providing social housing for local people*, December 2013, para 13

²⁰ *Ibid*, para 15

²¹ DCLG, *Providing social housing for local people – summary of responses to consultation*, April 2014

²² *Inside Housing*, “Residency test for allocations would be illegal, lawyers warn,” 30 October 2013

²³ [\[2014\] EWCA Civ 1438](#) (see section 2 of this note)

A blanket bar on those failing to meet residency criteria could potentially exclude homeless people who should be given reasonable preference, Mr Chataway said.²⁴

2.3 Local connection and armed forces personnel

More detailed information on the ability of armed forces personnel to access social housing can be found in Library Note SN04244 [Housing options for ex-service personnel](#).

[The Allocation of Housing \(Qualification Criteria for Armed Forces Personnel\) \(England\) Regulations 2012](#) (SI 2012/1869), which came into force on 24 August 2012, provides that authorities must not disqualify certain serving or former members of the armed forces from applying for social housing on residency grounds. The [statutory guidance](#) advises:

Members of the Armed Forces and the Reserve Forces

3.27 Subject to Parliamentary scrutiny, we will regulate to provide that authorities must not disqualify the following applicants on the grounds that they do not have a local connection²⁵ with the authority's district:

- (a) members of the Armed Forces and former Service personnel, where the application is made within five years²⁶ of discharge
- (b) bereaved spouses and civil partners of members of the Armed Forces leaving Services Family Accommodation following the death of their spouse or partner
- (c) serving or former members of the Reserve Forces who need to move because of a serious injury, medical condition or disability sustained as a result of their service

3.28 These provisions recognise the special position of members of the Armed Forces (and their families) whose employment requires them to be mobile and who are likely therefore to be particularly disadvantaged by local connection requirements; as well as those injured reservists who may need to move to another local authority district to access treatment, care or support.²⁷

As noted in section 2.3 (above) the supplementary statutory guidance issued in December 2013, which encourages authorities to implement a two year residency test for social housing applications, states that authorities "must make an exception for certain members of the regular and reserve Armed Forces."²⁸

2.4 Local connection and moving for work

As noted in section 1.1 above, on 9 March 2015 the Government announced that it would introduce 'Right to Move' regulations to 'ensure local connection requirements do not prevent social tenants from moving into the area to take up work or apprenticeship opportunities.'²⁹ It appears that, as with armed forces personnel, the 'reasonable preference' categories will be amended to so that the 'hardship' criteria in section 166A(3)(e) will cover those moving for work. The Government consulted on a [Right to Move](#) over six weeks from 10 September 2014. The [Right to Move: response to consultation](#) was published in March 2015.

²⁴ *Inside Housing*, "Homeless mother wins legal challenge against London council," 7 November 2014

²⁵ As defined by s.199 of the 1996 Act.

²⁶ 5 years reflects guidelines issued by the local authorities associations which propose a working definition of normal residence for the purposes of establishing a local connection.

²⁷ DCLG, [Allocation of accommodation: guidance for local housing authorities in England](#), June 2012

²⁸ DCLG, [Providing social housing for local people](#), December 2013, para 18

²⁹ [DCLG, Press Release](#), 9 March 2015

The response state that “respondents were overwhelmingly supportive of the objective of the Right to Move proposals, to help social tenants move to secure or retain employment, recognising the benefits for individuals, families and communities.” There was less support for the removal of residency requirements for this group and “very little support for setting aside a quota of lets.”³⁰ The Government intends to strengthen the existing statutory guidance:

We have decided to issue strengthened statutory guidance in relation to the existing ‘hardship’ reasonable preference category to ensure that social tenants who need to move for work related reasons are given appropriate priority. This will ensure that we can deliver the ‘Right to Move’ as quickly as possible. We are minded to introduce a new reasonable preference category for the Right to Move when time allows, and will consult further on the detail of this as soon as practicable.³¹

The expectation is that the new regulations will be laid before the end of March 2015. On the issue of quotas, the new statutory guidance will “include an expectation for local authorities to set aside a proportion of their lets for social tenants who need to move across local authority boundaries for work related reasons. The guidance will set a minimum expectation of 1% of lets, although it will be for local authorities to decide on the appropriate proportion in the light of local circumstances.”³²

