

Using the private rented sector to tackle homelessness in your area



A briefing for councillors and local authority officers on using your new powers

March 2013

Changes in the Localism Act 2011 give local authorities more scope to place homeless households in private rented homes, increasing your options for placements. These powers also provide an opportunity to build stronger links with local landlords and raise the general standards of rented homes in your area.

However, the private rented sector does not always provide families with the stability they need, and too often standards are not up to scratch. We think this option should only be used as a last resort. This briefing sets out the alternatives. If you do need to place homeless families in private rented homes, government guidance requires your council to develop clear policies for doing so. This briefing will help you ensure that your council:

- Exhausts all options that might avoid the necessity of offering private rented accommodation.
- Makes offers which are in line with the government regulations and guidance.
- Makes offers that are within households' means.
- Offers tenancies that are sustainable for households.
- Offers properties that are safe and in a decent condition.
- Uses this opportunity to build better relationships with the private rented sector in your area.
- Does not undermine other authorities' management of their local private rented sector.

The wider context

The changing private rented sector

The private rented sector has transformed in recent years, and is no longer the preserve of students and young professionals.

- The sector **grown by 69%** over the last ten years.
- **Nine million people** in England now rent privately.
- **Over a million families with children** are now renting privately.

But the rental market has not been designed to provide permanent housing. This new role has developed organically and largely unchecked.

The changing welfare system

Recent and upcoming welfare reforms will make it more difficult to cover the rents in high cost areas. This is likely to increase homelessness and put more pressure on local authorities.

These changes include:

- The £500 per week overall benefit cap.
- The breaking of the link between Local Housing Allowance and local rents.
- The extension of the Shared Accommodation Rate to under 35s.
- The new under-occupancy restrictions (the 'bedroom tax').

Preventing homelessness

In order to avoid the necessity of using offers in the private rented sector you should start by ensuring sufficient measures are in place to prevent homelessness in the first place.

Support services

The Homelessness Act 2002 requires local authorities to strategically prevent homelessness; to ensure sufficient accommodation is and will be available for people in the district who may become homeless; and to secure satisfactory provision of support (advice, information and assistance) for homeless people.

There are a number of options available for your council, which you may or may not be using already, to prevent people losing their existing home:

- Provide high quality advice and advocacy. This could include advisors negotiating with landlords to help ensure that housing problems do not reach crisis point.
- Prevent rent arrears by expediting the processing and payment of Housing Benefit and Local Housing Allowance, and through the use of Discretionary Housing Payments.
- Prevent breaches or loss of tenancy by providing, or referring people to, support and care services that allow them to remain in their homes. Preventative services should be targeted at those particularly at risk of homelessness, such as young care leavers.

Supply of affordable homes

The National Planning Policy Framework requires local authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for affordable housing in the housing market area.

Local authorities should try their utmost to ensure that there is an adequate supply of homes affordable and accessible to low income residents by:

- Using their strategic powers to minimise demolitions or net losses in regeneration schemes, and prevent the conversion of homes of multiple occupation into single-household properties, where suitable.
- Strategically increasing the number of homes affordable to Housing Benefit claimants through section 106 agreements; the use of council-owned development land; and, where necessary, good quality conversion of existing homes to smaller units.
- Increasing the affordable options for Housing Benefit claimants by setting up and supporting private sector leasing schemes. These are schemes where the council takes on the leasing of private rented sector residential properties to homeless families. These are traditionally used for temporary accommodation purposes, but some authorities are also exploring longer term options. They can be a good way to use the private rented sector to meet housing need, because tenants effectively have a social landlord while living in a privately-owned property, often allowing for more affordable, stable and suitable accommodation options.

Making an offer in the private rented sector

We believe homeless people should ideally have a choice between accepting an offer of a private tenancy and waiting for a social rented home. However, we do recognise that there can be no one-size-fits-all model. Each local authority has different pressures and resources, and each household has different needs.

Before making a private rented offer, you should consider whether the household would be better served by waiting in suitable temporary accommodation for a social rented home. The preferences and needs of the household should be a major factor in the decision.

Only once all the other options have been exhausted should you consider an offer of private rented housing. Below is a checklist of the government guidance and regulations, as well as further recommendations to ensure your offer is appropriate. You should be confident you have met these before going ahead.

A STABLE HOME – Preventing the cycle of repeat homelessness.

