



**REPORTS FOR DECISION BY THE  
CABINET MEMBER FOR REGENERATION**

Date Issued:

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# Agenda Item 1

## **MAIDSTONE BOROUGH COUNCIL**

### **CABINET MEMBER FOR REGENERATION**

#### **REPORT OF THE DIRECTOR FOR REGENERATION & COMMUNITIES**

**Report prepared by John Littlemore**

**Date Issued: 18 November 2010**

#### **1. Common Housing Assessment Framework**

##### **1.1 Key Issue for Decision**

- 1.1.1 To approve amending the Council's allocation scheme to provide a simpler, more transparent mechanism for the prioritisation between applicants for social housing. In addition the new scheme if adopted across a number of Kent authorities would provide a framework for easier access to social housing and opportunities for rationalisation.

##### **1.2 Recommendation of the Director for Regeneration and Communities**

- 1.2.1 That the Cabinet Member agrees in principle to pursue an allocation scheme as outlined in principle at Appendix A.
- 1.2.2 That the Cabinet Member authorises the Head of Housing & Community Safety to continue negotiations through Kent Housing Group to deliver a common housing assessment delivery model; and (in consultation with the Cabinet Member for regeneration) to make any amendments to the allocation scheme to achieve a common assessment framework.
- 1.2.3 That the Cabinet Member agrees to retain the current Allocation Scheme (dated January 2009) until such time as a viable common housing assessment is implemented by the Kent Homechoice Partnership.

##### **1.3 Reasons for Recommendation**

- 1.3.1 In 2007 the Council entered into a partnership with the other Kent local housing authorities and housing associations to promote and provide a choice based lettings (CBL) approach to accessing social housing. The partnership, called Kent Homechoice, is the largest one of its kind and has successfully enabled applicants to have a greater degree of participation in accessing housing. The emphasis being

placed on applicants to bid for properties that are available rather than officers determining who is allocated homes.

- 1.3.2 The move to CBL was the first major change in our approach to allocating social housing since the implementation of the Housing Act 1996. The HA 1996 regulated the process for allocating social housing and introduced the concept of certain categories of applicant having 'preference' for social housing. The Act requires local housing authorities to adopt an allocation scheme which sets out the rules for determining how priority is awarded between applicants.
- 1.3.3 In order to provide sufficient weighting to the preference groups; and to determine what characteristics of a persons circumstances should be prioritised, points are awarded as set out within the allocation scheme. For example points are awarded for lacking a bed-space; poor condition of a property; or if someone is threatened with homelessness.
- 1.3.4 The council's current allocation scheme has over 50 characteristics for which points are awarded. Each application is assessed against these characteristics to determine what points should be awarded. In recent years schemes that awards points as their weighting mechanism have been criticised for being overly complex, particularly as only a small percentage of applicants will ever achieve the priority needed to successfully obtain social housing. At present there are over 3,000 applicants on the council's housing list of whom only 14% are likely to be housed in any one year.
- 1.3.5 **Bands v Points:** The way in which allocation schemes are framed and then implemented has become a fertile area for litigation. Prior to 2009 the case law doubted that simple schemes based on bands and date order was compliant with the Housing Act 1996. However, the legal landscape changed with the House of Lords decision in Ahmad v Newham LBC, which approved the use of simple banding. A new Code of Guidance was issued by CLG following the judgment interpreting how the judgment should be implemented.
- 1.3.6 There has been an interest from some members, applicants and stakeholders to introduce a band-based scheme in Maidstone, culminating with a review by the Overview and Scrutiny Committee in 2008/09. Prior to the Ahmad case the Head of Housing & Community Safety could not recommend a transition to banding because of the risk of litigation. Since the Ahmad case this concern has rescinded and the opportunity now exists to review the Council's allocation scheme.
- 1.3.7 **Opportunity:** The opportunity exists following the Ahmad judgement to review how the council's allocation scheme is set out and the weighting given to each applicant. Simple banding schemes normally

consist of four priority groups or bands; priority within each band is determined by when the applicant was accepted onto the housing register. The general consensus being this is easier to understand for applicants and staff administering the scheme and reduces the instances of applicants involved in 'points chasing'.

- 1.3.8 **Change:** A move from the current points system to bands would require the assessment and transfer of data for 3,000 current applications, which has a cost implication. This could be offset on a 'spend to save' basis as described below. A critical part of the process is to ensure that those characteristics of housing need are given adequate weighting to provide priority to those applicants.
- 1.3.9 **Consequence:** Stakeholder and service user consultation has provided feedback that a simple band system would be preferred over the current points based scheme. However, simple band schemes reduce the ability to reflect specific issues that maybe of importance locally e.g. addressing cumulative need.
- 1.3.10 Discussion took place at Kent Housing Group following the judgment on the possibility of introducing a common assessment framework that could be adopted across Kent. A task group was set up led by the author of this report supported by the Kent Homechoice Manager. Following discussions with local authority and housing association practitioners a document was drafted and is attached as Appendix A.
- 1.3.11 **Contributing to the Community:** Kent Homechoice benefited from a £100k grant from the previous government to help with the set up costs and one of the principle objectives of introducing CBL is to enable improved access across local authority boundaries. The coalition government has stated its preference for enabling people to move within the social housing sector in order to promote access to employment and training.
- 1.3.12 This has been difficult to achieve within the Kent Homechoice scheme due in part to each local authority having its own allocation scheme, each being a variation on the statutory framework. This means that applicants have to register in each of the local authority in which they want to bid for property. The situation can be confusing for applicants as currently there is no uniformity between local authorities. Some authorities use a points based system whilst others employ priority bands; and local authorities have some discretion in determining what weight to give to the characteristics on which the scoring mechanism is based.
- 1.3.13 **Opportunity:** A number of local authorities have taken the opportunity to review their allocation scheme in the light of Ahmad and take advantage of the greater flexibility to give higher priority to those

applicants who require social housing in order to take up employment, training or education. This has been colloquially described as 'bringing a positive contribution to the local community'.