2.5 Working/community contribution

The additional discretion that local authorities have acquired to determine who qualifies for an allocation of social housing is being used by some to prioritise low income households with a family member in work and those deemed to be making a “community contribution.” In fact local authorities already had the power to prioritise these applicants prior to the *Localism Act* coming into force. Statutory guidance published by the Labour Government in December 2009 said:

Local authorities should consider how they can use their allocation policies to support those who are in work or who are seeking work. This could involve using local lettings policies to ensure that particular properties are allocated to essential workers or to those who have skills which are in short supply, regardless of whether they are currently resident in the authority’s district. Alternatively, authorities may choose to give some preference within their scheme to existing tenants who are willing to move to take up employment or training opportunities – where, for example, the authority has identified a need to address skills shortages and worklessness, perhaps as part of their skills strategy.³³

The current [statutory guidance](#) states:

4.27 Local authorities are urged to consider how they can use their allocation policies to support those households who want to work, as well as those who – while unable to engage in paid employment - are contributing to their community in other ways, for example, through voluntary work. The flexibilities which authorities are encouraged to make use of to meet the needs of Service personnel would apply equally here. This might involve, for example, framing an allocation scheme to give some preference to households who are in low paid work or employment-related training, even where they

³⁰ DCLG, [Right to Move: response to consultation](#), March 2015, para 6

³¹ *Ibid*, para 21

³² *ibid*

³³ DCLG, [Fair and flexible: statutory guidance on social housing allocations for local authorities in England](#), December 2009, para 33

are not in the reasonable preference categories; or to give greater priority to those households in the reasonable preference categories who are also in work or who can demonstrate that they are actively seeking work. Alternatively, it might involve using local lettings policies to ensure that specific properties, or a specified proportion of properties, are allocated to households in particular types of employment where, for example, skills are in short supply.

4.28 Authorities should also consider how best they can make use of the new power to offer flexible tenancies to support households who are in low paid work, and incentivise others to take up employment opportunities.³⁴

Manchester City Council published a revised allocation policy in February 2011 (before the relevant sections of the *Localism Act* came into force) which awarded additional priority to households where at least one adult is in work or to those making a “community contribution” through; for example, voluntary work. Priority can be reduced for:

- failing the residency criteria;
- any unacceptable behaviour;
- owing more than £100 in rent arrears;
- having too high an income; and
- being found intentionally homeless.³⁵

The London Borough of Barnet published a revised [Housing Allocations Scheme](#) policy in February 2015. Under this policy applicants falling in a reasonable preference category are awarded additional priority where they make a “community contribution”:

People who play a part in making their neighbourhood strong, stable and healthy – those who help make it a good place to live, work and play – are valuable people. They are the backbone of their community, and the Council believes such people should be allocated social housing to continue contributing to sustaining local communities in the area where they contribute.³⁶

Annex 3 to the policy explains how a community contribution is defined. Briefly, it covers people who are in employment, training, performing voluntary work for at least six months, are ex-service personnel or registered foster carers as long as they have a “current positive residence history.”

In 2012 the London Borough of Newham consulted on a revised allocations policy the aims of which are summarised below:

Brief Summary

- The Council have a large number of residents registered on our housing waiting list and we need to make sure we’re allocating social housing in a way that is fair.
- Lots of residents are working in low-paid employment and would benefit greatly from the subsidised rent in a social home.

³⁴ DCLG, *Allocation of accommodation: guidance for local housing authorities in England*, June 2012

³⁵ Manchester City Council’s full allocations policy can be downloaded [here](#).

³⁶ LBB’s [Housing Allocations Scheme](#), February 2015

- **Our proposed allocations policy will recognise and reward those residents who are working hard – through paid employment or, for example, acting as full time carers.**
- We aim to change the culture of the housing waiting list to show residents that making a positive step in their lives will be supported, rather than leading them further away from social housing.
- By changing the allocations policy we hope to create mixed and stable communities, avoiding estates becoming ghettos of worklessness.³⁷

The London Borough of Westminster announced in September 2011 that it would be revising its housing allocation policy to benefit those seeking work.³⁸ The council's allocation policy can be accessed online [here](#).