The private rented sector does not often provide the stability many households need. Government data shows that the loss of a private rented tenancy is now the biggest single cause of homelessness.

The Localism Act 2011 requires that homeless households being re-housed in the private rented sector are given a minimum 12 month tenancy. If the household becomes unintentionally homeless within two years then the duty owed by your council to rehouse them still applies. If you decide to discharge into a private rented home there is a risk that the same households will present as homeless year after year as they move from one unstable tenancy to another. To prevent this cycle of homelessness, and save temporary accommodation costs, we suggest that local authorities:

- **Offer at least two year tenancies in the private rented sector.** As a minimum, it would be beneficial to all parties for an option of renewal for a further twelve months to be written into any one year tenancies offered.
- **Give those placed in the private rented sector priority for social housing** for five years following their homeless acceptance. This is equivalent to 'reasonable preference' and can be done through your allocations policy. This means that the tenant retains a realistic prospect of an offer of social housing which would provide more long term stability.
- **Offer tenancy start-up support.** Landlords who offer private rented sector accommodation can be required to use a model tenancy agreement and provide a 'welcome pack' for tenants. This could contain information such as repairs procedures, how to register for utilities, and fire escape routes. Private rented sector access schemes are a useful resource - they do all this and more, and are operating in most authority areas - <http://www.privaterentedsector.org.uk/schemes.asp>
- **Provide ongoing tenancy support.** Interim findings from research by Shelter and Crisis, funded by the Big Lottery, suggest that residents tended to be more positive about receiving support and achieve better outcomes if they have consistency of care and can return to the same support worker or organisation if they need to, rather than being moved from pillar to post.

A SUITABLE HOME – Ensuring safe, decent and local homes.

Conditions in the private rented sector are often poor, with 35% of the sector currently classed as ‘non-decent’. Government regulations and guidance set out the circumstances in which accommodation offered is not considered suitable, under five broad headings:

1. Physical conditions

The regulations state that:	You must be of the view that the accommodation is in ‘reasonable physical condition’. Accommodation must have a valid Energy Performance Certificate.
The guidance states that:	You should ensure the property has been visited by either a local authority officer or someone acting on their behalf to look for signs of poor conditions, such as damp or mould.
Shelter recommends that:	Inspections should only be carried out by someone trained in making assessments under the Housing Health and Safety Rating System – as only trained inspectors can effectively spot evidence of carbon monoxide, fire safety risks or damp. Where Category 1 Hazards are identified, the accommodation should not be offered and the council should take action to ensure the landlord makes repairs before letting out the property, as required by law. You should not consider the accommodation suitable unless it achieves an Energy Performance Certificate rating considered to be satisfactory by your authority. High fuel costs caused by a very low rating could threaten tenancy sustainment. We also urge you to ensure that the accommodation is adequately furnished, especially considering that residents can no longer rely on Community Care Grants and Crisis Loans to buy the basics. The provision of white goods, such as a fridge, are particularly important as they directly affect people’s wellbeing, diet and ability to budget.

2. Landlord Behaviour

The regulations state that:	You must be of the view that the landlord is fit and proper to manage accommodation, by considering whether s/he has committed any relevant criminal offences, such as harassment or illegal eviction, or otherwise contravened any rule of landlord and tenant law.
The guidance states that:	This can be carried out via Criminal Records Bureau checks. Where the accommodation is out of the district, checks should be made with the ‘receiving’ authority.
Shelter recommends that:	Households accepted as homeless often contain very vulnerable people, such as children, people with disabilities, people with mental or physical ill health and young people leaving care. They will have little choice in accepting the accommodation. Therefore, landlord self certification should not be the main way that you satisfy yourself that the landlord is fit and proper as this could be judged an inadequate standard of care. Only consider accredited landlords (those who meet an agreed standard) as fit and proper for purposes of discharge of the statutory duty. This will incentivise landlords to get accredited and help raise the general standards of private rented homes in your area. At the very least, we suggest asking the local police authority to run checks for violent/sexual complaints or fraud, and checking with your Environmental Health team for landlord-tenant offences. To make it easier for people to alert you to concerns about the landlord, we suggest you provide a named contact to whom tenants can complain in confidence, preferably via a Tenancy Relations Service.