1.3.14 There is an opportunity to meet a number of aims including promoting economic development and regeneration by giving additional priority to applicants who are economically active. This will in turn act as an incentive to applicants to obtain work or enter into training and education.

1.3.15 **Change:** Our present scheme does not provide additional weighting for applicants who fall into this category and in fact gives points for those in receipt of benefit. This would have reflected the thinking at the time when the Housing Act 1996 was implemented. Currently points are also awarded for having a local connection and further consultation will take place to determine whether this factor should be giving weighting.

1.3.16 **Consequence:** The number of available affordable homes is likely to decrease in the short-term over the next three years and the council should be clear as to who and the reason why it provides additional weighting to certain applicants. Giving additional value to those persons who provide a positive contribution to the community will effectively suppress the chances for housing to those classes of applicant in other categories.

1.3.17 Altering the preference around local connection will make it easier for applicants with no direct link to Maidstone to obtain housing in this area. Your officer believes it is unlikely that many applicants within Kent will want to take advantage of this, as most applicants are keen to remain in the areas of their upbringing and to be close to those who provide support. However, an unknown factor is the impact of the coalition government's proposals to reduce benefit, particularly the housing benefit caps.

1.3.18 One suggestion is to reduce the benefits of those persons who have not been actively seeking work. This could have the effect of encouraging people who live in areas of low economic activity to move towards areas with better prospects e.g. the South-East. Additionally there is a proposal to cap local housing allowance in the private sector, particularly those with larger families requiring accommodation of more than three bedrooms. This might have the affect of households leaving the London area, which is likely to be especially affected, to seek cheaper private rent or social housing in Kent.

1.3.19 **Efficient processing:**

1.3.20 **Opportunity:** Having a common framework that can be adopted by a number of the Kent partners could provide the opportunity for closer

joint working between local authorities and housing associations. A joint approach would enable a single application form and point of entry, as well as providing an opportunity to centralise the administration of a single housing list and rationalisation of support e.g. software and other IT costs.

1.3.21 **Change:** At present each local authority maintains its own housing list, applying their local allocation scheme. If an applicant wants to bid for property in Dartford and Maidstone they will need to make separate applications to each local authority and it is likely that their application will be assessed in different ways e.g. points or bands. Having a common assessment would mean the need only register once and be assessed under a unified appraisal.

1.3.22 **Consequence:** Whilst providing a seamless process for the applicant and possible savings for the administering authorities having a common scheme would remove the ability to influence how people are assessed at a local level. For example whereas we might at present give higher weighting to street homeless the priorities in future would need to be set by consensus. Subtle local nuances such as giving greater priority to service personnel or Ghurkha families would not easily be accommodated within a common scheme.

#### 1.4 Alternative Action and why not Recommended

1.4.1 The Cabinet could retain its current allocation scheme, which is compliant with the statute. However, the coalition government is encouraging local housing authorities to frame their schemes with a local emphasis. It is appropriate to review the scheme following the Ahmad case and not to do so could mean the Council misses the opportunity to provide a more efficient scheme with colleagues from across Kent.

#### 1.5 Impact on Corporate Objectives

1.5.1 The review of the allocation scheme is intended to promote a place to live and enjoy through improving access to affordable housing

#### 1.6 Risk Management

1.6.1 The risks when amending the allocation scheme are the new scheme is not compliant with statute; and it fails to give adequate weighting to those applicants seen as a priority by the Council. Careful consideration has been given to how the scheme is framed and it is intended that the Kent Homechoice Partnership will obtain a third party view of the finalised scheme either from Shelter or a legal opinion from one of the specialist housing law firms.

- 1.6.2 On the issue of weighting there is an inherent risk when moving to broader categories of prioritisation (as outlined in 1.3.8 above) that the priorities for certain categories of person are not properly reflected in the implementation of the scheme. This can lead to some groups not having sufficient priority to obtain social housing or other groups having a greater priority than was intended. Careful analysis and testing will be carried to reduce the risk of this occurring prior to implementation.

## 1.7 Other Implications

### 1.7.1

1.	Financial	X
2.	Staffing	X
3.	Legal	X
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	

- 1.7.2 Financial: It is possible that there is an initial set-up cost involved in order to migrate data from one software system to another. However, this will be determined once it is known whether Maidstone Council is taking this scheme forward through a partnership. In the event it is probable that such cost would be included in a rationalisation of service provision and wrapped up into a 'spend to save' bid. It is unlikely that a move to change the system unilaterally will achieve sufficient savings to make this proposition financially viable. With no growth budget available the proposal is unlikely to move forward except in a partnership with the other Kent local authorities.

- 1.7.3 A common assessment framework provides the opportunity to review how the process of registering on the housing list can be delivered. Other local authority areas, notably in Norfolk, have moved to a system whereby one authority manages the process on behalf of their

neighbouring authorities. Such an approach in Kent could lead to efficiency savings in the region of £20k per authority.

1.7.4 Staffing: In the event that a combined service is the most appropriate way forward a further report will be provided to the Cabinet Member for Regeneration setting out the implications for staff involved in this area of work.

1.7.5 Legal: The revised allocation scheme will have to be compliant with the statute, as described in the background text above. It is a requirement within Part VI of the Housing Act 1996 that the allocation scheme is adopted by the Council.