2.6 Armed forces personnel and “reasonable preference”

More detailed information on the ability of armed forces personnel to access social housing can be found in Library Note SN/SP/4244 [Housing options for ex-service personnel](#).

When the Government consulted (between January and March 2012) on proposed changes to the statutory guidance for local authorities in England on their housing allocation schemes, it also published draft regulations: the *Housing Act 1996 (Additional Preference for Former Armed Forces Personnel) (England) Regulations 2012*.

The [Housing Act 1996 \(Additional Preference for Former Armed Forces Personnel\) \(England\) Regulations 2012](#) came into force on 30 November 2012 and provide that “additional preference” must be given to applications from certain serving and ex-members of the armed forces (and reserve forces) who come within the reasonable preference categories defined in sub-section 166A(3) of the 1996 Housing Act (listed in section 1.1 of this note) and who have urgent housing needs. The explanatory notes to the Regulations advise:

Regulation 2 amends section 166A(3) so that local housing authorities in England must frame their allocation scheme to give additional preference to persons who fall within the reasonable preference categories, have urgent housing needs and who meet one or more of the following criteria:

- the person is serving in the regular forces and is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to the person's service;
- the person formerly served in the regular forces;
- the person has recently ceased, or will cease to be entitled, to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner who has served in the regular forces and whose death was attributable (wholly or partly) to that service; or
- the person is serving or has served in the reserve forces and is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to the person's service.

The Regulations were considered by the Fourth Delegated Legislation Committee on 21 November 2012 and by Grand Committee in the House of Lords on 20 November 2012.

³⁷ LBN's Draft Housing Allocations Scheme – Equality Impact Analysis, February 2012

³⁸ Westminster City Council [Press Release](#), 23 September 2011

The then Minister, Don Foster, said they “would make a significant difference for service personnel and their families who are in urgent need of social housing.”³⁹ However, he also emphasised that there was no fundamental change to the way in which access to social housing is prioritised:

For other people in urgent housing need, such as families living in seriously cramped conditions and people fleeing the fear of violence, local authorities will continue to have discretion to give them greater priority. However they will not be required to do so.⁴⁰

The June 2012 [statutory guidance](#) also encourages local authorities to take account of the needs of all serving or former service personnel.

4.24 Authorities are also strongly encouraged to take into account the needs of all serving or former Service personnel when framing their allocation schemes, and to give sympathetic consideration to the housing needs of family members of serving or former Service personnel who may themselves have been disadvantaged by the requirements of military service and, in particular, the need to move from base to base. This would be in line with terms of the Government’s Armed Forces Covenant published in May 2011.

4.25 Examples of ways in which authorities can ensure that Service personnel and their families are given appropriate priority, include:

- using the flexibility within the allocation legislation to set local priorities alongside the statutory reasonable preference categories so as to give preference, for example, to those who have recently left, or are close to leaving, the Armed Forces;
- using the power to determine priorities between applicants in the reasonable preference categories, so that applicants in housing need who have served in the Armed Forces are given greater priority for social housing over those who have not; and
- if taking into account an applicant’s financial resources in determining priorities between households with a similar level of need, disregarding any lump sum received by a member of the Armed Forces as compensation for an injury or disability sustained on active service;
- setting aside a proportion of properties for former members of the Armed Forces under a local lettings policy.⁴¹

2.7 Foster carers and adopters

The [statutory guidance](#) makes it clear that foster carers may be afforded “reasonable preference” for a housing allocation on welfare grounds:

This would include foster carers, those approved to adopt, or those being assessed for approval to foster or adopt, who need to move to a larger home in order to accommodate a looked after child or a child who was previously looked after by a local authority.⁴²

³⁹ Fourth Delegated Legislation Committee, 21 November 2012 c4

⁴⁰ *ibid*

⁴¹ DCLG, [Allocation of accommodation: guidance for local housing authorities in England](#), June 2012

⁴² *Ibid* para 4.10

Authorities may choose to prioritise applications from prospective foster carers or adopters:

4.30 When considering housing applications from prospective foster carers or adopters who would require an extra bedroom to accommodate a foster or adoptive child, authorities will wish to weigh up the risk that the application to foster or adopt may be unsuccessful (leading to the property being under-occupied), against the wider benefits which would be realised if the placement was successful.