3. Health and safety

The regulations state that:	Accommodation must have a current Gas Safety Certificate. Electrical equipment must meet safety regulations, and the landlord must take reasonable fire and carbon monoxide safety precautions.
The guidance states that:	Landlords must fit carbon monoxide alarms and carry out a fire risk assessment of any common parts of buildings and ensure adequate fire safety measures, such as making sure that furniture and furnishings comply with safety regulations. You should also provide fire safety advice to tenants.
Shelter recommends that:	Adequate smoke alarms should be installed and adequate electrical sockets to prevent overloading. You should set a timeframe for review and confirmation of electrical, fire and carbon monoxide safety standards in the same way that there is for gas safety.

4. Houses in multiple occupation (HMOs)

The regulations state that:	The Regulations require that HMOs that are subject to licensing, must have a licence.
Shelter recommends that:	Your private rented sector offer policy should indicate whether hostel-type HMO accommodation would be considered suitable for discharge of duty. The policy should take into account whether there are adequate facilities for food storage, preparation and cooking. Also important is how the tenant will fit in with other residents – for example a vulnerable young woman should not be placed in an all-male HMO. Suitability of sharing should take into account cultural needs, such as preparation of food, and privacy in using bathroom facilities. We also suggest you offer appropriate support to prepare people to live with others in private rented sector HMO accommodation, for example in delivering conflict resolution training. This should increase the rate of tenancy sustainment, thereby saving money on tenancy breakdown and re-housing costs.

5. Elements of good management

The regulations state that:	A written tenancy agreement, which you consider to be adequate, is required.
The guidance States that:	You should review the tenancy agreement to ensure it is clear and doesn't contain unfair or unreasonable terms, such as call-out charges for repairs or professional cleaning at the end of the tenancy. You should also remind prospective landlords and tenants of their responsibilities under one of the official tenancy deposit protection schemes.
Shelter recommends that:	To ensure agreements are consistent and adequate you should provide all landlords offering private rented sector accommodation with a model tenancy agreement. For example, it would be unacceptable for agreements to contain six month break clauses (without the agreement of the applicant) as this defeats the purpose of the legislation requiring 12 month tenancies. You should require proof that landlords providing accommodation have protected all deposits under an authorised tenancy deposit protection scheme.

Location of accommodation

Another vital element of a suitable home is its location. As part of a major research project called Sustain, Shelter and Crisis, funded by the Big Lottery, have spent the last two years interviewing homeless people across the country who have been offered private rented accommodation by their local authority. Most people felt that the area was the most important factor for them in the allocation of a home. Shelter recommends that the applicant's location related needs, both within and outside the district, should be the main factor in deciding whether accommodation is suitable, and that people are given as much choice as possible on offers of accommodation.

You should not usually offer accommodation out of area. The Housing Act 1996 requires that, in so far as reasonably practical, you must secure accommodation within your own district.

If you do place out of area, there are certain things the regulations and guidance note you should take into account:

The regulations state that:	When considering whether the accommodation is suitable for the household you are offering it to, you must take into account: <ul style="list-style-type: none">• The distance from your district.• The significance of any disruption to employment, caring responsibilities or education.• The proximity and accessibility of medical facilities and other support.• The proximity and accessibility of local services, amenities and transport.
The guidance states that:	Where possible, you should provide accommodation that is as close as possible to where the household was previously living. If it is found that there was something available closer the person can challenge the offer on the grounds that it was not suitable. Where possible, you should: <ul style="list-style-type: none">• Retain established links with schools, doctors, social workers and other key services and support.• Take account of the need to reach a normal workplace and the need to minimise disruption to the education of young people, particularly at critical points, such as leading up to GCSEs or equivalent.• Recognise that, in some cases, there can be benefits to out-of-district accommodation, such as in cases of domestic violence, ex-offenders and the people in need of employment.

You should also assist the receiving borough by notifying them within 14 days of the accommodation being made available to the homeless household. It is in the best interest of the household that information is shared with the receiving borough, for example, whether the household includes a child on the Child Protection Register.

Finally, you should not undermine other authorities' efforts to manage their local private rented sector. For example by outbidding them on price, or distorting their local market by accepting lower quality properties for your residents.

The Pan London Agreement is a good example of how mutually beneficial processes can be developed. It exists to ensure London boroughs do not 'out-bid' each other by offering a higher price for properties, and makes sure they are safeguarding their most vulnerable households. The Agreement also advises that the boroughs inform each other of out of borough placements, and that Registered Providers should offer any Housing Association Leasing Schemes to the host borough first.