## 1.8 Relevant Documents

### 1.8.1 Appendices

Appendix A Kent Housing Group draft common assessment

### 1.8.2 Background Documents

- Allocation of Accommodation: Choice Based Lettings - Code of Guidance for Local Housing Authorities
- Allocation of Accommodation: Code of guidance for local housing authorities
- Fair and flexible: draft statutory guidance on social housing allocations for local authorities in England
- Maidstone BC Allocation Scheme



**IS THIS A KEY DECISION REPORT?**

Yes

☐

No

☐

If yes, when did it first appear in the Forward Plan?

October 2010

This is a Key Decision because: The Allocation Scheme affects all Wards

Wards/Parishes affected: All

**How to Comment**

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

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**KENT HOUSING GROUP**



**COMMON HOUSING ASSESSMENT  
FRAMEWORK DOCUMENT**

**May 2010**

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# FAIR AND FLEXIBLE: STATUTORY GUIDANCE ON SOCIAL HOUSING ALLOCATIONS

The Government issued new statutory guidance on social housing allocations in December 2009. Called 'Fair and flexible', the guidance is in part a reaction to the House of Lords judgement in the case of *R (on application of Ahmad) v. Newham LBC*. The main implications of the judgement are:

- Cumulative preference is no longer required within allocation schemes. Banding schemes have until now struggled to provide for cumulative preference.
- Waiting time can be used as the main factor in determining priority between people who have a reasonable preference.
- Councils can let a small proportion of their homes to social housing transfers who do not have reasonable preference.

The Housing Minister, John Healey, has urged local authorities to consult with their local communities and review their allocation schemes. He wants councils to move towards simpler banding systems that take into account local flexibilities.

*'The system for allocating housing is complex and poorly understood. The demands and pressures on housing in an area are rarely well explained to local people. This helps give rise to the perception that the system is inflexible and unfair and the mistaken view that much public housing goes to those who have no legitimate right to it.'*

*'I want to see such myths and misunderstandings challenged. It is part of a council's responsibility to do so.'*

The guidance makes it clear that social housing should still be prioritised to those who are in the greatest housing need, that is people who qualify under the reasonable preference categories. However, it goes on to tell councils that they should seek to achieve other outcomes, such as providing greater choice and mobility, produce policies which are fair and create more sustainable communities.

## CONSULTATION ARRANGEMENTS

Local authorities have a statutory duty to consult with their housing association partners when proposing changes to their allocation policies. Also, statutory guidance published in 2008 places a 'duty to involve' interested parties in local government decisions. Part 6 of the Housing Act 1996 (s168(3)) states that anyone likely to be affected by a major change to an allocation scheme must be notified of it.

The 'Fair and flexible' guidance goes further, stressing that councils need to properly engage and involve local communities in the development of their allocation policies. By doing so local authorities will achieve a greater sense among local people that social housing is being allocated fairly, and therefore reduce myths and misunderstandings about the allocation process.



Community engagement can be delivered by various methods. It is important to remember that one size doesn't fit all, that targeting particular groups may involve different forms of communication. The Kent Housing Group, as well as consulting partners, stakeholders, staff and elected members, will also involve the wider community including housing applicants, tenants and residents.

The Chartered Institute of Housing practice brief, 'Allocations and Local Flexibility' gives a comprehensive guide to the principles of community engagement.

- Raise awareness of the opportunities to engage, breaking down barriers through lack of knowledge
- Engage people in setting priorities
- Tell people why we are seeking their views
- Help vulnerable and disadvantaged groups get involved, by offering practical assistance such as transport or interpreting services
- Understand that people need to have adequate knowledge to allow them to get involved in a constructive way
- Let people choose how they wish to be consulted by offering a range of methods, drawing on partners' expertise
- Tell people how their views have shaped the policy





# KENT HOMECHOICE AND CROSS BOUNDARY MOBILITY

All 13 local authorities responsible for housing in Kent operate the choice based lettings scheme, Kent Homechoice. Together with local, regional and national housing associations, Kent County Council and the HomeBuy Zone Agent, they are members of the Kent Choice Based Lettings Partnership, which incorporates a total of 35 full partners.

Research has shown that social housing tenants are far less mobile than residents living in other tenures. The 2007 Hills Report concluded that 'people can get locked into a particular property' due to a lack of mobility. The partnership is committed to providing an element of cross boundary mobility to its customers. The funding proposal submitted to Government to develop the choice based lettings scheme made clear that cross boundary mobility would be a major feature of the partnership.

*'The traditional ways of allocating local authority and RSL homes stifles mobility and restricts the opportunities for people to find employment.....It is intended to pilot the scheme by making 10% of lettings available to bids from across the sub region. Safeguards will be built in initially to protect the interests of different local authorities.....The ultimate aspiration would be to remove all geographical restrictions within the scheme.'*

The Government produced statutory guidance for choice based lettings in August 2008. Chapter 7 of the Code of Guidance lays out the criteria for regional and sub-regional schemes. The Code expects sub-regional choice based lettings schemes, such as Kent Homechoice, to incorporate cross boundary mobility.

Councils are keen to ensure that local vacancies are offered to those who can demonstrate a connection with the area such as those working or seeking employment in the area, or have a care need or support network within the locality, with social housing tenants receiving priority. The priority band system explained in pages 10-12 provides the means for local authorities to help people move across district boundaries. Such persons who can demonstrate a local connection described above would have their applications placed in priority band B, either through criteria 3, medical and welfare grounds, or 4, mobility.

It is for local authorities themselves to decide on quotas for social housing transfers and when they implement cross boundary mobility.