4.31 Children's services have a duty under s.22G of the Children Act 1989 to ensure sufficient accommodation to meet the needs of the looked after children in their area. Authorities should work together with children's services to best meet the needs of prospective and approved foster carers and adopters, so that children's services can meet their s.22G duty. One way to strike an appropriate balance would be to set aside a quota of properties each year for people who need to move to larger accommodation in order to foster or adopt a child on the recommendation of children's services.⁴³

2.8 Under-occupiers

The [statutory guidance](#) makes specific reference to authorities framing their allocation schemes to assist households affected by Housing Benefit changes⁴⁴ which came into force on 1 April 2013:

4.22 When framing the rules which determine the size of property to allocate to different households and in different circumstances, housing authorities are free to set their own criteria, provided they do not result in a household being statutorily overcrowded. However, in setting these criteria, authorities will want to take account of the provision in the Welfare Reform Act 2012 which will reduce Housing Benefit to under-occupiers.

4.23 Social tenants affected by the under-occupation measure may choose to move to more suitably sized accommodation in the private rented sector. One way to encourage tenants to consider this option might be to ensure they are given some degree of preference for an allocation if they apply for a new social tenancy at a later date.⁴⁵

In the supplementary guidance published in December 2013: [Providing social housing for local people](#). The Government states "there may also be sound policy reasons not to apply a residency test to existing social tenants seeking to move between local authorities. Housing authorities should assist in tackling under-occupation, for example allowing tenants to move if they wish to downsize to a smaller social home."⁴⁶

3 Challenging decisions

Applicants must be notified in writing if an authority decides that they are not a qualifying person – they must be advised of the grounds on which the decision has been reached.⁴⁷

Applicants have the right to request a review of the decision. Again, they must be informed of the outcome of the review and the reasons for it.⁴⁸

⁴³ *Ibid* paras 4.30-31

⁴⁴ See Library note SN/SP/6272 for more information on the under-occupation restrictions to Housing Benefit.

⁴⁵ DCLG, [Allocation of accommodation: guidance for local housing authorities in England](#), June 2012

⁴⁶ DCLG, [Providing social housing for local people](#), December 2013, para 20

⁴⁷ Section 160ZA99) and (10) of the *Housing Act 1996*

There is no right of appeal to an independent court or tribunal. Any legal challenge to a review decision has to be by way of judicial review. The applicant may also use the landlord's internal complaints procedure and complaints concerning maladministration may, ultimately, be referred to the Ombudsman.

4 Allocating housing association homes

Nominations by local authorities to stock owned by housing associations (also known as private registered providers of social housing) are allocated within the same legal framework as described in section 1.1 of this note.

Where an association has retained arrangements to allocate some or all of its properties directly, they are not governed by Part 6 of the *1996 Housing Act* (as amended). [The Regulatory Framework for Social Housing in England from April 2012](#) sets out the following requirements to which housing associations must adhere:

Allocations and mutual exchange

1.1 Registered providers shall let their homes in a fair, transparent and efficient way. They shall take into account the housing needs and aspirations of tenants and potential tenants. They shall demonstrate how their lettings:

- make the best use of available housing
- are compatible with the purpose of the housing
- contribute to local authorities' strategic housing function and sustainable communities

There should be clear application, decision-making and appeals processes.

1.2 Registered providers shall enable their tenants to gain access to opportunities to exchange their tenancy with that of another tenant, by way of internet-based mutual exchange services.

