

Choice Based Lettings – Executive Summary of Code of Guidance

Purpose of the code

- 1.1 The Secretary of State is issuing this guidance to local housing authorities in England (referred to in this guidance as “housing authorities”) under s.169 of the Housing Act 1996 (the 1996 Act). Housing authorities must have regard to this guidance for the purposes of exercising their functions under sections 167(1A) and 167(2E) of the 1996 Act. This guidance is also relevant to the duties in sections 193(3A) and 195(3A) of the 1996 Act.
- 1.2 This code of guidance (“the Code”) provides information about those factors which housing authorities should take into account in framing their allocation scheme to offer a choice of accommodation to applicants, and factors which they may wish to consider. Accordingly the guidance is primarily for those authorities which have in place or propose to have in place a policy of offering choice to applicants. It is not a substitute for legislation and in so far as it comments on the law can only reflect the Department’s understanding at the time of issue. Housing authorities will still need to keep up to date with any developments in the law in this area.
- 1.3 Housing authorities which offer a choice of accommodation to applicants continue to allocate accommodation within the meaning of Part 6 of the 1996 Act and must comply with the provisions of Part 6. This guidance is therefore supplementary to the Allocation of Accommodation Code of Guidance for Local Housing Authorities¹ issued in November 2002 (referred to in this guidance as the “Allocations Code”).

Who the guidance is for

- 1.4 This guidance is specifically for housing authority members and staff. It is also of direct relevance to registered social landlords (referred to as RSLs). Where a housing authority requests it, RSLs have a duty under section 170 of the 1996 Act to co-operate to such extent as is reasonable in the circumstances in offering accommodation to people with priority under the

¹ *Allocation of Accommodation Code of Guidance for Local Housing Authorities*, ODPM 2002.

authority's allocation scheme. Other private landlords may also work in partnership with housing authorities to enable applicants to be offered a choice of accommodation and this guidance may be of interest to these landlords.

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

Legislation in context

1.6 In framing their allocation scheme to offer a choice of accommodation to applicants, housing authorities should ensure that their policies and procedures are compatible with obligations imposed on them by other existing legislation, in addition to Part 6 of the 1996 Act, including but not limited to:

- The Race Relations Act 1976 (in particular s.71)
- The Disability Discrimination Act 1995 (in particular s.49A)
- The Sex Discrimination Act 1975 (in particular s.76A)
- The Equality Act (Sexual Orientation) Regulations 2007 (in particular regulations 5 and 8)
- The Human Rights Act 1998
- The Freedom of Information Act 2000 (in particular s.19)
- The Data Protection Act 1998 (see paragraph 5.36 below)

1.7 Section 71 of the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000) requires specified bodies, including local authorities, to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between people of different racial groups. The aim of this provision is to make the promotion of racial equality central to the way relevant services are designed and delivered. Local authorities are also required to publish a

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

race equality scheme which must be reviewed every three years. Policies and procedures on offering choice to housing applicants should have regard both to wider duties imposed on public bodies in terms of race relations, and to the local authority's own race equality scheme.

- 1.8 Section 49A of the Disability Discrimination Act 1995 (inserted by the Disability Discrimination Act 2005) introduces a new duty to promote disability equality which is applicable to all public bodies, including housing authorities. This duty came into force in December 2006. It includes, amongst other things, the requirement to have due regard to:
 - the need to promote equality of opportunity between disabled persons and other persons
 - the need to eliminate unlawful discrimination and
 - the need to take steps to take account of disabled persons disabilities, even where that involves treating disabled persons more favourably than other persons
- 1.9 The Equality Act (Sexual Orientation) Regulations 2007 (which are made under section 81 of the Equality Act 2006) make it unlawful to discriminate on the grounds of sexual orientation in the provision of goods, facilities and services, the disposal and management of premises and the exercise of public functions (amongst other things). Sexual orientation is defined in section 35 of the Equality Act 2006 as meaning an individual's sexual orientation towards persons of the same sex as him or her, persons of the opposite sex, or both. Lesbian, gay and bisexual applicants may often be reluctant to access services, including social housing, for fear of discrimination and/or fear of a lack of awareness or sensitivity to their issues among housing and support providers. Housing authorities should be aware of this when framing their allocation policies and when considering the support and assistance available to applicants (see further Chapter 5).
- 1.10 Section 19 of the Freedom of Information Act 2000 requires public authorities to adopt and maintain a scheme which relates to the publication of information by the authority, and to publish information in accordance with that scheme. The publication scheme must specify the classes of information which the authority publishes or intends to publish; the manner in which information of each class is, or is intended to be, published; and whether the material is, or is intended to be, available to the public free of

charge or on payment. The type of information covered by a publication scheme would include the authority's allocation scheme. This is in addition to the duties under section 168 of the Housing Act 1996 to make information available about the authority's allocation scheme.

1.11 The following guidance on the equalities duties is available on the Equality and Human Rights Commission website at www.equalityhumanrights.com:

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

1.12 The policies and procedures on offering a choice of accommodation should be seen in the context of the authority's other housing functions. They should be compatible with the local authority's housing strategy and the relevant regional (and sub-regional) housing strategy. Since the allocation of accommodation under Part 6 is one of the ways in which the main homelessness duty can be discharged, the policies and procedures on choice should also be considered as part of the housing authority's homelessness strategy.

1.13 For a wide range of vulnerable people, housing, care and support are inextricably linked, and housing authorities will want to consider how their policies on offering choice to applicants interacts with other programmes of care and support.

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