# SCOPE OF THE KENT HOUSING GROUP COMMON HOUSING ASSESSMENT

The aim of this document is to deliver a common form of housing assessment across all the local authorities in Kent. It does not aim to introduce a common allocation policy, as this would fail to recognise the distinct and different priorities of social housing landlords in Kent, and would not properly allow for local flexibilities. The legal context for common housing assessment is as follows:

- Part VI of the Housing Act 1996 as amended by the Homelessness Act 2002 concerns the *allocation* of housing, whether this is directly into the local authority's own stock or via a nomination to a housing association.
- The statute prescribes those persons who are ineligible to be allocated social housing.
- The local authority must adopt an allocation scheme that sets out the policy for determining priorities and the procedures for assessing and allocating accommodation.
- The statute sets out the circumstances under which certain categories of person are given preference, or no preference under the allocation scheme.
- A local authority cannot contract out the adoption or alteration of its allocation scheme.

It is possible to separate the assessment of housing applicants from the allocation of accommodation. Each council has to adopt its own allocation scheme therefore it is possible to replicate elements of the scheme to effectively have a common method of assessment. There are two main elements that form the basis of common housing assessment, and would allow for a common application form.

1. Prioritisation between housing applicants using a simple banding scheme that includes homeseekers and transfer applicants.
2. De-prioritisation for housing applicants who have no local connection or have excessive income or equity.

Areas that are outside the scope of common housing assessment include the allocation of accommodation by size and type, the use of quotas, and access to designated schemes such as sheltered, local lettings plans and rural exception schemes.



# COMMON HOUSING ASSESSMENT

The aims of the common housing assessment are:

- Create a simple system of housing assessment that people will understand, will consider to be fair, and will have confidence in.
- To prioritise people who are in the greatest housing need in accordance with our statutory obligations.
- Have regard to local needs and build in local flexibilities.
- Maximise the use of the social housing stock and improve mobility by providing the opportunity for tenants to transfer to a more suitable home.

## 1. EQUALITY AND DIVERSITY

We are committed to delivering a service that is accessible and equitable to all the communities that we serve. We will ensure that people will be treated with respect and dignity. We will monitor access to the housing list, and the assessment of need in accordance with our equality impact assessment. We will make certain that no-one is discriminated against on the grounds of:

- Race
- Gender
- Disability
- Sexual orientation
- Age
- Religious beliefs

We will regularly review our vulnerable person's strategy to help people with support needs.

## 2. ELIGIBILITY

All 'qualifying persons' are eligible to join the housing list. Part VI of the Housing Act 1996 as amended by the Homelessness Act 2002 confirms that the Secretary of State may prescribe who are or are not qualifying persons.

The following persons can join the housing list:

- Any person aged 16 or over, and
- Their current home is their only home, or sole residence, and
- They are not already on the housing list, either on their own or with someone else, and
- They are not ineligible for housing assistance under section 160A(1) and (3), and 185(2) of the Housing Act 1996, or any regulation prescribed by the Secretary of State. Guidance on who is ineligible for housing assistance can be found in Appendix one.

In general terms a person from abroad who is subject to immigration control is ineligible for housing assistance. And

- They, or a member of their household, have not been guilty of unacceptable behaviour serious enough to make them unsuitable to be a tenant. Behaviour means it was so serious that, had they been a tenant of the local authority, the authority would have been entitled to a possession order, not suspended, against them by virtue of the behaviour. This relates to an entitlement to possession on the following grounds:
  - rent arrears
  - breach of tenancy agreement
  - nuisance or annoyance to neighbours
  - conviction of using for immoral or illegal purpose
  - damage or neglect
  - conviction for arrestable offence committed in the locality
  - domestic violence causing other to leave
  - false statement to induce grant of tenancy
  - premium paid for assignment
  - tied accommodation when dismissed for misconduct

Where a person has previously been found ineligible due to unacceptable behaviour but now believes this should no longer be held against him, he can make a fresh application. The local authority can also allow an application if they are satisfied that the person's behaviour has improved.

### **3. PRIORITY BANDS**

Persons who join the housing list will have their application placed into one of four bands, in accordance with the 'Fair and flexible' statutory guidance. The bands will be called 'A to D', with applications in band A being afforded the highest priority on the housing list, B the next highest, then C, with band D being the lowest priority on the list.

#### **Band A – urgent housing needs**

Applications from persons who meet the following criteria:

1. Victims of violence, harassment, intimidation or threats of violence likely to be carried out.

For those who are owed a homelessness duty, or would be owed such a duty if assessed. Includes domestic violence, witnesses to crime or victims of crime, racial or homophobic harassment.

2. Urgent medical or welfare needs.

Where an urgent medical need has been agreed with the local authority or a high priority referral has been accepted by the local authority under the Single Agency Assessment procedure or similar arrangements.

3. Management transfer.

Where the social landlord requires the tenant to move or the tenant needs to move due to 1 above, major works or other urgent management reason.

#### **Band B – reasonable preference**

Applications from persons where none of the above in band A applies (except point 5) but who meet the following criteria:

1. People who are homeless.

Where the local authority have accepted a rehousing responsibility under Part VII of the Housing Act 1996 (as amended), or determined that the person does not have a priority need for accommodation.

2. People occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions.

This would apply, for example, if a person was lacking basic facilities, or was overcrowded or under-occupying. A full list of categories is listed in Appendix two.

3. People who need to move on medical or welfare grounds, including grounds relating to a disability.

Where a medical need has been agreed with the local authority or a priority referral has been accepted by the local authority under the Single Agency Assessment procedure or similar arrangements. A list of criteria for priority to be given on medical and welfare grounds can be found in Appendix two.

4. Mobility.

People who need to move to a particular locality in the district of the local authority, where failure to meet that need would cause hardship to themselves or to others. For example, to give or receive care, or to take up employment.