Specific expectations

Allocations and mutual exchange

1.1 Registered providers shall co-operate with local authorities' strategic housing function, and their duties to meet identified local housing needs. This includes assistance with local authorities' homelessness duties, and through meeting obligations in nominations agreements.

1.2 Registered providers shall develop and deliver services to address under-occupation and overcrowding in their homes, within the resources available to them. These services should be focused on the needs of their tenants, and will offer choices to them.

1.3 Registered providers' published policies shall include how they have made use of common housing registers, common allocations policies and local letting policies. Registered providers shall clearly set out, and be able to give reasons for, the criteria they use for excluding actual and potential tenants from consideration for allocations, mobility or mutual exchange schemes.

⁴⁸ Section 166A(9)(c) of the *Housing Act 1996*

1.4 Registered providers shall develop and deliver allocations processes in a way which supports their effective use by the full range of actual and potential tenants, including those with support needs, those who do not speak English as a first language and others who have difficulties with written English.⁴⁹

5 Information on who gets social housing

The Continuous Recording of Lettings (CORE) by social landlords captures information on the characteristics of the household and property each time a social or affordable property is let. This information is submitted to DCLG. Advice to local authorities on the type of information that should be captured when letting social housing was published on 14 October 2013: [Provisions of Social Lettings Data: Advice to Local Authorities](#). The consultation paper issued on the same day set out the rationale for issuing new advice:

It is important that people understand how social housing is allocated in their area, and that they know who is getting that social housing, so that they can see that the allocation system is fair and the local authority is complying with its allocation scheme. To make sure this is the case, local authorities need to ensure they collect and publish accurate, up-to-date and anonymised information on waiting list applicants and lettings outcomes. The published data should include information about household characteristics, including the age, sex, ethnicity and nationality of applicants and new tenants. **Accordingly, the new guidance will include an expectation on local authorities to have a clear policy about the collection and publication of waiting list and lettings information and to ensure the policy is published on their website.**⁵⁰

5.1 Impact of new allocation policies

Section 2 of this note contains reference to a reduction in numbers registered on local authority housing waiting lists following the introduction of revised housing allocation schemes.

In 2014 *Inside Housing* analysed data on lettings collected by the DCLG and also carried out a survey of 25 of the largest housing associations. According to the analysis, both sets of data showed a reduction in the number of lettings going to BME households, from 17.3 per cent of total lets in June 2012 to 13.2 per cent in December 2013. Lettings to white households rose from 75.2 to 82.3 per cent over the same period. Commentators suggested that the changes could be due to the impact of amended policies on diversity and called for more research into the issue.⁵¹ DCLG was reported as saying that the analysis was based on 'flawed methodology.' More detail on the analysis can be found online: [Ethnicity and new social housing lets](#).⁵²

Indicative research by the East 7 group of eight housing associations (published in November 2014) focused on seven local authorities who had changed their allocations policy and in which East 7 members had significant stock. The authors found:

- Local authorities have used their new powers to considerably reduce their waiting lists. On average, housing registers contracted by 51.8% with the largest declines in Southend-on-Sea Borough Council (-76.57%) and Bedford Borough Council (-68.64%).

⁴⁹ Homes and Communities Agency, [The Regulatory Framework for Social Housing in England from April 2012](#)

⁵⁰ DCLG, [Providing social housing for local people](#), 14 October 2013

⁵¹ *Inside Housing*, "Drop in allocations to BME households," 20 June 2014

- Where government guidance has been implemented sparingly, the reduction is much less significant. Peterborough City Council (-42.75%) implemented a loose local connection criteria policy while Hertsmere Borough Council (-48.77%) only removed the lowest of their housing need categories.
- Fewer older people and households with multiple adults are being referred, a likely result of the removal of low priority and more financially secure applicants.
- Prospective tenant interviews suggest changing allocations policies may be reinforcing the perception that social housing is only allocated to those in receipt of benefits, despite no statistical evidence emerging to support the view that allocations policy changes are impacting the benefit profile of tenants.⁵³

⁵² *Inside Housing*, 20 June 2014

⁵³ East 7, *Changes to allocation policies – the future for housing associations in the East*, 2014