AN AFFORDABLE HOME – Providing accommodation within the household’s means.

To ensure households do not fall into arrears you should only offer accommodation that households can afford.

The regulations state that:	Local authorities need to ensure the accommodation is affordable to the applicant, setting out a basic definition of ‘affordability’ as a factor in suitability, in terms of balancing a person’s resources against their necessary or reasonable living expenses.
The guidance states that:	You should not regard accommodation as affordable if the applicant would be left with a residual income which would be less than the level of income support or income-based jobseeker’s allowance to which they would be entitled. This amount will vary from case to case, according to the circumstances and composition of the applicant’s household. You need to: <ul style="list-style-type: none">• Consider whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials.• Avoid placing applicants who are in low paid employment in accommodation where they would need to resort to claiming benefit to meet the costs of that accommodation.• Consider opportunities to secure accommodation at affordable rent levels where this is likely to reduce perceived or actual disincentives to work.

Recent welfare reforms are likely to increase homelessness and further reduce the availability of genuinely affordable housing. In addition, direct payments can make landlords more wary of letting to households on benefits. Some local authorities are therefore considering promoting the use of credit unions (member-owned financial cooperatives which provide credit at competitive rates), or escrow accounts (money held by a third party on behalf of the other two parties in a transaction). These options can promote responsible money management and give landlords more confidence in taking on benefit claimants.

In addition, some local authorities have set up social lettings agencies allowing them to act as the managing agent for private sector landlords. This provides certainty for landlords and allows the local authority to ensure that the tenant is adequately supported.

Conclusion

While we appreciate that local authorities may need to make use of the private rented sector, we advise that this option is only used as a last resort and in cases where it is appropriate. We hope that this advice assists your local authority in complying with the regulations and providing a decent, stable and affordable offer to your homeless residents.

We welcome any feedback on this briefing, and additionally any information about how your local authority will be using these new powers to help us compile a national picture of their use.

Ellie Robinson, Public Affairs Officer
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FURTHER READING:

Legislation

- [Housing Act 1996](#) – An Act making provision about the allocation of housing accommodation by local housing authorities and homelessness.
- [Homelessness Act 2002](#) – An Act outlining the functions of local housing authorities relating to homelessness and the allocation of housing.
- [Housing Act 2004](#) – An Act detailing housing conditions and the regulation of HMOs, among other housing issues.
- [Localism Act 2011](#) - Contains a wide range of measures to devolve more powers to councils and neighbourhoods and give local communities greater control over local decisions like housing and planning.

Regulations

- [The Homelessness \(Suitability of Accommodation\) \(England\) Order 2012 \(SI 2012/2601\)](#)
- [The Homelessness \(Suitability of Accommodation\) Order 1996 \(SI 1996/3204\).](#)
- [The Energy Performance of Buildings \(Certificates and Inspections\) \(England and Wales\) Regulations 2007 \(SI 2007/991 \(as amended\)\)](#)
- [The Gas Safety \(Installation and Use\) Regulations 1998 \(SI 1998/2451\)](#)
- [The Regulatory Reform \(Fire Safety\) Order 2005 \(SI 2005/1541\)](#)
- [The Furniture and Furnishings \(Fire\) \(Safety\) Regulations 1988 \(as amended\)](#)

Guidance

- [DCLG \(2006\) Homelessness Code of Guidance for Local Authorities](#)
- [DCLG \(2012\) Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness \(Suitability of Accommodation\) \(England\) Order 2012](#)
- [DCLG \(2012\) National Planning Policy Framework](#) – A Framework which sets out the Government’s planning policies for England and how these are expected to be applied. It provides a framework within which local people and their councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities.

Research

- Smith, M. Shelter and Crisis (June 2012) *Sustain: a longitudinal study of housing wellbeing in the private rented sector*. Big Lottery Fund
http://england.shelter.org.uk/professional_resources/policy_and_practice/sustain - A Big Lottery funded study exploring the long-term outcomes for vulnerable households who have recently entered the private rented sector.

Other useful resources

- London Councils (2011) [The Pan London Agreement on Inter-Borough Accommodation Placements](#) - An Agreement between the 33 London Boroughs on housing placements.