5. Restricted band A.

Where band A applies but they have no local connection with the district. Appendix four explains local connection criteria.

### **Band C – general**

Applications from persons where none of the above in band A or band B applies, or:

1. People who are intentionally homeless, or who have deliberately worsened their housing circumstances.

Where a decision has been made by the local authority under Part VII of the Housing Act 1996 (as amended) or, where a person has deliberately worsened their housing circumstances and would have been found to be intentionally homeless if an application under Part VII had been made.

2. People who are homeless by another local authority

This applies where a duty is owed by another local authority under section 190(2), 193(2) or 195(2) of the Housing Act 1996, or who are occupying accommodation secured by another local authority under section 192(3).

3. Where band B applies but they have no local connection with the district.

4. Where band B applies but they meet or exceed the financial threshold for HomeBuy. This threshold will change during time but as a guide persons will need to have access to (or savings of) £3,500 to cover the initial costs. They will also need to be in full time employment on a regular income that is sufficient to sustain a mortgage and/or rent payments.

**Band D – general without priority**

Applications from persons where none of the above in band A or band B applies, and:

1. They have no local connection with the district, and/or,
2. They meet or exceed the financial threshold for HomeBuy.

**4. WAITING TIME**

The simplest way of determining priorities between people with a similar level of housing need, and consequently those who are in the same priority band, would be to take into account the length of time which applicants have been waiting for an allocation. The housing list will differentiate between people who are in the same priority band according to their waiting time, taking into account the following:

- For new applicants, the date of their completed application.
- An application will only be completed once all the data required by the local authority to make an assessment has been provided.
- For transferring tenants, the date they applied for a transfer, and have provided all the data required by the local authority to make an assessment.

- For existing applicants or tenants, the date they notified the local authority of a significant change in their circumstances, that is, one which will improve their priority band. For changes that lower their priority band, the date of application applies. As above, the date will be from when all data required has been provided.

## **5. CIRCUMSTANCES OUTSIDE OF COMMON HOUSING ASSESSMENT**

People who apply to join the housing list are assessed in accordance with the provisions of Part VI of the Housing Act 1996 (as amended). There are a number of circumstances where people will be assessed outside of common housing assessment and will have their applications managed by the local authority and/or housing association separately. These circumstances are:

- Mutual exchange.
- An application made under Part VII of the Housing Act 1996 (as amended) (Homelessness) and consideration for temporary accommodation under this Part.
- Transfers involving a temporary decant for major works, or other management reason not involving an application from the tenant.
- Where a local authority secure the provision of suitable alternative accommodation under the Land Compensation Act 1973, section 39.
- The grant of a secure tenancy under the Housing Act 1985, section 554 or 555, regarding a defective home.
- Any duties arising from an application made under the Rent (Agriculture) Act 1976, section 27 or 28.
- Where a secure tenant dies, the tenancy is a periodic one, and there is a person qualified to succeed the tenant under the Housing Act 1985, section 89.
- Where a secure tenant with a fixed term tenancy dies and the tenancy remains secure by virtue of the Housing Act 1985, section 90.

- Where a secure tenancy is assigned to someone who would be qualified to succeed to the tenancy if the secure tenant died immediately before the assignment.
- Where a secure tenancy vests or is otherwise disposed of in pursuance of an order made under:
 

the Matrimonial Causes Act 1973, section 24 (property adjustment orders in connection with matrimonial proceedings);

the Matrimonial and Family Proceedings Act 1984, section 17(1) (property adjustment orders after overseas divorce); or

the Children Act 1989, Schedule 1, paragraph 1 (orders for financial relief against parents), or
- Where an introductory tenancy
 

becomes a secure tenancy on ceasing to be an introductory tenancy:

vests under the 1996 Act, section 133(2) (succession to an introductory tenancy on death of tenant); or

is assigned to someone who would be qualified to succeed the introductory tenancy if the introductory tenant died immediately before the assignment; or

meets the criteria in the previous paragraph (disposal)

## 6. MAKING AN APPLICATION

Persons wishing to apply for housing should complete a housing application form. The simplest way to do this is to visit the Kent Homechoice website at [www.kenthomechoice.org.uk](http://www.kenthomechoice.org.uk) and choose the Registration tab. An application and assistance can also be obtained from the local authority.

It is important that the application is completed fully and any evidence requested on the form is provided to the local authority. Waiting time will not accrue until all the data required by the council to make an assessment has been provided.

Once the form has been completed and all the information has been provided, the local authority may make additional enquiries into an application. They may conduct a credit reference check in certain circumstances. They could also conduct a home visit as part of their verification process.

A tenancy granted on the basis of information subsequently found to be false or because material information has been withheld, may be terminated and legal action taken by the landlord to recover possession of the property. In addition the applicant may commit a criminal offence if:

- He knowingly or recklessly makes a statement which is false and may lead the council to award priority for housing if the statement was relied on when assessing the application.
- He knowingly withholds information which the local authority has reasonable required him to give in connection with his application for housing

A person guilty of an offence, as stated above, is liable on summary conviction to a fine not exceeding scale 5 (currently £5,000) on the standard scale.

## **7. PERSONAL DATA AND INFORMATION SHARING**

We will share data provided by a person applying for housing in accordance with the Information Sharing Protocol agreed by the Kent Choice Based Lettings Partnership. When completing an application form, either using a paper copy of the form or on-line, the person is asked to provide their consent to the sharing of personal data between the parties to the protocol. Personal data can be shared provided the person has given informed consent and the sharing is for the purposes for which consent is given. Informed consent means that the person has the capacity to give consent, is aware of what information is to be shared, whom it is to be shared with and what it is to be used for.

Personal information is only disclosed to other parties with the person's consent or in exceptional circumstances where disclosure without consent is necessary. These reasons are:

- Where there are overriding legal, social or public interest considerations, for example there is a risk of seriously harm to the person themselves or to others if the information is not disclosed.



- Where the information is required by a local authority department or external auditors to carry out a statutory function.
- Where the information is required by the police as part of a criminal investigation.

People have the right to see and confirm the accuracy of any information held electronically about them. On receipt of a written request, local authorities have 40 days to provide details to a person of any personal information held. Third party documents will require the prior consent of the third party. If the person considers the personal information they have received is inaccurate, they may request that it is amended or removed from their records. If this is accepted by the council, appropriate action will be taken to amend the records. In the event of a disagreement, the information will remain and the person's comments will be recorded on file.

Disclosure of information may be denied by the local authority in the following circumstances:

- The information could prejudice criminal proceedings.
- Legal professional privilege could be claimed.
- A care professional is of the opinion that disclosure could result in a risk of serious harm to the person or others as a result of disclosure.



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# **APPENDIX ONE – ENTITLEMENT TO HOUSING ASSISTANCE**

## **Persons subject to immigration control (PSIC)**

Under section 160A(1) and (3), and 185(2) of the Housing Act 1996 a person from abroad who is subject to immigration control (PSIC) cannot be allocated social housing and is ineligible for housing assistance, unless s/he is of a class prescribed in regulations made by the Secretary of State. A PSIC is defined as someone who requires leave to enter or remain in the UK (whether or not such leave has been given).

A number of persons from abroad are not subject to immigration control, these are primarily European Economic Area (EEA) nationals and British nationals who have been living abroad. EEA nationals do not require leave to enter or remain in the UK if they have a right to reside in the UK that derives from European Community (EC) law. The question of whether an EEA national (or family member) has a right to reside in the UK will depend on their circumstances, particularly the economic status of the EEA national, for example whether he or she is a worker, self-employed, a student, or economically inactive.

Thus the existence or otherwise of a person's right to reside in the UK is the starting point in establishing their eligibility for housing.

## **Ineligible EEA nationals**

The Secretary of State has prescribed that certain persons from abroad who are not subject to immigration control are also ineligible for housing assistance by virtue of sections 106A(5) and 185(3) of the 1996 Act. Regulations 4 and 6 of the Eligibility Regulations 2006 determine which persons from abroad who are not subject to immigration control are nonetheless ineligible for housing assistance in respect of applications made on or after 1 June 2006.

Broadly, EEA nationals are excluded from housing assistance if they fall into the following categories:

- Those who are not habitually resident in the Common Travel Area (CTA) unless they are workers or self employed EEA nationals, or family members of such EEA nationals.
- A person whose only right to reside in the UK:

i) is derived from his/her status as a jobseeker or the family member of a jobseeker; or

ii) is an initial right to reside for a period not exceeding three months under regulation 13 of the EEA Regulations; or

- A person whose only right to reside in the CTA is a right equivalent to one of those mentioned in i) or ii) above which is derived from the Treaty establishing the EC.

### **Eligible EEA nationals**

EEA nationals who are not habitually resident in the UK may be eligible for housing assistance if they are in the UK and have a right to reside because they are:

- A worker;
- A self employed person;
- A person who is an accession state worker requiring registration who is treated as a worker for the purposes of regulation 6(1) of the 2006 EEA Regulations as amended;
- A person who is a family member of a person referred to above;
- A person with a right to reside permanently in the UK by virtue of regulation 15(c) (d) or (e) of the 2006 EEA Regulations.
- A person who left the territory of Montserrat after 1 November 1995 because of the effect on that territory of a volcanic eruption; and
- Here as a result of his/her deportation, expulsion or other removal by compulsion of law from another country to the UK.

### **EEA nationals and habitual residence**

Some EEA nationals will be persons from abroad who have not been specifically included as eligible for housing assistance under Regulation 6(2) of the 2006 eligibility Regulations but who nonetheless are eligible because they satisfy all elements of the habitual residence test. Habitual residence is not defined in legislation. There are two requirements that need to be met for habitual residence to be established:

- An appreciable time must have elapsed before a person can be considered to be habitually resident.

- The claimant must have a settled intention to reside in the UK.

There are also a number of categories of persons from abroad who have a right to reside under Directive 2004/38/EC and The Immigration (European Economic Area) Regulations 2006 “the EEA Regulations”, who are neither excluded by Regulation 6(1)(b) and (c) of the 2006 eligibility Regulations nor included by Regulation 6(2). These persons must satisfy the habitual residence test under Regulation 6(1)(a) in order to be eligible for assistance. Fundamentally these include non-economically active people, that is:

- An EEA national who is a student;
- A family member of an EEA student;
- An EEA national who is self-sufficient within the definition of the 2006 EEA Regulations;
- A family member of an EEA self-sufficient person;
- Extended family members (Regulations 7(3) and 8 of the 2006 EEA Regulations);
- An EEA national who has resided in the UK in accordance with the EEA Regulations for a continuous period of five years (permanent right of residence under Regulation 15 (1)(a) of the 2006 EEA Regulations);
- A family member of an EEA national who is not an EEA national but who has resided in the UK with the EEA national in accordance with the EEA Regulations for a continuous period of five years (permanent right of residence under Regulation 15 (1)(b) of the 2006 EEA Regulations);
- A person who (i) has resided in the UK in accordance with the EEA Regulations for a continuous period of five years; and (ii) was, at the end of that period, a family member who has retained the right of residence (permanent right of residence under Regulation 15 (1)(f) of the 2006 EEA Regulations).

### **Accession state nationals (A8)**

Nationals of the ‘A8’ accession states (Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary and Slovenia) who enter the UK as workers are required (with certain exceptions) under the Accession (Immigration and Worker Registration) Regulations 2004 (SI 2004/1219) to register their employment with the Home Office until they have accrued a period of 12 months’ continuous employment. If they remain both registered and in work for 12 months they are treated as having a right to reside and therefore may be eligible for housing assistance.

To demonstrate eligibility for housing assistance accession state workers requiring registration should be able to:

- Provide a valid worker registration card and a valid worker registration certificate showing their current employer; or
- Where the worker has applied to register but not yet received a certificate, provide a copy of their application to register; or
- Show they have been working for their current employer for less than one month.

While looking for work (or between jobs) these nationals have a right to reside that is conditional on them being self-sufficient and not imposing an unreasonable burden on the UK social assistance system. Thus while looking for work they are ineligible for housing assistance. These conditions cease to apply once they have worked in the UK continuously for 12 months.

### **Bulgarian & Romanian nationals (A2)**

On 1 January 2007, Bulgaria and Romania joined the European Union. The UK decided to impose restrictions on the right of these 'A2' nationals to work in the UK after accession. These restrictions go considerably further than those imposed on nationals of the A8 states. A Home Office press notice explained:

*'The UK has decided to limit access to its labour market following the European Commission's recommendation to permit Bulgaria and Romania to join the EU on 1 January 2007. From that date Romanians and Bulgarians will have the right to travel throughout the EU.'*

*In the UK low-skilled workers from Romania and Bulgaria will be restricted to existing quota schemes to fill vacancies in the agricultural and food processing sectors. There will be no net increase in these existing schemes and workers will be required to have an authorisation document.*

*Skilled workers will be able to work in the UK - as now - if they get a work permit or qualify under the Highly Skilled Migrant Programme, if they are a student, are self employed or as their dependents.*

*These new arrangements will be reviewed within 12 months and the Government's proposed new Migration Advisory Committee will assist in this process taking account of the needs of our labour market, the impact of the A8 accession and the positions adopted by other EU countries.*



*Employers and employees will have a duty to abide by the new rules and there will be controls in place for rogue employers and illegal workers, including fixed penalty notices.'*

These restrictions on attaining worker status also have an impact on the ability of the A2 nationals to attain a right to reside in the UK and thus attain eligibility for housing assistance.

The Allocation of Housing and Homelessness (Eligibility) (England) (No.2) Regulations 2006 (SI 2006/3340) were laid before Parliament on 15 December 2006 and came into force on 1 January 2007. These regulations provide that nationals of Bulgaria and Romania who are treated as a 'worker' for the purposes of the 2006 EEA Regulations (as modified) are exempted from the requirement to be habitually resident in the UK (or wider Common Travel Area) in order to be eligible for an allocation of accommodation under Part 6 of the 1996 Housing Act.

The Department of Communities and Local Government (CLG) issued a note to the Chief Officers of all local authorities in England on the position of A2 nationals in respect of housing assistance in December 2006:

*'For a transitional period, the Government proposes to allow Bulgarian and Romanian nationals access to the UK labour market only in limited circumstances. Broadly, access will be limited to those who are already working here lawfully, those who qualify to come here under the Highly Skilled Migrant Programme, and low skilled workers who obtain authorisation to work in the food processing or agriculture employment sectors (and are working in accordance with that authorisation).*

*The Government's policy is that EEA nationals who are working lawfully in the UK should have access to an allocation of accommodation under Part 6 of the Housing Act 1996 and to homelessness assistance under Part 7 of the 1996 Act, in accordance with their rights under EU law.*

*Under the EEA Regulations, those Bulgarian and Romanian nationals who have already worked lawfully in the UK for 12 months on 1 January 2007, or who enter the UK under the Highly Skilled Migrants programme, will have the same rights as other workers from the countries in the European Economic Area ("the EEA"). Such persons will be eligible for an allocation of accommodation or for homelessness assistance on 1 January by virtue of regulations 4(2)(a) and 6(2)(a) of the Eligibility Regulations.*

*However, the Accession Regulations 2006 modify worker status under the EEA Regulations for those nationals of Bulgaria and Romania requiring authorisation to undertake low skilled work. Consequently, the Amendment Regulations provide that those nationals of Bulgaria and Romania who are subject to worker authorisation and who are working lawfully in the UK in accordance with the Accession Regulations will also be exempted from the requirement to be habitually resident in the Common Travel Area in order to be eligible for an allocation or for homelessness assistance.*

*Since the number of Bulgarian and Romanian nationals who will be allowed to work lawfully in the UK during the transitional period will be limited, it is anticipated that the number of persons affected by the Amendment Regulations will be small.*

*From 1 January 2007, the Eligibility Regulations will apply to nationals of Bulgaria and Romania who come here in some other economic capacity (e.g. self employed or self-sufficient) in the same way as they apply to all other EEA nationals (subject to the modifications for workers outlined above).'*

On 31 October 2007 the Government announced that the restrictions on A2 nationals in terms of working in the UK would remain in place at least until the end of 2008. These restrictions have continued.



## **APPENDIX TWO – CRITERIA FOR REASONABLE PREFERENCE**

### **Insanitary, overcrowded and unsatisfactory housing conditions**

Living in insecure housing, for example short term private renting  
Living in supported housing and need to move  
Lacking bathroom or kitchen  
Lacking inside WC  
Lacking cold or hot water supplies, electricity, gas, or adequate heating  
Lack of access to a garden for children under 10  
Overcrowding (see Appendix three)  
Sharing living room, kitchen, bathroom/WC  
Property in disrepair, with a Category 1 hazard  
Property unfit  
Poor internal or external arrangements  
Under-occupation  
Children under 10 in flats or maisonettes above ground floor

### **People who need to move on medical or welfare grounds (criteria may apply to any member of the household)**

A mental illness or disorder  
A physical or learning disability  
Chronic or progressive medical conditions (for example MS, HIV/AIDS)  
Infirmity due to old age  
The need to give or receive care  
The need to recover from the effects of violence (including racial attacks) or threats of violence, or physical, emotional or sexual abuse  
Ability to fend for oneself restricted for other reasons  
Young people at risk  
People with behavioural difficulties  
Need for adapted housing and/or extra facilities, bedroom or bathroom  
Need improved heating (on medical grounds)  
Need sheltered housing (on medical grounds)  
Need ground floor accommodation (on medical grounds)  
Need to be near friends/relatives or medical facility on medical grounds

## APPENDIX THREE – OVERCROWDING

When considering whether a household is suffering from overcrowding, a local authority will take into account two standards:

1. The bedroom standard
2. The space standard

For the bedroom standard a separate bedroom shall be required for the following:

- a) a person living together with another as husband and wife (whether that other person is of the same sex or the opposite sex)
- b) a person aged 21 years or more
- c) two persons of the same sex aged 10 years to 20 years
- d) two persons (whether of the same sex or not) aged less than 10 years
- e) two persons of the same sex where one person is aged between 10 years and 20 years and the other is aged less than 10 years
- f) any person aged under 21 years in any case where he or she cannot be paired with another occupier of the dwelling so as to fall within (c), (d) or (e) above

The space standard is contravened when the number of persons sleeping in a property is in excess of the permitted number, having regard to the floor area of the rooms of the property available as bedrooms, or could be used as bedrooms. Children under the age of 5 years old will be regarded as half a unit, with a person aged 5 or over will be regarded as one unit.

Floor area of room	Number of persons
110 square feet or more	2
90 square feet or more, but less than 110 square feet	1.5
70 square feet or more but less than 90 square feet	1
50 square feet or more but less than 70 square feet	0.5

## APPENDIX FOUR – LOCAL CONNECTION

Local connection is defined in Part VII of the Housing Act 1996 as:

- Those who are normally resident in the area. Local Government Association guidelines define this as having resided in the area for six of the last twelve months, or three of the last five years, where residence has been out of choice;
- Those who are employed in the area– the Local Government Association guidelines define this as employment other than of a casual nature;
- Those who have family connections – the Local Government Association guidelines define this as immediate family members who have themselves lived in the area for five years;
- Special circumstances at the discretion of the local authority. We could accept a local connection for those who live close to the border with the local authority but not quite inside it; those who grew up in the area but moved away and no longer meet the normal residence conditions; those who need to move to the district for urgent social reasons such as to receive/give support or to escape violence. This is not a definitive list and we will be able to exercise discretion under this heading.

The Housing and Regeneration Act 2008, section 315, removes the exemptions for serving or former members of HM armed forces in relation to local connection based on residence or employment.

## SCRUTINY COMMITTEE RECOMMENDATION ACTION AND IMPLEMENTATION PLAN (SCRAIP)

**Committee: Leisure & Prosperity**

**Meeting Date: 26 October 2010**

**Minute Nº: 64**

**Topic: Housing Allocation Scheme**

<b>Recommendation<sup>i</sup></b>	<b>Chief Officer / Cabinet Member<sup>ii</sup></b>	<b>Response<sup>iii</sup></b>	<b>Timetable<sup>iv</sup></b>	<b>Lead Officer<sup>v</sup></b>
Clarity on the scheme for the eligibility criteria and urgent needs terminology be provided;	Chief Officer	Email from John Littlemore sent to Chairman and Members	05/11/10	John Littlemore
The scheme be clearly focussed on benefiting residents as well as providing value for money,	Chief Officer	The allocation framework is yet to be finalised and MBC will only agree to sign up to the scheme if there is a proven benefit to applicants	1/4/2011	John Littlemore
The following information be provided: i. A breakdown of the local connection of applicants housed in the last six months	Chief Officer	Email from John Littlemore sent to Chairman and Members	05/11/10	John Littlemore
ii. A model showing the impact of the new scheme when available	Chief Officer	Agreed	March 2011	John Littlemore
iii. The number of A8 nationals who we accepted a homelessness duty to in the last six months; and	Chief Officer	Email from John Littlemore sent to Chairman and Members	05/11/10	John Littlemore
iv. A copy of the Kent Home Choice Consultation Package when available.	Chief Officer	Agreed	March 2011	John Littlemore

## Notes on the completion of SCRAIP

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<sup>i</sup> Report recommendations are listed as found in the report.

<sup>ii</sup> Insert in this box the Cabinet Member whose portfolio the recommendation falls within.

<sup>iii</sup> The Officer/Cabinet Member responsible for responding to the recommendation should indicate in this box either the acceptance or rejection of the recommendation.

**If the recommendation is rejected** an explanation for its rejection should be provided. The 'timetable' and 'lead officer' boxes can be left blank

**If the recommendation is accepted** an explanation of the action to be taken to implement the recommendation should be recorded in this box. Please also complete the 'timetable' and 'lead officer' boxes.

<sup>iv</sup> The Officer/Cabinet Member responsible for responding to the recommendation should indicate in this box when the action in indicated in the previous box will be implemented.

<sup>v</sup> The Officer/Cabinet Member responsible for responding to the recommendation should indicate in this box the Officer responsible for the implementation of the action highlighted in the 'response' box.